

Offered: 3/1/84
Referred: Finance

Original sponsor: Pestinger

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 530 (Judiciary)
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 felonies; and amending
8 the children's proceedings waiver provisions."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 12.05 is amended by adding a new section to read:
11 Sec. 12.05.020. JURISDICTION OVER CERTAIN MINORS CHARGED WITH
12 SERIOUS FELONIES. (a) A person 16 or 17 years of age who is charged
13 with an offense designated as an unclassified felony shall be prose-
14 cuted as an adult.
15 (b) If the court has waived children's court jurisdiction over a
16 person under the age of 18 under AS 47.10.060, that person shall be
17 prosecuted as an adult.
18 (c) Unless referred to children's court for disposition after a
19 hearing under AS 12.55.007(b), a person who has been convicted of an
20 offense after being prosecuted as an adult under this section shall be
21 prosecuted as an adult for any subsequent criminal offense.
22 (d) References in this section to a person's age refer to the
23 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) A person
26 subject to the jurisdiction of the court under AS 12.05.020 who is
27 convicted of the offense charged or of any lesser included offense
28 shall be sentenced under the provisions of this chapter, unless re-
29 ferred to children's court for disposition after a hearing under (b)

1 of this section.

2 (b) A person subject to the jurisdiction of the court under
3 AS 12.05.020 who is convicted of an offense that is not an unclas-
4 sified felony, and that is lesser than the offense for which chil-
5 dren's court jurisdiction was waived, may petition the court to dis-
6 pose of the offense under AS 47.10.080. The petition for disposition
7 under AS 47.10.080 shall be filed with the court, with a copy to the
8 prosecutor, not less than 30 days before the time set for imposition
9 of sentence. The petition shall state the reasons why disposition
10 under AS 47.10.080 is appropriate. The court shall hold a hearing on
11 the petition. The court may order disposition under AS 47.10.080 if
12 the court finds that the petitioner has proven, by a preponderance of
13 the evidence, that there is a substantial likelihood that the peti-
14 tioner can be successfully rehabilitated under the children's court
15 system. In determining the likelihood of successful rehabilitation
16 under children's court proceedings, the court shall consider the
17 factors set out in AS 47.10.060(c), and comply with AS 47.10.060(d).

18 * Sec. 3. AS 12.55.125 is amended by adding a new subsection to read:

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

23 * Sec. 4. AS 12.55.145 is amended by adding a new subsection to read:

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

28 * Sec. 5. AS 12.80 is amended by adding a new section to read:

29 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. (a) A person 16

1 or 17 years of age who is charged with an unclassified felony and who
2 is held in custody shall be confined in a facility for juvenile
3 offenders until indicted for, held to answer following a preliminary
4 hearing on, or charged by complaint or information following a waiver
5 of indictment for an unclassified felony offense. Following indict-
6 ment, preliminary hearing, or waiver of indictment, the person, if
7 held in custody, shall be confined in a facility for adult offenders.

8 (b) Except as provided in (a) of this section, a person under 18
9 years of age, who is held in custody for an offense that would be a
10 crime if committed by an adult, shall be confined to a facility for
11 juvenile offenders unless children's court jurisdiction over the
12 person has been waived under AS 47.10.060, and the person has been
13 indicted for, held to answer following a preliminary hearing on, or
14 charged by complaint or information following a waiver of indictment
15 for a felony offense. Following indictment, preliminary hearing, or
16 waiver of indictment, the person, if held in custody, shall be con-
17 fined to a facility for adult offenders.

18 (c) If a person under 18 years of age who is subject to the
19 jurisdiction of the court under AS 12.05.020 is confined to custody
20 while awaiting sentencing, or is sentenced to a period of incarcera-
21 tion upon conviction, the person shall be committed to the custody of
22 the Department of Health and Social Services for confinement in a
23 correctional facility for adult offenders. The department shall
24 provide a person confined to custody in an adult facility under this
25 section with sleeping quarters that are separate from the sleeping
26 quarters for adult offenders until the person reaches 18 years of age.

27 * Sec. 6. AS 47.10.010(a) is amended to read:

28 (a) Except as otherwise provided in this chapter and AS 12.05.-
29 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS]

1 relating to a minor under 18 years of age residing or found in the
2 state are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN
3 THIS CHAPTER,] when the court finds the minor

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

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

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

11 (i) both parents,

12 (ii) the surviving parent, or

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

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

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

28 (D) the child having been sexually abused either by
29 the [HIS] parent, guardian or custodian of the child, or as a

1 result of conditions created by the [HIS] parent, guardian or
2 custodian of the child, or by the failure of the [HIS] parent,
3 guardian or custodian of the child adequately to supervise the
4 child [HIM];

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

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

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

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

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

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

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

23 (1) the seriousness of the offense;

24 (2) whether the offense constituted a substantial danger to
25 the public;

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

28 (4) the person's role in the commission of the offense;

29 (5) whether the offense is part of a repetitive pattern of

1 delinquent acts, even though previous offenses may have been less
2 serious;

3 (6) the age, maturity, intellectual capacity, educational
4 background, physical and mental health, and degree of criminal sophis-
5 tication of the person;

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

8 (8) the person's exhibited or expressed attitudes toward
9 the victims of the crime, the authorities, society, and self;

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

13 (10) the treatment resources available under children's
14 court proceedings; and

15 (11) whether the protection of the community requires iso-
16 lation of the person beyond that afforded by juvenile facilities.

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

25 (d) In this section, "waive children's court jurisdiction" means
26 an order of a court having jurisdiction over a child that transfers
27 the case to a court that would have jurisdiction had the act been
28 committed by an adult. A waiver of jurisdiction is for the offense
29 charged and all included or related offenses.