ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9164 HOUSE JUDICIARY

Alaska State Legislature

House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: January 31, 1997

To: Jack Chenoweth, Legislative Legal Services
Fax: 465-2029

From: Lisa Kirsch, House Judiciary Committee

Please make amendments one and two as set out on the attached page to the work draft Sponsor Substitute (0-LS0076\E).
Call if you have any questions.

Thanks for your assistance.

Amend #1
moved Brunde
Green 2d
adopted 1/31/97

AMENDMENT #1

OFFERED IN THE HOUSE

TO: HB 7

Page 1, lines 4-10:

Delete Section 1 and renumber following sections.

Page 2, line 13:

Delete "AS 22.~~34~~.35.020 or"

Page 4, lines 20-21:

Delete "adminstrative director of the Alaska Court System under AS 22.35.020 or by the"

AMEND #2

STRIKE "VOLUNTARILY"

FROM LINE 7 PG. 8 OF SS

HB

9

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

January 17, 1997

Representative Brian Porter
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Porter,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing House Bill 9 relating to the right of crime victims and victims of juvenile offenses to be present at court proceedings and amending Rule 615 of the Alaska Rules of Evidence. At a recent meeting of the APOA State Board, we decided to unanimously support this legislation. We believe that this legislation would better communicate to offenders especially juveniles how their illegal activities affect victims. We also believe that this legislation would further tear down the walls of confidentiality that currently protect juvenile offenders. Finally, we feel that victims should have the right to know how their case is being handled by the courts.

We encourage you to call on us when there are hearings on this bill, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,

Michael Corkill
APOA State President

HSC rec'd 1/23/97

CS FOR HOUSE BILL NO. 9 (JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

"An Act relating to the right of crime victims and victims of juvenile offenses to be present at court proceedings; and amending Rule 615, Alaska Rules of Evidence."

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

* **Section 1.** PURPOSE. The purpose of this Act is to clarify that the right of crime victims "to be present at all criminal or juvenile proceedings where the accused has the right to be present," which is a right protected under art. I, sec. 24, of the state constitution, may not be abridged by the sequestration rule applicable to most witnesses.

* **Sec. 2.** AS 09.20.180 is amended to read:

Sec. 09.20.180. Exclusion of witnesses from courtroom. <u>Except as provided in AS 12.50.200 and AS 47.12.110(b), upon</u> [UPON] the request of either party the judge may exclude from the courtroom any witness of the adverse party not under examination at the time so that the witness may not hear the testimony of other witnesses.

* **Sec. 3.** AS 12.50 is amended by adding a new section to read:

Article 3. Victim Witnesses.

Sec. 12.50.200. Victim may not be excluded from courtroom. A court may not exclude the victim of an alleged crime from the courtroom during testimony that occurs when the accused has the right to be present even if the victim is likely to be called as a subsequent witness. In this section, "victim" has the meaning given in AS 12.55.185.

* **Sec. 4.** AS 47.12.110(b) is amended to read:

(b) Notwithstanding (a) of this section, the victim of an offense that a minor is alleged to have committed, or the designee of the victim, has a right to be present at all hearings held under this section. If the minor is found to have committed the offense, the victim may at the disposition hearing give sworn testimony or make an unsworn oral presentation concerning the offense and its effect on the victim. If there are numerous victims of a minor's offense, the court may limit the number of victims who may give sworn testimony or make an unsworn oral presentation, but the court may not limit the right of a victim to attend a hearing **even if the victim is likely to be a witness in a hearing concerning the minor's alleged offense**.

* **Sec. 5.** Rule 615, Alaska Rules of Evidence, is amended to read:

Rule 615. Exclusion of Witnesses. At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion. This rule does not authorize exclusion of

(1) a party who is a natural person; [, OR]

(2) an officer or employee of a party which is not a natural person designated as its representative by its attorney; [, OR]

(3) a person whose presence is shown by a party to be important to the presentation of **the party's** [HIS] cause; **or**

(4) the victim of the alleged crime or juvenile offense during criminal or juvenile proceedings when the accused has the right to be present; in this paragraph, "victim" has the meaning given in AS 12.55.185.

* **Sec. 6.** COURT RULE CHANGE. Sections 2 - 5 of this Act have the effect of amending Rule 615, Alaska Rules of Evidence, by making the witness exclusion rule

inapplicable to victims of offenses.

*** Sec. 7.** APPLICABILITY. This Act applies to a criminal or juvenile hearing held on or after the effective date of this Act, regardless of when the criminal or juvenile proceeding commenced.

*** Sec. 8.** This Act takes effect only if sec. 6 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
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DISTRICT 20

SPONSOR STATEMENT

For

HB 9 RIGHT OF CRIME VICTIMS AND VICTIMS OF JUVENILE OFFENSES TO BE PRESENT AT COURT PROCEEDINGS

The Constitution of the State of Alaska was amended in 1994 by adding to Article 1, a new Section 24, which specifically extended to crime victims "the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present..."

Currently at least two Superior Court judges are interpreting the Alaska Statutes, and Rule 615 , Alaska Rules of Evidence, to exclude victims of crimes and juvenile offenses from being present in the courtroom during a trial of the accused until after the victim has testified.

This bill is then offered to implement the mandate of the 1994 Amendment to the Constitution and to make absolutely clear to the judiciary a crime victim's right to be present at the trial and other proceedings of the accused, including juvenile proceedings, whenever the accused has the right to be present.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM January 16, 1997

SUBJECT: Sectional Summary of HB 9 (Work Order No. 0-LS0088\E)

TO: Representative Brian Porter
Attn: Jim Sourant

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill provides a purpose section.

Section 2 of the bill amends AS 09.20.180 to ensure the effectiveness of the substantive changes being made in bill secs. 3 - 4.

Section 3 of the bill adds a new section to AS 12.50 providing that a crime victim may not be excluded from the courtroom during proceedings at which the defendant has a right to present, including situations where the victim may be called as a witness.

Section 4 of the bill amends AS 47.12.110(b) by providing that a crime victim may not be excluded from juvenile hearings involving the minor alleged to have committed the crime even if the victim may be called as a witness.

Section 5 of the bill amends Rule 615, Alaska Rules of Evidence, by providing that that rule does not authorize the exclusion of a crime victim from criminal or juvenile hearings involving the alleged offender.

Section 6 of the bill provides notice that bill secs. 2 - 5 are effecting a change to Rule 615, Alaska Rule of Evidence. Court rule changes require a two-thirds vote of each house of the legislature to become effective.

Section 7 of the bill is an applicability section.

Section 8 of the bill provides that the bill, if passed, only takes effect if the court rule changes receive the required two-thirds vote.

GPL:lmb
97-005.lmb

Date: January 15, 1997

To: Representative Joe Green
Chairman, House Judiciary Committee

From: Representative Brian Porter
House Majority Leader

Subject: Additional Sectional Analysis of HB 9

In general, at common law it was within the discretion of a trial judge to exclude witnesses from the courtroom during a trial on the theory that a witness who sits through a court proceeding could shape his or her testimony to match the testimony given by other witnesses. Even at common law, however, the exclusion of witnesses applied only to ordinary witnesses, and not to witnesses who were also parties to the litigation. The exemptions from exclusion enjoyed by party witnesses extended to prosecution witnesses in criminal proceedings. So under common law, a judge exercising sound discretion generally refused to exclude crime victims from the trial of an accused.

The reason underlying the common law exception which allowed crime victims to be present throughout a trial is that a crime victim's presence at the prosecutor's table was necessary in most instances because the crime victim was the only person with personal knowledge of what occurred during the criminal activity. Information which the crime victim could furnish to the prosecutor during the course of the trial could not be obtained from anyone else other than the crime victim. Excluding the crime victim would, in almost all cases, place the state at an enormous disadvantage. See Miller v. State, 648 N.E. 2d 1208, 1210 (Ind. 1995).

This rationale was implicitly accepted by the Alaska Supreme Court in a decision which predated Alaska's adoption of the Federal Rules of Evidence in 1979. In Dickens v. State, 398 P.2d 1008 (Ak. 1965), the court upheld the right of a police officer who was in charge of a criminal investigation to remain in the courtroom, despite the fact that he was to testify during the trial.

With the adoption of the Federal Rules of Evidence by Congress in 1973, the issue of which witnesses should or should not be excluded was finally settled in the federal courts. Federal Evidence Rule 615 mandated that a party witness could not be excluded if the party was a "natural person". By definition, all crime victims are "natural persons". The Federal Evidence Rules applied to both civil and criminal cases. Moreover, under the Federal

Evidence Rule 615, there no longer was discretion to exclude a party witness. It was now mandatory for a judge to refuse to exclude a crime victim from the trial of the accused.

Effective August 1, 1979, Alaska adopted, with few modifications, the Federal Rules of Evidence. Alaska Evidence Rule 615, as adopted, was virtually identical to the Federal Evidence Rule 615. The provisions regarding nonexclusion of party witnesses was identical in both the Federal and Alaska versions of Rule 615.

The Alaska Evidence Rules Commentary to Rule 615 reiterate the consistency of interpretations between Federal and Alaska Evidence Rules 615. In Alaska, natural persons who are parties clearly have the right to be present at criminal trials.

Even though Alaska Evidence Rule 615 on its face expressly makes mandatory the nonexclusion of a party witness, at lease two Alaska Superior Court judges have insisted on exercising discretionary powers to exclude crime vicitms. This is so despite the absence of discretion under the applicable portion of Rule 615. Apparently state and municipal authorities have neither the inclination nor the means to take the issue to the Alaska Supreme Court.

A similar problem may have arisen in New Hampshire, since that state's Evidence Rule 615 now specifically includes "a victim of the crime" provision to the category of party witnesses who are exempt from exclusion. See New Hampshire Evidence Rule 615, attached hereto as exhibit A. This could serve as a model for the very minor changes which will need to be made to Alaska Rule 615. See also State v. Hamil, 547 A.2d 223, 224 (N.H. 1988) in which the Supreme Court of New Hampshire affirmed that the trial court was correct in refusing to exclude the crime victim from the court room on the basis of its Evidence Rule 615, which explicitly exempted "a victim of crime" from being excluded during the trial.

Collateral references. — Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information. 1 ALR4th 959.

Name appropriation by employer or former employer. 52 ALR4th 156.

False light invasion of privacy — cognizability and elements. 57 ALR4th 22.

Invasion of privacy by a clergyman, church, or religious group. 67 ALR4th 1086.

Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guarantee. 74 ALR4th 1099.

Section 23. Resident Preference. This constitution does not prohibit the State from granting preferences, on the basis of Alaska residence, to residents of the State over nonresidents to the extent permitted by the Constitution of the United States.

Effective dates. — This section took effect January 4, 1989 (15th Legislature's CSHJR 18 (1988).)

Section 24. Rights of Crime Victims. Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

Effective dates. — This section took effect December 30, 1994 (18th Legislature's Legislative Resolve No. 58).

Article II

The Legislature

Section 1. Legislative Power; Membership. The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.

Opinions of attorney general. — Distinction between legislative and executive powers. See July 22, 1976, Op. Att'y Gen.

Vesting authority in the legislative Budget and Audit Committee to approve transfers between appropriation items violates the separation of powers doctrine and is an improper delegation of a legislative function to an interim committee. July 22, 1976 Op. Att'y Gen.

Section 13(3) of the 1976 budget bill, which authorized the Budget and Audit Committee to supervise the governor's execution of the budget act, specifically over that portion of it which permited him to transfer appropriation items constituted an encroachment on executive power and offended the Alaska Constitution. July 22, 1976 Op. Att'y Gen.

The apparent invalidity of Alaska's apportionment plan does not transform its legislature into an illegal assembly, prohibited from meeting and enacting laws. 1964 Op. Att'y Gen. No. 4.

NOTES TO DECISIONS

Separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Limitation on legislative checks on governor's power. — The lack of ambiguity in Alaska Const., art. III, §§ 25 and 26 mandate that the supreme court interpret these express provisions as embodying not only the maximum parameters of the delegation of the

influence Duncan v. State, 782 P.2d 301 (Alaska Ct. App. 1989).

Panel not bound by trial court's evaluation. — The three-judge panel is not bound by the trial court's evaluation of the facts or determination of the law. Winther v. State, 749 P.2d 1356 (Alaska Ct. App. 1988).

Trial court should not propose a nonstatutory mitigating factor to the three-judge panel where the legislature specifically rejected that factor for inclusion in AS 12.55.155(d). Where the legislature has expressly addressed a consideration, such as the relationship between a defendant's past conduct and his present offense, and imposed limitations on the trial court's power to consider that relationship in mitigation of sentence, the trial court should not propose the same mitigating factor to the three-judge panel without complying with the limitations; to do so is to suggest a common-law development inconsistent with legislation. Totemoff v. State, 739 P.2d 769 (Alaska Ct. App. 1987).

Applied in McManners v. State, 650 P.2d 414 (Alaska Ct. App. 1982); Shaw v. State, 673 P.2d 781 (Alaska Ct. App. 1983); Degler v. State, 741 P.2d 659 (Alaska Ct. App. 1987); Totemoff v. State, 739 P.2d 769 (Alaska Ct. App. 1987); Lowe v. State, 866 P.2d 1320 (Alaska Ct. App. 1994).

Quoted in Kirby v. State, 748 P.2d 757 (Alaska Ct. App. 1987); Wiley v. State, 822 P.2d 940 (Alaska Ct. App. 1991).

Stated in Erhart v. State, 656 P.2d 1199 (Alaska Ct. App. 1982); State v. Rastopsoff, 659 P.2d 630 (Alaska Ct. App. 1983); Maldonado v. State, 676 P.2d 1093 (Alaska Ct. App. 1984); Tulowetzke v. State, Dep't of Pub. Safety, 743 P.2d 368 (Alaska 1987).

Cited in Juneby v. State, 641 P.2d 823 (Alaska Ct. App. 1982); Griffith v. State, 653 P.2d 1057 (Alaska Ct. App. 1982); Neakok v. State, 653 P.2d 658 (Alaska Ct. App. 1982); Wright v. State, 656 P.2d 1226 (Alaska Ct. App. 1983); Langton v. State, 662 P.2d 954 (Alaska Ct. App. 1983); State v. LaPorte, 672 P.2d 466 (Alaska Ct. App. 1983); Walsh v. State, 677 P.2d 912 (Alaska Ct. App. 1984); State v. Brinkley, 681 P.2d 351 (Alaska Ct. App. 1984); Flink v. State, 683 P.2d 725 (Alaska Ct. App. 1984); Dancer v. State, 715 P.2d 1174 (Alaska Ct. App. 1986); Kuvaas v. State, 717 P.2d 855 (Alaska Ct. App. 1986); James v. State, 739 P.2d 1314 (Alaska Ct. App. 1987); Schnecker v. State, 739 P.2d 1310 (Alaska Ct. App. 1987); Comegys v. State, 747 P.2d 554 (Alaska Ct. App. 1987); James v. State, 764 P.2d 1336 (Alaska Ct. App. 1988); Russell v. State, 752 P.2d 1022 (Alaska Ct. App. 1988); Beauvois v. State, 837 P.2d 1118 (Alaska Ct. App. 1992).

Sec. 12.55.180. Designation of representative. If more than one person who qualifies as a victim under AS 12.55.185 desires notice under AS 12.55.088, the prosecuting attorney shall designate one person to represent all victims for purposes of receiving the notice required and exercising the rights granted under this chapter. (§ 6 ch 59 SLA 1989)

Revisor's notes. — Formerly AS 12.55.172. Renumbered in 1990.

Sec. 12.55.185. Definitions. In this chapter, unless the context requires otherwise,

(1) "crime against a person" has the meaning given in AS 33.30.901;

(2) "criminal street gang" has the meaning given in AS 11.81.900(b);

(3) "dangerous instrument" has the meaning given in AS 11.81.900;

(4) "domestic violence" has the meaning given in AS 18.66.990;

(5) "firearm" has the meaning given in AS 11.81.900;

(6) "first felony conviction" means that the defendant has not been previously convicted of a felony;

(7) "judicial officer" has the meaning given in AS 11.56.900;

(8) "most serious felony" means

(A) arson in the first degree, promoting prostitution in the first degree under AS 11.66.110(a)(2), or any unclassified or class A felony prescribed under AS 11.41; or

(B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41;

(9) "paramedic" means a mobile intensive care paramedic licensed under AS 08.64;

(10) "peace officer" has the meaning given in AS 11.81.900;

(11) "pecuniary gain" means the amount of money or value of property at the time of commission of the offense derived by the defendant from the commission of the offense, less the amount of money or value of property returned to the victim of the offense or seized by or surrendered to lawful authority before sentence is imposed;

(12) "second felony conviction" means that the defendant previously has been convicted of a felony and has been convicted of one other felony;

(13) "third felony conviction" means that the defendant has been at least twice previously convicted of a felony;

(14) "unconditional discharge" means that a defendant is released from all disability arising under a sentence, including probation and parole;

(15) "victim" means

(A) a person against whom an offense has been perpetrated;

(B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:

(i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or

(ii) a parent, adult child, guardian, or custodian of the person;

(C) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is dead:

(i) a person living in a spousal relationship with the deceased before the deceased died;

(ii) an adult child, parent, brother, sister, grandparent, or grandchild of the deceased; or

(iii) any other interested person, as may be designated by a person having authority in law to do so. (§ 12 ch 166 SLA 1978; am E.O. No. 55, § 9 (1984); am § 3 ch 154 SLA 1984; § 7 ch 59 SLA 1989; am § 6 ch 64 SLA 1991; am § 8 ch 36 SLA 1993; am § 5 ch 6 SLA 1996; am § 13 ch 7 SLA 1996; am § 10 ch 60 SLA 1996; am § 15 ch 64 SLA 1996)

Revisor's notes. — Paragraph (3) was enacted as paragraph (12). Renumbered in 1991, at which time former paragraphs (3)-(11) were renumbered as (4)-(12).

Paragraph (7) enacted as (13). Renumbered in 1993, at which time former paragraphs (7)-(12) were renumbered as (8)-(13), respectively.

Paragraphs (2), (8), and (10) were enacted as (14). Renumbered in 1996, at which time former paragraphs (2)-(6) were renumbered as (3)-(7), former paragraph (7) was renumbered as (9), and former paragraphs (8)-(13) were renumbered as (11)-(16).

Cross references. — For findings related to the definition of "most serious felony," see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts.

Effect of amendments. — The 1991 amendment, effective September 16, 1991, added paragraph (3) (now (4)).

The 1993 amendment, effective August 25, 1993, added paragraph (9).

The first 1996 amendment, effective June 27, 1996, added paragraph (10).

The second 1996 amendment, effective June 27, 1996, added paragraph (8).

The third 1996 amendment, effective September 1, 1996, added paragraph (2).

The fourth 1996 amendment, effective July 1, 1996, rewrote paragraph (4).

Legislative history reports. — For House letter of intent relating to the definition of "victim" in this section, as amended by § 7, ch. 59, SLA 1989 (CSHB 36(Fin) am), and related letter from the Department of Law, see 1989 House Journal 710 — 712.

NOTES TO DECISIONS

Prior convictions for presumptive sentencing. — Under the plain terms of former AS 12.55.145(a)(3) and 12.55.185(6), (7), and (8) (now see (6), (13), and (14)), one conviction must precede the next before presumptive sentencing can apply. State v. Rastopsoff, 659 P.2d 630 (Alaska Ct. App. 1983).

Where defendant's three separate criminal episodes occurred in close proximity and his convictions were entered after all of the offenses had been committed, he cannot be deemed to be a second felony offender under AS 12.55.125 and AS 12.55.185. State v. Rastopsoff, 659 P.2d 630 (Alaska Ct. App. 1983).

A person has not been convicted of a felony offense for presumptive sentencing purposes until after he has been sentenced on the first felony offense. Sawyer v. State, 663 P.2d 230 (Alaska Ct. App. 1983).

"Unconditional discharge" construed. — The definition of "unconditional discharge" in AS 15.60.010(33) is functionally identical to the definition of the same term set out in subsection (12). Singleton v. State, Ct. App. Op. No. 1475 (File No. A-5578), P.2d (1996).

The definition of "unconditional discharge" set forth in this section must be interpreted to require the completion of any sentence of imprisonment, discharge from parole or probation, and release from any other restriction directly imposed as part of the judgment of conviction; restoration of collaterally affected rights or privileges, such as to vote and to carry a gun, is not required. Singleton v. State, Ct. App. Op. No. 1475 (File No. A-5578), P.2d (1996).

"Victim." — The legislature did not intend the definition of "victim" to be limited to "offenses against the person," because the term appears in statutes defining property crimes that are outside that class. Municipality of Anchorage v. Sanders, 902 P.2d 310 (Alaska Ct. App. 1995).

Applied in Fry v. State, 655 P.2d 789 (Alaska Ct. App. 1983); Wesolic v. State, 837 P.2d 130 (Alaska Ct. App. 1992).

Quoted in Wright v. State, 656 P.2d 1226 (Alaska Ct. App. 1983); Capwell v. State, 823 P.2d 1260 (Alas-

New Hampshire Rules of EVIDENCE, RULE 615

WEST'S NEW HAMPSHIRE RULES OF COURT
NEW HAMPSHIRE RULES OF EVIDENCE
ARTICLE VI. WITNESSES

Current with amendments received through 12-15-95

RULE 615. EXCLUSION OF WITNESSES

At the request of a party the court shall in criminal cases and may in civil cases order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person or a victim of the crime, or (2) an officer or employee of a party in a civil case which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

Federal Rule: Exclusion of Witnesses.

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

Current New Hampshire Law: New Hampshire law is silent on the subject matter of this Rule.

Reporter's Notes

Sequestration of witnesses in criminal trials has long been New Hampshire practice. State v. Peters, 90 N.H. 438, 10 A.2d 242 (1939). There does not appear to be any express rule with respect to exclusion of witnesses in civil proceedings. Nor does there appear to be any express clarification of which persons are allowed to remain in attendance, such as exists in the Federal Rule. This Rule appears to be consistent with the considerable discretion allowed trial judges.

Under this Rule requests for sequestration of witnesses in criminal cases must be honored, while such requests in civil proceedings should be within

the discretion of the trial judge.

The Rule is not intended to exclude the police prosecutor in a criminal case.

Exhibit A

duction cost evidence or, concomitantly, in instructing the jury that it might consider such evidence.

[5] The housing authority also contends that the trial judge improperly suggested to the jury that the property's physical condition made it unique. We find no merit in MHA's contention, first, because it presupposes a uniqueness requirement that we decline to adopt, for the reasons provided above. In addition, however, our consideration of the instruction reveals the trial judge's purpose, in referring to fire damage and deterioration, to explain the unavailability of comparable sales rather than to describe any uniqueness of the property.

Because we now affirm the result reached below, we need not address the issues raised in the cross-appeal.

AFFIRMED.

THAYER, J., did not sit; the others concurred.

The STATE of New Hampshire

v.

Gilbert HAMEL.

No. 87-246.

Supreme Court of New Hampshire.

July 8, 1988.

Defendant was convicted in the Superior Court, Hillsborough County, O'Neil, J., as accomplice to robbery. Defendant appealed. The Supreme Court, Batchelder, J., held that: (1) trial court was not authorized to sequester victim as witness, and (2) trial court did not abuse discretion by failing to order State to present allegedly inebriated victim as first witness so that he would not color his testimony by listening to other witnesses.

Affirmed.

1. Criminal Law ⇐665(1)

Trial court must order sequestration of witnesses in criminal cases upon request. Rules of Evid., Rule 615.

2. Criminal Law ⇐665(2)

Trial court was not authorized to sequester victim as witness. Rules of Evid., Rule 615.

3. Criminal Law ⇐680(1)

Trial court's decision to direct order of witnesses lies within its sound discretion.

4. Criminal Law ⇐680(1)

Trial court did not abuse discretion by failing to order State to present victim, who was allegedly inebriated during crime, as first witness so that he would not color his testimony by listening to other witnesses; defendant made only conclusory allegations that police officer's testimony gave victim unfair opportunity to color his testimony.

5. Criminal Law ⇐1168(2)

Trial court's failure to require State to present victim, who was allegedly inebriated during crime, as first witness so that he would not color his testimony by hearing other witnesses did not require reversal in prosecution for being accomplice to robbery; record did not indicate that victim colored testimony to conform to that of police officer; and defendant unsuccessfully tried to impeach victim's ability to perceive and relate facts and presented defense witness who gave different account of victim's activities on night of incident. RSA 626:8, 636:1.

Stephen E. Merrill, Atty. Gen. (T. David Plourde, Asst. Atty. Gen., on the brief), for the State.

Joanne Green, Asst. Appellate Defender, Concord, for defendant.

BATCHELDER, Justice.

The defendant was convicted after a jury trial in Superior Court (*O'Neil*, J.) of accomplice to robbery. RSA 626:8; RSA 636:1. He was sentenced to twelve months at the county house of correction, with a twelve-month probation period following incarceration, and ordered to make restitution in the amount of $100. We affirm.

The testimony in this case reveals that in the early morning of October 9, 1986, the victim, Roland Roy, reported that he had been robbed by a group of five young men outside the Mayflower restaurant in Manchester. Roy testified at trial that, upon leaving the restaurant after an afternoon and evening of heavy drinking, he encountered the group of men and agreed to accompany them to a nearby party. He recognized one of the men as the brother of a former girlfriend. He later identified the man by name as the defendant, but not until after he had overheard Officer Kinney of the Manchester Police Department mention the name to another officer. According to Roy, as the group was en route to the party, he was struck in the face by one of the men and fell to the ground. He testified that the defendant kneeled on his chest and pinned him down while one of the other men took his wallet, which contained approximately $80. Roy further testified that after he was released he called to the fleeing men, "Hamel, give me back my wallet."

Officer Kinney testified before Roy at trial. He described Roy's disheveled physical appearance, including his apparent drunkenness, and testified that he took a description of the defendant from Roy. He added that Roy identified the defendant by name after Kinney mentioned it. He further testified that he saw a group of several young men in the area at the approximate time of the reported robbery.

Prior to trial, the defendant moved to sequester all of the witnesses, which included the two State's witnesses, Roy and Officer Kinney, to prevent them from hearing each other's testimony. The defendant argued that Roy's drunkenness at the time of the incident rendered his potential testimony suspect, and that he should not be permitted the opportunity to conform his testimony to that of Officer Kinney. The defendant suggested, alternatively, that the trial court could order the State to present Roy's testimony first. The trial court granted the sequestration motion except with respect to Roy.

The defendant pursues the same issue on appeal. He claims that under the circumstances of this case it was an abuse of discretion for the trial court not to have sequestered the victim-witness or, in the alternative, to have directed the State to call the victim as its first witness. The State argues, on the other hand, that Rule 615 of the New Hampshire Rules of Evidence precludes the trial court from sequestering the victim of the crime and that, in any event, the defendant has failed to show any prejudice as a result of the trial court's complete denial of relief.

[1, 2] Rule 615 of the New Hampshire Rules of Evidence provides, in pertinent part:

> "At the request of a party the court shall in criminal cases ... order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) ... a victim of the crime ..."

N.H.R.Ev. 615. The rule alters our common law to the extent that sequestration of witnesses in criminal cases has traditionally been within the discretion of the trial court. *See State v. Blake*, 113 N.H. 115, 119, 305 A.2d 300, 303 (1973); *State v. Peters*, 90 N.H. 438, 439, 10 A.2d 242, 244 (1939). Under the rule, the trial court must order sequestration in criminal cases upon request. The rule also plainly states that it does not authorize the trial court to exclude the victim of the crime. The trial court here cannot then be said to have committed error with respect to its refusal to sequester Roy.

[3, 4] The defendant's alternative request for the court to direct the order of the State's witnesses requires a different analysis. Authorities have suggested that in certain cases it may be appropriate for a

trial court to direct the order of witnesses so as to achieve the same purpose as that underlying sequestration; *i.e.*, to prevent witnesses from conforming their testimony to that of others. *See* 6 Wigmore, *Evidence* § 1841, at 476 (Chadbourn rev. 1976) (where party witness not excluded); *see also* 88 C.J.S. *Trial* § 68 (1955). That decision, however, lies within the sound discretion of the trial court, and it will not be upset on review absent a showing of abuse of discretion. *Cf. McKinney v. Riley*, 105 N.H. 249, 250, 197 A.2d 218, 220 (1964) (order of calling witnesses, at least in civil case, rests in sound discretion of trial court); 6 Wigmore *supra*. Moreover, as the State argues, establishing abuse of discretion necessarily entails a showing of prejudice to the defendant by the trial court's decision. *See* C. Torcia, *Wharton's Criminal Evidence* § 376, at 502–03 (14th ed. 1986) (denial of motion to sequester not reversible error absent a showing of prejudice); *cf. State v. Hotchkiss*, 129 N.H. 260, 264, 525 A.2d 270, 272 (1987) (admission of evidence must be to prejudice of defendant to constitute abuse of discretion). We are also mindful that the presentation of evidence, which includes the order in which witnesses are called, is a matter of trial strategy for counsel. J. Weinstein & M. Berger, *Weinstein's Evidence* ¶ 611[01], at 611–16 (1987).

[5] Here, the defendant has made only conclusory allegations to the effect that permitting Roy to hear the testimony of Officer Kinney gave Roy an unfair opportunity to color his testimony. Upon review of the record, we do not see that Roy gave testimony that so mirrored that of Officer Kinney as to lead to the conclusion that Roy colored his own testimony to conform to that of Officer Kinney. Nor did the defendant describe any instances in his brief where this occurred. Moreover, defense counsel tried several avenues of impeachment, including focusing on Roy's ability to perceive and relate the facts, as limited by his inebriation, and presenting a defense witness who gave a different account of Roy's activities on the evening of the incident. That the jury was not swayed by these efforts is not enough to prompt us to overturn the conviction and order a new trial. Finally, while the record reveals that Roy was deposed prior to trial, absent from the record is any attempt on the part of defense counsel to impeach Roy through the use of his deposition.

AFFIRMED.

All concurred.

BEDFORD RESIDENTS GROUP

v.

TOWN OF BEDFORD, PLANNING BOARD, Grove Realty Trust & Roland & Diane Auger.

No. 87–396.

Supreme Court of New Hampshire.

July 11, 1988.

Property owners challenged the validity of a town's zoning amendment. The Superior Court, Hillsborough County, O'Neil, J., found that the property owners had been denied notice. Appeal was taken. The Supreme Court, Johnson, J., held that: (1) the notice provided by the town planning board of the proposed zoning amendment did not comply with the statutory requisites for constructive notice; (2) the defective notice was not cured by subsequent publication of a warrant for the town meeting; and (3) the property owners were not required to exhaust their administrative remedies before challenging the adequacy of notice.

Affirmed.

1. Zoning and Planning ⇐194

While property owners need not be afforded actual notice of proposed zoning change, they must be afforded constructive

MADD

Mothers Against Drunk Driving

Telephone: (907) 522-6233
FAX: (907) 522-6234

Anchorage Chapter
615 East 82nd Avenue, Ste. B 1
Anchorage, AK 99518-3157

DATE: January 16, 1997

TO: Representative Brian Porter

FROM: Marti Greeson, Executive Director
Mothers Against Drunk Driving Marti Greeson

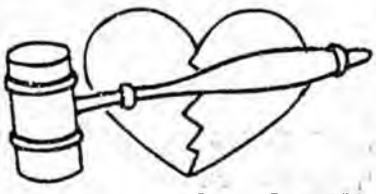
RE: House Bill No. 9

This letter is in support of House Bill No. 9 which will ensure the protection of a victim's right to be present during criminal proceedings including juvenile proceedings.

The rights of victims as stated in the Victims Rights amendment must be protected at least to the extent that defendant's rights are protected. Victims have been excluded from the criminal justice process and left to suffer unanswered questions, trauma and loss, and frequently second and ensuing victimization through that exclusion far too long.

The fact that a perpetrator of a criminal act is a juvenile does not negate nor diminish the impact and affect of the violation or trauma for the victim.

Please feel free to contact me if you have any questions.

VICTIMS

for Justice 619 East Fifth Avenue • Anchorage, AK 99501
(907) 278-0977 • Fax: (907) 258-0740

January 15, 1997

The Honorable Brian Porter
Alaska House of Representatives
Juneau, AK 99811

Dear Representative Porter:

My name is Janice Lienhart. I am the co-founder of Victims for Justice in Anchorage. Victims for Justice and it's Board of Directors have long been champions in Alaska for the rights of crime victims.

I am joining with scores of other crime victims and concerned citizens across Alaska to support HB 9, "the right of crime victims and victims of juvenile offenses to be present at court proceedings; and amending Rule 615, Alaska Rules of Evidence, by making the witness exclusion rule inapplicable to victims of offenses."

To fully understand the need for this amendment, each of us must answer this question: How would I wish to be treated if I or a loved one were a victim of a violent crime? No one expects or deserves to be a victim of a violent crime. And when that happens victims not only suffer crime's consequences, but are victimized by the criminal justice system as well. Despite the passage of the Alaska's Victims' Bill of Rights Amendment to our state constitution in 1994, Alaskan victims of crime are still being re-victimized. ***Because the system is perfectly tolerant of the unequal treatment for victims who are daily excluded from courtrooms because they may be called as witnesses.*** Defendants may be witnesses in their own trials but they of course have a right nonetheless to remain in the courtroom. If juries can put aside influences by the defendants they certainly can by victims.

The right to be informed of and given the opportunity to be present at every proceeding in which those rights are extended to the accused or convicted offender should be intended to expressly overturn all witness exclusion rules that presently result in the expulsion of the victims from the courtroom. It should mandate that the same standard be used for the victim and the defendant; hence it should be intended that the same rules govern the presence of the victim that govern the presence of the defendant.

Only when the rights of victims, ***such as the right to be present at trial proceedings***, are given equal weight to the rights of the accused, will they be guaranteed protection under the law.

Passage of HB 9 sends a clear message that *victim justice* must be an integral component of criminal justice in Alaska, as well as setting an unprecedented standard for our nation.

Sincerely,

Janice J. Lienhart

Janice Lienhart
Executive Director
Victims for Justice

FISCAL NOTE

STATE OF ALASKA **BILL NO: HB 9**

1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety

Title: "An Act relating to the rights of crime victims .....to be present at court proceedings" BRU: Statewide Support

Component: Commissioner's Office

Sponsor: Representative Porter

Requestor: House Judiciary Committee **COMPONENT SERIAL NO.** 0523

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

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-

Estimate of current year (FY 97) impact: $ _____-0-_____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This bill does not impact the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner Phone: 465-4322

Division: Commissioner's Office Date: 1/14/97

Approved by Commissioner: Date: 1/14/97

Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 9

Revision Date:
Title: . . . the right of crime victims and victims of juvenile offenses to be present at court . . .; amending Rule 615 . . .
Sponsor: Representative Porter
Requester: House Judiciary Committee

Dept. Affected: Department of Law
BRU: Criminal Division/Civil Division
Component: Criminal Division/General Legal Services
COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 ( )						

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	0.0	0.0	0.0

Estimate of any current year (FY97) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 09.20.180, AS 12.50.200, AS 47.12.110(b) and Rule 615, Alaska Rules of Evidence to ensure crime victims are granted their right, protected under art. I, sec. 24, of the state constitution, to be present at all criminal or juvenile proceedings where the accused has the right to be present, regardless of the sequestration rule applicable to most witnesses.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson — Phone: 465-5370
Division: Administrative Services Division — Date: 1/17/97

Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 1/17/97
Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 9

Revision Date:
Title: Victim's right to be present at trial
Sponsor: Rep. Porter
Requestor: House Judiciary

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component:
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 ( )						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Agency: Alaska Court System Date: 01/23/97

Approved by: Arthur H. Snowden, II, Administrative Director Date: 01/23/97
Agency: Alaska Court System

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 9

Revision Date:
Title: Rights of Victim's to be present at court proceedings
Sponsor: Representative Porter
Requestor: House (JUD)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: DFYS Central Office
COMPONENT SERIAL NO. 259
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
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						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the Division if this bill were to become law.

1/23/97
Prepared by: L. Diane Worley, Director
Division: Family & Youth Services
Phone: 465-3191
Date: 01/23/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 1/23/97

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To: Lisa
Fm: Teri
1/22/97

RE: WITNESS LIST FOR FEB 9 HRNG 1/24/97

A. From Anchorage via telephone:

1. RALPH SAMUELS
2. DAWN SCHERBERT
3. GAYNELLE DIXON
4. CAROLE ROTEN
5. KAREN CAMPBELL
6. Rebecca Holloway
7. JANICE LIENHART / (Victims for Justice)

8. Possibly: MARTY GREESON (MADD)

B. ~~Dept~~ of Public Safety (in person)

1. JAYNE ANDREEN — Exec. Director of Council for Domestic Violence & Sexual Assault.

2. Del Smith — Deputy Commissioner, DPS.

3. Possibly: Chris Christensen, AK Ct. System, who will take NO position on it, but will be at the hearing.

HB

10

(7)

Date Referred to Committee: March 14, 1997 **FURTHER REFERRALS:** **Finance**

Date of Committee Action: 3/21/97

The JUDICIARY Committee considered: **HB 10**

HOUSE BILL NO. 10 **MANDATORY MEDIATION/DESIGN PROF LAWSUITS**

"An Act requiring mediation in a civil action against an architect, engineer, or land surveyor; amending Rule 100, Alaska Rules of Civil Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) _____

[/] zero fiscal note(s) COURTS

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
ROKEBERG	✓			
CROFT	✓			
BERKOWITZ	✓			
BUNDE	✓			
JAMES	✓			
GREEN	✓			

CHAIR'S SIGNATURE _____

GREEN

BBFM Engineers Inc.

510 L Street, Suite 200
P.O. Box 91139
Anchorage, AK 99509-1139
(907) 274-2236
(907) 274-2520 Fax

March 12, 1997

apdcllc\HB10_397

Representative Joe Green
Room 118, State Capitol
Juneau, AK 99801-1182

Re: HB10

Dear Rep. Green:

I am writing to you as a professional engineer and as a representative of the Alaska Professional Design Council, commonly known as APDC. APDC is a consortium of professional societies representing architects, engineers, land surveyors, building code officials, and landscape architects. The ten member-organizations have a combined membership of over 1400 and represent approximately 5000 licensed professionals. APDC is very supportive of HB10.

Our legal system needs modification! Over 90% of civil suits never go to trial. Most cases are settled, with little to no consideration to actual fault, to avoid the expenses of discovery, trials, the threat of punitive damages (which aren't covered by insurance) and the seemingly capricious decisions of juries. When suits are filed against all possible defendants, regardless of fault, to ensure there are plenty of pockets to chip into the settlement, some defendants end up spending a considerable amount of time and money to extricate themselves from cases in which they shouldn't be involved. In most cases, they get to contribute to the settlement, even though they have no fault, due to pressure from the other parties to the suit. Knowing this, some people use the court system as a means of legal extortion by filing frivolous suits with the hope of a settlement. Millions of dollars are spent in the so called "discovery process" which almost always results in the defendants throwing in their insurance to stop the bleeding and make the case go away.

Existing sanctions against frivolous suits are rarely used because they require that the plaintiff first lose at trial, a trial that rarely happens. Summary judgment is also very rare because appellate courts have almost always overturned such decisions, making trial judges wary of issuing such orders. Many settlements are due to fear of the perceived large down side of going to trial, including the expense involved and the tendency of some juries to ignore common sense and aid the "little guy" plaintiff by dipping into the "deep pocket". All too often we read about large awards being reduced by the trial judge or on appeal or on the second appeal, all of which takes time and money. Some argue that these are rare, but they are not rare enough to take the gamble of a trial.

It is time to develop a system which identifies patently frivolous and meritorious suits early, so we can to get them out of the system. HB10 will help the situation for design professionals. Mandatory mediation would occur immediately after the immediate mandatory discovery process, a relatively new exchange of documents which occurs very shortly after a case is filed. A mandatory mediation system would reduce the number and costs of frivolous suits by letting the plaintiff and their attorney know early on if a case has no merit. They will be less willing to press the case as the likelihood of recovery will be decreased and the likelihood of court sanction for bringing a frivolous suit will be increased. On the other hand, it will encourage

defendants to settle valid claims early by giving them an independent opinion of the validity of the claim against them. It will reduce the costs of litigation by resolving cases before the lengthy, expensive, regular discovery process which includes depositions and responding to interrogatories. This may have the added benefit of more money going to the injured, rather than lawyers and expert witnesses. It should slow down the shotgun approach to suits by removing defendants who are obviously not liable.

It is our understanding that approximately 80% of cases sent to mediation in Washington are resolved during or soon after the mediation process. Fewer, smaller, and shorter cases should provide relief to an overtaxed court system. A bill which would have established mandatory mediation in suits against design professionals passed the House last year, 37-3. The trial attorneys, who have generally not been proponents of legal reform, testified on that bill that they support mandatory mediation, although they would prefer it to apply to all suits.

APDC thanks you for introducing HB10 and urges its passage. If you have any questions, I can be reached by phone at (907) 274-2236, by fax at (907) 274-2520, or by e-mail at bbfm@alaska.net.

Respectfully yours,

Colin Maynard, PE

Alaska State Legislature

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Representative Joe Green
District 10

CHAIRMAN, JUDICIARY COMMITTEE
VICE CHAIRMAN, HEALTH, EDUCATION, & SOCIAL SERVICES COMMITTEE
MEMBER, RESOURCES COMMITTEE

FINANCE SUBCOMMITTEES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
ALASKA COURT SYSTEM

Sponsor Statement

CSHB 10 (L&C)

Mandatory Mediation for Claims Against Design Professionals

HB 10 attempts to keep frivolous lawsuits out of the courtroom by amending the Code of Civil Procedure to require mediation of a civil action alleging professional negligence against an architect, engineer, or land surveyor.

A voluntary mediation process is set out under Court Rule 100, HB 10 simply makes this process mandatory for actions against design professionals. After a suit is filed both parties will go through a limited discovery process, then a mediator will work with each side to help reach a settlement.

Members of both the professional design community and the trial attorneys have offered public testimony in favor of this approach. They have testified, and I agree, that mandatory mediation will help resolve claims of negligence against design professionals *before* they reach the courtroom.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 10

Revision Date:
Dept. Affected: Alaska Court System
Title: Civil action against an architect, engineer or land surveyor
BRU: Trial Courts
Component:
Sponsor: Rep. Green
Requestor:
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 ( )						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Agency: Alaska Court System
Date: 03/10/97

Approved by: Stephanie J. Cole, Acting Administrative Director
Date: 03/10/97
Agency: Alaska Court System

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Alaska Court System
Fiscal Analysis
HB 10

HB 10 amends the Code of Civil Procedure to require mediation of a civil action alleging professional negligence against an architect, engineer or land surveyor. Mediation must be conducted as provided under the Rules of Civil Procedure.

The court system does not keep statistics on the number of professional negligence claims filed against design professionals each year; based on testimony, it is assumed that only a few dozen such cases are filed each year in superior or district court.

Court rules will specify that the costs of the mediation shall be paid by the parties. However, as long as mediation is mandatory, the state will be required to pay the costs of the mediator for any party who is legally indigent. Because of the small number of claims each year and the relatively low costs of mediation, this note assumes that there will be no costs to the state for indigent mediation. This could change dramatically from year to year, however. Several years ago, a school roof collapsed because of snow load. Because the building was empty, no one was injured and only one plaintiff (the school district) had standing to file a claim. If school had been in session, however, scores of children or their estates might have had grounds for filing a civil action. In such an event, there could be a large number of legally indigent plaintiffs ordered to mediation, and the engineers who designed the roof might not be financially able to pay their share of the costs of hundreds of mediation sessions. While the catastrophic failure of buildings or other structures is fortunately rare, the potential exists that the court system would need to return to the legislature for funding of indigent mediation at some time in the future.

(1) Hearings involving telephonic participation must be scheduled in the same manner as other hearings.

(2) When telephonic participation is requested, the court, before the hearing, shall designate the party responsible for arranging the call and the party or parties responsible for payment of the call pursuant to Administrative Rule 48.

(3) Upon convening a telephonic proceeding, the judge shall:

(i) Recite the date, time, case name, case number, names and locations of parties and counsel, and the type of hearing;

(ii) Ascertain that all statements of all parties are audible to all participants;

(iii) Give instructions on how the hearing is to be conducted, including notice that in order to preserve the record speakers must identify themselves each time they speak.

(4) A verbatim record must be made in accord with Administrative Rule 35.

(c) The right of public access to court proceedings must be preserved in accordance with law.

(Added by SCO 623 effective June 15, 1985; amended by SCO 790 effective March 15, 1987; and by SCO 922 effective January 15, 1989)

Annotations

Cases

Where father participated telephonically in parental rights termination action, his due process right to confront and cross-examine witnesses was not violated, since his attorney was present in the courtroom and did effectively cross-examine witnesses and since the transcript of the hearing indicated that the father could hear well enough to follow the proceedings. E.J.S. v. Dept. of Health & Social Serv., Op. No. 3318, 754 P2d 749 (Alaska 1988).

Trial judge did not err in accepting telephonic testimony over the objection of a party. Gregg v. Gregg, Op. No. 3454, 776 P2d 1041 (Alaska 1989).

Trial judge could administer oath to witness appearing by telephone. Gregg v. Gregg, Op. No. 3454, 776 P2d 1041 (Alaska 1989).

Oath administered to witness appearing by telephone was valid even though the witness was not physically present in the state. Gregg v. Gregg, Op. No. 3454, 776 P2d 1041 (Alaska 1989).

At telephonic hearing on father's opposition to mother's motion seeking child support arrears, judge's ruling limiting hearing to oral arguments, which preventing father from testifying and his counsel from cross-examining the mother, was error, even though father did not file motion to participate telephonically in the hearing. Carvalho v. Carvalho, Op. No. 3881, 838 P2d 259 (Alaska 1992).

Rule 100. Mediation.

(a) **Application.** At any time after a complaint is filed, a party may file a motion with the court requesting mediation for the purpose of achieving a mutually agreeable settlement. The motion must address how the mediation should be conducted as specified in paragraph (b), including the names of any acceptable mediators. The court may order mediation in response to such a motion, or on its own motion, whenever it determines that mediation may result in an equitable settlement. In making this determination, the court may consider whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim. Mediation may not be ordered in a case filed under AS 25.35.010 or .020 and conduct which constitutes domestic violence under these statutes may not be the subject of mediation under this rule.

(b) **Order.** A order of mediation must state:

(1) the name of the mediator, or how the mediator will be decided upon;

(2) any changes in the procedures specified in paragraphs (c) and (e), or any additional procedures;

(3) that the costs of mediation are to be borne equally by the parties unless the court apportions the costs differently between the parties; and

(4) a date by which the initial mediation conference must commence.

(c) **Challenge of Mediator.** Each party has the right once to challenge peremptorily any mediator appointed by the court if the "Notice of Challenge of Mediator" is timely filed pursuant to Civil Rule 42(c).

(d) **Mediation Briefs.** Any party may provide a confidential brief to the mediator explaining its view of the dispute. If a party elects to provide a brief, the brief may not exceed five pages in length and must be provided to the mediator not less than three days prior to the mediation. A party's mediation brief may not be disclosed to anyone without the party's consent and is not admissible in evidence.

(e) **Conferences.** Mediation will be conducted in informal conferences at a location agreed to by the parties or, if they do not agree, at a location designated by the mediator. All parties shall attend the initial conference at which the mediator shall first meet with all parties. Thereafter the mediator may meet with the parties separately. Counsel for a party may attend all conferences attended by that party.

(f) **Termination.** After the initial joint conference and the first round of separate conferences if separate conferences are required by the mediator, a party may withdraw from mediation, or the mediator may terminate the process if the mediator determines that mediation efforts are likely to be unsuccessful. Upon withdrawal by a party or termination by the

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testify as to any
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imposed by st

(h) If the
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dismissal whic
action as have
agreed upon a

(Added by SC
amended by SC

mediator, the mediator shall notify the court that mediation efforts have been terminated.

(g) Mediation proceedings shall be held in private and are confidential. The mediator shall not testify as to any aspect of the mediation proceedings. This rule does not relieve any person of a duty imposed by statute.

(h) If the mediation is successful, the party requesting mediation shall prepare a stipulation for dismissal which dismisses all or such portions of the action as have been concluded by mediation as agreed upon at the mediation.

(Added by SCO 1116 effective July 15, 1993; amended by SCO 1130 effective July 15, 1993)

V

(7)

Date Referred to Committee: January 13, 1997 FURTHER REFERRALS: Judiciary Finance

Date of Committee Action: 3/12/97

The LABOR AND COMMERCE Committee considered: HB 10

HOUSE BILL NO. 10 MANDATORY MEDIATION/DESIGN PROF LAWSUITS

"An Act requiring mediation in a civil action against an architect, engineer, or land surveyor; amending Rule 100, Alaska Rules of Civil Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 10 (L+C) [ ] the same title [X] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

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

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

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

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Caudery	Caudery	✓			
Sanders	Sanders	✓			
Brice	Brice			✓	
Ryan	Ryan	✓			
Hudson	Hudson	✓			
Rokeberg	Rokeberg	✓			
		5		1	

CHAIR'S SIGNATURE Norman Rokeberg 3/12/97

Rokeberg

HB

12

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 2/4/98 ISSUE: move HB 12 (amended)

	YEA	NAY	PRESENT
Vice Chair Bunde			—
Representative Berkowitz		—	
Representative Croft	—		
Representative James			—
Representative Porter	—		
Representative Rokeberg	—		
Chairman Green	—		
TOTALS:	4	1	

PASSED 4-1 FAILED _____

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 13, 1997 **FURTHER REFERRALS:** **Finance**

Date of Committee Action: 2/2/98

The JUDICIARY Committee considered: **HB 12**

HOUSE BILL NO. 12 **IMMUNITY FOR EQUINE ACTIVITIES**

"An Act relating to civil liability for injuries or death resulting from equine activities."

recommends it be replaced with the following committee substitute CS HB 12 (JUD) [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

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

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

[✓] zero fiscal note(s) LAW [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Brian A Porter	✓			
[illegible]	✓			
[illegible]	✓			
[illegible]		✓		
[illegible]			✓	

CHAIR'S SIGNATURE [illegible]

Alaska State Legislature

Interim:
145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)

Session:
State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

SPONSOR STATEMENT

HB12

"An Act relating to civil liability for injuries or death resulting from equine activities."

HB 12 is intended to provide owners and handlers in the equine profession extra protection from civil liability lawsuits. The reasoning behind this proposition is that horses and related animals can be unpredictable in their behavior. This unpredictability is an inherent characteristic of some domestic animals, especially equines because of their size and specific utilization for human activities.

A horse that is carrying a rider can be easily spooked by a number of events. If the rider is subsequently thrown from the horse, the owner or trainer may not be directly responsible for the accident. This would be true as long as the owner or trainer has cared for and trained the equine in the best possible manner.

Obviously, there are a number of exceptions to this piece of legislation. If the owner or trainer is negligent in properly caring for the horse or uses faulty equipment (such as the saddle), they would not be immune to civil liability.

People who participate in equine activities are aware beforehand of the risks involved. Many of the resulting unfortunate accidents are intrinsic in nature. Therefore, innocent parties should not be held accountable simply for compensation

Alaska State Legislature

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Session:
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(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

SECTIONAL ANALYSIS OF HB 12

"An Act relating to civil liability for injuries or death resulting from equine activities."

Section 1 is an addition to AS 09.65 stating that a sponsor or professional of equine activity is not liable for civil damages that arise from the injury or death resulting from equine activities.

This section also outlines the exceptions to this act. If an equine activity sponsor or professional is guilty of reckless or intentional misconduct, he/she can still be held liable for damages. Other exceptions are the failure to provide adequate warning signs for a dangerous condition, faulty equipment, allowing an unskilled participant to become engaged in a risky activity and the injury or death of a spectator.

In the latter part of section 1, the key terms are defined in order to provide clarity.

Section 2 states that this act would apply to all civil actions that occur on or after the effective date, which is 90 days after the bill becomes law.

Echo Ranch Bible Camp
PO Box 210608
Auke Bay, AK 99821
(907) 789-3777 FAX 789-4403
March 6, 1997

Honorable Gary Davis
House of Representatives
Alaska State Capitol
Juneau, AK 99801

Dear Representative Davis

As the Director of Echo Ranch Bible Camp located 40 miles north of Juneau, I would like to write in support of House Bill 12 or similar legislative proposals that offer immunity for injuries resulting from equine activities.

Echo Ranch Bible Camp hosts nearly 3000 campers each season offering a variety of school retreats, Christian camps,and family and church outings The horsemanship program at Echo Ranch is an integral part of our camping ministry and has been for over 30 years. We currently use 19 horses in the program under the oversight of trained wranglers

We take pride in the fact that the horsemanship program has been operated with an emphasis on safety Our horses are trained to accommodate young riders. Helmets and pointed-toe boots are a requirement for trail rides and two wranglers accompany each ride. Our tack is well maintained and suitable for the rider. Still, the very nature of horseback riding through rough country makes it a somewhat risky sport, even when everything is done correctly Most people recognize this and accept the risks, especially since camping in general is designed to present natural risks and the associated challenges to the participant

When accidents occur resulting from negligence on the part of the sponsoring organization, then the organization should take responsibility But when accidents occur simply because of the inherent risks or because of inappropriate behavior of the rider, then it is not reasonable for the organization to be liable Actually, such immunity should be considered for a number of activities normally conducted at Camp in addition to equine events. In that sense, perhaps House Bill 58, the Tort Reform package, may be a more appropriate legislative remedy than singling out one activity.

At least 15 percent of our liability insurance coverage at Echo Ranch can be attributed solely to the use of saddle animals in our program We suspect Tort Reform would help reduce this and possibly for other activities as well This is an important budgetary item for us since insurance providers for camping operations in Alaska are not numerous. Besides the monetary considerations, Tort Reform may help reduce a growing reluctance

on the part of program managers to involve people in risky activities because of a concern for frivolous lawsuits

Again, we feel responsible to provide a safe environment for the participant at Echo Ranch Bible Camp and we will do what is feasible to ensure a safe operation. But we would truly appreciate any relief from liability for accidents when they are beyond our reasonable ability to prevent them To eliminate all risks from an outdoor camp would be to destroy the very reason that people participate in camping.

Thank you for allowing me to comment.

Sincerely,

Gary V. Lidholm

GARY V. LIDHOLM
Director, Echo Ranch Bible Camp

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 12

Revision Date (Note if correction) _____ Dept Affected Law

Title An Act relating to civil liability for injuries and death resulting from equine activities

BRU Civil Division

Component Special Litigation

Sponsor Representative Davis

Requester House Judiciary Committee

Component Serial No 2213

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill provides immunity from injuries resulting from equine activities subject to certain, specified exceptions. HB 12 will have no impact on the Department of Law.

Prepared by Joan M Kasson Phone 465-5370

Division Attorney General's Office Date 2/10/98

Approved by Commissioner Bruce M Botelho, Attorney General Date 2/10/98

Agency Department of Law

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(Rev 9/97) 98Inform.xls/OMB

REPRESENTATIVE ERIC CROFT

MEMORANDUM

To: Representative Joe Green, Chair
House Judiciary Committee
Representative Gary Davis, Sponsor
House Bill 12, Limited Liability for Equine Activities

From: Representative Eric Croft

Date: February 5, 1998

Re: Judiciary Action on HB 12

In response to Mike Ford's memo of February 5, 1998, commenting on policy choices made by the House Judiciary Committee, I still feel that we, as a committee, have clarified our belief that the inherent risk of an outdoor activity, such as horseback riding, is not a proper basis for liability. This is an important policy statement and has a concrete impact on litigation. The fact that the committee did not want to immunize owners from their proven negligent acts is also an appropriate policy choice.

Please call me directly at x4998 of you have any additional comments or concerns.

January-May: State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4998 • (800) 689-4998 • Fax (907) 465-4419
June-December: 716 W. 4th Avenue • Anchorage, Alaska 99501 • (907) 258-8162
Representative_Eric_Croft@legis.state.ak.us

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 5, 1998

SUBJECT: Civil liability from equine activities - (CSHB 12(JUD))

TO: Representative Joe Green
Attn: Kevin

FROM: Michael F. Ford
Legislative Counsel

As you know, the Judiciary Committee has passed a CS for HB 12 that removed the word "gross" from subsection (b) of Sec. 09.65.145. As originally written the bill provided a narrow level of immunity by immunizing conduct amounting to negligence, but not acts that were grossly negligent, reckless, or intentional. As changed by the CS, the bill also does not apply to civil actions resulting from conduct that is negligent. I wanted to make sure you understand that with this change the bill does not provide any significant protection against civil liability. The primary effect of the CS is to protect against strict liability (liability without fault), assuming strict liability would exist in relation to equine activities.

Please contact me if you have further questions.

MFF:jdr
98-069.jdr

APR 10 1997

Victory Ministries

HC 03, Box 8392, Palmer, Alaska 99645 Phone: (907)745-4203 FAX: (907)745-4206

April 3, 1997

Honorable Gary Davis
House of Representatives
Alaska State Capitol
Juneau, AK 99801

Dear Representative Davis,

I would like to go on record as Director of Victory Ministries, Inc., as highly favorable to the passage of House Bill 12 and any other proposals that are designed to give immunity to organizations resulting from equine activity injuries.

As a camp, we find the Horsemanship program is a great experience for campers and groups coming to our facilities. We have offered this program for over 22 years with good results and minimal accidents.

We try to operate with safety as a big priority. Our teachers of horsemanship skills are required to to be trained and certified with CHA (Association of Horsemanship Safety and Education). We also require two certified wranglers on each trail ride. Helmets must be worn by all campers and staff unless judged by the Program Director in unique situations to be less safe.

In spite of extreme care on our part, we do recognize however, that the very nature of horseback riding, carries some inherent risks. Most people recognize this and want to enjoy the challenge of this sport or allow their children to have this experience. We feel if the organization is negligent, it should assume responsibilities. However, when accidents incur simply because of inherent risks or inappropriate behavior of the rider, it is unfair for the organization to be held liable.

We believe House Bill 58, the Tort Reform package, since it would cover more activities would relieve some of our concerns about providing other fun, outdoor events and would be most helpful to us and other camps. To try to remove every situation that would involve any risks would render a camp program with very few choices of activities.

We will appreciate your efforts to help remove from us the concern of frivolous lawsuits and the extreme costs of high liability insurance.

Sincerely,

Stan Gillespie
Executive Director

For your information, the following is a list of equine owners that have sent in letters of support for HB12 to Representative Davis.

Sandy Shacklett
Southcentral Horsemen, Inc.
P.O. Box 670034
Chugiak, AK 99567-0034

Diana Taplin
CAD-RE Farm and Ranch Supplies
281 Aspen Avenue
Soldotna, AK 99669

Roger and Amy Anderson
4804 Strawberry Road
Kenai, AK 99611

Shirley Schollenberg
HC 67 Box 250
Anchor Point, AK 99558

Marcia L. Boyd
Twin View Horse Park
HC 31 Box 5083-P
Wasilla, AK 99654

Bill L. Turner
Bluff Park Farm
1800 West Fairview Loop
Wasilla, AK 99687-1634

Julic A. Eaton
Eaton Equestrian Centre
5801 Moosemeadow Lane
Anchorage, AK 99516

Linda L. McQueary
Diamond H. Ranch
Anchorage AK

Kent Lee Woodman
Producer, *Company's Coming*
12920 Hillside Drive
Anchorage, AK 99516-3260

Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

committee on HB 303, **dated** 1/29/98.
bill # / subject

The following pages were sent to the Kenai LIO as written testimony

Signed: _____
Testifier

_____
Representing (Optional)

_____
Address

_____
Phone number

THOMAS & PATRICIA VINCENT
P.O. Box 1485 Kenai, Alaska 99611 (907) 283-3378

January 29, 1998

Chairman of the House Judiciary Committee
and Committee Members
State Capital
Juneau, Alaska 99801

RE: CS FOR HOUSE BILL NO. 203

Dear Chairman of the House Judiciary Committee and Committee Members:

We are writing to express our strong support for A BILL FOR AN ACT ENTITLED "An Act relating to actions for unlawful trade practices.", CS FOR HOUSE BILL 203. We favor any legislation that protects the consumers in the State of Alaska, and urge you to do the same! We are sure you are aware that this bill also protects the seller or lessor from "frivolous" law suits. This legislation is fair to everyone in the state.

Unfortunately, we have first-hand knowledge of how the system works for consumers with justified complaints, and we can't began to tell you how unfair the current system of solving disputes is to the consumer. What we can say with all certainty is that there are no monetary winners except for the lawyers involved! The giant corporations and/or insurance companies may "win" the case, but you can bet your life the consumers will have those costs passed back to us in higher cost of products and/or insurance premiums. This is unfair to everyone!

Every single penny we have had to spend on our litigation has had to come right out of our pocket. There is no insurance available to people in our situation to cover attorney fees. The other person's insurance company is paying all of his legal fees. What can be fair in this system when the person with the most money is the probably the only one left standing when the dust clears?

The Judge in our case has urged us all to settle out of Court, and that would certainly be our preference. However, unless the insurance company and the defendant are able to compensate us with a reasonable amount of money to repay our expenses for the repairs that have had to be done to make our home habitable, we are not financially able to "settle" - a jury of our peers will be forced to decide the outcome. The most we can even expect to receive to cover our attorney fees is 40%, if we "win" the litigation, and if the jury feels this is a fair compensation! Obviously, right doesn't always mean justice prevails.

The Judge told us all at a pretrial hearing that the six days the Court has set aside to hear this case will cost close to $3,000,000. The cost of our trial will be paid in some way by every

citizen in the State of Alaska. It costs just as much to take the Court's time with a case like ours, an issue of approximately $200,000, as it does to hear something important to the well-being and safety of the community such as a murder or rape or child abuse trial. Think of this! There has to be a better way for all of us!

One direct quote that came from the opposing attorney when he was asked how he would like the transcript of a deposition bound (it would cost less to put it all in one folder) was, " WHAT DO I CARE ABOUT COSTS!" This lawyer works for the insurance company we are up against. We believe that about says it all!

The amount of money a consumer has access to should not dictate the outcome of any reasonable complaint! No one should be forced into accepting substandard quality because they can't afford to financially fight for their rights. No one should have to use every financial resource available to them to fight for their rights. This practice should no longer be tolerated by the lawmakers or the citizens of our state!

We urge you to put a consumer protection agency and consumer protection laws in place as soon as possible. Every taxpayer in the state deserves protection! There has to be a way for all of us to receive compensation when a product is obviously defective, or a person suffers an ascertainable loss of money and property as a result of an unlawful act or practice. Fair compensation should not pertain only to those who have enough financing to seek restitution.

We thank you in advance for your support of CS FOR HOUSE BILL 203. It is our opinion that a consumer protection agency should be established and that the legislature consider passing any future legislation which protects your constituents.

Sincerely,

Patricia Vincent

Patricia Vincent

cc: Representative Gail Phillips
Representative Gary Davis
Representative Mark Hodgins
Senator John Torgerson
Senator Jerry Ward
Representative Dyson
Representative Croft

Written Testimony

HB

16

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 30, 1997 **FURTHER REFERRALS:**

Date of Committee Action: 5/6/97

The JUDICIARY Committee considered: **HB 16**

HOUSE BILL NO. 16 **JUVENILE DELINQUENCY PROCEDURES**

"An Act relating to delinquent minors, to the taking of action based on the alleged criminal misconduct of certain minors, to the services to be provided to the victims of criminal misconduct of minors, and to agency records involving minors alleged to be delinquent based on their criminal misconduct; and amending Rule 19 and repealing Rules 6, 7. 11(a), 12(a), and 21(f), Alaska Delinquency Rules."

recommends it be replaced with the following committee substitute CSHB 16 (JUD) [ ] the same title [X] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) _____

_____

[ ] zero fiscal note(s) _____

_____

APPROVES PREVIOUS: (Dept/Date)

[4] fiscal note(s) ADMIN(PD), ADMIN(OPA), COURTS & CORRECTIONS

[3] zero fiscal note(s) H&SS, LAW & PUB. SAFETY

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Bryan Porter	PORTER	✓			
	GREEN	✓			
Jeannette James	JAMES	✓			
	BERKOWITZ			✓	
	ROKEBERG			✓	
	CROFT	✓			

CHAIR'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 16 (HES)

Revision Date:
Title: "An Act relating to juvenile delinquency proceedings..."
Sponsor: Senator Kelly
Requestor: (H) JUD

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	133.4	133.4	133.4	133.4	133.4	133.4
TRAVEL	4.5	4.5	4.5	4.5	4.5	4.5
CONTRACTUAL	22.5	22.5	22.5	22.5	22.5	22.5
SUPPLIES	2.3	2.3	2.3	2.3	2.3	2.3
EQUIPMENT	7.5	1.5	1.5	1.5	1.5	1.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	170.2	164.2	164.2	164.2	164.2	164.2
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	170.2	164.2	164.2	164.2	164.2	164.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	170.2	164.2	164.2	164.2	164.2	164.2

Estimate of any current year (FY 97) cost: $ -0-

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 5/5/97

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ANALYSIS: (continued)

Dual Sentencing. This bill creates a "dual sentencing" scheme that invokes the jurisdiction of both the criminal and juvenile court. In the scheme the court would impose a juvenile disposition and an adult criminal sentence simultaneously. Execution of the adult criminal sentence would be stayed during imposition of the juvenile disposition. If the conditions of the juvenile disposition were satisfied, the adult criminal sentence is never imposed. If the conditions of the juvenile disposition were violated, the adult criminal sentence would be invoked.

This dual sentencing scheme is recommended for 13 to 15 year olds who are charged with Class A and unclassified offenses for which a 16 or 17 year old would be automatically waived to adult court and sexual assault in the second degree as well as 16 to 17 year olds who are convicted of sexual abuse of a minor in the second degree or a crime against a person with a previous felony adjudication against a person. Procedurally, the district attorney must either file a petition or the minor must agree to be subject to dual sentencing. The prosecutor must present the case to the grand jury and if there is a true bill filed, petition with the court. If the district attorney exercises his discretion not to invoke dual jurisdiction or the grand jury returns a no true bill, it stays in the juvenile system. The adult sentence must include some period of imprisonment that is not suspended. A child can be revoked and the adult sentence imposed if the child: 1) commits a new felony offense; 2) commits a misdemeanor offense against a person that involves injury to another person or the use of a deadly weapon; 3) fails to comply with restitution; 4) fails in a rehabilitation program ordered by the court or required by a facility or juvenile probation officer; or 5) escapes from a juvenile facility. Such violation must be proven by a preponderance of the evidence. If the new felony is a crime against a person or arson the court must impose the adult sentence and transfer custody of the child to the Department of Corrections. For other of the circumstances the court has to impose the adult sentence unless the child proves by preponderance of the evidence that mitigating circumstances exist that justify a continued stay of the adult sentence and that the child is amenable to further treatment under this chapter. Once an adult sentence is imposed the child is transferred to an adult correctional center.

This dual sentencing provision will impact the entire criminal justice system. The categories of children are quite broad, with the expectation that over 60 children will be eligible for such a referral per year, based upon FY 96 DHSS figures. (It is understood that the Department of Law and the Court System did not include numbers for 16 and 17 year olds in their calculations.) The Alaska Public Defender Agency would continue to be appointed to the majority of these cases which will now require the same attorney labor as an adult felony case (including grand jury review, virtual certainty of trial, and felony sentencing procedures). Based upon those numbers, and the serious nature of the allegations, an additional Attorney IV will be necessary in Anchorage and a part-time Attorney IV will be necessary in Fairbanks to provide attorney services in these serious felonies. It is anticipated that most of these cases will arise in these urban locales, with the attorneys travelling to more remote sites if assistance is needed. Additionally, the conditions for which a juvenile may be revoked for being in violation of his juvenile disposition are so overbroad and vague that it is anticipated that many of them will have petitions filed against them and engage in litigation to determine if a violation occurred or they have to prove that they have mitigating circumstances that justify a continued stay in the juvenile system. It will require clearly more prosecutor resources with mandatory grand jury and adult sentencing proceedings. It will clearly require more defense resources with challenges to the grand jury and Superior Court sentencings and duplication of efforts for two jurisdictions. It will result in many more felony level trials as the focus shifts from trying to find the best treatment alternative to avoiding the serious consequence of having an adult permanent record at such a young age. It will result in longer pre-trial stays and overcrowding and programming problems as more juvenile will be detained for longer periods of time in order to deal with the increase in the number of cases contested. Jails and juvenile detention pre-trial facilities are not programmed for lengthy pre-trial stays and cannot provide educational or other treatment services needed. Some critics within the juvenile justice system claim that had they received sufficient resources to begin with, they could have done a good job in improving their system at less cost. By shifting the population to adult Corrections Department if any programming will be developed which is doubtful, it is for a population that Corrections does not want and does not have the expertise to address.

The U.S. Department of Justice study recommends that the transfer alternative to adult court should only be considered for those juveniles whose criminal history, failure to respond to treatment, or serious or violent conduct clearly demonstrates that they require criminal justice system sanctions. This bill is too broadly fashioned and includes many juveniles who are charged

with offenses that would clearly indicate their amenability to treatment. In particular, sexual assault in the second degree and sexual abuse of a minor in the second degree include a broad range of conduct which are often amenable to education and treatment. While attempting to make the juvenile justice system more similar to the adult system, this portion of the bill stating the grounds for imposing the adult sentence actually makes the system more punitive than the adult system. As a basis for revocation, the failure to complete a rehabilitation program ordered by the court accurately reflects the adult system. However, including "any program required by a facility or juvenile probation officer" gives complete unsupervised discretion to a facility or individual who may or may not have the skill to determine the appropriateness of a program with no judicial oversight. To revoke for an offense "involving injury to another person" is completely overbroad in that a number of minor charges including disorderly conduct and assault in the fourth degree which may include a simple shoving match among children is enough to transfer a case to the adult system. Making transfer to the adult sentencing provisions automatic for certain crimes eliminates any individual discretion. In adult court the judge continues to have discretion to determine the disposition based upon a violation. It is even more problematic when one understands that 90% of the juvenile offenders have at one time or another a petition to revoke their probation filed. This is because it is a useful mechanism for probation and juvenile authorities to enforce compliance, to inspire good behavior, and to issue a wake up call. A broad population will have to go through the process of determining whether or not adult sentencing is appropriate. The mandatory imprisonment requirement places a child in a much worse position than an adult offender and completely disregards potential alternative community correction solutions available in adult court. The completely unbridled prosecutorial discretion is neither subject to judicial review nor based upon detailed criteria. The Utah Supreme Court in State v. Mohi, 901 P.2d 991 (Utah 1995) ruled that a similar Utah juvenile court Act giving such unbridled discretion to the prosecutor violated the state constitution.

FISCAL NOTE

STATE OF ALASKA **BILL NO.** CSHB 16 (HES)

1997 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to juvenile delinquency proceedings..."
Sponsor: Senator Kelly
Requestor: (H) HES

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	133.4	133.4	133.4	133.4	133.4	133.4
TRAVEL	4.5	4.5	4.5	4.5	4.5	4.5
CONTRACTUAL	22.5	22.5	22.5	22.5	22.5	22.5
SUPPLIES	2.3	2.3	2.3	2.3	2.3	2.3
EQUIPMENT	7.5	1.5	1.5	1.5	1.5	1.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	170.2	164.2	164.2	164.2	164.2	164.2
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	170.2	164.2	164.2	164.2	164.2	164.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	170.2	164.2	164.2	164.2	164.2	164.2

Estimate of any current year (FY 97) cost: $ -0-

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/29/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 16 (HES)

Revision Date:
Title: "An Act relating to delinquent minors, to the taking of action based on the alleged criminal misconduct of certain..."
Sponsor: Representative Kelly
Requestor: (H) JUD

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	41.2	41.2	41.2	41.2	41.2	41.2
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	23.4	23.4	23.4	23.4	23.4	23.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.6					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	86.2	80.6	80.6	80.6	80.6	80.6
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	86.2	80.6	80.6	80.6	80.6	80.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	86.2	80.6	80.6	80.6	80.6	80.6

Estimate of any current year (FY 97) cost: $ 0

POSITIONS:

FULL-TIME						
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill fundamentally alters the manner in which serious cases involving thirteen, fourteen, and fifteen year old children will be processed by the justice system. This new dual sentencing scheme will impose adult sentences that are automatically triggered by several commonly violated probation conditions. The severity of the sanctions and the complexity of the procedures will require extensive attorney and expert witness resources.

(continued)

Prepared by: Brant McGee Public Advocate
Division: Office of Public Advocacy
Phone: 274-1684
Date:

Approved by Commissioner: Mark Boyer
Agency: Administration
Date: 5/5/97

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ANALYSIS: (continued)

Such cases will require significantly more resources than an adult felony case since they involve not only grand jury review, pre-trial motions, trial and post conviction work, but also representation at complex probation revocation hearings. The law provides no incentive whatsoever to plead guilty as charged and many strong reasons to try such cases. In short, most cases will go to trial and, because of the high incidence of recidivism among untreated juveniles, most cases will result in probation revocation proceedings.

OPA estimates that it would receive about one third of the appointments in such cases and would therefore require the services of an experienced half-time attorney. The position would require extensive travel to other Alaska communities where such cases arise, and would need the services of expert witnesses in the revocation proceedings that trigger adult prison sentences for children.

CS FOR HOUSE BILL NO. 16(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KELLY

A BILL

FOR AN ACT ENTITLED

"An Act relating to delinquent minors, to the taking of action based on the alleged criminal misconduct of certain minors, to the services to be provided to the victims of criminal misconduct of minors, and to agency records involving minors alleged to be delinquent based on their criminal misconduct; providing for the dual sentencing of minors who commit certain felony offenses; relating to violations of municipal ordinances by minors and to civil penalties for violation of municipal ordinances by minors; amending the Interstate Compact on Juveniles to which the state is a party; and amending Rules 3, 21, and 27 and repealing Rules 6 and 7, Alaska Delinquency Rules; and providing for an effective date."

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

* Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

(54) AS 29.25.070(e) (notices of certain civil actions).

* **Sec. 2.** AS 29.25.070(b) is amended to read:

(b) The municipality or an aggrieved person may institute a civil action against a person, **including a minor as provided in AS 29.25.072.** who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of an ordinance continues constitutes a separate violation.

* **Sec. 3.** AS 29.25.070 is amended by adding new subsections to read:

(e) The municipality shall provide written notice to the commissioner of health and social services or to the commissioner's designee of the commencement of a civil enforcement action for the violation of an ordinance under (b) of this section against a minor. Unless the commissioner and the municipality have negotiated an agreement making other arrangements for the municipality to provide the notice required by this subsection, the municipality shall provide the notice by mailing a copy of the citation or other document setting out the notice of the commencement of the civil enforcement action. This subsection applies to home rule and general law municipalities.

(f) In this section, "minor" means a person under 18 years of age.

* **Sec. 4.** AS 29.25 is amended by adding a new section to read:

Sec. 29.25.072. Civil penalties for violation of municipal ordinances by minors. (a) Except as otherwise provided in this section, the enforcement under AS 29.25.070(b) of a civil penalty against a minor for violation of a municipal ordinance shall be heard in the district court in the same manner as for similar allegations brought against an adult, except that the minor's parent, guardian, or legal custodian shall be present at all proceedings unless the court excuses the parent, guardian, or legal custodian from attendance for good cause.

(b) If provision is made by ordinance for use of a hearing officer to decide enforcement of a civil penalty under AS 29.25.070(b), allegations against a minor for a civil penalty under a municipal ordinance may be assigned to a hearing officer for the municipality for decision.

(c) An action for a civil penalty filed against a minor under this section does not give rise to the right to a trial by jury or to counsel appointed at public expense.

* **Sec. 5.** AS 33.30.901(12) is amended to read:

(12) "prisoner"

(A) means a person held under authority of state law in official detention as defined in AS 11.81.900(b);

(B) includes a **minor** [JUVENILE] committed to the custody of the commissioner when,

(i) under AS 47.12.030(a), 47.12.065, or 47.12.100, the **minor** [JUVENILE] has been charged, prosecuted, or convicted as an adult; **or**

(ii) under AS 47.12.160(e), the minor has been ordered transferred to the custody of the commissioner;

* **Sec. 6.** AS 44.23 is amended by adding a new section to read:

Sec. 44.23.070. Victim/witness assistance program. If the Department of Law maintains a victim/witness assistance program, subject to sufficient appropriations for the purpose, the services of that program shall be extended to victims of criminal offenses committed by persons under 18 years of age so that victims of these offenses may exercise the rights provided to them by law.

* **Sec. 7.** AS 47.10.092(a) is amended to read:

(a) Notwithstanding AS 47.10.090 and 47.10.093,

(1) a parent or legal guardian of a minor subject to a proceeding under AS 47.10.010 - 47.10.142 may disclose confidential or privileged information about the minor, including information that has been lawfully obtained from agency or court files, to the governor, the lieutenant governor, a legislator, the ombudsman appointed under AS 24.55, the attorney general, and the commissioners of health and social services, administration, or public safety, or an employee of these persons, for review or use in their official capacities;

(2) the department may disclose confidential or privileged information about the minor and make available for inspection documents about the minor to the state officials or employees identified in (1) of this subsection for

review or use in their official capacities; and

(3) a [. A] person to whom disclosure is made under (1) or (2) of this subsection [SECTION] may not disclose confidential or privileged information about the minor to a person not authorized to receive it.

* Sec. 8. AS 47.10.092(b) is amended to read:

(b) The disclosure right under (a)(1) [(a)] of this section is in addition to, and not in derogation of, the rights of a parent or legal guardian of a minor.

* Sec. 9. AS 47.12.010 is repealed and reenacted to read:

Sec. 47.12.010. Goal and purposes of chapter. (a) The goal of this chapter is to promote a balanced juvenile justice system in the state to protect the community, impose accountability for violations of law, and equip juvenile offenders with the skills needed to live responsibly and productively.

(b) The purposes of this chapter are to

(1) respond to a juvenile offender's needs in a manner that is consistent with

(A) prevention of repeated criminal behavior;

(B) restoration of the community and victim;

(C) protection of the public; and

(D) development of the juvenile into a productive citizen;

(2) protect citizens from juvenile crime;

(3) hold each juvenile offender directly accountable for the offender's conduct;

(4) provide swift and consistent consequences for crimes committed by juveniles;

(5) make the juvenile justice system more open, accessible, and accountable to the public;

(6) require parental or guardian participation in the juvenile justice process;

(7) create an expectation that parents will be held responsible for the conduct and needs of their children;

(8) ensure that victims, witnesses, parents, guardians, juvenile offenders,

and all other interested parties are treated with dignity, respect, courtesy, and sensitivity throughout all legal proceedings;

(9) provide due process through which juvenile offenders, victims, parents, and guardians are assured fair legal proceedings during which constitutional and other legal rights are recognized and enforced;

(10) divert juveniles from the formal juvenile justice process through early intervention as warranted when consistent with the protection of the public;

(11) provide an early, individualized assessment and action plan for each juvenile offender in order to prevent further criminal behavior through the development of appropriate skills in the juvenile offender so that the juvenile is more capable of living productively and responsibly in the community;

(12) ensure that victims and witnesses of crimes committed by juveniles are afforded the same rights as victims and witnesses of crimes committed by adults;

(13) encourage and provide opportunities for local communities and groups to play an active role in the juvenile justice process in ways that are culturally relevant; and

(14) review and evaluate regularly and independently the effectiveness of programs and services under this chapter.

* **Sec. 10.** AS 47.12.040(a) is amended to read:

(a) Whenever circumstances subject a minor to the jurisdiction of this chapter, the court shall

(1) provide, under procedures adopted by court rule, that, for a minor who is alleged to be a delinquent minor under AS 47.12.020, **the department or an entity selected by it** [A STATE AGENCY] shall make a preliminary inquiry to determine if any action is appropriate and may take appropriate action to adjust the matter without a court hearing; if, under this paragraph,

(A) the **department or an entity selected by it** [STATE AGENCY] makes a preliminary inquiry and takes appropriate action to adjust the matter without a court hearing, the minor may not be detained or taken into custody as a condition of the adjustment and, subject to AS 47.12.060, the matter shall be closed by the **department or an entity selected by it**

[AGENCY] if the minor successfully completes all that is required of the minor by the **department or an entity selected by it** [AGENCY] in the adjustment; in a municipality or municipalities in which a youth court has been established under AS 47.12.400, adjustment of the matter under this paragraph may include referral to the youth court;

(B) the **department or an entity selected by it** [AGENCY] concludes that the matter may not be adjusted without a court hearing, the **department or an entity selected by it** [AGENCY] may file a petition under (2) of this subsection setting out the facts; or

(2) appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken; if, under this paragraph, the court appoints a person or agency to make a preliminary inquiry and to report to it, then upon the receipt of the report, the court may informally adjust the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts; if the court informally adjusts the matter, the minor may not be detained or taken into the custody of the court as a condition of the adjustment, and the matter shall be closed by the court upon adjustment.

*** Sec. 11.** AS 47.12.060 is amended to read:

Sec. 47.12.060. Informal action [BY DEPARTMENT] to adjust matter. (a) The provisions of this section apply to a minor who is alleged to be a delinquent minor under AS 47.12.020 and for whom **the department or an entity selected by it** [AN AGENCY] has, under applicable court rule, made a preliminary inquiry [BEFORE TAKING APPROPRIATE ACTION] as authorized by **AS 47.12.040(a)(1)** [AS 47.12.040(a)]. Following the preliminary inquiry,

(1) [UNLESS] the **department or the entity selected by it may dismiss the matter with or without prejudice; or**

(2) [AGENCY DETERMINES THAT THE MATTER SHOULD BE DISMISSED,] the **department or the entity selected by it** [AGENCY] may take informal action to adjust the matter.

(b) When the **department or the entity selected by it** [AGENCY] decides **to make** [THAT] an informal adjustment of a matter **under (a)(2) of this section** [SHOULD BE MADE], that informal adjustment may not be made without the agreement or consent of the minor and the minor's parents or **guardian** [GUARDIANS] to the terms and conditions of the adjustment. An informal action to adjust a matter is not successfully completed unless, among other factors that the **department or the entity selected by it** [AGENCY] considers, as to the victim of the act of the minor that is the basis of the delinquency allegation, the minor pays restitution in the amount set by the **department or the entity selected by it** [AGENCY] or agrees as a term or condition set by the **department or the entity selected by it** [AGENCY] to pay the restitution.

* **Sec. 12.** AS 47.12 is amended by adding a new section to read:

Sec. 47.12.065. Dual sentencing provisions. (a) The department or the entity selected by it shall refer to the appropriate district attorney the circumstances involving a minor who is subject to the provisions of this section because the minor is alleged to have violated a criminal law of the state. The department or the entity selected by it shall make the referral if the minor was

(1) at least 13 years of age but had not reached 16 years of age at the time of the offense, and the offense is

(A) an unclassified felony or a class A felony for which AS 47.12.030(a) would have made this chapter and the Alaska Delinquency Rules inapplicable if the minor had been at least 16 years of age at the time of the offense; or

(B) sexual assault in the second degree; or

(2) 16 years of age or older at the time of the offense, and the offense is

(A) a felony that is a crime against a person and the minor has previously been adjudicated a delinquent under the laws of this state or substantially similar laws of another jurisdiction for a felony offense that is a crime against a person; or

(B) sexual abuse of a minor in the second degree.

(b) If a referral is made under (a) of this section, the district attorney may elect to seek imposition of a dual sentence in the case to further the goal and purposes of this chapter as set out in AS 47.12.010. If the district attorney seeks imposition of a dual sentence, the district attorney shall present the case to the grand jury for indictment. If the grand jury returns an indictment, the district attorney shall file with the court under AS 47.12.040(a) a petition seeking the minor's adjudication as a delinquent.

(c) If the district attorney decides not to seek imposition of a dual sentence under (b) of this section or if the grand jury does not return an indictment, the case shall proceed under the remaining provisions of this chapter.

*** Sec. 13.** AS 47.12.110(b) is amended to read:

(b) Notwithstanding (a) of this section **or an order prohibiting or limiting the public made under (d) of this section**, the victim of an offense that a minor is alleged to have committed, or the designee of the victim, has a right to be present at all hearings held under this section. If the minor is found to have committed the offense, the victim may at the disposition hearing give sworn testimony or make an unsworn oral presentation concerning the offense and its effect on the victim. If there are numerous victims of a minor's offense, the court may limit the number of victims who may give sworn testimony or make an unsworn oral presentation, but the court may not limit the right of a victim to attend a hearing.

*** Sec. 14.** AS 47.12.110 is amended by adding a new subsection to read:

(d) Notwithstanding (a) of this section, a court proceeding shall be open to the public, except as prohibited or limited by order of the court,

(1) when the district attorney has elected to seek imposition of a dual sentence, and a petition has been filed under AS 47.12.065, or when a minor agrees as part of a plea agreement to be subject to dual sentencing; or

(2) for a minor who is 16 years of age or older at the time of the commission of the offense and who is found by the court to have committed a crime against a person punishable as a felony or who, after having been previously adjudicated a delinquent for an offense punishable as a felony, is found by the court to have committed the offense of burglary in the first degree.

* **Sec. 15.** AS 47.12.120(b) is amended to read:

(b) If **the minor is not subject to (j) of this section and** 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 **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** [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, juvenile work camp, treatment facility, 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 47.12.260** [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 **years of age**, 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** [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 **with a relative**

or in a foster home or residential [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 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 [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;

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

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; and

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent;

(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;

(6) in addition to an order under (1) - (5) of this subsection, [IF THE DELINQUENCY FINDING IS BASED ON THE MINOR'S VIOLATION OF AS 11.71.030(a)(3) OR 11.71.040(a)(4),] order the minor to perform [50 HOURS OF] community service; for purposes of this paragraph, "community service" includes work

(A) defined as community service under AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1).

*** Sec. 16.** AS 47.12.120(g) is amended to read:

(g) Within 18 months after the date a minor is **initially taken into** [COMMITTED TO THE] custody by [OF] the department under (b)(3) of this section, 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 minor should be returned to the parent;

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

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

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

*** Sec. 17.** AS 47.12.120 is amended by adding new subsections to read:

(i) When, under (a) of this section, the court enters judgment finding that a

minor is delinquent, the court may order the minor temporarily detained pending entry of its dispositional order if the court finds that detention is necessary

(1) to protect the minor or the community; or

(2) to ensure the minor's appearance at a subsequent court hearing.

(j) If in a case in which a district attorney has elected to seek imposition of a dual sentence under AS 47.12.065, the court finds that the minor is delinquent for committing an offense in the circumstances set out in AS 47.12.065, or if the minor agrees as part of a plea agreement to be subject to dual sentencing, the court shall

(1) enter one or more orders under (b) of this section; and

(2) pronounce a sentence for the offense in accordance with the provisions of AS 12.55; however, the sentence pronounced under this paragraph must include some period of imprisonment that is not suspended by the court.

* **Sec. 18.** AS 47.12.140 is amended to read:

Sec. 47.12.140. Court dispositional order. In making its dispositional order under AS 47.12.120(b)(1) - (3) and (5) **and (j)**, the court shall

(1) consider both the best interests of the minor and the interests of the public, and, in doing so, the court shall take into account

(A) the seriousness of the minor's delinquent act [,] and the attitude of the minor and the minor's parents toward that act;

(B) the minor's culpability as indicated by the circumstances of the particular case;

(C) the age of the minor;

(D) the minor's prior criminal or juvenile record [,] and the success or failure of any previous orders, dispositions, or placements imposed on the minor;

(E) the effect of the dispositional order to be imposed in deterring the **minor** [CHILD] from committing other delinquent acts;

(F) the need to commit the minor to the department's custody or to detain the minor in an institution or other suitable place in order to prevent further harm to the public;

(G) the interest of the public in securing the minor's

rehabilitation; and

(H) the ability of the state to take custody of and to care for the minor; and

(2) order the least restrictive alternative disposition for the minor; for purposes of this paragraph, the "least restrictive alternative disposition" means that disposition that is no more restrictive than is, in the judgment of the court, most conducive to the minor's rehabilitation taking into consideration the interests of the public.

* **Sec. 19.** AS 47.12.160 is amended by adding new subsections to read:

(d) The department may petition the court for imposition of sentence pronounced under AS 47.12.120(j)(2) if the offender is still subject to the jurisdiction of the court and if the offender, after pronouncement of sentence under AS 47.12.120(j)(2),

(1) commits a subsequent felony offense;

(2) commits a subsequent offense against a person that is a misdemeanor and involves injury to a person or the use of a deadly weapon;

(3) fails to comply with the terms of a restitution order;

(4) fails to engage in or satisfactorily complete a rehabilitation program ordered by a court or required by a facility or juvenile probation officer; or

(5) escapes from a juvenile correctional facility.

(e) If a petition is filed under (d) of this section and if the court finds by a preponderance of the evidence that the minor has committed a subsequent felony offense that is a crime against a person or is the crime of arson, the court shall impose the adult sentence previously pronounced under AS 47.12.120(j) and transfer custody of the minor to the Department of Corrections. If the court finds by a preponderance of the evidence that any of the other circumstances set out in (d)(1) - (5) of this section exist, the court shall impose the adult sentence previously pronounced and transfer custody of the minor to the Department of Corrections unless the minor proves by preponderance of the evidence that mitigating circumstances exist that justify a continuance in the stay of the adult sentence and the minor is amenable to further treatment under this chapter. The court shall make written findings to support its

order.

* **Sec. 20.** AS 47.12.180(a) is amended to read:

(a) Except as provided by **AS 47.12.160(d) and (e) and** AS 47.12.170, an adjudication under this chapter upon the status of a minor

(1) may not operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge;

(2) does not operate to permit a minor afterward to be considered a criminal by the adjudication; and

(3) does not operate to permit the adjudication to be afterward **considered** [DEEMED] a conviction, nor may a minor be charged with or convicted of a crime in a court [,] except as provided in this chapter.

* **Sec. 21.** AS 47.12.310(b) is amended to read:

(b) **Except as provided by AS 47.12.310(b)(1), fingerprint** [FINGERPRINT] records taken under this section are not subject to AS 47.12.310.

* **Sec. 22.** AS 47.12.240(c) is amended to read:

(c) Notwithstanding (a) of this section, a minor may be incarcerated in a correctional facility

(1) if the minor is the subject of a petition filed with the court under this chapter seeking adjudication of the minor as a delinquent minor or if the minor is in official detention pending the filing of that petition; however, detention in a correctional facility under this paragraph may not exceed the lesser of

(A) six hours; or

(B) the time necessary to arrange the minor's transportation to a juvenile detention home or comparable facility for the detention of minors;

(2) if, in response to a petition of delinquency filed under this chapter, the court has entered an order closing the case under AS 47.12.100(a), allowing the minor to be prosecuted as an adult; [OR]

(3) if the incarceration constitutes a protective custody detention of the minor that is authorized by AS 47.37.170(b)**; or**

(4) if, under AS 47.12.160(e), the court has entered an order imposing an adult sentence and transferring custody of the minor to the

Department of Corrections.

* **Sec. 23.** AS 47.12 is amended by adding a new section to read:

Sec. 47.12.245. Arrest. A peace officer

(1) may arrest a minor

(A) for the commission of an act that subjects the minor to the provisions of this chapter under the same circumstances and in the same manner as would apply to the arrest of an adult for violation of a criminal law of the state or a municipality of the state;

(B) if the peace officer reasonably believes the minor is a fugitive from justice;

(C) if the peace officer has probable cause to believe that the minor has violated a condition of the minor's release or probation; or

(D) if the peace officer reasonably believes that the minor has been adjudicated a delinquent and has escaped from an institution or absconded from probation, parole, or the jurisdiction of a court;

(2) may continue the lawful arrest of a minor that is made by a citizen.

* **Sec. 24.** AS 47.12.250(a) is amended to read:

(a) A peace officer **who has arrested or who has continued the arrest of** [MAY ARREST] a minor **under AS 47.12.245** [WHO VIOLATES A LAW OR ORDINANCE IN THE PEACE OFFICER'S PRESENCE, OR WHOM THE PEACE OFFICER REASONABLY BELIEVES IS A FUGITIVE FROM JUSTICE. A PEACE OFFICER MAY CONTINUE A LAWFUL ARREST MADE BY A CITIZEN. THE PEACE OFFICER] may

(1) have the minor detained in a juvenile detention facility if in the opinion of the peace officer making or continuing the arrest it is necessary to do so to protect the minor or the community**; however, the department may direct that a minor who was arrested or whose arrest was continued be released from detention before the hearing required by (c) of this section;**

(2) before taking the minor to a juvenile detention facility, release the minor to the minor's parents or guardian if detention is not necessary to

(A) protect the minor or the community; or

(B) ensure the minor's attendance at subsequent court hearings.

* **Sec. 25.** AS 47.12.300(c) is amended to read:

(c) Except as provided in (g) of this section, the [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 unless authorized by order of the court.

* **Sec. 26.** AS 47.12.300(d) is amended to read:

(d) Except as provided in (f) of this section, within [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 releases jurisdiction over the minor, the court shall order all the court's official records pertaining to that minor in a proceeding under this chapter sealed, 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. 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. The provisions of this subsection relating to the sealing of records do not apply to records of traffic offenses.

* **Sec. 27.** AS 47.12.300(e) is amended to read:

(e) The court's official records prepared under this chapter and not made public under this section are confidential and may be inspected only with the court's permission and only by persons having a legitimate interest in them. A person with a legitimate interest in the inspection of a confidential [AN OFFICIAL] record maintained by the court includes a victim who suffered physical injury or whose real or personal property was damaged as a result of an offense that was the basis of an adjudication or modification of disposition. If the victim knows the identity of the minor, identifies the minor or the offense to the court, and certifies that the information is being sought to consider or support a civil action against the minor or against the minor's parents or guardian [GUARDIANS] under AS 34.50.020, the court shall, subject to AS 12.61.110 and 12.61.140, allow the victim to inspect and use the following records and information in connection with the civil action:

(1) a petition filed under AS 47.12.040(a) seeking to have the court declare the minor a delinquent;

(2) a petition filed under AS 47.12.120 seeking to have the court modify or revoke the minor's probation;

(3) a petition filed under AS 47.12.100 requesting the court to find that a minor is not amenable to treatment under this chapter and that results in closure of a case under AS 47.12.100(a); and

(4) a court judgment or order entered under this chapter that disposes of a petition identified in (1) - (3) of this subsection.

* **Sec. 28.** AS 47.12.300(f) is amended to read:

(f) A person who has been tried as an adult under AS 47.12.100(a) **or a person whose records have been made public under (g) of 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 **or five years after a disposition was entered for an offense for which the records were made public under (g) of this section**. If the superior court finds that its order has had its intended rehabilitative effect and further finds that the person has fulfilled all orders of the court entered under AS 47.12.120, 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. The court may not, under this subsection, seal records of a criminal proceeding

(1) initiated against a person if the court finds that the person has not complied with a court order made under AS 47.12.120; or

(2) commenced under AS 47.12.030(a) unless the minor has been acquitted of all offenses with which the minor was charged or unless the most serious

offense of which the minor was convicted was not an offense specified in AS 47.12.030(a).

*** Sec. 29.** AS 47.12.300 is amended by adding new subsections to read:

(g) When a district attorney has elected to seek imposition of a dual sentence and a petition has been filed under AS 47.12.065, or when a minor agrees as part of a plea agreement to be subject to dual sentencing, all court records shall be open to the public except for predisposition reports, psychiatric and psychological reports, and other documents that the court orders to be kept confidential because the release of the documents could be harmful to the minor or could violate the constitutional rights of the victim or other persons.

(h) A person who discloses confidential information in violation of this section is guilty of a class B misdemeanor.

*** Sec. 30.** AS 47.12.310(b) is amended to read:

(b) A state or municipal agency or employee

(1) shall disclose information regarding a case to a state or municipal law enforcement agency for a specific investigation being conducted by that agency; and

(2) may disclose information regarding a case to

(A) [(1)] a guardian ad litem appointed by the court or to a citizen review panel for permanency planning authorized by AS 47.14.200 - 47.14.220;

(B) [(2)] a person or an agency requested to provide consultation or services for a minor who is subject to the jurisdiction of the court under this chapter;

(C) [(3)] school officials as may be necessary to protect the safety of school students and staff;

(D) [(4)] a governmental agency as may be necessary to obtain that agency's assistance for the department in its investigation or to obtain physical custody of a minor;

(E) [(5)] a state or municipal law enforcement agency as may be necessary [FOR A SPECIFIC INVESTIGATION BEING CONDUCTED

BY THAT AGENCY OR] for disclosures by that agency to protect the public safety; and

(F) [(6)] a victim or to the victim's insurance company as may be necessary to inform the victim or the insurance company about the arrest of the minor, an investigation regarding a case involving the minor, or the disposition or resolution of a case involving a minor.

* **Sec. 31.** AS 47.12.310(g) is amended to read:

(g) The department and affected law enforcement agencies shall work with school districts and private schools to develop procedures for the disclosure of information to school officials under (b)(2)(C) [(b)(3)] and (c)(3) of this section. The procedures must provide a method for informing the principal or the principal's designee of the school the student attends as soon as it is reasonably practicable.

* **Sec. 32.** AS 47.12.320(a) is amended to read:

(a) Notwithstanding AS 47.12.300 and 47.12.310,

(1) a parent or legal guardian of a minor subject to a proceeding under this chapter may disclose confidential or privileged information about the minor, including information that has been lawfully obtained from agency or court files, to the governor, the lieutenant governor, a legislator, the ombudsman appointed under AS 24.55, the attorney general, and the commissioners of health and social services, administration, or public safety, or an employee of these persons, for review or use in their official capacities;

(2) the department may disclose confidential or privileged information about the minor and make available for inspection documents about the minor to the state officials or employees identified in (1) of this subsection for review or use in their official capacities; and

(3) a [. A] person to whom disclosure is made under (1) or (2) of this subsection [SECTION] may not disclose confidential or privileged information about the minor to a person not authorized to receive it.

* **Sec. 33.** AS 47.12.320(b) is amended to read:

(b) The disclosure right under (a)(1) [(a)] of this section is in addition to, and not in derogation of, the rights of a parent or legal guardian of a minor.

* **Sec. 34.** AS 47.12 is amended by adding a new section to read:

Sec. 47.12.988. Implementation of provisions by an entity selected by department. In this chapter, when authority exercised by the department may also be exercised by an entity selected by the department, the entity that the department may select in order to exercise authority is limited to

(1) a municipality; or

(2) a nonprofit corporation.

* **Sec. 35.** AS 47.15.010 is amended by adding a new article to read:

ARTICLE XVII

RENDITION

(a) This article shall provide additional remedies and shall be binding only between those party states which specifically execute it.

(b) All provisions and procedures of articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such a case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after filing of the petition. The requisition described in article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

* **Sec. 36.** AS 47.12.110(d), added by sec. 14 of this Act, has the effect of changing Rules 3 and 21, Alaska Delinquency Rules, by reversing the presumption that the public shall be excluded from hearings involving minors.

* **Sec. 37.** The provisions of AS 47.12.300(g), added by sec. 29 of this Act, have the effect of changing Rule 27, Alaska Delinquency Rules, by making court records for certain juvenile proceedings public documents in specified circumstances.

* **Sec. 38.** Rules 6 and 7, Alaska Delinquency Rules, are repealed.

* **Sec. 39.** AS 47.12.110(c) is repealed.

* **Sec. 40.** APPLICABILITY OF SECTIONS 1 - 34. Sections 1 - 34 of this Act apply to