

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1265

Amending the CINA and  
Delinquency Rules to reflect  
reorganization of statutes  
governing children's  
proceedings.

IT IS ORDERED:

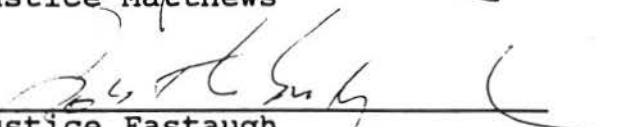
The Child in Need of Aid Rules and the Delinquency Rules are amended as shown in the attachment to this order. These changes reflect the reorganization and renumbering of the statutes governing child in need of aid and juvenile delinquency proceedings. See chapter 59 SLA 1996.


DATED: May 1, 1997

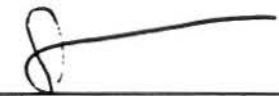
EFFECTIVE DATE: July 15, 1997

  
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Chief Justice Compton

  
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Justice Matthews

  
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Justice Eastaugh

  
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Justice Fabe

  
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Justice Bryner

## Child In Need of Aid Rules

### PART I. GENERAL PROVISIONS

#### Rule 1. ~~Title—Scope—Construction—Situations Not Covered by the Rules.~~

(a) **Title.** These rules will be known and cited as the Child in Need of Aid Rules or the CINA Rules.

(b) **Scope.** These rules govern practice and procedure in the trial courts in all phases of child in need of aid proceedings brought under AS 47.10.010(a).

(c) **Construction.** These rules will be construed and applied to promote fairness; accurate fact-finding; the expeditious determination of children's matters; and the best interests of the child, including individualized care and treatment in the least restrictive placement, and the preservation of family life.

(d) **Legal Effect of Rules.** These rules are promulgated pursuant to Alaska constitutional authority granting rulemaking power to the Alaska supreme court. To the extent that the rules are inconsistent with a procedural provision of any Alaska statute not enacted for the specific purpose of changing a rule, these rules supersede the statute to the extent of the inconsistency.

(e) **Civil Rules Applicable.** Civil Rules 3(b) — (g), 4, 5, 6, 10, 11, 15, 42, 45(a) — (f), 46, 53, 59, 60, 61, 63, 76, 77, 81, and 90 apply to child in need of aid proceedings except to the extent that any provisions of these civil rules conflict with the Child in Need of Aid Rules.

(f) **Situations Not Covered by These Rules.** Where no specific procedure is prescribed by these rules, the court may proceed in any lawful manner, including application of the Civil Rules, applicable statutes, the Alaska and United States Constitutions or the common law. Such a procedure may not be inconsistent with these rules and may not unduly delay or otherwise interfere with the unique character and purpose of child in need of aid proceedings.

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#### Rule 7. ~~Petition for Adjudication—Petition for Temporary Custody—Summons.~~

(a) **Petition.** Formal proceedings may be commenced by the filing of either a petition for adjudication or a petition for temporary custody. Either petition must be verified and must contain a statement of facts which alleges that the child is a child in need of aid under AS 47.10.010(a). If the child is believed to be an Indian child, the petition must so state and must

state, if known, the Indian child's tribe. If the proceeding was commenced by a petition for temporary custody, a petition for adjudication must be filed within a reasonable time before an adjudication hearing is held.

(b) **Notice of Hearing.** The Department shall provide a copy of the petition, as well as actual notice of the time and place of the initial hearing and of the parties' right to counsel, to the parents, guardian and Indian custodian if these parties can be found after diligent efforts. If an Indian child is taken into emergency custody, the Department shall make reasonable efforts to ascertain and provide actual notice to the child's tribe before the temporary custody hearing.

(c) **Summons.** The court shall issue a summons to be served with the petition on the child, parents, guardian and guardian ad litem. If the summons and petition are not contained in one document, the petition must be attached to and incorporated by reference into the summons. The summons must contain a statement advising the parties of their right to counsel.

(d) **Service of Petition and Summons.** The petition and summons must be served pursuant to Civil Rule 4 or in any other manner in which the court directs. The child's summons must be served on the child's guardian ad litem, attorney or social worker. This person must deliver the summons to the child if the child is of an appropriate age. The court may appoint employees of the Department or any other competent person to serve the summons and petition. Inability to obtain service on any party does not deprive the court of jurisdiction.

(e) **Notice in Cases Involving an Indian Child.**

(1) If there is reason to believe that the child is an Indian child, the Department shall give notice to the child's parents, Indian custodian, and to any tribe that may be the child's tribe, of their rights under the Indian Child Welfare Act. This notice must be personally served or sent by certified mail with return receipt requested. If the identity or location of the parents or Indian custodian or tribe cannot be determined, notice that would otherwise have been sent to the missing persons or tribe must be given to the appropriate area office of the Bureau of Indian Affairs.

(2) The notice of rights under the Indian Child Welfare Act must contain the following information:

(A) The name of the Indian child.

(B) The child's tribal affiliation, if known. If notice is being sent to more than one tribe, a statement of all tribes being notified must be included.

(C) A copy of the petition.

(D) The location, mailing address, and telephone number of the court, and the time and place of the next hearing, if known.

(E) A statement of the right of the Indian custodian and the tribe to intervene in the proceeding.

(F) A statement that if the parents are unable to afford counsel, counsel will be appointed to represent them.

(G) A statement of the rights of the parents, Indian custodian or the tribe to have, on request, up to 30 days to prepare for the adjudication hearing.

(H) A statement of the potential legal consequences of an adjudication on the rights of the parents or Indian custodian.

(I) A statement that child custody proceedings are conducted on a confidential basis and that tribal officials are required to keep confidential the information contained in the notice and not reveal it to anyone who does not need the information in order to exercise the tribe's rights.

(f) **Dismissal.** The court may dismiss a petition at any time based on a finding of good cause consistent with the welfare of the child and the family.

(g) **Amendment.** A petition may be amended by leave of the court and with reasonable notice on all parties at any time before the adjudication order. Amendment with appropriate continuances will be permitted to promote the interests of justice and the welfare of the child and the family.

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**Rule 10. Temporary Custody Hearing.**

(a) **Time of Hearing.** At the request of the petitioner, the court shall schedule a temporary custody hearing:

(1) within 48 hours, including weekends and holidays, of when the court is notified of emergency custody taken pursuant to CINA Rule 6(a) or (b); or

(2) within a reasonable time following a petition for temporary custody or adjudication when emergency custody has not been taken.

(b) **Conduct of Hearing.**

(1) **Opening address.** The court shall determine whether all parties have received copies of the petition and understand its contents and shall advise the parties of the nature of the

proceedings and possible disposition. In addition, the court shall advise the parties of the possibility of a temporary custody or supervision order pending adjudication and final deposition, and that the parents may be liable for child support payments if the child is placed outside the home at any time during the proceeding.

(2) *Advice of rights.* The court shall advise the parties of their right to counsel, including the right to court-appointed counsel if applicable; the child's right to a guardian ad litem; their right to a hearing at which the state is required to present evidence to prove the allegations in its petition; their right to confront and cross-examine witnesses at such a hearing, to present witnesses on their own behalf, and to compulsory process to compel these witnesses to attend; and their privilege against self-incrimination. In cases involving an Indian child, the court shall also advise the parties of an Indian custodian's or tribe's right to intervene.

(3) In cases involving an Indian child, the Department must present evidence which demonstrates its efforts to comply with the placement requirements of 25 U.S.C. Section 1915(b).

(4) The court may admit hearsay evidence which would be otherwise inadmissible under the Evidence Rules if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

**(c) Findings of Fact and Order.**

(1) The court shall order the child returned to the home and dismiss the petition if the court does not find probable cause to believe the child is a child in need of aid under the provisions of AS 47.10.010(a).

(2) The court shall order the child placed in the temporary custody of the Department or order the child returned to the home with supervision by the Department if the court makes a finding that there is probable cause to believe that the child is a child in need of aid.

(3) The court may grant the Department authority to remove the child from the child's home only if the court makes the following additional findings:

(A) in the case of a non-Indian child, that continued placement in the home is contrary to the welfare of the child; and

(B) in cases involving an Indian child, either: (i) that removal from the parent's or Indian custodian's care is necessary to prevent imminent danger of physical harm or damage to the child; or (ii) that there is clear and convincing evidence, including the testimony of qualified expert witnesses, that the child is likely

to suffer physical or emotional damage if left in the custody of the parent or Indian custodian.

(4) In any case in which the Department has removed the child from the home pursuant to CINA Rule 6, or in which the court has authorized the Department to remove the child pursuant to the preceding subparagraph, the court shall make findings:

(A) as to whether, under 42 U.S.C. Section 671(a)(15), reasonable efforts under the circumstances of each case were made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return to the home; and

(B) in cases involving an Indian child, concerning the Department's efforts to comply with the placement requirements of 25 U.S.C. Section 1915(b).

(d) **Review.**

(1) The court must hold a hearing to review an order for temporary custody or supervision not more than 90 days from the date of the original hearing or any subsequent review hearing.

(2) If circumstances relating to the child's placement change at any time between the temporary custody hearing and a final disposition, any party may request that the court review the initial temporary custody or supervision order. In cases involving an Indian child, any party may move the court to return the child to the home of the parents or Indian custodian. The court shall return the Indian child to the home if the movant shows by a preponderance of the evidence that removal is no longer necessary to prevent imminent physical harm or damage.

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## Delinquency Rules

### PART I. GENERAL PROVISIONS

#### **Rule 1. ~~Title—Scope—Construction—Situations Not Covered by the Rules.~~**

(a) **Title.** These rules will be known and cited as the Delinquency Rules.

(b) **Scope.** These rules govern practice and procedure in the trial courts in all phases of delinquency proceedings brought under AS 47.12.020.

(c) **Construction.** These rules will be construed and applied to promote fairness; accurate fact-finding; expeditious determination of juvenile matters; the best interests of the juvenile, including individualized care and treatment in the least restrictive placement, and the preservation of the juvenile's family life; and protection of the public.

(d) **Legal Effect of Rules.** These rules are promulgated pursuant to Alaska constitutional authority granting rulemaking power to the Alaska supreme court. To the extent that the rules are inconsistent with a procedural provision of any Alaska statute not enacted for the specific purpose of changing a rule, these rules supersede the statute to the extent of the inconsistency.

(e) **Criminal Rules Applicable.** Criminal Rules 17, 18 — 20, 24, 25, 27 — 31, 36, 40, 42, 43(a), 44, 46, 47, 50 and 53 apply to delinquency proceedings except to the extent that any provisions of these criminal rules conflict with the Delinquency Rules.

(f) **Situations Not Covered by These Rules.** If these rules do not prescribe a specific procedure, the court may proceed in any lawful manner, including application of the Civil or Criminal Rules, applicable statutes, the Alaska and United States Constitutions or the common law. Such a procedure may not be inconsistent with these rules and may not unduly delay or otherwise interfere with the unique character and purpose of delinquency proceedings.

#### Cross References

**CROSS REFERENCES:** AS 22.10.020; AS 22.15.100(8); AS 47.05.060; AS 47.12.140; Alaska Constitution, Art. IV.

#### **Rule 2. Definitions.**

(a) "Adjudication Hearing" is the proceeding, analogous to the trial in a criminal case, in which the court or a jury determines whether the juvenile is a delinquent minor as a result

of the minor's violation of a criminal law of the state or a municipality.

(b) "Admit Plea" is a plea, analogous to a guilty plea in a criminal case, by which the juvenile admits committing acts constituting delinquent conduct under AS 47.12.020.

(c) "Arraignment on Petition" is a proceeding, analogous to an arraignment in a criminal case, in which the court advises the juvenile and other parties of their rights and asks the juvenile to enter a plea.

(d) "The Department" means the Department of Health and Social Services of the State of Alaska.

(e) "Deny Plea" is a plea, analogous to a not guilty plea in a criminal case, by which the juvenile requires the state to prove the allegations of the petition for adjudication in the adjudication hearing.

(f) "Detention" means holding in a locked or secure facility.

(g) "Disposition Hearing" is a proceeding, analogous to a sentencing hearing in a criminal case, in which the court determines the appropriate disposition of a juvenile who has been adjudicated a delinquent.

(h) "Guardian" means a legally appointed guardian of the person of the minor.

(i) "Guardian ad litem" means a person appointed by the court to represent the best interests of the juvenile in the delinquency proceeding as distinguished from a guardian of the person as defined in paragraph (h).

(j) "Intake Officer" means a person assigned by the Department to perform intake functions as defined by these rules.

(k) "Juvenile" means a person under eighteen years of age at the time of the alleged delinquent conduct who remains subject to the jurisdiction of the court.

(l) "Minor" means a person under eighteen years of age, as defined by AS 25.20.010.

(m) "Parent" means a natural or adoptive parent.

(n) "Party" means the juvenile, the guardian ad litem, the juvenile's parents or guardian, and the Department.

(o) "Petition for Adjudication" is a document which formally begins a delinquency proceeding and which brings the juvenile under the jurisdiction of the court.



(p) "Probation" means releasing the juvenile into the community subject to conditions set by the court and under the supervision of a probation officer.

(q) "Temporary Detention Hearing" is a proceeding in which the court determines the conditions concerning placement of the juvenile pending the adjudication and disposition hearings.

#### **Cross References**

**CROSS REFERENCES:** AS 47.12.120(b), AS 47.12.150, AS 47.12.220, AS 47.20.290, AS 25.20.010.

#### **Rule 3. Hearings.**

(a) **Notice.** Notice of each hearing must be given to all parties within a reasonable time before the hearing.

(b) **Presence of Juvenile and Other Parties.** The presence of the juvenile is required unless the juvenile:

(1) waives the right to be present and the juvenile's presence is excused by the court; or

(2) engages in conduct which justifies exclusion from the courtroom.

The presence of the parent or guardian is preferred, but not required unless the court so orders.

(c) **General Public Excluded.** Hearings are not open to the public unless requested by the juvenile. However, the court may, after due consideration for the welfare of the juvenile and the interests of the public, admit specific individuals to a hearing, and shall admit victims of the juvenile's offense to hearings as required by AS 47.12.110(b).

(d) **Exclusion of Witnesses.** Witnesses may be excluded from a hearing pursuant to Evidence Rule 615.

(e) **Telephonic and Televised Participation.**

(1) The juvenile has the right to be physically present in court. However, the court has discretion to allow telephonic participation by other parties. The juvenile's waiver of the right to be physically present may be obtained orally on the record or in writing.

(2) The court may allow telephonic participation of witnesses only upon stipulation of the juvenile and the Department, except that the court may allow telephonic participation of witnesses without the consent of the parties at disposition, disposition review or temporary detention hearings.

(3) In those court locations in which a television system has been approved by the supreme court and has been installed, juveniles in custody may appear by way of television with the consent of the juvenile and with the approval of the court. Appearance by television shall not be allowed at adjudication trials or at any hearings in which sworn testimony is to be presented.

(f) **Testimony Under Oath.** All testimony must be given under oath or affirmation as required by Evidence Rule 603.

(g) **Representation by Non-Attorney.** A guardian ad litem need not be represented by an attorney unless the court, for good cause, requires representation by an attorney.

#### **Cross References**

**CROSS REFERENCE:** AS 47.12.110.

### **PART II. MASTERS, MAGISTRATES, DISTRICT COURT JUDGES**

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### **PART III. INTAKE, COMMENCEMENT OF PROCEEDINGS**

#### **Rule 6. Intake.**

(a) **Responsibility for Investigation.** If a law enforcement agency or the court is informed of facts which would bring a juvenile within the court's jurisdiction under AS 47.12.020, the agency or court shall refer the matter to the Department for preliminary investigation to determine if any action, formal or informal, is appropriate.

(b) **Intake Interview.** The intake officer may arrange to interview the juvenile, the juvenile's parents and guardian, and any other person having relevant information. The intake officer must inform the juvenile, parents and guardian of any interview and that their attendance is voluntary.

(c) **Parties Advised of Rights.** At or prior to the interview, the juvenile, parents and guardian, if present, must be advised that any statements may be used against the juvenile and of the following rights of the juvenile: to have a parent or guardian present at the interview; to remain silent; to have retained or appointed counsel at all stages of the proceedings including the intake interview; if a petition is filed, to have an adjudication hearing before a judge or jury with compulsory process to compel the attendance of witnesses; and the opportunity to confront and cross-examine witnesses.

(d) **Informal Supervision.** If, after investigation, the intake officer determines that an informal disposition would best serve the interests of the juvenile and the public, the officer may refrain from filing a petition, and may either counsel the juvenile, parents and guardian, or may establish a program of informal supervision, for a duration not in excess of six months. The juvenile and the juvenile's parents or guardian must consent to any informal disposition. An informal supervision agreement may not be enforced by detention or removal from the home by the Department. Upon successful completion of informal supervision, the Department may not file a petition based on the actions which led to informal supervision.

(e) **Formal Procedure.** If the intake officer determines that informal supervision is not in the best interests of the juvenile or the public, the officer may file a petition for adjudication.

(f) **Authority of Court.** Nothing in this rule precludes the court from appointing persons other than the intake officer to make investigations, file reports or make recommendations with respect to the formal or informal handling of a delinquency matter.

#### **Cross References**

**CROSS REFERENCE:** AS 47.12.040(a).

#### **Rule 7. Emergency Detention or Placement.**

##### **(a) Arrest.**

(1) A juvenile may be arrested for the commission of a delinquent act 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.

(2) A peace officer or probation officer may, without a warrant, arrest a juvenile if probable cause exists to believe that the juvenile has violated conditions of release or probation.

(3) In conformity with the Interstate Compact on Juveniles, a peace officer may, without a requisition, arrest a juvenile based upon reasonable information that the juvenile is a delinquent and has escaped from an institution or absconded from probation, parole or the jurisdiction of a court.

(b) **Detention, Placement, Notification.** If a juvenile is arrested, the juvenile must be taken immediately to a detention facility or placement facility designated by the Department or released pursuant to paragraph (c) of this rule. The arresting officer shall immediately notify the parents or guardian of the arrest and detention or placement and shall notify the court and Department immediately, if possible, and in no event more than 12 hours later. The arresting officer shall make and retain a written record of the notification. If the juvenile is arrested under

subparagraph (a)(3) of this rule, prompt notification must also be given to the Department of Law.

(c) **Release.** A peace officer or probation officer may, before taking the juvenile arrested under subparagraphs (a)(1) or (2) of this rule to a detention or other placement facility, release the juvenile to the juvenile's parents or guardian if detention or placement is not necessary to protect the juvenile or others, and the juvenile will be available for court hearings. The Department may direct that a juvenile arrested under paragraph (a) of this rule be released from detention before the temporary detention hearing.

#### **Cross References**

**CROSS REFERENCES:** AS 47.12.200; AS 47.12.020; AS 12.25; AS 47.12.250(a); AS 33.05.070(a); AS 47.15; AS 47.12.240; AS 47.12.250; AS 47.14.990(6) and (7).

#### **Rule 8. Petition for Adjudication, Summons.**

(a) **Petition.** Formal proceedings are commenced by the Department filing a verified petition for adjudication which contains a statement of facts which brings the juvenile within the jurisdiction of the court under AS 47.12.020. The petition may be verified on information and belief, and must establish probable cause to believe that an offense has been committed and that the minor has committed it.

(b) **Summons.** Upon the filing of a petition for adjudication, the court shall set a time for the arraignment on petition and shall, if the juvenile is not in custody, issue a summons to be served with the petition compelling the attendance of the juvenile. The court may issue a summons compelling the attendance of the juvenile's parents or guardian at the hearing. If the summons and petition are not contained in one document, the petition must be attached to and incorporated by reference into the summons. The summons must contain a statement advising the parties of their right to counsel.

(c) **Service.** The petition must be served on the juvenile and the juvenile's parents or guardian. The petition and the summons, if issued, must be served on the juvenile pursuant to Criminal Rule 4(c), except that the court may appoint a probation officer or other competent person to serve the summons and petition. The parents or guardian may be served in the same manner as the juvenile or by any method of service allowed under Civil Rule 4, including registered or certified mail, or specified by the court. Inability to obtain service on a parent or guardian does not deprive the court of jurisdiction.

(d) **Dismissal.** The court may dismiss a petition at any time based on a finding of good cause consistent with the welfare of the juvenile and the protection of the public.

(e) **Amendment.** A petition may be amended with leave of the court at any time before adjudication. Amendment will be freely permitted to promote the interests of justice, the welfare of the juvenile and the protection of the public.

#### **Cross References**

**CROSS REFERENCES:** AS 47.12.040; AS 47.12.050; AS 47.12.070; AS 47.12.250(b).

### **PART IV. DISCOVERY, EVIDENCE, PROOF**

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#### **Rule 10. Evidence.**

(a) **Applicability of Evidence Rules.** The Alaska Rules of Evidence apply to delinquency proceedings to the same extent that they apply to criminal proceedings, except as otherwise provided by these rules.

(b) **Disposition and Review of Disposition Orders.** The parties may submit information through reports, statements, affidavits and testimony at the disposition hearing and in review of a disposition order. Hearsay which is not otherwise admissible under a recognized exception to the hearsay rule may be admissible at disposition and in review of a disposition order if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(c) **Temporary Detention Hearing.** Hearsay which is not otherwise admissible under the Evidence Rules is not admissible to prove probable cause at a temporary detention hearing. However, otherwise inadmissible hearsay may be admitted under the standard stated in paragraph (b) of this rule on the issue of whether the minor should be removed from the home or detained.

#### **Cross References**

**CROSS REFERENCES:** AS 47.17.060, AS 47.12.250(c).

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### **PART V. PRELIMINARY PROCEEDINGS**

#### **Rule 12. Temporary Detention Hearing.**

(a) **Hearing Required.** A juvenile detained under AS 47.12.250 must be taken before the court for a temporary detention hearing. The hearing must be held as soon as is practicable, but in no event

later than 48 hours after notification to the court, including weekends and holidays.

(b) **Detention or Placement After Hearing.** A juvenile may not be detained or placed outside the home of a parent or guardian unless the court makes the following findings:

(1) that probable cause exists to believe that either (a) the juvenile has committed a delinquent act as alleged in a petition, or (b) after such a probable cause finding has been made at a prior hearing, the juvenile has violated a release condition or probation condition imposed by the court; and

(2) that detention or placement outside the home of a parent or guardian is necessary either (a) to protect the juvenile or others, or (b) to ensure the juvenile's appearance at subsequent court hearings. The court may not order detention unless there is no less restrictive alternative which would protect the juvenile and the public or ensure the juvenile's appearance at subsequent hearings.

(c) **Release from Detention or Placement.** The juvenile must be released to a parent, guardian, relative or some other responsible person upon such reasonable conditions as the court may set if insufficient reason exists to warrant detention or placement outside the home under paragraph (b) of this rule.

(d) **Termination of Detention or Placement.** A juvenile who has been detained for a period of 30 days, but who has not been adjudicated a delinquent, will be released unless, at or prior to the expiration of the 30 days, either:

(1) the court, after a hearing, orders continued detention and makes findings stating the reasons supporting the order; or

(2) the minor and the minor's attorney stipulate with the Department to continued detention.

If the juvenile is not in the same community as the court, the juvenile's participation at the hearing to determine continued detention may be by telephone. An order for placement outside the home pending adjudication or disposition must specify its duration.

#### **Cross References**

**CROSS REFERENCES:** AS 47.12.080; AS 47.12.090(a); AS 47.12.240; AS 47.12.250(c) & (d).

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**Rule 14. Arraignment on Petition.**

(a) **Time.** The arraignment on petition may be held at the same time as the temporary detention hearing or, with notice to the parties, within a reasonable time after the filing of the petition.

(b) **Order of Proceedings.**

(1) **Opening Address.** The court shall ensure that all parties have received copies of the petition and understand its contents. The court shall advise the parties of the nature of the proceedings and the possible disposition that may occur. In addition, the court shall advise the parties of the possibility of temporary detention or placement outside the home pending final disposition, and that the parents may be liable for child support payments if the child is placed outside the home at any time during the proceeding.

(2) **Advice of Rights.** The court shall advise the parties of their right to counsel and their privilege against self-incrimination. The court shall advise the juvenile of the right to an adjudication hearing before a judge or jury, the right to a public hearing, the right to call witnesses and to issue compulsory process to compel their attendance, the right to confront and cross-examine witnesses called by other parties, and the right to challenge the judge or master assigned to the case pursuant to Delinquency Rule 4(c). If the minor is represented by counsel, the opening address and advice of rights may be waived.

(3) **Motions, Discovery, Hearing Date.** The court may set a time certain for the adjudication hearing and the date by which discovery and motion matters will close, or may refer the case to calendaring or court administration for trial setting. Priority on the trial calendar will be given to adjudication hearings.

(4) **Request for Admissions or Denial.** If it appears to the court that the juvenile adequately understands the juvenile's rights and that the requirements of AS 47.12.090(a) have been met, the court may inquire whether the juvenile admits or denies all or part of the allegations of the petition and, if so, accept the plea. Otherwise, the court shall set a date for entry of a plea. Except as stated in this paragraph, the entry of pleas is governed by Criminal Rule 11.

(c) **Temporary Detention, Placement.** The court may order the juvenile committed to the Department for detention or placement as provided by Delinquency Rule 12(b) at the arraignment on petition.

**Rule 15. Guardians Ad Litem.**

(a) **When Appointed.** The court may appoint a guardian ad litem to represent the best interests of the juvenile in a delinquency proceeding.

(b) **Appointment.** Guardians ad litem will be appointed in accord with the provisions of AS 44.21.410 and Administrative Rule

12. The court shall specify the duties of the guardian ad litem and the duration of the appointment in its order of appointment.

(c) **Service.** A guardian ad litem is a party and must be served with pleadings and notices according to the Civil Rules. Service on the guardian ad litem does not constitute service on the juvenile.

#### **Cross References**

**CROSS REFERENCES:** AS 25.24.310; AS 47.12.090.

#### **Rule 16. Right to Counsel.**

(a) **Notice of Right to Counsel.** The court shall inform the child, parent or guardian at the first hearing at which they are present of their respective rights to be represented by counsel at all subsequent stages of the proceedings.

(b) **Appointed Counsel.** The court shall appoint counsel pursuant to Criminal Rule 39 and Administrative Rule 12 for a juvenile not represented by counsel of choice. The court may order a parent to deposit an appropriate sum consistent with the parent's financial ability in the registry of the court to pay for the appointment. At the disposition phase of a delinquency case, the court shall, if requested, appoint counsel pursuant to Administrative Rule 12 and AS 44.21.410(a)(4) for a parent or guardian who is financially unable to employ counsel if the court concludes that custody is at issue, the interests of the parent or guardian and the child are in conflict, and the interests of the parent or guardian are not adequately protected.

(c) **Waiver of Right to Counsel.** The court shall accept a valid waiver of the right to counsel by a juvenile if the requirements of AS 47.12.090(a) are met.

#### **Cross References**

**CROSS REFERENCES:** AS 25.24.310; AS 47.12.090; AS 47.12.250(c).

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#### **PART VI. WAIVER OF JUVENILE JURISDICTION**

#### **Rule 20. Waiver of Juvenile Jurisdiction.**

(a) **Persons Subject to Trial as Adults.** A person may not be tried as an adult for a delinquent act committed while the person was under the age of 18 unless the court has waived juvenile jurisdiction.



(b) **Waiver Petition.** The Department or the juvenile may file a petition requesting the court to waive juvenile jurisdiction of a person alleged to have committed a delinquent act. Waiver may not be requested for delinquent conduct which has been the basis of an adjudication of delinquency.

(c) **Waiver Hearing.** A waiver hearing will be given priority on the court calendar. The petitioner shall serve notice of the waiver hearing upon the parties. The notice, unless the hearing is requested by the juvenile, must specify the possible consequences of a waiver hearing. The conduct of a waiver hearing is governed by Criminal Rule 5.1(a) — (e).

(d) **Waiver Order.**

(1) **Requirements.** An order waiving juvenile jurisdiction must be accompanied by written findings of fact stating that:

(A) there is probable cause to believe the juvenile committed the act for which waiver is sought; and

(B) the juvenile is not amenable to treatment based on the factors stated in AS 47.12.100(b).

(2) **Effect.** Upon issuance of an order waiving juvenile jurisdiction, the juvenile proceeding will be closed and the waived juvenile may be prosecuted as an adult for the delinquent conduct for which waiver was sought.

(e) **Custody Pending Criminal Proceedings.** The court may order that a juvenile who has been waived for trial as an adult be held in custody pending arraignment on criminal proceedings.

#### **Cross References**

**CROSS REFERENCE:** AS 47.12.100.

### **PART VII. ADJUDICATION**

#### **Rule 21. Adjudication Hearing.**

(a) **Nature of Proceeding.** The adjudication hearing is a trial on the merits of the petition for adjudication. The court will decide the merits of the case unless the juvenile requests a trial by jury. The juvenile must request a jury trial within 10 days of the arraignment on petition or when entering a deny plea, whichever is later. The adjudication hearing is not open to the public unless requested by the juvenile. The department may not request an adjudication by jury or an adjudication hearing open to the public.

(b) **Juries.** The jury will consist of twelve persons unless at any time prior to the verdict the parties stipulate in writing, with the approval of the court, to any number of jurors less than twelve. The verdict of the jury must be unanimous.

(c) **Venue.** Venue for an adjudication by jury is determined by the law of venue applicable to trials by jury in criminal proceedings.

(d) **Judgment.**

(1) At the conclusion of the adjudication hearing, the court shall enter a judgment that the juvenile is not delinquent or, if the court or the jury finds that the juvenile committed one or more delinquent acts alleged in the petition, either:

(A) enter a judgment that the minor is delinquent; or

(B) issue an order that the matter be held in abeyance for a stated period of time not to exceed one year. The court may dismiss the case at the expiration of this period of time if dismissal will promote the interests of the public and the welfare of the child.

(2) In a case tried without a jury, the court shall make a general finding, but on request shall find facts specially. If an opinion or memorandum of decision is filed, the findings of fact may appear therein.

(e) **Failure of Proof.** A juvenile who is found not to be delinquent must be released from custody.

(f) **Order Pending Disposition.** If the court finds a juvenile to be delinquent, the court may order the juvenile placed or detained pending disposition if the court finds that:

(1) detention or placement is necessary to protect the juvenile or others; or

(2) detention or placement is necessary to ensure the juvenile's appearance at subsequent court hearings.

**Cross References**

**CROSS REFERENCES:** AS 47.12.120(a).

**PART VIII. DISPOSITION**

**Rule 22. Reports in Aid of Disposition.**

(a) **Predisposition Report.**

(1) The predisposition report filed by the Department may include information concerning the following: the juvenile's family background, educational history, past adjudications, verified past incidents of delinquent behavior; the juvenile's medical, psychological and psychiatric history; and a description of the delinquent act and the juvenile's attitude about the act. The report must contain a recommendation regarding the recommended form of treatment that would be in the best interests of the juvenile

and the public, and the victim impact statement required by AS 47.12.130.

(2) The predisposition report must be made available to the persons entitled to it at least ten days before the disposition hearing unless the parties agree to a different period and this agreement is approved by the court. A predisposition report which is submitted to the court prior to the adjudication hearing must be kept sealed until the adjudication hearing is completed.

(b) **Supplementary Material.** The court may order mental and physical examinations of the juvenile, studies of the home of any person with whom the juvenile might be placed by the court, and may provide for any other reports to aid in disposition. Parties may prepare and submit their own reports in aid of disposition. All such materials must be made available to the persons entitled to receive them at a reasonable time prior to disposition.

(c) **Disclosure of Reports.** Unless otherwise ordered, copies of predisposition reports and supplementary materials must be given to all parties. Any party may move to withhold all or part of a report from the juvenile or the juvenile's parents or guardian if disclosure would be likely to cause serious psychological harm to the juvenile or the family relationship. The court shall inspect the reports in camera prior to entering such a limitation on disclosure and a limitation does not bar an attorney's access to the material withheld. The court may enter orders prohibiting release of the material by the attorney to his or her client.

#### **Cross References**

**CROSS REFERENCES:** AS 47.12.130.

#### **Rule 23. Disposition.**

(a) **Nature and Timing of the Hearing.** The purpose of a disposition hearing is to determine the appropriate disposition of a juvenile who has been adjudicated a delinquent. The disposition hearing may not be held before adequate information is available upon which to enter an informed disposition order. If the disposition is not held immediately following the adjudication, the court shall set a time for the disposition hearing, which will be held without unreasonable delay, and shall order a predisposition report and other studies, examinations or reports under Delinquency Rule 22 which are necessary for an informed disposition. The juvenile, with approval of the court, may waive the preparation and submission of a predisposition report.

(b) **Statements.** The court shall allow the parties an opportunity to make a statement and to offer evidence in aid of disposition before entering a disposition order.

(c) **Findings.** A disposition order must be accompanied by findings of fact supporting the disposition ordered.

(d) **Order.** In its disposition order, the court shall order the least restrictive alternative disposition under AS 47.12.120(b) and AS 47.12.140 that addresses the juvenile's treatment needs and protects the public.

(e) **Release by Department.** The Department shall notify the court in writing when the Department releases a juvenile from institutionalization without court order.

#### **Rule 24. Probation Revocation.**

(a) **Revocation Petition.** The Department may petition the court to revoke the probation of a juvenile. The petition must be supported by an affidavit stating the particulars of the alleged violations.

(b) **Detention Pending Hearing.** If the juvenile has been arrested, the provisions of Delinquency Rule 12 apply to continued detention or placement pending a hearing on the petition.

(c) **Hearing.** The Department has the burden of proving by a preponderance of the evidence that the juvenile violated the conditions of probation. At the hearing, the juvenile has the right to appointed counsel, the right against self-incrimination, the right to a public hearing, the right to call witnesses and to issue compulsory process to compel their attendance, the right to confront and examine witnesses called by other parties, and the right to challenge the judge or master assigned to the case pursuant to Delinquency Rule 4(c). However, the juvenile does not have a right to a jury trial.

(d) **Disposition.** If the juvenile is found to have violated the conditions of probation, the court may extend, enlarge or modify its disposition order, taking into account the best interests of the juvenile and the public, and the ability of the Department to care for and protect the juvenile's best interests. The provisions of Delinquency Rule 23 apply to this disposition hearing.

#### **Cross References**

**CROSS REFERENCES:** AS 47.12.120(b)(1)-(3).

#### **Rule 25. Review and Extension of Disposition Orders.**

(a) **Annual Review.** The court shall review its disposition order annually. The review will take place without a hearing on the basis of written reports and any statements or affidavits which accompany the reports unless a hearing is requested by a party or ordered by the court on its own motion. The Department shall serve the parties with copies of the reports, statements and affidavits submitted to the court for annual review together with a notice of the parties' right to submit statements, affidavits or other

evidence to the court and a notice of their right to request a hearing within 20 days of service.

(b) **Review Upon Application.** A party may apply for review of a disposition order. The court shall order a hearing to review the disposition order upon a showing of good cause or on its own motion.

(c) **Extension of Custody or Supervision.**

(1) *Petition.* The Department may file a petition for an extension of custody or supervision no later than thirty days before the expiration of the existing disposition order. The Department shall notice a hearing on the petition. The juvenile must be advised of his or her right to an attorney at the extension hearing.

(2) *Report.* The Department shall submit a written report stating the basis for the requested extension and make it available to all persons entitled to receive it ten days prior to the extension hearing, unless a different time period is ordered. The report must address the juvenile's progress in treatment and the need for further treatment or services.

(3) *Status Pending Decision.* If the court cannot reach a decision on the extension petition before expiration of the existing disposition order, the court may extend custody or supervision of the juvenile for a reasonable time pending a decision on the extension petition.

(4) *Extension Past Age 19.* The court may not extend custody or supervision of the juvenile past age 19 unless the juvenile consents to the extension in writing or orally on the record.

**Cross References**

**CROSS REFERENCES:** AS 47.12.120(b) & (f); AS 47.12.140; AS 47.12.160.

**PART IX. APPEAL AND PETITION FOR REVIEW**

**Rule 26. Appeal and Petition for Review in Appellate Courts.**

(a) **Grounds, Procedure.** An appeal of a final judgment or order, or a petition for review of an interlocutory order or decision, may be taken in accord with the provisions of the Appellate Rules pertaining to criminal proceedings.

(b) **Stay.** An order, judgment or decision of the superior court remains in effect pending appeal or review unless stayed by order of the superior court or the appellate courts. Neither bail nor an appellate bond is required in appellate proceedings concerning delinquency cases.

### **Cross References**

**CROSS REFERENCES:** AS 22.07.020(a)(3); AS 47.12.120(f).

### **PART X. COURT ADMINISTRATION OF JUVENILE RECORDS**

#### **Rule 27. Court Records—Confidentiality.**

The records of a juvenile proceeding are confidential. Information may not be released and access to the records may not be permitted except as authorized by statute or upon court order for good cause shown under conditions as the court may set, except that:

(a) the name of a juvenile and the juvenile's parents may be released to victims by the Department for the purpose of civil restitution proceedings; and

(b) a probation officer employed by the Alaska Department of Corrections may review delinquency proceedings records for the sole purpose of preparing a presentence report on the individual whose juvenile record is reviewed. The records may be used in the sentencing proceeding and attached to the probation officer's report;

(c) a prosecuting attorney may obtain a certified copy of an adjudication or disposition order entered in a juvenile proceeding based on a written request certifying that the prosecutor needs the order to establish the elements of a felony offense. The prosecutor may not use or disclose the order except for this purpose.

### **Cross References**

**CROSS REFERENCE:** AS 47.12.300.