

## CS FOR SENATE BILL NO. 54(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 2/26/93

Referred: Rules

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 09.25.120 is amended to read:

7 Sec. 09.25.120. PUBLIC RECORDS; EXCEPTIONS; CERTIFIED COPIES.  
8 Every person has a right to inspect a public record in the state, including public  
9 records in recorders' offices except (1) records of vital statistics and adoption  
10 proceedings which shall be treated in the manner required by AS 18.50; (2) records  
11 pertaining to juveniles, unless the record is, by law, a public record; (3) medical and  
12 related public health records; (4) records required to be kept confidential by a federal  
13 law or regulation or by state law; (5) to the extent the records are required to be kept  
14 confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g

1 in order to secure or retain federal assistance; (6) records or information compiled for  
2 law enforcement purposes, but only to the extent that the production of the law  
3 enforcement records or information (A) could reasonably be expected to interfere with  
4 enforcement proceedings, (B) would deprive a person of a right to a fair trial or an  
5 impartial adjudication, (C) could reasonably be expected to constitute an unwarranted  
6 invasion of the personal privacy of a suspect, defendant, victim, or witness, (D) could  
7 reasonably be expected to disclose the identity of a confidential source, (E) would  
8 disclose confidential techniques and procedures for law enforcement investigations or  
9 prosecutions, (F) would disclose guidelines for law enforcement investigations or  
10 prosecutions if the disclosure could reasonably be expected to risk circumvention of  
11 the law, or (G) could reasonably be expected to endanger the life or physical safety  
12 of an individual. Every public officer having the custody of records not included in the  
13 exceptions shall permit the inspection, and give on demand and on payment of the fees  
14 under AS 09.25.110 - 09.25.115 a certified copy of the record, and the copy shall in  
15 all cases be evidence of the original. Recorders shall permit memoranda, transcripts,  
16 and copies of the public records in their offices to be made by photography or  
17 otherwise for the purpose of examining titles to real estate described in the public  
18 records, making abstracts of title or guaranteeing or insuring the titles of the real  
19 estate, or building and maintaining title and abstract plants; and shall furnish proper  
20 and reasonable facilities to persons having lawful occasion for access to the public  
21 records for those purposes, subject to reasonable rules and regulations, in conformity  
22 to the direction of the court, as are necessary for the protection of the records and to  
23 prevent interference with the regular discharge of the duties of the recorders and their  
24 employees.

25 \* Sec. 2. AS 33.30.901(11) is amended to read:

26 (11) "prisoner"

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

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

1     \* **Sec. 3.** AS 43.23.065(b) is amended to read:

2             **(b)** An exemption is not available under this section for permanent fund  
3     dividends taken to satisfy

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

6                     (2) court ordered restitution under AS 12.55.045 - 12.55.051, [OR]  
7     12.55.100, or AS 47.10.080(b)(4):

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

9                     (4) court ordered fines;

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

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

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

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

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

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

25     \* **Sec. 4.** AS 47.10.010 is amended by adding new subsections to read:

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

29                     (1) was 16 years of age or older at the time of the alleged offense and  
30     is charged with

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

1 (B) a crime against a person that is a felony other than an  
2 unclassified felony or a class A felony, and the minor has been previously  
3 adjudicated as a delinquent or convicted as an adult, in this or another  
4 jurisdiction, as a result of an offense that is a crime against a person and was  
5 a felony under the laws of this state, or that in another jurisdiction is an offense  
6 with similar elements and would be a felony if charged under the laws of this  
7 state; or

8 (2) was 14 years of age or older at the time of the alleged offense but  
9 had not reached 16 years of age at the time of the alleged offense and is charged with

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

12 (B) an unclassified or a class A felony, and the minor has been  
13 previously adjudicated as a delinquent in this or another jurisdiction as a result  
14 of an offense that is a crime against a person that would have been a felony  
15 under the laws of this state if committed by an adult, or that in another  
16 jurisdiction is an offense with similar elements and would be a felony if  
17 charged under the laws of this state;

18 (C) a crime against a person that is a felony, and the minor has  
19 been previously prosecuted and convicted as an adult of an offense that is a  
20 crime against a person that is a felony in this state, or of an offense in another  
21 jurisdiction with similar elements that would be a felony if charged under the  
22 laws of this state.

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

28 (g) Except as provided in AS 47.10.080(o), a minor accused of an offense  
29 specified in (e) or (f) of this section shall be charged, prosecuted, and sentenced in the  
30 superior court in the same manner as an adult. If a minor is accused of an offense  
31 specified in (e) of this section and the minor is to be prosecuted as an adult based

1 upon the minor's previous adjudication or conviction, the charging document shall be  
2 accompanied by an sworn statement setting out the offenses that bring the minor under  
3 (e) of this section.

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

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

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

14 (i) At a hearing on a petition

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

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

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

25 \* Sec. 5. AS 47.10.060(e) is amended to read:

26 (e) A person who has been tried as an adult under this section, or the  
27 department on the person's behalf, may petition the superior court to seal the records  
28 of all criminal proceedings, except traffic offenses, initiated against the person, and all  
29 punishments assessed against the person, while the person was a minor. A petition  
30 under this subsection may not be filed until five years after the completion of the  
31 sentence imposed for the offense for which the person was tried as an adult. If the

1 superior court finds that the punishment assessed against the person has had its  
2 intended rehabilitative effect and further finds that the person has fulfilled all  
3 orders of the court entered under AS 47.10.080(b), the superior court shall order the  
4 record of proceedings and the record of punishments sealed. Sealing the records  
5 restores civil rights removed because of a conviction. A person may not use these  
6 sealed records for any purpose except that the court may order their use for good cause  
7 shown or may order their use by an officer of the court in making a presentencing  
8 report for the court. The court may not, under this subsection, seal records of a  
9 criminal proceeding

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

12 (2) commenced

13 (A) under AS 47.10.010(e) - (i) unless the minor has been  
14 acquitted of all offenses with which the minor was charged or unless the  
15 most serious offense of which the minor is convicted is an offense with  
16 which the minor could not be charged under AS 47.10.010(e); or

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

21 \* Sec. 6. AS 47.10.080(b) is amended to read:

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

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

1 minor may be released from placement or detention and placed on probation on order  
2 of the court and may also be released by the department, in its discretion, under  
3 AS 47.10.200;

4 (2) order the minor placed on probation, to be supervised by the  
5 department, and released to the minor's parents, guardian, or a suitable person; if the  
6 court orders the minor placed on probation, it may specify the terms and conditions  
7 of probation; the probation may be for a period of time, not to exceed two years and  
8 in no event extend past the day the minor becomes 19, except that the department may  
9 petition for and the court may grant in a hearing

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

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

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

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

31 (B) an additional one-year period of supervision past age 19 if

1 the continued supervision is in the best interests of the person and the person  
2 consents to it;

3 (4) order the minor to make suitable restitution in lieu of or in addition  
4 to the court's order under (1), (2), or (3) of this subsection; the court may not refuse  
5 to make an order of restitution under this paragraph to the benefit of the victim  
6 of the act of the minor that is the basis of the delinquency adjudication;

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

12 (6) in addition to an order under (1) - (5) of this subsection, if the  
13 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or  
14 11.71.040(a)(4), order the minor to perform 50 hours of community service; for  
15 purposes of this paragraph, "community service" includes work

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

17 (B) that, on the recommendation of the city council or  
18 traditional village council, would benefit persons within the city or village who  
19 are elderly or disabled.

20 \* Sec. 7. AS 47.10.080 is amended by adding a new subsection to read:

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

31 \* Sec. 8. AS 47.10.090(a) is amended to read:

1 (a) The court shall make and keep records of all cases brought before it. The  
2 records pertaining to a minor who was 16 years of age or older at the time of the  
3 alleged offense and who was convicted or adjudicated a delinquent for the  
4 commission of that offense is a public record. Except for a record that, under  
5 this subsection, is a public record, the [THE] court's official records may be  
6 inspected only with the court's permission and only by persons having a legitimate  
7 interest in them. Except for a record that, under this subsection, is a public  
8 record, all [ALL.] information and social records pertaining to a minor and prepared  
9 by an employee of the court or by a federal, state, or city agency in the discharge of  
10 the employee's or agency's official duty, including driver's license action under  
11 AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone  
12 without the court's permission. However, a state or city law-enforcement agency shall  
13 disclose information regarding a case that [WHICH] is needed by the person or  
14 agency charged with making a preliminary investigation for the information of the  
15 court. The court shall forward a record of adjudication of a violation of an offense  
16 listed in AS 28.15.185(a) to the Department of Public Safety [,] if the court imposes  
17 a license revocation under AS 28.15.185. Within 30 days of the date of a minor's 18th  
18 birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday,  
19 within 30 days of the date on which the court relinquishes jurisdiction over the minor,  
20 the court shall order sealed all the court's official records, information, and social  
21 records pertaining to that minor, as well as records of all driver's license proceedings  
22 under AS 28.15.185, criminal proceedings against the minor, and punishments assessed  
23 against the minor except for traffic offenses, except records that, under this  
24 subsection, are made public records. A person may not use these sealed records for  
25 any purpose except that the court may order their use for good cause shown or may  
26 order their use by an officer of the court in making a presentencing report for the  
27 court.

28 \* Sec. 9. AS 47.10.090 is amended by adding a new subsection to read:  
29 (d) In (a) of this section, a person with a legitimate interest in the inspection  
30 of an official record maintained by the court includes a victim who suffered damage  
31 as the result of physical injury by an offense that is a crime against a person

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

11 \* Sec. 10. AS 47.10.190 is amended to read:

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

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

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

21 \* Sec. 11. AS 47.10.990 is amended by adding a new paragraph to read:

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

23 \* Sec. 12. APPLICABILITY. This Act applies

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

25 (2) to offenses committed after the effective date of this Act, except that in  
26 AS 47.10.010, as amended by sec. 4 of this Act, and AS 47.10.060, as amended by sec. 5 of  
27 this Act, references to a previous adjudication or conviction includes adjudications and  
28 convictions occurring before the effective date of this Act, to the extent constitutionally  
29 permissible.

30 \* Sec. 13. This Act takes effect September 1, 1993.