

HOUSE BILL NO. 7

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE PORTER

Introduced: 1/13/97

Referred: Judiciary, Finance

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."**

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

4 *** Section 1.** AS 22.35 is amended by adding a new section to read:

5 **Sec. 22.35.020. Recognition of community dispute resolution centers for**
6 **matters involving minors.** The administrative director may recognize an entity
7 described in AS 47.12.450(a) as a community dispute resolution center to serve as a
8 center to resolve disputes between minors and victims. Before extending recognition
9 under this section, the administrative director shall determine that the bylaws of the
10 entity set out standards and procedures that meet the requirements of AS 47.12.450(b).

11 *** Sec. 2.** AS 47.12.040(a) is amended to read:

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

14 (1) provide, under procedures adopted by court rule, that, for a minor

1 who is alleged to be a delinquent minor under AS 47.12.020, a state agency shall make
 2 a preliminary inquiry to determine if any action is appropriate and may take
 3 appropriate action to adjust the matter without a court hearing; if, under this paragraph,

4 (A) the state agency makes a preliminary inquiry and takes
 5 appropriate action to adjust the matter without a court hearing, the minor may
 6 not be detained or taken into custody as a condition of the adjustment and,
 7 subject to AS 47.12.060, the matter shall be closed by the agency if the minor
 8 successfully completes all that is required of the minor by the agency in the
 9 adjustment; in a municipality or municipalities in which a youth court has been
 10 established under AS 47.12.400, adjustment of the matter under this paragraph
 11 may include referral to the youth court; **if a community dispute resolution**
 12 **center has been established under AS 47.12.450(a) and has obtained**
 13 **recognition under AS 22.35.020 or AS 47.12.450(b), adjustment of the**
 14 **matter under this paragraph may include use of the services of the**
 15 **community dispute resolution center;**

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

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

29 * **Sec. 3.** AS 47.12.120(b) is amended to read:

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

31 (1) order the minor committed to the department for a period of time

1 not to exceed two years or in any event extend past the day the minor becomes 19
2 years of age, except that the department may petition for and the court may grant in
3 a hearing (A) two-year extensions of commitment that do not extend beyond the
4 minor's 19th birthday if the extension is in the best interests of the minor and the
5 public; and (B) an additional one-year period of supervision past age 19 if continued
6 supervision is in the best interests of the person and the person consents to it; the
7 department shall place the minor in the juvenile facility that the department considers
8 appropriate and that may include a juvenile correctional school, juvenile work camp,
9 treatment facility, detention home, or detention facility; the minor may be released
10 from placement or detention and placed on probation on order of the court and may
11 also be released by the department, in its discretion, under AS 47.12.260;

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

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

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

24 (3) order the minor committed to the custody of the department and
25 placed on probation, to be supervised by the department, and released to the minor's
26 parents, guardian, other suitable person, or suitable nondetention setting such as a
27 family home, group care facility, or child care facility, whichever the department
28 considers appropriate to implement the treatment plan of the predisposition report; if
29 the court orders the minor placed on probation, it may specify the terms and conditions
30 of probation; the department may transfer the minor, in the minor's best interests, from
31 one of the probationary placement settings listed in this paragraph to another, and the

1 minor, the minor's parents or guardian, and the minor's attorney are entitled to
 2 reasonable notice of the transfer; the probation may be for a period of time not to
 3 exceed two years and in no event to extend past the day the minor becomes 19 years
 4 of age, except that the department may petition for and the court may grant in a
 5 hearing

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

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

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

15 (A) except as provided in (B) of this paragraph, the court may
 16 not refuse to make an order of restitution to benefit the victim of the act of the
 17 minor that is the basis of the delinquency adjudication; **under this**
 18 **subparagraph, the court may require the minor to use the services of a**
 19 **community dispute resolution center that has been recognized by the**
 20 **administrative director of the Alaska Court System under AS 22.35.020 or**
 21 **by the commissioner under AS 47.12.450(b) to resolve any dispute between**
 22 **the minor and the victim of the minor's offense as to the amount of or**
 23 **manner of payment of the restitution;** and

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

1 parent;

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

7 (6) in addition to an order under (1) - (5) of this subsection, if the
8 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
9 11.71.040(a)(4), order the minor to perform 50 hours of community service; for
10 purposes of this paragraph, "community service" includes work

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

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

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

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

19 **Article 3A. Community Dispute Resolution Centers.**

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

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

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

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

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

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

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

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

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

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

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

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

23 (D) notice that the minor has successfully completed all that is
24 required of the minor under the provisions of the written agreement under
25 (d)(2) of this section; and

26 (8) for informing and educating the community about the community
27 dispute resolution center and encouraging the use of the center's services in appropriate
28 cases.

29 (c) A center established under this section shall provide dispute resolution
30 services between a minor who has committed an offense and who, because of the
31 commission of the offense, may be alleged to be a delinquent minor under

1 AS 47.12.020, and a person who was a victim of that offense. The center shall
2 provide dispute resolution services either without charge to a participant or for a fee
3 that is based on the participant's ability to pay.

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

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

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

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

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

30 (g) A center established under this section may seek and accept contributions
31 and any other available money and may expend the money to carry out the purposes

1 of this section.

2 (h) A member of the board of directors of a community dispute resolution
3 center is immune from suit in a civil action based upon a proceeding or other official
4 act performed in good faith as a member of the board. Employees and volunteers of
5 a community dispute resolution center are immune from suit in a civil action based on
6 a proceeding or other official act performed in their capacity as employees or
7 volunteers, except in cases of wilful or wanton misconduct. A center is immune from
8 suit in a civil action based on a proceeding or other official act performed by its
9 employees, volunteers, or members or its board of directors, except in cases of wilful
10 or wanton misconduct by its employees or volunteers or in cases of official acts
11 performed in bad faith by members of the board.

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