

HOUSE BILL NO. 16

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KELLY

Introduced: 1/13/97

Referred: Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to delinquent minors, to the taking of action based on the
2 alleged criminal misconduct of certain minors, to the services to be provided to
3 the victims of criminal misconduct of minors, and to agency records involving
4 minors alleged to be delinquent based on their criminal misconduct; and amending
5 Rule 19 and repealing Rules 6, 7, 11(a), 12(a), and 21(f), Alaska Delinquency
6 Rules."

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

8 * **Section 1.** AS 44.23 is amended by adding a new section to read:

9 **Sec. 44.23.070. Victim/witness assistance program.** If the Department of
10 Law maintains a victim/witness assistance program, subject to sufficient appropriations
11 for the purpose, the services of that program shall be extended to victims of criminal
12 offenses committed by persons under 18 years of age so that victims of these offenses
13 may exercise the rights provided to them by law.

1 * **Sec. 2.** AS 47.12 is amended by adding a new section to read:

2 **Sec. 47.12.035. Preliminary inquiry; action based on that inquiry.**

3 Whenever circumstances subject a minor to the jurisdiction of this chapter because the
4 minor is alleged to be a delinquent minor under AS 47.12.020,

5 (1) except when a court, under (2) of this section, makes an
6 appointment of a person or agency to make a preliminary inquiry and report to it, a
7 state agency

8 (A) shall make a preliminary inquiry into the alleged offense
9 and the circumstances of its commission to determine if any action is
10 appropriate; if, at the conclusion of the preliminary inquiry, the state agency
11 concludes that the matter may not be adjusted without a court hearing, the
12 agency shall file a petition under AS 47.12.045; and

13 (B) may take appropriate action under AS 47.12.060 to adjust
14 the matter without a court hearing; under this subparagraph, if the state agency
15 takes appropriate action to adjust the matter without a court hearing, the minor
16 may not be further detained or taken into custody as a condition of the
17 adjustment, and, subject to AS 47.12.060, the state agency shall close the
18 matter if the minor successfully completes all that is required of the minor by
19 the state agency in the adjustment; in a municipality or municipalities in which
20 a youth court has been established under AS 47.12.400, adjustment of the
21 matter under this subparagraph may include referral to a youth court; in a
22 municipality or municipalities in which a community intervention court has
23 been established under AS 47.12.420, adjustment of the matter under this
24 subparagraph may include referral to a community intervention court;

25 (2) the court may appoint a competent person or agency to make a
26 preliminary inquiry and report for the information of the court to determine whether
27 the interests of the minor require that any action be taken; if, under this paragraph, the
28 court appoints a person or agency to make a preliminary inquiry and report to it, then,
29 upon the receipt of the report, the court may

30 (A) informally adjust the matter without a hearing; if the court
31 informally adjusts the matter, the matter shall be closed by the court if the

1 minor successfully completes all that is required of the minor by the court in
 2 the adjustment, and the minor may not be further detained or taken into the
 3 custody of the court as a condition of the adjustment; or

4 (B) authorize the person or agency, or any other person or
 5 agency having knowledge of the facts of the matter, to file a petition under
 6 AS 47.12.045 seeking adjudication of the minor as a delinquent.

7 * **Sec. 3.** AS 47.12 is amended by adding new sections to read:

8 **Sec. 47.12.041. Manner of conduct of preliminary inquiry.** (a) When a
 9 preliminary inquiry is made under AS 47.12.035, a person or agency making a
 10 preliminary inquiry

11 (1) may arrange an interview of the minor, the minor's parents or
 12 guardian, and any other person having relevant information;

13 (2) shall inform the minor and the minor's parents or guardian who are
 14 asked to attend an interview that their attendance at the interview is voluntary.

15 (b) At or before the interview scheduled under (a) of this section, the minor
 16 and the minor's parents or guardian, if present, must be advised

17 (1) that any statements may be used against the minor; and

18 (2) of the following rights of the minor:

19 (A) to have a parent or guardian present at the interview unless
 20 the parent or guardian has determined not to attend;

21 (B) to remain silent;

22 (C) to have retained or appointed counsel at all stages of the
 23 proceedings, including the interview; and

24 (D) if, following the preliminary inquiry, a petition seeking the
 25 minor's adjudication as a delinquent is filed, to have

26 (i) an adjudication hearing on the petition before a judge
 27 or jury with compulsory process to compel the attendance of witnesses;
 28 and

29 (ii) the opportunity to confront and cross-examine
 30 witnesses.

31 **Sec. 47.12.045. Petition for delinquency adjudication.** (a) The process of

1 seeking adjudication of a minor as a delinquent is commenced by the filing of a
2 petition.

3 (b) The petition and all subsequent pleadings shall be styled as follows: "In
4 the matter of, a minor under 18 years of age." The
5 petition may be executed upon the petitioner's information and belief, and must be
6 verified. It must include the following information:

7 (1) the name, address, and occupation of the petitioner, together with
8 the petitioner's relationship to the minor, and the petitioner's interest in the matter;

9 (2) the name, age, and address of the minor;

10 (3) a brief statement of the facts that bring the minor within this
11 chapter;

12 (4) the names and addresses of the minor's parents;

13 (5) the name and address of the minor's guardian, or of the person
14 having control or custody of the minor.

15 (c) If the petitioner does not know a fact required in this section, the petitioner
16 shall so state in the petition.

17 * **Sec. 4.** AS 47.12.060 is amended to read:

18 **Sec. 47.12.060. Informal state agency action [BY DEPARTMENT] to**
19 **adjust matter.** (a) The provisions of this section apply to a minor who is alleged to
20 be a delinquent minor under AS 47.12.020 and for whom **a state** [AN] agency has [,
21 UNDER APPLICABLE COURT RULE,] made a preliminary inquiry [BEFORE
22 TAKING APPROPRIATE ACTION] as authorized by **AS 47.12.035(1)**
23 [AS 47.12.040(a)]. Following the preliminary inquiry,

24 **(1) [UNLESS] the state agency may dismiss the matter; however, the**
25 **state agency may not dismiss a matter under this paragraph unless the state**
26 **agency obtains the consent either of the law enforcement agency that arrested,**
27 **detained, or took custody of the minor for the act of the minor that is the basis**
28 **of the delinquency allegation to be adjusted by the informal action or of the**
29 **appropriate district attorney's office; or**

30 **(2) [DETERMINES THAT THE MATTER SHOULD BE**
31 **DISMISSED,] the state agency may take informal action to adjust the matter; the**

1 state agency may make an informal adjustment only if the state agency
 2 determines that an informal adjustment would best serve the interests of the
 3 minor and the public.

4 (b) When the state agency decides to make [THAT] an informal adjustment
 5 of a matter under (a)(2) of this section [SHOULD BE MADE],

6 (1) that informal adjustment may not be made without the agreement
 7 or consent of the minor and the minor's parents or guardian [GUARDIANS] to the
 8 terms and conditions of the adjustment; as part of the agreement or consent to the
 9 terms and conditions of the adjustment, the parents or guardian shall act to
 10 ensure that the whereabouts of the minor shall always be monitored by or known
 11 to the parents or guardian and that, if requested, the parents or guardian shall
 12 provide that information to the person or agency, to a law enforcement agency,
 13 or to the victim of the act of the minor that is the basis of the delinquency
 14 allegation that is to be adjusted by the informal action;

15 (2) the state agency and the minor's parents or guardian shall
 16 make every reasonable effort to ensure that the informal action is successfully
 17 completed; an [. AN] informal action to adjust a matter is not successfully completed
 18 unless, among other factors that the agency considers, as to the victim of the act of the
 19 minor that is the basis of the delinquency allegation,

20 (A) the minor pays restitution in the amount set by the agency
 21 or agrees as a term or condition set by the agency to pay the restitution; and

22 (B) the minor provides a letter to the victim of the minor's
 23 act that is the basis of the delinquency allegation setting out a narrative
 24 account of the minor's activities under the agreement to adjust the matter.

25 * **Sec. 5.** AS 47.12.100(c) is amended to read:

26 (c) For purposes of making a determination under this section,

27 (1) the standard of proof is by a preponderance of the evidence; and

28 (2) the burden of proof that a minor is not amenable to treatment under
 29 this chapter is on the state; however, if the petition filed under AS 47.12.045
 30 [AS 47.12.040] seeking to have the court declare a minor a delinquent is based on the
 31 minor's alleged commission of an offense that is an unclassified felony or class A

1 felony and that is a crime against a person, the minor

2 (A) is rebuttably presumed not to be amenable to treatment
3 under this chapter; and

4 (B) has the burden of proof of showing that the minor is
5 amenable to treatment under this chapter.

6 * **Sec. 6.** AS 47.12.120 is amended by adding a new subsection to read:

7 (i) When, under (a) of this section, the court enters judgment finding that a
8 minor is delinquent, the court may order the minor temporarily detained pending entry
9 of its dispositional order if the court finds that detention is necessary

10 (1) to protect the minor or the community; or

11 (2) to ensure the minor's appearance at a subsequent court hearing.

12 * **Sec. 7.** AS 47.12.210(b) is amended to read:

13 (b) **Except as provided by AS 47.12.310(b)(1), fingerprint** [FINGERPRINT]
14 records taken under this section are not subject to AS 47.12.310.

15 * **Sec. 8.** AS 47.12 is amended by adding a new section to read:

16 **Sec. 47.12.245. Arrest.** A peace officer

17 (1) may arrest a minor

18 (A) for the violation of a law or ordinance under the same
19 circumstances and in the same manner as would apply to the arrest of an adult
20 for violation of a criminal law of the state or a municipality of the state;

21 (B) if the peace officer reasonably believes the minor is a
22 fugitive from justice;

23 (C) if the peace officer has probable cause to believe that the
24 minor has violated a condition of the minor's release or probation; or

25 (D) if the peace officer reasonably believes that the minor has
26 been adjudicated a delinquent and has escaped from an institution or absconded
27 from probation, parole, or the jurisdiction of a court;

28 (2) may continue the lawful arrest of a minor that is made by a citizen.

29 * **Sec. 9.** AS 47.12.250 is amended to read:

30 **Sec. 47.12.250. Temporary detention and detention hearing.** (a) **Following**
31 **a minor's arrest, the** [A PEACE OFFICER MAY ARREST A MINOR WHO

1 VIOLATES A LAW OR ORDINANCE IN THE PEACE OFFICER'S PRESENCE, OR
 2 WHOM THE PEACE OFFICER REASONABLY BELIEVES IS A FUGITIVE FROM
 3 JUSTICE. A PEACE OFFICER MAY CONTINUE A LAWFUL ARREST MADE
 4 BY A CITIZEN. THE] peace officer

5 (1) may have the minor **placed in temporary detention** [DETAINED]
 6 in a juvenile detention facility **or in a secure juvenile detention home or similar**
 7 **facility that provides locked or secure detention of minors on a short-term basis**
 8 if in the opinion of the peace officer making or continuing the arrest **temporary**
 9 **detention of the minor** [IT] is necessary [TO DO SO] to protect the minor or the
 10 community **or to compel the minor's attendance for court hearings; or**

11 (2) **unless temporary detention is authorized under (1) of this**
 12 **subsection, shall release the minor to the minor's parents or guardian.**

13 (b) A peace officer who has a minor detained under **(a)(1)** [(a)] of this section
 14 shall immediately, and in no event more than 12 hours later, notify the court and make
 15 reasonable efforts to notify the minor's parents or guardian and the department of the
 16 officer's action. **If the minor is arrested under AS 47.12.245(1)(B) - (D), the peace**
 17 **officer shall also notify the Department of Law.** The department may file with the
 18 court a petition alleging delinquency before the detention hearing. **The peace officer**
 19 **shall make and retain a written record of the notification and of any attempt at**
 20 **notification that is unsuccessful.**

21 (c) The court shall, **as soon as is practicable** [IMMEDIATELY], and in no
 22 event more than 48 hours later, **weekends and holidays included,** hold a hearing at
 23 which the minor, and the minor's parents or guardian if they can be found, shall be
 24 present. **At the hearing, the** [THE COURT SHALL DETERMINE WHETHER
 25 PROBABLE CAUSE EXISTS FOR BELIEVING THE MINOR TO BE
 26 DELINQUENT. THE COURT SHALL INFORM THE MINOR OF THE REASONS
 27 ALLEGED TO CONSTITUTE PROBABLE CAUSE AND THE REASONS
 28 ALLEGED TO AUTHORIZE THE MINOR'S DETENTION. THE] minor is entitled
 29 to counsel and to confrontation of adverse witnesses. **Except when the hearing**
 30 **concerns a minor who has been placed in emergency protective custody under**
 31 **AS 47.10.141(c), at the hearing, the court shall determine whether probable cause**

1 exists for believing that the minor is delinquent based on the minor's alleged
 2 violation of a law or ordinance for which the minor was arrested. Unless the
 3 department has filed with the court before the hearing a petition alleging
 4 delinquency, the court may make an appointment of a person or an agency to
 5 initiate a preliminary inquiry under AS 47.12.035(2). The court shall inform the
 6 minor of the reasons alleged to constitute probable cause to believe that the minor
 7 is delinquent and the reasons alleged to authorize the minor's temporary
 8 detention.

9 (d) At the hearing held under (c) of this section,

10 (1) if [IF] the court finds that probable cause exists for believing that
 11 the minor is delinquent based on the minor's alleged violation of a law or
 12 ordinance for which the minor was arrested, the court [IT] shall further determine
 13 whether the minor should be detained pending the hearing on the petition or released;
 14 the court [. IT] may either order the minor held in detention or released to the
 15 custody of a suitable person pending the hearing on the petition; under this
 16 paragraph, unless the court orders the continued detention of the minor, the court
 17 shall order the minor released to the custody of a suitable person; the court shall
 18 make the determination under this paragraph on the court's finding, based on a
 19 preponderance of the evidence, the burden of which is on the state, that continued
 20 detention of the minor is reasonably necessary to

21 (A) protect the minor or the community; or

22 (B) compel the minor's attendance at subsequent court
 23 hearings on the delinquency adjudication petition;

24 (2) if [. IF] the court finds no probable cause to believe that the
 25 minor is delinquent based on the minor's alleged violation of a law or ordinance
 26 for which the minor was arrested, the court [, IT] shall order the minor released and
 27 close the case.

28 (e) Except for temporary detention under (a) of this section pending a
 29 detention hearing held under (c) of this section, a minor may be detained only by
 30 court order.

31 * **Sec. 10.** AS 47.12.300(e) is amended to read:

1 (e) The court's official records under this chapter may be inspected only with
 2 the court's permission and only by persons having a legitimate interest in them. A
 3 person with a legitimate interest in the inspection of an official record maintained by
 4 the court includes a victim who suffered physical injury or whose real or personal
 5 property was damaged as a result of an offense that was the basis of an adjudication
 6 or modification of disposition. If the victim knows the identity of the minor, identifies
 7 the minor or the offense to the court, and certifies that the information is being sought
 8 to consider or support a civil action against the minor or against the minor's parents
 9 or **guardian** [GUARDIANS] under AS 34.50.020, the court shall, subject to
 10 AS 12.61.110 and 12.61.140, allow the victim to inspect and use the following records
 11 and information in connection with the civil action:

12 (1) a petition filed under **AS 47.12.045** [AS 47.12.040(a)] seeking to
 13 have the court declare the minor a delinquent;

14 (2) a petition filed under AS 47.12.120 seeking to have the court
 15 modify or revoke the minor's probation;

16 (3) a petition filed under AS 47.12.100 requesting the court to find that
 17 a minor is not amenable to treatment under this chapter and that results in closure of
 18 a case under AS 47.12.100(a); and

19 (4) a court judgment or order entered under this chapter that disposes
 20 of a petition identified in (1) - (3) of this subsection.

21 * **Sec. 11.** AS 47.12.310(b) is amended to read:

22 (b) A state or municipal agency or employee

23 **(1) shall disclose information regarding a case to a state or**
 24 **municipal law enforcement agency for a specific investigation being conducted by**
 25 **that agency; and**

26 **(2)** may disclose information regarding a case to

27 **(A)** [(1)] a guardian ad litem appointed by the court or to a
 28 citizen review panel for permanency planning authorized by AS 47.14.200 -
 29 47.14.220;

30 **(B)** [(2)] a person or an agency requested to provide
 31 consultation or services for a minor who is subject to the jurisdiction of the

1 court under this chapter;

2 (C) [(3)] school officials as may be necessary to protect the
3 safety of school students and staff;

4 (D) [(4)] a governmental agency as may be necessary to obtain
5 that agency's assistance for the department in its investigation or to obtain
6 physical custody of a minor;

7 (E) [(5)] a state or municipal law enforcement agency as may
8 be necessary [FOR A SPECIFIC INVESTIGATION BEING CONDUCTED
9 BY THAT AGENCY OR] for disclosures by that agency to protect the public
10 safety; and

11 (F) [(6)] a victim as may be necessary to inform the victim
12 about the disposition or resolution of a case involving a minor.

13 * **Sec. 12.** AS 47.12.310(g) is amended to read:

14 (g) The department and affected law enforcement agencies shall work with
15 school districts and private schools to develop procedures for the disclosure of
16 information to school officials under (b)(2)(C) [(b)(3)] and (c)(3) of this section. The
17 procedures must provide a method for informing the principal or the principal's
18 designee of the school the student attends as soon as it is reasonably practicable.

19 * **Sec. 13.** AS 47.12 is amended by adding a new section to read:

20 **Article 4A. Community Intervention Courts.**

21 **Sec. 47.12.420. Community intervention courts.** (a) In a municipality or
22 combination of municipalities in which a community intervention court is established,
23 the community intervention court may hear, determine, and dispose of cases involving
24 a minor whose alleged act that brings the minor within the jurisdiction of this chapter
25 constitutes a violation of a state law that is a misdemeanor or a violation or that
26 constitutes a violation of a municipal ordinance that prescribes a penalty not exceeding
27 the penalties for an offense that is a class A misdemeanor under state law.

28 (b) The jurisdiction of a community intervention court is coextensive with the
29 boundaries of the municipality or combination of municipalities in which the
30 community intervention court is located. Nothing in this subsection prohibits two or
31 more municipalities from operating a single community intervention court for the

1 municipalities by agreement between them.

2 (c) A community intervention court may exercise only the powers that are
3 required of it by this section and the powers that are set out in the ordinance
4 establishing it.

5 (d) A community intervention court shall adjust or dispose of a matter
6 involving a minor that has been referred to it. To adjust or dispose of a matter, the
7 community intervention court and the minor shall enter into an agreement that sets out
8 all requirements set by the community intervention court as a part of its adjustment or
9 disposition to which the minor agrees. To that end, the community intervention court
10 and the minor may agree that the minor

11 (1) perform community service;

12 (2) make suitable restitution;

13 (3) obtain counseling or treatment when the community intervention
14 court and the minor agree that counseling or treatment is otherwise appropriate.

15 (e) The ordinance establishing the community intervention court must set out
16 standards and procedures by which the community intervention court,

17 (1) establishes a system by which the minor may be held accountable
18 for the conduct that brings the minor within the jurisdiction of the community
19 intervention court;

20 (2) guarantees the constitutional rights of the minor that are guaranteed
21 by the state and federal constitutions;

22 (3) may secure jurisdiction over a minor; unless otherwise provided by
23 law, the community intervention court may secure jurisdiction over the minor only
24 with the consent of the minor and the agreement of the minor's legal custodian;

25 (4) sets out the process for disposing of matters referred to it for
26 resolution;

27 (5) provides a process for appeal of a verdict or sentence, and defines
28 the basis for appeals;

29 (6) reserves the right to refer to the department, under AS 47.12.060(a),
30 a matter transmitted to the community intervention court for disposition in which the
31 minor fails, without good cause, to comply with all requirements ordered by the

1 community intervention court as a part of sentence imposed on the minor; and

2 (7) prepares and delivers a report of the disposition of the matter
3 referred to it for resolution to the commissioner.

4 (f) Subject to the privileges that witnesses have in the courts of this state, the
5 community intervention court may compel by subpoena, at a specified time and place,
6 the

7 (1) appearance and sworn testimony of a person who the community
8 intervention court reasonably believes may be able to give information relating to a
9 matter before it; and

10 (2) production by a person of a record or object that the community
11 intervention court reasonably believes may relate to a matter before it.

12 (g) If a person refuses to comply with a subpoena issued under (f) of this
13 section, the superior court may, upon application of the presiding official of the
14 community intervention court, compel obedience by proceedings for contempt in the
15 same manner as in the case of disobedience to the requirements of a subpoena issued
16 by the superior court or refusal to testify in the superior court.

17 (h) The community intervention court shall make and keep records of all cases
18 referred to it. The records of a court proceeding

19 (1) relating to a minor who complies with all requirements ordered by
20 the community intervention court as a part of sentence imposed on the minor shall be
21 sealed by the commissioner and may not be used for any purpose; and

22 (2) except as to a record described in (1) of this subsection, shall be
23 afforded at least the same protection and are subject to at least the same procedural
24 safeguards in matters relating to access, use, and security as they would be under
25 AS 47.12.310.

26 * **Sec. 14.** Rule 19, Alaska Delinquency Rules, is amended to read:

27 **Rule 19. Prehearing Procedures [PRETRIAL CONFERENCE].** (a)
28 **Determination of Adjudication Hearing Date; Prehearing Conference, Time and**
29 **Purpose. Promptly [AT ANY TIME] after the arraignment on petition or entry of**
30 **a deny plea, the court shall set a date at which the court shall hear the petition,**
31 **which date may not be later than 30 days from the date that the petition seeking**

1 **the minor's adjudication as a delinquent was filed, and** may schedule a **prehearing**
2 [PRETRIAL] conference on the record to consider:

3 (1) simplification of the issues;

4 (2) the possibility of obtaining admissions of fact and documents which
5 will avoid the introduction of unnecessary evidence;

6 (3) the number of witnesses who will give testimony of a cumulative
7 nature; and

8 (4) such other matters as may aid in the adjudication of the petition.

9 (b) **Order.** The court shall enter an order **setting the date for the hearing**
10 **of the petition for adjudication and** reciting the agreement made at the **prehearing**
11 conference. This order controls the subsequent course of the proceedings unless
12 modified at the adjudication hearing in order to prevent manifest injustice.

13 * **Sec. 15.** Rules 6, 7, 11(a), 12(a), and 21(f), Alaska Delinquency Rules, are repealed.

14 * **Sec. 16.** AS 47.12.040 is repealed.