

CS FOR HOUSE BILL NO. 7(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/3/97

Referred: Finance

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

SENATOR Wilken

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 youth courts and for members of the
4 boards of directors, employees, volunteers, and members of 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

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

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

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

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

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

26 (1) order the minor committed to the department for a period of time
 27 not to exceed two years or in any event extend past the day the minor becomes 19
 28 years of age, except that the department may petition for and the court may grant in
 29 a hearing (A) two-year extensions of commitment that do not extend beyond the
 30 minor's 19th birthday if the extension is in the best interests of the minor and the
 31 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;

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

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

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

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

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

13 (g) A member of the board of directors of a nonprofit corporation obtaining
 14 recognition from the commissioner to serve as a youth court under this section is
 15 immune from suit in a civil action based upon a proceeding or other official act
 16 performed in good faith as a member of the board. Employees and volunteers of a
 17 youth court are immune from suit in a civil action based on a proceeding or other
 18 official act performed in their capacity as employees or volunteers, except in cases of
 19 wilful or wanton misconduct. A youth court is immune from suit in a civil action
 20 based on a proceeding or other official act performed by its employees, volunteers, or
 21 members of its board of directors, except in cases of wilful or wanton misconduct by
 22 its employees or volunteers or in cases of official acts performed in bad faith by
 23 members of the board.

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

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

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

31 (b) The commissioner may recognize an entity organized for the purpose of

1 providing community mediation services as a community dispute resolution center to
 2 serve as a center to resolve disputes between minors and victims. Before extending
 3 recognition under this subsection, the commissioner shall determine that the bylaws of
 4 the entity set out standards and procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (f) A minor or a victim who enters a dispute resolution process at a center
31 established under this section may revoke consent, withdraw from dispute resolution,

1 and seek judicial or administrative redress before reaching a written resolution
2 agreement. The withdrawal must be in writing. If a minor or a victim withdraws from
3 dispute resolution, a legal penalty, sanction, or restraint may not be imposed upon the
4 person for that withdrawal.

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

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

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