

HOUSE BILL NO. 251

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/23/01

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the commission of an offense or a juvenile delinquency act involving**
2 **the victim's race, sex, color, religion, physical or mental disability, sexual orientation,**
3 **economic disadvantage, ancestry, or national origin; relating to sentencing, informal**
4 **adjustment, and adjudication for those offenses and acts; relating to a diversity**
5 **tolerance program for certain juvenile delinquency acts; relating to a civil cause of**
6 **action for certain acts involving discriminatory harassment; and providing for an**
7 **effective date."**

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

9 * **Section 1.** AS 09.55 is amended by adding a new section to read:

10 **Sec. 09.55.670. Discriminatory harassment action.** (a) An individual may
11 maintain a civil action for discriminatory harassment against another, or against the
12 parent or legal guardian of a minor, who has caused physical injury to the individual,
13 or damage to the property of the individual, with the intent to intimidate or harass the

1 individual because of the individual's actual or perceived race, sex, color, religion,
 2 physical or mental disability, sexual orientation, economic disadvantage, ancestry, or
 3 national origin.

4 (b) An action may not be maintained under this section against

5 (1) the state, an agency or instrumentality of the state, or a political
 6 subdivision of the state;

7 (2) an agent, officer, or employee of an entity described in (1) of this
 8 subsection;

9 (3) an individual working in or responsible for the operation under
 10 AS 47 of a foster, receiving, or detention home or children's institution, regarding the
 11 acts of an unemancipated minor in the charge or custody of the home or institution; or

12 (4) an employee of or a volunteer with a nonprofit corporation that
 13 designates shelters for runaways under AS 47.10.392 - 47.10.399, regarding the acts of
 14 a minor sheltered in a shelter for runaways, as defined in AS 47.10.399.

15 (c) Compensatory and punitive damages may be awarded to a prevailing
 16 plaintiff in an action brought under this section. An award of damages against the
 17 parent or legal guardian of a minor under this section must be based upon the reckless
 18 conduct of the parent or legal guardian having actual care and custody of the minor.

19 (d) An award of damages under this section does not preclude an individual
 20 from seeking other remedies available under other law.

21 * **Sec. 2.** AS 12.55.085(f) is amended to read:

22 (f) The court may not suspend the imposition of sentence of a person who

23 (1) is convicted of a violation of AS 11.41.100 - 11.41.220,
 24 11.41.260 - 11.41.320, 11.41.410 - 11.41.530, or AS 11.46.400;

25 (2) uses a firearm in the commission of the offense for which the
 26 person is convicted; [OR]

27 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony
 28 and the person has one or more prior convictions for a misdemeanor violation of
 29 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction
 30 having substantially similar elements to an offense defined as a misdemeanor in
 31 AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall

1 be considered to have a prior conviction even if that conviction has been set aside
 2 under (e) of this section or under the equivalent provisions of the laws of another
 3 jurisdiction; or

4 (4) is convicted of an offense and knowingly directed the conduct
 5 constituting the offense at a victim because of that person's actual or perceived
 6 race, sex, color, religion, physical or mental disability, sexual orientation,
 7 economic disadvantage, ancestry, or national origin.

8 * **Sec. 3.** AS 12.55.135(i) is amended to read:

9 (i) If a defendant is sentenced under (g) or (k) of this section,

10 (1) execution of sentence may not be suspended and probation or
 11 parole may not be granted until the minimum term of imprisonment has been served;

12 (2) imposition of sentence may not be suspended;

13 (3) the minimum term of imprisonment may not otherwise be reduced.

14 * **Sec. 4.** AS 12.55.135(j) is amended by adding a new paragraph to read:

15 (3) "hate crime" means the defendant knowingly directed the conduct
 16 constituting the offense at a victim because of that person's actual or perceived race,
 17 sex, color, religion, physical or mental disability, sexual orientation, economic
 18 disadvantage, ancestry, or national origin.

19 * **Sec. 5.** AS 12.55.135 is amended by adding a new subsection to read:

20 (k) If a court finds by clear and convincing evidence that a defendant has
 21 committed a misdemeanor hate crime, the court shall sentence the defendant

22 (1) to a minimum term of imprisonment of 60 days if the defendant
 23 violated AS 11.41.230(a)(1) or (2) or 11.41.270;

24 (2) to a minimum term of imprisonment of 30 days if the defendant
 25 violated AS 11.41.230(a)(3) or 11.41.250;

26 (3) to a minimum term of imprisonment of 10 days if the defendant
 27 violated AS 11.61.110 or 11.61.120; or

28 (4) as a worst offender if the defendant violated any other provision of
 29 AS 11 that is punishable as a misdemeanor and that is not described in (1) - (3) of this
 30 subsection.

31 * **Sec. 6.** AS 12.55.155(c)(22) is amended to read:

1 (22) the defendant knowingly directed the conduct constituting the
 2 offense at a victim because of that person's **actual or perceived** race, sex, color,
 3 **religion** [CREED], physical or mental disability, **sexual orientation, economic**
 4 **disadvantage**, ancestry, or national origin;

5 * Sec. 7. AS 47.12.060(b) is amended to read:

6 (b) When the department or the entity selected by it decides to make an
 7 informal adjustment of a matter under (a)(2) of this section, that informal adjustment
 8 **must**

9 **(1)** [MAY NOT] be made **with** [WITHOUT] the agreement or consent
 10 of the minor and the minor's parents or guardian to the terms and conditions of the
 11 adjustment;

12 **(2)** [. IN ADDITION, THE DEPARTMENT OR ENTITY SHALL]
 13 give the minor's foster parents an opportunity to be heard before the informal
 14 adjustment is made;

15 **(3) include notice that** [. AN] informal action to adjust a matter is not
 16 successfully completed unless, among other factors that the department or the entity
 17 selected by it considers, as to the victim of the act of the minor that is the basis of the
 18 delinquency allegation, the minor pays restitution in the amount set by the department
 19 or the entity selected by it or agrees as a term or condition set by the department or the
 20 entity selected by it to pay the restitution; **and**

21 **(4) if there is reason to believe that the minor knowingly directed**
 22 **the conduct constituting a delinquent act at a victim because of that person's**
 23 **actual or perceived race, sex, color, religion, physical or mental disability, sexual**
 24 **orientation, economic disadvantage, ancestry, or national origin,**

25 **(A) require the minor to perform a minimum of 100 hours**
 26 **of community work service; and**

27 **(B) include a referral to a diversity tolerance program or**
 28 **otherwise provide the minor and the minor's parents or guardian with the**
 29 **opportunity to develop respect for the ethnic, cultural, and personal**
 30 **diversity of all persons of the state.**

31 * Sec. 8. AS 47.12.120(b) is amended to read:

1 (b) If the minor is not subject to (j) of this section and the court finds that the
2 minor is delinquent, it shall

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

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

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

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

27 (3) order the minor committed to the custody of the department and
28 placed on probation, to be supervised by the department and released to the minor's
29 parents, guardian, other suitable person, or suitable nondetention setting such as with a
30 relative or in a foster home or residential child care facility, whichever the department
31 considers appropriate to implement the treatment plan of the predisposition report; if

1 the court orders the minor placed on probation, it may specify the terms and conditions
2 of probation; the department may transfer the minor, in the minor's best interests, from
3 one of the probationary placement settings listed in this paragraph to another, and the
4 minor, the minor's parents or guardian, the minor's foster parent, and the minor's
5 attorney are entitled to reasonable notice of the transfer; the probation may be for a
6 period of time not to exceed two years and in no event to extend past the day the
7 minor becomes 19 years of age, except that the department may petition for and the
8 court may grant in a hearing

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

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

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

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

26 (B) the court may not order payment of restitution by the parent
27 of a minor who is a runaway or missing minor for an act of the minor that was
28 committed by the minor after the parent has made a report to a law
29 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
30 away or is missing; for purposes of this subparagraph, "runaway or missing
31 minor" means a minor who a parent reasonably believes is absent from the

1 minor's residence for the purpose of evading the parent or who is otherwise
 2 missing from the minor's usual place of abode without the consent of the
 3 parent;

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

9 (6) in addition to an order under (1) - (5) of this subsection, order the
 10 minor to perform community service; for purposes of this paragraph, "community
 11 service" includes work

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

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

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

19 **(8) in addition to an order under (1) - (5) and (7) of this subsection,**
 20 **if the court finds by clear and convincing evidence that the minor knowingly**
 21 **directed the conduct constituting a delinquent act at a victim because of that**
 22 **person's actual or perceived race, sex, color, religion, physical or mental**
 23 **disability, sexual orientation, economic disadvantage, ancestry, or national**
 24 **origin,**

25 **(A) order the minor to perform a minimum of 100 hours of**
 26 **community work service; and**

27 **(B) carefully assess the plan proposed by the department**
 28 **under AS 47.12.130 to ensure that the plan adequately provides the minor**
 29 **and the minor's parents or guardian with the opportunity to develop**
 30 **respect for the ethnic, cultural, and personal diversity of all persons of the**
 31 **state.**

1 * **Sec. 9.** AS 47.12 is amended by adding a new section to article 5 to read:

2 **Sec. 47.12.970. Diversity tolerance program.** The department shall develop
3 and implement, or designate, in cooperation with other state, local, tribal, and non-
4 profit public service agencies, a diversity tolerance program that provides resources
5 for developing respect for ethnic, cultural, and personal diversity, and that is designed
6 for persons under 18 years of age who have been referred to the program under this
7 chapter in connection with conduct by a minor that is motivated by a person's actual or
8 perceived race, sex, color, religion, physical or mental disability, sexual orientation,
9 economic disadvantage, ancestry, or national origin.

10 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **APPLICABILITY.** This Act applies to offenses or acts committed on or after the
13 effective date of this Act.

14 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).