

CS FOR HOUSE BILL NO. 105(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/12/21

Referred: Health and Social Services

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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; **and**

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
26 officer 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

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

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

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

17 (1) must include a finding of probable cause that the minor is a
 18 runaway in wilful violation of a court order and identify the court order the minor
 19 violated;

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

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

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

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

30 (6) may not be renewed or extended.

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

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

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

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

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

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

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

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

28 (2) of arson in the first degree;

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

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

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

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

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

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

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

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

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

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

28 (c) If there is no available juvenile detention facility in a community where a
 29 trial is being held or if a juvenile facility is inappropriate for a minor, the department
 30 may request that the court order, in the interest of justice, that a minor be held in an
 31 adult correctional facility with or without sight and sound separation from adult

1 offenders. In making this decision, the court shall consider

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

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

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

14 (1) the department shall request a hearing not less than once every 30

15 days to review the determination that the minor may be held under the ordered

16 circumstances;

17 (2) the minor may not be held in an adult correctional facility, or

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

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

20 minor expressly waives this limitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) When the court commits a minor to the custody of the department, the
 30 department shall arrange to place the minor in a detention home, work camp, or
 31 another suitable place that the department designates for that purpose. Except when

1 detention in a correctional facility is authorized by **AS 47.12.105** or (c) of this section,
 2 the minor may not be incarcerated in a correctional facility that houses adult prisoners.

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

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

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

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

15 (A) protect the minor or the community; or

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

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

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

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

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

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

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

31 (1) information regarding a case to a federal, state, or municipal law

1 enforcement agency for a specific investigation being conducted by that agency;

2 (2) appropriate information regarding a case to

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

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

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

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

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

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

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

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

30 (I) the Department of Law or its agent for use and subsequent
31 release if necessary for collection of an order of restitution on behalf of the

1 recipient;

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

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

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

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

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

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

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

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

26 APPLICABILITY. This Act applies to minors subject to AS 47.12.030(a) and
27 47.12.100 who are held in a facility operated by the Department of Corrections or a facility
28 operated by the Department of Health and Social Services on or after the effective date of this
29 Act.

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

1 REVISOR'S INSTRUCTION. If this Act and an executive order that is submitted by
2 the governor to the Thirty-Second Alaska State Legislature in the First Regular Session
3 reorganizing the Department of Health and Social Services both become law, the revisor of
4 statutes is requested to give effect to the provisions of this Act and the executive order,
5 including AS 33.30.011, as amended by sec. 1 of this Act, by changing the "Department of
6 Health and Social Services" to the "Department of Family and Community Services."

7 * **Sec. 19.** This Act takes effect July 1, 2021.