

**HOUSE BILL NO. 475**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE TOOHEY

Introduced: 2/7/96

Referred: Health, Education and Social Services, Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to proceedings involving and records concerning children in need  
2 of aid and delinquent minors; and amending Rule 3(c), Alaska Delinquency  
3 Rules."

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

5 \* **Section 1.** AS 47.10.070 is amended to read:

6           Sec. 47.10.070. HEARINGS. (a) The court may conduct the hearing **on the**  
7 **petition** in an informal manner in the courtroom or in chambers. **The** [A] hearing  
8 may be held before a young adult advisory panel in accordance with AS 47.10.075.  
9 The court shall give notice of the hearing to the department and **the department** [IT]  
10 may send a representative to the hearing. The court shall also transmit a copy of the  
11 petition to the department. The representative of the department may also be heard at  
12 the hearing. [THE PUBLIC SHALL BE EXCLUDED FROM THE HEARING, BUT  
13 THE COURT, IN ITS DISCRETION, MAY PERMIT INDIVIDUALS TO ATTEND  
14 A HEARING, IF THEIR ATTENDANCE IS COMPATIBLE WITH THE BEST

1 INTERESTS OF THE MINOR. NOTHING IN THIS SECTION MAY BE APPLIED  
2 IN SUCH A WAY AS TO DENY A CHILD'S RIGHTS TO A PUBLIC TRIAL AND  
3 TO A TRIAL BY JURY.]

4 (b) **The** [NOTWITHSTANDING (a) OF THIS SECTION, THE] victim of an  
5 offense that a minor is alleged to have committed, or the designee of the victim, has  
6 a right to be present at all hearings **based on a petition to adjudicate a minor a**  
7 **delinquent that are** held under this section. If the minor is found to have committed  
8 the offense, the victim may at the disposition hearing give sworn testimony or make  
9 an unsworn oral presentation concerning the offense and its effect on the victim. If  
10 there are numerous victims of a minor's offense, the court may limit the number of  
11 victims who may give sworn testimony or make an unsworn oral presentation [, BUT  
12 THE COURT MAY NOT LIMIT THE RIGHT OF A VICTIM TO ATTEND A  
13 HEARING].

14 \* **Sec. 2.** AS 47.10.070 is amended by adding new subsections to read:

15 (c) In a hearing held under this section on a petition to find the minor a child  
16 in need of aid, the court shall exclude the public from the hearing. However, the  
17 court, in its discretion, may permit an individual to attend a hearing if the attendance  
18 of the individual is compatible with the best interests of the minor.

19 (d) In a hearing held under this section on a petition to adjudicate a minor a  
20 delinquent based on a criminal offense that the minor is alleged to have committed,  
21 the public may attend the hearing. However, on application by a party, the court may  
22 exclude the public from the hearing or a portion of it. Before issuing an order  
23 excluding the public from the hearing or a portion of it, the court shall consider  
24 possible alternatives to ensure that the closure order is no broader than necessary to  
25 accomplish the court's purpose in requiring the closure, and shall place its reasons for  
26 ordering the closure or partial closure on the record. The court may order a closure  
27 or partial closure to exclude the public from the hearing

28 (1) if the court determines that a closure or partial closure is necessary  
29 to protect the minor or the victim of the offense from physical harm or from severe  
30 emotional harm;

31 (2) to maintain order in the courtroom;

1 (3) to ensure truthful testimony; or  
2 (4) to meet any other interest of a party or of the court that the court  
3 finds to be compelling.

4 (e) Nothing in this section may be applied in such a way as to deny a minor's  
5 rights to a public trial and to a jury trial.

6 \* Sec. 3. AS 47.10.082 is amended to read:

7 Sec. 47.10.082. **BASIS OF COURT DISPOSITIONAL ORDER** [BEST  
8 INTERESTS OF CHILD AND OTHER CONSIDERATIONS]. In making its  
9 dispositional order

10 (1) under AS 47.10.080(b), the court shall consider **all of the**  
11 **following:**

12 (A) **the seriousness of the offense committed by the child in**  
13 **relation to other offenses;**

14 (B) **the child's prior record of violations of state and**  
15 **municipal criminal laws and the likelihood of rehabilitation;**

16 (C) **the need to confine the child to prevent further harm to**  
17 **the public;**

18 (D) **the circumstances of the offense for which the child was**  
19 **adjudicated delinquent and the extent to which the offense harmed the**  
20 **victim or endangered the public safety or order;**

21 (E) **the effect of the dispositional order to be imposed in**  
22 **detering the child or other minors from future criminal conduct;**

23 (F) **the effect of the sentence to be imposed as a community**  
24 **condemnation of the violation of state or municipal criminal law and as a**  
25 **reaffirmation of societal norms;**

26 (G) **the best interests of the public;**

27 (H) **the best interests of the child; and**

28 (I) **the ability of the state to take custody and to care for the**  
29 **child to protect the child's best interests under AS 47.10.010 - 47.10.142;**

30 (2) [AND THE PUBLIC. IN MAKING ITS DISPOSITIONAL  
31 ORDER] under AS 47.10.080(c), the court shall consider

1                    (A) the best interests of the child; and  
2                    (B) [. IN EITHER CASE THE COURT SHALL CONSIDER  
3                    ALSO] the ability of the state to take custody and to care for the child to  
4                    protect the child’s best interests under AS 47.10.010 - 47.10.142.

5 \* **Sec. 4.** AS 47.10.090(d) is amended to read:

6                    (d) The name or picture of a minor under the jurisdiction of the court may not  
7                    be made public in connection with the minor’s status as [A DELINQUENT CHILD  
8                    OR] a child in need of aid unless authorized by order of the court.

9 \* **Sec. 5.** AS 47.10.090(e) is amended to read:

10                    (e) The court’s official records under this chapter **that relate to or that are**  
11                    **based on a petition filed under this chapter for a minor alleged to be a child in**  
12                    **need of aid are confidential and** may be inspected only with the court’s permission  
13                    and only by persons having a legitimate interest in them. [A PERSON WITH A  
14                    LEGITIMATE INTEREST IN THE INSPECTION OF AN OFFICIAL RECORD  
15                    MAINTAINED BY THE COURT INCLUDES A VICTIM WHO SUFFERED  
16                    PHYSICAL INJURY OR WHOSE REAL OR PERSONAL PROPERTY WAS  
17                    DAMAGED AS A RESULT OF AN OFFENSE THAT WAS THE BASIS OF AN  
18                    ADJUDICATION OR MODIFICATION OF DISPOSITION. IF THE VICTIM  
19                    KNOWS THE IDENTITY OF THE MINOR, IDENTIFIES THE MINOR OR THE  
20                    OFFENSE TO THE COURT, AND CERTIFIES THAT THE INFORMATION IS  
21                    BEING SOUGHT TO CONSIDER OR SUPPORT A CIVIL ACTION AGAINST THE  
22                    MINOR OR AGAINST THE MINOR’S PARENTS OR GUARDIANS UNDER  
23                    AS 34.50.020, THE COURT SHALL, SUBJECT TO AS 12.61.110 AND 12.61.140,  
24                    ALLOW THE VICTIM TO INSPECT AND USE THE FOLLOWING RECORDS  
25                    AND INFORMATION IN CONNECTION WITH THE CIVIL ACTION:

26                    (1) A PETITION FILED UNDER AS 47.10.010(a)(1) SEEKING TO  
27                    HAVE THE COURT DECLARE THE MINOR A DELINQUENT;

28                    (2) A PETITION FILED UNDER AS 47.10.080 SEEKING TO HAVE  
29                    THE COURT MODIFY OR REVOKE THE MINOR’S PROBATION;

30                    (3) A PETITION FILED UNDER AS 47.10.060 REQUESTING THE  
31                    COURT TO FIND THAT A MINOR IS NOT AMENABLE TO TREATMENT

1 UNDER THIS CHAPTER AND THAT RESULTS IN CLOSURE OF A CASE  
2 UNDER AS 47.10.060(a); AND

3 (4) A COURT JUDGMENT OR ORDER ENTERED UNDER  
4 AS 47.10.010 - 47.10.142 THAT DISPOSES OF A PETITION IDENTIFIED IN (1) -  
5 (3) OF THIS SUBSECTION.]

6 \* **Sec. 6.** AS 47.10.090 is amended by adding new subsections to read:

7 (f) The court's official records under this chapter that relate to or that are  
8 based on a petition filed under this chapter for a minor alleged to be a delinquent  
9 minor

10 (1) are, as to a minor who is under 13 years of age at the time of the  
11 offense on which the petition for adjudication is filed, confidential and may be  
12 inspected only with the court's permission and only by persons having a legitimate  
13 interest in them; a person with a legitimate interest in the inspection of the record  
14 includes a victim who suffered physical injury or whose real or personal property was  
15 damaged as a result of an offense that was the basis of an adjudication or modification  
16 of disposition; if the victim knows the identity of the minor, identifies the minor or the  
17 offense to the court, and certifies that the information is being sought to consider or  
18 support a civil action against the minor or against the minor's parents or guardians  
19 under AS 34.50.020, the court shall, subject to AS 12.61.110 and 12.61.140, allow the  
20 victim to inspect and use the following records and information in connection with the  
21 civil action:

22 (A) a petition filed under AS 47.10.010(a)(1) seeking to have  
23 the court declare the minor a delinquent;

24 (B) a petition filed under AS 47.10.080 seeking to have the court  
25 modify or revoke the minor's probation;

26 (C) a petition filed under AS 47.10.060 requesting the court to  
27 find that a minor is not amenable to treatment under this chapter and that  
28 results in closure of a case under AS 47.10.060(a); and

29 (D) a court judgment or order entered under AS 47.10.010 -  
30 47.10.142 that disposes of a petition identified in (A) - (C) of this paragraph;

31 (2) are, as to a minor other than a minor described in (1) of this

1 subsection, open to inspection and copying by the public.

2 (g) A person who, under AS 47.10.080, has been adjudicated a delinquent  
3 minor may petition the court to seal the record of the delinquency proceeding and  
4 expunge the information relating to it from the court's records. The person may not  
5 file a petition under this subsection until the person's 18th birthday or until two years  
6 after completion of the disposition as ordered, whichever occurs later. If the court  
7 finds that the person has complied with all the terms of the disposition and has not  
8 committed another violation of a state or municipal criminal law, the court shall order  
9 the record of the proceeding to be sealed and the person's record expunged. The  
10 sealed records may not be used for any purpose, except the court may order

11 (1) their use for good cause shown; or

12 (2) that the seal of the records be broken if the person is charged with  
13 a felony offense within two years of the sealing.

14 \* **Sec. 7.** AS 47.10.070(d), added by sec. 2 of this Act, has the effect of amending Rule  
15 3(c), Alaska Delinquency Rules, by establishing a presumption that court hearings on  
16 delinquency proceedings will be open to the public except when ordered closed by the court.

17 \* **Sec. 8.** Sections 1 and 2 of this Act take effect only if sec. 7 of this Act receives the  
18 two-thirds vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.