

Offered: 3/28/83
Referred: Finance

Original sponsors: Pestinger, Furnace,
Uehling, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 109 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to persons 16 or 17 years of age who
7 are charged with unclassified or class A felonies;
8 and amending the children's proceedings waiver pro-
9 visions."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 12.05 is amended by adding a new section to read:

12 Sec. 12.05.020. JURISDICTION OVER CERTAIN MINORS CHARGED WITH
13 SERIOUS FELONIES. (a) A person 16 or 17 years of age who is charged
14 with an offense designated as an unclassified or class A felony must
15 be arrested and prosecuted as an adult.

16 (b) If the court has waived juvenile jurisdiction over a person
17 under the age of 18 under AS 47.10.060, that person must be prosecuted
18 as an adult.

19 (c) A person who has been convicted of an offense after being
20 prosecuted as an adult under this section must be prosecuted as an
21 adult for any subsequent criminal offense.

22 (d) References in this section to the age of a person refers to
23 the person's age at the time of the offense.

24 * Sec. 2. AS 12.55 is amended by adding a new section to read:

25 Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. A person subject
26 to the jurisdiction of the court under AS 12.05.020 who is convicted
27 of the offense charged or of any lesser included offense must be
28 sentenced under the provisions of this chapter.

29 * Sec. 3. AS 12.55.125(c) is amended to read:

1 (c) A defendant convicted of a class A felony may be sentenced
2 to a definite term of imprisonment of not more than 20 years, and,
3 except as provided in (j) of this section, shall be sentenced to the
4 following presumptive terms, subject to adjustment as provided in AS
5 12.55.155 - 12.55.175:

6 (1) if the offense is a first felony conviction and does
7 not involve circumstances described in (2) of this subsection, five
8 years;

9 (2) if the offense is a first felony conviction, other than
10 for manslaughter, and the defendant possessed a firearm, used a dan-
11 gerous instrument, or caused serious physical injury during the com-
12 mission of the offense, seven years;

13 (3) if the offense is a second felony conviction, 10 years;

14 (4) if the offense is a third felony conviction, 15 years.

15 * Sec. 4. AS 12.55.125(i) is amended to read:

16 (i) A defendant convicted of sexual assault in the first degree
17 may be sentenced to a definite term of imprisonment of not more than
18 30 years, and, except as provided in (j) of this section, shall be
19 sentenced to the following presumptive terms, subject to adjustment as
20 provided in AS 12.55.155 - 12.55.175:

21 (1) if the offense is a first felony conviction and does
22 not involve circumstances described in (2) of this subsection, eight
23 years;

24 (2) if the offense is a first felony conviction, and the
25 defendant possessed a firearm, used a dangerous instrument, or caused
26 serious physical injury during the commission of the offense, 10
27 years;

28 (3) if the offense is a second felony conviction, 15 years;

29 (4) if the offense is a third felony conviction, 25 years.

1 * Sec. 5. AS 12.55.125 is amended by adding a new subsection to read:

2 (j) Notwithstanding any other provision in this section, a
3 person convicted of a first felony offense while under the jurisdic-
4 tion of the court under AS 12.05.020 is not subject to the mandatory
5 minimum and presumptive sentences required for first offenders.

6 * Sec. 6. AS 12.55.145 is amended by adding a new subsection to read:

7 (f) If a person subject to the jurisdiction of the court under
8 AS 12.05.020 is convicted of a felony offense, the conviction is to be
9 considered a prior conviction for presumptive sentencing purposes in
10 subsequent offenses.

11 * Sec. 7. AS 12.80 is amended by adding a new section to read:

12 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. If a person
13 under the age of 18 who is subject to the jurisdiction of the court
14 under AS 12.05.020 is confined to custody while awaiting trial or
15 sentencing or is sentenced to a period of incarceration upon convic-
16 tion, the person must be committed to the custody of the Department of
17 Health and Social Services for confinement in a correctional facility
18 for adult offenders.

19 * Sec. 8. AS 47.10.010(a) is amended to read:

20 (a) Except as otherwise provided in this chapter and AS 12.05.-
21 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS]
22 relating to a minor under 18 years of age residing or found in the
23 state are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN
24 THIS CHAPTER,] when the court finds the minor

25 (1) to be a delinquent minor as a result of violating a
26 criminal law of the state or of a municipality of the state; or

27 (2) to be a child in need of aid as a result of

28 (A) the child being habitually absent from the child's
29 [HIS] home or refusing to accept available care, or having no

1 parent, guardian, custodian or relative caring or willing to care
2 for the child [HIM], including physical abandonment by

3 (i) both parents,

4 (ii) the surviving parent, or

5 (iii) one parent if the other parent's rights and
6 responsibilities have been terminated under AS 47.10.080 or
7 voluntarily relinquished;

8 (B) the child being in need of medical treatment to
9 cure, alleviate, or prevent [HIS] suffering substantial physical
10 harm, or mental harm as evidenced by failure to thrive, severe
11 anxiety, depression, withdrawal, or untoward aggressive behavior
12 or hostility toward others, and the [HIS] parents of the child
13 are unwilling to provide the medical treatment;

14 (C) the child having suffered substantial physical
15 harm or if there is an imminent and substantial risk that the
16 child will suffer such harm as a result of the actions done by or
17 conditions created by the [HIS] parent, guardian or custodian of
18 the child or the failure of the [HIS] parent, guardian or
19 custodian of the child adequately to supervise the child [HIM];

20 (D) the child having been sexually abused either by
21 the [HIS] parent, guardian or custodian of the child, or as a
22 result of conditions created by the [HIS] parent, guardian or
23 custodian of the child, or by the failure of the [HIS] parent,
24 guardian or custodian of the child adequately to supervise the
25 child [HIM];

26 (E) the child committing delinquent acts as a result
27 of pressure, guidance, or approval from the [HIS] parents,
28 guardian or custodian of the child; [.]

29 (F) the child having suffered substantial physical

1 abuse or neglect as a result of conditions created by the
2 [CHILD'S] parent, guardian or custodian of the child.

3 * Sec. 9. AS 47.10.060 is repealed and reenacted to read:

4 Sec. 47.10.060. WAIVER OF JURISDICTION. (a) Upon motion of the
5 prosecutor, and after a hearing, the court shall waive children's
6 court jurisdiction over a person under the age of 18 if the court
7 finds, based upon the preponderance of the evidence,

8 (1) that there is probable cause to believe that the person
9 has committed an offense which would be a felony if committed by an
10 adult; and

11 (2) that there is no substantial likelihood that the person
12 can be successfully rehabilitated under children's court proceedings.

13 (b) In determining the likelihood of successful rehabilitation
14 under children's court proceedings, the court shall consider

15 (1) the seriousness of the offense;

16 (2) whether the offense constituted a substantial danger to
17 the public;

18 (3) whether the offense was committed in an aggressive,
19 violent, premeditated, or willful manner;

20 (4) whether the offense was against persons or against
21 property, greater weight being given to an offense against persons,
22 especially if personal injury resulted;

23 (5) whether the offense is a part of a repetitive pattern
24 of delinquent acts, even though previous offenses may have been less
25 serious;

26 (6) the age, maturity, educational background, and degree
27 of criminal sophistication of the person;

28 (7) the success of any previous attempts to rehabilitate
29 the person;

1 (8) whether children's court jurisdiction over the person
2 can be retained long enough to allow for effective treatment or reha-
3 bilitation; and

4 (9) the treatment resources available under children's
5 court proceedings.

6 (c) The court shall determine the weight to be given to each of
7 the factors listed in (b) of this section and shall issue a written
8 decision. A finding that there is no substantial likelihood of suc-
9 cessful rehabilitation of the person under children's court proceed-
10 ings may be based on any one or a combination of the factors. If the
11 court waives children's court jurisdiction over a person, the court
12 shall order the children's court proceeding closed and the person must
13 then be prosecuted as an adult.