

SENATE BILL NO. 270

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY SENATORS HALFORD, Green, Phillips

Introduced: 2/7/96

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to juveniles; relating to the jurisdiction of juvenile courts;
2 relating to the release of juveniles; and relating to records concerning juveniles."

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

4 * **Section 1.** AS 47.10.010(b) is amended to read:

5 (b) When a minor is accused of violating a statute, regulation, or municipal
6 ordinance specified in this subsection, other than a statute the violation of which is
7 a felony, AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules do not apply
8 and the minor accused of the offense shall be charged, prosecuted, and sentenced in
9 the district court in the same manner as an adult. If a minor is charged, prosecuted,
10 and sentenced for an offense under this subsection, the minor's parent, guardian, or
11 legal custodian shall be present at all proceedings. The provisions of this subsection
12 apply when a minor is accused of violating

13 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
14 a municipality;

1 (2) AS 11.76.105, relating to the possession of tobacco by a person
2 under 19 years of age;

3 (3) a fish and game statute or regulation under AS 16;

4 (4) a parks and recreational facilities statute or regulation under
5 AS 41.21; [AND]

6 (5) AS 04.16.050, relating to possession or consumption; **and**

7 **(6) a noncriminal offense under a municipal ordinance for which**
8 **a conviction cannot result in incarceration or the loss of a valuable license and for**
9 **which a fine schedule has been established under AS 29.25.070(a).**

10 * Sec. 2. AS 47.10.040 is amended to read:

11 Sec. 47.10.040. RELEASE OF MINOR. A minor who is taken into custody
12 may, in the discretion of the court and upon the written promise of the parent,
13 guardian, or custodian to bring the minor before the court at a time specified by the
14 court, be released to the care and custody of the parent, guardian, or custodian **if the**
15 **court finds that the appearance of the minor is reasonably assured and that the**
16 **minor will not pose a danger to other persons or the community. If the court**
17 **finds that the release of the minor to a parent, guardian, or custodian will not**
18 **reasonably assure the appearance of the minor or will pose a danger to other**
19 **persons or the community, the court may (1) place restrictions on the travel,**
20 **association, or place of abode of the minor, (2) require the minor to return to**
21 **detention after daylight hours on designated conditions, (3) require the execution**
22 **of an appearance bond in a specified amount and the deposit in the registry of the**
23 **court, in cash or other security, a sum not to exceed 10 percent of the amount of**
24 **the bond, the deposit to be returned upon the performance of the condition of**
25 **release, (4) require the execution of a bail bond with sufficient solvent securities**
26 **or the deposit of cash, (5) impose any other condition considered reasonably**
27 **necessary to assure the minor's appearance as required and the safety of other**
28 **persons and the community. If the court determines that the imposition of**
29 **conditions will not reasonably assure the appearance of the minor or that the**
30 **minor will continue to pose a danger to other persons or the community, the court**
31 **shall detain the minor** [. THE MINOR, IF NOT RELEASED, SHALL BE

1 DETAINED] as provided by AS 47.10.140. The court may determine whether the
2 father or mother or another person shall have the custody and control of the minor for
3 the duration of the proceedings. If the minor is of sufficient age and intelligence to
4 state desires, the court shall give consideration to the minor's desires.

5 * **Sec. 3.** AS 47.10.040 is amended by adding a new subsection to read:

6 (b) In determining the conditions under (a) of this section, the court shall take
7 into account the factors identified in AS 12.30.020(c) relating to bail.

8 * **Sec. 4.** AS 47.10.060(e) is amended to read:

9 (e) A person who has been tried as an adult under this section, or the
10 department on the person's behalf, may petition the superior court to seal the records
11 of all criminal proceedings, except traffic offenses, initiated against the person, and all
12 punishments assessed against the person, while the person was a minor. A petition
13 under this subsection may not be filed until five years after the completion of the
14 sentence imposed for the offense for which the person was tried as an adult. If the
15 superior court finds that the punishment assessed against the person has had its
16 intended rehabilitative effect and further finds that the person has fulfilled all orders
17 of the court entered under AS 47.10.080(b), the superior court shall order the record
18 of proceedings and the record of punishments sealed. Sealing the records restores civil
19 rights removed because of a conviction. A person may not use these sealed records
20 for any purpose except that the court may order their use for good cause shown or may
21 order their use by an officer of the court in making a presentencing report for the
22 court. The court may not, under this subsection, seal records of a criminal proceeding

23 (1) **that are subject to disclosure under AS 47.10.090(f);**

24 (2) initiated against a person if the court finds that the person has not
25 complied with a court order made under AS 47.10.080(b); or

26 (3) [(2)] commenced under AS 47.10.010(e) unless the minor has been
27 acquitted of all offenses with which the minor was charged or unless the most serious
28 offense of which the minor was convicted was not an offense specified in
29 AS 47.10.010(e)(1) or (2).

30 * **Sec. 5.** AS 47.10.082 is amended to read:

31 Sec. 47.10.082. BEST INTERESTS OF CHILD AND OTHER

1 CONSIDERATIONS. (a) In making its dispositional order under AS 47.10.080(b)
2 the court shall consider the best interests of the child and the public. **The court shall**
3 **also consider**

4 **(1) the seriousness of the minor’s present offense in relation to**
5 **other offenses;**

6 **(2) the prior criminal history of the minor and the minor’s likely**
7 **amenability to treatment;**

8 **(3) the need to confine the minor to prevent further harm to the**
9 **public;**

10 **(4) the circumstances of the offense and the extent to which the**
11 **offense harmed the victim or endangered the public safety or order;**

12 **(5) the effect of the disposition to be imposed in deterring the**
13 **minor or other members of society from future delinquent or criminal conduct;**

14 **(6) the effect of the disposition to be imposed as a community**
15 **condemnation of the minor’s conduct and as a reaffirmation of societal norms;**
16 **and**

17 **(7) the ability of the state to take custody and to care for the child**
18 **to protect the child’s best interests under AS 47.10.010 - 47.10.142.**

19 (b) In making its dispositional order under AS 47.10.080(c) the court shall
20 consider the

21 **(1) best interests of the child; and**

22 **(2) [. IN EITHER CASE THE COURT SHALL CONSIDER ALSO**
23 **THE] ability of the state to take custody and to care for the child to protect the child’s**
24 **best interests under AS 47.10.010 - 47.10.142.**

25 * **Sec. 6.** AS 47.10.090(a) is amended to read:

26 (a) The court shall make and keep records of all cases brought before it.

27 **Except as provided in (c) of this section, records relating to a child, 13 years of**
28 **age or older, who is alleged or found to be delinquent, are public records.**
29 **Records relating to a child who is alleged or found to be a child in need of aid are**
30 **confidential and may only be inspected by a person having a legitimate interest**
31 **in inspecting the records and only with the court’s permission.**

1 * **Sec. 7.** AS 47.10.090(c) is amended to read:

2 (c) **A minor, on** [WITHIN 30 DAYS OF] the date of **the** [A] minor's 18th
3 birthday or **two years after the minor has successfully completed any disposition**
4 **ordered by the court, whichever occurs later, may petition** [, IF] the court **to**
5 [RETAINS JURISDICTION OF A MINOR PAST THE MINOR'S 18TH BIRTHDAY,
6 WITHIN 30 DAYS OF THE DATE ON WHICH THE COURT RELEASES
7 JURISDICTION OVER THE MINOR, THE COURT SHALL] order all the court's
8 official records pertaining to **the** [THAT] minor **under AS 47.10.010 - 47.10.142**
9 sealed [, AS WELL AS RECORDS OF ALL DRIVER'S LICENSE PROCEEDINGS
10 UNDER AS 28.15.185, CRIMINAL PROCEEDINGS AGAINST THE MINOR, AND
11 PUNISHMENTS ASSESSED AGAINST THE MINOR]. A person may not use these
12 sealed records for any purpose except that the court may order their use for good cause
13 shown or may order their use by an officer of the court in making a presentencing
14 report for the court. **The court shall unseal the records and make them available**
15 **for public inspection if the minor is charged with a felony offense within two**
16 **years of the date the records were sealed.** The provisions of this subsection relating
17 to the sealing of records do not apply to records of traffic offenses. **This subsection**
18 **does not authorize a court to seal records of a criminal proceeding that are**
19 **subject to disclosure under AS 47.10.090(f).**

20 * **Sec. 8.** AS 47.10.090(d) is amended to read:

21 (d) The name or picture of a minor under the jurisdiction of the court
22 (1) may [NOT] be made public in connection with the minor's status
23 as a delinquent child, **if**
24 **(A) the court's official records pertaining to the minor are**
25 **subject to disclosure under (f) of this section and the records are not sealed**
26 **under (b) of this section; or**
27 **(B) disclosure is authorized by order of the court;**
28 (2) **may not be made public in connection with the minor's status**
29 **as** [OR] a child in need of aid unless **the court's official records relating to the**
30 **minor are subject to disclosure under (f) of this section or disclosure is**
31 **authorized by order of the court.**

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

2 (e) The court's official records that, under this chapter, **are confidential or**
3 **have been sealed** may be inspected only with the court's permission and only by
4 persons having a legitimate interest in them. **Under (a) of this section a** [A] person
5 with a legitimate interest in the inspection of, **and under (c) of this section a person**
6 **with good cause to inspect**, an official record maintained by the court includes a
7 victim who suffered physical injury or whose real or personal property was damaged
8 as a result of an offense that was the basis of an adjudication or modification of
9 disposition. If the victim knows the identity of the minor, identifies the minor or the
10 offense to the court, and certifies that the information is being sought to consider or
11 support a civil action against the minor or against the minor's parents or guardians
12 under AS 34.50.020, the court shall, subject to AS 12.61.110 and 12.61.140, allow the
13 victim to inspect and use the [FOLLOWING] records [AND INFORMATION IN
14 CONNECTION WITH THE CIVIL ACTION:

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

17 (2) A PETITION FILED UNDER AS 47.10.080 SEEKING TO HAVE
18 THE COURT MODIFY OR REVOKE THE MINOR'S PROBATION;

19 (3) A PETITION FILED UNDER AS 47.10.060 REQUESTING THE
20 COURT TO FIND THAT A MINOR IS NOT AMENABLE TO TREATMENT
21 UNDER THIS CHAPTER AND THAT RESULTS IN CLOSURE OF A CASE
22 UNDER AS 47.10.060(a); AND

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

26 * **Sec. 10.** AS 47.10.090 is amended by adding new subsections to read:

27 (f) A record made or kept by the court, including the identity of a minor, is
28 not confidential and shall be disclosed to the public if the record relates to a criminal
29 offense that a minor is accused of committing and the minor is

30 (1) 13 years of age or older and the criminal offense is a felony,
31 regardless of whether the minor is subject to prosecution as an adult or adjudication

1 as a minor under this chapter; or

2 (2) less than 13 years of age and

3 (A) the criminal offense is a felony, regardless of whether the
4 minor is subject to prosecution as an adult or adjudication as a minor under this
5 chapter; and

6 (B) the minor has been previously convicted of, or adjudicated
7 a delinquent for, a felony.

8 (g) In (f) of this section, "criminal offense" does not include an offense arising
9 from the minor's application for, or receipt of, benefits provided from the proceeds of
10 grants under 42 U.S.C. 671 or 42 U.S.C. 602.

11 * **Sec. 11.** AS 47.10.093(a) is amended to read:

12 (a) Except as specified in AS 47.10.092 and **(b) - (g) and (k)** [(b) - (f) AND
13 (g)] of this section, all information and social records pertaining to a minor who is
14 subject to this chapter or AS 47.17 prepared by or in the possession of a federal, state,
15 or municipal agency or employee in the discharge of the agency's or employee's
16 official duty, including driver's license actions under AS 28.15.185, are privileged and
17 may not be disclosed directly or indirectly to anyone without a court order.

18 * **Sec. 12.** AS 47.10.093(h) is amended to read:

19 (h) Notwithstanding (c)(3) **and (k)** of this section, a state or municipal law
20 enforcement agency is not required to **(1)** notify the appropriate school official of a
21 school district or school under (c) of this section, **or (2) make the disclosures**
22 **required under (k) of this section,** if the agency determines that notice **or disclosure,**
23 **as appropriate,** would jeopardize an ongoing investigation.

24 * **Sec. 13.** AS 47.10.093 is amended by adding new subsections to read:

25 (k) Information, including the identity of the minor, concerning a criminal
26 offense that a minor is accused of committing is not privileged and shall be disclosed
27 to the public if the minor is

28 (1) 13 years of age or older and the criminal offense is a felony,
29 regardless of whether the minor is subject to prosecution as an adult or adjudication
30 as a minor under this chapter; or

31 (2) less than 13 years of age and

1 (A) the criminal offense is a felony, regardless of whether the
2 minor is subject to prosecution as an adult or adjudication as a minor under this
3 chapter; and

4 (B) the minor has previously been convicted of, or adjudicated
5 a delinquent for, a felony.

6 (l) In (k) of this section, "criminal offense" does not include an offense arising
7 from the minor's application for, or receipt of, benefits provided from the proceeds of
8 grants under 42 U.S.C. 671 or 42 U.S.C. 602.

9 * **Sec. 14.** AS 47.10.140(d) is amended to read:

10 (d) If the court finds that probable cause exists, it shall determine whether the
11 minor should be detained pending the hearing on the petition or released **as provided**
12 **in AS 47.10.040.** [IT MAY EITHER ORDER THE MINOR HELD IN DETENTION
13 OR RELEASED TO THE CUSTODY OF A SUITABLE PERSON PENDING THE
14 HEARING ON THE PETITION.] If the court finds no probable cause, it shall order
15 the minor released and close the case.