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Referred: Finance

Original sponsors: Pestinger, Furnace,
Uehling, et al

1 IN THE HOUSE

BY THE HEALTH, EDUCATION, AND
SOCIAL SERVICES COMMITTEE

2

SENATE CS FOR CS FOR HOUSE BILL NO. 109 (HESS)

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 felony must be arrested
15 and prosecuted as an adult.

16 (b) A person 16 or 17 years of age who is charged with an of-
17 fense designated as a class A felony is subject to AS 47.10.

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

21 (d) A person who has been convicted of an offense after being
22 prosecuted as an adult under this section and sentenced as an adult as
23 provided in AS 12.55.007 must be prosecuted as an adult for any subse-
24 quent criminal offense.

25 (e) References in this section to the age of a person refers to
26 the person's age at the time of the offense.

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

28 Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. A person subject
29 to the jurisdiction of the court under AS 12.05.020 who is convicted

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. (a) A person 16
19 or 17 years of age who is charged with an unclassified felony, and who
20 is held in custody, shall be confined in a facility for juvenile
21 offenders until indicted for, held to answer following a preliminary
22 hearing on, or charged by complaint or information following a waiver
23 of indictment or preliminary hearing for an unclassified felony of-
24 fense. Following indictment, preliminary hearing, or waiver the
25 person, if held in custody, shall be confined in a facility for adult
26 offenders.

27 (b) Except as provided in (a) of this section, a person under
28 the age of 18 who has been arrested and is being held in custody for
29 an offense that would be a criminal offense if committed by an adult

1 shall be confined to a facility for juvenile offenders unless chil-
2 dren's court jurisdiction over the person has been waived under
3 AS 47.10.060, and the person has been indicted for, held to answer
4 following a preliminary hearing on, or charged by complaint or infor-
5 mation following a waiver of indictment or preliminary hearing for a
6 felony offense.

7 (c) If a person under the age of 18 who is subject to the jurisdic-
8 tion of the court under AS 12.05.020 is confined to custody while
9 awaiting sentencing, or is sentenced to a period of incarceration upon
10 conviction, the person must be committed to the custody of the Depart-
11 ment of Health and Social Services for confinement in a correctional
12 facility for juvenile offenders, unless the person is 17 or 18 years
13 of age and has committed an unclassified felony, in which case the
14 person may be confined in a correctional facility for adult offenders.

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

16 (a) Except as otherwise provided in this chapter and AS 12.05.-
17 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS] relat-
18 ing to a minor under 18 years of age residing or found in the state
19 are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN THIS
20 CHAPTER,] when the court finds the minor

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

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

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

28 (i) both parents,

29 (ii) the surviving parent, or

1 (iii) one parent if the other parent's rights and
2 responsibilities have been terminated under AS 47.10.080 or
3 voluntarily relinquished;

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

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

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

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

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

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

29 Sec. 47.10.060. WAIVER OF JURISDICTION. (a) Upon motion of the

1 prosecutor, and after a hearing, the court shall waive children's
2 court jurisdiction over a person under the age of 18 if the court
3 finds, based upon the preponderance of the evidence,

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

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

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

11 (1) the seriousness of the offense;

12 (2) whether the offense constituted a substantial danger to
13 the public;

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

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

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

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

24 (7) the success of any previous attempts to rehabilitate
25 the person;

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

29 (9) the treatment resources available under children's

1 court proceedings.

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