

Offered: 6/22/83

Original sponsors: Rodey and Ray

1 IN THE SENATE

BY THE RULES COMMITTEE

2

CS FOR SENATE BILL NO. 127 (Rules)

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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 victims' rights and the jurisdic-

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tion of courts in cases involving minors; and amend-

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ing Rule 32(d)(2) of the Alaska Rules of Criminal

9

Procedure."

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

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

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Sec. 12.05.020. JURISDICTION OVER CERTAIN MINORS CHARGED WITH

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SERIOUS FELONIES. (a) A person 16 or 17 years of age who is charged

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with an offense designated as an unclassified felony must be arrested

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and prosecuted as an adult.

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(b) If the court has waived children's court jurisdiction over a

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person under the age of 18 under AS 47.10.060, that person must be

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prosecuted as an adult.

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(c) Unless referred to children's court for disposition after a

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hearing under AS 12.55.007(b), a person who has been convicted of an

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offense after being prosecuted as an adult under this section must be

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prosecuted as an adult for any subsequent criminal offense.

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(d) References in this section to the age of a person refers to

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the person's age at the time of the offense.

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

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Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. (a) A person

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subject to the jurisdiction of the court under AS 12.05.020 who is

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convicted of the offense charged or of any lesser included offense

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must be sentenced under the provisions of this chapter, unless

1 referred to children's court for disposition after a hearing under (b)
2 of this section.

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

18 * Sec. 3. AS 12.55 is amended by adding a new section to read:

19 Sec. 12.55.022. VICTIM IMPACT STATEMENT. As part of the presen-
20 tence report prepared on each felony offender, the probation officer
21 shall prepare a victim impact statement reporting in a nonargumenta-
22 tive style the following verified information:

23 (1) the financial, emotional, and medical impact of the
24 offense on the victim;

25 (2) the need of the victim for restitution; and

26 (3) any other information required by the court.

27 * Sec. 4. AS 12.55.025(a) is amended to read:

28 (a) When imposing a sentence for conviction of a felony offense
29 or a sentence of imprisonment exceeding 90 days or upon a conviction

1 of a violation of AS 04, a regulation adopted under AS 04, or an
2 ordinance adopted in conformity with AS 04.21.010, the court, shall
3 prepare, as a part of the record, a sentencing report which includes
4 the following:

5 (1) a verbatim record of the sentencing hearing and any
6 other in-court sentencing procedures;

7 (2) findings on material issues of fact and on factual
8 questions required to be determined as a prerequisite to the selection
9 of the sentence imposed;

10 (3) a clear statement of the terms of the sentence imposed;

11 [AND]

12 (4) recommendations as to the place of confinement or the
13 manner of treatment; and

14 (5) in the case of a conviction for a felony offense,
15 verified information assessing

16 (A) the financial, emotional, and medical impact of
17 the offense on the victim;

18 (B) the need of the victim for restitution; and

19 (C) any other information required by the court.

20 * Sec. 5. AS 12.55.125(a) is amended to read:

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

25 * Sec. 6. AS 12.55.125(b) is amended to read:

26 (b) Except as provided in (j) of this section, a [A] defendant
27 convicted of murder in the second degree, kidnapping, or misconduct
28 involving a controlled substance in the first degree shall be sen-
29 tenced to a definite term of imprisonment of at least five years but

1 not more than 99 years.

2 * Sec. 7. AS 12.55.125(c) is amended to read:

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

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

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

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

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

17 * Sec. 8. AS 12.55.125(i) is amended to read:

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

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

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

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

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

3 * Sec. 9. AS 12.55.125 is amended by adding a new subsection to read:

4 (j) A person convicted of a first felony offense while under the
5 jurisdiction of the court under AS 12.05.020 is not subject to the
6 mandatory minimum and presumptive sentences required for first of-
7 fenders.

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

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

13 * Sec. 11. AS 12.55.185 is amended by adding a new paragraph to read:

14 (11) "victim" means the victim of the offense or, in the
15 case in which the victim has died, is a minor, or is incapacitated to
16 the extent that the victim is unable to take advantage of the victim's
17 rights under this chapter, the term includes a spouse, parent, child,
18 brother, sister or legal guardian of the victim.

19 * Sec. 12. AS 12 is amended by adding a new chapter to read:

20 CHAPTER 61. RIGHTS OF VICTIMS.

21 Sec. 12.61.010. RIGHTS OF VICTIMS. (a) Victims of crimes have
22 the following rights:

23 (1) the right to be informed by the appropriate law en-
24 forcement agency or the prosecuting attorney of the date of trial and
25 the date of sentencing of the case in which the victim is involved;

26 (2) the right to be notified that a sentencing hearing or a
27 court proceeding to which the victim has been subpoenaed will not
28 occur as scheduled, in order to save the person an unnecessary trip to
29 court;

1 (3) the right to receive protection from harm and threats
2 of harm arising out of cooperation with law enforcement and prosecu-
3 tion efforts, and to be provided with information as to the protection
4 available;

5 (4) the right to be informed of the procedure to be fol-
6 lowed to apply for and receive any victim compensation to which the
7 person may be entitled;

8 (5) the right to cooperate with the criminal justice pro-
9 cess without loss of pay and other employee benefits and without
10 interference in any form by the employer of the victim of crime; and

11 (6) the right to access to immediate medical assistance and
12 not to be detained for an unreasonable length of time by a law en-
13 forcement agency before having medical assistance administered; how-
14 ever, an employee of the law enforcement agency may, if necessary
15 accompany the person to a medical facility to question the person
16 about the criminal incident if the questioning does not hinder the
17 administration of medical assistance.

18 (b) Law enforcement agencies, prosecutors, and the courts shall
19 make every reasonable effort to assure that victims of crimes have the
20 rights set out in (a) of this section. However, a failure to assure
21 these rights does not give rise to a separate cause of action against
22 law enforcement agencies, or other agencies of the state, or a politi-
23 cal subdivision of the state.

24 * Sec. 13. AS 12.80 is amended by adding a new section to read:

25 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. (a) A person 16
26 or 17 years of age who is charged with an unclassified felony, and who
27 is held in custody, shall be confined in a facility for juvenile
28 offenders until indicted for, held to answer following a preliminary
29 hearing on, or charged by complaint or information following a waiver

1 of indictment or preliminary hearing for an unclassified felony of-
2 fense. Following indictment, preliminary hearing, or waiver the
3 person, if held in custody, shall be confined in a facility for adult
4 offenders.

5 (b) Except as provided in (a) of this section, a person under
6 the age of 18 who has been arrested and is being held in custody for
7 an offense which would be a criminal offense if committed by an adult
8 shall be confined to a facility for juvenile offenders unless chil-
9 dren's court jurisdiction over the person has been waived under
10 AS 47.10.060, and the person has been indicted for, held to answer
11 following a preliminary hearing on, or charged by complaint or infor-
12 mation following a waiver of indictment or preliminary hearing for a
13 felony offense.

14 (c) If a person under the age of 18 who is subject to the jurisd-
15 iction of the court under AS 12.05.020 is confined to custody while
16 awaiting sentencing, or is sentenced to a period of incarceration upon
17 conviction, the person must be committed to the custody of the Depart-
18 ment of Health and Social Services for confinement in a correctional
19 facility for adult offenders.

20 * Sec. 14. AS 18.66.060 is amended to read:

21 Sec. 18.66.060. QUALIFICATIONS. A local community entity is
22 qualified to receive a grant or contract under this chapter if it
23 agrees to provide services approved by the council to victims of
24 domestic violence or sexual assault or their families or to perpetra-
25 tors of domestic violence or sexual assault without regard to ability
26 to pay. The local community entity may not condition provision of
27 services to a victim on the victim's cooperation with a prosecuting
28 attorney in the filing of criminal charges.

29 * Sec. 15. AS 33.15.060(a) is amended to read:

1 (a) In considering a prisoner, the board shall consider the
2 presentence report made to the sentencing court, comments received
3 from the victim under AS 33.15.065, the recommendations by the sen-
4 tencing court and the prosecuting attorney, the report from the proper
5 officers of the institution where the prisoner is incarcerated, the
6 record of the prisoner and all pertinent information that will enable
7 the board to make a determination.

8 * Sec. 16. AS 33.15 is amended by adding a new section to read:

9 Sec. 33.15.065. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRIS-
10 ONER. (a) Upon request of the victim, as defined in AS 12.55.185-
11 (11), notice of a hearing to review or consider the parole eligibility
12 or the setting of a parole date for a prisoner in a state prison who
13 is convicted of a crime against a person as defined in AS 33.30.900(8)
14 shall be sent to the victim of the crime at least 30 days before the
15 scheduled hearing.

16 (b) It shall be the responsibility of the victim to keep the
17 board apprised of the person's most current mailing address. If the
18 board has not been kept apprised of the person's most current mailing
19 address, the board shall send the notice required under (a) of this
20 section to the last known address of the victim. The address of the
21 victim may not be disclosed to the prisoner or the prisoner's attor-
22 ney.

23 (c) The victim has a right to comment in writing on the proposed
24 action of the board. Copies of the comments shall be provided to the
25 prisoner and the prisoner's attorney.

26 (d) The board shall consider the comments presented under (c) of
27 this section in deciding whether to release the prisoner on parole.

28 (e) Upon request of the victim, if the board decides to release
29 on parole a prisoner who is convicted of a crime against a person as

1 defined in AS 33.30.900(8), the board shall notify the victim before
2 the prisoner's release date. Notification under this subsection shall
3 include the expected date of the prisoner's release, the geographic
4 area in which the prisoner is required to reside, and other pertinent
5 information concerning the prisoner's conditions of parole that may
6 impact the victim. The board shall make every reasonable effort to
7 notify the victim of the pending parole of the prisoner unless the
8 victim does not wish to be notified.

9 * Sec. 17. AS 33.30.250 is amended by adding a new subsection to read:

10 (h) Upon request of the victim, as defined in AS 12.55.185(11),
11 in the case of a prisoner convicted of a crime against a person as
12 defined in AS 33.30.900(8), notice of the commissioner's intent to
13 consider the prisoner for release under (a) of this section shall be
14 sent to the victim. The victim may comment in writing on the intent
15 of the commissioner to release the prisoner on work furlough status.
16 The commissioner shall consider the comments of the victim before
17 making a final decision to release a prisoner under (a) of this sec-
18 tion. The victim shall keep the commissioner apprised of the person's
19 current mailing address. The commissioner shall make every reasonable
20 effort to notify the victim of an intent to consider a release of a
21 prisoner under (a) of this section, unless the victim does not wish to
22 be notified. The notice shall contain the expected date of the pris-
23 oner's release and the geographic area in which the prisoner will
24 reside.

25 * Sec. 18. AS 33.30.260 is amended by adding a new subsection to read:

26 (b) In the case of a prisoner convicted of a crime against a
27 person as defined in AS 33.30.900(8) notice of the commissioner's
28 intent to consider the prisoner for release under (a) of this section
29 shall be sent upon request to the victim as defined in

1 AS 12.55.185(11). The victim may comment in writing on the intent of
2 the commissioner to release the prisoner in rehabilitation furlough
3 status. The commissioner shall consider the comments of the victim
4 before making a final decision to release a prisoner under (a) of this
5 section. The victim shall keep the commissioner apprised of the
6 person's current mailing address. The commissioner shall make every
7 reasonable effort to notify the victim of an intent to release a
8 prisoner under (a) of this section, unless the victim does not wish to
9 be notified. The notice shall contain the expected date of the pris-
10 oner's release and the geographic area in which the prisoner will
11 reside.

12 * Sec. 19. AS 33.30.900 is amended by adding a new paragraph to read:

13 (8) "crime against a person" means a crime as set out in
14 AS 11.41, except custodial interference under AS 11.41.320 and AS 11.-
15 41.330, or a crime against a person in this or another jurisdiction
16 having elements substantially identical to those of a crime as set out
17 in AS 11.41, except custodial interference under AS 11.41.320 and
18 AS 11.41.330.

19 * Sec. 20. AS 34.50.020(a) is amended to read:

20 (a) Except as provided in (e) of this section, a [A] person,
21 municipal corporation, association, village, school district or reli-
22 gious or charitable organization, incorporated or unincorporated, may
23 recover damages in a civil action in an amount not to exceed \$5,000
24 [\$2,000] and court costs, from either parent or both parents or the
25 legal guardian or person having the legal custody of an unemancipated
26 minor under the age of 18 years, who maliciously or wilfully destroys
27 real or personal property belonging to the person, municipal corpo-
28 ration, association, village, school district or religious or charita-
29 ble organization.

1 * Sec. 21. AS 34.50.020 is amended by adding new subsections to read:

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

6 (1) the disabilities of minority have been removed under
7 AS 09.55.590;

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

12 (3) the minor is living separate and apart from the minor's
13 parents or legal guardian or person having legal custody and engages
14 in conduct that results in a judgment under AS 47.10.080(a) that the
15 minor is a delinquent minor and that also is the basis for a civil
16 action for damages to property under this section.

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

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

24 * Sec. 22. AS 47.10.010(a) is amended to read:

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

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

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

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

8 (i) both parents,

9 (ii) the surviving parent, or

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

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

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

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

1 child [HIM];

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

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

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

9 (a) Whenever a person informs the court of the facts which bring
10 a minor within this chapter, the court shall appoint a competent
11 person or agency to make a preliminary inquiry and report for the
12 information of the court to determine whether the interests of the
13 public or of the minor require that further action be taken. Upon the
14 receipt of the report, the court may informally adjust or dispose of
15 the matter without a hearing, or it may authorize the person having
16 knowledge of the facts of the case to file with the court a petition
17 setting out the facts. Where the court informally adjusts or disposes
18 of the matter, the minor may not be detained or taken into the custody
19 of the court, and the matter shall be closed by the court upon adjust-
20 ment or disposition. Upon request of the victim or the victim's
21 parent or guardian, the court shall disclose to the victim of the
22 minor or to the victim's parent or guardian the manner in which it
23 informally adjusted or disposed of the matter.

24 * Sec. 24. AS 47.10.060 is repealed and reenacted to read:

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

29 (1) that there is probable cause to believe that the person

1 has committed an offense which would be a felony if committed by an
2 adult; and

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

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

9 (c) 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 (d) The court shall determine the weight to be given to each of
3 the factors listed in (c) 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.

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

11 (a) The court, at the conclusion of the hearing, or thereafter
12 as the circumstances of the case may require, shall find and enter a
13 judgment that the minor is or is not a delinquent or a child in need
14 of aid. The court shall disclose the results of the hearing in accor-
15 dance with AS 47.10.020(a).

16 * Sec. 26. AS 47.10.090 is amended by adding a new subsection to read:

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

21 * Sec. 27. AS 47.10.140(d) is amended to read:

22 (d) If the court finds that probable cause exists, it shall
23 determine whether the minor should be detained pending the hearing on
24 the petition or released. It may either order the minor held in
25 detention or order the minor [HIM] to be released to the custody of a
26 suitable person pending the hearing on the petition. If the court
27 finds no probable cause, it shall order the minor released and close
28 the case. The court shall disclose the results of the hearing in
29 accordance with AS 47.10.020(a).

1 * Sec. 28. The effect of sec. 3 of this Act is to amend Rule 32(d)(2)
2 of the Alaska Rules of Criminal Procedure by adding a requirement for a
3 Victim Impact Statement as part of a court ordered presentence report.
4