

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 Delinquency Rule 6 is rescinded in its entirety.
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Note to SCO 1349: Delinquency Rule 6 (Intake) was repealed by ch. 107 § 53 SLA 1998, effective July 1, 1998.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 Delinquency Rule 7 is rescinded in its entirety.
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Note to SCO 1349: Delinquency Rule 7 (Emergency Detention or Placement) was repealed by ch. 107 § 53 SLA 1998, effective July 1, 1998.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 court in all cases shall admit victims of the juvenile's offense to hearings 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 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.

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) **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).

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 liable for child support 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.

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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.

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(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:

(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.

Cross References

CROSS REFERENCE: AS 47.12.300.

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

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

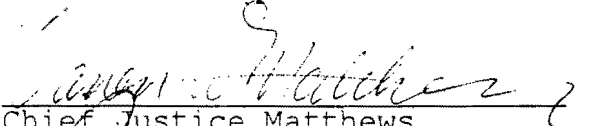
circumstances set out in AS 47.12.160(d)(1)-(5), the adult sentence shall be imposed and custody transferred to the Department of Corrections, unless the juvenile proves by a preponderance of the evidence that mitigating circumstances exist that justify a continuance of the stay of the adult sentence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

Cross References

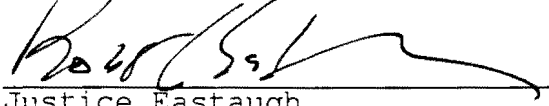
CROSS REFERENCES: AS 47.12.065; AS 47.12.120(j)(2); AS 47.12.160(d) and (e).

DATED: November 12, 1998


EFFECTIVE DATE: December 1, 1998



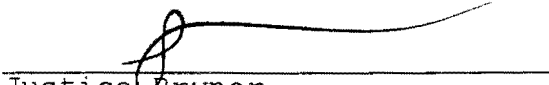
Chief Justice Matthews



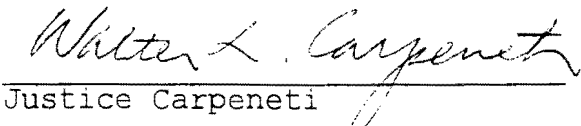
Justice Eastaugh



Justice Fabe



Justice Bryner



Justice Carpeneti