

HOUSE CS FOR CS FOR SENATE BILL NO. 54(JUD)**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE JUDICIARY COMMITTEE****Offered: 4/20/93****Referred: Finance****Sponsor(s): SENATORS HALFORD, Phillips, Leman, Taylor, Miller****REPRESENTATIVES Porter, Bunde****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 intentional 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 a new subsection to read:

26 (e) When a minor who is at least 16 years of age is arraigned on a charge of
27 murder in the first degree, attempted murder in the first degree, or murder in the
28 second degree under AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules do
29 not apply to the offense for which the minor is arraigned or to any additional offenses
30 joinable to it under the applicable rules of court governing criminal procedure. The
31 minor shall be charged, prosecuted, and sentenced in the superior court in the same

1 manner as an adult.

2 * Sec. 5. AS 47.10.020(a) is amended to read:

3 (a) Whenever circumstances subject [A PERSON INFORMS THE COURT
4 OF THE FACTS THAT BRING] a minor to the jurisdiction of AS 47.10.010 -
5 47.10.142 [WITHIN THIS CHAPTER], the court shall

6 (1) provide, under procedures adopted by court rule, that, for a
7 minor who is alleged to be a delinquent minor under AS 47.10.010(a), a state
8 agency shall make a preliminary inquiry to determine if any action is appropriate
9 and may take appropriate action to adjust or dispose of the matter without a
10 court hearing; if, under this paragraph,

11 (A) the state agency makes a preliminary inquiry and takes
12 appropriate action to adjust or dispose of the matter without a court
13 hearing, the minor may not be detained or taken into custody and, subject
14 to (d) of this section, the matter shall be closed by the agency if the minor
15 successfully completes all that is required of the minor by the agency in
16 the adjustment or disposition;

17 (B) the agency concludes that the matter may not be
18 adjusted or disposed of without a court hearing, the agency may file a
19 petition under (2) of this subsection setting out the facts; or

20 (2) appoint a competent person or agency to make a preliminary inquiry
21 and report for the information of the court to determine whether the interests of the
22 public or of the minor require that further action be taken; if, under this paragraph,
23 the court appoints a person or agency to make a preliminary inquiry and to
24 report to it, then upon [. UPON] the receipt of the report, the court may informally
25 adjust or dispose of the matter without a hearing, or it may authorize the person having
26 knowledge of the facts of the case to file with the court a petition setting out the facts;
27 if [. WHERE] the court informally adjusts or disposes of the matter, the minor may
28 not be detained or taken into the custody of the court, and the matter shall be closed
29 by the court upon adjustment or disposition.

30 * Sec. 6. AS 47.10.020 is amended by adding a new subsection to read:

31 (d) The provisions of this subsection apply to a minor who is alleged to be a

1 delinquent minor under AS 47.10.010(a)(1) and for whom an agency has, under
2 applicable court rule, made a preliminary inquiry before taking appropriate action as
3 authorized by (a)(1) of this section. Following the preliminary inquiry, unless the
4 agency determines that the matter should be dismissed, the agency may take informal
5 action to adjust or dispose of the matter. When the agency decides that an informal
6 adjustment or disposition of a matter should be made, that informal adjustment or
7 disposition may not be made without the agreement or consent of the minor and the
8 minor's parents or guardians to the terms and conditions of the adjustment or
9 disposition. An informal action to adjust or dispose of a matter is not successfully
10 completed unless, among other factors that the agency considers, as to the victim of
11 the act of the minor that is the basis of the delinquency allegation, the minor pays
12 restitution in the amount set by the agency or agrees as a term or condition set by the
13 agency to pay the restitution.

14 * Sec. 7. AS 47.10.060(a) is amended to read:

15 (a) When a petition has been filed under AS 47.10.020, the minor has the
16 burden of proving, by a preponderance of the evidence, that the minor is
17 amenable to treatment under this chapter. If the court finds at the [A] hearing on
18 the [A] petition that there is probable cause for believing that the [A] minor is
19 delinquent and finds that the minor is not amenable to treatment under this chapter, the
20 court [IT] shall order the case closed. After a case is closed under this subsection, the
21 minor may be prosecuted as an adult.

22 * Sec. 8. AS 47.10.060(e) is amended to read:

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

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

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

9 (2) commenced under AS 47.10.010(e) unless the minor has been
10 acquitted of all offenses with which the minor was charged or unless the most
11 serious offense of which the minor was convicted was not murder in the first
12 degree, attempted murder in the first degree, or murder in the second degree.

13 * Sec. 9. AS 47.10.080(b) is amended to read:

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

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

27 (2) order the minor placed on probation, to be supervised by the
28 department, and released to the minor's parents, guardian, or a suitable person; if the
29 court orders the minor placed on probation, it may specify the terms and conditions
30 of probation; the probation may be for a period of time, not to exceed two years and
31 in no event extend past the day the minor becomes 19, except that the department may

1 petition for and the court may grant in a hearing

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

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

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

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

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

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

30 (5) order the minor committed to the department for placement in an
31 adventure based education program established under AS 47.21.020 with conditions

1 the court considers appropriate concerning release upon satisfactory completion of the
2 program or commitment under (1) of this subsection if the program is not satisfactorily
3 completed; or

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

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

9 (B) that, on the recommendation of the city council or
10 traditional village council, would benefit persons within the city or village who
11 are elderly or disabled.

12 * Sec. 10. AS 47.10.090 is repealed and reenacted to read:

13 Sec. 47.10.090. RECORDS. (a) The court shall make and keep records of all
14 cases brought before it.

15 (b) The following records pertaining to a minor who was 16 years of age or
16 older at the time of the alleged offense and who was convicted or adjudicated a
17 delinquent for the commission of that offense are public records:

18 (1) a petition filed under AS 47.10.020 seeking to have the court
19 declare the minor a delinquent;

20 (2) a petition filed under AS 47.10.080 seeking to have the court
21 revoke the minor's probation;

22 (3) a petition filed under AS 47.10.010 - 47.10.142 that, under
23 AS 47.10.060, requests the court to find that a minor is not amenable to treatment
24 under this chapter and that results in closure of a case under AS 47.10.060(a); and

25 (4) a court judgment or order entered under AS 47.10.010 - 47.10.142
26 that disposes of a petition identified in (1) - (3) of this subsection.

27 (c) Except for a record that, under (b) of this subsection, is a public record,

28 (1) the court's official records under this chapter may be inspected only
29 with the court's permission and only by persons having a legitimate interest in them;

30 (2) all information and social records pertaining to a minor and
31 prepared by an employee of the court or by a federal, state or city agency in the

1 discharge of the employee's or agency's official duty, including driver's license action
2 under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to
3 anyone without the court's permission.

4 (d) Notwithstanding (c)(2) of this section, a state or city law-enforcement
5 agency

6 (1) shall disclose information regarding a case that is needed by the
7 person or agency charged with making a preliminary investigation for the information
8 of the court; and

9 (2) may disclose to school officials information regarding a case that
10 is needed by the school officials to protect the safety and well-being of school students
11 and staff.

12 (e) The court shall forward a record of adjudication of a violation of an
13 offense listed in AS 28.15.185(a) to the Department of Public Safety if the court
14 imposes a license revocation under AS 28.15.185.

15 (f) Within 30 days of the date of a minor's 18th birthday or, if the court
16 retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the
17 date on which the court relinquishes jurisdiction over the minor, the court shall order
18 sealed all the court's official records, information and social records pertaining to that
19 minor, as well as records of all driver's license proceedings under AS 28.15.185,
20 criminal proceedings against the minor, and punishments assessed against the minor.
21 A person may not use these sealed records for any purpose except that the court may
22 order their use for good cause shown or may order their use by an officer of the court
23 in making a presentencing report for the court. The provisions of this subsection
24 relating to the sealing of records do not apply to

25 (1) records that, under (b) of this subsection, are made public records;
26 and

27 (2) records of traffic offenses.

28 (g) The name or picture of a minor under the jurisdiction of the court may not
29 be made public in connection with the minor's status as a delinquent child or a child
30 in need of aid unless authorized by order of the court. However, notwithstanding the
31 limitation imposed by this subsection, the name of a minor who is found for the

1 second time to have violated a law that if committed by an adult would be a felony
2 shall be made public unless the court, for good cause shown, in certain individual
3 cases, enters an order prohibiting the disclosure.

4 (h) A person who violates a provision of this section is guilty of a
5 misdemeanor, and upon conviction is punishable by a fine of not more than \$500 or
6 by imprisonment for not more than one year, or by both.

7 (i) In (c)(1) of this section, a person with a legitimate interest in the inspection
8 of an official record maintained by the court includes a victim who suffered damage
9 as the result of physical injury by an offense that is a crime against a person
10 committed by a minor or as a result of the knowing or intentional injury of the
11 victim's real or personal property by an offense committed by a minor. If the victim
12 knows the identity of the minor, identifies the minor to the court, and certifies that the
13 information is being sought to support a civil action against the minor or against the
14 minor's parents or guardians under AS 34.50.020, the court shall allow the victim to
15 inspect and may not refuse permission for the victim to use the following records and
16 information in connection with the civil action:

17 (1) a petition filed under AS 47.10.020 seeking to have the court
18 declare the minor a delinquent;

19 (2) a petition filed under AS 47.10.080 seeking to have the court
20 revoke the minor's probation;

21 (3) a petition filed under AS 47.10.010 - 47.10.142 that, under
22 AS 47.10.060, requests the court to find that a minor is not amenable to treatment
23 under this chapter and that results in closure of a case under AS 47.10.060(a); and

24 (4) a court judgment or order entered under AS 47.10.010 - 47.10.142
25 that disposes of a petition identified in (1) - (3) of this subsection.

26 * Sec. 11. AS 47.10.190 is amended to read:

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

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

31 (b) A juvenile detained in a jail or similar institution at the request of the

1 department shall be held in custody in a room or other place apart and separate from
2 adults. The provisions of this subsection do not apply to a juvenile held in a jail
3 when committed to the custody of the commissioner of corrections under
4 AS 33.30.

5 • Sec. 12. AS 47.10.990 is amended by adding a new paragraph to read:

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

7 • Sec. 13. APPLICABILITY. This Act applies

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

9 (2) to offenses committed on or after the effective date of this Act.

10 • Sec. 14. This Act takes effect September 1, 1993.