

## DELINQUENCY 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 47.12.020.

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

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

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

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

(SCO 845 effective August 15, 1987; amended by SCO 1104 effective July 9, 1992; and by SCO 1265 effective July 15, 1997)

**Cross References**

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

**Rule 2. Definitions.**

(a) “Adjudication Hearing” is the proceeding, analogous to the trial in a criminal case, in which the court or a jury determines whether the juvenile is a delinquent minor as a result of the minor's violation of a criminal law of the state or a municipality.

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

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

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

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

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

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

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

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

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

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

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

(m) “Parent” means a natural or adoptive parent.

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

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

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

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

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 2(n) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

### Cross References

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

### Rule 3. Hearings.

(a) **Notice.** Notice of each hearing must be given to all parties and to any foster parent within a reasonable time before the hearing. Notice to the foster parent must be provided by the Department.

(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 required unless excused by the court for good cause.

(c) **Admission to Hearings.** The court in all cases shall admit victims of the juvenile's offense to hearings as required by AS 47.12 and shall admit foster parents to hearings subject to paragraph (d) of this rule. 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.

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

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

(1) The juvenile has the right to be physically present in court for arraignment, adjudication, disposition, probation

revocation, extension of jurisdiction, and waiver of jurisdiction hearings; however, the juvenile may waive the right to be present. At all other hearings, the court, upon application of any party, may allow telephonic participation by the juvenile if the juvenile's personal appearance is not essential to the fair disposition of the matter, telephonic participation is not unfair to the juvenile, and personal contact between counsel and the juvenile is not needed for case preparation. The court has discretion to allow telephonic participation by other parties. The juvenile's waiver of the right to be physically present may be obtained orally on the record or in writing.

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

(3) In those court locations in which a television system has been approved by the supreme court and has been installed, juveniles in custody may appear by way of television with the consent of the juvenile and with the approval of the court for hearings in which the juvenile has a right to be physically present under (1) of this section. If the court has allowed telephonic participation by the juvenile in a hearing, participation may also be by television. Appearance by television or telephone shall not be allowed at adjudication trials or at any hearings in which sworn testimony is to be presented.

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

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

(SCO 845 effective August 15, 1987; amended by SCO 998 effective January 15, 1990; by SCO 1092 effective July 15, 1992; by SCO 1165 effective July 15, 1994; by SCO 1265 effective July 15, 1997; by SCO 1269 effective July 15, 1997; by SCO 1294 effective January 15, 1998; by SCO 1349 effective December 1, 1998; by SCO 1361 effective October 15, 1999; and by SCO 1582 effective nunc pro tunc to July 14, 2005)

**Note:** Paragraph (c) was amended by ch. 57, § 21, SLA 1991.

**Note to SCO 1269:** Delinquency Rule 3(b)(2) was amended by § 5 ch. 144 SLA 1996. Section 23 of this order is adopted for the sole reason that the legislature has mandated the amendment.

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 3(b) and (c) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors

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under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

## Cross References

CROSS REFERENCE: AS 47.12.110.

## PART II. MASTERS, MAGISTRATE JUDGES, 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) non-jury adjudication hearings and disposition hearings resulting from a non-jury 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 Delinquent 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);

(8) order release from detention and set conditions of release pursuant to Delinquency Rule 12(c); and

(9) order conditions of probation for minors placed on probation or released from institutionalization.

(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 an electronic recording of the recommendation, the time period for objection runs from receipt of the recording. 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.

(SCO 845 effective August 15, 1987; amended by SCO 917 effective January 15, 1989; by SCO 918 effective January 15, 1989; and by SCO 1555 effective October 15, 2004)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 4(f)(3) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

### **Rule 5. Authority of District Court Judges and Magistrate Judges.**

(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 judge 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 judge 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 judge under this rule.

(SCO 845 effective August 15, 1987; and amended by SCO 1829 effective October 15, 2014)

#### **Cross References**

**CROSS REFERENCE:** AS 22.15.100.

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

#### **Rule 6. Intake. (Rescinded).**

**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.

#### **Rule 7. Emergency Detention or Placement. (Rescinded).**

**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.

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

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

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

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

(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.

(SCO 845 effective August 15, 1987; amended by SCO 1041 effective January 15, 1991; by SCO 1265 and 1269 effective July 15, 1997; by SCO 1361 effective October 15, 1999; and by SCO 1364 effective October 15, 1999)

**Note to SCO 1269:** Delinquency Rule 8(b) was amended by § 6 ch. 144 SLA 1996. Section 25 of this order is adopted for the sole reason that the legislature has mandated the amendment.

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**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 8(b) and (c) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

## Cross References

**CROSS REFERENCE:** AS 47.12.040; AS 47.12.050; AS 47.12.070; AS 47.12.250(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.

(SCO 845 effective August 15, 1987)

### 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 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 is not otherwise admissible under the Evidence Rules may be admitted under the standard stated in paragraph (b) of this rule at a temporary detention hearing.

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997; and by SCO 1349 effective December 1, 1998)

**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.

## Cross References

**CROSS REFERENCE:** AS 47.17.060, AS 47.12.250(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 unamenable 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, 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) **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;

(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).

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

(SCO 845 effective August 15, 1987; amended by SCO 1349 effective December 1, 1998)

**Cross References**

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

**PART V. PRELIMINARY PROCEEDINGS****Rule 12. Temporary Detention Hearing.**

(a) **Hearing Required.** A juvenile detained under AS 47.12.250 must be taken before the court for a temporary detention hearing. The hearing must be held as soon as is practicable, but in no event later than 48 hours after notification to the court, including weekends and holidays.

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

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

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

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

(d) **Foster Parent's Right To Be Heard.** If the juvenile's foster parent is present at the temporary detention hearing, the court shall give the foster parent an opportunity to be heard.

(e) **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.

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997; and by SCO 1361 effective October 15, 1999)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 12(b), (c), (d), and (e) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

**Cross References**

**CROSS REFERENCE:** AS 47.12.080; AS 47.12.090(a); AS 47.12.240; AS 47.12.250(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.

(SCO 845 effective August 15, 1987)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 13 by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

**Rule 14. Arraignment on Petition.**

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

**(b) Order of Proceedings.**

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

(2) *Advice of Rights.* The court shall advise the parties of their right to counsel and their privilege against self-incrimination. The court shall advise the juvenile of the right to

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

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

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

(SCO 845 effective August 15, 1987; amended by SCO 1105 effective January 15, 1993; by SCO 1265 effective July 15, 1997; by SCO 1269 effective July 15, 1997; and by SCO 1349 effective December 1, 1998)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 14(b) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory

provisions contained in sections 1-8 of the Act applicable to those persons.

## Cross References

**CROSS REFERENCE:** AS 47.12.065.

## Rule 15. Guardians Ad Litem.

### (a) Appointment.

(1) Any party or the court on its own motion may request a guardian ad litem. The court may appoint a guardian ad litem to represent the best interests of the juvenile in a delinquency proceeding. If the court denies a motion for appointment of a guardian ad litem, the court must make findings to explain the denial.

*Commentary—In addition to appointment of an attorney, the court may, upon motion of a party or upon its own motion, appoint the office of public advocacy to provide guardian ad litem services to a juvenile.*

*Courts should not routinely appoint guardians ad litem in juvenile delinquency proceedings. In most instances, the juvenile's best interests are adequately protected and represented by the parties. The juvenile's best interests may not be adequately protected in situations, including but not limited to: when no parent or guardian is available, when a parent or guardian is not in a position to advocate for the juvenile's best interests, when a household or family member is an alleged victim, when the juvenile has complex therapeutic needs, or when an adult guardianship or conservatorship may be appropriate.*

(2) A non-attorney guardian ad litem is entitled to counsel. Upon request, the court shall make the appointment. The court may appoint an attorney on its own motion for good cause if the court finds that legal advice or legal representation of the guardian ad litem is necessary to represent the juvenile's best interests.

(3) Within seven days of the court's appointment, the designated guardian ad litem must file an entry of appearance indicating whether the guardian ad litem is an attorney and certifying that the guardian ad litem meets qualifications under subsection (b) below.

(4) Throughout the period of appointment, the guardian ad litem is a party to the proceeding, and must be served with copies of all pleadings and papers relating to the juvenile and must be given notice of all court proceedings. The guardian ad litem, whether an attorney or a non-attorney, has the right to appear and participate at hearings regarding the juvenile. The guardian ad litem may also engage in motion practice, conduct discovery, introduce evidence, examine and cross examine witnesses, make objections, make opening statements and closing arguments, and take or participate in an appeal. Although the guardian ad litem can participate in plea agreement negotiations and make recommendations, the guardian ad litem is not a signatory to and cannot veto any agreement.

**(b) Qualifications.**

(1) A guardian ad litem should possess knowledge, skill, experience, training, or education that allows the guardian ad litem to conduct a thorough and impartial investigation and effectively advocate for the best interests of the juvenile. Specifically, the guardian ad litem should have an understanding of the following as appropriate to the case:

(A) child and adolescent development;

(B) disabilities, including cognitive impairments such as fetal alcohol spectrum disorders;

(C) the impact of child abuse and neglect or other trauma on the juvenile;

(D) the educational needs and rights of juveniles;

(E) the resources available for least restrictive placement, treatment, and other necessary services, both within the community and elsewhere;

(F) the ethnic, cultural, and socioeconomic backgrounds of the population to be served;

(G) domestic violence and substance abuse and their impact on juveniles;

(H) Alaska statutes, rules, and both state and United States Supreme Court decisions relating to juvenile delinquency proceedings;

(I) the legal rights of juveniles accused of delinquency crimes;

(J) the ability to communicate effectively with juveniles and adults;

(K) juvenile alcohol and substance abuse pathology and treatment;

(L) juvenile mental health issues and treatment; and

(M) other qualifications appropriate to the particular case.

(2) Upon request of a party, a guardian ad litem or prospective guardian ad litem shall provide to the parties a written summary of relevant education and experience.

**(c) Order Authorizing Access to Juvenile's Records.** Unless otherwise ordered, an order appointing a guardian ad litem shall authorize the guardian ad litem access, without further release, to all confidential and privileged records of the child, including but not limited to mental health records, drug and alcohol treatment records, medical records, evaluations, child protection records, law enforcement records, juvenile justice records, and educational records, including special education records. Nothing in this rule shall prevent any party from seeking a protective order.

**(d) Disclosure of Information.**

(1) Defense counsel, the Division of Juvenile Justice, and the Department of Law shall be permitted to review and copy information received by the guardian ad litem under subsection (c) and other discoverable material, including but not limited to notes memorializing interviews and observations. Before disclosing any material to other parties, the guardian ad litem shall give defense counsel notice and a reasonable opportunity to review the material and seek a protective order.

(2) Disclosure obligations are ongoing.

**(e) Disclosure of Conflicts.** The guardian ad litem shall disclose any relationships or associations between the guardian ad litem and any party that might reasonably cause the guardian ad litem's impartiality to be questioned. The guardian ad litem must also disclose whether the guardian ad litem has served or is currently serving as a guardian ad litem for that juvenile, or for that juvenile's sibling, in any other proceeding. This disclosure must be made no later than 10 days after appointment.

**(f) Duties of the Guardian Ad Litem.**

(1) *Role.* The guardian ad litem represents the best interests of the juvenile. The guardian ad litem determines and advocates for the best interests of the juvenile given the juvenile's situation, taking into account the juvenile's age, maturity, culture, ethnicity, least restrictive placement options available, and public laws and policies regarding juvenile justice.

(2) *Duty to the juvenile.* The guardian ad litem shall:

(A) conduct ongoing independent investigations, including, as reasonable and appropriate: in-person visits with the juvenile; review of records; interviews with parents, juvenile probation officers, teachers, and other persons as necessary to assess the juvenile's situation; and observations of the juvenile's interactions with parents or other potential caregivers;

(B) identify relatives, family friends, or other persons who are potential placement options, and take such steps as may be necessary to offer such persons to the Division of Juvenile Justice and/or to the court for placement determinations;

(C) consult professionals as necessary to determine the juvenile's best interests;

(D) monitor services to the juvenile provided by educational, medical, mental health, and other community systems and ensure these services are promoting the best interests of the juvenile;

(E) represent the best interests of the juvenile until the disposition order expires unless the court finds that the appointment is no longer necessary;

(F) explain to the juvenile in language and terms the juvenile can understand that:

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- (i) the juvenile has a right to refuse to talk to the guardian ad litem,
- (ii) communications with the guardian ad litem are not confidential,
- (iii) all information and records gathered may be shared with the state, and
- (iv) the juvenile has a right to have an attorney be present for interviews with the guardian ad litem.

(3) *Duty to the court.* The guardian ad litem will appear at all hearings, present appropriate witnesses to testify at hearings, present relevant information about the juvenile's status and needs to the court, and may provide written reports.

*Commentary*—Whether a guardian ad litem should testify or be subject to cross examination raises complex issues that are best resolved on a case-by-case basis with the benefit of briefing by all parties. Nothing in this rule is intended to dictate a particular outcome.

## (g) Contact with Juvenile.

(1) Any entity or person that has physical or legal custody of the juvenile may not deny reasonable access by the guardian ad litem without an order from the court.

(2) With the consent of the juvenile's attorney, the guardian ad litem may meet with the juvenile as often as necessary to ascertain and represent the juvenile's best interests. The juvenile's attorney, at any time, may limit the content and frequency of meetings with the guardian ad litem.

(h) **Confidentiality.** The juvenile's statements to the guardian ad litem are not confidential.

*Commentary*—If the guardian ad litem is an attorney, he or she acts in a capacity as a guardian ad litem rather than as an attorney, and information received from the juvenile is not subject to the attorney-client privilege. See *Ethics Opinion 85-4, Alaska Bar Association. Notwithstanding these provisions, the guardian ad litem may seek a protective order to keep certain communications confidential in accordance with discovery rules.*

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997; rescinded and re-adopted by SCO 1847 effective April 15, 2015)

## Rule 16. Right to Counsel.

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

(b) **Appointed Counsel.** The court shall appoint counsel pursuant to Criminal Rule 39 and Administrative Rule 12 for a juvenile not represented by counsel of choice. The court may order a parent to deposit an appropriate sum consistent with the

parent's financial ability in the registry of the court to pay for the appointment. At the disposition phase of a delinquency case, the court shall, if requested, appoint counsel pursuant to Administrative Rule 12 and AS 44.21.410(a)(4) for a parent or guardian who is financially unable to employ counsel if the court concludes that custody is at issue, the interests of the parent or guardian and the child are in conflict, and the interests of the parent or guardian are not adequately protected.

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

(SCO 845 effective August 15, 1987; amended by SCO 1119 effective July 15, 1993; and by SCO 1265 effective July 15, 1997)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 16(a) and (b) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

## Cross References

**CROSS REFERENCE:** AS 25.24.310; AS 47.12.090; AS 47.12.250(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 the placement or detention of the juvenile be continued for a specified time pending the filing of a new petition.

(SCO 845 effective August 15, 1987)

### **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.

(SCO 845 effective August 15, 1987)

### **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.

(SCO 845 effective August 15, 1987)

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

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

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

#### **(d) Waiver Order.**

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

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

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

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

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

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997; and by SCO 1349 effective December 1, 1998)

#### **Cross References**

**CROSS REFERENCE:** AS 47.12.100.

## **PART VII. ADJUDICATION**

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

(a) **Nature of Proceeding.** The adjudication hearing is a trial on the merits of the petition for adjudication. The court will decide the merits of the case unless the juvenile requests a trial by jury. Except for good cause shown, the juvenile must request a jury trial no later than 20 days before any scheduled trial date. The department may not request an adjudication by jury.

(b) **Juries.** The jury will consist of twelve persons unless at any time prior to the verdict the parties stipulate in writing,

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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 two years. 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.

(3) A minor may, with the consent of the Department and the victim(s), condition an admission to one or more acts alleged in the petition upon the court's agreement to the recommendations made by a restorative justice program to which the matter is referred pursuant to Delinquency Rule 23(f).

(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.

(g) **Foster Parent's Right To Be Heard.** If the juvenile's foster parent is present at the adjudication hearing, the court shall give the foster parent an opportunity to be heard.

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997; by SCO 1294 effective January 15, 1998; by SCO 1349 effective December 1, 1998; by SCO 1361 effective October 15, 1999; by SCO 1723 effective October 15, 2010; by SCO 1773 effective April 16, 2012; and by SCO 1816 effective April 15, 2014)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 21(g) by requiring the court to conform the

rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

**Note:** Chapter 65, section 6, SLA 2005 (HB 54) amended AS 47.12.110 relating to the introduction of the victim and the minor to the jury. According to section 8 of the Act, section 6 of the Act has the effect of amending Delinquency Rule 21 by allowing the introduction of the victim and the minor at an adjudication hearing.

## Cross References

**CROSS REFERENCE:** AS 47.12.110(e); AS 47.12.120(a).

## LAW REVIEW COMMENTARIES

"Advancing Tribal Court Criminal Jurisdiction in Alaska," 32 Alaska L. Rev. 93 (2015).

## Rule 21.5. Use of Restraints on the Juvenile.

(a) Restraints such as handcuffs, waist belts, and footcuffs shall not be used on a juvenile during a court proceeding unless they are necessary because the juvenile is otherwise uncontrollable or constitutes a serious and evident danger to self or others, there is reason to believe that the juvenile will try to escape, or there is no less restrictive alternative available to maintain order and safety in the courtroom given available security resources.

(b) If a juvenile appears at a court proceeding in restraints, and if there is an objection to the restraints or if the juvenile is appearing without counsel, the judge must make a finding, based on an individualized assessment of the particular juvenile and the available security resources, whether the restraints are necessary. In subsequent proceedings in the same case, a judge may rely on a finding that was made previously, as long as the circumstances have not materially changed. When ruling on the necessity of restraints, the judge shall consider the following factors:

(1) any threats that the juvenile has made to cause harm to self or others, or to cause a disturbance;

(2) any behavior of the juvenile indicating that the juvenile presents a current threat to the juvenile's own safety, or to the safety of other people in the courtroom, or to the orderly course of the proceedings;

(3) any past escapes or attempts to escape, and the seriousness of the current charge, to the extent it raises a concern that the juvenile has an incentive to attempt to escape;

(4) the existence of any less restrictive alternative to maintain order and safety in the courtroom, taking into account available security resources; and

(5) the recommendations of security personnel charged with custody of the juvenile.

(SCO 1791 effective April 15, 2015)

**PART VIII. DISPOSITION****Rule 22. Reports in Aid of Disposition.****(a) Predisposition Report.**

(1) The predisposition report filed by the Department may include information concerning the following: the juvenile's family background, educational history, past adjudications, verified past incidents of delinquent behavior; the juvenile's medical, psychological and psychiatric history; and a description of the delinquent act and the juvenile's attitude about the act. The report must contain a recommendation regarding the recommended form of treatment that would be in the best interests of the juvenile and the public, and the victim impact statement required by AS 47.12.130.

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

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

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

(SCO 845 effective August 15, 1987; amended by SCO 1092 effective July 15, 1992; and by SCO 1265 effective July 15, 1997)

**Note:** Paragraph (a) was amended by ch. 57, § 22, SLA 1991.

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 22(c) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory

provisions contained in sections 1-8 of the Act applicable to those persons.

**Cross References**

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

**Rule 23. Disposition or Dual Sentence.**

**(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. If the juvenile's foster parent is present at the disposition hearing, the court shall give the foster parent an opportunity to be heard.

**(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.

**(f) Restorative Justice Programs.**

(1) With the consent of the victim(s), the Department and the juvenile may stipulate to a stay of disposition pending a referral of the matter to a restorative justice program. The parties must inform the restorative justice program about any applicable mandatory disposition provisions at the time the matter is submitted to the program.

(2) The court shall give due consideration to the recommendations made pursuant to a referral authorized by paragraph (1).

(3) The term "restorative justice program" means a program using a process in which persons having an interest in a specific offense collectively resolve how to respond to the offense, its aftermath, and its implications for the future. Restorative justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation. For purposes of this rule, the term "restorative justice program" does not include the Alaska Court System's therapeutic courts.

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(4) Except as provided below, the judge rendering the disposition shall not participate directly in any restorative justice program to which a case is referred for dispositional recommendations.

(A) The judge may be present during the proceedings of the program provided that:

(i) the proceedings are conducted on the record; or

(ii) minutes of the proceedings are kept in a manner that the parties agree will fairly and accurately represent what is said at those proceedings.

(B) The judge may speak at these proceedings provided that the judge's comments do not detract or appear to detract from the judge's neutrality.

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997; by SCO 1269 effective July 15, 1997; by SCO 1349 effective December 1, 1998; by SCO 1361 effective October 15, 1999; and by SCO 1816 effective April 15, 2014)

**Note to SCO 1269:** Delinquency Rule 23(d) was amended by § 56 ch 59 SLA 1996.

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 23(b) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

## Cross References

**CROSS REFERENCE:** AS 47.12.120(j); AS 47.12.140.

## LAW REVIEW COMMENTARIES

"Advancing Tribal Court Criminal Jurisdiction in Alaska," 32 Alaska L. Rev. 93 (2015).

### Rule 23.1. Dispute Resolution for Restitution.

In accordance with AS 47.12.120(b), the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any restitution dispute between the minor and any person entitled to restitution as to the amount or manner of payment of restitution.

(SCO 1751 effective October 14, 2011)

### Rule 23.2. Judgment for Restitution.

(a) **Definition.** When a disposition includes a requirement that the minor or the minor's parent pay restitution, the judge shall enter a separate judgment for restitution.

(b) **Content.** The judgment for restitution must:

(1) Identify each victim or other person entitled to restitution and the amount of restitution owed to each.

(2) State the date restitution is due or, if the court schedules installment payments, the amount and due date of each payment. If no due date is stated, the restitution amount is due immediately.

(3) State whether payment will be made through the clerk of court or otherwise. The restitution payment will be made through the clerk of court unless (A) the court orders restitution to be made in a form other than payment of a specific dollar amount or (B) the court orders payment to be made directly to the victim or through another entity.

(4) Identify by name and case number any other delinquent minors, criminal defendants, or parents who are jointly and severally liable for the restitution owed to each person.

(5) State whether post-judgment interest is owed on the judgment, and, if so, when it begins to accrue.

#### (c) Entering the Judgment for Restitution.

(1) *At Disposition.* If the amount of restitution and the names of the persons entitled to restitution are known at the time of disposition, the court shall enter the judgment of restitution at the time of disposition.

(2) *After Disposition.* If the amount of restitution and the names of persons seeking restitution are not known at the time of disposition, the state shall file and serve within 90 days after disposition a proposed judgment for restitution on a form designated by the administrative director, and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, the names of any other delinquent minors, criminal defendants, and parents who might be jointly and severally liable for the restitution, and any case numbers for those persons, if applicable. Within 30 days after receipt of the proposed judgment for restitution, the delinquent minor and the minor's parents, if applicable, shall file any objection to the proposed judgment, and a statement of grounds for the objection. If the delinquent minor or parent does not file an objection, the court may enter the judgment for restitution without further proceedings. If the delinquent minor or parent files an objection and any party requests a hearing, the court shall schedule a hearing.

(3) *Victim Information.* In addition to the requirements of (c)(1) and (2) above, the state shall submit an *ex parte* restitution victim information statement on a form provided by the administrative director, which includes information concerning the identity and addresses of the victims. The restitution victim information statement shall be filed within 30 days after entry of the restitution judgment under (c)(1) above or at the time the state submits a proposed judgment to the court under (c)(2) above. The restitution victim information statement is not a permanent record and will not be retained in

the case file. It must not be served on the delinquent minor or parent or disclosed to anyone other than court personnel for purposes of collecting restitution.

(d) **Hearing Regarding Payment Schedule.** A minor or a minor's parent, if applicable, who is unable to pay restitution because of financial circumstances may request a hearing to ask the court to modify the restitution payment schedule. If the court holds a hearing and the minor or the minor's parent, if applicable, proves by a preponderance of the evidence that the minor or, if applicable, the minor's parent is unable through good faith efforts to satisfy the payment schedule in the judgment for restitution, the court may modify the payment schedule.

(e) **Execution.** Civil execution to enforce the judgment may issue if restitution is ordered to be paid by a specified date and the minor or the minor's parent, if applicable, fails to make full payment by that date. If restitution is ordered to be paid in specified installments and the minor or the minor's parent, if applicable, fails to make one or more installment payments, civil execution to collect the entire remaining balance may issue. The automatic stay on enforcement provided in Civil Rule 62(a) does not apply to the enforcement of restitution judgments. The civil judgment for restitution remains enforceable after the expiration of the court's jurisdiction over the minor, as provided in AS 47.12.170(a).

(f) **Victim's Options for Collection.** The collections unit established within the court system will execute on the minor's permanent fund dividend or on the minor's parent's, if applicable, as needed to collect the restitution judgment. A victim who wants to pursue collection more broadly under Civil Rule 69, including the use of general writs of execution or writs of execution for garnishment of earnings, may elect to proceed without the collections unit's assistance. Notice of this election shall be provided on a form designated by the administrative director.

(g) **Priority of Payments.** Where the allocation and application of payments received from or on behalf of a delinquent minor or a minor's parents is uncertain, the court shall apply the priority provisions of Criminal Rule 32.6(g).

(h) **Financial Statement.**

(1) As provided in AS 47.12.120(b)(4)(C), at the request of the department, the victims' advocate, or on its own motion, the court shall, at any time, order the minor and the minor's parent, if applicable, to submit financial information on a form approved by the administrative director to the court and the department for the purpose of establishing the amount of restitution or enforcing an order of restitution.

(2) If the minor or the minor's parent, if applicable, fails to submit a completed financial statement as ordered, the minor's probation officer, or a representative of the department may notify the court by affidavit. Upon receipt of an affidavit under this paragraph, the court shall schedule a hearing for the minor or the minor's parent, if applicable, to show cause why the minor or the minor's parent should not be held in contempt for failure to comply with the order to submit the financial

statement.

**Cross References**

**CROSS REFERENCE:** AS 47.12.120 -.170.

(SCO 1751 effective October 14, 2011; amended by SCO 1907 effective April 5, 2017)

**Note:** Information for victims about collecting on judgments for restitution is provided on the court system's website at: [www.courts.alaska.gov/trialcourts/restitution.htm](http://www.courts.alaska.gov/trialcourts/restitution.htm).

**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.

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997)

**Cross References**

**CROSS REFERENCE:** AS 47.12.120(b)(1)–(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.

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(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.

(SCO 1349 effective December 1, 1998)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 24.1(d) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

## Cross References

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

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

(a) **Annual Review.** The court shall review its disposition order annually. The review will take place without a hearing on the basis of written reports and any statements or affidavits which accompany the reports unless a hearing is requested by a party or ordered by the court on its own motion. The Department shall serve the parties with copies of the reports, statements and affidavits submitted to the court for annual review together with a notice of the parties' right to submit statements, affidavits or other evidence to the court and a notice of their right to request a hearing within 20 days of service.

(b) **Review Upon Application.** A party may apply for review of a disposition order. The court shall order a hearing to review the disposition order upon a showing of good cause or on its own motion. If the juvenile's foster parent is present at a hearing ordered under this paragraph, the court shall give the foster parent an opportunity to be heard.

(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.

(SCO 845 effective August 15, 1987; amended by SCO 983 effective January 15, 1990; by SCO 1265 effective July 15, 1997; by SCO 1361 effective October 15, 1999; and by SCO 1582 effective July 14, 2005)

**Note:** Chapter 70 SLA 2005 (SB 154) enacted changes concerning proceedings relating to delinquent minors. According to section 10 of the Act, the changes made by sections 1-8 of the Act have the effect of amending Delinquency Rule 25(b) and (c)(4) by requiring the court to conform the rule to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in sections 1-8 of the Act applicable to those persons.

## Cross References

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

## PART IX. APPEAL AND PETITION FOR REVIEW

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

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

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

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997)

**Cross References**

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

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

(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.

(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.

(SCO 845 effective August 15, 1987; amended by SCO 919 effective January 15, 1989; by SCO 1185 effective July 15, 1995; by SCO 1265 effective July 15, 1997; by SCO 1294 effective January 15, 1998; and by SCO 1349 effective December 1, 1998)

**Cross References**

**CROSS REFERENCE:** AS 47.12.300.