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Source
CSHB 177(HES)

Chapter No.
40

AN ACT

Relating to foster parents; relating to the right of foster parents to have notice of, and testify at, delinquency hearings and to the disclosure of minors' records to foster parents; and amending Rules 3, 7, 10, 12, 21, 23, and 25, Alaska Delinquency Rules.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 1, 1999
Actual Effective Date: August 30, 1999

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3 Rules 3, 7, 10, 12, 21, 23, and 25, Alaska Delinquency Rules.

4

5 * **Section 1.** AS 47.12.010(b) is amended to read:

6 (b) The purposes of this chapter are to

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

8 with

9 (A) prevention of repeated criminal behavior;

10 (B) restoration of the community and victim;

11 (C) protection of the public; and

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

13 (2) protect citizens from juvenile crime;

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- 1 (3) hold each juvenile offender directly accountable for the offender's
2 conduct;
- 3 (4) provide swift and consistent consequences for crimes committed by
4 juveniles;
- 5 (5) make the juvenile justice system more open, accessible, and
6 accountable to the public;
- 7 (6) require parental or guardian participation in the juvenile justice
8 process;
- 9 (7) create an expectation that parents will be held responsible for the
10 conduct and needs of their children;
- 11 (8) ensure that victims, witnesses, parents, foster parents, guardians,
12 juvenile offenders, and all other interested parties are treated with dignity, respect,
13 courtesy, and sensitivity throughout all legal proceedings;
- 14 (9) provide due process through which juvenile offenders, victims,
15 parents, and guardians are assured fair legal proceedings during which constitutional
16 and other legal rights are recognized and enforced;
- 17 (10) divert juveniles from the formal juvenile justice process through
18 early intervention as warranted when consistent with the protection of the public;
- 19 (11) provide an early, individualized assessment and action plan for
20 each juvenile offender in order to prevent further criminal behavior through the
21 development of appropriate skills in the juvenile offender so that the juvenile is more
22 capable of living productively and responsibly in the community;
- 23 (12) ensure that victims and witnesses of crimes committed by juveniles
24 are afforded the same rights as victims and witnesses of crimes committed by adults;
- 25 (13) encourage and provide opportunities for local communities and
26 groups to play an active role in the juvenile justice process in ways that are culturally
27 relevant; and
- 28 (14) review and evaluate regularly and independently the effectiveness
29 of programs and services under this chapter.

30 * Sec. 2. AS 47.12.050(a) is amended to read:

- 31 (a) Except as may be otherwise specifically provided, in all cases under this

chapter, the minor, each parent of the minor, **the foster parent of the minor**, and the guardian of the minor are entitled to notice adequate to give actual notice of the proceedings, taking into account education and language differences that are known or reasonably ascertainable by the party giving the notice. The notice must contain all names by which the minor has been identified.

* Sec. 3. AS 47.12.060(b) is amended to read:

(b) When the department or the entity selected by it decides to make an informal adjustment of a matter under (a)(2) of this section, that informal adjustment may not be made without the agreement or consent of the minor and the minor's parents or guardian to the terms and conditions of the adjustment. **In addition, the department or entity shall give the minor's foster parent an opportunity to be heard before the informal adjustment is made.** An informal action to adjust a matter is not successfully completed unless, among other factors that the department or the entity selected by it 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 or agrees as a term or condition set by the department or the entity selected by it to pay the restitution.

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

(a) The court shall conduct a hearing on the petition. The court shall give notice of the hearing to the department, and the department shall send a representative to the hearing. The representative of the department may also be heard at the hearing. **The department shall give notice of the hearing and a copy of the petition to the minor's foster parent, and the court shall give the foster parent an opportunity to be heard at the hearing.** The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing if their attendance is compatible with the best interests of the minor. Nothing in this section may be applied in such a way as to deny a minor's rights to confront adverse witnesses, to a public trial, and to a trial by jury.

* Sec. 5. 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

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1 (1) order the minor committed to the department for a period of time
2 not to exceed two years or in any event extend past the day the minor becomes 19
3 years of age, except that the department may petition for and the court may grant in
4 a hearing (A) two-year extensions of commitment that do not extend beyond the
5 minor's 19th birthday if the extension is in the best interests of the minor and the
6 public; and (B) an additional one-year period of supervision past age 19 if continued
7 supervision is in the best interests of the person and the person consents to it; the
8 department shall place the minor in the juvenile facility that the department considers
9 appropriate and that may include a juvenile correctional school, juvenile work camp,
10 treatment facility, detention home, or detention facility; the minor may be released
11 from placement or detention and placed on probation on order of the court and may
12 also be released by the department, in its discretion, under AS 47.12.260;

13 (2) order the minor placed on probation, to be supervised by the
14 department, and released to the minor's parents, guardian, or a suitable person; if the
15 court orders the minor placed on probation, it may specify the terms and conditions
16 of probation; the probation may be for a period of time not to exceed two years and
17 in no event to extend past the day the minor becomes 19 years of age, except that the
18 department may petition for and the court may grant in a hearing

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

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

25 (3) order the minor committed to the custody of the department and
26 placed on probation, to be supervised by the department and released to the minor's
27 parents, guardian, other suitable person, or suitable nondetention setting such as with
28 a relative or in a foster home or residential child care facility, whichever the
29 department considers appropriate to implement the treatment plan of the predisposition
30 report; if the court orders the minor placed on probation, it may specify the terms and
31 conditions of probation; the department may transfer the minor, in the minor's best

1 interests, from one of the probationary placement settings listed in this paragraph to
2 another, and the minor, the minor's parents or guardian, the minor's foster parent,
3 and the minor's attorney are entitled to reasonable notice of the transfer; the probation
4 may be for a period of time not to exceed two years and in no event to extend past the
5 day the minor becomes 19 years of age, except that the department may petition for
6 and the court may grant in a hearing

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

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

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

16 (A) except as provided in (B) of this paragraph, the court may
17 not refuse to make an order of restitution to benefit the victim of the act of the
18 minor that is the basis of the delinquency adjudication; under this
19 subparagraph, the court may require the minor to use the services of a
20 community dispute resolution center that has been recognized by the
21 commissioner under AS 47.12.450(b) to resolve any dispute between the minor
22 and the victim of the minor's offense as to the amount of or manner of payment
23 of the restitution; and

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

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1 parent;

2 (5) order the minor committed to the department for placement in an
3 adventure-based [ADVENTURE BASED] education program established under
4 AS 47.21.020 with conditions the court considers appropriate concerning release upon
5 satisfactory completion of the program or commitment under (1) of this subsection if
6 the program is not satisfactorily completed;

7 (6) in addition to an order under (1) - (5) of this subsection, order the
8 minor to perform community service; for purposes of this paragraph, "community
9 service" includes work

10 (A) on a project identified in AS 33.30.901; or

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

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

17 * Sec. 6. AS 47.12.120(d) is amended to read:

18 (d) A minor found to be delinquent is a ward of the state while committed to
19 the department or while the department has the power to supervise the minor's actions.
20 The court shall review an order made under (b) of this section annually [,] and may
21 review the order more frequently to determine if continued placement, probation, or
22 supervision, as it is being provided, is in the best interest of the minor and the public.
23 The department, the minor, and the minor's parents, guardian, or custodian are entitled,
24 when good cause is shown, to a review on application. If the application is granted,
25 the court shall afford these parties and their counsel and the minor's foster parent
26 reasonable notice in advance of the review and hold a hearing where these parties and
27 their counsel and the minor's foster parent shall be afforded an opportunity to be
28 heard. The minor shall be afforded the opportunity to be present at the review.

29 * Sec. 7. AS 47.12.250(b) is amended to read:

30 (b) A peace officer who has a minor detained under (a) of this section shall
31 immediately, and in no event more than 12 hours later, notify the court and make

1 reasonable efforts to notify the minor's parents or guardian, the minor's foster parent,
2 and the department of the officer's action. The department may file with the court a
3 petition alleging delinquency before the detention hearing.

4 * Sec. 8. AS 47.12.250(c) is amended to read:

5 (c) The court shall immediately, and in no event more than 48 hours later, hold
6 a hearing at which the minor and the minor's parents or guardian if they can be found
7 shall be present. The court shall determine whether probable cause exists for believing
8 the minor to be delinquent. The court shall inform the minor of the reasons alleged
9 to constitute probable cause and the reasons alleged to authorize the minor's detention.
10 The minor is entitled to counsel. The court shall give the minor's foster parent the
11 opportunity to be heard at the hearing.

12 * Sec. 9. AS 47.12.300(e) is amended to read:

13 (e) The court's official records prepared under this chapter and not made public
14 under this section are confidential and may be inspected only with the court's
15 permission and only by persons having a legitimate interest in them. A foster parent
16 is considered to have a legitimate interest in those portions of the court's official
17 records relating to a child who is already placed with the foster parent or who is
18 recommended for placement with the foster parent. A person with a legitimate
19 interest in the inspection of a confidential record maintained by the court also includes
20 a victim who suffered physical injury or whose real or personal property was damaged
21 as a result of an offense that was the basis of an adjudication or modification of
22 disposition. If the victim knows the identity of the minor, identifies the minor or the
23 offense to the court, and certifies that the information is being sought to consider or
24 support a civil action against the minor or against the minor's parents or guardian
25 under AS 34.50.020, the court shall, subject to AS 12.61.110 and 12.61.140, allow the
26 victim to inspect and use the following records and information in connection with the
27 civil action:

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

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

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

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

6 * Sec. 10. COURT RULE CHANGE. (a) AS 47.12.050, 47.12.060, 47.12.110, 47.12.120,
7 and 47.12.250, amended by secs. 2 - 8 of this Act, have the effect of amending Rules 3, 7,
8 10, 12, 21, 23, and 25, Alaska Delinquency Rules, by requiring certain information about
9 delinquency hearings to be sent to foster parents and by providing that foster parents are
10 entitled to testify at the hearings.

11 (b) Sections 2 - 8 of this Act take effect only if this section receives the two-thirds
12 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

13 * Sec. 11. APPLICABILITY. The changes made by secs. 2 - 8 of this Act apply to
14 hearings described in this Act for which notice has not been sent by the court or the
15 Department of Health and Social Services before the effective date of this Act.