

Offered: 5/3/83
Referred: Rules

Original sponsors: Rodey and Ray

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 127 (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 the power and jurisdiction of
7 courts in cases involving minors."

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

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

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

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

17 (c) Unless referred to children's court for disposition after a
18 hearing under AS 12.55.007(b), a person who has been convicted of an
19 offense after being prosecuted as an adult under this section must be
20 prosecuted as an adult for any subsequent criminal offense.

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

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

24 Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. (a) A person
25 subject to the jurisdiction of the court under AS 12.05.020 who is
26 convicted of the offense charged or of any lesser included offense
27 must be sentenced under the provisions of this chapter, unless re-
28 ferred to children's court for disposition after a hearing under (b)
29 of this section.

1 (b) A person subject to the jurisdiction of the court under
2 AS 12.05.020 who is convicted of an offense that is not an unclassi-
3 fied felony and that is lesser than the offense for which children's
4 court jurisdiction was waived may petition the court to dispose of the
5 offense under AS 47.10.080. The petitioner must file with the court
6 notice of intent to seek disposition under AS 47.10.080 and serve the
7 prosecutor with a copy of the notice no less than 20 days before the
8 day set for imposition of sentence. The court shall hold a hearing on
9 the petition. At the hearing the petitioner has the burden of estab-
10 lishing, by a preponderance of the evidence, that there is a substan-
11 tial likelihood that the petitioner can be successfully rehabilitated
12 under the children's court system. In determining the likelihood of
13 successful rehabilitation under children's court proceedings, the
14 court shall consider the factors set out in AS 47.10.060(c) and follow
15 the procedure established in AS 47.10.060(d).

16 * Sec. 3. AS 12.55.125(a) is amended to read:

17 (a) Except as provided in (j) of this section, a [A] defendant
18 convicted of murder in the first degree shall be sentenced to a defi-
19 nite term of imprisonment of at least 20 years but not more than 99
20 years.

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

22 (b) Except as provided in (j) of this section, a [A] defendant
23 convicted of murder in the second degree, kidnapping, or misconduct
24 involving a controlled substance in the first degree shall be sen-
25 tenced to a definite term of imprisonment of at least five years but
26 not more than 99 years.

27 * Sec. 5. AS 12.55.125(c) is amended to read:

28 (c) A defendant convicted of a class A felony may be sentenced
29 to a definite term of imprisonment of not more than 20 years, and

1 except as provided in (j) of this section, shall be sentenced to the
2 following presumptive terms, subject to adjustment as provided in
3 AS 12.55.155 - 12.55.175:

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

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

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

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

13 * Sec. 6. AS 12.55.125(i) is amended to read:

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

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

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

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

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

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

29 (j) A person convicted of a first felony offense while under the

1 jurisdiction of the court under AS 12.05.020 is not subject to the
2 mandatory minimum and presumptive sentences required for first
3 offenders.

4 * Sec. 8. AS 12.55.145 is amended by adding a new subsection to read:

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

9 * Sec. 9. AS 12.80 is amended by adding a new section to read:

10 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. (a) A person 16
11 or 17 years of age who is charged with an unclassified felony, and who
12 is held in custody, shall be confined in a facility for juvenile
13 offenders until indicted for, held to answer following a preliminary
14 hearing on, or charged by complaint or information following a waiver
15 of indictment or preliminary hearing for an unclassified felony
16 offense. Following indictment, preliminary hearing, or waiver the
17 person, if held in custody, shall be confined in a facility for adult
18 offenders.

19 (b) Except as provided in (a) of this section, a person under
20 the age of 18 who has been arrested and is being held in custody for
21 an offense which would be a criminal offense if committed by an adult
22 shall be confined to a facility for juvenile offenders unless chil-
23 dren's court jurisdiction over the person has been waived under
24 AS 47.10.060, and the person has been indicted for, held to answer
25 following a preliminary hearing on, or charged by complaint or infor-
26 mation following a waiver of indictment or preliminary hearing for a
27 felony offense.

28 (c) If a person under the age of 18 who is subject to the jurisdic-
29 tion of the court under AS 12.05.020 is confined to custody while

1 awaiting sentencing, or is sentenced to a period of incarceration upon
2 conviction, the person must be committed to the custody of the Depart-
3 ment of Health and Social Services for confinement in a correctional
4 facility for adult offenders.

5 * Sec. 10. AS 34.50.020(a) is amended to read:

6 (a) Except as provided in (e) of this section, a [A] person,
7 municipal corporation, association, village, school district or reli-
8 gious or charitable organization, incorporated or unincorporated, may
9 recover damages in a civil action in an amount not to exceed \$5,000
10 [\$2,000] and court costs, from either parent or both parents or the
11 legal guardian or person having the legal custody of an unemancipated
12 minor under the age of 18 years, who maliciously or wilfully destroys
13 real or personal property belonging to the person, municipal corpo-
14 ration, association, village, school district or religious or charita-
15 ble organization.

16 * Sec. 11. AS 34.50.020 is amended by adding new subsections to read:

17 (c) For the purposes of this section a minor is considered
18 emancipated and a parent or legal guardian or person having legal
19 custody is not liable for property damage caused by the minor if the
20 court determines that

21 (1) the disabilities of minority have been removed under
22 AS 09.55.590;

23 (2) the minor is a resident of the state, is at least 16
24 years of age, is living separate and apart from the minor's parents or
25 legal guardian or person having legal custody, and is capable of
26 self-support and of managing personal financial affairs; or

27 (3) the minor is living separate and apart from the minor's
28 parents or legal guardian or person having legal custody and engages
29 in conduct that results in a judgment under AS 47.10.080(a) that the

1 minor is a delinquent minor and that also is the basis for a civil
2 action for damages to property under this section.

3 (d) If the court determines that a minor is emancipated under
4 (c) of this section, the minor may be sued in a civil action for
5 injuries caused by the minor as if the minor were an adult.

6 (e) The provisions of (a) of this section do not apply to de-
7 struction of property by an unemancipated minor under the age of 18
8 years who maliciously or wilfully destroys property at the time the
9 minor is a ward of the state under AS 47.10.080(f).

10 * Sec. 12. AS 47.10.010(a) is amended to read:

11 (a) Except as otherwise provided in this chapter and AS 12.05.-
12 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS] relat-
13 ing to a minor under 18 years of age residing or found in the state
14 are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN THIS
15 CHAPTER,] when the court finds the minor

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

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

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

23 (i) both parents,

24 (ii) the surviving parent, or

25 (iii) one parent if the other parent's rights and
26 responsibilities have been terminated under AS 47.10.080 or
27 voluntarily relinquished;

28 (B) the child being in need of medical treatment to
29 cure, alleviate, or prevent [HIS] suffering substantial physical

1 harm, or mental harm as evidenced by failure to thrive, severe
2 anxiety, depression, withdrawal, or untoward aggressive behavior
3 or hostility toward others, and the [HIS] parents of the child
4 are unwilling to provide the medical treatment;

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

11 (D) the child having been sexually abused either by
12 the [HIS] parent, guardian or custodian of the child, or as a
13 result of conditions created by the [HIS] parent, guardian or
14 custodian of the child, or by the failure of the [HIS] parent,
15 guardian or custodian of the child adequately to supervise the
16 child [HIM];

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

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

23 * Sec. 13. AS 47.10.020(a) is amended to read:

24 (a) Whenever a person informs the court of the facts which bring
25 a minor within this chapter, the court shall appoint a competent
26 person or agency to make a preliminary inquiry and report for the
27 information of the court to determine whether the interests of the
28 public or of the minor require that further action be taken. Upon the
29 receipt of the report, the court may informally adjust or dispose of

1 the matter without a hearing, or it may authorize the person having
2 knowledge of the facts of the case to file with the court a petition
3 setting out the facts. Where the court informally adjusts or disposes
4 of the matter, the minor may not be detained or taken into the custody
5 of the court, and the matter shall be closed by the court upon adjust-
6 ment or disposition. Upon request of the victim or the victim's
7 parent or guardian, the court shall disclose to the victim of the
8 minor or to the victim's parent or guardian the manner in which it
9 informally adjusted or disposed of the matter.

10 * Sec. 14. AS 47.10.060 is repealed and reenacted to read:

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

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

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

20 (b) For purposes of this section, "substantial likelihood of
21 rehabilitation" means that it is highly probable that a person can be
22 rehabilitated by treatment under this chapter before children's court
23 jurisdiction over the person expires.

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

26 (1) the seriousness of the offense;

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

29 (3) whether the offense was committed in an aggressive,

1 violent, premeditated, or willful manner;

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

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

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

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

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

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

17 (d) The court shall determine the weight to be given to each of
18 the factors listed in (c) 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 must
24 then be prosecuted as an adult.

25 * Sec. 15. AS 47.10.080(a) is amended to read:

26 (a) The court, at the conclusion of the hearing, or thereafter
27 as the circumstances of the case may require, shall find and enter a
28 judgment that the minor is or is not a delinquent or a child in need
29 of aid. The court shall disclose the results of the hearing in

1 accordance with AS 47.10.020(a).

2 * Sec. 16. AS 47.10.090 is amended by adding a new subsection to read:

3 (d) The provisions of this section requiring a court order to
4 authorize disclosure of information relating to a minor do not apply
5 to a disclosure to a victim or the victim's parent or guardian under
6 AS 47.10.020(a), 47.10.080(a), and 47.10.140(d).

7 * Sec. 17. AS 47.10.140(d) is amended to read:

8 (d) If the court finds that probable cause exists, it shall
9 determine whether the minor should be detained pending the hearing on
10 the petition or released. It may either order the minor held in
11 detention or order the minor [HIM] to be released to the custody of a
12 suitable person pending the hearing on the petition. If the court
13 finds no probable cause, it shall order the minor released and close
14 the case. The court shall disclose the results of the hearing in
15 accordance with AS 47.10.020(a).