

CS FOR SENATE BILL NO. 54(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/19/93
Referred: Finance

Sponsor(s): SENATORS HALFORD, Phillips, Leman, Taylor, Miller

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to violations of laws by juveniles, to the remedies for offenses
2 and activities committed by juveniles and to records of those offenses, and to
3 incarceration of juveniles who have been charged, prosecuted, or convicted as
4 adults; and providing for an effective date."

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

6 * Section 1. AS 33.30.901(11) is amended to read:

7 (11) "prisoner"

8 (A) means a person [, OTHER THAN A JUVENILE,] held
9 under authority of state law in official detention as defined in AS 11.81.900(b);

10 (B) includes a juvenile committed to the custody of the
11 commissioner when the juvenile has been charged, prosecuted, or convicted
12 as an adult;

13 * Sec. 2. AS 43.23.065(b) is amended to read:

14 (b) An exemption is not available under this section for permanent fund

1 dividends taken to satisfy

2 (1) child support obligations required by court order or decision of the
3 child support enforcement agency under AS 25.27.140 - 25.27.220;

4 (2) court ordered restitution under AS 12.55.045 - 12.55.051, [OR]
5 12.55.100, or AS 47.10.080(b)(4):

6 (3) claims on defaulted scholarship loans under AS 43.23.067;

7 (4) court ordered fines;

8 (5) writs of execution under AS 09.35 of a judgment that is entered

9 (A) against a minor in a civil action to recover damages;
10 recovery under this subparagraph is limited to \$2,000 and court costs, and
11 may be obtained only when the judgment is based upon

12 (i) an act of the minor that is defined as a crime
13 against a person under AS 33.30.901, that injured the plaintiff, and
14 for which the minor was adjudicated a delinquent or convicted as
15 an adult; or

16 (ii) the minor's malicious or knowing injury of real
17 or personal property of the plaintiff;

18 (B) under AS 34.50.020 against the parent, parents, legal
19 guardian, or person having the legal custody of an unemancipated minor;

20 (6) a debt owed by an eligible individual to an agency of the state,
21 unless the debt is contested and an appeal is pending, or the time limit for filing an
22 appeal has not expired.

23 * Sec. 3. AS 47.10.010 is amended by adding new subsections to read:

24 (e) Except for a minor to whom the provisions of AS 47.10.080(o) apply, the
25 procedure prescribed in AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules
26 does not apply when a minor

27 (1) is 16 years of age or older and is charged with

28 (A) an unclassified felony or a class A felony; or

29 (B) a crime against a person that is a felony other than an
30 unclassified felony or a class A felony, and the minor has been previously
31 adjudicated as a delinquent or convicted as an adult, in this or another

1 jurisdiction, as a result of an offense that is a crime against a person and was
2 a felony under the laws of this state, or that in another jurisdiction is an offense
3 with similar elements and would be a felony if charged under the laws of this
4 state; or

5 (2) is 14 years of age or older but has not reached 16 years of age and
6 is charged with

7 (A) the offense of murder under AS 11.41.100 - 11.41.110 or
8 an attempt or solicitation to commit murder under AS 11.41.100 - 11.41.110;

9 (B) an unclassified or a class A felony, and the minor has been
10 previously adjudicated as a delinquent in this or another jurisdiction as a result
11 of violating a criminal law that would have been a felony under the laws of
12 this state if committed by an adult, or that in another jurisdiction is an offense
13 with similar elements and would be a felony if charged under the laws of this
14 state;

15 (C) a felony of any degree, and the minor has been previously
16 prosecuted and convicted as an adult of a felony in this state, or of an offense
17 in another jurisdiction with similar elements that would be a felony if charged
18 under the laws of this state.

19 (f) If a minor is charged with an offense specified in (e) of this section, except
20 for a minor to whom the provisions of AS 47.10.080(o) apply, the procedure
21 prescribed in AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules does not
22 apply with regard to a charge that is properly joined to the offense described in (e) of
23 this section, unless otherwise ordered by the court under (e) - (i) of this section.

24 (g) Except as provided in AS 47.10.080(o) and 47.10.190(b), a minor accused
25 of an offense specified in (e) or (f) of this section shall be charged, prosecuted, and
26 sentenced in the superior court in the same manner as an adult. If a minor is accused
27 of an offense specified in (e) of this section and the minor is to be prosecuted as an
28 adult based upon the minor's previous adjudication or conviction, the charging
29 document shall be accompanied by an sworn statement setting out the offenses that
30 bring the minor under (e) of this section.

31 (h) If a minor is charged as an adult under (e) of this section and the minor

1 is to be prosecuted as an adult based upon the minor's previous adjudication or
2 conviction, the minor may, within 10 days of the date that the minor is charged, file
3 a petition with the court seeking to have the charges heard under the procedure
4 prescribed in AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules. The
5 petition under this subsection must allege that

6 (1) the minor is amenable to treatment under this chapter before the
7 minor's 20th birthday; or

8 (2) the allegations in a sworn statement filed under (g) of this section
9 are not true.

10 (i) At a hearing on a petition

11 (1) under (h)(1) of this section, the minor bears the burden of proving
12 by a preponderance of the evidence that the minor is amenable to treatment under this
13 chapter before reaching 20 years of age; in ruling on the petition, the court shall
14 consider the factors set out in AS 47.10.060(d);

15 (2) under (h)(2) of this section, the state bears the burden of proving
16 by a preponderance of the evidence that the allegations of a sworn statement under
17 (h)(2) of this section are true.

18 (j) Nothing in this section prohibits a party to an action under this chapter
19 from seeking closure of a case under AS 47.10.060(a) and prosecution of the minor
20 as an adult.

21 * Sec. 4. AS 47.10.060(e) is amended to read:

22 (e) A person who has been tried as an adult under this section, or the
23 department on the person's behalf, may petition the superior court to seal the records
24 of all criminal proceedings, except traffic offenses, initiated against the person, and all
25 punishments assessed against the person, while the person was a minor. A petition
26 under this subsection may not be filed until five years after the completion of the
27 sentence imposed for the offense for which the person was tried as an adult. If the
28 superior court finds that the punishment assessed against the person has had its
29 intended rehabilitative effect and further finds that the person has fulfilled all
30 orders of the court entered under AS 47.10.080(b), the superior court shall order the
31 record of proceedings and the record of punishments sealed. Sealing the records

1 restores civil rights removed because of a conviction. A person may not use these
2 sealed records for any purpose except that the court may order their use for good cause
3 shown or may order their use by an officer of the court in making a presentencing
4 report for the court. The court may not, under this subsection, seal records of a
5 criminal proceeding

6 (1) initiated against a person if the court finds that the person has
7 not complied with a court order made under AS 47.10.080(b); or

8 (2) commenced

9 (A) under AS 47.10.010(e) - (i) unless the most serious
10 offense of which the minor is convicted is an offense with which the minor
11 could not be charged under AS 47.10.010(e); or

12 (B) against a person tried as an adult under this section for
13 any offense if the person has previously been adjudicated a delinquent or
14 convicted as an adult and the earlier adjudication or conviction was for a
15 crime against a person that is a felony.

16 * Sec. 5. AS 47.10.080(b) is amended to read:

17 (b) If the court finds that the minor is delinquent, it shall

18 (1) order the minor committed to the department for a period of time
19 not to exceed two years or in any event extend past the day the minor becomes 19,
20 except that the department may petition for and the court may grant in a hearing (A)
21 two-year extensions of commitment that do not extend beyond the child's 19th
22 birthday if the extension is in the best interests of the minor and the public; and (B)
23 an additional one-year period of supervision past age 19 if continued supervision is in
24 the best interests of the person and the person consents to it; the department shall place
25 the minor in the juvenile facility that the department considers appropriate and that
26 may include a juvenile correctional school, detention home, or detention facility; the
27 minor may be released from placement or detention and placed on probation on order
28 of the court and may also be released by the department, in its discretion, under
29 AS 47.10.200;

30 (2) order the minor placed on probation, to be supervised by the
31 department, and released to the minor's parents, guardian, or a suitable person; if the

1 court orders the minor placed on probation, it may specify the terms and conditions
2 of probation; the probation may be for a period of time, not to exceed two years and
3 in no event extend past the day the minor becomes 19, except that the department may
4 petition for and the court may grant in a hearing

5 (A) two-year extensions of supervision that do not extend
6 beyond the child's 19th birthday if the extension is in the best interests of the
7 minor and the public; and

8 (B) an additional one-year period of supervision past age 19 if
9 the continued supervision is in the best interests of the person and the person
10 consents to it;

11 (3) order the minor committed to the department and placed on
12 probation, to be supervised by the department, and released to the minor's parents,
13 guardian, other suitable person, or suitable nondetention setting such as a family home,
14 group care facility, or child care facility, whichever the department considers
15 appropriate to implement the treatment plan of the predisposition report; if the court
16 orders the minor placed on probation, it may specify the terms and conditions of
17 probation; the department may transfer the minor, in the minor's best interests, from
18 one of the probationary placement settings listed in this paragraph to another, and the
19 minor, the minor's parents or guardian, and the minor's attorney are entitled to
20 reasonable notice of the transfer; the probation may be for a period of time, not to
21 exceed two years and in no event extend past the day the minor becomes 19, except
22 that the department may petition for and the court may grant in a hearing

23 (A) two-year extensions of commitment that do not extend
24 beyond the child's 19th birthday if the extension is in the best interests of the
25 minor and the public; and

26 (B) an additional one-year period of supervision past age 19 if
27 the continued supervision is in the best interests of the person and the person
28 consents to it;

29 (4) order the minor to make suitable restitution in lieu of or in addition
30 to the court's order under (1), (2), or (3) of this subsection; the court may not refuse
31 to make an order of restitution under this paragraph to the benefit of the victim

1 of the act of the minor that is the basis of the delinquency adjudication:

2 (5) order the minor committed to the department for placement in an
3 adventure based education program established under AS 47.21.020 with conditions
4 the court considers appropriate concerning release upon satisfactory completion of the
5 program or commitment under (1) of this subsection if the program is not satisfactorily
6 completed; or

7 (6) in addition to an order under (1) - (5) of this subsection, if the
8 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
9 11.71.040(a)(4), order the minor to perform 50 hours of community service; for
10 purposes of this paragraph, "community service" includes work

11 (A) on a project identified in AS 33.30.901; or

12 (B) that, on the recommendation of the city council or
13 traditional village council, would benefit persons within the city or village who
14 are elderly or disabled.

15 * Sec. 6. AS 47.10.080 is amended by adding a new subsection to read:

16 (o) If a minor is charged and prosecuted as an adult under AS 47.10.010(e) -
17 (i), and the most serious offense of which the minor is convicted is an offense with
18 which the minor could not be charged under AS 47.10.010(e), the minor shall be
19 treated as though the charges had been heard under this chapter, and the court shall
20 order disposition of the charges of which the minor is convicted under the provisions
21 of (b) of this section. However, the charges may not be disposed of under this
22 subsection if, within five days of the conviction, a motion is filed with the court
23 asserting that the minor is not amenable to treatment under this chapter and seeking
24 a disposition and sentencing as an adult based upon the minor's conviction, and the
25 motion is granted.

26 * Sec. 7. AS 47.10.090 is amended by adding a new subsection to read:

27 (d) In (a) of this section, a person with a legitimate interest in the inspection
28 of an official record maintained by the court includes a victim who suffered damage
29 as the result of physical injury by an offense that is a crime against a person
30 committed by a minor or as a result of the knowing or intentional injury of the
31 victim's real or personal property by an offense committed by a minor who, because

1 of the commission of the offense, is adjudicated a delinquent under AS 47.10.080(b)
2 or whose case is closed under AS 47.10.060(a). If the victim knows the identity of
3 the minor, identifies the minor to the court, and certifies that the information obtained
4 from inspection of the record is being sought to support a civil action against the
5 minor or against the minor's parents or guardians under AS 34.50.020, the court may
6 not refuse to allow the victim to inspect the records of the adjudication proceeding and
7 may not refuse permission for the victim to use the information in connection with the
8 civil action.

9 * Sec. 8. AS 47.10.190 is amended to read:

10 Sec. 47.10.190. [CONDITIONS GOVERNING] DETENTION OF MINORS.

11 (a) When the court commits a minor to the custody of the department, the department
12 shall arrange to place the juvenile in a detention home, facility, or another suitable
13 place that the department designates for that purpose.

14 (b) A juvenile detained in a jail or similar institution at the request of the
15 department shall be held in custody in a room or other place apart and separate from
16 adults. The provisions of this subsection do not apply to a juvenile held in a jail
17 when committed to the custody of the commissioner of corrections under
18 AS 33.30.

19 * Sec. 9. AS 47.10.990 is amended by adding a new paragraph to read:

20 (10) "crime against a person" has the meaning given in AS 33.30.901.

21 * Sec. 10. APPLICABILITY. This Act applies

22 (1) to civil actions accruing after the effective date of this Act; and

23 (2) to offenses committed after the effective date of this Act, except that in
24 AS 47.10.010, as amended by sec. 3 of this Act, and AS 47.10.060, as amended by sec. 4 of
25 this Act, references to a previous adjudication or conviction includes adjudications and
26 convictions occurring before the effective date of this Act, to the extent constitutionally
27 permissible.

28 * Sec. 11. This Act takes effect September 1, 1993.