

CS FOR SENATE BILL NO. 45(HES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/22/93
Referred: FINANCE

Sponsor(s): SENATORS PHILLIPS, Halford, Kelly, Miller, Lemau, Sharp

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to persons under 21 years of age; providing for designation of
2 shelters for runaway minors; relating to the detention and incarceration of
3 minors; and providing for an effective date."

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

5 * Section 1. PURPOSE OF SECS. 13 AND 17. The purpose of secs. 13 and 17 of this
6 Act is to improve the state's juvenile justice system by

7 (1) ending, with minor exceptions, the practice of allowing the confinement
8 of children in adult correctional facilities, jails, prisons, and rural lock-ups, however operated,
9 based on evidence that the practice often leads to aggravated emotional problems and
10 depression in, and suicide attempts by, the children who are confined;

11 (2) conforming state law and policy relating to the confinement of children to
12 the requirements of 42 U.S.C. 5633(a)(13) and (14) (Juvenile Justice and Delinquency
13 Prevention Act of 1974, as amended), taking into consideration the dislocations that may arise
14 from distance, weather, and lack of means to transport minor children to suitable places for

1 the care and custody of minors.

2 * **Sec. 2. SHELTERS FOR RUNAWAYS, LEGISLATIVE FINDINGS; INTENT.** (a) The
3 legislature finds that licensed programs for runaway minors need not be the only sources of
4 government-encouraged assistance for runaway minors. There exist many concerned citizens
5 in the state who, with appropriate oversight and certain limitations of their liability, would
6 volunteer to assist runaway minors in their private residences. It would be in the public
7 interest to encourage properly qualified private citizens to seek designation of their homes as
8 shelters for runaways where runaway minors could seek temporary, short-term shelter and
9 other care.

10 (b) It is the intent of legislature that the Department of Health and Social Services,
11 in implementing secs. 18 - 21 of this Act, adopt regulations under which interested nonprofit
12 corporations could be approved by the department for the purpose of designating shelters for
13 runaways. Oversight of the shelters by the nonprofit corporations and the state should
14 involve less regulation than is required for licensed programs for runaways under
15 AS 47.10.310 while still requiring the shelters to meet health and safety standards designed
16 to reduce the risk to the runaway minors in the shelters.

17 * **Sec. 3.** AS 09.55.590(a) is amended to read:

18 (a) A minor who is a resident of this state and is at least 16 years of age, who
19 is living separate and apart from the parents or guardian of the minor, capable of
20 self-support and of managing one's own financial affairs, or the legal custodian of
21 such a minor, may petition the superior court to have the disabilities of minority
22 removed for limited or general purposes

23 * **Sec. 4.** AS 09.55.590(b) is amended to read:

24 (b) A minor or the legal custodian of a minor may institute a [THIS] petition
25 under this section in the name of the minor.

26 * **Sec. 5.** AS 09.55.590(c) is amended to read:

27 (c) The petition for removal of disabilities of minority must state [:]

- 28 (1) the name, age, and residence address of the minor [PETITIONER];
29 (2) the name and address of each living parent;
30 (3) the name and address of the guardian of the person and the
31 guardian of the estate, if any;

1 (4) the reasons why removal would be in the best interest of the minor
2 [CHILD], and

3 (5) the purposes for which removal is sought.

4 * Sec. 6. AS 09.55.590(d) is amended to read:

5 (d) The person who institutes a petition under this section [PETITIONER]
6 must obtain the consent of each living parent or guardian having control of the person
7 or property of the minor [PETITIONER]. If the person who is to consent to the
8 petition is unavailable or the whereabouts of that person are unknown, or if a parent
9 or guardian unreasonably withholds consent, the court, acting in the best interest of the
10 minor [PETITIONER], may waive this requirement of consent as to that parent or
11 guardian.

12 * Sec. 7. AS 09.55.590(e) is amended to read:

13 (e) The court may appoint an attorney or a guardian ad litem to represent the
14 interests of the minor [PETITIONER] at the hearing. Appointment of an attorney or
15 guardian ad litem shall be made in accordance with AS 25.24.310.

16 * Sec. 8. AS 09.55.590(f) is repealed and reenacted to read:

17 (f) If the petition under this section is filed by a minor, the court may remove
18 the disabilities of minority as requested in the petition if the court finds on the record
19 after a hearing that the minor is a resident of the state, at least 16 years of age, living
20 separate and apart from the parent or guardian of the minor, and capable of self-
21 support and managing the minor's own financial affairs. If the petition under this
22 section is filed by the legal custodian of a minor, the court may remove the disabilities
23 of minority as requested in the petition only if the court, in addition to making the
24 other findings required under this subsection for a petition filed by a minor, makes a
25 finding on the record that there is interpersonal conflict involving the legal custodian
26 and the minor that the custodian and the minor have been unable to resolve
27 satisfactorily through other means; the finding must include a description of the efforts
28 that were made by the legal custodian to resolve the interpersonal conflict before the
29 custodian filed the petition under this section.

30 * Sec. 9. AS 11.51.130(a) is amended to read:

31 (a) A person commits the crime of contributing to the delinquency of a minor

1 if, being 19 years of age or older, the person aids, induces, causes, or encourages a
2 child

3 (1) [AIDS, INDUCES, CAUSES, OR ENCOURAGES A CHILD]
4 under 18 years of age to do any act prohibited by state law;

5 (2) [REPEALED]

6 (3) AIDS, INDUCES, CAUSES, OR ENCOURAGES A CHILD] under
7 18 years of age to enter or remain in the same room in a building where the unlawful
8 sale of a drug occurs;

9 (3) [OR (4) REPEALED

10 (5) AIDS, INDUCES, CAUSES, OR ENCOURAGES A CHILD] under
11 16 years of age to be [ABSENT FROM THE CUSTODY OF A PARENT,
12 GUARDIAN, OR CUSTODIAN OR TO BE] repeatedly absent from school, without
13 just cause; or

14 (4) under 18 years of age to be absent from the custody of a parent,
15 guardian, or custodian without just cause, unless the child's disabilities of
16 minority have been removed for general purposes under AS 09.55.590 or the
17 person has immunity under AS 47.10.398(a)

18 * Sec. 10. AS 12.62.035(f)(1) is amended to read:

19 (1) "contributing to the delinquency of a minor" means a conviction for
20 a violation or attempted violations of AS 11.51.130(a) [AS 11.51.130(a)(1), (3), OR
21 (5)]; former AS 11.40.130; or the laws of another jurisdiction if the offense would
22 have been a crime in this state under AS 11.51.130(a) [AS 11.51.130(a)(1), (3), OR
23 (5)] or former AS 11.40.130 if committed in the state;

24 * Sec. 11. AS 23.10.350 is amended by adding a new subsection to read:

25 (f) A minor for whom the disabilities of minority have not been removed for
26 general purposes under AS 09.55.590 may not be employed or allowed to work

27 (1) without the written permission of the minor's legal custodian; or

28 (2) after 10:00 p.m. on the night before the minor's school is in session
29 unless the minor has graduated from secondary school or its equivalent; however, a
30 minor under 16 years of age may not be employed to work after 9:00 o'clock in the
31 evening, as provided in AS 23.10.340.

1 * **Sec. 12.** AS 34.50.020(b) is amended to read:

2 (b) A state agency or its agents, including a person working in or responsible
3 for the operation of a foster, receiving, or detention home, or children's institution, is
4 not liable for the acts of unemancipated minors in its charge or custody. A state
5 agency or an agent of a state agency, including a nonprofit corporation that
6 designates shelters for runaways under AS 47.10.392 - 47.10.399 and employees
7 of or volunteers with that corporation, is not liable for the acts of a minor
8 sheltered in a shelter for runaways, as defined in AS 47.10.399.

9 * **Sec. 13.** AS 47.10.130 is repealed and reenacted to read:

10 Sec. 47.10.130. DETENTION. (a) A minor may not be incarcerated in a
11 correctional facility that houses adult prisoners.

12 (b) When a minor is detained under this chapter, the person having
13 responsibility for the facility in which the minor is detained shall immediately notify
14 the minor's parent, guardian, or custodian of the minor's detention.

15 (c) Notwithstanding (a) of this section, a minor may be incarcerated in a
16 correctional facility

17 (1) if the minor is the subject of a petition filed with the court under
18 this chapter seeking adjudication of the minor as a delinquent minor or if the minor
19 is in official detention pending the filing of that petition; however, detention in a
20 correctional facility under this paragraph may not exceed the lesser of

21 (A) six hours; or

22 (B) the time necessary to arrange the minor's transportation to
23 a juvenile detention home or comparable facility for the detention of minors;

24 (2) if, in response to a petition of delinquency filed under this chapter,
25 the court has entered an order closing the case under AS 47.10.060(a), allowing the
26 minor to be prosecuted as an adult; or

27 (3) if the incarceration constitutes a protective custody detention of the
28 minor that is authorized by AS 47.37.170(b).

29 (d) When a minor is detained under (c)(1) or (c)(3) of this section and
30 incarcerated in a correctional facility, the minor shall be

31 (1) assigned to quarters in the correctional facility that are separate

1 from quarters used to house adult prisoners so that the minor cannot communicate with
2 or view adults who are in official detention;

3 (2) provided admission, health care, hygiene, and food services and
4 recreation and visitation opportunities separate from services and opportunities
5 provided to adults who are in official detention.

6 (e) Notwithstanding the limitation on detention set out in (c)(1) of this section,
7 a minor whose detention is authorized by (c)(1) of this section may be detained in a
8 correctional facility for more than six hours if transportation to a juvenile detention
9 home or comparable facility for the detention of minors is not available. The minor's
10 detention for more than six hours is authorized by this subsection only if the person
11 having responsibility for the facility in which the minor is detained

12 (1) documents the reason that transportation of the minor to a juvenile
13 detention home or comparable facility is not available; and

14 (2) during the minor's detention, after learning that transportation is not
15 available, promptly notifies the appropriate officials or employees of the department
16 and the Alaska court system of the lack of available transportation.

17 (f) A detention authorized by (e) of this section may not exceed the time
18 necessary to satisfy the requirement of (c)(1)(B) of this section.

19 (g) The provisions of AS 47.37.170(i) apply to a minor incarcerated in a
20 correctional facility when authorized by (c)(3) of this section.

21 (h) In this section

22 (1) "correctional facility" has the meaning given in AS 33.30.901
23 whether the facility is operated by the state, a municipality, a village, or another entity;

24 (2) "official detention" has the meaning given in AS 11.81.900.

25 * Sec. 14. AS 47.10 is amended by adding new sections to read:

26 **ARTICLE 4A. SHELTERS FOR RUNAWAY MINORS.**

27 **Sec. 47.10.392. CERTIFICATE REQUIRED.** A private residence may not be
28 held out publicly as a shelter for runaway minors unless the residence

29 (1) is designated a shelter for runaways by a nonprofit corporation that
30 is licensed to make the designation under AS 47.35.085; and

31 (2) has a valid permit from the department signifying that designation.

1 **Sec. 47.10.394. OPERATION OF SHELTERS.** (a) A shelter for runaways
2 may not shelter a runaway minor for more than seven days unless the department
3 determines that

4 (1) the minor is the subject of exceptional circumstances; or

5 (2) another appropriate setting is not available for the minor.

6 (b) The provider of a shelter for runaways shall promptly, but within 48 hours,
7 inform the department of a runaway minor in the shelter

8 (1) who claims to be the victim of child abuse or neglect, as defined
9 in AS 47.17.290;

10 (2) whom the provider has reasonable cause to suspect has been a
11 victim of child abuse or neglect; or

12 (3) whom the provider knows is in the custody of the department and
13 is evading the supervision of the department or the person to whom the department has
14 entrusted supervision.

15 (c) The provider of a shelter for runaways shall make good faith efforts to
16 ensure that notice of the minor's presence in the shelter is given to the minor's legal
17 custodian as soon as possible, but within 48 hours, after the minor is admitted to the
18 shelter. The notice need not specify the location of the shelter. The provider may
19 give the notice, or the provider may request the appropriate law enforcement agency
20 to give the notice. If requested by the provider, the law enforcement agency shall
21 make good faith efforts to give the notice required under this subsection.

22 **Sec. 47.10.396. CONFIDENTIALITY.** If the department requires record
23 keeping by a shelter for runaways or by a nonprofit corporation that is licensed to
24 designate shelters for runaways, records of the shelter and the nonprofit corporation
25 that identify a runaway minor who has been sheltered in a shelter for runaways or has
26 sought assistance from a shelter for runaways are confidential and are not subject to
27 inspection or copying under AS 09.25.110 - 09.25.120 unless

28 (1) after being informed of the minor's right to privacy, the minor
29 consents in writing to the disclosure of the records;

30 (2) the records are relevant to an investigation or proceeding involving
31 child abuse or neglect or a child in need of aid petition; or

1 (3) disclosure of the records is necessary to protect the life or health
2 of the minor.

3 Sec. 47.10.398. IMMUNITY FROM LIABILITY. (a) A person in a shelter
4 for runaways, or in a home for which an application to be designated a shelter for
5 runaways is being considered by a nonprofit corporation licensed for that purpose by
6 the department, that is operated in a manner that is consistent with AS 47.10.392 -
7 47.10.399 and regulations adopted under those sections is not criminally liable under
8 AS 11.51.130(a)(4).

9 (b) Except as provided in (c) of this section, the provider of a shelter for
10 runaways, or of a home for which an application to be designated a shelter for
11 runaways is being considered by a nonprofit corporation approved for that purpose by
12 the department, and the members of the provider's household, other than a runaway
13 minor, are not liable for civil damages as a result of an act or omission

14 (1) in admitting or refusing to admit a runaway minor to the shelter or
15 home; or

16 (2) by a runaway minor who is sheltered in the shelter or home.

17 (c) The provisions of (b) of this section do not preclude liability for civil
18 damages as a result of recklessness or intentional misconduct.

19 Sec. 47.10.399. DEFINITIONS. In AS 47.10.392 - 47.10.399,

20 (1) "runaway minor" has the meaning given in AS 47.10.390;

21 (2) "shelter for runaways" or "shelter for runaway minors" means a
22 private residence whose legal occupant agrees to shelter, with or without compensation,
23 a runaway minor accepted into the residence by the legal occupant and that

24 (A) is not simultaneously licensed under AS 47.10.310 as a
25 program for runaway minors;

26 (B) has been designated a shelter for runaways by a nonprofit
27 corporation licensed for that purpose under AS 47.35.085; and

28 (C) has a permit issued by the department under AS 47.35.085.

29 * Sec. 15. AS 47.10.141(b) is amended to read:

30 (b) A peace officer shall take into protective custody a minor described in (a)
31 of this section if the minor is not otherwise subject to arrest or detention. The peace

1 officer shall honor the minor's preference to (1) return the minor to the legal custodian
2 if the legal custodian consents to the return; (2) take the minor to a nearby location
3 agreed to by the minor and the legal custodian; or (3) take the minor to an office
4 specified by the Department of Health and Social Services, a program for runaway
5 minors licensed by the department under AS 47.10.310, a shelter for runaways that
6 has a permit from the department under AS 47.35.085 that agrees to shelter the
7 minor, or a facility or contract agency of the department. If an office specified by the
8 department, a licensed program for runaway minors, a shelter for runaways that will
9 accept the minor, or a facility or contract agency of the department does not exist in
10 the community, the officer shall take the minor to another suitable location and
11 promptly notify the department. A minor under protective custody may not be housed
12 in a jail or other detention facility. Immediately upon taking a minor into protective
13 custody, the officer shall advise the minor orally and in writing of the right to social
14 services under AS 47.10.142(b), and, if known, the officer shall advise the legal
15 custodian that the minor has been taken into protective custody and that counseling
16 services for the custodian and the minor's household are available under
17 AS 47.10.142(b).

18 * Sec. 16. AS 47.10.142(b) is amended to read:

19 (b) A minor who has left home and is evading the person having legal custody
20 of the minor may obtain the services of the department. The department shall assess
21 the situation and furnish the minor with the social services it considers appropriate to
22 protect the well-being of the minor and to preserve the minor's family life if
23 preserving it is considered desirable under the circumstances. The department shall
24 also offer counseling services to the person having legal custody of the minor and
25 to the members of the minor's household if it determines that counseling services
26 would be appropriate in the situation. If, after assessing the situation, considering
27 the wishes of the minor, offering counseling services to the legal custodian and the
28 minor's household, and furnishing appropriate social services to the minor, the
29 department considers it necessary, the department may take emergency custody of the
30 minor.

31 * Sec. 17. AS 47.10.190 is amended to read:

1 **Sec. 47.10.190. CONDITIONS GOVERNING DETENTION.** When the court
2 commits a minor to the custody of the department, except when detention in a
3 correctional facility is authorized by AS 47.10.130(c), the department shall arrange
4 to place the juvenile in a detention home [, FACILITY] or another suitable place that
5 the department designates for that purpose. [A JUVENILE DETAINED IN A JAIL OR
6 SIMILAR INSTITUTION AT THE REQUEST OF THE DEPARTMENT SHALL BE
7 HELD IN CUSTODY IN A ROOM OR OTHER PLACE APART AND SEPARATE
8 FROM ADULTS.]

9 * **Sec. 18.** AS 47.35.020 is amended to read:

10 **Sec. 47.35.020. LICENSE OR PERMIT REQUIRED FOR CERTAIN CARE**
11 **FACILITIES.** A person may not, without a license or permit to do so,

12 (1) maintain or conduct, for more than 90 days, a boarding home, foster
13 home, group home, institution, or other place for the regular reception or care of
14 children under 16 years of age, or a foster home, group home, or institution for the
15 care of dependent adults; [OR]

16 (2) engage in the business of receiving or caring for children under 14
17 years of age, with or without compensation, in a nursery in which five or more
18 children not related by blood or marriage, or legal adoption, to the owner, operator, or
19 manager of the business are lodged; or

20 (3) hold out publicly that the person's residence is a shelter for
21 runaway minors.

22 * **Sec. 19.** AS 47.35 is amended by adding a new section to read:

23 **Sec. 47.35.085. SHELTERS FOR RUNAWAY MINORS.** (a) The department
24 shall adopt regulations under which a nonprofit corporation may apply for a license to
25 designate and supervise shelters for runaway minors.

26 (b) The department shall also adopt regulations setting health and safety
27 standards for shelters for runaways. The regulations adopted under this subsection
28 must

29 (1) involve less regulation than is required for programs for runaways
30 licensed under AS 47.10.310 and foster homes licensed under this chapter;

31 (2) provide that private agencies approved by the department may

1 recruit, evaluate, and monitor the shelters for runaways under procedures established
2 by the department; and

3 (3) require that a nonprofit corporation licensed under (a) of this section
4 inspect the shelters for runaways, perform criminal background checks of its residents,
5 keep records, and meet other requirements only to the extent that they are necessary
6 to reduce the risk to the health and safety of a runaway minor in the shelter.

7 (c) If a person licensed under (a) of this section certifies to the department that
8 a home meets the standards set under (b) of this section, the department shall issue the
9 home a permit authorizing it to be a shelter for runaway minors. The permit may not
10 be transferred to a different home or owner.

11 (d) Upon notice from a person licensed under (a) of this section that a shelter
12 for runaways is not in compliance with AS 47.10.392 - 47.10.399 or the regulations
13 of the department adopted under (b) of this section, the department may revoke a
14 permit issued under this subsection or modify it to provisional status. The department
15 shall give written notice of revocation or modification under this subsection at least
16 30 days before the effective date of the action. However, if the health or well-being
17 of a child is in jeopardy, the revocation or modification action is effective immediately
18 upon the issuance of written notice by the department.

19 * Sec. 20. AS 47.35.100(a) is amended to read:

20 (a) Without a license issued by the department in accordance with its
21 regulations a person may not operate an agency providing any of the following
22 services:

23 (1) the placement of children for foster home care;

24 (2) the placement of children for adoption; [OR]

25 (3) individual and family counseling; or

26 (4) designation and supervision of shelters for runaway minors
27 under AS 47.35.085.

28 * Sec. 21. AS 47.35.900 is amended by adding new paragraphs to read:

29 (7) "runaway minor" has the meaning given in AS 47.10.390;

30 (8) "shelter for runaway minors" or "shelter for runaways" means a
31 private residence whose legal occupant agrees to shelter, with or without compensation,

1 a runaway minor accepted into the residence, subject to the limitations imposed under
2 this chapter and AS 47.10.392 - 47.10.399.

3 • Sec. 22. This Act takes effect immediately under AS 01.10.070(c).