

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) am
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 and sentenced as an adult as
21 provided in AS 12.55.007 must be prosecuted as an adult for any subse-
22 quent criminal offense.
23 (d) References in this section to the age of a person refers to
24 the person's age at the time of the offense.
25 * Sec. 2. AS 12.55 is amended by adding a new section to read:
26 Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. A person subject
27 to the jurisdiction of the court under AS 12.05.020 who is convicted
28 of the offense charged or of any lesser included offense that is an
29 unclassified or class A felony must be sentenced under the provisions

1 of this chapter. If the person is convicted only of a lesser included
2 offense other than an unclassified or class A felony, the person must
3 be sentenced as a delinquent minor under AS 47.10.

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

5 (c) A defendant convicted of a class A felony may be sentenced
6 to a definite term of imprisonment of not more than 20 years, and,
7 except as provided in (j) of this section, shall be sentenced to the
8 following presumptive terms, subject to adjustment as provided in AS
9 12.55.155 - 12.55.175:

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

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

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

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

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

20 (i) A defendant convicted of sexual assault in the first degree
21 may be sentenced to a definite term of imprisonment of not more than
22 30 years, and, except as provided in (j) of this section, shall be
23 sentenced to the following presumptive terms, subject to adjustment as
24 provided in AS 12.55.155 - 12.55.175:

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

28 (2) if the offense is a first felony conviction, and the
29 defendant possessed a firearm, used a dangerous instrument, or caused

1 serious physical injury during the commission of the offense, 10
2 years;

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

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

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

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

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

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

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

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

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

24 (a) Except as otherwise provided in this chapter and AS 12.05.-
25 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS] relat-
26 ing to a minor under 18 years of age residing or found in the state
27 are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN THIS
28 CHAPTER,] when the court finds the minor

29 (1) to be a delinquent minor as a result of violating a

1 criminal law of the state or of a municipality of the state; or

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

3 (A) the child being habitually absent from the child's
4 [HIS] home or refusing to accept available care, or having no
5 parent, guardian, custodian or relative caring or willing to care
6 for the child [HIM], including physical abandonment by

7 (i) both parents,

8 (ii) the surviving parent, or

9 (iii) one parent if the other parent's rights and
10 responsibilities have been terminated under AS 47.10.080 or
11 voluntarily relinquished;

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

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

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

1 (E) the child committing delinquent acts as a result
2 of pressure, guidance, or approval from the [HIS] parents, guard-
3 ian or custodian of the child; [.]

4 (F) the child having suffered substantial physical
5 abuse or neglect as a result of conditions created by the
6 [CHILD'S] parent, guardian or custodian of the child.

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

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

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

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

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

19 (1) the seriousness of the offense;

20 (2) whether the offense constituted a substantial danger to
21 the public;

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

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

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

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

3 (7) the success of any previous attempts to rehabilitate
4 the person;

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

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

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