ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
7882 HOUSE JUDICIARY

NOTES TO DECISIONS

Editor's notes. — RLR v. State, 487 P.2d 27 (Alaska 1971) and Doe v. State, 487 P.2d 47 (Alaska 1971), cited below, were decided prior to the 1977 amendment to this section, which rewrote subsection (b).

The child and his parents must receive notice which would be deemed adequate in a civil or criminal proceeding. These requirements suggest that Alaska civil and criminal rules should be looked to for techniques of service on children. RLR v. State, 487 P.2d 27 (Alaska 1971).

Personal service upon the child is required. Doe v. State, 487 P.2d 47 (Alaska 1971).

Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded. RLR v. State, 487 P.2d 27 (Alaska 1971); Doe v. State, 487 P.2d 47 (Alaska 1971).

And it must set forth the alleged misconduct with particularity. RLR v. State, 487 P.2d 27 (Alaska 1971).

One day's notice was insufficient to afford a reasonable time to prepare. Doe v. State, 487 P.2d 47 (Alaska 1971).

Waiving defects in process. — While some authorities hold that infants, even when represented by counsel, cannot waive defects in process and consent to jurisdiction over the person, such a rule unreasonably restricts the strategic choices open to a child represented by counsel. A no-waiver rule could be used as a delaying tactic by an unprepared prosecutor when process was not entirely correct. A child represented by competent counsel is about as fit as an adult to waive this sort of objection, which is usually beyond the ken of adult laymen as well as children. RLR v. State, 487 P.2d 27 (Alaska 1971).

Defect in process was waived by child's failure to raise it below. RLR v. State, 487 P.2d 27 (Alaska 1971).

Order terminating parental rights vacated because of inadequate notice. — Order terminating parental rights was vacated where the state, by merely publishing notice of the parental rights termination proceeding, failed to comply with the notice requirements of the Indian Child Welfare Act, 25 U.S.C. 1912(a), and subsections (a) and (b) of this section and the record did not establish actual notice so as to render that error harmless. In re L.A.M., 727 P.2d 1057 (Alaska 1986).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Collateral references. — Notice to parent, and hearing, before commitment of delinquent, dependent, or neglected children, 76 ALR 247.

Right to and appointment of counsel in juvenile court proceedings, 60 ALR2d 691.

Right of juvenile court defendant to be represented during court proceedings by parent, 11 ALR4th 719.

Sec. 47.10.040. Release of minor. A minor who is taken into custody may, in the discretion of the court and upon the written promise of the parent, guardian, or custodian to bring the minor before the court at a time specified by the court, be released to the care and custody of the parent, guardian, or custodian. The minor, if not released, shall be detained as provided by AS 47.10.140. The court may determine whether the father or mother or another person shall have the custody and control of the minor for the duration of the proceedings. If the minor is of sufficient age and intelligence to state desires, the court shall give consideration to the minor's desires. (§ 7 art I ch 145 SLA 1957; am § 10 ch 63 SLA 1977)

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A child has the right to remain free pending an adjudication that the child is delinquent, dependent, or in need of supervision [now delinquent or in need of aid], where the facts supporting the petition involve an act which, if committed by an adult, would be a crime, and where the court has been given reasonable assurance that the child will appear at future court proceedings. If the facts produced at the inquiry show that the child cannot return or remain at home, every effort must be made to place the child in a situation where his freedom will not be curtailed. Only if there is clearly no alternative available may the child be committed to a detention facility and deprived of his freedom. Doe v. State, 487 P.2d 47 (Alaska 1971).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Sec. 47.10.050. Appointment of guardian ad litem or attorney. (a) Whenever in the course of proceedings instituted under this chapter it appears to the court that the welfare of a minor will be promoted by the appointment of an attorney to represent the minor or an attorney or other person to serve as guardian ad litem, the court may make the appointment. Appointment of a guardian ad litem or attorney shall be made under the terms of AS 25.24.310.

(b) In all proceedings initiated under a petition for delinquency, a minor shall have the right to be represented by counsel and if indigent have counsel appointed by the court. The court shall appoint counsel in such cases unless it makes a finding on the record that the minor has made a voluntary, knowing, and intelligent waiver of the right to counsel and a parent or guardian with whom the child resides or resided before the filing of the petition concurs with the waiver. In cases in which it has been alleged that the minor has committed an act that would be a felony if committed by an adult, waiver of counsel may not be accepted unless the court is satisfied that the minor has consulted with an attorney before the waiver of counsel. (§ 8 art I ch 145 SLA 1957; am § 5 ch 167 SLA 1975; am §§ 11, 12 ch 63 SLA 1977)

Cross references. — For appointment of counsel, see CINA Rule 12 and Delinquency Rule 16; for guardians ad litem, see CINA Rule 11 and Delinquency Rule 15.

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Under Rule of Children's Procedure 12(c)(3), the presence of the guardian ad litem is required at a child hearing. In re C.L.T., 597 P.2d 518 (Alaska 1979).

Failure to conduct hearing in presence of child's counsel and guardian ad litem held harmless error. — See In re C.L.T., 597 P.2d 518 (Alaska 1979).

Cited in RLR v. State, 487 P.2d 27 (Alaska 1971); Cooper v. State, 638 P.2d 174 (Alaska 1981); M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Collateral references. — 39 Am. Jur. 2d, Guardian and Ward, § 17; 42 Am. Jur. 2d, Infants, § 173 et seq.

39 C.J.S., Guardian and Ward, §§ 20-29; 43 C.J.S., Infants, §§ 52, 54, 201, 222 et seq.

Recognition of foreign guardian as next friend or guardian ad litem. 94 ALR2d 211.

Who is minor's next of kin for guardianship purposes. 63 ALR3d 813.

Validity and efficacy of minor's waiver of right to counsel — modern cases. 25 ALR4th 1072.

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

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

(d) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

(e) A person who has been tried as an adult under this section, or the department on the person's behalf, may petition the superior court to seal the records of all criminal proceedings, except traffic offenses, initiated against the person, and all punishments assessed against the person, while the person was a minor. A petition under this subsection may not be filed until five years after the completion of the sentence imposed for the offense for which the person was tried as an adult. If the superior court finds that the punishment assessed against the person has had its intended rehabilitative effect, the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil rights removed because of a conviction. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. (§ 9 art I ch 145 SLA 1957; am § 1 ch 118 SLA 1962; am §§ 3, 8 ch 110 SLA 1967; am § 6 ch 104 SLA 1971; am § 13 ch 63 SLA 1977)

Cross references. — For court rule covering waiver proceedings, see Delinquency Rule 20.

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I. General Consideration.
II. Amenability to Treatment.
III. Procedural Matters.

I. GENERAL CONSIDERATION.

Non-criminal treatment of child offenders is to be rule. — The statutory framework for dealing with child offenders contemplates that non-criminal treatment is to be the rule and adult criminal disposition the exception. In re P.H., 504 P.2d 837 (Alaska 1972).

Section provides means to determine amenability to treatment available for child offenders. — The waiver procedure set out in this section and in Rule of Children's Procedure 3 provides the means by which the children's court judge determines, prior to adjudicating the delinquency petition, that an accused child is not a suitable subject for the treatment available for child offenders. In re P.H., 504 P.2d 837 (Alaska 1972).

The court's authority to impose a penal sentence on a juvenile was limited under the strict procedures of subsections (a) and (d) and Children's Rule 3. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Findings necessary to justify waiver. — To justify waiver, the children's court judge must find, on sufficient evidence, that probable cause is established at the hearing for believing that the child committed the act with which he was charged in the petition and which if committed by an adult would constitute a crime and that the child is not amenable to the treatment provided under this article. In re P.H., 504 P.2d 837 (Alaska 1972).

As a prerequisite to criminal prosecution, the children's court must find not only that the child is properly accused but also that he would not be receptive to the rehabilitative programs available to the court. In re P.H., 504 P.2d 837 (Alaska 1972).

The inability to predicate a plan for a defendant during the short time remaining before his 19th birthday coupled with the obvious need for treatment as disclosed by the record may be sufficient to justify a waiver to adult jurisdiction. In re P.H., 504 P.2d 837 (Alaska 1972).

The court may close out the case as a juvenile matter only upon finding cause to believe that the minor is delinquent and that the minor is not amenable to treatment. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

A court must find that there is probable cause to believe that the minor is delinquent and that the minor is not amenable to treatment before jurisdiction may be waived. In re J.H.B., 578 P.2d 146 (Alaska 1978).

There is no conflict between subsection (d) and AS 47.10.080(b)(1). In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The inconsistency between subsection (d) of this section and 47.10.080(b)(1) that existed prior to the 1977 amendments to these sections has been eliminated in that subsection (d) now provides that the determinative age is 20 and AS 47.10.080(b)(1) provides that the maximum limitation of confinement of minors is to the age of 20. In re F.S., 586 P.2d 607 (Alaska 1978).

Prosecution for joyriding. — One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.R., 590 P.2d 65 (Alaska 1979).

In proceedings under this section, even if a child's best chance for rehabilitation would be in a juvenile institution, waiver must be ordered when the evidence shows a likelihood that the child cannot be rehabilitated before reaching 20 years of age. D.E.P. v. State, 727 P.2d 800 (Alaska Ct. App. 1986).

Basis for finding amenability to treatment. — This section does not authorize a finding of amenability to treatment on the basis that rehabilitation will probably not occur if the minor is prosecuted as an adult. State v. J.D.S., 723 P.2d 1278 (Alaska 1986).

Applied in State v. Jensen, 650 P.2d 422 (Alaska Ct. App. 1982).

Quoted in Henson v. State, 576 P.2d 1352 (Alaska Ct. App. 1978); W.M.F. v. Johnstone, 711 P.2d 1187 (Alaska Ct. App. 1986).

Cited in B.A.M. v. State, 528 P.2d 437 (Alaska Ct. App. 1977); State v. R.H., 683 P.2d 269 (Alaska Ct. App. 1984); Brower

v. State, 683 P.2d 290 (Alaska Ct. App. 1984); Shewey v. State, 739 P.2d 196 (Alaska Ct. App. 1987).

II. AMENABILITY TO TREATMENT.

Factors to be considered in judging seriousness of alleged offense. — In judging the seriousness of the alleged offense, the children's court judge may consider not only the type of crime charged but also the circumstances surrounding its commission, the factors leading to delinquency, history of delinquency, and facilities available for rehabilitation. In re P.H., 504 P.2d 837 (Alaska 1972).

Subsection (d) is clear on its face that age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The 1977 amendments of this section and 47.10.080 show that it is the legislature's intent that age 20 is the age to be used in determining the amenability issue. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Binding advance consent to treatment. — In order to give effect of the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The portion of the opinion in In re F.S., 586 P.2d 607 (Alaska 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., 608 P.2d 12 (Alaska 1980).

The amenability decision rests in the sound discretion of the children's court judge. In re P.H., 504 P.2d 837 (Alaska 1972).

But the latitude afforded him is not unbounded. The proper exercise of that discretion must be predicated not only upon procedural regularity sufficient to satisfy the basic requirements of due process but also on a full inquiry into the amenability issue. In re P.H., 504 P.2d 837 (Alaska 1972).

The trial court was required to make an evidentiary record and make written findings of fact, as required by Children's Rule 3(h), as to each of these four factors enunciated in subsection (d). In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

These findings must be supported by substantial evidence. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Substantial evidence must be presented before jurisdiction may be waived. D.H. v. State, 561 P.2d 294 (Alaska 1977).

Based on these findings, the trial court, within its sound discretion, must make a decision as to the minor's amenability to treatment. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Factors to be considered in determining amenability. — Subsection (d) of this section suggests four factors which may be considered by the court when inquiring into the amenability issue: (1) the seriousness of the offense; (2) the delinquency of the minor; (3) the probable cause of the delinquent behavior; and (4) the facilities available for the treating of the minor. J.W.H. v. State, 583 P.2d 227 (Alaska 1978).

All four factors listed in subsection (d) need not be resolved against the child to justify waiver. Nor is there value in requiring the children's court to make an arithmetic calculation as to the weight to be given each factor. In re P.H., 504 P.2d 837 (Alaska 1972).

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

Though the standards for determining amenability to treatment through the children's court lack explicit definition, it is clear from the statute that the court in most cases must go beyond the circumstances surrounding the alleged delinquent acts and the age of the child. In re P.H., 504 P.2d 837 (Alaska 1972).

Even though the children's court may have independent knowledge concerning children's treatment programs and facili-

ties, it is necessary to make the existence and evaluation of such programs a part of the waiver proceedings to enable proper review by the supreme court. In re P.H., 504 P.2d 837 (Alaska 1972).

At a waiver hearing there must be a thorough examination of (1) the probable cause for believing that the child committed the act with which he was charged and (2) the amenability of the child to juvenile treatment. R.J.C. v. State, 520 P.2d 806 (Alaska 1974).

In the absence of such an examination there is no evidentiary basis for a waiver decision. R.J.C. v. State, 520 P.2d 806 (Alaska 1974); J.W.H. v. State, 583 P.2d 227 (Alaska 1978).

III. PROCEDURAL MATTERS.

The record must disclose the existence and evaluation of the available children's treatment programs in all future cases in order to establish the validity of the hearing. R.J.C. v. State, 520 P.2d 806 (Alaska 1974).

Waiver decision without testimony of psychologist or psychiatrist. — A waiver of juvenile jurisdiction decision can be made without the testimony of a psychologist or psychiatrist, since such testimony is germane to at most two of the four factors set out in subsection (d) of this section, and not all four of those facts need be determined adversely to the youth to warrant waiver of juvenile jurisdiction. In re J.R., 616 P.2d 865 (Alaska 1980).

Compulsory psychiatric evaluation constituting error. — Compelling a juvenile to submit to a psychiatric evaluation for the purpose of determining his amenability to treatment as a child was reversible error, where admission of the psychiatric evidence against him at the waiver hearing helped to pave the way for the state to prosecute him for murder as an adult, thereby exposing him to potential punishment far more severe than could otherwise have been visited upon him. R.H. v. State, 777 P.2d 204 (Alaska Ct. App. 1989).

The constitutional prerequisites for a valid waiver of juvenile court treatment are reflected in Rule of Children's Procedure 3 which guarantees the child a hearing before the children's court judge after adequate notice thereof, counsel at the hearing who has had access to records and reports relevant to issues before the court, and a statement of reasons accompanying the waiver order. In re P.H., 504 P.2d 837 (Alaska 1972).

Compliance with Rule of Children's Procedure 3(h) was essential to insure that the waiver hearing was not a "mere ritual" and to provide a meaningful basis for review. R.J.C. v. State, 520 P.2d 806 (Alaska 1974).

The waiver hearing is a critically important stage in criminal proceedings against a child. In re P.H., 504 P.2d 837 (Alaska 1972).

At stake at a child's waiver hearing is the statutory promise of special rehabilitative treatment in lieu of the harsher sanction of criminal conviction. Because the consequences of waiver are great, the hearing must measure up to the essentials of due process and fair treatment. In re P.H., 504 P.2d 837 (Alaska 1972).

The investigation at a waiver hearing cannot be a mere ritual. In re P.H., 504 P.2d 837 (Alaska 1972).

There must be a hearing which measures up to the essential of due process and fair treatment. R.J.C. v. State, 520 P.2d 806 (Alaska 1974); J.W.H. v. State, 583 P.2d 227 (Alaska 1978).

The right of confrontation applies to children's proceedings in which the child is charged with misconduct for which he may be incarcerated. In re P.H., 504 P.2d 837 (Alaska 1972).

Waiver without hearing is denial of due process. — To waive children's court jurisdiction without a hearing or opportunity for adversary presentation is a denial of fair process. In re P.H., 504 P.2d 837 (Alaska 1972).

As is waiver without substantial evidence of unamenability to treatment. — To waive children's court jurisdiction without substantial evidence having been presented that the child is unamenable to juvenile rehabilitation programs is denial of fair process. In re P.H., 504 P.2d 837 (Alaska 1972).

There must be a thorough examination made in determining probable cause and amenability to treatment. Without such an examination, there is no evidentiary basis for a waiver decision. W.M.F. v. State, 723 P.2d 1298 (Alaska Ct. App. 1986).

A minor may move to waive children's court jurisdiction pursuant to subsection (a). M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

A minor under the age of 18 cannot "elect" to be tried as an adult. M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Where no waiver hearing has been

conducted, the court has no authority to sentence a delinquent child as an adult. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Before treating a juvenile as an adult, the court must first conduct a waiver hearing. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Option available to prosecution absent waiver. — A proceeding in children's court, which is limited to the dispositions set forth in AS 47.10.080(b), is the only option available to the prosecution absent waiver under subsection (a) of this section, and the standards established in subsection (a) are sufficiently clear to prevent arbitrary enforcement. M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

But hearing is not criminal in nature. — A waiver hearing is not criminal in nature and is dispositional, rather than adjudicatory. N.P.A. v. State, 604 P.2d 599 (Alaska 1979).

And right to attend may be waived. — Although a minor had a constitutional right to attend her waiver hearing, she waived that right when she voluntarily failed to appear at the hearing by refusing to waive extradition from another state. N.P.A. v. State, 604 P.2d 599 (Alaska 1979).

The proper standard of proof as to the amenability of a minor to treatment is the "preponderance of the evidence" standard. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980); M.K. v. State, 744 P.2d 1178 (Alaska Ct. App. 1987).

Use of the "preponderance of the evidence" standard as the standard of proof in a waiver hearing to show nonamenability of a juvenile to treatment is not violative of due process. W.M.F. v. State, 723 P.2d 1298 (Alaska Ct. App. 1986).

The state bears the burden of establishing unamenability by a preponderance of the evidence. P.K.M. v. State, 780 P.2d 395 (Alaska Ct. App. 1989).

Probable cause determination cannot be based on hearsay testimony. — The probable cause determination of a court at a waiver hearing concerning juveniles cannot be based upon hearsay testimony. In re P.H., 504 P.2d 837 (Alaska 1972).

Exclusion of testimony held proper. — Although proffered testimony was relevant to the amenability issue, the superior court did not abuse its discretion in excluding it because its prejudicial impact outweighed its probative value. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Insufficient evidence. — Where the court had little information concerning the probable cause of the minor's delinquent behavior, it was aware only of the nature of the offenses, of the fact that the minor was apparently not in need of funds, and of his statement that he regarded the commission of the crimes as a game, this information was insufficient to satisfy the requirements of this subsection. D.H. v. State, 561 P.2d 294 (Alaska 1977).

Waiver hearing did not comply with the standards set forth in this section and Rule of Children's Procedure 3. R.J.C. v. State, 520 P.2d 806 (Alaska 1974).

Trial court's conclusion that minor was amenable to treatment was abuse of discretion. — See In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Minor unamenable to treatment. — The court did not abuse its discretion in determining that a juvenile offender who had committed three murders while stealing money from her victims was not amenable to treatment by age 20. W.M.F. v. State, 723 P.2d 1298 (Alaska Ct. App. 1986).

After taking into account the seriousness of the offense, defendant's current age, and the inconclusive psychiatric and psychological testimony, the trial court's decision that defendant was unamenable to treatment was sustained. M.K. v. State, 744 P.2d 1178 (Alaska Ct. App. 1987).

Waiver of juvenile jurisdiction over an 18 ½ year old individual was not an abuse of discretion, where he had committed several property offenses which would be felonies if committed by an adult, and the evidence supported the conclusion that he was not amenable to treatment. D.R.D. v. State, 767 P.2d 207 (Alaska Ct. App. 1989).

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, 702 P.2d 648 (Alaska Ct. App. 1985).

Continuance denied. — The trial court did not err in failing to grant defendant a nine- to 12-month continuance to permit further psychiatric and psychologi-

cal treatment in order to test his amenability to juvenile treatment. M.K. v. State, 744 P.2d 1178 (Alaska Ct. App. 1987).

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

NOTES TO DECISIONS

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

Constitutional requirements apply to children. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

Hence, states must afford juveniles due process of law in delinquency proceedings that might result in the child's incarceration, and accordingly juveniles must be afforded the right to be represented by counsel, must be given proper and timely notice, must be given the right of confrontation and cross-examination of witnesses, and afforded the privilege against self-incrimination. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

While the U.S. Supreme Court has not held that children must be afforded due process rights in the pre-adjudication stages of the juvenile process, the Alaska supreme court believes that due process safeguards are necessary not only at the adjudicative hearing, but at any stage which may result in deprivation of the child's liberty. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

The extension to children of fundamental constitutional rights does not mean a total substitution of the adult criminal model for the present children's court system. Doe v. State, 487 P.2d 47 (Alaska 1971).

The problems of pre-adjudication treatment of juveniles are unique to the juvenile process; hence, what is held with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Due process standards must be observed at a detention inquiry since it may result in the deprivation of the child's liberty. Due process requires at the very least that detention orders be based on competent, sworn testimony, that the child have the right to be represented by counsel at the detention inquiry, and that the detention order state with particularity the facts supporting it. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Incarceration, when applied to children, is a taking of liberty under the 14th amendment, regardless of benevolent-sounding labels. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The due process clause of the 14th amendment applies when a child is charged with misconduct for which he may be incarcerated in an institution, regardless of the labels of the adjudication and institution, so the child is entitled to notice of charges, counsel, confrontation

and cross-examination, and the privilege against self-incrimination. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The right to grand jury indictment is not so fundamental that due process is offended by alternate methods for instituting children's proceedings where the child is charged with having violated a criminal statute. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Children who are charged with acts which would be chargeable only by grand jury indictment, if committed by an adult, need not be indicted by a grand jury. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Children are constitutionally entitled to jury trial in the adjudicative stage of a delinquency proceeding. However, due to the uniqueness of some facets of the procedures governing children's court proceedings and the potential damage which may accrue to the child by a public trial, the child should first consult with his counsel and his parents or guardian when appropriate, and then affirmatively assert the right to a trial by jury before it is finally granted. RLR v. State, 487 P.2d 27 (Alaska 1971). But see McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), in which it was held that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement (decided prior to 1972 amendment).

Whenever a child in a delinquency proceeding is charged with acts which would be a crime, subject to incarceration if committed by an adult, Alaska Const., art. I, § 11, guarantees him the right to jury trial. To the extent In re White, 445 P.2d 813 (Alaska 1968) [subsequently overruled, In re G.K., 497 P.2d 914 (Alaska 1972)] is inconsistent with this opinion, it is overruled. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The purposes of the right to jury trial, such as protection against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge, apply as much in children's cases as in adults' cases. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

If the child waives jury trial, the state may not require it, but jury trial shall be provided only on demand. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The Hammonds test of waiver [Hammonds v. State, 442 P.2d 39 (Alaska 1968)], applies to infants as well as adults. The consequences of application will differ for infants, because some decisions can be "knowingly and intelligently" made only by persons of fuller knowledge and maturity. An infant not advised by an attorney could make few knowledgeable and intelligent decisions about whether to waive rights in judicial proceedings. On the other hand, in areas where an adult ordinarily delegates to his attorney decision-making authority, as in deciding whether to object to introduction of evidence, the competence of the attorney rather than of the client generally determines whether waivers satisfy the Hammonds criteria. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The right to counsel extends to children charged with delinquency. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

A juvenile must be afforded the right to be represented by counsel at the delinquency proceeding, and a denial of that right violates due process. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Right to reasonable time to prepare for trial. — It is unquestionable that the right to the assistance of counsel of necessity includes the concomitant right to have a reasonable time in which to prepare for trial. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

While an adult defendant in a criminal case must be brought to trial within a reasonable time, due process requires that he may not be brought to trial too soon. He must be given a reasonable time to consult with his counsel and to prepare his defense. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

This section provides for the exclusion of the public from children's hearings. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

But such provision involves only persons whose presence is not desired by child. — The area of discretion in the rule, where the court may refuse to open the hearing, involves persons whose presence is not desired by the child. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

It is an abuse of discretion for the court to refuse admittance to individuals whose

presence is favored by the child, except in special circumstances such as the unavailability of a courtroom sufficiently large to hold all the individuals whose presence is sought. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

If the child or his guardian ad litem wants the press, friends, or others to be free to attend, then the hearing must be open to them. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

As children are guaranteed the right to a public trial by the Alaska Constitution. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

Due process requires that children have the right to a public trial by jury where they are charged with acts which would be a crime if committed by an adult. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

The fundamental constitutional right of public trial by jury must be afforded children in delinquency adjudication proceedings, in spite of the possible interference with the benevolent motives of the children's court system which have, in the past, justified denial of those rights. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

The reasons for the constitutional guarantees of public trial apply as much to juvenile delinquency proceedings as to adult criminal proceedings. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

Delinquency must be proved beyond a reasonable doubt under the due process clause of the 14th amendment. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

"Compatible". — In the absence of contrary authority, it is appropriate to accord the word "compatible" its usual meaning. W.M.F. v Johnstone, 711 P.2d 1187 (Alaska Ct. App. 1986).

Cited in In re P.N., 533 P.2d 13 (Alaska 1975); M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

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

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

Degree of proof in juvenile delinquency proceedings. 43 ALR2d 1138.

Sec. 47.10.072. Access to hearing by victim. (a) If a crime was committed by a minor who is scheduled for a hearing under AS 47.10.070, the victim may request from the court permission to attend the hearing. If the victim requests, the department shall provide technical assistance to the victim in preparing a written submission to the court requesting access to the hearing. The department shall make reasonable efforts to inform victims of the availablilty of this assistance.

(b) If more than one person who qualifies as a victim under AS 12.55.185 makes a request, the commissioner of health and social services shall designate one person for purposes of receiving the notice and exercising the rights granted by this section.

(c) In this section, "victim" has the meaning given in AS 12.55.185. (§ 24 ch 59 SLA 1989)

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

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

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

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

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

Sec. 47.10.080. Judgments and orders. (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent or a child in need of aid.

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

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that 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 that the department considers appropriate and that 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 that do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

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

(3) order the minor committed to the department and placed on probation, to be supervised by the department, and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that 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 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 that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; the department may transfer the minor, in the minor's best interests, from one placement setting to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer;

(2) order the minor released to the minor's parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and

treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor, but the court may dispense with the department's supervision if the court finds that the adult to whom the minor is released will adequately care for the minor without supervision; the department's supervision may not exceed two years or in any event extend past the date the minor reaches age 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that 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. If annual review under this subsection would arise within 90 days of the hearing required under (*l*) of this section, the court may postpone review under this subsection until the time set for the hearing. The department, the minor, the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel

shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

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

(h) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings that 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.

(*l*) Within 18 months after the date a child is initially taken into custody by the department under AS 47.10.142(c) or committed to the custody of the department under (b)(3), (c)(1), or (c)(3) of this section, or 47.10.230(c), the court shall hold a hearing to review the placement and services provided and to determine the future status of the minor. The court shall make appropriate written findings, including findings related to the following;

(1) whether the child should be returned to the parent;

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

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

(4) whether the child should be placed for adoption or legal guardianship.

(m) Within 60 days after the date a child is removed from the child's home by the department, the department shall notify the appropriate local citizen out-of-home care review panel established under AS 47.10.420.

(n) Within 60 days after a court orders a child committed to the department under (c) of this section and at a review under (f) or (l) of

this section, the department shall inform the parties about the local citizen out-of-home care review panel established under AS 47.10.420. (§ 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; am §§ 4, 5 ch 117 SLA 1990)

Effect of amendments. — The 1990 amendment, effective July 1, 1990, added the third sentence in subsection (f) and added subsections (l)-(n).

NOTES TO DECISIONS

I. General Consideration.
II. Delinquent Minor.
III. Child in Need of Aid.

I. GENERAL CONSIDERATION.

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, 490 P.2d 658 (Alaska 1971).

Least restrictive alternative approach. — Under the "least restrictive alternative" approach, the court must consider and reject less restrictive alternatives prior to the imposition of more restrictive alternatives. The state has the burden of proving that less restrictive alternatives are inappropriate by a preponderance of the evidence. In re J.H., 758 P.2d 1287 (Alaska Ct. App. 1988).

To determine the least restrictive alternative in a given case, the court must consider, among other things, the seriousness of the offense, the degree of the child's culpability, the totality of the underlying circumstances in the case, and the child's prior record. In re J.H., 758 P.2d 1287 (Alaska Ct. App. 1988).

Superior court erred in concluding that institutionalization was the "least restrictive alternative," where there was no substantial evidence to warrant a conclusion that the child's treatment needs could not be successfully addressed by residential treatment. In re J.H., 758 P.2d 1287 (Alaska Ct. App. 1988).

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, 490 P.2d 658 (Alaska 1971).

The legislature has authorized institutionalization only where the child is found to be a delinquent minor. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Findings insufficient to sustain order institutionalizing juvenile. — See R.P. v. State, 718 P.2d 168 (Alaska Ct. App. 1986).

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., 682 P.2d 1131 (Alaska Ct. App. 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, 576 P.2d 1352 (Alaska 1978).

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, 645 P.2d 1229 (Alaska Ct. App. 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, 576 P.2d 1352 (Alaska 1978).

Section is maximum sentencing statute. — Statutes requiring release upon a specified birthday are, in effect, maximum sentencing statutes. Davenport v. McGinnis, 522 P.2d 1140 (Alaska 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, 522 P.2d 1140 (Alaska 1974).

There is no conflict between subsection (b)(1) and AS 47.10.060(d). In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Effect of denying petition for extension of custody. — Where defendant proposed to return child in state custody to her natural mother and sought extension of state custody to accomplish this gradually, a native village council argued that denial of department's petition for an extension of custody would not require the superior court then to return the child to her mother, but rather that under subsection (e) the court could release the child to the child's parents under the tribal court adoption order; however, it was held that the superior court correctly concurred in the state's position that, absent an extension, the child must be returned to her natural mother. In re A.S., 740 P.2d 432 (Alaska 1987).

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., 596 P.2d 22 (Alaska 1979).

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) (25 U.S.C. § 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., 715 P.2d 1170 (Alaska 1986).

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, 490 P.2d 658 (Alaska 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, 490 P.2d 658 (Alaska 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, 490 P.2d 658 (Alaska 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, 521 P.2d 512 (Alaska), 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, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

The United States supreme court concluded that Alaska's interest in protecting the anonymity of the juvenile offender was outweighed by the more critical need to afford a criminal defendant reasonable inquiry into the motives of prosecution witnesses. Gonzales v. State, 521 P.2d 512 (Alaska), 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, 521 P.2d 512 (Alaska), 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, 521 P.2d 512 (Alaska), 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, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 858, 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, 521 P.2d 512 (Alaska), 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, 521 P.2d 512 (Alaska), 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, 522 P.2d 528 (Alaska 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, 572 P.2d 786 (Alaska 1977).

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, 521 P.2d 512 (Alaska), 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, 458 P.2d 1008 (Alaska 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, 458 P.2d 1008 (Alaska 1969).

Consideration of the juvenile record is proper by the court imposing a sentence upon an adult offender. Penn v. State, 588 P.2d 288 (Alaska 1978).

Use of the juvenile history of the offender in sentencing proceedings does not amount to the use of those proceedings as evidence against the offender within the proscription of such a statute as this section. Penn v. State, 588 P.2d 288 (Alaska 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, 522 P.2d 1140 (Alaska 1974).

Restitution. — Superior court could properly require minor to pay restitution for jewelry which was taken during a burglary which he admitted and for which the court adjudicated him a delinquent, where he did not contest the fact that his participation in the burglary made him legally accountable as an accomplice of the theft of the jewelry. J.M. v. State, 786 P.2d 923 (Alaska Ct. App. 1990).

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., 573 P.2d 1376 (Alaska 1978).

Standard of review. — The factual findings supporting the trial court's determination that a minor is a child in need of aid will not be overturned on review unless clearly erroneous. A.H. v. State, 779 P.2d 1229 (Alaska 1989).

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, 653 P.2d 346 (Alaska Ct. App. 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, 653 P.2d 346 (Alaska Ct. App. 1982).

Superior court did not exceed its jurisdiction in requiring the Department of Health and Social Services to designate a parenting class and urinalysis center for the child's father, and in ordering the department to encourage contacts between the child and her mother, where the department was merely ordered to implement its chosen programs and was not required to make any particular placement or post-disposition treatment decision. In re A.B., 791 P.2d 615 (Alaska 1990).

Appeal from detention order dismissed as untimely. — See A.M. v. State, 653 P.2d 346 (Alaska Ct. App. 1982).

Appellate jurisdiction. — AS 22.05.010 places final appellate jurisdiction in all cases in the supreme court. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Applied in L.A.M. v. State, 547 P.2d 827 (Alaska 1976); Adams v. Ross, 551 P.2d 9[illegible] (Alaska 1976); D.H. v. State, 561 P.2d 294 (Alaska 1977); R.N. v. State, 770 P.2d 301 (Alaska Ct. App. 1989); P.R.J. v. State, 787 P.2d 123 (Alaska Ct. App. 1990).

Quoted in Davis v. State, 499 P.2d 1025 (Alaska 1972).

Stated in In re G.K., 497 P.2d 914 (Alaska 1972).

Cited in Elliason v. State, 511 P.2d 1066 (Alaska 1973); D.L.J. v. W.D.R., 635 P.2d 834 (Alaska 1981); S.O. v. W.S., 643 P.2d 997 (Alaska 1982); In re J.R.S., 690 P.2d 10 (Alaska 1984); Coney v. State, 699 P.2d 899 (Alaska Ct. App. 1985); In re S.C.Y., 736 P.2d 353 (Alaska 1987).

II. DELINQUENT MINOR.

Standards for use in choosing alternatives under subsection (b). — See R.P. v. State, 718 P.2d 168 (Alaska Ct. App. 1986).

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, 528 P.2d 437 (Alaska 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, 528 P.2d 437 (Alaska 1974); A.A. v. State, 538 P.2d 1004 (Alaska 1975).

Authority to order placement of delinquent child. — In enacting paragraph (b)(3), the legislature intended for the department, not the court, to make the decisions concerning placement of the minor. State, Dep't of Health & Social Servs. v. A.C., 682 P.2d 1131 (Alaska Ct. App. 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., 682 P.2d 1131 (Alaska Ct. App. 1984).

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, 528 P.2d 437 (Alaska 1974).

Age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

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., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

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., 608 P.2d 12 (Alaska 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., 608 P.2d 12 (Alaska 1980).

The portion of the opinion in In re F.S., 586 P.2d 607 (Alaska 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., 608 P.2d 12 (Alaska 1980).

While it is true, as indicated in In re F.S., 586 P.2d 607 (Alaska 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., 608 P.2d 12 (Alaska 1980), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

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, 487 P.2d 27 (Alaska 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. L.C. v. State, 625 P.2d 339 (Alaska 1981).

The hearing judge erred by placing a delinquent child on probation until his 20th birthday. B.A.M. v. State, 528 P.2d 437 (Alaska 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. E.A.M. v. State, 528 P.2d 437 (Alaska 1974).

III. CHILD IN NEED OF AID.

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, 490 P.2d 658 (Alaska 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, 490 P.2d 658 (Alaska 1971).

Power of court under subsection (c). — Under subsection (c) of this section, the court is empowered to order the minor committed to the Department of Health and Social Services or order the minor released to his parents, guardian, or some other suitable person. In re A Minor Child, 490 P.2d 658 (Alaska 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, 490 P.2d 658 (Alaska 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., 597 P.2d 518 (Alaska 1979).

"Best interests" standard. — Given that both subparagraph (c)(1)(A) and subsection (f) contain the "best interests" standard, it's reasonable to assume that the legislature intended the standard to have the same meaning with respect to each type of continuation of custody, namely a .080(c)(1)(A) extension beyond the term of the original order and a .080(f) "extension" beyond the first year of the order until its expiration. In re A.S., 740 P.2d 432 (Alaska 1987).

The "continuing conditions of need" requirement for continued custody found in AS 47.10.083 should be viewed as an additional requirement beyond "best interests," not as the equivalent thereof. In re A.S., 740 P.2d 432 (Alaska 1987).

"Best interests" as used in AS 47.10.080(c)(1)(A) does not constitute a requirement that the state demonstrate the continuing existence of AS 47.01.010(a)(2) conditions of need in order to obtain an extension of custody. Thus, the state may require an extension of custody in order to implement a plan for reuniting the family without causing emotional trauma to the child by virtue of a sudden change of circumstances. In re A.S., 740 P.2d 432 (Alaska 1987).

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., 596 P.2d 22 (Alaska 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., 597 P.2d 518 (Alaska 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, 623 P.2d 1210 (Alaska 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., 597 P.2d 518 (Alaska 1979).

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., 717 P.2d 376 (Alaska 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., 717 P.2d 376 (Alaska 1986).

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, 660 P.2d 436 (Alaska 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, 623 P.2d 1210 (Alaska 1981).

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.), 557 P.2d 1128 (Alaska 1976).

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, 515 P.2d 1234 (Alaska 1973); In re B.J., 530 P.2d 747 (Alaska 1975); In re E.J. (T.), 557 P.2d 1128 (Alaska 1976).

Termination of father's parental rights was affirmed, where he had not made reasonable efforts to locate and communicate with his daughter and, at the time of the termination hearing, was incarcerated for assaulting his girlfriend. E.J.S. v. State, Dep't of Health & Social Servs., 754 P.2d 749 (Alaska 1988).

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, 704 P.2d 774 (Alaska 1985).

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, 699 P.2d 340 (Alaska 1985).

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.), 557 P.2d 1128 (Alaska 1976).

Role of trial court in proceeding involving termination of parental rights. — See In re E.J. (T.), 557 P.2d 1128 (Alaska 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., 549 P.2d 1190 (Alaska 1976). See also In re C.L.T., 597 P.2d 518 (Alaska 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., 549 P.2d 1190 (Alaska 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., 597 P.2d 518 (Alaska 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., 597 P.2d 518 (Alaska 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., 597 P.2d 518 (Alaska 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., 597 P.2d 518 (Alaska 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., 543 P.2d 1191 (Alaska 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, 623 P.2d 1210 (Alaska 1981).

Orders terminating parental rights met statutory and rule of court requirements regarding findings of fact. — See In re C.L.T., 597 P.2d 518 (Alaska 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, 623 P.2d 344 (Alaska 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, 623 P.2d 344 (Alaska 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, 623 P.2d 344 (Alaska 1981).

Good cause could be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rehabilitated themselves so that they can provide proper guidance and care for the child. Rita T. v. State, 623 P.2d 344 (Alaska 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, 623 P.2d 344 (Alaska 1981).

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, 689 P.2d 472 (Alaska 1984).

For reference to apparent conflict between subsection (c)(1) as it read prior to 1977 amendment and Chil-

dren's Rule 22(f), see footnote 30 in In re S.D., 549 P.2d 1190 (Alaska 1976).

Collateral references. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights. 80 ALR3d 1141.

Validity and application of statute allowing endangered child to be temporarily removed from parental custody. 38 ALR4th 756.

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 that 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 must include, but is not limited to, the following:

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

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

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

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

(c) The court shall inform the child, the child's parents and the attorneys representing the parties and the guardian ad litem that the predisposition report will be available to them not less than 10 days before the disposition hearing.

(d) For purposes of this section "parents" means the natural or adoptive parents, and any legal guardian, relative, or other adult person with whom the child has resided and who has acted as a parent in providing for the child for a continuous period of time before this action. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Applied in Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Sec. 47.10.082. Best interests of child and other considerations. In making its dispositional order under AS 47.10.080(b) the court shall consider the best interests of the child and the public. 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, 660 P.2d 436 (Alaska 1983).

Applied in D.A.W. v. State, 699 P.2d 340 (Alaska 1985).

Cited in Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979); M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); K.T.E. v. State, 689 P.2d 472 (Alaska 1984).

Sec. 47.10.083. Review of orders, requests for extensions. In a review under AS 47.10.080(f) and in a hearing related to a request for extended commitment or extended supervision under AS 47.10.080(c)(1) or (2), the court shall, in addition to the requirements of those provisions and the requirements of court rules, determine whether a child continues to be a child in need of aid at the time of the review or hearing. The court may not continue or extend state custody or supervision of the child unless the court finds that the child continues to be a child in need of aid except that, if the child is no longer a child in need of aid, the court may establish a specific timetable for gradual reunification of the family and termination of state custody or supervision if the court makes a finding that immediate reunification would be detrimental to the child. (§ 26 ch 63 SLA 1977; am § 3 ch 29 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote this section.

Legislative history reports. — For legislative letter of intent in connection with the enactment of this section by § 3, ch. 29, SLA 1990 (SCS CSHB 175(Jud)), see 1990 Senate Journal 3431.

NOTES TO DECISIONS

The "continuing conditions of need" requirement for continued custody found in this section should be viewed as an additional requirement beyond "best interests" for extension of custody under AS 47.10.080(c)(1)(A), not as the equivalent thereof. In re A.S., 740 P.2d 432 (Alaska 1987).

Applied in A.H. v. State, 779 P.2d 1229 (Alaska 1989).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); In re A.B., 791 P.2d 615 (Alaska 1990).

Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities. (a) When a child is committed under AS 47.10.080(b)(1) or (c)(1) to the department or released under AS 47.10.080(b)(2) or (3) or (c)(2) to the child's parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person the responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When parental rights have been terminated, or there are no living parents and no guardian has been appointed, the responsibilities of legal custody include those in (b) and (c) of this section. The department or person having legal custody of the child may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter a person in charge of a placement setting is an agent of the department.

(b) When a guardian is appointed for the child, the court shall specify in its order the rights and responsibilities of the guardian. The guardian may be removed only by court order. The rights and responsibilities may include, but are not limited to, having the right and responsibility of reasonable visitation, consenting to marriage, consenting to military enlistment, consenting to major medical treatment, obtaining representation for the child in legal actions, and making decisions of legal or financial significance concerning the child.

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

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, 689 P.2d 472 (Alaska 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, 689 P.2d 472 (Alaska 1984).

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, 681 P.2d 341 (Alaska Ct. App. 1984).

De facto termination of natural parent's visitation rights. — Where the Department of Health and Social Services decided to allow minor children, who had been adjudicated as children in need of aid, to move from Alaska to Alabama with their foster care family, the state's action constituted a de facto termination of a natural parent's visitation rights; the natural father was unemployed and virtually penniless, the state would not provide airfare so that the father could visit his children on a regular basis, and the father would be limited to phone "visits" because of his lack of funds. D.H. v. State, 723 P.2d 1274 (Alaska 1986).

Department's decision to place children in a foster home in Anchorage did not constitute a de facto termination of their mother's parental rights of visitation, notwithstanding the mother's contention that she did not have the financial means to travel from her home in Juneau to Anchorage. A.H. v. State, 779 P.2d 1229 (Alaska 1989).

Standard of review of state action constituting de facto termination of natural parent's right of reasonable visitation. — The appropriate standard of review for state decisions which essentially terminate a natural parent's right of reasonable visitation under subsection (c) is an independent determination of whether the state has proved by clear and convincing evidence that termination of parental visitation is in the child's best interest. D.H. v. State, 723 P.2d 1274 (Alaska 1986).

Applied in In re B.L.J., 717 P.2d 376 (Alaska 1986).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); In re A.B., 791 P.2d 615 (Alaska 1990).

Sec. 47.10.085. Medical treatment by religious means. 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)

Cross references. — For a related provision, see AS 47.17.020(d).

NOTES TO DECISIONS

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 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, including driver's license action under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with making a preliminary investigation for the information of the court. The court shall forward a record of adjudication of a violation of an offense listed in AS 28.15.185(a) to the Department of Public Safety, if the court imposes a license revocation under AS 28.15.185. 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 driver's license proceedings under AS 28.15.185, 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 shown, 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

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Cross references. — For a related provision, see AS 47.17.020(d).

NOTES TO DECISIONS

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 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, including driver's license action under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with making a preliminary investigation for the information of the court. The court shall forward a record of adjudication of a violation of an offense listed in AS 28.15.185(a) to the Department of Public Safety, if the court imposes a license revocation under AS 28.15.185. 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 driver's license proceedings under AS 28.15.185, 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 shown, 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; am § 4 ch 130 SLA 1988; am § 56 ch 50 SLA 1989)

Effect of amendments. — The 1988 amendment, effective September 1, 1988, in subsection (a), inserted "including traffic offenses and driver's license action under AS 28.15.185" in the third sentence and "driver's license proceedings under AS 28.15.185" in the next-to-last sentence, and inserted the fifth sentence.

The 1989 amendment, effective May 27, 1989, deleted "traffic offenses and" following "including" in the third sentence in subsection (a).

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., 533 P.2d 13 (Alaska 1975).

There is no indication that subsection (a) was intended to authorize the granting of testimonial use immunity to parents. In re P.N., 533 P.2d 13 (Alaska 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., 533 P.2d 13 (Alaska 1975).

Confidentiality policy. — The policy of confidentiality in Child in Need of Aid proceedings is not absolute. The court has discretion to disclose records in CINA proceedings under subsection (a). Clifton v. State, 758 P.2d 1279 (Alaska Ct. App. 1988).

Superior court's records release order did not violate state or federal rights of privacy, where the order was intended to facilitate an expeditious and comprehensively monitored reunion of the child and her father, and the order's scope was limited to agencies directly involved in providing resources to the parties in the case. In re A.B., 791 P.2d 615 (Alaska 1990).

Quoted in Sledge v. State, 763 P.2d 1364 (Alaska Ct. App. 1988).

Stated in RLR v. State, 487 P.2d 27 (Alaska 1971).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); State v. R.H., 683 P.2d 269 (Alaska Ct. App. 1984).

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

Sec. 47.10.097. Fingerprinting of minors. (a) Except as provided in (b) of this section, a minor in the custody of the department or of a law enforcement agency may not be fingerprinted for reference to or entry into the Alaska automated fingerprint system without a court order upon good cause shown.

(b) A law enforcement officer may fingerprint a minor who is 16 years of age or older for reference to or entry into the Alaska automated fingerprint system without a court order when the minor is convicted of, or adjudicated a delinquent for, an offense that is a felony.

(c) Fingerprint records under this section are not subject to AS 47.10.090. (§ 3 ch 121 SLA 1988)

HB
337

(7)

Date Referred: March 4, 1994 FURTHER REFERRALS: Rules

Date of Committee Action: 4-6-94

The JUDICIARY Committee considered: HB 337

HOUSE BILL NO. 337 DRUG FREE RECREATION AND YOUTH CENTERS

"An Act relating to the possession of controlled substances within 500 feet of recreation and youth centers."

RECOMMENDATIONS: [ ] the same title
be replaced with CSHB 337 (Jud) [✓] a new title
[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ 3 [X] zero fiscal note(s) DOC, P.S., Law 3/4/94

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Green	✓	Pete Kott (Kott)		✓	
Porter Porter	✓				
Phillips Phillips	✓				
Noordlund Noordlund	✓				
Davidson Davidson	✓				
	(5)			(1)	

Porter
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 10, 1994 FURTHER REFERRALS: Judiciary

Date of Committee Action: 3/3/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 337

HOUSE BILL NO. 337 DRUG FREE RECREATION AND YOUTH CENTERS

"An Act relating to the possession of controlled substances within 500 feet of recreation and youth centers."

RECOMMENDATIONS:
be replaced with CS HB 337 (HESS) [ ] the same title [X] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[X] zero fiscal note Law, Public Safety, Corrections [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓			X	
	✓			X	
	✓			✓	
	✓			✓	

Dan Brende
CHAIRMAN'S SIGNATURE

716 W. Fourth Ave.
Anchorage, Alaska 99501-2133
258-8191

While in Session:
Alaska State Capitol
Juneau, Alaska 99801-1182
465-4968

Alaska State Legislatur

House of Representatives

District 11:
Sand Lake
Spenard
Taku-Campbell

Representative Jim Nordlund

SPONSOR STATEMENT

House Bill 337 takes the idea of "Drug-Free School Zones" and expands it to include the areas around "recreation and youth centers." This includes buildings, structures, playgrounds and athletic playing fields. The legislation stiffens the penalties on people who possess drugs where children go to play.

Criminal justice, education and substance abuse prevention leaders agree that the best resolution to the current drug epidemic lies in reducing the demand for illegal drugs, particularly among youth. The reason we create neighborhood playgrounds and recreation centers is to provide healthy alternatives for our citizens. Children and adults should not be intimidated by people who push or possess illegal substances in these areas.

Under HB 337, if a person is caught with drugs within 500 feet of a recreation or youth center, they will be charged with either misconduct involving a controlled substance in the third degree or the fourth degree, depending on the nature of the drug. Both of these are felony charges. Current statues provide for only misconduct involving a controlled substance in the fourth degree or fifth degree (a misdemeanor). The proposed penalties are the same as current statutes for "Drug-Free School Zones."

Anchorage Police Chief Kevin O'Leary says the area around recreation and youth centers are a fertile ground for those who promote and sell drugs to our children. Officer Patrick O'Brien, a police/school liaison officer, says the parking lot of the Fairview Recreation Center is the site of a huge drug trade. The director of Spenard Recreation Center says the local drug dealer lives across the street. We must give law enforcement officials additional weapons to stop this illegal activity.

716 W. Fourth Ave.
Anchorage, Alaska 99501-2133
258-8191

While in Session:
Alaska State Capitol
Juneau, Alaska 99801-1182
465-4968

Alaska State Legislature

House of Representatives

District 11:
Sand Lake
Spenard
Taku-Campbell

Representative Jim Nordlund

SECTIONAL ANALYSIS

CSHB 337 (H.E.S.S.)

Section 1. Amends AS 11.71.030(a)(3) by providing that it is illegal to possess any amount of a schedule IA or IIA controlled substance at or within 500 feet of a recreation or youth center.

Section 2. Amends AS 11.71.030(b) to provide that it is an affirmative defense to a prosecution for possessing a schedule IA or IIA controlled substance at or within 500 feet of a recreation or youth center that the possession occurred entirely within a private residence located within 500 feet of the recreation or youth center and that the possession did not involve distributing, dispensing, or possessing with the intent to sell.

Section 3. Amends AS 11.71.040(a)(4) to make it illegal to possess a schedule IIIA, IVA, VA, VIA controlled substance at or within 500 feet of a recreation or youth center.

Section 4. Amends AS 11.71.040(b) to make it an affirmative defense to a prosecution for possessing a schedule IIIA, IVA, VA, or VIA controlled substance at or within 500 feet of a recreation or youth center that the possession occurred entirely within a private residence located within 500 feet of the recreation or youth center.

Section 5. Defines "recreation or youth center."

Section 6. Amends AS 28.01.010(d) by providing a new paragraph that allows municipalities to post "drug-free recreation and youth center zone" signs.

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET ♦ ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500

Tom Fink, Mayor

Service since 1921

1/18/94

Representative Jim Nordlund
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Nordlund:

I have received a copy of your proposed legislation, House Bill 337, which widens the scope of areas designated as drug-free zones. As you have already found through your meeting with Officer O'Brien, the areas around recreation and youth centers are indeed fertile ground for those who promote and sell drugs to our children. The fact that you have included buildings, playgrounds and athletic fields in the bill enhances the effectiveness of this important legislation.

The Anchorage Police Department, in cooperation with the School District, does its very best to protect our youth from drugs by education, counseling, and by vigilance in and near schools. However, it is time to attack the drug problem on as many fronts as possible. We enthusiastically support HB 337 and its goals to eradicate drugs from any area where children may be present, and to severely punish those who would possess, use, promote or sell controlled substances near our children.

Sincerely,

Kevin M. O'Leary

Kevin M. O'Leary
Chief of Police

ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION

4501 South Bragaw Street Anchorage, Alaska 99507-1599

Representative Jim Nordlund
Alaska State Legislature
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

February 3, 1994

Dear Representative Nordlund:

The Anchorage Police Department Employees Association strongly endorses House Bill 337. The Association feels that youth and recreation centers should be drug free zones that offer families and children recreational opportunities free of infringements from street predators.

Recognizing that the expanded wording in this statute is the first step toward aggressive, proactive enforcement, the A.P.D.E.A. encourages all legislators to support HB 337. This will send a clear message throughout the state's criminal justice system that this legislature means business by targeting specific elements of the criminal community who have blantantly and deviously infringed on areas which should be oasises of childhood innocence and strongholds of wholesome family activities.

The represented employees of the A.P.D.E.A. stand firm in our support of HB 337 and commend your efforts pertaining to this issue.

Sincerely,

Rob Heun

Sgt. Rob Heun
President, A.P.D.E.A.

ALASKA COUNCIL ON
PREVENTION
OF ALCOHOL AND DRUG ABUSE, INC.
Founded 1962

February 14, 1994

Representative Jim Nordlund
House of Representatives
State Capitol, Room 426
Juneau, AK 99801-1182

Dear Representative Nordlund:

This letter is in support of House Bill 337. It seems logical to me that any area where young people gather we have a responsibility as a community to protect them as much as possible. This bill sends that kind of message. It also gives the police the authority to take action if these violations occur. Substance use and abuse have been on the decline for the past few years, however when it comes to young people that's still the area where most problems are occurring. So anything that can continue to assist this problem from rising again we should support. These area's where young people gather are most vulnerable for this kind of activity. We have to let the young people know that we are working in their best interest.
I am very grateful for this legislation it proves to me that you and your colleagues are very concerned about the teenagers of our communities. Prevention is the only hope we have for the future. Best of luck with this bill.

Sincerely,

Joseph DiMatteo
Executive Director

/JDM

AN AFFILIATE OF NCADD
NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE, INC.
3333 DENALI STREET, SUITE 201 • ANCHORAGE, ALASKA 99503
(907) 258-6021 • FAX (907) 258-6052 • (800) 478-PREV OUTSIDE ANCHORAGE AREA ONLY
Alaska Children's Trust MEMBER AGENCY

Alaska Recreation and Park Association

P.O. Box 102664
Anchorage, Alaska 99510-2664

February 17, 1994

Representative Jim Nordlund
Alaska State Capitol
Juneau, Alaska 99801-1182

Rep. Nordlund:

Thank you for your sponsorship of House Bill No. 337 and for sharing a copy of this proposed legislation with me. After studying the bill this week, asking for opinions from my membership and then sharing it with my own city Police Chief for his comment, I believe HB337 will greatly benefit communities throughout our state and will assist the goals of the Alaska Recreation and Park Association (ARPA).

Not only does HB337 clear up current law and make it more enforceable, but it extends stiffer penalties for possession of controlled substances to include zones where young people play and recreate, as well as where they attend school. It is an unfortunate fact of life that drugs are available and readily accessible throughout our state, but we should not tolerate this condition and should take steps like HB337 to "say no to drugs" and to drug dealers.

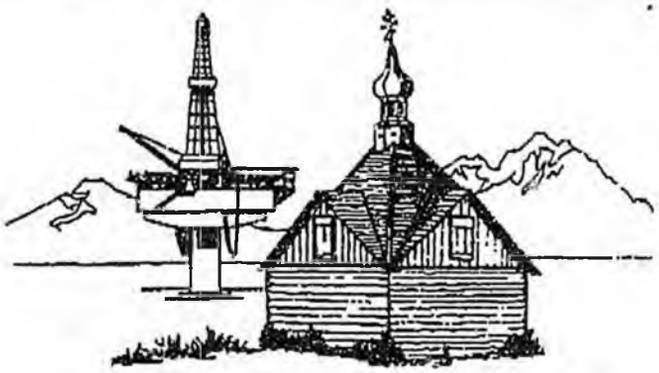
ARPA believes recreation and play should be a positive experience. We support HB337 and other efforts like it that would help say "NO!" to those who would enter our parks, play areas and recreation centers to ruin that positive experience and to potentially ruin the lives of those we serve.

Please feel free to contact me at any time regarding this issue or any other involving recreation and parks, and I thank you for your fine efforts.

Sincerely,

William J. Musson, President
Alaska Recreation and Park Association

cc: ARPA Board of Directors



1791-1991
CITY OF KENAI
"Oil Capital of Alaska"
210 FIDALGO KENAI, ALASKA 99611
TELEPHONE 283-7535
FAX 907-283-3014

March 3rd, 1994

The Kenai Recreation Center and Teen Center are a location where a large number of adults and teens come together to participate in various recreational activities.

While inside the building individuals are carefully supervised by staff, but once outside of the building, and just off the grounds, supervision is much more difficult. It is this area, outside of the facility, where individuals possessing or selling drugs would most likely be found.

The Staff at the Kenai Recreational Center and Teen Center strongly supppot House Bill 337, because we feel that it will give our local Police Department added incentive to closely monitor the area outside of our facility. We also believe that the drug-free recreation and youth center zone signs will communicate our staff's commitment to providing a safe drug-free enviroment for all individuals who use our facility.

Sincerely,

Julie Niederhauser

Julie Niederhauser

Asst. Supervisor of Teen Center

Kayo McGillivray

Director - Parks & Recreation

Municipality of Anchorage

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650

TOM FINK
MAYOR

DEPARTMENT OF CULTURAL AND RECREATIONAL SERVICES

February 21, 1994

Representative Jim Nordlund
Alaska State Legislature
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Nordlund:

I am writing to support the bill you have introduced which relates to the possession of controlled substances within 500 feet of recreation and youth centers. We agree with your move to add recreation and youth centers to the list of locations in which such activity will be considered a criminal offense.

As with schools and school buses, recreation centers are gathering places for our youth. We are concerned that the recreation centers operated by this department remain places that youth can use without fear of encountering drug use or sales. I am also aware that this legislation will cover other athletic fields and playgrounds under our supervision and I certainly support this inclusion as well.

I hope the legislation is successful and I applaud your efforts in bringing it forward.

Sincerely,

Connie Jones

Connie Jones, Director
Cultural and Recreational Services

CRJ/csj

Municipality of Anchorage

PARKS AND RECREATION

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650

TOM FINK
MAYOR

Representative Jim Nordlund
Alaska State Capitol
Juneau, AK 99801
February 18, 1994

Letter of Support for House Bill No 337

As Director of the Spenard Community Recreation Center and speaking from a youth oriented perspective, I support House Bill No. 337 Having read the bill I believe that setting up drug free zones for youth and recreation centers will greatly benefit not only the Spenard Community Recreation Center, but similar areas across the state. The bill will benefit the youth of the community and hopefully prevent any problems with controlled substances.

Sincerely,

Sharon Perrin

Sharon Perrin, Director
Spenard Community Recreation Center

BILL NO: HB 337

DATE: January 24, 1994

TITLE: "An Act relating to the possession of controlled substance within 500 ft. of a recreation or youth center"

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

POSITION PAPER - Department of Public Safety

HB 337 includes recreation centers and youth center in the controlled substance statutes that currently outline violations of controlled substances when they take place within five hundred feet of a school grounds.

This bill adequately and logically places these locations, recreation centers and youth centers, within the same category as schools for being drug free zones.

This bill has low impact on the Alaska State Troopers as it is consistent with current enforcement policies and creates no additional work but does create potentially an additional charge for persons caught with controlled substances near these locations.

The Department of Public Safety supports this legislation as it is consistent with a strong enforcement attitude and the Division's goals of controlling distribution of controlled substances.

Richard L. Burton
Commissioner

March 21, 1994

155 SOUTH SEWARD STREET
JUNEAU, ALASKA 99801

Eighteenth Alaska State Legislature

Subject: House Bill No. 337

On March 12, 1994, the Juneau Parks and Recreation Advisory Committee moved to send this letter in support of HB337.

This bill will treat recreation and youth centers the same as drug free school zones, with respect to the possession of controlled substances within 500 feet of the facility or park.

The Parks and Recreation Advisory Committee has an ongoing commitment to the health and safety of Juneau's youth. Incorporating recreation and youth facilities within drug-free zones will, we believe, act as an additional deterrent to drug-related activities and provide an additional means of prosecution for offenders.

Thank you for your efforts on behalf of our youth.

Sincerely,

R. Crewse CHR

Randy Crewse, Chair
Juneau Parks and Recreation Advisory Committee
155 South Seward Street
Juneau, AK 99801

Municipality of Anchorage

PARKS AND RECREATION

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650

TOM FINK
MAYOR

Representative Jim Nordlund
Alaska State Capitol
Juneau, AK 99801
February 22, 1994

As a Recreational Specialist and youth coach of the Spenard Recreation Center, I am completely supportive of House Bill No. 337. Setting up such a zone for our center will create the safe haven needed within the area. Hopefully the zone will prevent any problems with controlled substances here in our community and communities across the state.

Sincerely,

Sheryl R. Cohen, Recreation Specialist/Coach
Spenard Recreation Center

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 337(HES)

Revision Date: 03/09/94
Dept. Affected: Public Safety
Title: Drug Free Recreation and Youth Centers
BRU: Alaska State Troopers
Component: Detachments
Sponsor: REP NORDLUND
Requestor: H. JUD
COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( ) Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 94) impact: $

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact anticipated.

Prepared By: Francis C. Allan
Phone: (907) 269-5691
Division: Alaska State Troopers
Date: 03/09/94
Approved by Commissioner:
Date: 03/09/94
Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 337

Revision Date:
Title: An Act relating to the possession of controlled substances...
Sponsor: Rep. Nordlund
Requestor: House HESS

Dept. Affected: Corrections
BRU: All
Component: All
COMPONENT SERIAL NO. 694-1884

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY94) cost: $ 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant — Phone: 465-4643/786-2147
Division: Office of the Commissioner — Date: 2/8/94
Approved by Commissioner: J. Frank Prewitt, Jr. (for) — Date: 2/8/94
Agency: Department of Corrections

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The bill would increase the severity, and thus length of sentence, for certain drug crimes if committed in proximity to recreation and youth centers. A class C felony (MICS IV) would become a class B felony (MICS III), and a class A misdemeanor (MICS V) would become a class C felony (MICS IV) if certain controlled substances were possessed within 500 feet of a youth or recreational center.

Assumptions

1. It is assumed that the effect of this measure might be similar to the effect of increasing the severity of MICS offenses which are committed in the proximity of schools, as provided under current law. The department was unable to locate any meaningful data on the frequency with which these offenses occur or their impact on the incarcerated or probation/parole populations. Only data on the actual offense category is available, which does not include the specific elements of the offense, such as proximity to a school. Therefore, the department contacted several law enforcement agencies/personnel and one prosecutor and asked how frequently such offenses occur. A district attorney informed the department that one such case occurred in the two years he was in that position. Three police officers stated such offenses occur "almost never." One police agency reported an average of 5.5 arrests near schools within the past four years. The department does not have the research resources needed to find out how this would correlate with actual convictions and sentences, so no conclusion could be drawn. Based upon this small amount of information, the department assumes that the behaviors described in the bill will "almost never" result in raising the severity of an offense from one category to another, and thus will not impact incarcerated or probation/parole populations.

2. In a profile of the incarcerated population on June 30, 1993, there were 41 inmates incarcerated for MICS IV and 75 incarcerated for MICS III. There were 96 inmates actually sentenced for MICS IV during 1992, and 119 sentenced for MICS III. In the June profile, there were 211 offenders under probation or parole supervision for MICS IV and 346 offenders being supervised for MICS III. Any increase in sentence length, or movement from misdemeanor to felony level which might result from this bill would seriously impact the department, given the number of cases involved. (Misdemeanor cases are not supervised by the department when placed on probation.)

3. If the department obtains any information contradicting the "almost never" incidence rate assumed above, the fiscal note will be revised to reflect an increase in prisoner-days ($113/day) and probation/parole-days ($6/day), as well as any captital funds necessary to expand correctional bedspace, based upon the numbers of current MICS III and IV cases under the department's custody on June 30, 1993.

FISCAL NOTE

Work Draft

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 337 ( )
Dated 1/25/94

Revision Date: January 27, 1994
Title: "... relating to the possesion of controlled substances within 500 feet of recreation and youth centers."
Sponsor: Representative Nordlund
Requestor: Representative Nordlund

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE						
FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: January 27, 1994

Richard L. Pegues FOR

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: January 27, 1994

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FISCAL NOTE

Work Draft

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 337 ( )
Dated 1/25/94

ANALYSIS CONTINUATION:

The work draft CS for HB 337 adds a definition for "recreation or youth center" to mean a building, structure, athletic playing field, or playground operated by a municipality on the state to provide athletic, recreational, or leisure activities for minors. As previously stated, the bill amends AS 11.71 to increase the penalty for possession of a controlled substance within 500 feet of a recreation or youth center. This increased penalty provision is already the law for possession within 500 feet of school grounds. We do not believe the bill will have a fiscal impact because the number of cases involving possession of a controlled substance under current law is not significant and, extension of "Drug Free" zones to include recreation and youth centers, will not add any new significant workload.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 337

Revision Date: January 14, 1994
Department Affected: Department of Law
Title: "...relating to the possession of controlled substances within 500 feet of recreation and youth centers."
BRU: Prosecution
Component: All
Sponsor: Representative Nordlund
Requestor: Representative Nordlund
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	****	****	****	****	****	****
POSITIONS:						
FULL-TIME	****	****	****	****	****	****
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: January 14, 1994

Richard L. Pegues /FOR/

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: January 14, 1994

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This bill amends AS 11.71 to extend the current prohibitions and penalties for possession of a controlled

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 337

ANALYSIS CONTINUATION:

This bill amends AS 11.71 to extend the current prohibitions and penalties for possession of a controlled substance within 500 feet of school grounds to also include prohibiting possession of a controlled substance within 500 feet of a recreation or youth center. These latter terms have not been defined in the bill and could be interpreted somewhat broadly unless their meaning is clearly spelled out. For this reason, we are unable to determine whether there will be a fiscal impact. Department of Law staff is available to help clarify this issue.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: HB 337

Revision Date: _____ Dept. Affected: Public Safety

Title: "An Act relating to possession of controlled substances within five hundred feet of youth centers" BRU: Alaska State Troopers

Component: Detachments

Sponsor: Representative Nordlund

Requestor: Representative Nordlund COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 94) impact: $ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers anticipated.

Prepared By: Francis C. Allan Phone: (907) 269-5691

Division: Alaska State Troopers Date: 01/12/94

Approved by Commissioner: _____ Date: 01/24/94

Agency: Richard L. Burton, Dept. of Public Safety

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HB
339

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 339

Revision Date: January 13, 1994
Title: An Act relating to the use in public schools of historical documents
Sponsor: Representative Kott
Requestor: Representative Kott

Department Affected: Department of Education
BRU: Education Program Support
Component: Basic Education and Instructional Improvement
COMPONENT SERIAL NO. 171

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $

ANALYSIS: (Attach a separate page if necessary.)

The required distribution of this Act can be accomplished through the department's regular mailings to school district superintendents.

Prepared by: Sheila Peterson
Division: Commissioner's Office
Phone: 465-2803
Date: January 13, 1994

Approved by Commissioner: Jerry Covey
Agency: Education
Date: January 13, 1994

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DOE - EDUCATION PROGRAM SUPPORT - ZERO FISCAL NOTE

WALTER J. HICKEL, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

March 7, 1994

The Honorable Con Bunde, Co-Chair
House HESS Committee
Alaska State Legislature
State Capitol, Room 112
Juneau, AK 99801-1182

Dear Representative Bunde:

During the recent public hearing on HB 339, "An Act relating to the use in public schools of historical documents," the Department of Education was asked to present the House HESS Committee with a bill analysis on HB 339. Enclosed is the requested analysis.

Thank you very much.

Sincerely,

Jerry Covey
Commissioner

Enclosure

cc: Representative Pete Kott
Prime Sponsor of HB 339

✓Representative Brian Porter, Chair
House Judiciary Committee

05-E13LH

Bill Analysis

By the Department of Education

House Bill 339, *"An Act relating to the use in public schools of historical documents,"* states a public school teacher or administrator may use a historical document of the state as part of the public school curriculum. The legislation indicates that the use of a historical document does not constitute the advocation of a partisan, sectarian, or denominational doctrine and the teacher may not be disciplined for using the document. A list of historical documents is included in the legislation.

The Department of Education is committed to academic freedom and is opposed to any effort at censorship. However, as HB 339 is currently written, the legislation may be granting a blanket immunity to a teacher or administrator who uses a historical document as part of the curriculum.

On page 2, line 9, paragraph (c) states that a teacher or administrator cannot be disciplined for using a historical document. This protection from discipline appears to be too broad. *Inappropriate* use of any teaching material should subject a teacher or administrator to discipline or other appropriate action.

A similar concern is on page 2, line 6. Paragraph (b) states the use of a historical document does not constitute the advocation of a partisan, sectarian, or denominational doctrine under AS 14.03.090. Certain use of a historical document could possibly constitute advocating a church doctrine.

If the intent of this legislation is to reassure teachers and administrators that historical documents can be used freely in a public school classroom, AS 14.03.090 could be amended to clearly indicate that the appropriate use of historical documents is permissible. The Department of Education would recommend that HB 339 be replaced in total with the following amended change to AS 14.03.090.

Sec. 14.03.090 Sectarian or Denominational Doctrines Prohibited
Partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money. **Nothing in this section prohibits the appropriate use of historical documents that contain religious references.**

339 Blanket of immunity p2 L6
p2 L9
p2 L4

Book of Mormon →

Is there a problem.
03.090

Lang — No problem

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M E M O R A N D U M March 7, 1994

SUBJECT: Definition of "historical document" - (CSHB 339(JUD))

TO: Representative Brian Porter

FROM: Michael F Ford
Legislative Counsel

You have asked if the attached work draft should also contain a definition of the term "historical document". While you can include a definition, a definition is not required. In the context of CSHB 339(Jud) I believe the term "historical document" would be clear without adding a definition. As presently defined in HB 339, the definition is really a list of examples and does not limit the use of the term to certain documents. It is usually preferable to omit a definition unless the intent is to limit the commonly accepted use of the term.

Please contact me if you have further questions.

MFF:gc
94-175.glc

Attachment

8-LS1393\J
Ford
3/7/94

CS FOR HOUSE BILL NO. 339(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Sanders

A BILL

FOR AN ACT ENTITLED

"An Act relating to the use of historical documents in public schools; and providing for an effective date."

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

* Section 1. AS 14.03.090 is amended to read:

Sec. 14.03.090. SECTARIAN OR DENOMINATIONAL DOCTRINES PROHIBITED. Partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money. <u>Nothing in this section prohibits the use of historical documents that contain religious references, as a part of a classroom curriculum.</u>

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Sec. 14.03.085. Procurement preference for recycled Alaska products. A school district shall comply with AS 29.71.050, except that in AS 29.71.050(b), "AS 29.71.040" is read as "AS 36.15.050," and in AS 29.71.050(a) — (c) and (e), "municipal" and "municipality" are read as "school district." In this section, "school district" does not include regional educational attendance areas. (§ 1 ch 63 SLA 1988; am § 30 ch 50 SLA 1989)

Cross references. — For requirement that school districts, including REAA's, that receive state money comply with agricultural and fisheries products preference laws, see AS 36.15.050.

Effect of amendments. — The 1989 amendment, effective May 27, 1989, substituted "AS 29.71.050(b), 'AS 29.71.040' is read as 'AS 36.15.050,' and in AS 29.71.050(a) — (c) and (e)'" for "AS 29.71.050(a) — (e) and (g)."

Sec. 14.03.090. Sectarian or denominational doctrines prohibited. Partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money. (§ 1 ch 98 SLA 1966)

Opinions of attorney general. — Although public school teachers may teach about various religions as part of the curriculum in public schools, they may not advocate a particular religious view or teach that a particular religious view is true or false. The Professional Training Practices Commission has jurisdiction to hear complaints about the inappropriate advocacy of personal religious views in the classroom, and to take appropriate disciplinary action if the complaints are justified. Sept. 15, 1988 Op. Att'y Gen.

Collateral references. — What constitutes "prayer" under federal constitutional prohibition of prayer in public schools. 30 ALR3d 1352.

Constitutionality of teaching or otherwise promoting secular humanism in public schools. 103 ALR Fed 538.

Sec. 14.03.100. Use of school facilities. The governing body of a school district may allow the use of school facilities for any legal gatherings or assemblies. The governing body shall adopt bylaws that will ensure reasonable and impartial use of the facilities. (§ 1 ch 98 SLA 1966)

Collateral references. — Power of school authorities to provide gymnasium or athletic field and equipment for same. 69 ALR 871.

Constitutionality, construction, and application of statutes declaring that school buildings are civic centers, or otherwise providing for use of such buildings for other than school purposes. 79 ALR2d 1148; 94 ALR2d 1274.

Use of school property for other than public school or religious purposes. 94 ALR2d 1274.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 ALR3d 712.

Validity and construction of statute or ordinance forbidding unauthorized persons to enter upon or remain in school building or premises. 50 ALR3d 340.

Alaska State Legislature
House of Representatives

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& SOCIAL SERVICES
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PHONE (907) 69[illegible]-7943

DURING SESSION:
STATE CAPITOL
JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

SPONSOR STATEMENT

HB 339 – Relating to the Use of Historical Documents

The proposed bill relating to the use of historical documents in public schools is enabling legislation. It is best described as an academic freedom measure. It clarifies that original source documents of American history may be used to teach children about American history in our schools regardless of their content–even though that content may, at times, be explicitly religious.

The establishment clause in both the federal and Alaska constitutions was not intended to hinder children's knowledge of the role of religion in the life of our state and nation. The Supreme Court of the United States affirmed this in *Abington v. Schempp* and other decisions. Yet the history textbooks now used in our schools often omit religious references in relating the history of our country. Also, teachers and administrators are sometimes hesitant to use documents such as the Mayflower Compact for fear of violating the constitutional and statutory prohibitions against advocating religious belief.

The legislature has a duty to ensure that an atmosphere of academic freedom prevails in our public schools and that an anti-religious bias does not develop to hinder school children's understanding of their regional and national heritage. HB 339 will protect teachers who supplement their history classes with primary source documents. HB 339 will allow students to be exposed more broadly to the primary source material for United States history.

HB 339
SECTIONAL ANALYSIS

"An Act relating to the use in public schools of historical documents without alteration or removal of religious or secular references when the references are a part of the text of the document; providing that the use of historical documents does not constitute the advocation of partisan, sectarian, or denominational doctrine; and providing that public school teachers and administrators may not be disciplined or otherwise acted against for using historical documents; requiring the Department of Education to distribute copies of the law; and providing for an effective date."

Section 1.

Adds new section to AS 14.03 as follows:

AS 14.03.095

(a) Affirms that a school teacher or administrator may use a historical document of a state or the United States as a part of the school curriculum. Further provides that such a document may not be altered to censure the religious or secular content of the document.

(b) Provides that the use of a historical document may not be grounds for an alleged violation of AS 14.03.090 which prohibits the advocation of a partisan, sectarian, or denominational doctrine.

(c) Prohibits disciplinary action against a teacher or administrator who uses a historical document as provided in subsection (a).

(d) Provides a partial, exemplary listing of historical documents.

Section 2.

Provides that the Department of Education shall distribute copies of the law to schools, school districts and REAAs.

Section 3.

Provides that the Act takes effect on July 4, 1994.

Sec. 14.03.090. Sectarian or denominational doctrines prohibited. Partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money. (§ 1 ch 98 SLA 1966)

Opinions of attorney general. — Although public school teachers may teach about various religions as part of the curriculum in public schools, they may not advocate a particular religious view or teach that a particular religious view is true or false. The Professional Training Practices Commission has jurisdiction to hear complaints about the inappropriate advocacy of personal religious views in the classroom, and to take appropriate disciplinary action if the complaints are justified. Sept. 15, 1988 Op. Att'y Gen.

Collateral references. — What constitutes "prayer" under federal constitutional prohibition of prayer in public schools. 30 ALR3d 1352.

Constitutionality of teaching or otherwise promoting secular humanism in public schools. 103 ALR Fed 538.

Background Paper
HB 339 NO CENSORSHIP:
AMERICAN HISTORY DOCUMENTS

The establishment clause in the First Amendment to the United States constitution which provided the model for Article I, section 4 of Alaska's constitution, was not intended to hinder children's knowledge of the role of religion in the life of our state and nation. The Supreme Court of the United States affirmed this in *Abington v. Schempp*, 374 US 203.

Justice Clark, in the opinion of the Court, wrote:

> We agree of course that the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe" (374 US at 225).
>
> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect is to oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment (374 US at 226).

Justice Brennan, in a separate concurring opinion, wrote:

> The holding of the Court today plainly does not foreclose teaching *about* the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion. . . . Any attempt to impose rigid limits upon the mention of God or references to the Bible in the classroom would be fraught with dangers (374 US at 300).

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Juneau, Alaska 99801-2105

MEMORANDUM February 3, 1994

SUBJECT: Freedom of religion - (HB 339)

TO: Representative Cynthia Toohey

FROM: Michael F. Ford MF
Legislative Counsel

You have asked if HB 339 presents any constitutional problems. As explained in this memo, HB 339 does not appear to violate either the state or federal constitutions.

The constitution of the State of Alaska, in Article 1, section 4, and the United States constitution under the first amendment both prohibit the "establishment of religion" or the prohibition of the "free exercise" of religion by the government. The application of these two provisions is often difficult, partly because the two concepts are in conflict. Sometimes a command not to establish religion cannot be met without inhibiting religion in some manner. The general result that the courts have attempted to achieve is one of neutrality. Whether a particular law is neutral to the extent required by the state and federal constitutions requires that the law meet a three part test. First, the law must have a secular purpose, second, the principle effect of the law must not advance or inhibit religion, and third, the law must not give rise to excessive entanglement between the government and religion. Lemon v. Kurtzman, 403 U.S. 602 (1971).

Applying this test to HB 339, it appears that the first or second parts of the test are satisfied. The bill is limited to american historical documents, and requires only that documents not be altered to remove religious or secular references that are a part of the historical document. The last part of the test is not as easily met by HB 339, but given that the bill only applies to a public school curriculum there should not be government entanglement of the degree that would cause constitutional problems.

The primary effect of HB 339 appears to be that a school district could not modify a curriculum for religious purposes. Assuming this is the purpose of the bill, then there is a court decision that directly addresses this issue. The United States supreme court has ruled that a state may not eliminate the teaching of certain ideas related to normal classroom subjects because they conflict with religious beliefs. Epperson

v. Arkansas, 393 U.S. 97 (1968). In Epperson the court struck down a statute that made it unlawful to teach a theory of human biological evolution. The statute had a religious purpose, therefore it violated the establishment clause of the U.S. constitution. Again, the primary requirement of the courts has been to achieve neutrality. Prohibiting alteration of historical documents would seem a clear expression of this neutrality requirement.

Please contact me if you have further questions.

MFF:gc:mi
94-087.glc

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 10, 1994 FURTHER REFERRALS: Judiciary

Date of Committee Action: 2/16/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 339

HOUSE BILL NO. 339 NO CENSORSHIP: AMERICAN HISTORY DOCUMENTS

"An Act relating to the use in public schools of historical documents without alteration or removal of religious or secular references when the references are a part of the text of the document; providing that the use of historical documents does not constitute the advocation of partisan, sectarian, or denominational doctrine; and providing that public school teachers and administrators may not be disciplined or otherwise acted against for using historical documents; requiring the Department of Education to distribute copies of the law; and providing for an effective date."

RECOMMENDATIONS: [ ] the same title

be replaced with _____ [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[X] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[X] zero fiscal note DOE [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
			X		

CHAIRMAN'S SIGNATURE

NEA-ALASKA

Affiliated with the National Education Association

February 16, 1994

TO: Representative Con Bunde, Chair
Members: House HESS Committee

FROM: Claudia Douglas, President
NEA-Alaska

RE: SS HB. 267; "An Act increasing elementary and secondary instructional units for certain school districts with 800 or fewer students in average daily membership; and providing for an effective date."

NEA-Alaska strongly supports and encourages your favorable consideration of SSHB 267, which will permanently "fix" the concern for single site funding. We urge you to support the formula presently in SS House Bill 267 "An Act increasing elementary and secondary instructional units for certain school districts with 800 or fewer students in average daily membership..."

A disparity has existed in the public school foundation formula relative to singe site districts since Alaska instituted the Instructional Unit technique of funding in 1987-88. The result has been an inordinate financial burden on these communities and the reduction or elimination of critical programs and services. These districts have not been able to attain prior funding levels under the current formula.

These inequities in the formula with regard to small single-site school districts have been before the legislature each year since enactment of the present foundation formula. It is not fair that they have had to withstand additional legislative scrutiny relative to their basic needs under a funding formula that is supposed to treat all districts equitably.

For most years, under the present law, supplemental appropriations to small school districts have been passed. The formula in SSHB 267 is the same as that which has been appropriated for these 21 districts over the past two years.

We urge your early support for this legislation. It would be not only unfair, but irresponsible to place these single-site districts in another political game, as they

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experienced last year. All children and communities of Alaska need to be treated fairly and with dignity; none need to be placed in a position of coming to Juneau to beg for equal funding.

All 21 districts are in accord with this proposal. Although the Department of Education has proposed other possible solutions, the State Board has indicated that they support single site funding if it is not prorated from other districts and based on full funding at the $61,000 Instructional Unit.

The formula in SSHB 267 is supported by the Single Site School District Consortium, the Alaska Association of School Administrators and NEA-Alaska. We urge you to take a position in support of SSHB 267, a formula seen as resolving the single site schools' issue.

Thank you for consideration of our recommendation.

THE MAYFLOWER COMPACT

(1620)

[From the History of Plymouth Plantation by William Bradford (1590–1657), second governor of Plymouth.]

IN the name of God, Amen. We, whose names are underwritten, the loyal subjects of our dread sovereigne Lord, King James, by the grace of God, of Great Britaine, France, and Ireland king, defender of the faith, etc., having undertaken, for the glory of God, and advancement of the Christian faith, and honour of our king and country, a voyage to plant the first colony in the Northerne parts of Virginia, doe, by these presents, solemnly and mutually in the presence of God, and one of another, covenant and combine ourselves together into a civill body politick, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enacte, constitute, and frame such just and equall laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meete and convenient for the generall good of the Colonie unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cap-Codd the 11. of November, in the year of the raigne of our sovereigne lord, King James, of England, France, and Ireland, the eighteenth, and of Scotland the fiftie-fourth. Anno. Dom. 1620.

THIS, THEN, is the condition of the world and the nation the last two weeks of April, 1789. Imagine yourself, if you will, as a thoughtful Washington, sitting down in your quiet study at Mount Vernon to prepare an address you must deliver April 30th in New York City. Although you have been almost as adept with the pen as with the sword, still it comes hard, this address, and during the trip from Mount Vernon to New York with wildly cheering crowds along the way you cannot help but feel uneasy over its reception. Indeed, when you reach New York you discard your original address, and with the aid of James Madison prepare a much shorter message. After the oath of office has been administered to you by Chancellor Robert R. Livingston of New York on the balcony of Federal Hall you listen to the thirteen-gun salute from the harbor as the Stars and Stripes are raised, acknowledge the acclamation of the crowd, and retire to the Senate Chamber, where you take your seat until the Chamber has settled down. Now the entire Chamber looks toward you as you stand, settle your dark brown coat on your shoulders, adjust your spectacles nervously, and begin to speak in a low voice the words you have so painstaking rewritten . . . .

George Washington

[1789–1793]

FIRST INAUGURAL ADDRESS, APRIL 30, 1789

Federal Hall, New York, N.Y.

Fellow-Citizens of the Senate and of the House of Representatives:

Among the vicissitudes incident to life no event could have filled me with greater anxieties than that of which the notification was transmitted by your order, and received on the 14th day of the present month. On the one hand, I was summoned by my country, whose voice I can never hear but with veneration and love, from a retreat which I had chosen with the fondest predilection, and, in my flattering hopes, with an immutable decision, as the asylum of my declining years—a retreat which was rendered every day more necessary as well as more dear to me by the addition of habit to inclination, and of frequent interruptions in my health to the gradual waste committed on it by time. On the other hand, the magnitude and difficulty of the trust to which the voice of my country called me, being sufficient to awaken in the wisest and most experienced of her citizens a distrustful scrutiny into his qualifications, could not but overwhelm with despondence one who (inheriting inferior endowments from nature and unpracticed in the duties of civil administration) ought to be peculiarly conscious of his own deficiencies. In this conflict of emotions all I dare aver is that it has been my faithful study to collect my duty from a just appreciation of every circumstance by which it might be affected. All I dare hope is that if, in executing this task, I have been too much swayed by a grateful remembrance of former instances, or by an affectionate sensibility to this transcendent proof of the confidence of my fellow-citizens, and have thence too little consulted my incapacity as well as disinclination for the weighty and untried cares before me, my error will be palliated by the motives which mislead me, and its consequences be judged by my country with some share of the partiality in which they originated.

Such being the impressions under which I have, in obedience to the public summons, repaired to the present station, it would be peculiarly improper to omit in this first official act my fervent supplications to that Almighty Being who rules over the universe,

Washington was 6'2" tall and weighed 200 pounds. Now, however, at 57 the strain of long years at war was beginning to tell on him—as he briefly mentioned in his opening remarks.

Washington foresaw the young nation's difficulties. He didn't feel quite so much at home in a statesman's role as president. He felt better as commander in chief. But he evidently believed that by appealing to his colleagues, he could eliminate a good deal of the internal friction that was even then becoming evident. This friction was eventually to cause the dissolution of the Federalist party, of which Washington was a member.

who pre ides in the councils of nations, and whose providential aids can suppl, every human defect, that His benediction may consecrate to the liberties and happiness of the people of the United States a Government instituted by themselves for these essential purposes, and may enable every instrument employed in its administration to execute with success the functions allotted to his charge. In tendering this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own, nor those of my fellow-citizens at large less than either. No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency; and in the important revolution just accomplished in the system of their united government the tranquil deliberations and voluntary consent of so many distinct communities from which the event has resulted can not be compared with the means by which most governments have been established without some return of pious gratitude, along with an humble anticipation of the future blessings which the past seem to presage. These reflections, arising out of the present crisis, have forced themselves too strongly on my mind to be suppressed. You will join with me, I trust, in thinking that there are none under the influence of which the proceedings of a new and free government can more auspiciously commence.

The thought in this passage would occur repeatedly throughout the addresses of Washington's successors, but would seldom be expressed with the eloquence commanded by Washington.

The "future blessings" to which Washington referred were soon lost sight of in the storm of party bickering that began as the new government was seated—a development of which Washington was evidently not insensible, judging by the appeal in the next segment of his address.

By the article establishing the executive department it is made the duty of the President "to recommend to your consideration such measures as he shall judge necessary and expedient." The circumstances under which I now meet you will acquit me from entering into that subject further than to refer to the great constitutional charter under which you are assembled, and which, in defining your powers, designates the objects to which your attention is to be given. It will be more consistent with those circumstances, and far more congenial with the feelings which actuate me, to substitute, in place of a recommendation of particular measures, the tribute that is due to the talents, the rectitude, and the patriotism which adorn the characters selected to devise and adopt them. In these honorable qualifications I behold the surest pledges that as on one side no local prejudices or attachments, no separate views nor party animosities, will misdirect the comprehensive and equal eye which ought to watch over this great assemblage of communities and interests, so, on another, that the foundation of our national policy will be laid in the pure and immutable principles of private morality, and the preeminence of free government be exemplified by all the attributes which can win the affections of its citizens and command the respect of the world. I dwell on this prospect with every satisfaction which an ardent love for my country can inspire, since there is no truth more thoroughly established than that there exists in the economy and course of nature an indissoluble union between virtue and happiness; between duty and advantage; between the genuine maxims of an honest and magnanimous policy and the solid rewards of public prosperity and felicity; since we ought to be no less persuaded that the propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right which Heaven itself has ordained; and since the preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered, perhaps, as

Washington here revealed the meat of his message: "party animosities." His was a blunt request to the members of Congress who would be directing affairs of government under his leadership. But this appeal was soon to be forgotten, as it became plain that the young government was stronger than even its creators suspected. Political office was found to offer unforeseen rewards besides those of "public prospect and felicity"—rewards for which no sacrifice was apparently too great for the ambitious.

In this passage, which begins with the words "the sacred fire of liberty," Washington's eloquence reached its peak.

deeply, as *finally,* staked on the experiment intrusted to the hands of the American people.

Besides the ordinary objects submitted to your care, it will remain with your judgment to decide how far an exercise of the occasional power delegated by the fifth article of the Constitution is rendered expedient at the present juncture by the nature of objections which have been urged against the system, or by the degree of inquietude which has given birth to them. Instead of undertaking particular recommendations on this subject, in which I could be guided by no lights derived from official opportunities, I shall again give way to my entire confidence in your discernment and pursuit of the public good; for I assure myself that whilst you carefully avoid every alteration which might endanger the benefits of an united and effective government, or which ought to await the future lessons of experience, a reverence for the characteristic rights of freemen and a regard for the public harmony will sufficiently influence your deliberations on the question how far the former can be impregnably fortified or the latter be safely and advantageously promoted.

In his reference to the fifth article of the Constitution, which provides for proposal of Constitutional amendments, Washington was attempting to divert rash action on the part of party hotheads, to whom the Constitution was still an imperfect instrument. Federalist party leaders had stated their desire for Constitutional changes, and Washington was plainly displeased.

To the foregoing observations I have one to add, which will be most properly addressed to the House of Representatives. It concerns myself, and will therefore be as brief as possible. When I was first honored with a call into the service of my country, then on the eve of an arduous struggle for its liberties, the light in which I contemplated my duty required that I should renounce every pecuniary compensation. From this resolution I have in no instance departed; and being still under the impressions which produced it, I must decline as inapplicable to myself any share in the personal emoluments which may be indispensably included in a permanent provision for the executive department, and must accordingly pray that the pecuniary estimates for the station in which I am placed may during my continuance in it be limited to such actual expenditures as the public good may be thought to require.

Here again Washington made an indirect yet nonetheless frank appeal to those who would make political office a means of excessive "personal emoluments."

Having thus imparted to you my sentiments as they have been awakened by the occasion which brings us together, I shall take my present leave; but not without resorting once more to the benign Parent of the Human Race in humble supplication that, since He has been pleased to favor the American people with opportunities for deliberating in perfect tranquillity, and dispositions for deciding with unparalleled unanimity on a form of government for the security of their union and the advancement of their happiness, so His divine blessing may be equally *conspicuous* in the enlarged views, the temperate consultations, and the wise measures on which the success of this Government must depend.

At the close of his address Washington once more stressed a desire for "enlarged views . . temperate consultations, and . . . wise measures" instead of acts of personal aggrandizement. A noble appeal, it fell on deaf ears—as Washington was soon to discover when ideals ran headlong into reality.

ALASKA CONSTITUTIONAL CONVENTION

November 8, 1955

FIRST DAY

Processional

Presentation of the Colors

GOVERNOR B. FRANK HEINTZLEMAN: The hour appointed by the Alaska Territorial Legislature having arrived for the convening of the Alaska Constitutional Convention, I do accordingly, as Governor of this Territory, call the Convention to order. It is appropriate that those to whom so much has been entrusted by our voters call upon God for the guidance at the outset of their task. It is my privilege at this time to present the Reverend Roy Ahmoagak of Wainwright, Alaska, who will offer an invocatory prayer.

THE REVEREND ROY AHMOAGAK: Let us unite in prayer. Almighty and Everlasting God, who by Thy providence didst lead our forefathers to this good land wherein they found liberty and freedom to worship Thee, we beseech Thee ever to guide our nation in the way of Thy truth and peace so that we may never fail in the blessing which Thou has promised to that people whose God is the Lord. Grant, we beseech Thee, unto our Governor, and to those men who sit with him in authority, Thy gracious presence and blessing. Enlighten them with wisdom from above and especially in establishing our Constitution. May we ever seek to comply with Thy requirements, and what does the Lord require of you but "to do justice, and to love kindness, and to walk humbly with Thy God." Deliver us, our Father from error, pride and prejudice, and so order all these doings here that Thy kingdom may be advanced. Hear this our prayer, O God, and may what is accomplished in these meetings be in accordance with Thy Holy will. For we ask these things in the name of our Lord and Saviour Jesus Christ.

MCNEALY: I move, "RESOLVED that the reading of the certificate of election of the respective delegates be dispensed with and that the certificate of the Secretary of Alaska as to their election be accepted in lieu thereof.

FURTHER RESOLVED, that each delegate who has answered the roll call and whose name appears on the certificate of the Secretary of Alaska take and subscribe an oath or affirmation of office to be administered by the Honorable Vernon D. Forbes, Judge of the United States District Court of Alaska, Fourth Division, and that each delegate so sworn shall be deemed to have been duly seated." I ask unanimous consent.

GOVERNOR HEINTZLEMAN: I thank you. Without objection it is so ordered. Pursuant to the authority invested to me as Governor of the Territory, I would now like to appoint Mr. John B. Hall, Clerk of the Court, Fourth Division, to act as the

ALASKA CONSTITUTIONAL CONVENTION

November 10, 1955

THIRD DAY

PRESIDENT EGAN: The Convention will come to order and the Secretary will call the roll. (10 a.m.)

(Mr. John Hall called the roll at this time.)

MR. JOHN HALL: Mr. President, I find that all delegates are present excepting Frank Peratrovich who has not yet appeared, sir.

PRESIDENT EGAN: A quorum is present. The Convention will please stand while Reverend Armstrong comes forward to give the daily invocation.

ARMSTRONG: Let us bow in prayer. Almighty Father, who hath placed in our hands the lives of our fellow Alaskans, bring us to this Convention as delegates in their behalf. Continue to bring Thy spirit of wisdom upon us. Thou dost know that we will differ from one another as we search for true precepts for the great land. Thou dost know how our voices will rise as champions of ideals we hold eternal. Father, keep the good pace of brotherhood within us as we have started on this journey, and impose Thy will when we fail to surrender. Depose wrong when it is bred in selfishness, anger and sectionalism, and O God, our Father, we pray Thee of all to be our constant guide. In Jesus' holy name, amen.

PRESIDENT EGAN: The Secretary will read the minutes of yesterday's meeting. Mr. Johnson?

JOHNSON: Mr. President, in order to expedite the proceedings, I move the reading of minutes of yesterday's session be dispensed with. I ask unanimous consent.

PRESIDENT EGAN: Mr. Johnson moves and asks unanimous consent that the minutes of yesterday's meeting be dispensed with. Is there objection? Hearing no objection, it is so ordered. Mr. McNealy?

MCNEALY: In view of the developments since yesterday's nominations for Secretary of this Convention, and at the request of Mrs. Alexander, I wish to withdraw her name which was placed in nomination by me.

PRESIDENT EGAN: Do you put that in the form of a motion, Mr. McNealy?

MCNEALY: I so move Mr. President and ask unanimous consent of the body.

ALASKA CONSTITUTIONAL CONVENTION

November 9, 1955

SECOND DAY

PRESIDENT PRO-TEM, MILDRED HERMANN: The second session of the Alaska Constitutional Convention will come to order. We will have the roll call by the Secretary.

(Mr. John Hall called the roll.)

MR. HALL: Madam President, all fifty-five delegates are present excepting Frank Peratrovich who did not answer to his name.

MRS. HERMANN: This is the time and place set for a special order of business to hear an address by the keynote speaker for the Convention. I would like to appoint Mr. Hellenthal, Mr. Sundborg and Mrs. Nordale who will escort the speaker to the rostrum.

(Dr. Gruening was escorted to the rostrum at this time.) (applause)

MRS. HERMANN: Before we proceed with the address, I shall ask the Reverend Londborg to give the invocation.

LONDBORG: Let us pray. Almighty God, for whom we move and have our being, we stand before you this moment with bowed heads and humble hearts, realizing the responsibility that is ours as citizens and servants of this great potential State of Alaska. As Delegates to this Constitutional Convention we are aware of the need for divine guidance and wisdom. It is our prayer that this document we have been delegated to prepare will be one that will provide for equal liberty and justice for all peoples of Alaska, one that will stand the test of time and posterity and above all one that will bring honor to Thy holy name. We pray for Thy guidance in all of our business, that it may be conducted in a true spirit of brotherly love as taught by Christ, in order that we may make the most of the opportunity and challenge that is ours. We would pray as Solomon of old, "O Lord God, give us now wisdom and knowledge to do the task we have been called to do, for who can do this task that is so great." In Thy Holy Name we pray. Amen.

MRS. HERMANN: Yesterday when I was elected to be your temporary president, I felt both proud and humble. I am a little bit afraid I might not know how to say the right thing at the right time, but very proud that the Convention itself had thought that I could. It was not until later in the afternoon that it penetrated my befuddled intelligence, which had been jolted into something of a coma by my unexpected election, that I had still another reason to be proud to be your temporary chairman. It gave me the opportunity to introduce the keynote