

HOUSE BILL NO. 105

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/19/21

Referred: Judiciary, Health and Social Services

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the duties of the commissioner of corrections; relating to the
2 detention of minors; relating to minors subject to adult courts; relating to the placement
3 of minors in adult correctional facilities; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 33.30.011(a) is amended to read:

6 (a) The commissioner shall

7 (1) establish, maintain, operate, and control correctional facilities
8 suitable for the custody, care, and discipline of persons charged or convicted of
9 offenses against the state or held under authority of state law; each correctional facility
10 operated by the state shall be established, maintained, operated, and controlled in a
11 manner that is consistent with AS 33.30.015;

12 (2) classify prisoners;

13 (3) for persons committed to the custody of the commissioner,
14 establish programs, including furlough programs that are reasonably calculated to

1 (A) protect the public and the victims of crimes committed by
2 prisoners;

3 (B) maintain health;

4 (C) create or improve occupational skills;

5 (D) enhance educational qualifications;

6 (E) support court-ordered restitution; and

7 (F) otherwise provide for the rehabilitation and reformation of
8 prisoners, facilitating their reintegration into society;

9 (4) provide necessary

10 (A) medical services for prisoners in correctional facilities or
11 who are committed by a court to the custody of the commissioner, including
12 examinations for communicable and infectious diseases;

13 (B) psychological or psychiatric treatment if a physician or
14 other health care provider, exercising ordinary skill and care at the time of
15 observation, concludes that

16 (i) a prisoner exhibits symptoms of a serious disease or
17 injury that is curable or may be substantially alleviated; and

18 (ii) the potential for harm to the prisoner by reason of
19 delay or denial of care is substantial; and

20 (C) assessment or screening of the risks and needs of offenders
21 who may be vulnerable to harm, exploitation, or recidivism as a result of fetal
22 alcohol syndrome, fetal alcohol spectrum disorder, or another brain-based
23 disorder;

24 (5) establish minimum standards for sex offender treatment programs
25 offered to persons who are committed to the custody of the commissioner;

26 (6) provide for fingerprinting in correctional facilities in accordance
27 with AS 12.80.060;

28 (7) establish a program to conduct assessments of the risks and needs
29 of offenders sentenced to serve a term of incarceration of 90 days or more; the
30 program must include a requirement for an assessment before a prisoner's release on
31 parole, furlough, or electronic monitoring from a correctional facility;

1 (8) establish a procedure that provides for each prisoner required to
 2 serve an active term of imprisonment of 90 days or more a written case plan that

3 (A) takes effect and is provided to the prisoner within 90 days
 4 after sentencing;

5 (B) is based on the results of the assessment of the prisoner's
 6 risks and needs under (7) of this subsection;

7 (C) includes a requirement to follow the rules of the institution;

8 (D) is modified when necessary for changes in classification,
 9 housing status, medical or mental health, and resource availability;

10 (E) includes participation in programming that addresses the
 11 needs identified in the assessment;

12 (9) establish a program to begin reentry planning with each prisoner
 13 serving an active term of imprisonment of 90 days or more; reentry planning must
 14 begin at least 90 days before release on furlough or probation or parole; the reentry
 15 program must include

16 (A) a written reentry plan for each prisoner completed upon
 17 release on furlough or probation or parole that includes information on the
 18 prisoner's proposed

19 (i) residence;

20 (ii) employment or alternative means of support;

21 (iii) treatment options;

22 (iv) counseling services;

23 (v) education or job training services;

24 (B) any other requirements for successful transition back to the
 25 community, including electronic monitoring or furlough for the period between
 26 a scheduled parole hearing and parole eligibility;

27 (C) coordination with the Department of Labor and Workforce
 28 Development to provide access, after release, to job training and employment
 29 assistance; and

30 (D) coordination with community reentry coalitions or other
 31 providers of reentry services if available;

1 (10) for offenders under electronic monitoring, establish

2 (A) minimum standards for electronic monitoring, which may
3 include the requirement of active, real-time monitoring using global
4 positioning systems; and

5 (B) procedures for oversight and approving electronic
6 monitoring programs and systems provided by private contractors;

7 (11) assist a prisoner in obtaining a valid state identification card if the
8 prisoner does not have a valid state identification card before the prisoner's release; the
9 department shall pay the application fee for the identification card; and

10 (12) provide to the legislature, by electronic means, by January 10
11 preceding the first regular session of each legislature, a report summarizing the
12 findings and results of the program established under (7) of this subsection; the report
13 must include

14 (A) the number of prisoners who were provided with written
15 case plans under (8) of this subsection;

16 (B) the number of written case plans under (8) of this
17 subsection initiated within the preceding year; and

18 (C) the number of written case plans under (8) of this
19 subsection that were updated in the preceding year;

20 **(13) enter into agreements with the Department of Health and**
21 **Social Services, consistent with the provisions of AS 47.12.105, for the detention**
22 **and care of minors committed to the custody of the department under**
23 **AS 47.12.030(a) and 47.12.100.**

24 * Sec. 2. AS 47.10.141(c) is amended to read:

25 (c) A minor may be taken into emergency protective custody by a peace officer
26 and placed into temporary detention in a juvenile detention home in the local
27 community if there has been an order issued by a court under **(k) of this section** [A
28 FINDING OF PROBABLE CAUSE THAT (1) THE MINOR IS A RUNAWAY IN
29 WILFUL VIOLATION OF A VALID COURT ORDER ISSUED UNDER
30 AS 47.10.080(C)(1), 47.10.142(F), AS 47.12.120(B)(1) OR (3), OR 47.12.250(D), (2)
31 THE MINOR'S CURRENT SITUATION POSES A SEVERE AND IMMINENT

RISK TO THE MINOR'S LIFE OR SAFETY, AND (3) NO REASONABLE PLACEMENT ALTERNATIVE EXISTS WITHIN THE COMMUNITY]. A minor detained under this subsection shall be brought before a court on the day the minor is detained, or, if that is not possible, within 24 hours after the detention for a hearing to determine the most appropriate placement in the best interests of the minor. A minor taken into emergency protective custody under this subsection may not be detained for more than 24 hours, except as provided under AS 47.12.250. Emergency protective custody may not include placement of a minor in a jail or secure facility other than a juvenile detention home, nor may an order for protective custody be enforced against a minor who is residing in a licensed program for runaway minors, as defined in AS 47.10.390.

* **Sec. 3.** AS 47.10.141 is amended by adding a new subsection to read:

(k) The court shall issue a written order if the court determines that a minor shall be placed in a juvenile detention home as a result of violating a court order issued under AS 47.10.080(c)(1) or 47.10.142(f). An order issued under this subsection

(1) must include a finding or probable cause that the minor is a runaway in willful violation of a court order, and identify the court order the minor violated;

(2) must specify the factual basis for determining that there is reasonable cause to believe that the minor has violated a court order;

(3) must describe how the minor's current situation poses a severe and imminent risk to the minor's life or safety;

(4) must include findings of fact to support a determination that there is no appropriate, less restrictive alternative available to placing the minor in a juvenile detention home, with due consideration to the best interests of the minor;

(5) must include a plan for the minor's release from the juvenile detention home within the least amount of time necessary, not to exceed seven days unless otherwise specified by the court;

(6) may not be renewed or extended.

* **Sec. 4.** AS 47.12.020 is amended by adding a new subsection to read:

(c) The provisions of this chapter apply to the detention and care of a person who is alleged to have committed a violation of a criminal law of the state or local government, subject to the provisions of AS 47.12.030(a), 47.12.100, and 47.12.105.

* **Sec. 5.** AS 47.12.022 is amended to read:

Sec. 47.12.022. Applicability; inclusion of certain persons as minors.

Except as provided in AS 47.12.025, the provisions of this chapter apply to a person who is 18 years of age or older and who is subject to the jurisdiction of this chapter due [SOLELY] to AS 47.12.020(b) or 47.12.020(c). To implement AS 47.12.020(b), 47.12.020(c), and this section, the term "minor" as used in this chapter includes a person described in this section.

* **Sec. 6.** AS 47.12.030(a) is amended to read:

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. Except as provided in AS 47.12.105, the [THE] minor shall be charged, held, transported, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person;

(2) of arson in the first degree;

(3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an

adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, “deadly weapon” has the meaning given in AS 11.81.900(b); or

(4) that is misconduct involving weapons in the first degree under

(A) AS 11.61.190(a)(1); or

(B) AS 11.61.190(a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person.

* **Sec. 7.** AS 47.12.100(a) is amended to read:

(a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. **Subject to the provisions of AS 47.12.105, after** [AFTER] a case is closed under this subsection, the minor may be **charged, held, transported, released on bail, prosecuted, sentenced, and incarcerated in the same manner** [PROSECUTED] as an adult.

* **Sec. 8.** AS 47.12 is amended by adding a new section to read:

Sec. 47.12.105. Minor offenders subject to adult court. (a) Except as provided in (b) and (c) of this section, the department shall enter into agreements with the Department of Corrections for the detention and care of minors subject to the provisions of AS 47.12.030(a) or 47.12.100. A minor shall be transferred to a facility operated by the Department of Corrections when the minor turns 18 years of age.

(b) Except as provided in (c) of this section, a minor held in an adult correctional facility for more than four hours to attend court proceedings shall be separated by sight and sound from adult offenders.

(c) If there is no available juvenile detention facility or a minor poses a serious security risk, a court may order, in the interest of justice, that a minor be held in an adult correctional facility with or without sight and sound separation from adult offenders. In making this decision, the court shall consider

(1) the age of the minor;

- 1 (2) the physical and mental maturity of the minor;
- 2 (3) the present mental state of the minor, including whether the minor
- 3 presents an imminent risk of harm to the minor;
- 4 (4) the nature and circumstances of the alleged offense;
- 5 (5) the minor's history of prior delinquent acts;
- 6 (6) the relative ability of an available adult or juvenile detention
- 7 facility to both meet the specific needs of the minor and protect the safety of the public
- 8 and other detained minors; and
- 9 (7) other relevant factors.

10 (d) If a court determines under (c) of this section that it is in the interest of

11 justice to permit a minor to be held in an adult correctional facility,

12 (1) the court shall hold a hearing not less than once every 30 days to

13 review the determination that the minor may be held under the ordered circumstances;

14 (2) a minor may not be held in an adult correctional facility, or

15 permitted to have sight or sound contact with adult offenders for more than 180 days,

16 unless the court, in writing, determines that there is good cause for an extension or the

17 minor expressly waives this limitation.

18 (e) A minor detained under (a) of this section shall be detained in a secure

19 facility and receive credit, including credit under AS 33.20.010, for time spent in a

20 department facility pending trial, sentencing, or appeal, if the detention is in

21 connection with an offense for which a sentence is imposed.

22 * **Sec. 9.** AS 47.12.150(a) is amended to read:

23 (a) When a minor is committed under AS 47.12.120(b)(1) or (3) **or 47.12.240**

24 **to the department, detained by the department on behalf of the Department of**

25 **Corrections under AS 33.30.011 and AS 47.12.105,** or released under

26 AS 47.12.120(b)(2) to the minor's parents, guardian, or other suitable person, a

27 relationship of legal custody exists. This relationship imposes on the **state**

28 [DEPARTMENT] and its authorized agents or the parents, guardian, or other suitable

29 person the responsibility of physical care and control of the minor, the determination

30 of where and with whom the minor shall live, the right and duty to protect, train, and

31 discipline the minor, and the duty of providing the minor with food, shelter, education,

1 and medical care. These obligations are subject to any residual parental rights and
 2 responsibilities and rights and responsibilities of a guardian if one has been appointed.
 3 When a minor is committed to the department and the department places the minor
 4 with the minor's parent, the parent has the responsibility to provide and pay for food,
 5 shelter, education, and medical care for the minor. When parental rights have been
 6 terminated, or there are no living parents and a guardian has not been appointed, the
 7 responsibilities of legal custody include those in (b) and (c) of this section. The
 8 department or person having legal custody of the minor may delegate any of the
 9 responsibilities under this section, except authority to consent to marriage, adoption,
 10 and military enlistment may not be delegated. For purposes of this chapter, a person in
 11 charge of a placement setting is an agent of the department.

12 * **Sec. 10.** AS 47.12.160(e) is amended to read:

13 (e) If a petition is filed under (d) of this section and if the court finds by a
 14 preponderance of the evidence that the minor has committed a subsequent felony
 15 offense that is a crime against a person or is the crime of arson, the court shall impose
 16 the adult sentence previously pronounced under AS 47.12.120(j) and, subject to
 17 AS 47.12.105, transfer custody of the minor to the Department of Corrections. If the
 18 court finds by a preponderance of the evidence that any of the other circumstances set
 19 out in (d)(1) - (5) of this section exist, the court shall impose the adult sentence
 20 previously pronounced and, subject to AS 47.12.105, transfer custody of the minor to
 21 the Department of Corrections unless the minor proves by preponderance of the
 22 evidence that mitigating circumstances exist that justify a continuance in the stay of
 23 the adult sentence and the minor is amenable to further treatment under this chapter.
 24 The court shall make written findings to support its order.

25 * **Sec. 11.** AS 47.12.240(a) is amended to read:

26 (a) When the court commits a minor to the custody of the department, the
 27 department shall arrange to place the minor in a detention home, work camp, or
 28 another suitable place that the department designates for that purpose. Except when
 29 detention in a correctional facility is authorized by AS 47.12.105 or (c) of this section,
 30 the minor may not be incarcerated in a correctional facility that houses adult prisoners.

31 * **Sec. 12.** AS 47.12.250(a) is amended to read:

(a) A peace officer or a probation officer who has arrested or a peace officer who has continued the arrest of a minor under AS 47.12.245 **or pursuant to criminal allegations under AS 47.12.030** may

(1) have the minor detained in a juvenile detention facility if in the opinion of the peace officer making or continuing the arrest it is necessary to do so to protect the minor or the community; however, the department may direct that a minor **who is subject to delinquency proceedings and** who was arrested or whose arrest was continued be released from detention before the hearing required by (c) of this section;

(2) before taking the minor to a juvenile detention facility, release the minor to the minor's parents or guardian if detention is not necessary to

(A) protect the minor or the community; or

(B) ensure the minor's attendance at subsequent court hearings.

* **Sec. 13.** AS 47.12.250 is amended by adding a new subsection to read:

(f) A minor arrested pursuant to criminal allegations under AS 47.12.030 is subject to adult court processes and may be held in a juvenile detention facility under AS 47.12.105.

* **Sec. 14.** AS 47.12.310(a) is amended to read:

(a) Except as specified in AS 47.12.315, 47.12.320, and (b) - (g) and (i) of this section, all information and social records pertaining to a minor who is subject to this chapter or AS 47.17, **or who is in the department's care under AS 47.12.105,** prepared by or in the possession of a federal, state, or municipal agency or employee in the discharge of the agency's or employee's official duty, including driver's license actions under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without a court order.

* **Sec. 15.** AS 47.12.310(b) is amended to read:

(b) A state or municipal agency or employee shall disclose

(1) information regarding a case to a federal, state, or municipal law enforcement agency for a specific investigation being conducted by that agency;

(2) appropriate information regarding a case to

(A) a guardian ad litem appointed by the court;

1 (B) a person or an agency requested by the department or the
2 minor's legal custodian to provide consultation or services for a minor who is
3 subject to the jurisdiction of the court under this chapter as necessary to enable
4 the provision of the consultation or services;

5 (C) school officials as may be necessary to protect the safety of
6 the minor who is the subject of the case and the safety of school students and
7 staff or to enable the school to provide appropriate counseling and supportive
8 services to meet the needs of a minor about whom information is disclosed;

9 (D) a governmental agency as may be necessary to obtain that
10 agency's assistance for the department in its investigation or to obtain physical
11 custody of a minor;

12 (E) a law enforcement or corrections agency of this state or
13 another jurisdiction as may be necessary for the protection, rehabilitation, care,
14 or supervision of any minor or former juvenile offender or for actions by that
15 agency to protect the public safety;

16 (F) a victim or to the victim's insurance company as may be
17 necessary to inform the victim or the insurance company about the arrest of the
18 minor, including the minor's name and the names of the minor's parents, copies
19 of reports, or the disposition or resolution of a case involving a minor;

20 (G) the state medical examiner under AS 12.65 as may be
21 necessary to perform the duties of the state medical examiner;

22 (H) foster parents or relatives with whom the child is placed by
23 the department as may be necessary to enable the foster parents or relatives to
24 provide appropriate care for the child who is the subject of the case, to protect
25 the safety of the child who is the subject of the case, and to protect the safety
26 and property of family members and visitors of the foster parents or relatives;

27 (I) the Department of Law or its agent for use and subsequent
28 release if necessary for collection of an order of restitution on behalf of the
29 recipient;

30 (J) the Violent Crimes Compensation Board established in
31 AS 18.67.020 for use in awarding compensation under AS 18.67.080;

(K) a state, municipal, or federal agency of this state or another jurisdiction that has the authority to license adult or children's facilities and services;

(L) a child placement agency licensed under AS 47.32 as necessary to provide services for a minor who is subject to the jurisdiction of the court under this chapter; and

(M) a state or municipal agency of this state or another jurisdiction that is responsible for child protection services, as may be necessary for the administration of services, protection, rehabilitation, or supervision of a minor or for actions by the agency to protect the public safety;

(N) the Department of Corrections as necessary for the administration of services, protection, rehabilitation, or supervision of any minor for release to the public as authorized by law, or as necessary to transfer detention of a minor held under AS 47.12.105; and

(3) to the University of Alaska under the Alaska higher education savings program for children established under AS 47.14.400 information that is necessary to support the program, but only if the information released is maintained as a confidential record by the University of Alaska.

* **Sec. 16.** AS 47.12.240(c)(2) and 47.12.240(c)(3) are repealed.

* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to minors subject to AS 47.12.030(a) and 47.12.100 who are held in a facility operated by the Department of Corrections or a facility operated by the Department of Health and Social Services on or after the effective date of this Act.

* **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. If this Act and an executive order that is submitted by the governor to the Thirty-Second Alaska State Legislature in the First Regular Session reorganizing the Department of Health and Social Services both become law, the revisor of statutes is requested to give effect to the provisions of this Act and the executive order,

- 1 including sec. 1 of this Act, by changing the "Department of Health and Social Services" to
- 2 the "Department of Family and Community Services."
- 3 * **Sec. 19.** This Act takes effect July 1, 2021.