

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1349

Rescinding Delinquency Rules 6 and 7, amending Delinquency Rules 3, 10, 11, 14, 20, 21, 23, and 27, and adopting Delinquency Rule 24.1.

IT IS ORDERED:

1. Delinquency Rule 6 is rescinded in its entirety:

~~Rule 6. Intake.~~

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

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

~~(c) Parties Advised of Rights. At or prior to the interview, the juvenile, parents and guardian, if present, must be advised that any statements may be used against the juvenile and of the following rights of the juvenile: to have a parent or guardian present at the interview; to remain silent;~~

~~to have retained or appointed counsel at all stages of the proceedings including the intake interview; if a petition is filed, to have an adjudication hearing before a judge or jury with compulsory process to compel the attendance of witnesses; and the opportunity to confront and cross-examine witnesses.~~

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

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

~~(f) Authority of Court. Nothing in this rule precludes the court from appointing~~

~~persons other than the intake officer to make investigations, file reports or make recommendations with respect to the formal or informal handling of a delinquency matter.~~

Cross References

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

2. The following note is added to the Delinquency Rules:

Note to SCO 1349: Delinquency Rule 6 (Intake) was repealed by ch. 107 § 53 SLA 1998, effective July 1, 1998. Paragraph 1 of this order, which rescinds Delinquency Rule 6, is adopted for the sole reason that the legislature has mandated the amendment.

3. Delinquency Rule 7 is rescinded in its entirety:

~~Rule 7. Emergency Detention or Placement.~~

~~(a) Arrest.~~

~~(1) A juvenile may be arrested for the commission of a delinquent act under the same circumstances and in the same manner as would apply to the arrest of an adult for violation of a criminal law of the state or a municipality of the state.~~

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

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

~~(b) **Detention, Placement, Notification.** If a juvenile is arrested, the juvenile must be taken immediately to a detention facility or placement facility designated by the Department or released pursuant to paragraph (c) of this rule. The arresting officer shall immediately notify the parents or guardian of the arrest and detention or placement and shall notify the court and Department immediately, if possible, and in no event more than 12 hours later. The arresting officer shall make and retain a written record of the notification. If the juvenile is arrested under subparagraph (a) (3) of this rule, prompt notification must also be given to the Department of Law.~~

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

~~juvenile arrested under paragraph (a) of this rule be released from detention before the temporary detention hearing.~~

Cross References

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

4. The following note is added to the Delinquency Rules:

Note to SCO 1349: Delinquency Rule 7 (Emergency Detention or Placement) was repealed by ch. 107 § 53 SLA 1998, effective July 1, 1998. Paragraph 3 of this order, which rescinds Delinquency Rule 7, is adopted for the sole reason that the legislature has mandated the amendment.

5. Paragraph (c) of Delinquency Rule 3 is amended to read:

(c) **Admission to Hearings.** ~~The provisions of AS 47.12.110(d) apply to govern admission of the public to adjudication hearings. Disposition hearings, temporary detention hearings, hearings in the nature of an arraignment on a petition, and other proceedings before the court 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 or proceeding, and~~ The court in all cases shall admit victims of the juvenile's offense to hearings or proceedings as required by AS 47.12. The court has discretion in all cases

to admit specific individuals to a hearing if their attendance is compatible with the best interests of the juvenile. Hearings are open to the general public if:

(1) requested by the juvenile;

(2) the court orders the hearing open to the public pursuant to a request by the department under AS 47.12.110(d)(1); or

(3) the juvenile is subject to dual sentencing. In such cases, hearings are open to the general public, unless otherwise limited or prohibited by court order, if (A) a petition has been filed under AS 47.12.065 and the grand jury has returned an indictment or the juvenile has waived indictment; or (B) the juvenile has agreed as part of a plea agreement to be subject to dual sentencing.

6. Delinquency Rule 10 is amended to read:

Rule 10. Evidence.

* * * *

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

Cross References

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

6. The following note is added at the end of Delinquency Rule 10:

Note to SCO 1349: Delinquency Rule 10(c) was amended by ch. 107 § 52 SLA 1998, effective July 1, 1998. Paragraph 5 of this order, which amends Delinquency Rule 10(c), is adopted for the sole reason that the legislature has mandated the amendment.

7. Delinquency Rule 11 is amended to read:

Rule 11. Burden and Standards of Proof.

* * * *

(e) **Disposition.** In order to support a particular disposition, including a disposition ordered as part of a dual sentence, 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.~~ **Other Petitions.** 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; and

(5) a petition to impose the adult portion of a dual sentence pursuant to AS 47.12.160(d)-(e).

Cross References

CROSS REFERENCES: AS 47.12.140(2); AS 47.12.160(d)-(e); AS 47.12.120(j).

8. Delinquency Rule 14 is amended to read:

Rule 14. Arraignment on Petition.

* * * *

(b) **Order of Proceedings.**

(1) *Opening Address.* The court shall ensure that all parties have received copies of the petition and understand its contents. The court shall advise the parties of the nature of the proceedings and the possible disposition that may occur, including potential dual sentencing. In addition, the court shall advise the parties of the possibility of temporary detention or placement outside the home pending final disposition, that the parents or guardian must attend all hearings and may be held in contempt for failure to do so, and that the parents may be ~~laible~~ liable for child support ~~paymenets~~ payments if the child is placed outside the home at any time during the proceeding.

* * * *

(4) *Request for Admissions or Denial.* If it appears to the court that the juvenile

adequately understands the juvenile's rights and that the requirements of AS 47.12.090(a) have been met, the court may inquire whether the juvenile admits or denies all or part of the allegations of the petition and, if so, accept the plea. Otherwise, the court shall set a date for entry of a plea. Except as stated in this paragraph, the entry of pleas is governed by Criminal Rule 11. If the petition states that the juvenile may be subject to dual sentencing under AS 47.12.065, the court shall delay the request for admission or denial until one of the following has occurred:

(A) if the juvenile is in custody, 10 days have passed since arraignment and the district attorney has not presented the case to the grand jury for indictment;

(B) if the juvenile is not in custody, 20 days have passed since arraignment and the district attorney has not presented the case to the grand jury for indictment; or

(C) the grand jury has returned an indictment or a no true bill.

If the juvenile consents or if the state demonstrates good cause, taking into account the interest of the public in the prompt disposition of delinquency cases, the court may extend the time for the district attorney to present the case to the grand jury under (A) or (B).

(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.

Cross References
CROSS REFERENCE: AS 47.12.065.

9. Paragraph (a) of Delinquency Rule 20 is amended to read:

(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 person is subject to AS 47.12.030 or the court has waived juvenile jurisdiction.

10. Delinquency Rule 21 is amended to read:

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 department may not request an adjudication by jury ~~or an adjudication hearing open to the public.~~ ~~Admission of the public to~~

~~adjudication hearings is governed by AS
47.12.110.~~

* * * *

Cross References

CROSS REFERENCES: AS 47.12.110(e); AS
47.12.120(a).

11. Delinquency Rule 23 is amended to read:

Rule 23. Disposition or Dual Sentence.

* * * *

(c) **Findings.** A disposition order, including a disposition order entered as part of a dual sentence, must be accompanied by findings of fact supporting the disposition ordered.

(d) **Order.** The court shall enter its disposition order or dual sentence taking into account the considerations set out in AS 47.12.140 or AS 47.12.120(j).

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

Cross References

CROSS REFERENCES: AS 47.12.120(j); AS
47.12.140.

12. Delinquency Rule 27 is amended to read:

Rule 27. Court Records - Confidentiality.

(a) The court records of a juvenile delinquency proceeding are confidential in any case in which the juvenile is not subject to dual sentencing. Information may not be released and access to the records may not be permitted except as authorized by statute or upon court order for good cause shown under conditions as the court may set, except that:

~~(a)~~ (1) A probation officer employed by the Alaska Department of Corrections may review delinquency proceedings records for the sole purpose of preparing a presentence report on the individual whose juvenile record is reviewed. The records may be used in the sentencing proceeding and attached to the probation officer's report.

~~(b)~~ (2) A prosecuting attorney may obtain a certified copy of an adjudication or disposition order entered in a juvenile proceeding based on a written request certifying that the prosecutor needs the order to establish the elements of a felony offense. The prosecutor may not use or disclose the order except for this purpose.

(b) If the juvenile is subject to dual sentencing, all court records are open to the public except for predisposition reports, psychiatric and psychological reports, and

other documents that the court orders to be kept confidential because the release of the documents could be harmful to the juvenile or could violate the constitutional rights of the victim or other persons. In such cases, court records are open to the public when one of the following has occurred: (1) a petition has been filed under AS 47.12.065 and the grand jury has returned an indictment or the juvenile has waived indictment; or (2) the juvenile has agreed as part of a plea agreement to be subject to dual sentencing.

Cross References

CROSS REFERENCE: AS 47.12.300.

14. The Delinquency Rules are amended to include new Rule 24.1, which reads: 3

Rule 24.1 Imposition of Adult Portion of Dual Sentence.

(a) Petition to Impose Adult Portion of Dual Sentence. The district attorney may petition the court for imposition of the adult portion of a dual sentence pronounced under AS 47.12.120(j)(2). 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 provisions of Delinquency Rule 24(c) apply to hearings on the petition to impose the adult portion of a dual sentence.

(d) Sentence. If the district attorney demonstrates by a preponderance of the evidence that the juvenile has committed a subsequent felony offense that is a crime against a person or the crime of arson, the adult sentence previously pronounced under AS 47.12.120(j)(2) shall be imposed and custody transferred to the Department of Corrections.

If the district attorney demonstrates by a preponderance of the evidence that the juvenile has committed any of the other circumstances set out in AS 47.12.160(d)(1)-(5), the adult sentence shall be imposed and custody transferred to the Department of Corrections, unless the juvenile proves by a preponderance of the evidence that mitigating circumstances exist that justify a continuance of the stay of the adult sentence and the juvenile is amenable to further treatment in the juvenile system. The court shall make written findings to support its order.

Cross References

CROSS REFERENCES: AS 47.12.065; AS 47.12.120(j)(2); AS 47.12.160(d) and (e).

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DATED: November 12, 1998

EFFECTIVE DATE: December 1, 1998

/s/
Chief Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner

/s/
Justice Carpeneti