

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 845

Adopting the Child in Need of
Aid Rules and the Delinquency
Rules

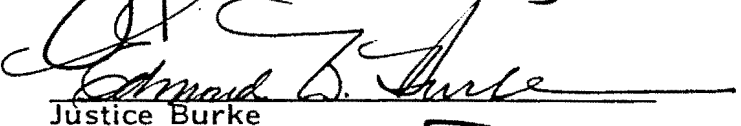
IT IS ORDERED:

The attached Child in Need of Aid Rules and Delinquency Rules are adopted to replace the Rules of Children's Procedure.

DATED: July 16, 1987

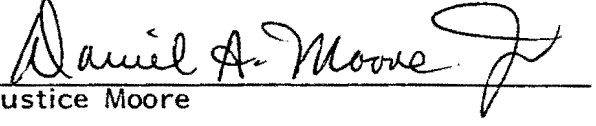
EFFECTIVE DATE: August 15, 1987


Chief Justice Rabinowitz


Justice Burke


Justice Matthews


Justice Compton


Justice Moore

NOTE: A copy of the Indian Child Welfare Act is appended to the Child in Need of Aid Rules.

Cross References from Delinquency and CINA Rules
to Prior Children's Rules

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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 47.10.010(a)(1).

(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, 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: AS 22.10.020; AS 22.15.100(8); AS 47.05.060; AS 47.10.082; Alaska Constitution, Art. IV, § 15.

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 47.10.010(a)(1).

(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: AS 47.10.080(b), AS 47.10.084,
AS 47.10.110, AS 47.10.290, 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.

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

(e) Telephonic 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.

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

CROSS REFERENCE: AS 47.10.070.

PART II - MASTERS, MAGISTRATES, DISTRICT COURT JUDGES

Rule 4. Appointment and Authority of Masters

(a) Appointment. The presiding judge may appoint a standing master to conduct any or all of the delinquency proceedings listed in subparagraph (b)(2). Appointments of standing masters must be reviewed annually. The presiding judge may appoint a special master to conduct a proceeding which is specified in the order of reference and is listed in subparagraph (b)(2).

(b) Authority, Order of Reference.

(1) An order of reference specifying the extent of the master's authority and the type of appointment must be entered in every case assigned to a master. The order of reference must be served on all parties.

(2) The following proceedings may be referred to a master:

(A) temporary detention and arraignment proceedings;

(B) interim hearings, including detention review, change of plea and pre-trial conferences;

(C) adjudication hearings and disposition hearings resulting from a contested adjudication, provided all parties stipulate to both hearings before the master;

(D) disposition following an admit plea, post-disposition review, probation revocation and extension of custody hearings.

(3) A master's report is not binding until approved by a superior court judge pursuant to Civil Rule 53(d) and paragraph (f) of this rule, except:

(A) a master may enter orders without further approval of the superior court pursuant to Civil Rule 53(b) and (c), and by paragraph (d) of this rule; and

(B) a master's order of detention or placement outside the home is effective pending superior court review.

(c) Objection to Reference to a Master. The prosecution and the defense are entitled as a matter of right to a change of one judge and one master pursuant to the procedures stated in Criminal Rule 25(d). In addition, a party may file an objection to a case or proceeding being referred to a master in the following manner:

(1) Timeliness. A party may file an objection no later than five days after receiving notice of the order of reference.

(2) Grounds for Objection. An objection to the assignment of a master to hear a probation revocation hearing or an extension of custody hearing under Delinquency Rules 24 and 25(c) will be granted as a matter of right. Any other objection must set forth sufficient grounds from which the court may determine whether good cause exists to remove the matter from the master's jurisdiction. Good cause may include involvement of (i) complex questions of law which require a decision by a superior court judge or (ii) questions requiring prompt resolution which would be seriously impaired by a reference to a master.

(d) Standing Master's Authority to Enter Orders. A standing master is authorized to take the following actions without further approval by a superior court judge:

- (1) issue an arrest warrant;
- (2) appoint counsel or a guardian ad litem for the juvenile;
- (3) order home studies, predisposition reports, and psychological or psychiatric evaluations;
- (4) set hearings and order continuances of hearings held before the master;
- (5) decide motions requesting expedited review pursuant to Civil Rule 77(i);
- (6) accept and approve stipulations, except that stipulated adjudications or dispositions must be reviewed by a superior court judge;
- (7) review and approve uncontested orders on annual review under Delinquency Rule 25(a).

(e) Master's Report, Recommendations. A master may issue a written report or oral findings on the record concerning an order or recommendation which must be approved by a superior court judge. The master shall advise the parties on the record of their right to file objections to any such report or recommendation pursuant to paragraph (f) of this rule.

(f) Objections to Master's Report, Recommendations.

(1) Objections, Reply, Oral Argument. Objections to a master's report or recommendation must be filed within 10 days of entry of the findings or service of the report unless the court requires objection to be filed earlier. In the case of a recommendation rendered orally on record where a party requests a cassette tape of the recommendation, the time period for objection runs from receipt of the tape. A reply to the objections must be filed within three days of service of the objections. The superior court

may permit oral argument, order the taking of further evidence, or grant a hearing de novo.

(2) Request for stay, immediate review. A party may request that a superior court judge stay a master's order issued under paragraph (d) pending review of the order.

(3) Review of Detention or Placement Outside the Home Order. A master's order for detention or placement outside the home which is not stayed must be reviewed by the superior court by the end of the next working day if a party so requests.

Rule 5. Authority of District Court Judges and Magistrates

(a) Emergency Situations. When a minor is in a condition or surrounding dangerous to the welfare of the minor or others which requires immediate action, and no superior court judge or authorized master is available, a district court judge or magistrate may order temporary detention of the minor or take other action which a superior court judge is authorized by law to take. The district court judge or magistrate must immediately notify the superior court of the facts concerning the child and expeditiously transfer the case file to the superior court.

(b) Review. A party may request a hearing before the superior court or authorized master to review any action taken by a district court judge or magistrate under this rule.

CROSS REFERENCES: AS 22.15.100.

PART III - 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 47.10.010(a)(1), 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 REFERENCE: AS 47.10.020(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, guardian and Department of the arrest and detention or placement, and 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: AS 47.10.095; AS 47.10.010(a)(1); AS 12.25; AS 47.10.140(a); AS 33.05.070(a); AS 47.15; AS 47.10.130; AS 47.10.140; AS 47.10.290(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 47.10.010(a)(1). The petition may be verified on information and belief.

(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 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. 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: AS 47.10.020; AS 47.10.030;
AS 47.10.140(b).

PART IV - DISCOVERY, EVIDENCE, PROOF

Rule 9. Depositions and Discovery

Criminal Rules 15 and 16 govern depositions and discovery in delinquency proceedings with the following exceptions:

- (a) the court may shorten the time periods for discovery;
- (b) a juvenile under 16 years of age may not be deposed except upon court order; and
- (c) the presence of parties and others at depositions is governed by Delinquency Rule 3.

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 REFERENCE: AS 47.17.060, AS 47.10.140(c).

Rule 11. Burden and Standards of Proof

(a) Detention. In order to support a temporary detention order, the Department must prove that probable cause exists that the minor committed the delinquent act charged and must prove, by a preponderance of the evidence, that detention or placement is necessary either:

(1) to protect the juvenile or others; or

(2) to ensure the juvenile's appearance at subsequent court hearings.

(b) Adjudication. In order to support an adjudication of delinquency, the Department must prove the essential elements of the alleged crime beyond a reasonable doubt.

(c) Waiver. In order to support an order waiving juvenile court jurisdiction, the Department must prove unamenability to treatment by a preponderance of the evidence, and must prove that probable cause exists that the juvenile committed the act charged in the petition.

(d) Other Motions. On other motions that relate to the criminal nature of proceedings such as the suppression of evidence, the burdens and standard of proof are the same as in a criminal proceeding.

(e) Disposition. In order to support a particular disposition, the Department must prove by a preponderance of the evidence that the disposition is the least restrictive alternative appropriate to the needs of the juvenile and the protection of the community.

(f) Release, Modification, Extension. The following petitions require the moving party to present proof by a preponderance of the evidence:

- (1) a petition for release from commitment or supervision;
- (2) a petition for extension of commitment or supervision;
- (3) a petition for modification of probation; and
- (4) a petition for revocation of probation.

(g) Annual Review. No party has the burden of proof at an annual review.

PART V - PRELIMINARY PROCEEDINGS

Rule 12. Temporary Detention Hearing

(a) Hearing Required. A juvenile detained under AS 47.10.140 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: AS 47.10.030(c); AS 47.10.040;
AS 47.10.050(b); AS 47.10.130; AS 47.10.140(c), (d).

Rule 13. Judge's Responsibility Concerning Conditions of Detention.

A court exercising jurisdiction under these rules has a continuing duty to ascertain that appropriate conditions of detention of juveniles are observed concerning visitation, clothing, exercise, private visitation of counsel and confinement. A juvenile may not be confined in solitary confinement for punitive reasons.

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 dispositions 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.

(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 47.10.050(b) 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: AS 25.24.310; AS 47.10.050.

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.

(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 47.10.050(b) are met.

CROSS REFERENCES: AS 25.24.310; AS 47.10.050;
AS 47.10.140(c).

Rule 17. Pleadings and Motions Before Trial - Defenses and Objections

(a) Pleadings and Motions. Pleadings in delinquency proceedings are the petition for adjudication and the pleas of admit or deny. Motions in delinquency proceedings are governed by the Criminal Rules.

(b) Motions Prior to Adjudication. Any defense, objection or request which is capable of determination before adjudication of the general issue may be raised prior to the adjudication hearing by motion. The following matters must be raised prior to the adjudication hearing:

(1) defenses and objections based on defects in the petition (other than a failure to show jurisdiction in the court or to charge an offense, which objections may be raised at any time during the pendency of the proceeding);

(2) motions to suppress evidence on the ground that it was illegally obtained; and

(3) requests for severance or joinder under Delinquency Rule 18.

(c) Notice of Mental Disease or Defect. Notice of an intention to offer evidence of mental disease or defect is governed by AS 12.47.010 and AS 12.47.020.

(d) Ruling on Motion. The court shall decide a motion made prior to adjudication before the adjudication hearing unless the court orders that the motion be deferred until the hearing.

(e) Effect of Failure to Raise Defenses or Objections. Failure by the juvenile to raise defenses or objections or to make requests which must be made prior to the adjudication hearing, or by the time set by the court pursuant to Delinquency Rule 14(b)(3), constitutes waiver thereof. However, the court may grant relief from the waiver for good cause.

(f) Effect of Dismissal. If the court grants dismissal based on a defect in the institution of the proceedings or in the petition, it also may order that placement or detention of the juvenile be continued for a specified time pending the filing of a new petition.

Rule 18. Joinder and Severance

(a) Joinder. The court may order two or more petitions for adjudication to be tried together if the offenses and the juveniles could have been joined in a single petition. The procedure will be the same as if the proceedings were under a single petition.

(b) Severance. If it appears that the juvenile or the state is prejudiced by a consolidation of offenses or of juveniles in a petition for adjudication, the court may order an election or separate adjudication of counts, grant a severance of cases against juveniles, or provide whatever other relief justice requires. In ruling on a motion by a juvenile for severance, the court may order the Department to deliver to the court for inspection in camera any statements or confessions made by the juveniles which the Department intends to introduce at the adjudication hearing.

Rule 19. Pretrial Conference

(a) Time and Purpose. At any time after the arraignment on petition or entry of a deny plea, the court may schedule a pretrial conference on the record to consider:

- (1) simplification of the issues;
- (2) the possibility of obtaining admissions of fact and documents which will avoid the introduction of unnecessary evidence;
- (3) the number of witnesses who will give testimony of a cumulative nature; and
- (4) such other matters as may aid in the adjudication of the petition.

(b) Order. The court shall enter an order reciting the agreement made at the conference. This order controls the subsequent course of the proceedings unless modified at the adjudication hearing in order to prevent manifest injustice.

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 47.10.060(d).

(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 REFERENCE: AS 47.10.060.

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: AS 47.10.080(a); AS 47.10.081.

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.

(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.

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 47.10.080(b) 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: AS 47.10.080(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.

(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: AS 47.10.080(b), (f); AS 47.10.082;
AS 47.10.100.

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: AS 22.07.020(a)(3); AS 47.10.080(i).

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 such conditions as the court may set, except that the names of a juvenile and the juvenile's parents may be released to victims by the Department for the purpose of civil restitution proceedings.

CROSS REFERENCE: AS 47.10.090.

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APPENDIX

Indian Child Welfare Act

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)(2).

(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 the 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.

CROSS REFERENCES: AS 22.15.100(8); AS 47.05.060;
AS 47.10.082; AS 47.10.280; AS 47.10.290(1); Alaska Constitution, Art. IV, §
15.

Rule 2. Definitions

(a) "Child" means a person under 18 years of age when the petition for adjudication is filed who remains subject to the jurisdiction of the court.

(b) "Custodian" means a person over 18 years of age to whom a parent has transferred temporary physical care, custody, and control of the child for the period of time immediately preceding the conduct alleged in the petition.

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

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

(e) "Guardian ad litem" means a person appointed by the court to represent the best interests of the child in the CINA proceeding as distinguished from a guardian of the person defined in paragraph (d).

(f) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. §1606.

(g) "Indian child" means any unmarried person who is under the age of 18 and who is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(h) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of

an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(i) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody and control has been transferred by the parent of the child.

(j) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Department of the Interior because of their status as Indians, including an Alaska Native village as defined in 43 U.S.C. §1602(c).

(k) "Minor" means a person under 18 years of age as defined by AS 25.20.010.

(l) "Parent" means a biological or adoptive parent.

(m) "Party" means the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian who has intervened, an Indian child's tribe which has intervened, and any other person who has been allowed to intervene by the court.

CROSS REFERENCES: AS 25.20.010; AS 47.10.080(b)(1), (3); AS 47.10.290(2), (4), (5), (6), (9); 25 USC §1903.

Rule 3. Hearings

(a) Notice. Notice of each hearing must be given to all parties within a reasonable time before the hearing. Service on the child may be accomplished by serving the child's guardian ad litem, attorney or social worker.

(b) Presence of the Child. A child who is not of suitable age to understand or participate in the proceedings need not be present at hearings unless the court so orders. The court may excuse the presence of a child who is of suitable age if attendance would be detrimental to the child. The child or the child's guardian ad litem may waive the child's right to be present at a particular hearing.

(c) Parties Excluded. The court may exclude the child during particular testimony if the effect of that testimony would psychologically harm the child. The court also may exclude a parent, guardian or Indian custodian during the child's testimony in order to protect the child from material psychological harm, provided that the parent, guardian or Indian custodian may listen to a recording of the testimony to prepare for further examination and rebuttal.

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

(e) General Public Excluded. Hearings are not open to the public. However, the court may, after due consideration for the welfare of the child and the family, admit specific individuals to a hearing.

(f) Telephonic Participation.

(1) The court may conduct any hearing with telephonic participation by one or more parties, counsel, witnesses or the judge.

(2) In any proceeding in which the court is authorized to proceed ex parte, the court may contact the non-appearing party or counsel by telephone, and in the interests of justice receive evidence or argument without stipulation of the parties.

(3) Procedures for telephonic hearings are governed by Civil Rule 99(b). Payment of telephone costs is governed by Administrative Rule 48.

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

CROSS REFERENCE: AS 47.10.070.

PART II - MASTERS, MAGISTRATES, DISTRICT COURT JUDGES

Rule 4. Appointment and Authority of Masters

(a) Appointment. The presiding judge may appoint a standing master to conduct any or all of the CINA proceedings listed in subparagraph (b)(2). Appointments of standing masters must be reviewed annually. The presiding judge may appoint a special master to conduct a proceeding which is specified in the order of reference and is listed in subparagraph (b)(2).

(b) Authority, Order of Reference.

(1) An order of reference specifying the extent of the master's authority and the type of appointment must be entered in every case assigned to a master. The order of reference must be served on all parties.

(2) The following proceedings may be referred to a master:

- (A) emergency or temporary custody hearings;
- (B) interim hearings, including temporary custody review hearings and pre-trial conferences;
- (C) adjudication and disposition hearings;
- (D) post-disposition review and extension of custody hearings.

(3) A master's report is not binding until approved by a superior court judge pursuant to Civil Rule 53(d) and paragraph (f) of this rule, except:

(A) a master may enter orders without further approval of the superior court pursuant to Civil Rule 53(b) and (c), and by paragraph (d) of this rule; and

(B) a master's order of removal from the home is effective pending superior court review.

(c) Objection to Reference to a Master. In addition to the peremptory challenge of a master provided for in Civil Rule 42(c), a party may file an objection to a referral to a master in the following manner:

(1) Timeliness. A party may file an objection no later than five days after receiving notice of the order of reference.

(2) Grounds for Objection. An objection to the assignment of a master to hear an adjudication hearing, a disposition hearing following a contested adjudication or an extension of custody hearing will be granted as a matter of right. Any other objection must set forth sufficient grounds from which the court may determine whether good cause exists to remove the matter from the master's jurisdiction. Good cause may include involvement of (i) complex questions of law which require a decision by a superior court judge or (ii) questions requiring prompt resolution which would be seriously impaired by a reference to a master.

(d) Standing Master's Authority to Enter Orders. A standing master is authorized to take the following actions without further approval by a superior court judge:

- (1) order emergency custody under CINA Rule 6(b);
- (2) appoint counsel and guardians ad litem;

(3) order home studies, predisposition reports, and psychological or psychiatric evaluations;

(4) set hearings and order continuances of the master's hearings;

(5) issue orders on motions requesting expedited review pursuant to Civil Rule 77(i);

(6) accept and approve stipulations, except that stipulated adjudications or dispositions must be reviewed by a superior court judge;

(7) review and approve uncontested orders on annual review;

(8) accept voluntary relinquishments of parental rights, and in the case of an Indian child, make the requisite judicial certification of voluntary consent required by federal law.

(e) Master's Report, Recommendations. A master may issue a written report or oral findings on the record concerning an order or recommendation which must be approved by a superior court judge. The master shall advise the parties on the record of their right to file objections to any such decision pursuant to paragraph (f) of this rule.

(f) Objections to Master's Report, Recommendations.

(1) Objections, Reply, Oral Argument. Objections to a master's report or recommendation must be filed within 10 days of service of the report unless the court requires objection to be filed earlier. In the case of a recommendation rendered orally on the record where a party requests a cassette tape of the recommendation, the time period for objection runs from receipt of the tape. A reply to the objections must be filed within three days

of service of the objections. The superior court may permit oral argument, order the taking of further evidence, or grant a hearing de novo.

(2) Request for Stay, Immediate Review. A party may request that a superior court judge stay the master's order issued under paragraph (d) pending review of the order.

(3) Review of Order Removing the Child from the Home. A master's order removing a child from the home which is not stayed must be reviewed by the superior court by the end of the next working day if a party so requests.

Rule 5. Authority of District Court Judges and Magistrates

(a) Emergency Situations. When a minor is in a condition or surrounding dangerous to the welfare of the minor which requires immediate action, and no superior court judge or authorized master is available, a district court judge or magistrate may take the least restrictive action necessary to protect the minor which a superior court judge is authorized by law to take. The district court judge or magistrate must immediately notify the superior court of the facts concerning the child and expeditiously transfer the case file to the superior court.

(b) Review. A party may request a hearing before the superior court or master to review any action taken by a district court judge or magistrate under this rule.

CROSS REFERENCES: AS 22.15.100.

PART III - COMMENCEMENT OF PROCEEDINGS

Rule 6. Emergency Custody

(a) Emergency Custody Without Court Order. The Department may take emergency custody of a minor pursuant to AS 47.10.142 without a court order.

(b) Emergency Custody With Court Order

(1) Who May Request. The Department or any other person or agency may petition the court for an order granting emergency custody of the child to the Department.

(2) Form, Contents of Motion. The petition must be supported by a statement of facts sufficient to show that the child is a child in need of aid and is in a condition which requires the immediate assumption of custody pursuant to AS 47.10.142. If a child is believed to be an Indian child, the statement of facts must show the tribal affiliation of the child, if known, and must be sufficient to show that removal of the child from the home is necessary to prevent imminent physical damage or harm to the child. The statement of facts must be made under oath, either in a petition, by affidavit, or orally on the record.

(3) Order. If the court determines that there is probable cause to believe that the child is a child in need of aid and is in such condition or surroundings that the child's welfare requires the immediate assumption of custody, the court may immediately issue an emergency custody order. In a case involving an Indian child, the court may not order emergency removal unless it finds that removal is necessary to prevent imminent

physical damage or harm to the child. The order must be directed to a peace officer or other person specifically designated by the court, and shall require that the child be taken into custody immediately.

(4) Notification to Department. If the emergency custody order was not requested by the Department, the court shall, if possible, notify the Department of the motion immediately, and in any event no later than 12 hours after the motion is filed.

(5) Service. At the time of executing the order, or as soon thereafter as practicable, the peace officer or other person specifically designated by the court shall serve the child, parents, Indian custodian, guardian, and Department with a copy of the emergency custody order, a summons to the temporary custody hearing if one has been issued, and any available pleadings filed in support of the order. The person charged with service shall prepare and retain a return of service.

CROSS REFERENCES: AS 22.15.100(8); AS 47.10.141;
AS 47.10.142.

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)(2). 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. 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 family.

CROSS REFERENCES: AS 47.10.020; AS 47.10.030;
AS 47.10.142(a); 25 U.S.C. §1912.

PART IV - DISCOVERY, EVIDENCE PROOF

Rule 8. Depositions and Discovery

(a) By the Parties. The Civil Rules govern depositions and discovery in child in need of aid proceedings with the following exceptions:

- (1) the court may shorten time periods for discovery;
- (2) no minor under 16 years of age may be deposed except upon court order; and

(3) the presence of parties or others at depositions is governed by CINA Rule 3.

(b) By the Court. The court may order further discovery, and grant a continuance to accomplish the discovery, at any phase of the proceeding if it believes that the evidence has not been fully developed.

Rule 9. Evidence

(a) Applicability of Evidence Rules. The Alaska Rules of Evidence apply to child in need of aid proceedings to the same extent as they govern civil proceedings, except as otherwise provided by these rules.

(b) Privileges Inapplicable. The physician and psychotherapist-patient privilege, Evidence Rule 504, and the husband-wife privileges, Evidence Rule 505, do not apply in Child in Need of Aid proceedings.

CROSS REFERENCE: AS 47.17.060.

PART V - PRELIMINARY PROCEEDINGS

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 taking emergency custody 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 dispositions. In addition, the court shall advise the parties of the possibility of a temporary custody or supervision order pending adjudication and final disposition.

(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. §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).

(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) that reasonable efforts have been made to prevent removal of the child from the home;

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

(C) 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; and

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

(d) Review.

(1) An order for temporary custody or supervision must specify a date not more than 90 days from the date of the original hearing at which the order will be reviewed by the court.

(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.

CROSS REFERENCES: AS 47.10.030(c); AS 47.10.142(d); 25 U.S.C. §1912(a); 25 U.S.C. §1913(a).

Rule 11. Guardians Ad Litem

(a) For Whom Appointed. The court shall appoint a guardian ad litem to represent the best interests of a child alleged to be abused or neglected. The court may appoint a guardian ad litem for any other child subject to a CINA proceeding when necessary to promote the child's best interests.

(b) Appointment. The court shall appoint a guardian ad litem as soon as the court has notice that a child is entitled to one. In its order of appointment, the court shall specify the duties of the guardian ad litem and the duration of the appointment.

(c) Service. A guardian ad litem is a party and must be served with pleadings and notices according to the Civil Rules.

CROSS REFERENCES: AS 25.24.310; AS 47.10.050;
AS 47.17.030(a); AS 47.17.170(1), (2) and (5).

Rule 12. Right to Counsel

(a) Notice of Right to Counsel. The court shall inform the parties at the first hearing at which they are present of their respective rights to be represented by counsel at all stages of the proceedings.

(b) Appointed Counsel. The court shall appoint counsel pursuant to Administrative Rule 12:

(1) for a parent or guardian who is financially unable to employ counsel;*

(2) for a parent on active military duty who has not appeared prior to entry of an adjudication;

(3) for a child when the court determines that the interests of justice require the appointment of an attorney to represent the child's expressed interests; and

(4) for a non-attorney guardian ad litem when legal representation of the guardian ad litem is necessary.

(c) Waiver of Right to Counsel. The court shall accept a valid waiver of the right to counsel by any party if the court determines that the party understands the benefits of counsel and knowingly waives those benefits.

* An indigent Indian custodian has a right to court-appointed counsel under 25 USC §1912(b). Counsel appointed under §1912 may seek compensation pursuant to 25 CFR §23.13.

(d) Appointment of Counsel for Absent Parent. The court shall appoint counsel to represent an absent parent at any hearing in which the termination of parental rights is or may be in issue if the parent has failed to appear after service of notice, including service by publication, and the court concludes that a continuance is not likely to result in the attendance of the non-appearing parent.

CROSS REFERENCES: AS 25.24.310; AS 47.10.050.

Rule 13. Trial Setting Order and Pretrial Conference

(a) Trial Setting Order. The court may set a time certain for the adjudication hearing and the date by which discovery and motion matters will close at the temporary custody hearing, any subsequent hearing, or by pretrial order.

(b) Time and Purpose of Pretrial Conference. At any time after the temporary custody hearing, the court may schedule a pretrial conference on the record to consider:

- (1) simplification of the issues;
- (2) the possibility of obtaining admissions of fact and documents which will avoid the introduction of unnecessary evidence;
- (3) the number of witnesses who will give testimony of a cumulative nature; and
- (4) such other matters as may aid in the resolution of the proceeding.

(c) Pretrial Order. The court shall enter an order reciting the agreements made at the conference. This order controls the subsequent course of the proceedings, unless modified at the adjudication or disposition hearing to prevent manifest injustice.

Rule 14. Stipulations.

Subject to approval by the court, parties may stipulate to any matter, including stipulations to adjudication and disposition. However, stipulations to adjudication and disposition may be accepted only if the court determines that the parties understand their rights and have had a sufficient opportunity to consult with counsel. In the case of an Indian child, a stipulation to adjudication or disposition is not binding on the parents or Indian custodian unless it is in writing and agreed to in court.

PART VI - ADJUDICATION

Rule 15. Adjudication Hearing

(a) Nature of Proceeding. The adjudication hearing is a trial to the court on the merits of the petition for adjudication.

(b) Notice. The Department must provide notice of the adjudication hearing to the parties within a reasonable time prior to the hearing. In cases involving an Indian child, notice of the hearing must be given at least ten days before the hearing pursuant to CINA Rule 7(e)(1). The court shall, upon request, grant the Indian child's parents, Indian custodian or tribe up to twenty additional days to prepare for the hearing.

(c) Burden of Proof. The Department has the burden of proving by a preponderance of the evidence that the child is a child in need of aid. However, the court may not terminate parental rights pursuant to CINA Rule 16 unless the Department has proved by clear and convincing evidence at the adjudication hearing that the child is a child in need of aid as a result of conduct of the parent.

(d) Judgment. At the conclusion of the adjudication hearing, the court shall make findings of fact and enter a judgment that the child is or is not a child in need of aid.

(e) Failure of Proof. If the court finds that the child is not a child in need of aid, it shall immediately order the child released from the Department's custody and returned to the child's parents, guardian or custodian.

(f) Order Pending Disposition. The court may order a child found to be a child in need of aid committed to the custody of the Department for placement outside the home pending disposition if the court makes the findings required by CINA Rule 11(c)(3).

CROSS REFERENCES: AS 47.10.080(a); AS 47.10.081; 25 U.S.C. §1913.

PART VII - DISPOSITION

Rule 16. Reports in Aid of Disposition(a) Predisposition Report.

(1) Unless waived by the parties with the approval of the court, the Department shall submit a predisposition report pursuant to AS 47.10.081(b) which may also include the following information: the child's family background and educational history; past contacts by the Department with the child and the child's family; the child's medical, psychological and psychiatric history; and recommendations regarding the disposition which would be in the best interests of the child. In cases concerning an Indian child, the report must describe the proposed placement of the child, the placement preference under the Indian Child Welfare Act which is recommended and the rationale for the use of that level of placement preference.

(2) The predisposition report must be made available to the persons entitled to receive it ten days before the disposition hearing, unless all parties, with the approval of the court, agree upon a different time period. If the predisposition report is submitted to the court prior to the adjudication hearing, it must be kept sealed until the adjudication hearing is completed.

(b) Supplementary Material. The court may order mental and physical examinations of the child and the child's parents, guardian and Indian custodian. The court may order studies of the home of any person with whom the child might be placed, and may order any other reports to aid disposition. A party may submit the party's own report 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, as determined by the court.

(c) Disclosure of Reports. Unless otherwise ordered, copies of predisposition reports and supplementary materials must be given to all parties. The court may enter an order prohibiting release of all or part of a report to the child only if disclosure would be likely to cause serious psychological harm to the child. The court shall inspect the reports in camera prior to entering a limitation on disclosure, and such a limitation does not bar the child's attorney or guardian ad litem from access to the material withheld from the child. The court may enter orders prohibiting release of the material by the attorney or guardian ad litem to the child.

CROSS REFERENCES: AS 47.10.080; AS 47.10.081; AS 47.10.082;
AS 47.10.230; 25 USC §1912(c); 25 U.S.C. §1922.

Rule 17. Disposition.

(a) Nature and Timing of the Hearing. The purpose of a disposition hearing is to determine the appropriate disposition of a child who has been adjudicated a child in need of aid. 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. The court shall order a predisposition report, and other studies, examinations or reports under CINA Rule 16 which are necessary for an informed disposition.

(b) Statements. The court shall allow the parties to make a statement in their own behalf and to offer evidence in aid of disposition at the hearing.

(c) Findings. A disposition order must be accompanied by findings of fact supporting the disposition ordered. In cases involving an Indian child, the court must make additional findings before removing the child from his or her parents or Indian custodian. The court must find, based on clear and convincing evidence, including the testimony of qualified expert witnesses, that custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The court must also find by a preponderance of the evidence that the party requesting removal of the Indian child has shown that active efforts have been made to provide remedial services and rehabilitative programs designed

to prevent the breakup of the Indian family, and that these efforts have proved unsuccessful.

(d) Termination of Parental Rights. A disposition hearing concerning the termination of parental rights is governed by CINA Rule 18.

(e) Evidence. Hearsay which is not otherwise admissible under a recognized exception to the hearsay rule may be admissible at the disposition hearing 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.

CROSS REFERENCES: AS 47.10.010(a) and (c); AS 47.10.080(c); AS 47.10.081; AS 47.10.082; AS 47.10.083; 25 U.S.C. §§1912, 1915(b),(c), 1922.

Rule 18. Termination of Parental Rights.

(a) Petition. The Department may file a petition seeking termination of parental rights combined with or after the filing of a petition for adjudication for that child as a child in need of aid. The title of the petition must clearly state that termination of parental rights is sought. A petition for termination of parental rights must be served as provided by CINA Rule 7(d).

(b) Nature of the Proceeding. The termination hearing is a disposition hearing to the court on the question of whether the parental rights to an adjudicated child in need of aid should be terminated. Upon a showing of good cause and with adequate notice to the parties, an adjudication hearing and a termination hearing may be consolidated. CINA Rule 17 applies to termination hearings except as this rule provides otherwise.

(c) Burden of Proof. Before the court may terminate parental rights, the Department must prove:

(1) by clear and convincing evidence that the parental conduct that caused the minor to be adjudicated a child in need of aid is likely to continue unless parental rights are terminated; and

(2) in the case of an Indian child, by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The court must also find by a preponderance of evidence that the party requesting the termination of parental rights an Indian child has shown that active efforts have been made

to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(d) Relinquishment.

(1) Notwithstanding other provisions of this rule, the court may terminate parental rights after a voluntary relinquishment pursuant to AS 25.23.180. In the case of an Indian child, the relinquishment must meet the requirements set forth in 25 U.S.C. §1913(c).

(e) Judgment. The court shall make findings of fact and enter a judgment at the conclusion of the termination hearing. The court shall commit the minor to the custody of the Department if parental rights are terminated. The Department shall report annually on efforts to find a permanent placement for the child.

CROSS REFERENCES: AS 25.23.180; AS 47.10.080; 25 U.S.C. §1913.

Rule 19. 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, statements and affidavits unless an evidentiary 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 its annual review together with a notice of their right to submit statements, affidavits or other evidence to the court and notice of their right to request an evidentiary hearing.

(b) Review Upon Application. A party may apply for review of a disposition order at any time. The court shall order an evidentiary hearing to review the disposition upon a showing of good cause by a party or on its own motion. Notice by a party that there is reason to believe that the Department has not followed the placement preferences of AS 47.10.230 or, in the case of an Indian child, of 25 U.S.C. §1915, constitutes good cause for purposes of this paragraph.

(c) Notice - Indian Child. In cases involving an Indian child, notice of an evidentiary hearing held under paragraphs (a) or (b) of this rule must be given to the child's tribe and Indian custodian, even if the tribe or Indian custodian has not intervened in the case.

(d) Findings. At the conclusion of a hearing under subparagraph (a) or (b), the court must make findings based on the totality of the evidence before the court. The child shall be returned home unless the court finds by a preponderance of the evidence that the basis upon which the child

was adjudicated as a child in need of aid continues to exist. If the child is not returned home, the court shall establish on the record:

- (1) why the child was removed from the home;
- (2) what services have been provided to or offered to the parents to facilitate reunion;
- (3) what services were utilized by the parents to facilitate reunion;
- (4) the visitation history between the parents and the child;
- (5) whether additional services are needed to facilitate the return of the child to the child's parents; and
- (6) when return of the child can be expected.

(e) Extension of Custody or Supervision.

(1) Petition. The Department may file a petition for an extension of the commitment to custody or supervision no later than thirty days prior to the expiration of the existing disposition order. The Department shall notice a hearing on the petition. The child and the child's parents or guardian must be advised of their rights to an attorney and guardian ad litem at the extension hearing. In cases involving an Indian child, notice of the hearing must be given to the child's tribe and Indian custodian, even if the tribe or Indian custodian has not intervened in the case.

(2) Extension of Custody. At the conclusion of the hearing the court shall make findings indicating whether the child continues to be a child in need of aid under AS 47.10.010(a)(2) and whether a basis exists for continuing or modifying its disposition order.

(3) Report. The Department shall submit a written report comparable to the annual review report 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.

(4) Status Pending Decision. If the court is unable to decide the extension petition before expiration of the existing disposition order, the court may extend custody or supervision for a reasonable time pending a decision on the extension petition.

CROSS REFERENCES: AS 47.10.080(c), (f); AS 47.10.081;
AS 47.10.082; AS 47.10.083; AS 47.10.100; 25 U.S.C. §§1912 and 1915.

Rule 20. Review Upon Petition Under 25 U.S.C. §1914.

(a) Grounds for Petition. In cases involving an Indian child, the child, parents, Indian custodian and child's tribe may petition the court to invalidate any order in the case upon a showing that the order violated any provision of 25 U.S.C. §§1911, 1912 or 1913. A petition under 25 U.S.C. §1914 may be brought as a separate action if the petitioner is unable to participate in the challenged proceeding as a party.

(b) The Petition to Invalidate. A petition filed under 25 U.S.C. §1914 must be served on all parties to the action sought to be invalidated, including the Indian child's tribe and Indian custodian whether or not they have intervened. The petition must include:

(1) the identities of the petitioner and the Indian child subject to the petition, and the status of the petitioner under 25 U.S.C. §1914;

(2) a statement of the particular provisions of 25 U.S.C. §§1911, 1912 or 1913 alleged to have been violated and the factual basis supporting the alleged violation; and

(3) any exhibits, reports or other evidence in support of the allegations.

(c) Disposition. If the court determines that the challenged order violated 25 U.S.C. §§1911, 1912 or 1913, the court shall immediately invalidate the order and take other appropriate action which may include dismissing the case and ordering the child returned to the parents or Indian custodian.

CROSS REFERENCES: 25 U.S.C. §§1911, 1912, 1913, and 1914.

PART VIII - APPELLATE REVIEW

Rule 21. 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 subject to Appellate Rule 218 or other appropriate appellate procedures.

(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 supreme court.

CROSS REFERENCES: AS 22.07.020(a)(3); AS 47.10.080(i); Appellate Rules 218, 402 & 403; 25 U.S.C. §1914.

PART IX - CONFIDENTIALITY

Rule 22. Confidentiality

The records of child in need of aid proceedings are confidential. Only parties and their attorneys may have access to the court file except as otherwise authorized by statute or court order for good cause shown. Parties and their attorneys shall maintain the confidentiality of all information in the court's file. Other persons authorized access to the file are subject to such conditions as the court may set with notice to the parties. The name or picture of a child who is the subject of a CINA proceeding may not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization.

CROSS REFERENCE: AS 47.10.090; 25 USC 1912(c).

APPENDIX

INDIAN CHILD WELFARE ACT

25 U.S.C. §§1901-1923

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings;
additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence;
determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence;
determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

§ 1913. Parental rights, voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

§ 1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

§ 1916. Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the

child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

§ 1919. Agreements between States and Indian Tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child; danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

§ 1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.