

SENATE CS FOR CS FOR HOUSE BILL NO. 7(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/8/98

Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Green, Croft, Rokeberg, James, Kubina, Bunde, Kemplen, Berkowitz, Ogan, Dyson, Ryan

SENATORS Wilken, Taylor, Pearce, Lincoln, Duncan, Mackie

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing establishment of community dispute resolution centers to
2 foster the resolution of disputes between juvenile offenders and their victims, and
3 providing immunity from civil suits for members of the boards of directors and
4 certain participants in youth courts."

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

6 * **Section 1.** AS 47.12.040(a) is amended to read:

7 (a) Whenever circumstances subject a minor to the jurisdiction of this chapter,
8 the court shall

9 (1) provide, under procedures adopted by court rule, that, for a minor
10 who is alleged to be a delinquent minor under AS 47.12.020, a state agency shall make
11 a preliminary inquiry to determine if any action is appropriate and may take
12 appropriate action to adjust the matter without a court hearing; if, under this paragraph,

13 (A) the state agency makes a preliminary inquiry and takes
14 appropriate action to adjust the matter without a court hearing, the minor may

not be detained or taken into custody as a condition of the adjustment and, subject to AS 47.12.060, the matter shall be closed by the agency if the minor successfully completes all that is required of the minor by the agency in the adjustment; in a municipality or municipalities in which a youth court has been established under AS 47.12.400, adjustment of the matter under this paragraph may include referral to the youth court; if a community dispute resolution center has been established under AS 47.12.450(a) and has obtained recognition under AS 47.12.450(b), adjustment of the matter under this paragraph may include use of the services of the community dispute resolution center;

(B) the agency concludes that the matter may not be adjusted without a court hearing, the agency may file a petition under (2) of this subsection setting out the facts; or

(2) appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken; if, under this paragraph, the court appoints a person or agency to make a preliminary inquiry and to report to it, then upon the receipt of the report, the court may informally adjust the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts; if the court informally adjusts the matter, the minor may not be detained or taken into the custody of the court as a condition of the adjustment, and the matter shall be closed by the court upon adjustment.

* **Sec. 2.** AS 47.12.120(b) is amended to read:

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued

1 supervision is in the best interests of the person and the person consents to it; the
2 department shall place the minor in the juvenile facility that the department considers
3 appropriate and that may include a juvenile correctional school, juvenile work camp,
4 treatment facility, detention home, or detention facility; the minor may be released
5 from placement or detention and placed on probation on order of the court and may
6 also be released by the department, in its discretion, under AS 47.12.260;

7 (2) order the minor placed on probation, to be supervised by the
8 department, and released to the minor's parents, guardian, or a suitable person; if the
9 court orders the minor placed on probation, it may specify the terms and conditions
10 of probation; the probation may be for a period of time not to exceed two years and
11 in no event to extend past the day the minor becomes 19 years of age, except that the
12 department may petition for and the court may grant in a hearing

13 (A) two-year extensions of supervision that do not extend
14 beyond the minor's 19th birthday if the extension is in the best interests of the
15 minor and the public; and

16 (B) an additional one-year period of supervision past age 19 if
17 the continued supervision is in the best interests of the person and the person
18 consents to it;

19 (3) order the minor committed to the custody of the department and
20 placed on probation, to be supervised by the department, and released to the minor's
21 parents, guardian, other suitable person, or suitable nondetention setting such as a
22 family home, group care facility, or child care facility, whichever the department
23 considers appropriate to implement the treatment plan of the predisposition report; if
24 the court orders the minor placed on probation, it may specify the terms and conditions
25 of probation; the department may transfer the minor, in the minor's best interests, from
26 one of the probationary placement settings listed in this paragraph to another, and the
27 minor, the minor's parents or guardian, and the minor's attorney are entitled to
28 reasonable notice of the transfer; the probation may be for a period of time not to
29 exceed two years and in no event to extend past the day the minor becomes 19 years
30 of age, except that the department may petition for and the court may grant in a
31 hearing

1 (A) two-year extensions of commitment that do not extend
2 beyond the minor's 19th birthday if the extension is in the best interests of the
3 minor and the public; and

4 (B) an additional one-year period of supervision past age 19 if
5 the continued supervision is in the best interests of the person and the person
6 consents to it;

7 (4) order the minor and the minor's parent to make suitable restitution
8 in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection;
9 under this paragraph,

10 (A) except as provided in (B) of this paragraph, the court may
11 not refuse to make an order of restitution to benefit the victim of the act of the
12 minor that is the basis of the delinquency adjudication; **under this**
13 **subparagraph, the court may require the minor to use the services of a**
14 **community dispute resolution center that has been recognized by the**
15 **commissioner under AS 47.12.450(b) to resolve any dispute between the**
16 **minor and the victim of the minor's offense as to the amount of or manner**
17 **of payment of the restitution;** and

18 (B) the court may not order payment of restitution by the parent
19 of a minor who is a runaway or missing minor for an act of the minor that was
20 committed by the minor after the parent has made a report to a law
21 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
22 away or is missing; for purposes of this subparagraph, "runaway or missing
23 minor" means a minor who a parent reasonably believes is absent from the
24 minor's residence for the purpose of evading the parent or who is otherwise
25 missing from the minor's usual place of abode without the consent of the
26 parent;

27 (5) order the minor committed to the department for placement in an
28 adventure based education program established under AS 47.21.020 with conditions
29 the court considers appropriate concerning release upon satisfactory completion of the
30 program or commitment under (1) of this subsection if the program is not satisfactorily
31 completed;

(6) in addition to an order under (1) - (5) of this subsection, if the delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or 11.71.040(a)(4), order the minor to perform 50 hours of community service; for purposes of this paragraph, "community service" includes work

(A) on a project identified in AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1).

* **Sec. 3.** AS 47.12.400 is amended by adding a new subsection to read:

(g) An individual who is a member or an agent of the board of directors of a nonprofit corporation that has obtained recognition from the commissioner to serve as a youth court under this section is immune from suit in a civil action based upon the exercise or performance of or the failure to exercise or perform a discretionary function or a discretionary duty as a member of the board of directors or that has been properly delegated by the board of directors. An individual who tries, represents, or adjudicates a minor in a youth court is immune from suit in a civil action based upon the exercise or performance of or the failure to exercise or perform a discretionary function or a discretionary duty within the individual's quasi-judicial capacity with the youth court. A nonprofit corporation that has obtained recognition from the commissioner to serve as a youth court is immune from suit in a civil action based upon an act or failure to act for which an individual is granted immunity under this subsection.

* **Sec. 4.** AS 47.12 is amended by adding a new section to read:

Article 3A. Community Dispute Resolution Centers.

Sec. 47.12.450. Community dispute resolution centers for matters involving minors. (a) An entity organized for the purpose of providing community mediation services may establish and operate a community dispute resolution center to resolve disputes between minors who are alleged to have committed offenses and the victims

1 of those offenses.

2 (b) The commissioner may recognize an entity organized for the purpose of
3 providing community mediation services as a community dispute resolution center to
4 serve as a center to resolve disputes between minors and victims. Before extending
5 recognition under this subsection, the commissioner shall determine that the bylaws of
6 the entity set out standards and procedures

7 (1) for filing requests for dispute resolution services with the center and
8 for scheduling mediation sessions participated in by the parties to the dispute;

9 (2) to ensure that each dispute mediated meets the criteria for
10 appropriateness for mediation and for rejecting disputes that do not meet the criteria;

11 (3) for giving notice of time, place, and nature of the mediation session
12 to the parties, and for conducting mediation sessions that comply with the provisions
13 of this section;

14 (4) to ensure that participation by all parties is voluntary;

15 (5) for obtaining referrals from public and private bodies;

16 (6) for providing mediators who, during the dispute resolution process,
17 may not make decisions or determinations of the issues involved, but who shall
18 facilitate negotiations by the participants themselves to achieve a voluntary resolution
19 of the issues;

20 (7) for communicating to the agency making a referral under
21 AS 47.12.040(a)(1)(A) or the court making a referral under AS 47.12.120(b)(4)(A), as
22 appropriate, the following:

23 (A) notice that the minor and victim have been unable to enter
24 into a written agreement under (d)(2) of this section or that the minor or victim
25 has withdrawn from mediation as authorized by (f) of this section;

26 (B) notice that the minor and victim have entered into a written
27 agreement under (d)(2) of this section; the center shall transmit a copy of the
28 agreement to the agency or the court, as appropriate;

29 (C) notice that the minor has failed to perform fully the minor's
30 obligations under the written agreement under (d)(2) of this section;

31 (D) notice that the minor has successfully completed all that is

1 required of the minor under the provisions of the written agreement under
2 (d)(2) of this section; and

3 (8) for informing and educating the community about the community
4 dispute resolution center and encouraging the use of the center's services in appropriate
5 cases.

6 (c) A center established under this section shall provide dispute resolution
7 services between a minor who has committed an offense and who, because of the
8 commission of the offense, may be alleged to be a delinquent minor under
9 AS 47.12.020, and a person who was a victim of that offense. The center shall
10 provide dispute resolution services either without charge to a participant or for a fee
11 that is based on the participant's ability to pay.

12 (d) In conducting a dispute resolution process under this section, a center shall
13 require that

14 (1) the minor and the victim enter into a written agreement that
15 expresses the method by which they shall attempt to resolve the issues in dispute; and

16 (2) at the conclusion of the dispute resolution process, the minor and
17 the victim enter into a written agreement that sets out the settlement of the issues and
18 the future responsibilities, if any, of each party.

19 (e) Except for a notice or a communication described in (b)(7) of this section,
20 all memoranda, work notes or products, or case files of centers established under this
21 section are confidential and privileged and are not subject to disclosure in any judicial
22 or administrative proceeding unless the court or administrative tribunal determines that
23 the materials were submitted by a participant to the center for the purpose of avoiding
24 discovery of the material in a subsequent proceeding. Any communication relating to
25 the subject matter of the resolution made during the resolution process by a participant,
26 mediator, or another person is a privileged communication and is not subject to
27 disclosure in a judicial or administrative proceeding unless all parties to the
28 communication waive the privilege. However, privilege and limitation on evidentiary
29 use set out in this subsection do not apply to a communication of a threat that injury
30 or damage may be inflicted on a person or on the property of a party to the dispute
31 to the extent the communication may be relevant evidence in a criminal matter.

1 (f) A minor or a victim who enters a dispute resolution process at a center
2 established under this section may revoke consent, withdraw from dispute resolution,
3 and seek judicial or administrative redress before reaching a written resolution
4 agreement. The withdrawal must be in writing. If a minor or a victim withdraws from
5 dispute resolution, a legal penalty, sanction, or restraint may not be imposed upon the
6 person for that withdrawal.

7 (g) A center established under this section may seek and accept contributions
8 and any other available money and may expend the money to carry out the purposes
9 of this section.

10 (h) An individual who is a member or an agent of the board of directors of or
11 a mediator at a community dispute resolution center is immune from suit in a civil
12 action based upon the exercise or performance of or the failure to exercise or perform
13 a discretionary function or a discretionary duty within the official capacity of the
14 individual. A community dispute resolution center is immune from suit in a civil
15 action based upon an act or failure to act for which an individual is granted immunity
16 under this subsection.

17 (i) In this section, "center" means a community dispute resolution center.