ARTICLES

AN OVERVIEW OF JUVENILE DELINQUENCY LAW IN ALASKA

BLAIR MCCUNE*

I. INTRODUCTION

The perplexing questions of how best to prevent juvenile crime and treat juvenile offenders have led to widely divergent responses over the years.[1] Although there is little consensus as to which of these

* Assistant Public Defender, Alaska Public Defender Agency, Anchorage, Alaska; J.D., University of Florida, 1976; B.A., University of Massachusetts, 1973; Member, Alaska Bar Association.

1. For a review of the changes in juvenile justice systems beginning with English common law courts, through the "child saving" reforms in this country in the 1890s, to the due process and deinstitutionalization reforms of the 1960s and 1970s, see C. SHIREMAN & F. REAMER, REHABILITATING JUVENILE JUSTICE 5-11 (1986). *See also* A. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (2d ed. 1977). A recently published textbook also contains considerable information on trends in treatment of juvenile offenders, as well as descriptions of different states' juvenile justice systems. A. BINDER, G. GEIS & D. BRUCE, JUVENILE DELINQUENCY: HISTORICAL, CULTURAL AND LEGAL PERSPECTIVES (1988). An excellent outline of current juvenile justice systems in the United States is contained in Whitebread & Heilman, *An Overview of the Law of Juvenile Delinquency*, 6 BEHAV. SCI. & THE LAW 285 (1988). A number of recent studies of institutionalized juveniles correlate delinquency with social and educational problems. D. SANDBURG, THE CHILD ABUSE-DELINQUENCY CONNECTION (1989); N. DUNIVANT, THE RELATIONSHIP BETWEEN LEARNING DISABILITIES AND JUVENILE DELINQUENCY (1986). In Alaska, the initial report of the Governor's Interim Commission on Children and Youth strongly recommends increased attention and funding for education, social services, and early intervention in the lives of troubled children as a way of preventing problems such as delinquency and crime. GOVERNOR'S INTERIM COMM'N ON CHILDREN AND YOUTH, OUR GREATEST NATURAL RESOURCE: INVESTING IN THE FUTURE OF ALASKA'S CHILDREN (1988).

There is a great deal of information on juvenile delinquency currently being published, especially by social scientists. It is beyond the scope of this article to attempt to review this literature.

responses has had the most success,[2] Alaska has developed a progressive system that is worth examining both as a static example of how the juvenile justice process operates and as a model for how such systems may evolve in the future.

The general structure of the juvenile justice system in Alaska is typical of that found in many other states.[3] Although jurisdiction over delinquent children lies in the superior court, juvenile jurisdiction can be waived[4] when the juvenile offender is deemed unamenable to treatment as a juvenile. Such a determination usually takes into consideration the age of the juvenile, his or her prior delinquency adjudications, and the severity of the offense charged. If the child is treated as a juvenile, the adjudication process determines whether he or she is in fact delinquent, and the disposition process decides what type of treatment or confinement is most appropriate. The appellate process considers both interlocutory and final appeals.

Before describing the Alaska juvenile justice system in detail, the next section examines the general trends and theories underlying juvenile law. The remainder of the article attempts to illustrate the current state of juvenile law in Alaska.

II. TRENDS AND THEORIES

The concept of a separate criminal justice system for children evolved in the 1890s in Chicago.[5] In 1899, the Illinois Legislature established a separate juvenile court system,[6] on the theory that children, although sometimes errant, are not "criminal" in the same sense as adults, and should not be processed through the criminal courts and incarcerated with older offenders.[7] The beliefs that neglected children should receive proper care and that delinquent children could and

2. C. SHIREMAN & F. REAMER, *supra* note 1, at 56-83. Some social scientists have come to the questionable conclusion that "nothing works" to prevent juvenile crime and rehabilitate juvenile offenders. *Id.* at 84-91.

3. *See* Whitebread & Heilman, *supra* note 1, at 294-304.

4. When juvenile jurisdiction is "waived," the case is transferred to criminal court where the child is tried as an adult. *See infra* Section III.

5. A. PLATT, *supra* note 1, at 124-36.

6. *See id.* at 133-34; *see also* C. SHIREMAN & F. REAMER, *supra* note 1, at 7 (discussing the enactment of the Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children); Melton, *Taking* Gault *Seriously: Toward A New Juvenile Court*, 68 NEB. L. REV. 146 (1989) (critiquing the historic rationales for separate juvenile courts).

7. A. PLATT, *supra* note 1, at 123.

should be reformed also played a role in the establishment of this system.[8] The movement that inspired the creation of juvenile courts has been called the "child saving" movement.[9]

The legal basis for the establishment of separate juvenile courts comes from the doctrine of *parens patriae*.[10] Under this doctrine, if a child is being neglected or is not responding to parental control, it is the right, indeed the duty, of the state to intervene and assume the role of the parent.[11]

Criticism of juvenile court systems has evolved over the past decades.[12] Historically, juvenile courts had a great deal of discretion over children. These courts viewed the child as a "ward of the court" and could order any placement which, in the courts' discretion, served the best interests of the child.[13] In the landmark case of *In re Gault*,[14] however, the United States Supreme Court held that the due process clause of the United States Constitution entitled children to certain fundamental due process rights in state juvenile delinquency proceedings.[15]

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8. *Id.* at 123-36.

9. Anthony Platt used the term "child savers" in the title of his influential book. *See id.*

10. *Parens patriae* can be translated as "parent of the country," meaning the state acts as parent. BLACK'S LAW DICTIONARY 1003 (5th ed. 1979).

11. The phrase *"parens patriae"* and the evolution and jurisdiction of family courts are examined at length in a three-part article by Andrew Kleinfeld. *See* Kleinfeld, *The Balance of Power Among Infants, Their Parents and the State*, 4 FAM. L.Q. 319 (1970); 5 FAM. L.Q. 64-71, 85-91 (1971). The United States Supreme Court has noted, "children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*." Schall v. Martin, 467 U.S. 253, 265 (1984).

12. A. PLATT, *supra* note 1, at 152.

13. C. SHIREMAN & F. REAMER, *supra* note 1, at 31-34; *see also* Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909) (describing the theory and purpose behind early juvenile courts). *But see* Melton, *supra* note 6, at 150-53 (critiquing the historical assumptions underlying the juvenile courts).

14. 387 U.S. 1 (1967).

15. *Id.* at 30-31. The Institute of Judicial Administration, in conjunction with the American Bar Association, authored a series of model statutes codifying and adopting standards for juvenile justice (the "IJA-ABA Standards"), which embody a strong due process approach to juvenile justice.

> [T]he major decision of the project was to reject the medical or rehabilitative model of the juvenile court. . . . The Commission adopted the view that the best way to protect juveniles was to ensure fair proceedings through procedural safeguards, representation by counsel, fixed criteria to guide official action, written decisions subject to judicial review, and full participation by juveniles in consultations with counsel and their parents if the parents' interests are not adverse to the juveniles.

INSTITUTE OF JUDICIAL ADMIN. & AMERICAN BAR ASS'N, STANDARDS FOR JUVENILE JUSTICE: A SUMMARY AND ANALYSIS 23-24 (1977).

Juvenile justice systems can thus be characterized as emphasizing either of two theories: the theory of *parens patriae*, a "benevolent" system in which juvenile courts typically exercise broad discretion in the best interests of the child or a theory that emphasizes *due process*, a system in which children are given procedural rights traditionally not afforded them by juvenile courts. The strength of the *parens patriae* system is said to lie in its flexibility and informality.[16] A juvenile court judge, acting in the role of a parent, has broad discretion to act in the best interests of the child. Cases such as *In re Gault*, however, observed the dangers inherent in largely unfettered discretion, and imposed at least some due process restraints.[17] The Alaska system does not totally embrace either of these theories; aspects of both are readily apparent in the practice of juvenile law in the state.

The Alaska statutes that created the state's juvenile justice system[18] appear to be motivated by the theory of *parens patriae*. This motivation is evidenced by the fact that delinquency dispositions under the statute are guided by considering the "best interests of the child and the public."[19] Dispositions are indeterminate: no matter how serious or trivial the offense, a disposition can range anywhere from years of secure confinement to release on probation.[20]

Court decisions and rules, however, provide strong procedural protections to children charged with committing crimes. The Alaska Supreme Court has recognized greater procedural rights for children

16. *See* Schall v. Martin, 467 U.S. 253, 263 (1984).

17. In *Gault*, a 15 year-old child was committed to the Arizona State Industrial School until age 21 for making lewd telephone calls to a neighbor. The court focused on the total lack of due process protections available to the child before such a penalty was imposed. *In re* Gault, 387 U.S. at 7-8, 10-11; *see also* Melton, *supra* note 6, at 147-50 (explaining and critiquing *In re Gault*).

18. Alaska Statutes sections 47.10.010 to 47.10.900 govern juvenile delinquency and "child in need of aid" proceedings. "Children in need of aid" are children who come into state custody through abandonment, neglect or abuse. ALASKA STAT. §§ 47.10.010-900 (1990).

19. *Id.* § 47.10.082 (1990); *cf.* ALASKA DEL. R. 1(c) ("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.").

20. ALASKA STAT. § 47.10.080(b) (1990). The statute limits commitment to two years, but provides for extension periods under certain circumstances. *Id.* § 47.10.080(b)(1). This wide discretion has been limited by court decision and rule through the adoption of the IJA-ABA Standards, indicating that "the court must consider and reject less restrictive alternatives *prior* to imposition of more restrictive alternatives." R.P. v. State, 718 P.2d 168, 169 (Alaska Ct. App. 1986) (citing INSTITUTE OF JUDICIAL ADMIN. & AMERICAN BAR ASS'N, JUVENILE JUSTICE STANDARDS PROJECT, STANDARDS RELATING TO DISPOSITIONS § 2.1 and commentary at 34-35 (Tentative Draft 1977)); *see also infra* Section V; ALASKA DEL. R. 23(d).

than those required by federal courts,[21] and the Alaska Delinquency Rules further guarantee strong procedural protections.[22] Therefore, the Alaska system has a statutory framework emphasizing *parens patriae* overlaid with court decisions and rules emphasizing due process.[23]

The Alaska system might appear to give children the best of both worlds: Alaska juvenile courts have substantial leeway in choosing the best disposition, yet the child is afforded strong procedural protections, including the requirement that the disposition be the least restrictive alternative.[24] The most recent appellate decisions, however, show a reluctance to expand juveniles' procedural rights beyond current levels.[25] Despite these procedural protections, statistics released

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21. In the leading case of R.L.R. v. State, 487 P.2d 27 (Alaska 1971), the Alaska Supreme Court held that the Alaska Constitution required that a juvenile be given the right to a jury trial if he or she is charged with acts that would be crimes punishable by incarceration if the child were an adult. *Id.* at 33. The court found it unnecessary to reach the same question under the federal constitution, but an earlier United States Supreme Court decision has held that juveniles have no sixth amendment right to jury trial. *Id.* at 32 (citing *In re* Gault, 387 U.S. at 30-31); *see infra* Sections IV and V. The Alaska Court of Appeals, vested with jurisdiction over juvenile delinquency cases, has also provided substantial procedural protections to juveniles. *See infra* Section VI.

22. A separate section of the Alaska Rules of Court is devoted to delinquency proceedings. ALASKA DEL. R. 1-27. These rules were adopted by the Alaska Supreme Court effective August 15, 1987. For a discussion of the protections provided by the Rules, see *infra* note 72.

23. Alaska appellate courts, however, have not emphasized due process protections when a child is charged with committing a serious crime and the state seeks a waiver of juvenile jurisdiction. In determining whether the child is "amenable" to treatment as a juvenile or should be tried as an adult, the Alaska Court of Appeals has held that lack of "amenability" only has to be proven by a preponderance of the evidence. W.M.F. v. State, 723 P.2d 1298 (Alaska Ct. App. 1986). Several other states and the IJA-ABA Standards require proof by clear and convincing evidence. *See infra* note 49.

24. "In order to support a particular disposition, the Department must prove by a preponderance of the evidence that the disposition is the least restrictive alternative appropriate to the needs of the juvenile and the protection of the community." ALASKA DEL. R. 11(e). "In its disposition order, the court shall order the least restrictive alternative disposition . . . that addresses the juvenile's needs and protects the public." *Id.* R. 23(d); *see infra* Section V.

25. *Compare* K.L.F. v. State, 790 P.2d 708, 710-12 (Alaska Ct. App. 1990), *petition for hearing granted*, No. S-3923 (Alaska Aug. 2, 1990) (refusing to expand the Delinquency Rules by consulting the IJA-ABA Standards on detention of juveniles pending disposition hearings) *with* R.P. v. State, 718 P.2d 168 (Alaska Ct. App. 1986) (adopting the IJA-ABA's "least restrictive alternative" standard for dispositions). *K.L.F.* shows that the Alaska Court of Appeals will no longer consult the IJA-ABA Standards when there is a court rule directly addressing the issue before it. *See infra* notes 100-02 and accompanying text. In a recent case, Perotti v. State, No. 1104, slip op. (Alaska Ct. App. Feb. 8, 1991), the court noted that the adoption of the IJA-ABA Standards, even when there is no rule directly on point, "is a question best suited for

by the United States Department of Justice show that Alaska institutionalizes delinquent children more often than nearly any other state.[26]

Several states have enacted legislation that automatically waives juvenile jurisdiction when older children commit serious crimes.[27] The Alaska Legislature is currently considering a similar bill.[28] Many factors militate against the passage of such legislation, however, including recent funding for secure juvenile treatment units, the lack of separate facilities for children and youthful offenders in the adult correctional system, and the tendency of courts to allow waiver of juvenile jurisdiction liberally when serious crimes have been committed.[29]

It might, however, be beneficial to enact legislation providing for some proportionality in juvenile delinquency dispositions. Despite all the procedural protections available to juveniles before the disposition or "sentencing" phase of the case, the basic choices available to Alaska juvenile courts are probation or a two-year institutional order.[30] The

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consideration in the context of the Alaska Supreme Court's rule-making authority . . . ." *Id.* at 12 n.2.

26. U.S. DEP'T OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, JUVENILE JUSTICE BULLETIN 6 (Oct. 1988). According to these statistics, Alaska's "juvenile custody rate" (the number of children in custody per 100,000 children) was the fourth highest in the country in 1985 and the fifth highest in 1987. Only the District of Columbia, California, Nevada and South Dakota have higher custody rates. Alaska's custody rate is two to three times that of most northeastern states. These statistics are quite shocking if one assumes that institutionalization is not a particularly good solution to the delinquency problem. In terms of the actual number of children admitted to juvenile institutions, Alaska admitted more than twice as many children as more populous western states such as Idaho, Montana and Wyoming.

27. *See, e.g.*, CAL. WELF. & INST. CODE § 707(c) (West 1984) (statutory presumption that a juvenile court is not an appropriate forum for a juvenile over 16 who commits certain listed serious felonies); COLO. REV. STAT. § 19-2-805 to 806 (Supp. 1990) (direct filing in district court for juveniles 14 or over where a Class 1 felony is charged; transfer of jurisdiction from juvenile court to district court allowed if juvenile court finds that it is contrary to best interests of the child or the public for it to retain jurisdiction); DEL. CODE ANN. tit. 10, § 938 (1975 & Supp. 1990) (mandatory waiver for certain listed serious felonies; discretionary waiver for children aged 14-16 for less serious offenses); N.Y. FAM. CT. ACT §§ 301.1-385.2 (Consol. 1984 & Supp. 1991) and N.Y. CRIM. PRO. §§ 720.10-725.20 (Consol. 1984 & Supp. 1991) (complex statutory scheme that eliminates discretionary waiver by treating children as "designated felony act" offenders in Family Court (13-15 year-olds) or "youthful offenders" in adult criminal court (16-19 year-olds)).

28. Alaska H.R. 101, 17th Leg., 1st Sess. (1991). This bill would allow automatic waiver of jurisdiction for juveniles over age 14 who commit certain serious offenses unless the juvenile can bear the burden of proving his or her amenability to treatment. *Id.*

29. *See infra* Section III.

30. *See infra* Section V.

IJA-ABA Standards recommend a series of dispositions directly related to the seriousness of the offense.[31] The Washington Legislature has enacted a juvenile code that bases punishment on the seriousness of the offense.[32] The Alaska Legislature has enacted a strict presumptive sentencing scheme for adult offenders in which courts are given only limited discretion in sentencing.[33] Although juvenile courts should be given more discretion in choosing dispositions for delinquents than criminal courts are given in sentencing adults, punishment for juvenile offenses should, in some measure, fit the crime.[34]

III. JURISDICTION AND WAIVER OF JURISDICTION

In Alaska, a child may be found a "delinquent minor" if he or she violates a state or municipal criminal law.[35] As noted above, the state may petition the court to "waive" juvenile jurisdiction, however, and transfer the case to superior or district court for regular adult criminal proceedings if the child cannot be treated and rehabilitated in the juvenile system.[36] This section will address two issues: jurisdictional age limits, and the serious and controversial topic of waiver of juvenile jurisdiction.

Juvenile jurisdiction is reserved for children under eighteen years of age on the date of the offense.[37] If a person commits an offense shortly before his or her eighteenth birthday, he or she will be subject

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31. *See infra* note 121 and accompanying text.

32. *See infra* note 122 and accompanying text.

33. ALASKA STAT. § 12.55.125-175 (1990); *see also* Di Pietro, *The Development of Appellate Sentencing Law in Alaska*, 7 ALASKA L. REV. 265, 278-95 (1990); *infra* note 120 and accompanying text.

34. *See infra* Section V.

35. ALASKA STAT. § 47.10.010(a)(1) (1990). Children can be prosecuted as adults, however, for violations of traffic, fish and game, and parks and recreation statutes. *Id.* § 47.10.010(b). As no felony charges are possible under this section, all cases are in district court. A recent amendment requires the superior court to bring driver's license revocation actions against juveniles "in the same manner as [against] an adult." *Id.* § 47.10.010(d). The statute further provides that a child's parents or guardian "shall be present at all proceedings" if the case is heard in district court. *Id.* § 47.10.010(b). The Alaska Court of Appeals has held the resulting conviction void if the trial court record does not show "substantial compliance" with the requirement that the child's parents be present at the criminal proceeding. Aiken v. State, 730 P.2d 821, 824 (Alaska Ct. App. 1987).

36. ALASKA STAT. § 47.10.060 (1990); ALASKA DEL. R. 20(b).

37. ALASKA STAT. § 47.10.010(a) (1990). The statute does not set any lower limit on the age of children who can come within the jurisdiction of the juvenile system. Practically speaking, however, very young children who commit offenses are not charged in the delinquency system, but are generally found to be children in need of aid. *See id.* § 47.10.010(a)(2). *See generally* Melton, *supra* note 6, at 152-53 (describing the common law "defense of infancy" for children under age 7 and those between ages 7 and 14 who fail to appreciate the wrongfulness of their conduct); Walkover,

to juvenile jurisdiction even though all of the court proceedings may occur well after he or she turns eighteen.[38] A disposition order can extend juvenile jurisdiction until the child's nineteenth birthday, or, with his or her consent, to age twenty.[39]

The state's ability to waive juvenile jurisdiction and transfer a case to adult criminal court is usually reserved for serious criminal cases involving older children. In order to waive juvenile jurisdiction, the state must petition the juvenile court prior to an adjudication of delinquency.[40] If jurisdiction is waived, the child is bound over to superior or district court for trial as an adult.[41]

Waiver is a two-step process in which the superior court must find probable cause that the offense has been committed, and that the child is not amenable to treatment as a juvenile.[42] The "probable cause" portion of a waiver hearing has been termed the "conceptual equivalent" of a preliminary hearing in an adult criminal case.[43] Once the state has established probable cause, the court must next consider

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The Infancy Defense in the New Juvenile Court, 31 UCLA L. REV. 503 (1984) (arguing that the common law defense of infancy should be available to non-culpable children under age 14).

38. P.H. v. State, 504 P.2d 837, 841-42 (Alaska 1972). The age limit applies even to children on juvenile court probation. If a child over 18 commits an offense while on juvenile probation, he or she will be treated as an adult even though he or she is technically still within the jurisdiction of the juvenile court because of probation. Henson v. State, 576 P.2d 1352, 1353-54 (Alaska 1978).

39. ALASKA STAT. § 47.10.080(b)(2)(A),(B); (b)(3)(A),(B) (1990).

40. *Id.* § 47.10.060 (1990); ALASKA DEL. R. 20(b). If the child is actually adjudicated a delinquent, the prosecution cannot thereafter proceed in adult criminal court without violating the child's double jeopardy rights. Breed v. Jones, 421 U.S. 519, 541 (1975). A minor child can file a petition for waiver on his or her own behalf, but is not entitled to waiver as a matter of right. M.O.W. v. State, 645 P.2d 1229, 1235 (Alaska Ct. App. 1982). In a recent case, the Alaska Court of Appeals held that, on the grounds of an "appearance of partiality," a superior court judge who presided over a waiver hearing should not have presided over the proceedings in adult criminal court. Perotti v. State, No. 1104, slip op. at 8-13 (Alaska Ct. App. Feb. 8, 1991). The court noted, however, that the IJA-ABA Standards recommend that a child should be given an automatic right to challenge the judge who presides over the waiver hearing. *Id.* at 10-12. The court requested that the Alaska Supreme Court refer to the appropriate rules committee the issue of whether this standard should be adopted. The court finally noted that a child arguably has an automatic peremptory challenge to the judge through Alaska Rule of Criminal Procedure 25(d) since the juvenile case is "closed" after juvenile jurisdiction is waived. *Id.* at 12 n.2; *see also* ALASKA DEL. R. 20(d)(2).

41. ALASKA DEL. R. 20(d)(2). The child can be held in custody pending the transfer. *Id.* R. 20(e).

42. ALASKA STAT. § 47.10.060(a) (1990); ALASKA DEL. R. 20(d)(1).

43. A.D. v. State, 668 P.2d 840, 841 n.3 (Alaska Ct. App. 1983); *see also* ALASKA R. CRIM. P. 5.1 (governing preliminary examinations). Although the waiver statute requires only probable cause to believe that the child is "delinquent," the Alaska Court of Appeals has held that the court must find probable cause that the child committed the acts charged in the waiver petition. The mere fact that the child is on

whether the child is amenable to treatment as a juvenile.[44] This issue has long been one of the most controversial areas in juvenile delinquency law in Alaska[45] and elsewhere.[46] In waiver cases involving serious crimes, Alaska courts have downplayed their usual concern for the due process rights of juveniles.[47] In these cases, the courts appear more concerned with punishment and isolation than either the benevolent *parens patriae* or due process ideal would suggest.

A striking example of the lack of emphasis given to due process concerns is the burden of proof Alaska courts apply in waiver hearings. In *W.M.F. v. State*,[48] the Alaska Court of Appeals held that the state need show the juvenile's lack of amenability to treatment by only a preponderance of the evidence. The court first stated that the preponderance of evidence standard had been adopted in an earlier Alaska Supreme Court case and was therefore binding on the Alaska Court of Appeals.[49] The court did not find that earlier case controlling on the issue of whether the due process clauses of the Alaska or

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probation, and therefore "delinquent," does not satisfy the probable cause requirement. A.D. v. State, 668 P.2d at 841 n.2; *see also* ALASKA DEL. R. 20(d)(1)(A) ("probable cause [exists] to believe the juvenile committed the act for which waiver is sought"). The court also held that probable cause cannot be based solely on hearsay evidence. A.D. v. State, 668 P.2d at 841 (citing P.H. v. State, 504 P.2d 837, 842-43 (Alaska 1972)). *See generally* ALASKA DEL. R. 20(c) (conduct of waiver hearings is governed by ALASKA R. CRIM. P. 5.1(a)-(e)).

44. A child will normally consent to treatment until age twenty prior to the waiver hearing. This consent is binding on the child. State v. F.L.A., 608 P.2d 12, 14-15 (Alaska 1980). The waiver statute now specifically provides that a child's amenability to treatment is to be decided by determining whether or not the child can be rehabilitated before reaching twenty years of age. ALASKA STAT. § 47.10.060(d) (1990); *cf.* ALASKA DEL. R. 20 (governing waiver proceedings).

45. *See* Note, *An Analysis of the Jurisdictional Waiver Procedure in the Juvenile Courts*, 5 UCLA-ALASKA L. REV. 152 (1975) (discussing procedures and policies underlying waiver of juvenile jurisdiction in Alaska).

46. *See* C. SHIREMAN & F. REAMER, *supra* note 1, at 43-47 (discussing different states' approaches to determining scope of juvenile court jurisdiction). The IJA-ABA Standards would allow waiver only for 15, 16 and 17 year-olds charged with very serious offenses. INSTITUTE OF JUDICIAL ADMIN. & AMERICAN BAR ASS'N, STANDARDS RELATING TO TRANSFER BETWEEN COURTS § 2.1, at 27 (1980).

47. Alaska, of course, complies with the minimum procedural guarantees of federal due process set out in Kent v. United States, 383 U.S. 541, 561 (1966), including notice, a hearing, representation by counsel and a statement of reasons if waiver is ordered. P.H. v. State, 504 P.2d 837, 842 (Alaska 1972); *see also* ALASKA DEL. R. 11, 16, 20 (adopting the *Kent* requirements).

48. 723 P.2d 1298 (Alaska Ct. App. 1986). *W.M.F.* involved a 14 year-old girl and 19 year-old man charged with robbing and murdering three elderly Anchorage residents. *Id.* at 1299. Justice Daniel A. Moore of the Alaska Supreme Court, sitting by assignment as a court of appeals judge, wrote the opinion of the court.

49. *Id.* at 1300 (citing *In re* F.S., 586 P.2d 607 (Alaska 1978)). The *F.S.* opinion is somewhat suspect. *F.S.* was overruled on other grounds by State v. F.L.A., 608 P.2d 12 (Alaska 1980), and the standard of proof issue did not appear to be well

United States Constitutions required more than the preponderance standard, but concluded that neither constitution prohibited a preponderance of the evidence standard, and thus upheld it in this context.[50]

W.M.F. is interesting for several reasons. First, by adopting a preponderance rather than a clear and convincing standard, it shows the court's refusal to emphasize procedural protections and due process in waiver cases involving serious offenses.[51] Second, it shows the willingness of Alaska courts to adopt rules for juvenile proceedings

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briefed by the parties. The *F.S.* court relied on its "independent research" to arrive at the conclusion that a preponderance standard was "uniform" in other jurisdictions. *In re* F.S., 586 P.2d at 611. It also appears that the court did not have to decide the issue because it found that any error the superior court made in applying the clear and convincing standard was harmless. *Id.* at 612.

Contrary to the *F.S.* court's assertion, the preponderance of the evidence standard in waiver hearings is not "uniform" in other jurisdictions. A significant minority of states have adopted a clear and convincing evidence standard for waiver. *See, e.g.,* Commonwealth v. King, 17 Mass. App. Ct. 602, 605, 460 N.E.2d 1299, 1302 (1984); *In re* Seven Minors, 99 Nev. 427, 436-37, 664 P.2d 947, 953 (1983) (both cases stating a "clear and convincing" evidence standard); *see also In re* White, 227 Kan. 881, 886-87, 610 P.2d 1114, 1118-19 (1980); K.C.H. v. State, 674 P.2d 551, 552 (Okla. Crim. App. 1984) (both cases stating a "substantial evidence" requirement). Perhaps because of the problems with *F.S.* and the strength of these decisions from other states, children have continued to challenge, albeit unsuccessfully, the application of the preponderance of evidence standard. *See* M.K. v. State, 744 P.2d 1178, 1180 (Alaska Ct. App. 1987); D.E.P. v. State, 727 P.2d 800, 802 (Alaska Ct. App. 1986); C.G.C. v. State, 702 P.2d 648, 649 n.1 (Alaska Ct. App. 1985).

The IJA-ABA Standards recommend a clear and convincing burden of proof. INSTITUTE OF JUDICIAL ADMIN. & AMERICAN BAR ASS'N, STANDARDS RELATING TO TRANSFER BETWEEN COURTS § 2.2C Commentary at 44 (1980). In any event, the preponderance of the evidence standard is now required by rule in Alaska. ALASKA DEL. R. 11(c).

50. W.M.F. v. State, 723 P.2d at 1301.

51. The waiver statute provides that a child is "unamenable to treatment" if he or she "*probably* cannot be rehabilitated . . . before reaching 20 years of age." ALASKA STAT. § 47.10.060(d) (1990) (emphasis added). Although the *F.S.* opinion found that "probably" connoted a preponderance of the evidence standard, it also could be viewed as imposing a higher standard in determining that a juvenile is not amenable to treatment. Instead of attempting to resolve this ambiguity in the waiver statute, the court in *W.M.F.* viewed *F.S.* as binding precedent for the preponderance of the evidence standard, W.M.F. v. State, 723 P.2d at 1300. The court chose not look at the waiver statute as a penal statute to be construed strictly against the government. *Id.*; *see* Romero v. State, 792 P.2d 679, 682 (Alaska Ct. App. 1990) ("It is well settled that a penal statute must be construed strictly and that ambiguities must be resolved against the state.").

After adopting the preponderance standard, the *W.M.F.* court proceeded to examine only whether that standard provided sufficient procedural due process protection to the juvenile. The court used the due process test stated by the United States Supreme Court in Santosky v. Kramer, 455 U.S. 745, 755 (1982). W.M.F. v. State, 723 P.2d at 1300. Although Alaska courts have often concluded the Alaska Constitution's due process clause provides greater protections than federal due process, *see, e.g.,* Gundersen v. Municipality of Anchorage, 792 P.2d 673, 674-76 (Alaska 1990),

without deferring to the legislature.[52] Although in this instance the court used its rule-making authority to provide less due process protection to juveniles, it appears that this tendency is confined to waiver cases. In most other areas of delinquency law, court decisions provide more rather than less protection for children subject to juvenile jurisdiction.[53]

The waiver statute sets out the factors courts must address in deciding a juvenile's amenability to treatment: the seriousness of the offense; the history of delinquency; the probable cause of the minor's delinquent behavior; and the facilities available for treatment in the juvenile system.[54] Although psychological examinations are not required,[55] most decisions rely on expert opinions concerning amenability to treatment.[56] In a recent case, *R.H. v. State*,[57] the court held that a child could not be compelled to undergo a psychological examination to determine amenability unless the child introduced psychological evidence in his or her own behalf.[58] The superior court has broad

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the *W.M.F.* court did not consider providing greater protections under the Alaska Constitution to children faced with waiver. W.M.F. v. State, 723 P.2d at 1300.

52. The *W.M.F.* and *F.S.* courts did not see their role as merely interpreting the language of the waiver statute, but as having broad authority to set rules for juvenile proceedings, even where those rules bordered on substantive rather than procedural matters. The Alaska Supreme Court has routinely held that it has broad, "inherent" rule-making authority. *See* Surina v. Buckalew, 629 P.2d 969 (Alaska 1981); Noland v. Sea Airmotive, 627 P.2d 1035 (Alaska 1981).

53. *See infra* Sections IV, V. Alaska courts have noted the high stakes involved in waiver cases. *See* R.H. v. State, 777 P.2d 204, 210 (Alaska Ct. App. 1989). For the child involved in a homicide case, the waiver decision may mean the difference between a few years in a juvenile institution and up to 99 years in an adult jail. For the family of the victim, conversely, allowing the child a relatively short stay in a juvenile institution may seem entirely unjust. In allocating the burden of proof at waiver hearings as they have, perhaps the Alaska courts have seen their role more from the perspective of protection of the public than rehabilitation of the child.

54. ALASKA STAT. § 47.10.060 (1990).

55. J.R. v. State, 616 P.2d 865, 867 (Alaska 1980).

56. *See, e.g.*, State v. J.D.S., 723 P.2d 1278, 1280-81 (Alaska 1986) (juvenile court's Memorandum of Decision Denying Waiver discussing psychiatric evidence offered at hearing); *In re* F.S., 586 P.2d 607, 614 n.26 (Alaska 1978) (juvenile court heard extensive psychiatric testimony as to amenability); *In re* J.H.B., 578 P.2d 146, 149 (Alaska 1978) (same); D.E.P. v. State, 727 P.2d 800, 801 (Alaska Ct. App. 1986) (court notes that six mental health professionals testified at waiver hearing); C.G.C. v. State, 702 P.2d 648, 649 n.1 (Alaska Ct. App. 1985) (discussing psychiatric evidence heard by juvenile court).

57. 777 P.2d 204 (Alaska Ct. App. 1989).

58. *Id.* at 211; *see also* Perotti v. State, No. 1104, slip op. at 3 (Alaska Ct. App. Feb. 8, 1991) (*R.H.* rule violated by court-ordered psychological evaluation). The *R.H.* court relied extensively on Estelle v. Smith, 451 U.S. 454, 465-74 (1981), in which the United States Supreme Court held that results of a court-ordered pretrial psychological competency examination could not be used at the defendant's sentencing hearing. R.H. v. State, 777 P.2d at 209-13. The Alaska Court of Appeals held

discretion in weighing the statutory factors and can disregard the consensus of psychological experts if it wishes.[59]

It appears that the primary factor in deciding waiver cases, however, is the seriousness of the offense. A prime example of the weight given this factor is the Alaska Supreme Court's decision in *State v. J.D.S.*,[60] which involved the robbery and murder of a convenience store clerk. The superior court found that J.D.S., who was only fourteen at the time of the offense, had "not yet begun to mature" and had "the appearance of an 11 year-old."[61] The court went on to find that he did not have much potential for rehabilitation, but that he was much more likely to be rehabilitated through confinement in a secure juvenile facility than an adult facility.[62] In choosing to deny waiver, the court also noted that appropriate treatment was not available in the adult correctional system.[63]

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that a waiver hearing is clearly an adversarial proceeding in which the consequences are extremely serious, and therefore the juvenile retains his fifth amendment privilege against self-incrimination. *Id.* at 210, 212. Even with the elaborate safeguards implemented by the trial court, the court found that a compelled examination violated self-incrimination guarantees. *Id.* at 207, 210; *see* U.S. CONST. amend. V, XIV; ALASKA CONST. art. I, § 9.

The *R.H.* decision raises the interesting issue of what happens if the child decides to present psychological evidence and is compelled to undergo a psychological examination, but loses the waiver hearing and goes to trial in adult criminal court. At trial, the question of whether or not the state can use the statements given by the child in the compelled examination arises. It appears that at least some sort of "use immunity" is necessary in this situation to avoid making the child choose between vigorously defending against waiver and asserting his or her right against self-incrimination at trial. *See* Ramona R. v. Superior Court, 37 Cal. 3d 802, 810, 693 P.2d 789, 795, 210 Cal. Rptr. 204, 210 (1985) ("We hold the California Constitution to require that testimony a minor gives at a fitness hearing . . . may not be used against him at a subsequent trial of the offense."); Whitebread & Heilman, *supra* note 1, at 295 ("In many states, evidence presented by the juvenile at a waiver hearing is not admissible against the juvenile in a subsequent adjudicatory hearing or criminal prosecution. Thus the juvenile can admit the charge at the waiver hearing in order to demonstrate amenability to rehabilitation under the juvenile court system and subsequently contest the petition or complaint.") (citation omitted). The IJA-ABA Standards recommend immunity if the child wishes to present evidence on amenability and note that many states offer some sort of protection to a child in this situation. INSTITUTE OF JUDICIAL ADMIN. & AMERICAN BAR ASS'N, STANDARDS RELATING TO TRANSFER BETWEEN COURTS § 2.3I, commentary at 50-51 (1980).

59. R.H. v. State, 777 P.2d at 211; *see also* Dolchok v. State, 639 P.2d 277, 281 (Alaska 1982) (absent clear error, trial court was free to disregard uniform psychological evidence and refuse to find the defendant not guilty by reason of mental disease or defect).

60. 723 P.2d 1278 (Alaska 1986).

61. *Id.* at 1281.

62. *Id.* at 1279, 1281.

63. *Id.* at 1281.

On appeal, the Alaska Supreme Court's majority opinion focused on this last finding by the superior court, and held that it was an error of law to base an amenability to treatment decision on a comparison between the rehabilitative alternatives available in the adult and juvenile systems.[64] Although the normal course would have been to remand the case to the trial court for findings under the legally correct factors, the supreme court simply ordered the child waived to adult court.[65] Justice Rabinowitz, joined by Justice Compton, dissented. They would have remanded the case to the trial court to enter unambiguous findings without considering the treatment the child would have received in the adult correctional system.[66]

From these appellate court decisions, it appears that the commission of a serious offense often outweighs a child's youth or lack of prior delinquency adjudications in a court's waiver decision.[67] Given the appellate courts' tendency to uphold waiver decisions in cases involving serious felony offenses, it is unlikely that the Alaska Legislature would see a need to follow the course taken by several other states in enacting legislation making waiver mandatory when such offenses are committed by older children.[68] The courts' approval of the preponderance of the evidence standard makes proving that a juvenile is not amenable to treatment relatively easy for the state. The legislature has recently appropriated considerable amounts of money to renovate

64. *Id.* at 1279. In finding that an error of law was made, the supreme court avoided the "abuse of discretion" standard of review usually applied in waiver cases. *See* D.E.P. v. State, 727 P.2d 800, 802 (Alaska Ct. App. 1989); W.M.F. v. State, 723 P.2d 1298, 1301-02 (Alaska Ct. App. 1986); C.G.C. v. State, 702 P.2d 648, 651 (Alaska Ct. App. 1985).

65. The trial court's "Memorandum of Decision Denying Waiver" was ambiguous as to the grounds upon which the finding of amenability was based. State v. J.D.S., 723 P.2d at 1279 (Rabinowitz, J., dissenting). Where a trial court's factual findings are incorrect or ambiguous, an appellate court usually remands the case for reconsideration. It is interesting to note that then-Chief Justice Matthews, the author of the *J.D.S.* opinion, had dissented in two prominent criminal cases because he thought the cases should be remanded for further evidentiary hearings instead of simply being reversed. Waring v. State, 670 P.2d 357, 367 (Alaska 1983) (Matthews, J., dissenting in part); Reeves v. State, 599 P.2d 727, 742-43 (Alaska 1979) (Boochever, C.J., and Matthews, J., dissenting). It almost appears as if the majority simply did not want the *J.D.S.* case remanded to the trial court so as to allow another opportunity to avoid waiver.

66. State v. J.D.S., 723 P.2d at 1279-81 (Rabinowitz, C.J., and Compton, J., dissenting).

67. *See, e.g.,* State v. J.D.S., 723 P.2d 1278 (Alaska 1986) (waiver of 14 year-old charged with murder); D.E.P v. State, 727 P.2d 800 (Alaska Ct. App. 1989) (waiver of 16 year-old charged with sexual assault and burglary); W.M.F. v. State, 723 P.2d 1298 (Alaska Ct. App. 1986) (waiver of 14 year-old charged with murder); C.G.C. v. State, 702 P.2d 648 (Alaska Ct. App. 1985) (waiver of 15 year-old charged with murder).

68. *See supra* note 27.

and construct secure juvenile treatment facilities.[69] Furthermore, the Department of Corrections, which controls detention and incarceration facilities for adults, does not maintain separate facilities for youthful offenders.[70] It seems unlikely that the legislature would reverse course given the amounts already invested in juvenile facilities, and the amounts that might be needed to fund adult corrections were there an influx of juveniles into the adult system. Finally, the passage of mandatory waiver statutes is less likely in light of the difficulties other states have had in implementing presumptive waiver.[71]

IV. ADJUDICATION AND DETENTION

Once a child comes within the jurisdiction of the juvenile court, the child is arraigned and must either admit or deny the state's allegations.[72] If he or she admits the petition, the court will set the case for

69. In 1986, a youth facility was constructed in Bethel at the cost of $3,600,000. The Closed Treatment Unit at McLaughlin Youth Center was renovated in 1988 at the cost of $2,000,000. A new co-ed unit was added to the Fairbanks Youth Facility in 1987, and a new facility was opened in Nome in 1982. The legislative authorization for operating the state's five youth facilities exceeded $12,800,000 for fiscal year 1991. Memorandum from Robert Buttcane, Probation Supervisor, Alaska Division of Family and Youth Services, Youth Corrections, to Blair McCune, Jan. 31, 1991 (reflecting information provided by Mr. Richard Illias, Youth Corrections Administrator) (on file with Alaska Law Review).

70. The lack of appropriate facilities in the adult system was one of the reasons the trial court did not order waiver in *J.D.S.* State v. J.D.S., 723 P.2d 1278, 1281 (Alaska 1986).

71. *See* C. SHIREMAN & F. REAMER, *supra* note 1, at 44-46; Champion, *Teenage Felons and Waiver Hearings: Some Recent Trends 1980-1988*, 35 CRIME AND DELINQ. 577 (1989); Note, *Rehabilitation v. Punishment: A Comparative Analysis of the Juvenile Justice Systems in Massachusetts and New York*, 21 SUFFOLK U.L. REV. 1091, 1107-21 (1987) (describing the New York Juvenile Offender Act and the repercussions of treating serious juvenile offenders presumptively as adults).

72. ALASKA DEL. R. 14(b). Most of the procedures in juvenile delinquency cases are set forth in the court rules. A few provisions in the Alaska Statutes set out procedures to be followed after a petition is filed in superior court. The statutes provide that a petition may be filed, ALASKA STAT. § 47.10.020(b) (1990); an attorney or guardian ad litem may be appointed, *id.* § 47.10.050; the child may be released or detained, *id.* § 47.10.040; informal hearings may be held that do not deny a child's right to a public trial and a trial by jury, *id.* § 47.10.070; and, if the child is found to be a delinquent minor, disposition orders may be entered by the court. *Id.* § 47.10.080(b). The rules do not provide expressly for "no contest" pleas in delinquency cases, *see* ALASKA DEL. R. 2, 17 (describing "admit" and "deny" pleas), but, in the author's experience, such pleas are often allowed by juvenile court judges and masters under the inherent powers of the court.

All juvenile court proceedings are held in superior court. The superior court can appoint masters to preside over certain types of juvenile hearings. ALASKA DEL. R. 4. The master's findings must be reviewed by the superior court. *Id.* R. 4(b)(3), R. 4(f); *see* ALASKA R. CIV. P. 53(d) (governing master's reports). Any party may file objections to the findings and ask for a hearing de novo. ALASKA DEL. R. 4(f)(1). The

disposition.[73] If the child denies the allegations, however, the case will set for an adjudication hearing, which is a trial on the merits of the petition.[74]

Before going to an adjudication hearing, however, the case may be informally "diverted" at the discretion of the juvenile intake officer.[75] Pre-trial "diversion" allows an offender to go through an informal, probation-type program rather than going to court. If the child is a first-time offender, the offense is not serious, or if it seems that the child's problems can be taken care of by family or community resources, the charges can be held in abeyance pending completion of an informal probationary program. Such a program would typically include regular school or work attendance, curfew, supervision by a parent or other responsible adult, and participation in a counseling or substance abuse program.[76]

The leading Alaska case establishing childrens' procedural rights in the adjudication process is *R.L.R. v. State*.[77] The court held for the first time that the statute in effect at the time, which provided that all juvenile hearings were to be held without a jury,[78] violated the Alaska constitutional guarantee of a right to trial by jury.[79] The court noted that although a number of courts in other states had upheld denials of jury trials in juvenile cases, the Alaska Constitution guaranteed such a

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superior court is not bound by the master's recommendations, but the master's findings of fact should be accepted if they are not "clearly erroneous." ALASKA R. CIV. P. 53(d)(2); *see also* Matter of B.L.J., 717 P.2d 376, 381 (Alaska 1986) (citing Headlough v. Headlough, 639 P.2d 1010, 1012 (Alaska 1982)). In Anchorage, juvenile delinquency cases are routinely assigned to a standing master of the superior court. In many other areas of the state, most notably Fairbanks, superior court judges, rather than masters, usually preside over all delinquency hearings.

73. ALASKA DEL. R. 14; For a discussion of disposition proceedings, see *infra* Section V.

74. ALASKA DEL. R. 21.

75. *Id.* R. 6(d). There has been some controversy among experts in the juvenile justice field about diversion. Many experts believe that diversion programs often do more harm than good because children who would not normally be subject to supervision by the delinquency system are ensnared by diversion programs. Children who were formerly given a warning by a local policeman and whose problems were handled by his or her family or school are now processed through the delinquency system. This phenomenon is referred to as "net-widening." *See* C. SHIREMAN & F. REAMER, *supra* note 1, at 134-36.

76. Diversion, or "informal supervision" as it is called in the rule, cannot last more than six months. ALASKA DEL. R. 6(d). No detention or out of home placement is permitted. If the child does not successfully complete informal supervision, a petition for adjudication may be filed. *Id.*; *see also* ALASKA STAT. § 47.10.020(a) (1990) (allowing "informal adjustment" prior to a petition being filed).

77. 487 P.2d 27 (Alaska 1971).

78. ALASKA STAT. § 47.10.070 (1966) *amended by* Act effective Aug. 16, 1972, ch. 71, § 53, 1972 Alaska Sess. Laws 11.

79. R.L.R. v. State, 487 P.2d at 33 n.35, 35; *see* ALASKA CONST. art. I, § 11.

right.[80] The court also held that juveniles have a right to a public trial and to be present at all proceedings, and that process must be personally served on the juvenile.[81] The prosecution's burden of proof is the same as in adult criminal trials: the state must prove charges beyond a reasonable doubt.[82] The Alaska Supreme Court has also held that the constitutional right to a speedy trial applies to juvenile proceedings, but has not strictly applied the 120 day period applicable to adult cases.[83]

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80. R.L.R. v. State, 487 P.2d at 35. The court also held that the right to a jury trial was not self-executing, but was available only if the child "affirmatively assert[ed]" the right. A child can waive jury trial with consultation of counsel or, where appropriate, a guardian ad litem. *Id.* at 32-35. The delinquency rules now provide for a jury of 12 persons if the child submits a request within 10 days after arraignment. ALASKA DEL. R. 21(a),(b).

The United States Supreme Court has held that the sixth amendment does not require a trial by jury in juvenile cases. McKeiver v. Pennsylvania, 403 U.S. 528 (1971). Nevertheless, a juvenile's right to a jury trial under the Alaska Constitution was an open question at the time *R.L.R.* was decided. R.L.R. v. State, 487 P.2d at 31 (citing *In re* Gault, 387 U.S. 1, 27-31 (1967)). *See generally* Melton, *supra* note 6, at 174-75 (advocating jury trials in juvenile cases).

81. R.L.R. v. State, 487 P.2d at 38-43. The Delinquency Rules currently provide that a trial in juvenile court is "not open to the public" unless the child requests a public trial. ALASKA DEL. R. 21(a). The *R.L.R.* court held that a guardian ad litem could be appointed to provide independent judgment where public proceedings appeared to be against the child's best interests, but the child still insisted on them. R.L.R. v. State, 487 P.2d at 39.

It should also be noted that records of juvenile court proceedings are supposed to be kept strictly confidential. ALASKA STAT. § 47.10.090(a) (1990); *see also* ALASKA DEL. R. 27 (governing the confidentiality of juvenile court records). It is a misdemeanor to violate the confidentiality of children's proceedings. ALASKA STAT. § 47.10.090(c) (1990). One of the few criminal cases in which the United States Supreme Court reversed a decision of the Alaska Supreme Court occurred as a result of the Alaska court's solicitude toward the confidentiality of juvenile proceedings. In Davis v. Alaska, 415 U.S. 308 (1974), the Court held that the trial court's refusal to allow the state to impeach a juvenile witness on his delinquency record violated the confrontation clause of the United States Constitution. *Id.* at 315-21; U.S. CONST. amend. VI. As a result of *Davis* and other cases, Alaska courts now allow more liberal access to childrens' court records for cross-examination purposes. *See, e.g.,* Sledge v. State, 763 P.2d 1364, 1367-69 (Alaska Ct. App. 1988).

Both the Alaska courts and legislature have also been willing to allow victims of juvenile offenses access to delinquency proceedings. *See* W.M.F. v. Johnstone, 711 P.2d 1187, 1190 (Alaska Ct. App. 1986); ALASKA STAT. § 47.10.072 (1990); ALASKA DEL. R. 3(c).

82. R.L.R. v. State, 487 P.2d at 46 (citing *In re* Winship, 397 U.S. 358, 368 (1970) (federal due process requires proof beyond a reasonable doubt in delinquency adjudications)). The *R.L.R.* court did not reach the standard of proof issue, but did note *Winship* and noted that the Delinquency Rules had been amended to provide for a reasonable doubt standard. *Id.*; *see* ALASKA DEL. R. 11(b).

83. R.D.S.M. v. Intake Officer, 565 P.2d 855 (Alaska 1977); *see* U.S. CONST. amend. VI; ALASKA CONST. art. I, § 11; ALASKA R. CRIM. P. 45 (providing for 120 day speedy trial period). Although Rule 45 was considered a "valuable guide" in

The *R.L.R.* case, however, is perhaps as interesting for its rationale as for the decision itself. Justice Rabinowitz's opinion states that the "benevolent social theory" of protecting juveniles, that is, the *parens patriae* theory, which is often used as a justification for limiting due process rights, could not justify deprivation of rights guaranteed by the Alaska Constitution.[84] The court found no empirical basis for concluding that the special features of juvenile courts led to less recidivism than "ordinary adult criminal proceedings."[85] The majority also noted that earlier juvenile court cases often showed "much more extensive and fundamental error than is generally found in adult criminal cases."[86] As a result, in *R.L.R.*, the Alaska court put itself squarely behind the due process, as opposed to the *parens patriae*, theory.[87]

Along with most other courts, Alaska courts have held that evidence illegally seized by the police cannot be used in adjudication proceedings,[88] but that the admission of evidence discovered in searches by non-state actors is constitutionally permissible under many circumstances.[89] A number of Alaska cases deal with children's rights

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determining whether one's constitutional right to a speedy trial was violated, it was not held to be directly applicable in a juvenile proceeding. R.D.S.M. v. Intake Officer, 565 P.2d at 858 and n.13.

84. R.L.R. v. State, 487 P.2d at 30-31.

85. *Id.* There is still no empirical evidence that informal proceedings with less emphasis on due process rights are more effective in reducing juvenile crime or rehabilitating juvenile offenders than more formal proceedings. *See* C. SHIREMAN & F. REAMER, *supra* note 1, at 31-36; *see also* Melton, *supra* note 6, at 164-66 (arguing that more formal procedures can have positive rehabilitative effects for delinquent adolescents). After much study, the committee that formulated the IJA-ABA Standards came to believe that a delinquency system providing comprehensive due process rights and determinate dispositions could better serve these goals than formal proceedings. C. SHIREMAN & F. REAMER, *supra* note 1, at 125. It should be noted, however, that even the most stringent due process guarantees cannot ensure fair treatment at disposition. *Id.* at 32, 38-42. This fact is apparent in Alaska, where large numbers of juveniles are confined to institutions despite strong due process guarantees. *See supra* note 26.

86. R.L.R. v. State, 487 P.2d at 38 (citing *In re* G.M.B., 483 P.2d 1006 (Alaska 1971) and E.J. v. State, 471 P.2d 367 (Alaska 1970) (two earlier cases involving detention of children without a hearing)).

87. *See supra* Section III.

88. *See, e.g.*, J.M.A. v. State, 542 P.2d 170, 173-78 (Alaska 1975) (implicit in court's discussion of whether evidence seized by foster parent was inadmissible on state or federal constitutional grounds); D.R.C. v. State, 646 P.2d 252 (Alaska Ct. App. 1982) (implicit in court's extensive discussion of whether evidence acquired by school officials in a locker search was admissible in juvenile adjudication).

89. J.M.A. v. State, 542 P.2d at 176-77. *J.M.A.* involved the admission of evidence found in a search by a foster parent. The Alaska Court of Appeals had also held that searches by school officials fell into this constitutionally permissible category. D.R.C. v. State, 646 P.2d at 256. This is no longer the case, however, given the decision of the United States Supreme Court that school officials act as representatives

against self-incrimination. Generally speaking, these rights are coextensive with the fifth amendment rights of adults in criminal cases, although confessions are more likely to be held involuntary if a child is not afforded an opportunity during custodial interrogation[90] to have his or her parent or guardian present.[91] Nevertheless, a juvenile is not per se incapable of waiving his or her *Miranda* rights.[92]

In the area of pre-adjudication detention of juveniles, the current rules and statutes provide that a child has a right to a hearing prior to or soon after detention.[93] To detain a child, the state must show both that there is probable cause to believe that an offense was committed and that detention is necessary to protect the juvenile or the public, or to ensure the child's appearance at subsequent court hearings.[94]

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of the state when carrying out searches and other disciplinary functions, and thus are not entitled to immunity from the fourth amendment. New Jersey v. T.L.O., 469 U.S. 325, 336-37 (1985); *see also* Lowry v. State, 707 P.2d 280, 285-86 (Alaska Ct. App. 1982).

90. Custodial interrogation is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." J.M.A. v. State, 542 P.2d at 172 n.1 (quoting Miranda v. Arizona, 384 U.S. 436, 444 (1966)).

91. *See* S.B. v. State, 614 P.2d 786 (Alaska 1980) (parent present). The Alaska Court of Appeals recently held that a juvenile's confession must be suppressed if the police fail to notify his or her parents immediately, as required under Alaska Delinquency Rule 7(b). *In re* J.R.N., No. A-3529 (Alaska Ct. App. April; 12, 1991). Courts in several states have established a "parental notification" exclusionary rule, often based on a statute or rule requiring notification. Under these rules, a child's statements to police must be suppressed if substantial and timely efforts to notify the child's parents are not undertaken prior to questioning. *See, e.g.,* People v. Castro, 118 Misc. 2d 868, 462 N.Y.S.2d 369 (1983); Jahnke v. State, 692 P.2d 911 (Wyo. 1984). It remains to be seen whether the Alaska courts will interpret the parental notification requirement of Delinquency Rule 7(d) as a basis for exclusion of a confession absent substantial compliance, or whether failure to notify a parent will be just one factor to be considered in determining whether a juvenile's confession is voluntary under the circumstances. *See* Ridgely v. State, 705 P.2d 924, 932 (Alaska Ct. App. 1985) (per curiam) *rev'd,* 732 P.2d 550 (Alaska 1987); *see also* Fare v. Michael C., 442 U.S. 707, 716-24 (1979) (continued interrogation by police after juvenile requested to see his probation officer in response to *Miranda* warnings did not result in a violation of his fifth amendment rights). In *Fare,* the Court "assumed without deciding" that *Miranda* was fully applicable to juvenile proceedings. 442 U.S. at 717 n.4; *see* J.M.A. v. State, 542 P.2d at 172 n.1 ("There is no question but that juveniles are also entitled to the warnings required by *Miranda.*")

92. Quick v. State, 599 P.2d 712, 719 (Alaska 1979); *see also* Melton, *supra* note 6, at 170-74 (reviewing literature on the validity of childrens' waiver of *Miranda* rights).

93. ALASKA DEL. R. 12(a); ALASKA STAT. §§ 47.10.040, 47.10.140 (1990). The Alaska Legislature has recently enacted a statute that allows police to take runaway or missing minors into protective custody. *Id.* § 47.10.141.

94. ALASKA DEL. R. 12(b); *see* K.L.F. v. State, 790 P.2d 708, 711 (Alaska Ct. App. 1990), *petition for hearing granted,* No. S-3923 (Alaska July 30, 1990).

Though detention is usually equated with placement in a locked, secure setting, the state must also make these showings in order to place a child in a group home or shelter.[95]

The Alaska Supreme Court has recognized substantial procedural rights for juveniles at detention hearings.[96] Although the court has rejected the argument that a child has the same right to bail as an adult under the Alaska Constitution,[97] it has found that a child has "the right to remain free" pending adjudication.[98] The child's right to remain free incorporates the "least restrictive alternative" to pre-adjudication detention requirement now specifically mentioned in the delinquency rules.[99]

The Alaska Court of Appeals recently decided that a child may be detained solely on the basis of the risk that he or she may fail to appear at future court proceedings.[100] The child in *K.L.F. v. State* argued that the court should use the IJA-ABA Standards for "guidance" in interpreting the Delinquency Rules.[101] Although the child was not a danger to herself or others, and had committed only a minor offense, the court noted that she had an extensive history of running

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95. ALASKA DEL. R. 12(b)(1)-(2).

96. Doe v. State, 487 P.2d 47 (1971). The court held that inadmissible hearsay evidence could not be used as a basis for detention. Detention must be based on "competent, sworn testimony." *Id.* at 53. The court also held that a child had a right to counsel at a detention hearing and that the detention order had to be supported by particular facts. *Id.*

97. *See* ALASKA CONST. art. I, § 11.

98. Doe v. State, 487 P.2d at 52. The court described this right as follows:

> If the facts produced at the inquiry show that the child cannot return or remain at home, every effort must be made to place the child in a situation where his freedom will not be curtailed. Only if there is clearly no alternative available may the child be committed to a detention facility and deprived of his freedom.

Id. at 53.

99. ALASKA DEL. R. 12(b)(2). The least restrictive alternative approach is also incorporated in the IJA-ABA Standards. INSTITUTE OF JUDICIAL ADMIN. & AMERICAN BAR ASS'N, STANDARDS RELATING TO INTERIM STATUS, §§ 3.1-3.6 (1980). On the other hand, other states' more restrictive approaches to pre-adjudication release have been upheld by the United States Supreme Court. In Schall v. Martin, 467 U.S. 253 (1984), the Court upheld a New York statute that allowed preventive detention of juveniles despite a finding by the New York Court of Appeals (New York's highest court) that pre-trial detention was actually being used as a punitive measure in New York and other states. *Id.* at 271-72. *See* Peters, Schall v. Martin *and the Transformation of Judicial Precedent*, 31 B.C.L. REV. 641 (1990) (arguing that the Supreme Court distorted precedent to decide *Schall* and that the Court has used *Schall* to distort other constitutional doctrines).

100. K.L.F. v. State, 790 P.2d 708, 712 (Alaska Ct. App. 1990), *petition for hearing granted*, No. S-3923 (Alaska July 30, 1990).

101. *Id.* at 710. The IJA-ABA Standards would not allow detention unless a crime of violence was charged and other factors were met. *Id.* at 709 n.2; *see supra* note 99.

away from placements, and held that the plain language of Delinquency Rule 12 gave the superior court discretion to detain her solely to ensure her appearance at subsequent court hearings.[102] The Alaska Supreme Court has granted discretionary review, but has not yet decided this case. The supreme court is expected to weigh the possibility of harm that could result from such detention against the need for juvenile courts to ensure that children appear for court dates. The child is arguing that the court should apply the relevant IJA-ABA Standards to the pre-adjudication detention decision, thus requiring release under the facts of her case.[103]

In comparing the cases and rules on adjudication and detention with the cases on waiver of jurisdiction, one cannot help but conclude that there is a great deal more solicitude toward the due process rights of children in the adjudication cases than in those on waiver procedures. Most of the due process rights first established in case law have now been incorporated into the Delinquency Rules, however, and Alaska courts may not be willing to grant greater due process rights for children than already exist. The supreme court's ruling in *K.L.F.* may be an indication of this trend.[104]

V. DISPOSITION

Once a child has been adjudicated a delinquent minor, the next step is a disposition hearing at which the superior court must choose one of the three alternatives for placement available under the Alaska statutes.[105] The first, and least restrictive disposition is "supervisory probation," under which the child is released on probation to a parent or guardian and is supervised by a juvenile probation officer.[106] The child remains in the legal custody of the parent or guardian, but will be subject to conditions of probation, typically including curfews, regular school or work attendance, and participation in substance abuse or other treatment programs.

The second alternative is "custodial probation," in which the child is committed to the legal custody of the Department of Health

102. K.L.F. v. State, 790 P.2d at 712.

103. Brief of Appellant at 11-17, K.L.F. v. State, 790 P.2d 708 (Alaska Ct. App. 1990), *petition for hearing granted,* No. S-3923 (Alaska July 30, 1990) (citing INSTITUTE OF JUDICIAL ADMIN. & AMERICAN BAR ASS'N, STANDARDS RELATING TO INTERIM STATUS § 6.6 (1980) (outlining standards for release and detention prior to adjudication)).

104. K.L.F. v. State, 790 P.2d 708 (Alaska Ct. App. 1990) *petition for hearing granted,* No. S-3923 (Alaska July 30, 1990).

105. ALASKA STAT. § 47.10.080(b) (1990); *see* ALASKA DEL. R. 22 (governing the predisposition report submitted by the Department of Health and Social Services); *id.* R. 23 (governing the disposition hearing itself).

106. ALASKA STAT. § 47.10.080(b)(2) (1990).

and Social Services.[107] Although the child may still be released to the physical custody of a parent or guardian, the Department has authority to place him or her in a more restrictive, but still "nondetention" setting, such as a group home or foster home.[108] The Department has considerable discretion in placing children who are committed to its custody.[109] There are a number of different group homes for children in Alaska. Some provide intensive supervision and therapy for children with serious behavioral or emotional problems, while others are less restrictive and less therapy oriented. The homes are usually run by private non-profit organizations, but depend in large part on state and federal funding. Both children from the delinquency system and children in need of aid are usually placed in these homes.

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107. *Id.* § 47.10.080(b)(3).

108. *Id.*

109. In State v. A.C., 682 P.2d 1131 (Alaska Ct. App. 1984), the Department of Health and Social Services appealed the superior court's order placing a child in a group treatment home rather than in his mother's home as the Department directed. The Alaska Court of Appeals held that placement decisions were entrusted to the Department's discretion. Although the juvenile court could "review" the decision pursuant to Alaska Statutes section 47.10.080(f), it could not substitute its judgment for the Department's; review was limited to the issue of whether or not the Department has abused its discretion. State v. A.C., 682 P.2d at 1134; *see also In re* B.L.J., 717 P.2d 376, 380-81 (Alaska 1986) (Department had similar discretion in placing children in need of aid). *A.C.* is significant for the fact that it totally ignores the theory that the superior court has inherent authority over a delinquent child as a "ward of the court." The case represents a rejection of the personal responsibility juvenile court judges traditionally professed for their wards and a move toward the "due process" ideal. The majority decided the case solely on the basis of statutory construction and legislative intent. State v. A.C., 682 P.2d at 1134-35. Judge Singleton's concurring opinion cites case law on appeals from decisions entrusted to the discretion of various administrative agencies. *Id.* at 1135 (Singleton, J., concurring). Under the *parens patriae* theory, a delinquent child would more likely be seen as a ward of the court, and the court seen as having a responsibility to involve itself directly in the child's well-being. *See* A. PLATT, *supra* note 1, at 137-45; Melton, *supra* note 6, at 150-53. A juvenile court judge from the early part of this century might well have been horrified by Judge Singleton's comparison of the court's administration of children's programs to the administration by state agencies of energy programs.

The third placement alternative after an adjudication of delinquency[110] is an institutional order, placing the child in a juvenile correctional home or similar detention facility.[111] In *R.P. v. State*,[112] the Alaska Court of Appeals held that courts should seek the "least restrictive alternatives" when choosing among dispositions.[113] Specifically, the court held that juvenile courts should consider and reject less restrictive alternatives prior to imposing more restrictive alternatives, and that the state had the burden of proving by a preponderance of the evidence that less restrictive alternatives are inappropriate in a particular case. The factors underlying this decision are the child's degree of culpability, the circumstances of the case, and the child's age and prior record of delinquency.[114] The court stressed that rehabilitation was the goal of "paramount importance" in juvenile disposition decisions.[115]

The least restrictive alternative approach mandated by *R.P.* was incorporated in the Alaska Delinquency Rules,[116] which also provide that the state bears the burden of proof on this issue.[117] In another recent case, the Alaska Court of Appeals reaffirmed these standards, as well as the factors determining the least restrictive alternative: the "paramount importance of rehabilitation" and the "strong presumption against institutionalization" outlined in *R.P.*[118]

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110. In some cases, children who come before the courts are given a deferred adjudication of delinquency. This disposition is conceptually similar to a suspended imposition of sentence in adult criminal cases, *see* ALASKA STAT. § 12.55.085 (1990), but, unlike a suspended sentence, is not specifically allowed by statute. In M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982), the court of appeals noted that the superior court had entered a deferred adjudication, but expressed "no opinion as to the propriety of deferring an adjudication of delinquency," since that issue was not before the court. *Id.* at 1230 n.3. Under the current court rules, an adjudication can be held in abeyance for up to a year. ALASKA DEL. R. 21(d)(1)(B).

111. ALASKA STAT. § 47.10.080(b)(1) (1990). There are several such facilities in the state of Alaska. *See supra* note 69. Placement out of state, which was apparently routine at one time for the most serious offenders, is now very rare since high-security closed treatment units have been constructed in Alaska. *See* D.H. v. State, 561 P.2d 294, 296 n.2 (Alaska 1977) (describing then-existing juvenile facilities in Alaska).

112. 718 P.2d 168 (Alaska Ct. App. 1986).

113. *Id.* at 169.

114. *Id.* at 169-70.

115. *Id.* at 169 n.1.

116. ALASKA DEL. R. 23(d) (mandates the least restrictive alternative disposition that addresses juveniles' treatment needs and protects the public).

117. *Id.* R. 11(e).

118. *In re* J.H., 758 P.2d 1287, 1291 (Alaska Ct. App. 1988) (citing R.P. v. State, 718 P.2d 168 (Alaska Ct. App. 1986)). The Alaska Court of Appeals has recently decided two cases holding that institutional placement is the least restrictive alternative in particular circumstances. P.R.J. v. State, 787 P.2d 123, 124 (Alaska Ct. App. 1990) (juvenile's history of running away from less secure settings, substance abuse and failure to gain admission to other programs justified placement in secure facility);

Once a child is institutionalized, he or she may be held for an indeterminate period not to exceed two years, regardless of the crime charged in the petition.[119] This indeterminate period, of course, sharply contrasts with the rigid "presumptive" sentencing scheme enacted for adults in the 1980 Criminal Code revision.[120]

The IJA-ABA Standards recommend replacing indeterminate juvenile dispositions with a "grid" that allows relatively short probationary placements for less severe offenses committed by children without prior records, and more lengthy and restrictive placements for serious crimes and second and subsequent offenses.[121] Washington is the only state which has enacted a disposition statute following the IJA-ABA Standards.[122]

R.N. v. State, 770 P.2d 301, 304 (Alaska Ct. App. 1989) (juvenile's past and continuing criminal conduct, substance abuse and threat to run away from less secure setting justified placement in secure juvenile correction facility).

119. ALASKA STAT. § 47.10.080(b)(1) (1990). This period may be extended on motion of the petitioner, or the child may be released on probation to a less restrictive placement. *Id.* §§ 47.10.080(b)(1), 47.10.200 (release from commitment permitted in the Department's discretion if there is a "reasonable probability that the juvenile will remain at liberty without violating the law"). The superior court has broad authority to extend disposition orders beyond the initial two year period when in the best interest of the juvenile and the public. P.R.J. v. State, 787 P.2d 123, 125 (Alaska Ct. App. 1990). A child is also entitled to notice and a new disposition hearing if his or her administrative release from an institution is revoked. L.C. v. State, 625 P.2d 839, 842 (Alaska 1981). The Delinquency Rules set out the standards for juvenile probation revocation proceedings. ALASKA DEL. R. 24. In A.S. v. State, 761 P.2d 122, 124 (Alaska Ct. App. 1988), the court of appeals held that the state could proceed by probation revocation rather than by a petition for adjudication even if a new juvenile offense was charged. Under the probation revocation rules, the child is entitled only to a hearing. ALASKA DEL. R. 24. At an adjudication hearing, however, the child would have had the right to a jury trial and the state would have borne the burden of proof beyond a reasonable doubt.

120. ALASKA STAT. §§ 12.55.125-175 (1990). The Alaska Criminal Sentencing Code provides for three classes of felony and two classes of misdemeanor crimes. The most serious crimes are "unclassified" offenses. "Presumptive," that is, fixed or mandatory minimum sentences, generally without the possibility of reduction through parole or suspended time, are imposed for second or subsequent felonies and for Class A and unclassified felonies. The goal of the revision was to lessen the discretion formerly given to the court, in order to eliminate "unjustified disparity" in sentencing. *Id.* § 12.55.005 (1990); *see* Di Pietro, *supra* note 33. "Presumptive" sentencing statutes have been enacted by the federal government, which has also recently adopted a controversial set of sentencing guidelines. *See* T. HUTCHISON & D. YELLEN, FEDERAL SENTENCING LAW AND PRACTICE, Title II, §§ 8.1, 8.7 (1989) (history of Sentencing Reform Act of 1984 and Sentencing Guidelines Act of 1986).

121. INSTITUTE OF JUDICIAL ADMIN. & AMERICAN BAR ASS'N, STANDARDS RELATING TO JUVENILE DELINQUENCY AND SANCTIONS § 5.2 commentary (1980).

122. WASH. REV. CODE §§ 13.40.010-450 (Supp. 1991); *see* Becker, *Washington State's New Juvenile Code: An Introduction*, 14 GONZAGA L. REV. 289 (1979); *see also*

The Alaska Legislature could easily study the Washington experience and determine whether a system of determinate juvenile dispositions would be appropriate for Alaska. Certainly the reasons for enacting a "grid" system seem to make sense. In at least one case, a juvenile court felt frustrated by its inability to impose a short, fixed period of detention, and chose to do so without legal authority.[123] The strong presumption against institutionalization in all but extreme cases evidenced by the holdings in *In re J.H.* and *R.P. v. State* may have been influenced by the knowledge that once children are institutionalized in Alaska, the period of confinement is often quite lengthy and release decisions are initially committed to the Department of Health and Social Services.[124] Although a grid system would not be without its dangers or difficulties in Alaska, such a system would seem to fit well with the determinate system now in effect in adult criminal courts.[125]

VI. APPEALS

Alaska law allows children appeals as a matter of right in delinquency cases.[126] The Alaska appellate rules addressing juvenile cases provide for an expedited procedure so that cases can be briefed and decided quickly.[127] Appeals from detention orders are also heard expeditiously. In *A.M. v. State*,[128] the court held that the procedure for adult bail appeals should be used.[129] Under this procedure, a motion

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Gardner, *The Right of Juvenile Offenders To Be Punished: Some Implications of Treating Kids as Persons*, 68 NEB. L. REV. 182, 193 n.56 (noting a trend toward determinate sentences for juveniles in Minnesota, Texas and New York).

123. M.O.W. v. State, 645 P.2d 1229, 1230 (Alaska Ct. App. 1982) (five day incarceration at a youth center as a condition of probation reversed on appeal).

124. *See supra* note 119 and accompanying text. The Department has considerable discretion over placement decisions and presumably has similar discretion over decisions on release from institutions as well. *See* L.C. v. State, 625 P.2d 839 (Alaska 1981); A.S. v. State, 761 P.2d 122 (Alaska Ct. App. 1988) (both dealing with proceedings on juveniles' violations of probation).

125. *See supra* note 120.

126. ALASKA STAT. § 47.10.080(i) (1990); ALASKA DEL. R. 26. Alaska Rule of Appellate Procedure 219(b) provides that an appeal which could not be taken under Alaska Rule of Appellate Procedure 202 is not permitted. Presumably, this means that in juvenile delinquency cases the state can appeal only on the grounds that the petition for adjudication or waiver was insufficient, or on the grounds that the disposition was too lenient. The state may also file interlocutory appeals by petitioning for review of juvenile court decisions, such as suppression of evidence. ALASKA R. APP. P. 401-08.

127. ALASKA R. APP. P. 219(g). These cases are not quite as expedited as child custody cases, in which briefing must be completed within 20 days. *Id.* R. 218(f).

128. 653 P.2d 346 (Alaska Ct. App. 1982).

129. *Id.* at 348.

rather than a brief can be filed in the appellate court.[130] The motion must contain specific information on the nature of the case and the child's background and prior offenses, if any.[131]

Despite these expedited procedures, cases are often technically moot before the appellate courts reach a decision.[132] Although Alaska courts have traditionally applied the public interest exception to the mootness doctrine liberally to reach the merits of appeals, the court of appeals has applied the mootness doctrine more strictly in recent years.[133]

As noted above, Alaska appellate courts have been very active in delinquency cases both through decisions and by adopting procedural rules. If recent cases are any indication, however, the Alaska courts may be somewhat less inclined to make additional major changes in delinquency law and procedure.[134]

VII. CONCLUSION

Alaska delinquency law is much like the law of other states in general form and structure. Alaska courts are strongly concerned with children's procedural rights, except in waiver cases, but the delinquency statutes are more in line with the traditional *parens patriae* role of juvenile courts. More recent decisions indicate that the courts are likely to protect juveniles' existing procedural rights, but are unlikely to break new ground.

It is difficult to say what the legislature may do with delinquency law in the future. There is some pressure to follow the lead of other states in enacting laws mandating waiver in serious cases, but the passage of such legislation is unlikely given the resources that have been devoted to juvenile correction facilities. The legislature may want to

130. ALASKA R. APP. P. 206(b), 207.

131. *Id.* R. 206(b)(1)-(8).

132. As a general rule, Alaska courts will not decide cases "where the facts have rendered the legal issues moot." Doe v. State, 487 P.2d 47, 53 (Alaska 1971). If a case presents a situation which is capable of repetition, yet evades review, the Alaska courts will decide the case on its merits if the case contains issues of public importance. In Alaska, this is referred to as the "public interest exception" to the mootness doctrine. *See* Municipality of Anchorage v. Anchorage Daily News, 794 P.2d 584, 588 (Alaska 1990).

133. *Compare* R.L.R. v. State, 487 P.2d 27, 45 (Alaska 1971) (court applied public interest exception to mootness doctrine to reach merits) *with* A.M. v. State, 653 P.2d 346, 348 (Alaska Ct. App. 1982) (court refused to apply exception and dismissed appeal). In K.L.F. v. State, 790 P.2d 708, 709 n.1 (Alaska Ct. App. 1990), *petition for hearing granted*, No. S-3923 (Alaska July 30, 1990), the court reached the merits, but only because it found that the child had been diligent in pursuing relief at the superior court level, although that court did not reach a final decision on predisposition custody.

134. *See supra* notes 25 & 118 and accompanying text.

consider conforming juvenile disposition statutes to the determinate sentencing theory of the adult criminal statutes, as Washington has done. Although Alaska courts are progressive in recognizing due process rights in delinquency cases, they are bound by statute to basically two disposition options: probation or institutionalization. A system in which there is at least some proportionality[135] between the punishment and the crime would make for a fairer and more predictable juvenile justice system. Such a system could serve to reduce the high number of institutionalized children in Alaska.

135. *See* C. SHIREMAN & F. REAMER, *supra* note 1, at 37-38, 118-20; *supra* notes 121-22 and accompanying text.