

Introduced: 1/20/84  
Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY PESTINGER

2

HOUSE BILL NO. 530

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND 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 shall  
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 shall be prose-  
18 cuted as an adult.

19 (c) A person who has been prosecuted as an adult under this  
20 section, convicted, and sentenced as an adult as provided in AS 12.-  
21 55.007 shall be prosecuted as an adult for any subsequent criminal  
22 offense.

23 (d) References in this section to a person's age refer to the  
24 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 shall 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 shall  
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, or knowingly directed the conduct constituting  
17 the offense at a uniformed or otherwise clearly identified peace  
18 officer, fire fighter, correctional officer, emergency medical techni-  
19 cian, paramedic, ambulance attendant, or other emergency responder who  
20 was engaged in the performance of official duties at the time of the  
21 offense, seven years;

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

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

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

25 (i) A defendant convicted of sexual assault in the first degree  
26 or sexual abuse of a minor in the first degree may be sentenced to a  
27 definite term of imprisonment of not more than 30 years, and, except  
28 as provided in (j) of this section, shall be sentenced to the follow-  
29 ing presumptive terms, subject to adjustment as provided in AS

1 12.55.155 - 12.55.175:

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

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

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

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

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

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

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

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

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

22 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. If a person  
23 under the age of 18 who is subject to the jurisdiction of the court  
24 under AS 12.05.020 is confined to custody while awaiting trial or  
25 sentencing or is sentenced to a period of incarceration upon convic-  
26 tion, the person shall be committed to the custody of the Department  
27 of Health and Social Services for confinement in a correctional facil-  
28 ity for adult offenders.

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

1           (a) Except as otherwise provided in this chapter and AS 12.05.-  
2 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS] relat-  
3 ing to a minor under 18 years of age residing or found in the state  
4 are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN THIS  
5 CHAPTER,] when the court finds the minor

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

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

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

13                   (i) both parents,

14                   (ii) the surviving parent, or

15                   (iii) one parent if the other parent's rights and  
16 responsibilities have been terminated under AS 47.10.080 or  
17 voluntarily relinquished;

18           (B) the child being in need of medical treatment to  
19 cure, alleviate, or prevent [HIS] suffering substantial physical  
20 harm, or mental harm as evidenced by failure to thrive, severe  
21 anxiety, depression, withdrawal, or untoward aggressive behavior  
22 or hostility toward others, and the [HIS] parents of the child  
23 are unwilling to provide the medical treatment;

24           (C) the child having suffered substantial physical  
25 harm or if there is an imminent and substantial risk that the  
26 child will suffer such harm as a result of the actions done by or  
27 conditions created by the [HIS] parent, guardian or custodian of  
28 the child or the failure of the [HIS] parent, guardian or custo-  
29 dian of the child adequately to supervise the child [HIM];

1 (D) the child having been sexually abused either by  
2 the [HIS] parent, guardian or custodian of the child, or as a  
3 result of conditions created by the [HIS] parent, guardian or  
4 custodian of the child, or by the failure of the [HIS] parent,  
5 guardian or custodian of the child adequately to supervise the  
6 child [HIM];

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

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

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

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

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

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

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

25 (1) the seriousness of the offense;

26 (2) whether the offense constituted a substantial danger to  
27 the public;

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

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

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

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

9           (7) the success of any previous attempts to rehabilitate  
10 the person;

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

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

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