HB
632

Trial Courts
State of Alaska
THIRD JUDICIAL DISTRICT
BOX 3891
KENAI, ALASKA 99611

Chambers of
JAMES A. HANSON, Judge

December 7, 1981

The Honorable Ramona L. Barnes
State Representative
P.O. Box 3382 Downtown Station
Anchorage, Alaska 99510

Dear Representative Barnes:

This is to urge your support for leglisation to reduce the age of juvenile jurisdiction from 18 to 16.

I really don't know when it was decided that age 18 was the cut off point in Alaska, but do know that it was so in 1947. (See §51-3 ACLA 1949). Little needs to be said about the difference between the 18 year old Alaskan of 1947 and those of today or perhaps of the parents of then and now. What does need emphasis is the changes in legislation over the past several years which have diminished the control parents have over their children and the courts have over the so called "status offenders". Rightly or wrongly, we have vastly expanded the "freedom" of our young people; the time has come to attach responsibilty. I urge that the jurisdictional age be lowered to 16 for all criminal acts. There is presently in place a diversionary program in the adult area which could simply be expanded to filter out those persons who perhaps need not fully be brought into the system. I see no need to complicate things by sorting out the various catagories. The 16 year old shoplifter is just as responsible and perhaps more devious than the 16 year old killer.

I do urge however that a separate incarceration/treatment program be implemented for the 16 - 20 year old age group that is presently in place for children or adults. We are on the verge of constructing additional penal institutions in the state so there is no reason that, for treatment purposes, one or more of them couldn't be utilized by the intermediate "youthful offenders" group. Even I would be very hesitant about putting a 16 year old in the same institution with a number of the fully adult folks I

in the same institution with a number of the fully adult folks I sentence, JUST AS I now hesitate to use McLaughlin Youth Center in the case of younger kids because of the level of sophistication of its current population. For all practical purposes I regard McLaughlin as no longer available for purposes of treating a 14 year old. I'll put him there only when he's too dangerous for another alternative.

To review my experience in the juvenile area; as a district judge in Anchorage from 1963-1969, I presided over the vast bulk of the kids cases for the entire Third Judicial District. As a superior court judge, I have dealt with all juvenile matters on the Kenai Peninsula since 1971, and in 1975 the same for the then Bethel Service District. I have attended many training sessions on the subject and have probably read half a ton of the literature. Because "masters" are used extensively, and the responsibility is rotated among the judges in Anchorage and Fairbanks, it is safe to say that I have more actual experience in the area than has any judicial officer in the history of Alaska. I was a member of the five person committee which drafted the first court promulgated rules of procedure ever effected in the United States. Jay Warner, the Chief Intake Officer for the district, is perhaps the only court employee who has had more direct contact with "children" accused of crimes.

I'm sorry this letter has been over long. Perhaps there's nothing more to be said, but would welcome an opportunity to discuss the matter further should you wish to do so.

Very truly yours,

James A. Hanson

JAMES A. HANSON
Superior Court Judge

JAH:nh

Barry Stern → Limit to Age 15.
Need new bill.
("Transfer back-upward") should be used.

Introduced: 1/11/82
Referred: Judiciary

IN THE HOUSE BY ANDERSON

HOUSE BILL NO. 632

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for waiver of jurisdiction under AS 47.10 over a minor if there is probable cause for believing that the minor committed a violent crime and the minor is over 16 years of age or that the minor committed murder regardless of the minor's age."

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

* Section 1. AS 47.10.060(a) is amended to read:

(a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as if he were an adult. The court shall order the case closed if it finds at a hearing on a petition that there is probable cause for believing that the minor

(1) is delinquent because the minor committed murder in the first degree (AS 11.41.100) or murder in the second degree (AS 11.41.-110); or

(2) is over 16 years of age and delinquent because the minor committed

(A) manslaughter (AS 11.41.120);

(B) criminally negligent homicide (AS 11.41.130);

(C) assault in the first degree (AS 11.41.200);

(D) assault in the second degree (AS 11.41.210);

(E) assault in the third degree (AS 11.41.220);

(F) kidnapping (AS 11.41.300);

(G) sexual assault in the first degree (AS 11.41.410);

(H) sexual assault in the second degree (AS 11.41.420);

(I) robbery in the first degree (AS 11.41.500);

(J) robbery in the second degree (AS 11.41.510);

H.S.S leave out ← (K) burglary in the first degree (AS 11.46.300);

(L) arson in the first degree (AS 11.46.400);

(M) escape in the first degree (AS 11.56.300);

(N) riot (AS 11.61.100).

Hearn → From 16yrs. → prosecution — Across the board.
→ Youthful Category → Treatment

Connelly - Youthful Offender —
After 5 yrs. clear record.

Waiver j.d. → to adult.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

POUCH H-05
JUNEAU, ALASKA 99811
PHONE: (907) 465-3170

Document No. 15-82

January 25, 1982

The Honorable Ramona Barnes
Chairperson, House Judiciary
Committee
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Barnes:

Enclosed is suggested language for amending the statute dealing with waiver of jurisdiction over juveniles which you requested at the January 22, 1982 hearing on House Bill No. 632.

These suggested amendments accomplish several things:

1. Provide for automatic waiver of juveniles over 16 years of age who have committed serious violent crimes (unclassified and Class A felonies).

2. Allow waiver of other juveniles by a finding of a preponderance of the evidence that they are: a) delinquent; and b) probably cannot be rehabilitated by age 19. (The change in age from 20 as in the present law eliminates a statutory inconsistency which bases the test of amenability to treatment upon age 20 but allows the court to order treatment only until age 19.)

3. Limit the discretion of the court by requiring that the court base a determination of amenability to treatment upon the seriousness of the alleged offense and the harm it caused, the past delinquent behavior of the accused juvenile, and the likely cause of the delinquent behavior, and available treatment. Present law only suggests that the court may consider some of those factors.

Sincerely,

John R. Pugh
Director

Enclosure

JRP:RW:kk

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to juvenile offenders."

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

*Section 1. AS 47.10.060(a) is amended to read:

(a) The court shall order a case closed and the minor may be prosecuted as if he were an adult if the court finds at a hearing on a petition

(1) that the minor was 16 years of age at the time of the offense and that there is probable cause to believe that the minor has committed an unclassified or class A felony; or

(2) that there is probable cause to believe that the minor is a delinquent and that the minor is not amenable to treatment under this chapter.

*Section 2. AS 47.10.070(d) is amended to read:

(d) A minor is unamenable to treatment under this chapter if he cannot be rehabilitated by treatment under this chapter before he reaches 19 years of age. In determining whether a minor is unamenable to treatment, the court shall consider

(1) the seriousness of the offense the minor is alleged to have committed;

(2) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety;

(3) the minor's history of delinquency;

(4) the probable cause of the minor's delinquent behaviour;

(5) the facilities available to the Division of Family and Youth Services for treating the minor.

Youth, 17, charged in death of 9-year-old Gloria Greene

An unidentified youth about 17 has been charged with first degree murder following discovery of the body of nine-year-old Gloria Greene in a wooded section of road near Houghtaling Elementary School last night.

The arrest was made between 10:30 and 10:45 a.m. today, just half a day after discovery of the girl's body.

City police Lt. Ronald Leighton declined to say what evidence or circumstances led to the arrest.

Time for arraignment had not been set as of 12:30 this afternoon. Leighton did not say whether a bail sum was set.

Gloria Greene

Name of the suspect was not revealed because he is a juvenile. A judge may decide to prosecute a juvenile accused of a felony as an adult, in which case his name would be released.

The girl's body was found shortly before midnight in brush along Baranof Avenue near her school. She had been the subject of a evening-long search after being reported missing about 5:45 p.m. Tuesday.

Dorothy Greene, an employee of Ketchikan General Hospital, reported her daughter missing when the girl failed to reach home after school.

Searchers, including members of the Ketchikan Volunteer Rescue Squad, Explorer Scouts, firefighters and police, found the body about 11:45 p.m. between Houghtaling Elementary on Baranof Avenue and Holy Name School down the street on Jackson Street.

District Attorney Geoffrey Currall met with reporters at 10 a.m. and gave a brief statement but at that time would not definitely label the girl's death as murder.

However, Principal Tom Cusack and teachers at Houghtaling told students the girl was killed by someone "wanting to hurt her."

Houghtaling and other elementary school officials stationed extra teachers outdoors and warned pupils to avoid wooded areas and to walk in groups.

Currall gave no details of the girl's death. His statement in part was:

"Gloria Greene, nine years old, was discovered shortly before midnight in some woods near Houghtaling School. "She was dead.

"The circumstances of her death indicate this was a homicide. An autopsy has been ordered."

He said the investigation was being headed by detectives Leighton and Tom Varnell, but Currall said investigators have been told to make no comments on the case.

Currall said he might make another announcement on the case Friday morning if he received a report on the autopsy by then.

Early this afternoon Currall confirmed the arrest but said he had no details.

"I just now stepped out of the grand jury room. You probably know more about it than I do."

Currall had been up all night working on the disappearance and this morning had to present grand jury evidence in other, unrelated cases.

Gloria was born July 14, 1968, in Rutland, Vermont. She entered Ketchikan schools at Houghtaling in September, 1976, after transferring from Bennington, Vermont. Her family's home address is 1733 Second Ave.

Mrs. Greene told authorities during the search the girl was wearing an orange parka and blue trousers. Her usual route from school was Carlanna and Tongass Avenue.

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Ketchikan lawmakers d

By JON MATTHEWS
Daily News Staff Writer

JUNEAU — Ketchikan legislators are widely split on possible oil tax hikes and an oil industry statewide media campaign against higher taxes.

Sen. Robert Ziegler Monday said the facts presented by the oil industry in a wide spread advertisements appear to him to be "by and large" accurate.

He said he wasn't in favor of raising oil taxes.

Ziegler said he has been told that 3,000 exploratory wells had been dug in Texas last year as compared with 10 in Alaska

Ziegler said he's read one survey that listed Alaska as 48th out of the 50 states in terms of investment climate.

Ziegler said he is guessing it will be six weeks before the oil taxation issue reaches the floor of the Senate and he predicted a "very close vote" on the issue.

But Rep. Terry Gardiner disagreed with Ziegler's views, calling the industry media campaign "self-serving," and saying he will continue to support a proposed tax boost on the oil companies in Alaska.

"You can expect somebody to do what's best for them," Gardiner said of

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To the Editor:

OPEN LETTER TO THE PUBLIC:

God himself said "THOU SHALT NOT KILL." A defenseless 9-year-old-child is murdered and suddenly God's will is weakened and manipulated by a sentence so inadequate and ineffective as to be an insult to those who believe in truth and justice.

If the poor, defective creature had murdered a policeman, armed and trained, he would have received a death sentence. Fortunately for him, he chose to destroy a small defenseless girl.

With a judgement like this how safe will other children be on the street or even in the school yard? Only until some other tormented person cries out for help and attention by killing another child and this will happen again! When the only consequence will be a short sentence with psyciatric treatment and vocational training, if the murderer promises to "mend his ways."

A dear little girl who gave nothing but love and pleasure to those who knew her is gone except in memory. I only wish it could matter as much to everyone as it does to me.

If there are among us those who so much deplore and fear "the hard-nosed attitude of the police," against those who break the law then let them be law-abiding citizens.

DORTHY GREENE
Gloria's Mother

Bill, Dorthy wrote this after Shevy was sentenced, At one time she told me that had she foreseen the big kit she would have made them (the sentencing of the Shevy boy) carry her kicking and screaming from the courtroom.

hewey case spurs judicial reform group

MAY 8 1979

By JIM MOORE
Daily News Staff Writer

Jan. 31, 1978, a 9-year-old girl named Gloria Green illed in the woods near Houghtaling Elementary l. The convicted murderer was Fred Shewey Jr., an r old who late in March was sentenced to serve 15 , the minimum sentence allowed under the law, with years suspended on condition that he violate no al, state or local laws.

is eligible for parole in one-third of his sentence, n is three and one-third years. He is credited with the that he has already spent. He, therefore, is eligible arole in about two years.

s now a familiar case with everyone. The majority of ons writing to the Daily News was appalled at the sentence that Judge Thomas Stewart handed down. dirty-five people are so unhappy that they have for- a group called the Alaska Committee for Judicial orm, which will hold its next meeting this Friday night 7:30 at the Lutheran Church. Because of double ardy laws, Shewey's sentence cannot be increased, the group has another reason for its formation.

ill Temple, committee member and former policeman was one of the arresting officers in the Shewey case, lained, "Our objective is to make the public aware of light sentencing in this case. Because of public apathy, gs have been allowed to progress like this. Without olic awareness, the judges will continue to make these ten decisions.

'...judges will continue to make these rotten decisions.'

We organized the committee with the purpose of being a atchdog. We will keep an eye on the courts and make the ublic aware of what is going on."

Temple is also concerned that often the rights of the ictim may be forgotten. "This is the basic problem of the udicial system. The criminal is let off so easily because of is rights. We argue about what rights he (criminal) has nd the victim's rights are forgotten."

Temple points out that these "rotten" decisions affect nore than just the victim's family. "These decisions affect us daily. Even when the case is over, the decision will hang on. It sets a precedent. Judges will refer to it in case law time and time again."

The case that Temple is most upset about right now is the Shewey case. He cites many facts about the case that disturb him.

Thomas Schulz and Schulz but according to Temple, Stewart agreed to assign himself to the case if Schulz was preempted.

Stewart is more lenient toward juveniles than Schulz, said Temple.

Stewart came in at the start of a hearing on whether Shewey should be tried as an adult or a juvenile. He denied a waiver of Shewey into adult court, commenting, according to Temple, that he had never waived a juvenile into adult court and this is not the appropriate time to begin.

The Supreme Court disagreed and ruled that Shewey be tried as an adult.

Schulz then came back to sit in on the evidentiary hearing, where he promptly ruled out two of the three confessions of guilt by Shewey.

'Steward referred to Shewey as a child during the sentencing hearing.'

Temple said he just received flimsy justification as to why Schulz returned for the evidentiary hearing.

Then, through a stipulation between Larry Weeks, district attorney, and Brown, Stewart was reassigned to the case for the sentencing hearing.

"I think Weeks was completely wrong for doing this. He sold out," Temple said.

Temple said he thinks this was the major problem with the case. "Stewart was still looking at Shewey as a juvenile. He was going directly against the Supreme Court's decision," Temple stated.

He added that Stewart referred to Shewey as a child during the sentencing hearing.

One confession of guilt by Shewey was obtained at Ketchikan High School and the others in the police station. The second confession was made after Shewey's father, Fred Shewey Sr., gave permission to police to question his son. The third was made when Detective Tom Varnell and Temple talked to Shewey later after he had talked with an attorney and refused his services.

Judge Schulz ruled out the last two confessions because an attorney was not present.

Temple gets particularly enraged with Stewart concerning Shewey's prior record. Shewey was found guilty of five felonies, all burglaries, as a juvenile.

Stewart said, "In terms of a prior record, obviously you had one, but it was not one which involved assaultive conduct or physical harm to others."

He added, "The worst type of offender, in my judgment, is a person who lives a habitually criminal life and worst [illegible] who murder for hire and plan

Other things irked Temple after the hearing. Letters about the sentencing were written to Stewart by concerned citizens. Temple showed the Daily News two letters from Stewart to different people that were exactly alike.

"Concerned people write to him about the hearing and all he has time for are form letters," Temple said.

In addition, Temple apparently had a hard time obtaining a transcript from the sentencing hearing, commenting that Stewart made it uneconomically feasible to get it.

Mainly because of Stewart's actions in the Shewey trial, the Alaska Committee for Judicial Reform has circulated petitions asking for the Alaska Judicial Council to review Stewart's actions in the hearing. Also, the committee is pushing for Stewart's recall.

In addition, Temple said he wants to lay to rest a common belief by the people in Ketchikan. "People have been led to believe that this is a nice, sleepy little fishing village—hogwash!" Temple said.

Temple cites many cases of Ketchikan youths who go on to commit more serious crimes after getting off light during their early years as criminals. He said there are number of cases in Ketchikan where "local boys mad good."

A case in point is that of Walter James Nielsen. From 1965 to 1975, Nielsen was arrested for a number of crimes including armed robbery, assault with the intent to kill

'...sleepy little fishing village—hogwash!'

kidnapping, stabbing or cutting with the intent to wou and two counts for assault with a dangerous weapon

He served 13 months for armed robbery and was dismissed for the assault with intent to kill charge. For first conviction of assault with a dangerous weapon, served three years and for the kidnapping and stabbing cutting with the intent to wound he got 20 years suspen and five years probation. Then, in September of 1975 he four years for assault with a dangerous weapon.

Early this year, he was released on parole with on the conditions being that he not consume alcohol. He later picked up after he had been drinking.

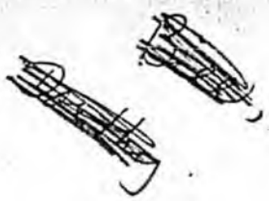
The parole officer filed a petition to revoke the pa Pending the parole hearing, Nielsen was out on a release. Two days before the hearing, he left Ketch

Two months ago, Nielsen, 31, was arrested in Fairb and charged with second degree murder for two kill

Temple is tired of the "hand slapping" that juve

Judicial reform group looking at change of judge

MAY 15 1979



By JIM MOORE
Daily News Staff Writer

The changing of judges during the Fred Shewey Jr. murder case may be illegal and could possibly lead to a mistrial, according to Bill Temple, a spokesman for the Alaska Committee for Judicial Reform, which held a meeting Friday in the Lutheran Church.

Judge Thomas Schulz began the case and Judge Thomas Stewart finished the case with the sentencing hearing. In between, Stewart sat in on the hearing of whether Shewey should be tried as a juvenile and Schulz was at the bench during the evidentiary hearing.

Legal counsel has said there is a good strong possibility that the judge changing was illegal, Temple said. This is one last facet of the Shewey case that the committee is looking into.

Primarily, the committee is interested in "preventing this kind of thing from happening again," Temple said.

Light sentencing and school safety improvements were also discussed at the meeting.

Temple cited a case from Mark Wheeler, an artist in Ketchikan, who had just returned from Singapore. A murder occurred in Singapore and two days later, the killer was beheaded.

Temple said he doesn't advocate that type of treatment but said, "Stiff sentencing is a definite crime deterrent. If you know what's going to happen to you, you don't commit the crime."

A school safety improvement that the committee would like to see is the use of safety patrols at intersections. Roxanne Green, chairman of the committee, said the school board is in support of having patrols in busy parts of town and around the schools.

In addition, Ms. Green is trying to arrange a helping hands project through the newly formed P.T.A. Children would draw hands which would then be placed in windows in houses around the schools. Students would then know where to go for safety if problems arise.

energy agency reported.

11/20/81

Youth pleads guilty to 5 rapes

JONESBORO, Ark. (AP) — A 14-year-old boys's plea of guilty to rape and assault charges has ended an investigation into 15 rapes that terrorized Arkansas State University and kept some black men off the streets at night, police say.

Juvenile Referee Don Seay said in sentencing Andy Woods that he wished "the law provided that the victims could be present to pronounce sentencing on him instead of the court."

Woods, who was arrested last week, was sentenced Monday to an "indefinite term" in a reformatory, but under state law he cannot be held after his 18th birthday.

He pleaded guilty to five counts of rape, two counts of attempted rape and two counts of breaking and entering.

Police had said they were looking for a black male between feet 8 inches and 5 feet 10 inches, weighing about 170 ounds, as a suspect in the series of rapes, which began a ear ago. Woods is black.

"The description of the suspect could fit almost any black ny," Dwight Love, a 21-year-old black student, had said last onth, at the height of tensions at ASU.

Love had said most black men at the school were staying in night to avoid raising suspicion about themselves. Women students, meanwhile, were going out in groups and taking other security precautions.

Some female students who went out at night had set up a system in which they would notify friends when they left their dormitories and arrived at their destinations.

"Girls are scared," sophomore Angela Brown said then. "You have to make your plans around your friends' schedules."

The names of juvenile defendants are normally kept confidential, but Seay made an exception in Woods' case.

"I think the nature of the offenses that were committed and the community interest and the lack of teeth in the juvenile code to provide punishment for such crime warranted the community to know who this juvenile was," Seay said.

Seay banned photographs, but reporters were allowed into the hearing 14 minutes after it began and Seay said Woods had entered a guilty plea.

Woods' mother, who was present at the hearing Monday, told the referee, "He knows what he has done and he knows that he will have to pay for it. I don't see how he could have done all that they say he did. He's my child and I love him."

Parole urged for Quick in 1976 death of Jones Yeltatzie

APR 28 1980

Raymond Quick, 29, of Saxman was sentenced Friday to 10 years in prison for manslaughter and four years in prison for attempted robbery for his role in the April 25, 1976 death of 79-year-old Haida artist Jones Yeltatzie, also of Saxman.

The sentences are to run concurrently. However, the court recommended that parole be considered for Quick at this time.

Superior Court Judge Thomas Schulz urged that parole be considered now, and that terms of the parole should include Quick's gainful employment and complete prohibition against the consumption of alcohol.

In the sentencing, Schulz considered testimony that Quick had been on a day-release program for the four years since his arrest without violations. Although testimony showed the robbery of Yeltatzie had been planned, it also indicated his death was not premeditated.

William Jackson and Tyrone Milton also were convicted in Yeltatzie's death. Jackson was sentenced in 1977 to 15 years in prison after pleading guilty to manslaughter and five years, also to be served concurrently, for burglary. Milton, who was a juvenile at the time of the crime, was found guilty in juvenile proceedings and ordered into the custody of the Department of Health and Social Services until his 19th birthday.

Jackson gets 15 years for death of Yeltatzie

APR 24 1977

William T. Jackson was sentenced Tuesday to 15 years in prison in connection with the death of Jones Yeltatzie a year ago.

Judge Thomas E. Schulz credited Jackson with a year he already has been in jail, and said he will be eligible for parole after serving one-third of the sentence.

The 15-year-sentence is on a manslaughter charge, to which Jackson pleaded guilty Feb. 22. Judge Schulz imposed a five-year concurrent sentence on a burglary charge to which Jackson also had pleaded guilty.

Jackson was one of three persons charged with causing the death of Yeltatzie, a 79-year-old Haida artist and totem carver, during an attempted robbery in Yeltatzie's Bawden Street apartment April 25, 1976.

Raymond Quick, 25, who has pleaded innocent of manslaughter, attempted robbery and burglary in a dwelling, is in custody awaiting the results of a supreme court review of several of Judge Schulz' pre-trial rulings.

Tyrone Milton, who was 17 at the time of Yeltatzie's death, was charged in juvenile petitions and was found guilty by a trial jury in February. Judge Schulz committed Milton to the commissioner of health and social services for placement in an institution until his 19th birthday.

Three men charged in death of carver

Three men have been charged in connection with the weekend death of an elderly Indian carver and retired fisherman in Ketchikan.

William Thomas Jackson, 37, and Raymond Quick, 24, were to be arraigned this afternoon on charges of first degree murder, resulting from Ketchikan Police Department's investigation of the death Sunday of Jones Yeltatzie.

A third suspect, a juvenile, also is in custody and charged with first degree murder.

Names of juveniles are not released to the press.

The arrest complaint alleges that Yeltatzie's death occurred during an attempted robbery.

Yeltatzie died in his apartment at 650 Bawden St., Sunday night. An ambulance crew, reported to have been summoned by Quick, discovered the death.

The elderly man suffered from emphysema and recently had pneumonia; and his death at first was thought to have been natural.

On Monday, information brought to the attention of police led to an investigation headed by Lt. Ron Leighton, which resulted in warrants being issued Thursday afternoon. An autopsy was ordered; however, results are not available for publication.

District Attorney Geoffrey Currall and Lt. Leighton said the defendants did not resist arrest. Quick was arrested on the downtown dock at 4:30 p.m., and Jackson at his residence, 102 Bawden apartments, at 6:46 p.m. Thursday. Bail of $50,000 each was set when they were placed in jail.

Another man was arrested Tuesday but released when police confirmed his alibi.

Quick has lived in Ketchikan most of his life. He is not married, and is unemployed. Jackson, identified as Quick's friend, came here from Kake about five months ago. Jackson is not married and also is unemployed, according to Lt. Leighton.

Yeltatzie's age has been reported at both 75 and 79. His daughter, Verna Mason, of Saxman, said her father was born in 1900. Police reports give the year of his birth as 1897.

Yeltatzie was a retired commercial fisherman, well known carver and artist and was descendant of an old Haida Indian family which included chiefs in their time.

Examples of his carving include the king salmon that used to be at Ketchikan Creek near the Park Avenue bridge. A 40-foot totem is on display at an Oregon site and some other examples are in private ownership.

Yeltatzie was born at Howkan, Alaska, Dec. 23, 1900, the family said.

Mrs. Mason said her father was the youngest and only survivor of six brothers. One sister is still alive.

He would have been a chief, as were his ancestors, "in the old ways, but now things are more commercial than socia'," she said.

She said he learned carving in his youth and left Howkan about 1918. He attended school in Oregon before returning to Alaska. His small seiner, which he operated for 50 years, was called Improver.

Mrs. Mason said she usually calls her father every night and Sunday night when there was no answer she called police to ask them to check on him. Officers told her that Yeltatzie had been found dead.

Survivors are a son, Larry Yeltatzie, San Antonio, and daughters Mrs. Mason, Saxman; Marie Yeltatzie, Ketchikan; Delma Yeltatzie, Anchorage, and Violet Kaloa, Tyonek. (Ms. Kaloa is the widow of the former chief of the Tyoneks who died in a hotel fire in Anchorage a number of years ago.)

Also surviving are a stepson, Victor Peele, Seattle, a stepdaughter, Sara Peele, Ketchikan, and 32 grandchildren and 23 great-grandchildren.

3/17/81

Jury to begin rape trial review

By HARRY McFARLAND
Daily News Assistant Editor

The jury in the sexual assault trial of Jon Howard was to begin deliberations shortly after noon today in Ketchikan Superior Court, following final arguments by District Attorney Vic Krumm and defense counsel Dennis McCarty.

Jon Howard, 19, and his 29-year-old brother, Grady, are charged in the July 10 rape of two teenage girls on the Shoenbar Trail.

After the opening defense statement Monday, the Howards' sister, Susan Park, testified on the brothers' characters.

Mrs. Park said she feared for Jon, when she learned that he and Grady planned to travel to Alaska. Her fear was caused by knowing Grady's problem."

Grady has been in trouble 12-13 years, Mrs. Park said, with the last 10 being spent going in and out of prisons. "He went in institutions at a very young age," she said.

Alcohol and drugs were the catalyst for his violence, she said. He was okay without them, but their use would make Grady "very uncontrollable" and unrational."

Trying to reason with Grady would make him more violent, Mrs. Park said.

In 1972, Grady attacked their mother, she said. It took five people to control him. In another incident, Grady beat his cousin severely. He was trying to strangle the cousin when other people finally subdued.

Grady's violence has now "come to the point that there is a weapon involved," Mrs. Park said.

Jon was present at these violent incidents, Mrs. Park said. He withdrew from them, she said, which became a characteristic. Anytime violence would flare up within the family, Jon would withdraw.

Mrs. Park said she knew Grady had escaped from prison in July, but never advised authorities. He was on a three-day furlough from an Oregon prison, when he decided not to return. Three weeks more and he would have been parolled.

When she would turn Grady into the authorities, "no one ever came after him until a crime was committed," Mrs. Park said.

Upon hearing about the planned Alaska trip, she told Jon not to go with Grady.

But Jon told her that Grady had changed.

"Jon absolutely wanted to believe everything was going to be fine," she said. "Jon is not mature in many ways." He takes "everything at face value."

Prior to Jon's testimony, Grady was brought into the courtroom with belly chains attached to his wrists and leg chains. He did not speak.

"Ever since I was young," Jon began, "I'd always had a dream to go to Alaska."

His Alaskan dream was enhanced by a "Grizzly Adams picture," said Mrs. Park as she described the letters that Grady wrote to Jon about the trip.

Grady also told Jon he had changed, that he wanted to make a fresh start in Alaska.

"I wanted to help him out," Jon said.

Starting out on the trip, it didn't take Grady long to fall back to his violent ways. They stopped under a bridge near a freeway, when Grady suggested they buy a six-pack of beer, since it was a hot, sweaty day.

"I told him we didn't have enough money," Jon testified, "and he shouldn't drink. But he always seemed able to persuade me."

Grady came back with the beer and a bottle of Mogen David wine, known as Mad Dog 20-20.

Things got hectic. Grady pulled a knife and threatened to kill him. Jon told him to go ahead. "I rebelled against him," Jon said.

Jon decided he didn't want to go with Grady, so they called a brother. The brother took them to his house, where the argument continued. Jon's rebellion continued, until Grady "finally stopped being mean."

"By morning," Jon said, "he had me persuaded to go along."

From Portland through Canada and finally to Ketchikan, Grady stayed away from alcohol. They arrived here on July 5. Because they didn't have any money, they sought out the Salvation Army for a place to stay.

Salvation Army personnel told them that the organization

Cont. on page 2

Howards discussed rape an hour before incident

By HARRY McFARLAND
Daily News Assistant Editor

Approximately one hour before Jon and Grady Howard accosted two teenage girls, they talked about the possibilities, and consequences, of rape.

Such was a new piece of testimony brought out during the sentencing hearing Monday of Jon Howard, 19, for second-degree assault; his part in the July 10 rape on the Schoenbar Trail.

Howard was sentenced to eight years in prison, three suspended, for the crime in Ketchikan Superior Court Monday.

The sentencing followed a morning of testimony from one victim's mother and the probation officer who prepared the pre-sentence report, and arguments by the two attorneys, district attorney Vic Krumm and defense lawyer Dennis McCarty.

Krumm asked one girl's mother to tell the court how the rape had affected her daughter.The girl is "totally messed up," the mother said. "She's confused, bitter.

"She's blocking the episode out of her mind. She refuses counseling. I can't control her."

On one occasion, the mother said, a handyman, who had been drinking, caused the girl to start screaming, "Get him out of here! Get him out of here!"

The girl was incoherent and crying, her mother said. The girl grabbed a butcher knife and went towards her mother and brother, saying, "I've got to kill them. I've got to kill them."

She has also tried suicide by taking pills, her mother said. She was rushed to the hospital to have her stomach pumped. She has stopped seeing her psychologist.

Because of the rape incident and other personal problems, she feels "that her brother and sister hate her," her mother said.

Probation officer Bart Penny testified that Jon Howard admitted "withholding" some facts at the trial. Penny, who interviewed Jon three times, said the young man told him of a conversation an hour prior to the attack on the girls.

Jon admitted to the conversation when called to the stand. His brother told him that women could be forced, but they could be placated into having sex, Jon said.

Jon said his brother told him that women could be calmed down, and "then everything would be all right."

Jon said his brother told him they could "scare a couple to get to know them."

If they were caught, Grady told his brother, it would become the girls' word against the brothers'.

Penny said the older brother told Jon, "I'll show you how to do it. Nothing is going to happen."

When it came to the actual rape, Penny said, Jon "in his mind, intended to have intercourse w h her. The brother had already, so 'what the hell.'"

During the events on the Schoenbar Trail, Jon wasn't out of control, Penny said, but was slightly fearful of his brother.

Following the events of that night, the brothers decided that if "worse came to worse," Penny said, "his older brother would take the brunt," since he was an escapee from Oregon State Penitentiary.

In cross examination, McCarty asked if Penny felt Jon was cooperative and if Penny had a good feeling about rehabilitation. Penny answered yes.

In his closing argument, Krumm argued for the maximum sentence of 10 years incarceration. In his report, Penny recommended 10 years with five suspended.

McCarty argued for suspended imposition of sentence, which would have meant Jon would be set free as long as he didn't commit any crimes.

Prior to sentencing, Judge Lewis asked if Jon had anything to say.

"I've spent nine months in jail," Jon said. "I've had a lot of guidance. I don't think jail is going to help me. It's going to hurt me. This happened by fluke. I don't think I could do anything like this again."

One of the girls, who was asked to come to testify about the impact of the rape, "didn't want to come today," Jon said, "because she knows I wasn't that guilty."

Judge Lewis said it was a "very unpleasant duty" to sentence Jon.

He said he hoped Jon's statement of contrition was true and that Jon would be rehabilitated.

But, Judge Lewis said, "I do have to take the victim into account." In earlier times, the rules were made to protect the suspect, he said, and "we'd lose the victim while saving the individual. I don't feel society can afford that any longer."

Despite defense assertions, the judge said Jon was not an innocent victim. He felt Jon should be incarcerated for more than four years.

Appeals challenging the justification for arrest for the brothers will be jointly filed, attorneys said in court. If the appeals are granted, the cases and subsequent convictions will be dismissed.

Crime fighters get robbery clues, ask more help

Tip leads to suspect's arrest

by Steve Hansen
Times Writer

A 16-year-old boy was arrested in connection with three armed robberies — the first arrest stemming from Anchorage's newly conceived Crime Stoppers program.

The boy was arrested Thursday night after police received a tip from an anonymous source on the Crime Stoppers telephone hotline that the boy was responsible for three recent armed robberies.

The boy was charged with first degree robbery and is being held at the McLaughlin Youth Center.

"I think this shows that the people are willing to use the Crime Stoppers system," said Sgt. George Novaky, police liaison with the community-run program.

(See ARREST, page A-3)

Arrest

(Continued from page A-1)

Crime Stoppers president Lee E. Fisher was also optimistic about the arrest.

"We're delighted with the fact that the public has picked it up so fast," Fisher said. "This start is a real shot in the arm."

Police officers manning the 24-hour hotline received the anonymous tip Tuesday morning. After examining police reports on several recent armed robberies, police located and arrested the boy.

"The investigators have enough evidence that they feel they have a very strong case against him," Novaky said today.

The boy is being charged with the Aug. 22 robbery of a Dimond Qwik Stop, the Aug. 28 robbery of Church's Chicken and the Sept. 8 robbery of Arctic Grocery. All of the robberies involved a hand gun.

The Crime Stoppers program began last Monday with the announcing of the Crime of the Week — the first one a $19,000 jewelry store robbery and assault.

But Novaky stressed that the Crime Stoppers telephone hotline was used for information on any felony crime or fugitive.

"I am glad the community is getting the message that we are taking information on any serious crime," he said. "And I'm optimistic that other people will also call and give us information."

Novaky said the anonymous caller now is eligible for a reward of up to $1,000. Novaky will present the information to the program's board of directors who will then determine the amount of the reward.

Fisher said the reward would be based primarily "on a recommendation from the police department who will evaluate the importance of the information given by the caller."

Then the board will award the tipster a reward between $25 and $1,000.

Fisher said he was uncertain how much he recommend on this case, but noted that on some violent crimes he would favor big payoffs.

"I'm only one of 21 members (of the board of directors) but I personally am going to be going for the maximum ($1,000 reward) on a murder or rape," he said.

Youth found guilty, man pleads guilty in Yeltatzie death case

FEB 23 1977

FEB 22 1977

By PAT CHARLES
Daily News Staff Writer

William T. Jackson, one of two adults charged with manslaughter, burglary and attempted robbery in connection with the death last April of Jones Yeltatzie, changed his plea in superior court Tuesday on two of the allegations.

Jackson pleaded guilty of manslaughter and burglary.

Raymond Quick, co-defendant with Jackson, is still to be tried on the three felony counts.

Superior Court Judge Thomas E. Schulz granted a stay until 1:30 p.m. Thursday to permit Quick's attorney to file petition for a writ of review with the supreme court.

Trial of Quick and Jackson opened in superior court Tuesday, but recessed before a jury was selected. During the afternoon, Jackson came before Judge Schulz to change his plea.

A juvenile, Tyrone Milton, 17, charged with Jackson and Quick as the result of Yeltatzie's death, was found guilty of all three counts by a jury which gave its verdict to Judge Schulz Sunday. Trial on the juvenile petitions was held last week in closed court.

Judge Schulz ordered a predisposition report within two weeks in the minor's case, and also has ordered a pre-sentence report for Jackson.

One charge—attempted robbery—against Jackson remains to be tried.

The minimum sentence that could be imposed for the charges to which Jackson pleaded guilty is one year, the maximum is 20 years, Judge Schulz said. Concurrent sentences, rather than consecutive sentences, would be imposed on the two counts, since they involve the same occurrence.

Jackson, Quick, and Milton were alleged to have caused the death of Yeltatzie, who was 79, during an attempt to steal money from Yeltatzie's Bawd apartment last April 25. was a well-known Ind and totem carver.

The three were arre days after the death police.

Jurors who found the against the juvenile tru Adeline DeBoer, Wi Freer, Barry J. Doyle Ireland, James L. L Mildred I. Wolfe, Julia Charles P. Cytanovich Adams, Bernice A. Georgianna C. Bo Virginia Zastrow. Terr was an alternate juror

Milton's name available to the press, c being a juvenile, u passed by the last legislature which confidentiality when a has been twice con felonies.

Youth's trial starts in Yeltatzie death

FEB 16 1977

FEB 16 1977

The trial of a 17-year-old youth, charged in the robbery and death of Jones Yeltatzie, an elderly Indian carver, began today in Ketchikan's superior court with selection of a jury.

Judge Thomas Schulz ruled Monday that the trial will be closed to the public. The ruling was based on an Alaska Supreme Court decision, RLR vs. state, in which the court ruled that the minor being tried could decide whether he wanted people at his trial. The juvenile in the case currently being tried asked that the trial be closed.

After an evidentiary hearing Tuesday, Judge Schulz ruled that a statement the youth gave to police at the time of his arrest will be admissable as evidence.

The judge also ruled that a statement given by one of two adults charged in the case, Raymond Quick, also would be admissable as evidence.

The two adults, William T. Jackson, 37, and Quick, 24, were indicted by a grand jury in May on charges of manslaughter robbery and burglary in a dwelling. The youth implicated in the case has been in the custody of juvenile authorities.

Yeltatzie was found dead in his apartment April 25. The arrest of the two men and the youth occurred five days later.

Jan. 22, 1982 Friday

Teleconference

HB#632

HB#633

HB#438

Anchorage

HB#438 - Eliminates Supreme Court ~~Case~~ Case. → Gayben Case
Fatal Accidents 75% of them all. (Anchorage area)

Carl Heimmiller - Judge → Haines

Soldotna - Jim Hanson — Former Superior Court Judge.

Kodiak - Julie Aller

Homer - Michael Dougherty
HB#632

Fairbanks
Judge Connelly - District Court Tanana Bar.
HB#632

Dillingham

James Landsbury - State Troopers.
Supports 438 HB.

Anch.
Ron Moore
HB#632, HB#438 → Supports it.

Fairbanks — Ruth Lister
HB#633 - Supports it.
HB#632 →

Haines
Leo Lund - Supports Bills (3)

Kodiak
Jim Olson
HB#478 Supports #632, 633.

John Pugh - Dept. HSS Juneau.
235 youths Arrested 28 Class A Felony
168 Burglary.

HSS → Supports HB#438

Harry Covemane - Public Health Lab.

Barry Stern - Dept. of Law
Supports HB#438, → Also HB#457

Stern → Uses Example of transfer back approach

Walt Jones - Dir. of Corrections

20-year-old convicted killer receives freedom on birthday

Nov 2, 1981

by Maureen Blewett
Times Writer

Frank Adams, the teen-ager who slashed Col. Robert Cassell's throat for hire in August 1978 was released from a juvenile detention center Sunday, the day of his 20th birthday.

He had been at McLaughlin Youth Center for three years, two months and 13 days.

Daniel Cassell, the colonel's 21-year-old adopted son who hired Adams and another youth to murder Cassell, is serving a life term in a federal prison.

Superior Court Judge Justin Ripley ordered Adams treated as a juvenile in a ruling three months after the murder. Had he been tried as an adult, he would have faced life in prison.

State prosecutors appealed the judge's decision to the Alaska Supreme Court, which sent the case back to Ripley. The judge refused to change his earlier decision. A psychiatrist and a pscyhologist testified that Adams could be rehabilitated.

As a juvenile, Adams was legally eligible under state law for release from prison on the day of his 19th birthday. He promised Ripley, however, he would remain in the center until his 20th birthday.

Adams was 16 at the time of the murder. A companion, Paul Scott, was 14. Scott, who said he watched the fatal struggle and handed Adams the knife, was released from McLaughlin in April.

Superintendent Jerry Jackowski said today McLaughlin is not set up to handle long-term murder sentences. "McLaughlin is a rehabilitation center, not a sentencing institution," he said.

Adams and Scott admitted bludgeoning and stabbing the colonel to death in exchange for the promise of $2,000, a fancy chess set, a trip to New York and the colonel's car.

Assistant District Attorney Mary Anne Henry, who prosecuted the case, said this morning she is disappointed in a system that allows a juvenile murderer to leave prison.

"There is no guarantee that he has been rehabilitated," she said.

Adams, who has been at McLaughlin since Aug. 18, 1978, was kept in a closed unit at the detention

(See ADAMS, page A-3)

Adams: 'It almost ruined my life . . .'

by Ellis E. Conklin
Times Writer

It happened one grisly night in August 1978. But for Frank Adams, it will happen forever.

A little more than three years ago, Adams, then 16 years old, participated in one of the most heinous killings this town has ever experienced.

In October, Adams kept a jury spellbound as he recalled that Aug. 14 night when he and 14-year-old Paul Scott murdered Col. Robert Cassell in his bedroom in Eagle River.

It all seemed so impossible, so completely incomprehensible.

It was Adams who brought the tire iron and beat the colonel until the tire iron broke. And it was Adams who stabbed Cassell twice in the chest before cutting his throat.

"I don't think they'll ever be a day in my life when I don't think about the horrible thing I did," Adams said this morning in an telephone interview from his home. "It almost ruined my life."

Adams, now 20, was released one minute after midnight Saturday. His parents were there at McLaughlin to take him home from the place he stayed for three years and two months.

Adams said the first thing he did upon entering his home was to watch

(See LIFE, page A-3)

juvenile crime

moved herself from availability to a substantial field of employment. I would therefore conclude that the Labor Department's determination which was affirmed by the superior court is not supported by substantial evidence. Thus, I would reverse the superior court's decision with directions to remand the matter to the Department of Labor for an award of an appropriate amount of unemployment benefits to Lola Lind.

Rehearing denied; RABINOWITZ, C. J., dissenting.

STATE of Alaska, Petitioner,

v.

F. L. A., A Minor Under the Age of Eighteen Years, Respondent.

No. 4333.

Supreme Court of Alaska.

March 14, 1980.

The State petitioned for review of an order of the Superior Court, Third Judicial District, J. Justin Ripley, J., which denied the State's motion for waiver of juvenile jurisdiction. The Supreme Court, Boochever, J., held that under circumstances including the fact that the juvenile defendant was represented by counsel and had a guardian ad litem and was given the opportunity to confer with his parents and where it appeared that the juvenile was able to understand the ramifications of his decision, the juvenile's consent to an extra year of treatment beyond age 19 was binding and was properly considered by the trial court in determining whether to waive juvenile jurisdiction.

Affirmed.

1. Infants ⇐68.7(2)

In determining whether to allow a child to be tried as a juvenile, the court may consider as binding the juvenile's consent to an extra year of treatment beyond the age of 19; overruling *In re F. S.*, 586 P.2d 607, to the extent it is inconsistent. AS 47.10.060(d), 47.10.080(b)(1).

2. Infants ⇐68.7(2)

In order to give effect to the legislature's intent that a court may consider treatment until age 20 in determining whether to waive juvenile jurisdiction, the court must evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. AS 47.10.080(b)(1).

3. Constitutional Law ⇐43(1)

Although a minor is generally incompetent in civil matters, he is nonetheless generally competent to waive constitutional rights in criminal matters.

4. Infants ⇐68.7(2), 77

In determining the effect to be given a minor's consent to an additional period of supervision as a basis for not waiving juvenile jurisdiction, the court should consider the age and maturity of the minor and whether he has the advice of counsel and, to protect a minor from making a decision adverse to his own interests, a guardian ad litem may be appointed. AS 47.10.080(b)(1).

5. Infants ⇐68.7(2)

Where juvenile defendant had the capacity to understand the ramifications of his decision to consent to an extra year of treatment beyond age 19 and where he was represented by counsel, had a guardian ad litem appointed and had the opportunity to confer with his parents, the juvenile's consent was binding; overruling *In re F. S.*, 586 P.2d 607, to the extent that it is inconsistent. AS 47.10.080(b)(1).

Mary Ann Henry, Asst. Dist. Atty., Joseph D. Balfe, Dist. Atty., Anchorage, Avrum M. Gross, Atty. Gen., Juneau, for petitioner.

Joseph W. Evans, Birch, Horton, Bittner & Monroe, Anchorage, for respondent.

Before RABINOWITZ, C. J., and CONNOR, BOOCHEVER, BURKE and MATTHEWS, JJ.

OPINION

BOOCHEVER, Justice.

The State of Alaska filed a petition for review of an order of the superior court denying the state's motion for waiver of juvenile jurisdiction.[1] By order of August 7, 1979, we granted the petition, affirmed the superior court's order and indicated that an opinion would follow.

The primary issue involved is whether the court may consider as binding a minor's consent to an extra year of treatment beyond the age of nineteen in determining whether to waive juvenile jurisdiction.[2] Under the circumstances here involved, we have concluded that the minor may give a binding consent to such additional year of treatment.

I. FACTS

F.L.A. was charged with first-degree murder as a result of the contract slaying of Colonel Robert Cassell in Anchorage, Alaska. Testimony indicated that Daniel Cassell, the son of the victim, offered another minor and F.L.A. money, a car, and a trip to New York in exchange for their killing the Colonel. The Colonel was bludgeoned to death by F.L.A. on August 15, 1978. F.L.A. was sixteen years and nine months old at the time.[3] He had no prior juvenile adjudications.

After an extensive waiver hearing, Judge Ripley issued an order denying waiver. The district attorney obtained a stay of further proceedings pending the filing of a petition for review to this court. Before the filing of the petition, we published the opinion *In re F.S.*, 586 P.2d 607 (Alaska 1978). Based on that decision, the state filed a motion for reconsideration. The superior court held a further hearing and eventually entered an order denying the motion to reconsider.[4]

The legislature has set forth the considerations for determining amenability and treatment as a juvenile in AS 47.10.060(d) as follows:

> [T]he court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

Here there is no dispute as to the seriousness of the crime and the absence of prior delinquency on the part of the minor. While there was some variation in expert testimony as to the probable cause of the minor's delinquent behavior, it appears generally that he had an immature outlook on life. There was ample evidentiary support for the court's finding that the McLaughlin Youth Center is an adequate facility for treating F.L.A. All of the doctors testifying agreed that F.L.A. was treatable, and there was substantial evidence indicating

1. The state filed a motion for reconsideration which was likewise denied.

2. AS 47.10.060(a) states:

> If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as if he were an adult.

Children's Rule 3(f) provides:

> If probable cause is established at the hearing for believing that the child committed the act with which he was charged in the petition and which if committed by an adult would constitute a crime and the child is not amenable to the treatment provided under AS 47.10 Article 1 and under these rules, the court shall issue an order waiving and terminating the treatment provided thereunder and close the children's case. The child may then be prosecuted for the act or acts charged in the petition as if he were an adult.

3. He was born on November 1, 1961.

4. A memorandum decision was subsequently issued on June 1, 1979.

that he could be adequately treated within three years of the time of his incarceration. Of prime importance in Judge Ripley's decision was the necessity of having three years available for treatment.

F.L.A. was placed in the detention unit at the McLaughlin Youth Center in late August 1978 where he has remained. In late September, he began meeting with a youth counsellor, Rick Calcote, twice or three times weekly under supervision of Dr. Patricia Patrick, a psychiatrist. Dr. Patrick began weekly psychotherapy sessions with the child and his family commencing on November 29, 1978.

Treatment had thus commenced shortly before F.L.A.'s seventeenth birthday on November 1, 1978, and three years of treatment were feasible if the court could be reasonably assured that F.L.A. would be subject to the supervision of juvenile authorities until his twentieth birthday.

AS 47.10.080(b)(1) provides in part:

> [T]he department [of health and social services] may petition for and the court may grant in a hearing . . . an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; . . . .

The trial court based its decision on the binding effect of F.L.A.'s consent to treatment until age twenty.[5]

The judge found conflict between the portions of our decision in *F.S.* wherein we held that in accordance with AS 47.10.060(d),[6] age twenty is the proper age for determining whether a minor is amenable to treatment,[7] and our holding that a minor could repudiate a consent to such additional treatment.[8] We therefore find it necessary to re-examine our decision in *F.S.*

II. THE *F.S.* DECISION

As indicated above, we concluded in *F.S.* that age twenty was the proper age for determining whether a minor is amenable to treatment. Yet we also concluded that a minor's advance consent to continued supervision beyond the age of nineteen could be repudiated. Our reasoning was based upon Alaska's unique statutory scheme for allowing treatment beyond the juvenile's nineteenth birthday.

In order for the state to retain supervision past nineteen years of age, three requirements must be met: (1) the Department of Health and Social Services must petition the court, (2) the court must grant the additional one-year period of supervision, and (3) the person must consent.[9]

In *F.S.*, we held that a minor could not give a binding consent at the time of a waiver hearing. Consent could only be granted when the person reached majority at age eighteen. Thus, in determining whether to allow a child to be tried as a juvenile on the basis that the child could be rehabilitated by age twenty, the judge was required to consider the possibility that consent could be repudiated at majority.

5. Judge Ripley stated:

> I believe the 3 year treatment option is essential to his rehabilitation. I believe he can now consent, this came into the picture at the motion of the child on the advice of counsel and we've had the appointment of the guardian. She's inquired of him, I've inquired of him, even in overstating the option as I recently did, I think that—I am convinced that it is a legitimate waiver. I take into account the facts that I have already mentioned in terms of present counsel and the guardian and the ability to consult with parents and friends. Take into account further the psychological information we have about [F.L.A.] in that he does grasp concepts regularly, he is not a dummy, appears to be fairly intelligent, quick to grasp and that's a matter which the psychologists and psychiatrists tend to agree. Based upon all those things I find that his waiver is knowing and exercised now, free from compulsion and with a full knowledge of the consequences.

6. AS 47.10.060(d) states in part:

> A minor is unamenable to treatment under this chapter if he probably cannot be rehabilitated by treatment under this chapter before he reaches 20 years of age.

7. 586 P.2d at 610.

8. *Id.* at 611.

9. *See* AS 47.10.080(b)(1) quoted in the text *supra*.

F.S. was premised on a minor's incompetency to enter into binding agreements of various types. We also concluded that since the statute contemplated that the decision to extend the period of supervision be made after the initial disposition hearing, it would be contrary to the legislature's apparent intent to give effect to an advance consent.

[1, 2] We now believe that the portion of the opinion in *F.S.* that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age nineteen was mistaken. First, in order to give effect to the legislature's intent that a court may consider treatment until age twenty in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. A judge may assume that the other two contingencies for the additional period of treatment, the petition of the Department and the consent of the court, will be forthcoming if the child still requires treatment at age nineteen. The contingency of the juvenile's consent, however, becomes a "wild card" incapable of rational evaluation if such consent may be repudiated at majority regardless of whether additional treatment is required. We do not believe that the legislature could have intended to require that the judge's discretion be based on such an unpredictable factor. While it is true, as indicated in *F.S.*, that the statute contemplates that the determination of the additional period of treatment be made after the initial hearing, such an intent does not mandate that an advance consent to treatment given by the minor may not be regarded as binding.

Second, we now find that it was incorrect to conclude that a minor may not under any circumstances give a binding consent in advance to an additional period of treatment. We based this portion of *F.S.* on the Washington Supreme Court's decision in *In re Harbert*, 85 Wash.2d 719, 538 P.2d 1212 (1975). In that case, a minor, aged seventeen, gave written consent to extend the jurisdiction from the time he reached the age of eighteen until twenty-one. We correctly quoted from *Harbert* as follows:

> Such consent is of no value. Because of his minority, appellant could repudiate it upon reaching majority. Furthermore, jurisdiction cannot be conferred by consent or agreement.[10]

The statement in *Harbert*, however, pertaining to the repudiation of consent is merely dicta. The Washington statutes in effect at the time Harbert's offense was committed had previously been construed as conferring juvenile jurisdiction only until the age of eighteen. *In re Carson*, 84 Wash.2d 969, 530 P.2d 331 (1975). Although a footnote in *Harbert* refers to a 1975 amendment extending juvenile court jurisdiction to age twenty-one in certain cases,[11] the amendment apparently did not control Harbert's adjudication, as it became effective while Harbert's case was on appeal. Moreover, the amendment did not require a minor's consent in any event.[12] Thus, the narrow holding of *Harbert* is that a juvenile's consent cannot confer jurisdiction on the court.

This brings us back to the major issue confronting us—whether a minor's consent to continuing jurisdiction for treatment between the time when he reaches the age of nineteen and his twentieth birthday is binding.

III. REPUDIATION OF CONSENT BY A MINOR

Since no other state has a provision conditioning additional years of supervision on the delinquent's consent, there are no cases concerning the binding effect of a juvenile's consent to future treatment.

10. 566 P.2d at 611.

11. 566 P.2d at 1214 n 1.

12. Washington statutes allowing care as a juvenile beyond age eighteen are now codified in RCW 13.40.300.

[3] There has been, however, extensive discussion of juvenile consent and waiver in other contexts. There exists a distinction between the validity of a juvenile waiver or consent in a civil context and in a criminal context.[13] In civil matters, a minor is legally incompetent in a wider variety of situations.[14] It has been argued that it would be anomalous to find a minor incompetent in simple civil matters, yet to give effect to a minor's waiver of constitutional rights.[15] The argument, however, has not received serious consideration.[16]

> The courts have held almost without exception that the condition of infancy, by itself, is not sufficient to invalidate an otherwise competent waiver of constitutional rights.[17]
>
> The age of a minor may have a bearing on his understanding of his constitutional rights when explained to him, but it does not confer upon the minor the right, ipso facto, to disaffirm a waiver merely by asserting his non-age at the trial.[18]

Although a minor is generally incompetent in civil matters, he is nonetheless generally competent to waive constitutional rights in criminal matters.

Even in civil matters, the trend seems to be toward expanding the juvenile right to consent. In *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 72–75, 96 S.Ct. 2831, 2842–44, 49 L.Ed.2d 788, 806–08 (1976), the United States Supreme Court held that a minor, without parental consent, may give a valid consent to an abortion. *See also Bellotti v. Baird*, 443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979). This has led one commentator to advocate "abolishing parental consent as a condition to the medical treatment of 'mature minors' . . . ."[19] Moreover, in *R. L. R. v. State*, 487 P.2d at 34, we noted that minors are competent in certain civil areas: they may hold property, nominate a guardian, consent to an adoption, and be held liable civilly for torts.[20] Even in traditional areas where minors are found incompetent, "a minor can enter into contracts, buy and sell property and legally do any number of things which a human being is capable of doing."[21] For his own protection, however, the law makes it possible for the minor to avoid liabilities for a number of such actions by disaffirming them when he reaches majority.[22] Even this ability to avoid liability may be

13. Note, *Waiver of Constitutional Rights by Minors: A Question of Law or Fact*, 19 Hastings L.J. 223, 224 (1967) (hereinafter cited as Waiver).

14. A minor does not have the legal capacity to contract. *Application of Cochran*, 434 F.Supp. 1207, 1211 (D.Neb.1977); *Jones v. State*, 119 Ga.App. 105, 166 S.E.2d 617, 619 (1969); *Longstreet v. Morey*, 49 Ill.App.3d 720, 7 Ill.Dec. 441, 364 N.E.2d 602 (1977); *Navarro v. Kohlmeyer & Co.*, 264 So.2d 691, 692 (La.App.1972); *Petition of Yonnone*, 72 Misc.2d 579, 339 N.Y.S.2d 212, 214 (N.Y.Surrogate Ct.1972). *See R. L. R. v. State*, 487 P.2d 27, 34 (Alaska 1971). A minor cannot alone convey property. *Kenwood Savings and Loan Assoc. v. Williams*, 8 Ohio Misc. 23, 220 N.E.2d 582, 584 (1966). Waiver *supra* note 13 at 224, although he may hold property. *R.L.R.*, 487 P.2d at 34. Generally, a minor cannot borrow money or execute a mortgage. *Kenwood*, 220 N.E.2d at 584. In some circumstances, a juvenile cannot consent to a medical operation. *Bonner v. Moran*, 75 U.S. App.D.C. 156, 126 F.2d 121 (D.C.Cir.1941). *But see*, Note, *Minor's Consent to Medical Care: The Constitutional Issue in Oklahoma*, 12 Tulsa L.Rev. 512 (1977) (hereinafter cited as Medical Care). A minor cannot maintain a suit. Waiver *supra* note 13.

15. *See* Waiver *supra* note 13 at 224; Note, *Waiver in Juvenile Court*, 68 Colum.L.Rev. 1149, 1152 (1968); *R. L. R. v. State*, 487 P.2d at 34.

16. *Id.*

17. *In re K. W. B.*, 500 S.W.2d 275, 279 (Mo. App.1973).

18. *People v. Gomez*, 252 Cal.App. 844, 60 Cal. Rptr. 881, 885 (1967) (a portion of this opinion not relevant to the discussion here was overruled in *People v. Tribble*, 4 Cal.3d 826, 94 Cal.Rptr. 613, 484 P.2d 589 (1971)). *See R. L. R. v. State*, 487 P.2d at 34, where this court disposed of "the argument that infancy renders all waivers automatically void."

19. Medical Care *supra* note 14 at 527.

20. *R.L.R.*, 487 P.2d at 34.

21. *Ballard v. Buist*, 8 Utah 2d 308, 333 P.2d 1071, 1073 (1959); *R.L.R.*, 487 P.2d at 34.

22. *Id.*

lost when a guardian is appointed for the minor.[23]

We have recognized the trend of expanding juvenile competency. In rejecting an argument that "infancy renders all waivers automatically void,"[24] we considered the Alaska statute governing the age of majority, AS 25.20.010. AS 25.20.010 provides that upon reaching majority, a person

> has control of his own actions and business and has all the rights and is subject to all the liabilities of citizens of full age, except as otherwise provided by statute.

We stated:

> This statute does not carry a broad negative implication. . . . The age of majority statute does not imply a legislative judgment that infants are incompetent in all things; it means only that persons above the statutory age minimum are competent in all things except otherwise provided. No statute prohibits waiver, by infants of procedural rights in children's court, so the issue is one of common law and constitutional law.[25]

Juvenile proceedings have some of the characteristics of both civil and criminal actions. Whether regarded from the standpoint of a civil or criminal proceeding, however, we believe that a juvenile may waive the right to be discharged from treatment at age nineteen or, put another way, give a binding consent to additional supervision.

It is clea. that juveniles can waive constitutional criminal rights and be bound by that waiver.[26] Although the right involved here is not of constitutional dimension, it certainly seems to follow that if a minor can waive a constitutional right, the right to have supervision terminated can be waived. Furthermore, several cases have held that juveniles may waive procedural rights to which this right seems analogous.

We have stated that "[n]o statute prohibits waivers by infants of procedural rights in children's court." *R.L.R.* 487 P.2d at 34. We held that: (1) a minor can affirmatively assert the right to trial by jury although "the child should first consult with his counsel and his parents or guardian when appropriate . . .," *id.* at 35; (2) a minor may waive the right to a public trial unless that choice may be adverse to his own interests in which case a guardian ad litem shall be appointed, *id.* at 39; and (3) a minor accompanied by counsel may waive the jurisdictional requirement of Children's Rule 10 that service of summons be sent to the juvenile and his parents or guardian. *Id.* at 41.

Other courts have held that juveniles may waive or consent to procedural and jurisdictional requirements. In *United States v. Williams*, 459 F.2d 903 (2d Cir. 1972), the court considered the then effective version of 18 U.S.C. § 5032, which provided that a minor had to give his consent to be tried as a juvenile. The court discussed the requirements for the juvenile's consent to be binding, stating:

> [I]n order to make an intelligent waiver of his rights under the Act and knowingly refuse to consent, a juvenile must in some manner be fully apprised of his rights and the respective consequences of the proceeding under the Juvenile Delinquency Act and as an adult.

459 F.2d at 904.[27]

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23. *See Kenwood Savings*, 220 N.E.2d at 584; Waiver *supra* note 13 at 224.

24. *R.L.R.*, 487 P.2d at 34.

25. *Id.*

26. Most courts simply consider age as one factor in the totality of the circumstances when determining whether the minor knowingly and intelligently waives his constitutional rights. *See Quick v. State*, 599 P.2d 712, 718–20 (Alaska 1979); *R.L.R.*, 487 P.2d at 33–34, and authorities cited there. *See also In re K. W. B.*, 500 S.W.2d 275, 279 (Mo.App.1973). *R.L.R.* apparently adopted this view. *Id.* at 34. Another view holds infants incompetent to waive rights without advice or waiver by a guardian ad litem or a friendly adult. *Id.* at 33.

27. *See also United States v. Jenkins*, 496 F.2d 57, 75–76 (2d Cir. 1974), *cert. denied*, 420 U.S. 925, 95 S.Ct. 1119, 43 L.Ed.2d 394 (1975). 18 U.S.C. § 5032 was extensively revised by Pub. L.No. 93–415 § 502, 88 Stat. 1134 (1974). The law now provides that a juvenile will automatically be tried as a juvenile unless he requests to

Several courts have held that a juvenile can waive his right to be treated as a juvenile and elect to be treated as an adult.[28]

[4] We conclude that a minor may bindingly consent to an additional period of supervision as provided by AS 47.10.080(b)(1). In determining the effect to be given to such consent, the court should consider the age and maturity of the juvenile and whether he has the advice of counsel. To protect a minor from making a decision adverse to his own interests, a guardian ad litem may be appointed.

[5] Here, consent was given by a juvenile who the record indicates had the capacity to understand the ramifications of the decision. He was represented by counsel, had a guardian ad litem appointed and had the opportunity to confer with his parents. The trial court did not err in considering such a consent to be binding as applied to the period available for treatment. To the extent that *F.S.*[29] is inconsistent with this opinion, it is overruled.[30]

The order of the trial court refusing to waive juvenile jurisdiction is affirmed.[31]

AFFIRMED.

be tried as an adult. In certain cases, the attorney general may request a transfer to try the individual as an adult.

28. A California appellate court explained:

> Since both statute law and court decisions recognize that juvenile procedure is intended for the benefit of the accused, . . . it follows that its benefits are waivable by the accused in the same way that procedural rights are waivable in criminal prosecutions.

Rucker v. Superior Court, 75 Cal.App.3d 197, 141 Cal.Rptr. 900, 902-03 (1977); *see also Merritt v. State*, 333 So.2d 915, 918 (Ala.Cr.App. 1976), *cert. denied*, 429 U.S. 963, 97 S.Ct. 393, 50 L.Ed.2d 332 (1977); *People v. Shaw*, 3 Ill.App.3d 1096, 279 N.E.2d 729, 731 (1972); *People v. Thomas*, 34 Ill.App.3d 1002, 341 N.E.2d 178, 180-81 (1976).

Most courts have required, however, that the trial court explain to the juvenile that he had the right to be treated as a juvenile and that an attorney and/or parent be present. *See McFarlin v. State*, 554 P.2d 56, 61 (Okl.Cr.App. 1976). The concern is, as the United States Supreme Court noted in another context in *Bellotti v. Baird*, 443 U.S. 622, 99 S.Ct. 3035, 3044, 61 L.Ed.2d 797, 808 (1979), that

> during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment to recognize and avoid choices that could be detrimental to them. [Footnote omitted.]

29. In *F.S.*, the juvenile not only committed a horrible crime but had a lengthy history of violations of criminal laws and a failure to respond to treatment. *See* 586 P.2d at 614, 615 & n.28. Our decision that *F.S.* was not amenable to treatment as a juvenile would not be altered by our present holding.

30. The recent comment of Justice Rehnquist in *Califano v. Boles*, 443 U.S. 282, 294, 99 S.Ct. 2767, 2775, 61 L.Ed.2d 541, 551 n.12 (1979), seems apropos:

> There is obviously a significant difference between this interpretation of the statutory purpose and that subscribed to by the author of this opinion in his separate concurrence in *Weinburger v. Wiesenfeld*, 420 U.S. 636, 655, 95 S.Ct. 1225, 1236, 43 L.Ed.2d 514 (1975). To the extent that these interpretations conflict, the author feels he can do no better than quote Mr. Justice Jackson, concurring in *McGrath v. Kristensen*, 340 U.S. 162, 177-178, 71 S.Ct. 224, 233, 95 L.Ed. 173 (1950): Precedent, however, is not lacking for ways by which a judge may recede from a prior opinion that has proven untenable and perhaps misled others. See Chief Justice Taney, *License Cases*, 5 How. 504, 12 L.Ed. 256, recanting views he had pressed upon the Court as Attorney General of Maryland in *Brown v. Maryland*, 12 Wheat. 419, 6 L.Ed. 678. Baron Bramwell extricated himself from a somewhat similar embarrassment by saying, "The matter does not appear to me now as it appears to have appeared to me then." *Andrews v. Styrap*, 26 L.T.R. (N.S.) 704, 706. And Mr. Justice Story, accounting for his contradiction of his own former opinion, quite properly put the matter: "My own error, however, can furnish no ground for its being adopted by this Court . . . ." *United States v. Gooding*, 12 Wheat. 460, 476, 6 L.Ed. 693 . . . . If there are other ways of gracefully and goodnaturedly surrendering former views to a better considered position, I invoke them all.

31. The advocacy, legal research and briefing displayed in this matter, as well as the trial court's carefully reasoned decision in a most difficult case, are deserving of high praise.

As discussed previously, the superior court's grant of the Greens' motion for summary judgment also must be reversed, and the case is remanded for entry of summary judgment in favor of the state.

Reversed and remanded in part.

In the Matter of F. S., a minor.

No. 4015.

Supreme Court of Alaska.

Nov. 9, 1978.

Minor was charged with first-degree murder. The Superior Court, First Judicial District, Ketchikan, Thomas B. Stewart, J., denied state's motion for waiver of juvenile jurisdiction, and state filed petition for review. The Supreme Court, Boochever, C. J., held that: (1) in determining whether minor was amenable to treatment as a juvenile, superior court properly considered whether minor could be rehabilitated by age 20 rather than whether he could be rehabilitated by age 19; (2) court erred in considering minor's consent to an additional one-year period of suspension past the age of 19 in determining whether he would be amenable to treatment as a juvenile; (3) proper standard of proof, in regard to amenability to treatment as a juvenile, is the "preponderance of the evidence" standard; (4) error in requiring state to prove by clear and convincing evidence that the minor was amenable to treatment was harmless; (5) exclusion of evidence that minor had committed previous sexual assaults was not abuse of discretion; but (6) finding that the minor was not seriously delinquent was not supported by substantial evidence, and (7) conclusion that minor was amenable to treatment as a juvenile was an abuse of discretion.

Reversed and remanded.

Rabinowitz, J., concurred in part and dissented in part and filed opinion.

1. Infants ⇐68

In determining whether minor, who was charged with a crime, was amenable to treatment as a juvenile, court properly considered whether minor could be rehabilitated by age 20 rather than whether he could be rehabilitated by age 19. AS 47.10.060(d), 47.10.080(b)(1).

2. Infants ⇐68

In proceeding in which state's motion for waiver of juvenile jurisdiction over minor charged with first-degree murder was denied, superior court erred in giving weight to minor's consent to a one-year period of supervision past age 19 in determining whether minor would be amenable to treatment as a juvenile, in light of fact that minor could withdraw his consent and that giving effect to such an advance consent by minor would be contrary to the legislative intent that the decision to extend period of supervision be made after the initial dispositional hearing. AS 47.10.080(b)(1).

3. Infants ⇐68

In proceeding in which state moved for waiver of juvenile jurisdiction over minor charged with first-degree murder, standard of proof, in regard to issue of minor's amenability to treatment as a juvenile, was the preponderance of the evidence standard, rather than the clear and convincing evidence standard. AS 47.10.060, 47.10.080(b)(1).

4. Infants ⇐68

In proceeding in which state's motion for waiver of juvenile jurisdiction over mi-

decision as to the date and extent of appropriation.

Our disposition of this matter does not preclude the superior court from considering administrative materials which are not before us on this appeal.

See page 609

nor charged with first-degree murder was denied, superior court's error in requiring state to prove by clear and convincing evidence that minor was unamenable to treatment as a juvenile was harmless, in light of fact that, even under preponderance of evidence standard, court would have concluded that state failed to meet its burden of proof. AS 47.10.060, 47.10.080(b)(1).

5. Infants ⇐68

Standard of review for determining whether a trial court has erred in excluding relevant evidence because of its prejudicial impact is the abuse of discretion standard.

6. Infants ⇐68

In proceeding in which state's motion for waiver of juvenile jurisdiction over minor charged with first-degree murder was denied, exclusion of evidence that minor had committed previous sexual assaults was not abuse of discretion, in light of fact that, though the proffered testimony was relevant to the issue of minor's amenability to treatment as a juvenile, the prejudicial impact of such evidence outweighed its probative value. AS 47.10.080(b)(1); Rules of Children's Procedure, rule 3(e).

7. Infants ⇐68

Trial court, which rules on motion for waiver of juvenile jurisdiction over a minor charged with an offense, must make an evidentiary record and must make written findings of fact in regard to seriousness of the offense charged, minor's history of delinquency, probable cause of minor's delinquent behavior and facilities available to the division of youth and adult authority for treating the minor; such findings must be supported by substantial evidence, and, based on those findings, court, within its sound discretion, must make a decision as to minor's amenability to treatment. AS 47.10.060(d); Rules of Children's Procedure, rule 3(h).

8. Infants ⇐68

In proceeding in which state's motion for waiver of juvenile jurisdiction over minor charged with first-degree murder was denied, findings that the offense was serious, that minor's behavior was an adolescent adjustment stemming in large measure from rigidly authoritarian tendencies of minor's father in relationship to the minor and that state could provide adequate facilities to treat minor were supported by substantial evidence. AS 47.10.060(d); Rules of Children's Procedure, rule 3(h).

9. Infants ⇐68

In proceeding in which state's motion for waiver of juvenile jurisdiction over minor charged with first-degree murder was denied, finding that minor was not a seriously delinquent juvenile was not supported by substantial evidence. AS 47.10.060(d); Rules of Children's Procedure, rule 3(h).

10. Infants ⇐68

Trial court has abused its discretion only if Supreme Court is left with definite and firm conviction on the whole record that the judge has made a mistake.

11. Infants ⇐68

In proceeding in which state's motion for waiver of juvenile jurisdiction over minor charged with first-degree murder was denied, trial court abused its discretion in determining that minor was amenable to treatment as a juvenile, in light of fact that minor was seriously delinquent, the offense in question was of a most heinous nature resulting in loss of human life and that minor was over 17½ years old, and, thus, there was only a short time left for treatment of him as a juvenile. AS 47.10.060(d); Rules of Children's Procedure, rule 3(h).

Geoffrey G. Currall, Dist. Atty., Ketchikan, and Avrum M. Gross, Atty. Gen., Juneau, for petitioner State of Alaska.

Harold M. Brown, Ziegler, Cloudy, Smith, King & Brown, Ketchikan, for respondent.

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, BURKE and MATTHEWS, JJ.

OPINION

BOOCHEVER, Chief Justice.

This case presents difficult questions concerning the waiver of juvenile jurisdiction.

A petition charging F.S., a minor, with first degree murder was filed on February 1, 1978. Thereafter, the state filed a motion for waiver of juvenile jurisdiction pursuant to AS 47.10.060(a) [1] and Children's Rule 3.[2] On May 1, 1978, Judge Stewart denied the state's motion, concluding that F.S. was amenable to treatment. The state then filed a petition for review. On June 16, 1978, we granted the petition for review [3] and issued an order reversing the superior court's order denying the motion for waiver of juvenile jurisdiction. At that time, we stated that an opinion would follow.

The statement of facts, as alleged in the state's petition for review, is as follows. On January 31, 1978, G.G., a nine-year-old female, was walking home from school on a trail through the woods. F.S., a seventeen-year-old male, was also walking from school on the trail. F.S. grabbed G.G., holding his hand over her mouth to stifle her screams, and carried her deeper into the woods. He intended to sexually molest her. When she pleaded with him to let her go, he released her momentarily.

Then, his "mind" told him to kill her. He again grabbed her. G.G. struggled, but only succeeded in scratching him. According to F.S., although it seemed to take hours to kill her, he believed that it really took only about twenty minutes.

He then removed her clothing and tried to penetrate her vagina, but could not. He masturbated and ejaculated on her nude body.

Next, he searched her bag and found a tennis ball. He shoved it between her legs in the genital area and left. Her body was found later that night. The next day, F.S. admitted killing G.G.

The state filed a petition charging F.S. with first degree murder and filed a motion for waiver of juvenile jurisdiction. Following a hearing on the motion, Judge Stewart denied it. The state filed a petition for review asking this court to reverse Judge Stewart's ruling.

In its petition for review, the state raises several specifications of error; namely:

1) That the court erred in using age twenty to determine the probability of rehabilitation,

2) That the court improperly considered the minor's consent to an additional one-year period of confinement,

3) That the court applied an improper burden of proof on the state,

4) That the court erred in excluding evidence that F.S. had committed previous sexual assaults, and

5) That the court abused its discretion in denying the state's motion for waiver of juvenile jurisdiction. We will address each of these issues separately.

I. THE PROPER AGE FOR DETERMINING AMENABILITY TO TREATMENT

[1] The superior court used the age of twenty to determine whether F.S. was amenable to treatment as a juvenile. The state argues that the court should have used age nineteen as the determinative age. The state's argument is premised upon what the state considers is a conflict between AS 47.10.080(b)(1) and AS 47.10.060(d). We find no conflict between the two provisions and hold that age twenty is the determinative age.

1. AS 47.10.060(a) provides:

> (a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as if he were an adult.

2. Children's Rule 3(a) provides:

> (a) Where a petition alleges that a child committed an act which if committed by an adult would be a crime, and it appears to the court from the petition or upon testimony heard in connection therewith that there may be probable cause for believing that the act alleged in the petition was committed by the child and that he is not amenable to treatment, a hearing must be held for the purpose of determining if the child shall be prosecuted as if he were an adult. Such a hearing shall be designated as a waiver hearing.

3. We grant review under Appellate Rules 23 and 24.

AS 47.10.060(d) provides in pertinent part:

> (d) A minor is unamenable to treatment under this chapter if he probably cannot be rehabilitated by treatment under this chapter before he reaches 20 years of age.

The statute is clear on its face that age twenty is the proper age for determining whether a minor is amenable to treatment.

Notwithstanding the clear language of the statute, the state contends that because AS 47.10.080(b)(1)[4] limits the court's jurisdiction to commit the minor to the Department of Health and Social Services, at least initially, to age nineteen, age nineteen is the touchstone in determining amenability. In *P. H. v. State*, 504 P.2d 837, 846 n.34 (Alaska 1972), we noted a conflict between the former AS 47.10.060(d) and AS 47.10.080(b)(1). At the time of the *P. H.* decision, AS 47.10.060 provided "[a] minor is unamenable to treatment . . . if he [probably] cannot be rehabilitated . . . [before] he reaches 21 years of age." Former AS 47.10.080(b)(1) provided that the court could only order commitment until age nineteen with an additional one-year period if the department petitions the court for an extension of the period of supervision. In *P. H.*, we held that AS 47.10.080(b)(1) was controlling over AS 47.10.060(d) because AS 47.10.080(b)(1) reflected "a 1970 legislative decision intended to reduce the age of majority in a great number of matters concerning minors . . . [while] AS 47.10.060(d) . . . was not similarly changed apparently through oversight."[5] Following our decision in *P. H.*, the legislature amended both statutes in 1977. The recent amendments show that it is the legislature's intent that age twenty is the age to be used in determining the amenability issue. The former inconsistency between the two statutes has been eliminated in that AS 47.10.060(d) provides that the determinative age is twenty and AS 47.10.080(b)(1) provides that the maximum limitation of confinement of minors is twenty.

Furthermore, in our recent opinion, *In re J. H. B., Jr.*, 578 P.2d 146, 149 (Alaska 1978), we relied upon amended AS 47.10.060(d) as the source for determining the issue of unamenability. Thus, we no longer followed our former cases[6] which used nineteen as the determinative age under the earlier statutes. The superior court did not err in using age twenty as the determinative age.

II. THE MINOR'S CONSENT

[2] In determining the amenability of F.S., the court considered the consent of F.S., endorsed by his counsel and his guardian, to an additional one-year period of supervision past age nineteen. AS 47.10.080(b)(1) provides in pertinent part:

> . . . the department [of health and social services] may petition for and the court may grant in a hearing . . . an additional one year period of supervision past age 19 if continued supervision

4. AS 47.10.080(b)(1) provides:

> (b) If the court finds that the minor is delinquent, it shall
>
> (1) order the minor committed to the Department of Health and Social Services for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under sec. 200 of this chapter;
>
> . . . .

5. *P. H. v. State*, 504 P.2d at 846 n.34. *See also* Walsh, "*An Analysis of the Jurisdictional Waiver Procedure in the Juvenile Courts*," 5 UCLA-Alaska L.Rev. 152, 174 n.132 (1975).

6. *See D. H. v. State*, 561 P.2d 294, 298 (Alaska 1977); *P. H. v. State*, 504 P.2d 837, 846 n.34 (Alaska 1972).

> is in the best interests of the person and the person consents to it; . . .

The state contends that the lower court erred in considering this purported consent because: (1) the minor could withdraw his consent and (2) even assuming the minor's consent could not be withdrawn, the statute requires that the department petition the court and that additional commitment be in the minor's best interests before the court has jurisdiction to order the additional one-year period.

This is an issue of first impression in Alaska. The Washington Supreme Court, in *In re Harbert*, 85 Wash.2d 719, 538 P.2d 1212 (1975), considered a similar issue. A Washington statute[7] permits the juvenile court to extend its jurisdiction beyond the usual age of eighteen to twenty-one in certain cases when the juvenile gives his consent. At the time of the amenability hearing, the minor, age seventeen, gave written consent for such an extension. The *Harbert* court held:

> Such consent is of no value. Because of his minority, appellant could repudiate it upon reaching majority. Furthermore, jurisdiction cannot be conferred by consent or agreement.

538 P.2d at 1216. We find the reasoning of the *Harbert* court persuasive as to the consent of F.S. to continued supervision by the Department of Health and Social Services. Furthermore, AS 47.10.080(b)(1) requires that the department petition for an additional one-year period of supervision and that continued supervision be in the best interests of the minor before the court may order an additional year. Thus, the minor's prospective consent is not a material factor unless the other two conditions of the statute are fulfilled.

The statute contemplates that the decision to extend the period of supervision be made after the initial dispositional hearing. To give effect to advance consent would thus be contrary to the apparent intent of the legislature. We believe that the superior court erred in the weight it gave the consent of F.S. to an additional year of supervision.

III. THE STANDARD OF PROOF

[3] Judge Stewart stated in his memorandum decision:

> The appropriate standard of proof appears to be that the state must show by clear and convincing evidence the probability that the minor is unamenable to treatment before reaching the age of 20.

The state contends that the proper standard of proof is the "preponderance of the evidence" standard. We agree.

This is also a matter of first impression. Our previous decisions have indicated, however, that the burden of persuasion on the state is not light. For instance, in *P. H. v. State*, 504 P.2d at 845, we stated:

> The statutory framework for dealing with child offenders contemplates that non-criminal treatment is to be the rule and adult criminal disposition the exception.

Nevertheless, our review of the relevant authorities and the statutory language convinces us that the proper standard is the "preponderance of the evidence" standard. Such a standard will still insure that criminal disposition is the exception.

Cases examined as a result of our independent research are uniform in holding that the proper standard is the preponderance of evidence.[8] F.S. cites no contrary authority. The courts have given three reasons for applying this standard. First, a remand proceeding is not criminal in nature. Second, it is not adjudicatory, but dispositional. Third, the standard of proof generally in juvenile proceedings is the preponderance of competent evidence except in the adjudicative phase. Moreover, the re-

7. See Chapter 170, Laws of 1975, 1st Ex.Sess.

8. *See Imel v. State*, 342 N.E.2d 897, 900 (Ind.App.1976); *In re Appeal No. 646(76) From Cir. Ct., Etc.*, 35 Md.App. 94, 369 A.2d 150, 152 (1977); *In re Myles*, 269 Md. 649, 309 A.2d 289, 293 (1973). *In re Lerma*, 29 Or.App. 713, 564 P.2d 1100, 1101 (1977); *State v. Layne*, 546 S.W.2d 220, 224 (Tex.App.1976); *In re P. B. C.*, 538 S.W.2d 448, 453 (Tex.Civ.App.1976).

mand proceeding does not result in any determination of guilt or innocence or in any confinement or punishment. We find this reasoning persuasive.

The wording of AS 47.10.060 also indicates that the preponderance of the evidence standard is the proper standard.

> (d) A minor is unamenable to treatment under this chapter if he *probably* cannot be rehabilitated by treatment under this chapter before he reaches 20 years of age. [emphasis added]

"Probable" means "having more evidence for than against."[9] "Preponderance of the evidence" has the same connotation.[10] Thus, the superior court imposed the wrong burden of proof upon the state.

[4] We conclude that the superior court, in requiring the state to prove by clear and convincing evidence that said minor was unamenable to treatment, erred. Nevertheless, in the context of this case, the error was harmless.[11] The superior court found:

> From this analysis I conclude not only that the state failed to prove that F.S. is unamenable to treatment before reaching the age of 20 years, but that it has been clearly shown on behalf of the minor that he is so amenable.

Thus, even under the preponderance of the evidence standard, the superior court would have concluded that the state failed to meet its burden of proof.

IV. THE EXCLUSION OF EVIDENCE THAT F.S. HAD COMMITTED PREVIOUS SEXUAL ASSAULTS

At the waiver hearing, the state sought to introduce the testimony of three witnesses[12] that F.S. had committed previous sexual assaults. The police reports and the state's offer of proof indicate that if allowed to testify, they would have testified as follows. First, Carol Weston would state that approximately one and a half years before the murder[13] she observed, as she approached the end of the alley near her house at 3:30 a. m., F.S. walking away from her four year old sister; that she asked her sister what he wanted and her sister stated that he wanted her to go down the alley; that she ran up to F.S. and asked him why but he did not reply; and that she told him to stay away from her sister. Second, V.R., who "went with" F.S. for about a year, would testify that one time F.S. invited her to his house under the pretense that F.S.'s sister, who was V.R.'s friend, was home; that when she arrived she found no one else besides F.S. present; that sometime during her visit, F.S. forcibly threw her down on a bed and attempted to rape her, but she managed to ward him off;[14] and that she first told her high school counselor about this incident just after G.G.'s death. Third, C.S., F.S.'s sister, would relate that on one occasion, when she was in her bedroom wearing a robe and underwear, F.S. came into her room and tried to remove her underwear; that she struggled and he eventually left;[15] and that in her opinion, F.S. had an unusual obsession with sex.

The state maintained that this testimony was relevant to show the minor's character and one of the requirements of AS 47.10.060(d)—the minor's history of delinquency. The superior court refused to admit the testimony because it was collateral and "evidence of other crimes, wrongs, or acts is not admissible to prove the character of a

9. Webster's New International Dictionary (2d ed. unabrid. 1960) at 1971.

10. Black's Law Dictionary (4th ed. 1951) at 1344–45.

11. *See Love v. State*, 457 P.2d 622, 631 (Alaska 1969).

12. Two witnesses, C.S. and V.R., are juvenile females.

13. The police report states that this incident took place a year and a half before the murder. The district attorney in his offer of proof stated that the incident occurred in the spring of 1977, which was approximately ten months before the murder.

14. Apparently, this incident took place sometime during the spring or summer of 1977.

15. The district attorney believed that this action occurred in the spring or summer of 1977.

person in order to show that he acted in conformity therewith." [16]

In *P. H. v. State*, 504 P.2d at 843 n. 15, we spoke about the rules of evidence in a waiver hearing.

> Children's Rule 3(e) provides in part: [T]he provisions of these rules concerning . . . admissibility of evidence for the adjudicative phase of child hearings shall be applicable to [a waiver] hearing.

In a context not involving a children's case, we have stated that:

> The court may exclude relevant evidence if it finds that its probative value is outweighed by the risk that it will have prejudicial effect on the jury, confuse the issues, or mislead the jury. . . . The court must balance the probative worth against those countervailing harms.

Burgess Construction Co. v. Hancock, 514 P.2d 236, 237 (Alaska 1973) (citations omitted).[17]

[5, 6] While the proffered testimony was relevant to the amenability issue, we do not find that the superior court abused its discretion in excluding it because its prejudicial impact outweighed its probative value.[18] As to Ms. Weston's testimony, its probative value was minimal since she did not see anything remotely criminal. While V.R.'s statements were of some probative value, the trial court could have properly concluded that their value was diminished due to the fact that V.R. did not report the incident, assuming that it occurred,[19] for over approximately ten months and that the report was made during the period of high emotion following the discovery of G.G.'s body. Moreover, the police reports and the state's offer of proof indicate that V.R. and F.S. were "going together" at the time of the alleged incident and thus, F.S.'s behavior could be attributable to normal adolescent sexual activity. Similarly, F.S.'s one-time attempt to disrobe his sister could also be attributed to the sexual adolescent development of a sixteen-year-old male and does not evidence a pattern of sexual deviation. Further, we note that a description of these three incidents was contained in the police reports and they were referred to in the reports prepared by the various psychiatrists, all of which were admitted into evidence.[20] Thus, any testimony concerning these incidents would have been merely cumulative. The trial court has wide discretion in this area, and we find no abuse here.[21]

V. THE DENIAL OF WAIVER

The trial court denied the state's motion for waiver of juvenile jurisdiction stating that "it has been clearly shown on behalf of the minor that he is . . . amenable" to treatment. The state submits that the trial court committed error in failing to waive jurisdiction. Although this is a close

16. *See* Federal Rule of Evidence 404(b); Proposed Alaska Rule of Evidence 404(b).

17. *See* Federal Rule of Evidence 403; Proposed Alaska Rule of Evidence 403.

18. The standard of review for determining whether a trial court erred in excluding relevant evidence because of its prejudicial impact is the abuse of discretion standard. *See Smith v. Spina*, 477 F.2d 1140, 1146 (3rd Cir. 1973); *United States v. Ravich*, 421 F.2d 1196, 1204–05 (2d Cir.), *cert. denied*, 400 U.S. 834, 91 S.Ct. 69, 27 L.Ed.2d 66 (1970); *Bowers v. Garfield*, 382 F.Supp. 503, 509 (E.D.Pa.), *aff'd*, 503 F.2d 1396 (3rd Cir. 1974).

19. F.S.'s counsel stated that if V.R. testified F.S. would deny that he attempted to rape her.

20. The police report was contained in the packet of information sent to various institutions by the state, which was admitted into evidence.

21. The state's reliance on *D. H. v. State*, 561 P.2d 294, 297 (Alaska 1977), is misplaced. There, we held that the trial court did not err in allowing a police officer to testify as to D.H.'s admission that he had planned additional crimes in the future. The present situation is not analogous. Moreover, even assuming these situations were analogous, because we ruled in one case that a trial court did not abuse its discretion in admitting evidence, it does not follow that in another similar case, a trial court would have abused its discretion in excluding similar evidence. Given the deference we accord to a trial court's evidentiary rulings, we cannot say that the judge here committed error in excluding the proffered testimony.

question, we find that the trial court did abuse its discretion in denying the waiver.

[7] In making the amenability determination, the legislature has provided in AS 47.10.060(d) that:

> . . . the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

We have previously stated that the trial court must make an evidentiary record and make written findings of fact, as required by Children's Rule 3(h),[22] as to each of these four factors enunciated by the legislature.[23] These findings must be supported by substantial evidence.[24] Based on these findings, the trial court, within its sound discretion, must make a decision as to the minor's amenability to treatment.[25]

[8] Our independent review of the record shows that the matter was presented with unusual completeness[26] and that the judge gave careful consideration to the factors mentioned in AS 47.10.060(d). We hold that the trial court's findings of fact that "there is of course no doubt at all about the seriousness of the offense;" that the probable cause of F.S.'s delinquent behavior was "an adolescent adjustment reaction stemming in large measure from the rigidly authoritarian tendencies of his father in relationship to the boy;" and that the state could provide adequate facilities to treat F.S., is supported by substantial evidence.

[9] On the other hand, we hold that the judge's finding of fact that "F.S. [was not] a seriously delinquent juvenile" is not supported by substantial evidence.[27] In our opinion, F.S. is a seriously delinquent juvenile. F.S.'s juvenile record demonstrates that F.S. has a long history of antisocial behavior and delinquent conduct.[28] Prior to

22. Children's Rule 3(h) specifies:

> (h) The order closing the case must be accompanied by written findings of fact clearly demonstrating that:
>
> (1) The court made full inquiry into the allegations of the petition,
>
> (2) The question of waiver of children's proceedings and of closing the children's case were given careful consideration by the court, and
>
> (3) All statutory conditions for waiver of child proceedings and closing the case were established.

23. *See In re J. H. B., Jr.*, 578 P.2d 146, 149 (Alaska 1978); *P. H. v. State*, 504 P.2d 837, 845-46 (Alaska 1972).

24. *See D. H. v. State*, 561 P.2d at 298.

25. *See P. H. v. State*, 504 P.2d at 845, holding that "the amenability decision rests in the sound discretion of the children's court judge."

26. The trial court relied upon the large amount of psychiatric evidence. Dr. C. Glenn Clement's psychiatric evaluation states: "I would see him [F.S.] as quite amenable to psychotherapy and to rehabilitation." Theodore R. Sterling, a clinical psychologist, saw F.S. "as amenable to therapy of an intense nature." Dr. Livingston of the Alaska Psychiatric Institute "felt that the minor can potentially be rehabilitated by treatment under AS 47.10 before he reaches the age of 20 years." Dr. E. J. Johnson concluded that "[i]f an appropriate treatment program can be found which will accept the minor then I would have to say that he *is* potentially treatable before he reaches his twentieth birthday." On the other hand, Dr. Irvin A. Rothrock of the Fairbanks Psychiatric and Psychological Clinic concluded that "his treatment would extend over a period of at least three to five years and that the probability of successful treatment would not be high." The psychological evaluation by C. Friar, a psychologist, stated that "one cannot predict at this point [the] length of treatment needed nor [the] possible effectiveness of treatment." Additionally, the trial court received a large volume of conflicting evidence concerning the availability of treatment facilities for F.S.

27. In *Interior Paint Co. v. Rodgers*, 522 P.2d 164, 170 (Alaska 1974) (footnotes omitted), we stated:

> Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . ." [I]t is not the function of the court to reweigh the evidence or choose between competing inferences, but only to determine whether such evidence exists.

28. F.S.'s juvenile record is:

November 1973 . .	Larceny from a Vessel, AS 11.20.150
July 1975	Receiving and Concealing Stolen Property, AS 11.20.350
July 1977	Burglary Not in a Dwelling, AS 11.20.100

the offenses committed in 1977, F.S. had twice been on probation. He participated actively in probation counselling, yet he has continued to commit serious felony offenses. According to the probation report prepared for the offenses committed in August 1977, F.S. demonstrated a lack of concern for court orders and instructions from the probation officers, had a very casual attitude and virtually no remorse regarding his present or past offenses, and had made little effort for finding employment to pay restitution for property stolen. Throughout the period of time from September 1977 until the death of G.G., F.S. was continually brought before the court. Moreover, the offenses of December and January were committed while F.S. was awaiting disposition on the previous offenses. Based on our review of the entire record, we are left with a definite and firm conviction that the trial court made a mistake in finding that F.S. was not seriously delinquent.

We are now faced with the difficult problem of deciding whether the trial court abused its discretion in concluding that F.S. was amenable to treatment as a juvenile and in denying the state's motion for waiver of juvenile jurisdiction. Our own research indicates that this is a unique issue. Although many reviewing courts have affirmed a trial court's determination that a juvenile charged with murder was not amenable to the juvenile process,[29] no case was found where a reviewing court either reversed or affirmed a lower court's ruling that a sixteen- or seventeen-year-old charged with murder was amenable to juvenile treatment. Neither party cited such a case.

[10, 11] We are convinced, on a review of the whole record, that the trial court's conclusion that the minor was amenable to treatment was an abuse of discretion.[30] Several reasons support our reversal of the trial court's determination. First, as noted in Section II, the trial court erroneously considered the minor's consent to an additional year of supervision. In making our determination, we refuse to consider this consent. Second, as we stated above, we found that the trial court's finding of fact that the minor was not seriously delinquent was clearly erroneous. Thus, this factor weighs in favor of a conclusion that the minor is not amenable to treatment. Moreover, the present offense resulted in the loss of human life and is of a most heinous nature. Further, the minor is presently over seventeen and a half years old, leaving but a short time for treatment. What we said in *P. H. v. State*, 504 P.2d at 846, is appropriate here.

> The peculiar facts of this case indicating very serious antisocial behavior and the inability to predicate a plan for the defendant during the short time remaining before [his] nineteenth birthday coupled with the obvious need of treatment as disclosed by the record, are sufficient to justify a waiver to adult jurisdiction. [footnote omitted]

July 1977	Burglary Not in a Dwelling, AS 11.20.100
August 1977	Burglary Not in a Dwelling, AS 11.20.100
August 1977	Burglary Not in a Dwelling, AS 11.20.100
September 1977 ..	Burglary in a Dwelling, AS 11.20.080
December 1977 ..	Burglary in a Dwelling, AS 11.20.080
December 1977 ..	Malicious Destruction of Property, AS 11.20.515; Petty Larceny, AS 11.20.140

29. *See In re Maricopa County*, Juvenile Action No. J-72504, 18 Ariz.App. 560, 504 P.2d 501, 503-04 (1972); *Stanley v. State*, 248 Ark. 787, 454 S.W.2d 72, 76 (1970); *People v. Curry*, 31 Ill.App.3d 1027, 335 N.E.2d 515, 517 (1975); *State v. Green*, 218 Kan. 438, 544 P.2d 356, 363 (1975); *State v. Doyal*, 59 N.M. 454, 286 P.2d 306, 312 (1955); *Berryhill v. State*, 568 P.2d 1306, 1310 (Okl.Cr.1977); *Bias v. State*, 561 P.2d 523, 528 (Okl.Cr.1977); *In re Lemna*, 29 Or.App. 713, 564 P.2d 1100 (1977); *In re Burtts*, 12 Wash.App. 564, 530 P.2d 709, 717 (1975).

30. A trial court abuses its discretion "only if we were left with the definite and firm conviction on the whole record that the judge had made a mistake . . . ." *Alaska Placer Co. v. Lee*, 502 P.2d 128, 132 (Alaska 1972) (footnote omitted), *quoting, Gravel v. Alaskan Village, Inc.*, 423 P.2d 273, 277 (Alaska 1967).

We conclude that the trial court erred in finding that F.S. was amenable to treatment and in denying the state's motion for waiver of juvenile jurisdiction.

The case is reversed and remanded for further proceedings not inconsistent with this opinion. We add one further comment. If F.S. is convicted of first degree murder, he will be sentenced as an adult. Nothing in this opinion is meant to imply that any sentence which F.S. may be given should deny him the rehabilitative treatment that he so obviously needs.

REVERSED and REMANDED.

RABINOWITZ, Justice, concurring in part, dissenting in part.

I respectfully dissent from the majority's holding that the superior court erred in its ruling that the minor was amenable to treatment as a juvenile. My review of the entire record has not left me with a definite and firm conviction that the superior court committed an abuse of discretion in reaching its conclusion that F.S. was amenable to treatment as a juvenile and in denying the state's motion for waiver of juvenile jurisdiction.

Study of the record demonstrates that the superior court, in reaching its amenability determination, carefully considered the evidence and scrupulously applied the criteria set forth in AS 47.10.060(d), as well as our interpretation of this statute found in *P. H. v. State*, 504 P.2d 837 (Alaska 1972).[1] Admittedly, the facts of the instant offense are horrifying. However, absent a legislative change in Alaska's juvenile code, the question of whether juvenile jurisdiction over the minor should be waived is committed to the sound discretion of the superior court.[2]

1. *See also Matter of H. B.*, 578 P.2d 146 (Alaska 1978); *D. H. v. State*, 561 P.2d 294 (Alaska 1977).

Joe ROSS, Appellant,

v.

STATE of Alaska, Appellee.

No. 3429.

Supreme Court of Alaska.

Nov. 17, 1978.

Defendant was convicted before the Superior Court, Fourth Judicial District, James R. Blair, J., of possession of heroin, and he appealed. The Supreme Court, Matthews, J., held that evidence was sufficient to support conviction of defendant who lived at residence which was regularly visited by several heroin addicts and who, when police entered residence pursuant to search warrant, was asleep on couch under which was found cache of heroin with retail value estimated at between $2,000 and $3,000.

Affirmed.

Drugs and Narcotics ⇐117

In prosecution for possession of heroin brought against defendant who lived at residence which was regularly visited by several heroin addicts and who, when police entered residence pursuant to search warrant, was asleep on couch under which was found cache of heroin with retail value estimated at between $2,000 and $3,000, evidence was sufficient to support defendant's conviction.

Mark E. Ashburn, Asst. Public Defender, Fairbanks, Brian Shortell, Public Defender, Anchorage, for appellant.

Thomas M. Jahnke, Asst. Dist. Atty., Fairbanks, and Harry L. Davis, Dist. Atty., Fairbanks and Avrum M. Gross, Atty. Gen., Juneau, for appellee.

2. In all other respects, I concur in the court's various holdings.

Shewey case spurs judicial reform group

MAY 8 1979

By JIM MOORE
Daily News Staff Writer

On Jan. 31, 1978, a 9-year-old girl named Gloria Green was killed in the woods near Houghtaling Elementary School. The convicted murderer was Fred Shewey Jr., an 18 year old who late in March was sentenced to serve 15 years, the minimum sentence allowed under the law, with five years suspended on condition that he violate no federal, state or local laws.

He is eligible for parole in one-third of his sentence which is three and one-third years. He is credited with the time that he has already spent. He, therefore, is eligible for parole in about two years.

It is now a familiar case with everyone. The majority of persons writing to the Daily News was appalled at the light sentence that Judge Thomas Stewart handed down.

Thirty-five people are so unhappy that they have formed a group called the Alaska Committee for Judicial Reform, which will hold its next meeting this Friday night at 7:30 at the Lutheran Church. Because of double jeopardy laws, Shewey's sentence cannot be increased, but the group has another reason for its formation.

Bill Temple, committee member and former policeman who was one of the arresting officers in the Shewey case, explained, "Our objective is to make the public aware of the light sentencing in this case. Because of public apathy, things have been allowed to progress like this. Without public awareness, the judges will continue to make these rotten decisions.

'...judges will continue to make these rotten decisions.'

We organized the committee with the purpose of being a watchdog. We will keep an eye on the courts and make the public aware of what is going on."

Temple is also concerned that often the rights of the victim may be forgotten. "This is the basic problem of the judicial system. The criminal is let off so easily because of his rights. We argue about what rights he (criminal) has and the victim's rights are forgotten."

Temple points out that these "rotten" decisions affect more than just the victim's family. "These decisions affect us daily. Even when the case is over, the decision will hang on. It sets a precedent. Judges will refer to it in case law time and time again."

The case that Temple is most upset about right now is the Shewey case. He cites many facts about the case that disturb him.

He is unhappy about the two judges, Thomas Schulz and Thomas Stewart, that were used in the case. "They were like a tag-team wrestling match," Temple said.

Judge Schulz was first involved with the case but was later preempted by defense attorney Harold Brown. Brown could not make a choice of judges after preempting Schulz but according to Temple, Stewart agreed to assign himself to the case if Schulz was preempted.

Stewart is more lenient toward juveniles than Schulz, said Temple.

Stewart came in at the start of a hearing on whether Shewey should be tried as an adult or a juvenile. He denied a waiver of Shewey into adult court, commenting, according to Temple, that he had never waived a juvenile into adult court and this is not the appropriate time to begin.

The Supreme Court disagreed and ruled that Shewey be tried as an adult.

Schulz then came back to sit in on the evidentiary hearing, where he promptly ruled out two of the three confessions of guilt by Shewey.

'Steward referred to Shewey as a child during the sentencing hearing.'

Temple said he just received flimsy justification as to why Schulz returned for the evidentiary hearing.

Then, through a stipulation between Larry Weeks, district attorney, and Brown, Stewart was reassigned to the case for the sentencing hearing.

"I think Weeks was completely wrong for doing this. He sold out," Temple said.

Temple said he thinks this was the major problem with the case. "Stewart was still looking at Shewey as a juvenile. He was going directly against the Supreme Court's decision," Temple stated.

He added that Stewart referred to Shewey as a child during the sentencing hearing.

One confession of guilt by Shewey was obtained at Ketchikan High School and the others in the police station. The second confession was made after Shewey's father, Fred Shewey Sr., gave permission to police to question his son. The third was made when Detective Tom Varnell and Temple talked to Shewey later after he had talked with an attorney and refused his services.

Judge Schulz ruled out the last two confessions because an attorney was not present.

Temple gets particularly enraged with Stewart concerning Shewey's prior record. Shewey was found guilty of five felonies, all burglaries, as a juvenile.

Stewart said, "In terms of a prior record, obviously you had one, but it was not one which involved assaultive conduct or physical harm to others."

He added, "The worst type of offender, in my judgment, is a person who lives a habitually criminal life and worst of all are those people who murder for hire and plan premeditated ways, and that I don't believe occurred here.

Concerning the habitually criminal life, Temple said, "After five felonies and a murder, what is he?"

Other things irked Temple after the hearing. Letters about the sentencing were written to Stewart by concerned citizens. Temple showed the Daily News two letters from Stewart to different people that were exactly alike.

"Concerned people write to him about the hearing and, all he has time for are form letters," Temple said.

In addition, Temple apparently had a hard time obtaining a transcript from the sentencing hearing, commenting that Stewart made it uneconomically feasible to get it.

Mainly because of Stewart's actions in the Shewey trial, the Alaska Committee for Judicial Reform has circulated petitions asking for the Alaska Judicial Council to review Stewart's actions in the hearing. Also, the committee is pushing for Stewart's recall.

In addition, Temple said he wants to lay to rest a common belief by the people in Ketchikan. "People have been led to believe that this is a nice, sleepy little fishing village—hogwash!" Temple said.

Temple cites many cases of Ketchikan youths who go on to commit more serious crimes after getting off lightly during their early years as criminals. He said there are a number of cases in Ketchikan where "local boys make good."

A case in point is that of Walter James Nielsen. From 1965 to 1975, Nielsen was arrested for a number of crimes including armed robbery, assault with the intent to kill,

'...sleepy little fishing village—hogwash!'

kidnapping, stabbing or cutting with the intent to wound and two counts for assault with a dangerous weapon.

He served 13 months for armed robbery and was dismissed for the assault with intent to kill charge. For the first conviction of assault with a dangerous weapon, he served three years and for the kidnapping and stabbing or cutting with the intent to wound he got 20 years suspended and five years probation. Then, in September of 1975 he got four years for assault with a dangerous weapon.

Early this year, he was released on parole with one of the conditions being that he not consume alcohol. He was later picked up after he had been drinking.

The parole officer filed a petition to revoke the parole. Pending the parole hearing, Nielsen was out on a work release. Two days before the hearing, he left Ketchikan.

Two months ago, Nielsen, 31, was arrested in Fairbanks and charged with second degree murder for two killings.

Temple is tired of the "hand slapping" that juveniles are getting for their punishment. "Juvenile criminals have to be treated like criminals. It's up to the judges to protect us, and they're damn sure not doing it."

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Name of the suspect was not revealed because he is a juvenile. A judge may decide to prosecute a juvenile accused of a felony as an adult, in which case his name would be released.

The girl's body was found shortly before midnight in brush along Baranof Avenue near her school. She had been the subject of a evening-long search after being reported missing about 5:45 p.m. Tuesday.

Dorothy Greene, an employee of Ketchikan General Hospital, reported her daughter missing when the girl failed to reach home after school.

Searchers, including members of the Ketchikan Volunteer Rescue Squad, Explorer Scouts, firefighters and police, found the body about 11:45 p.m. between Houghtaling Elementary on Baranof Avenue and Holy Name School down the street on Jackson Street.

District Attorney Geoffrey Currall met with reporters at 10 a.m. and gave a brief statement but at that time would not definitely label the girl's death as murder.

However, Principal Tom Cusack and teachers at Houghtaling told students the girl was killed by someone "wanting to hurt her."

Houghtaling and other elementary school officials stationed extra teachers outdoors and warned pupils to avoid wooded areas and to walk in groups.

Currall gave no details of the girl's death. His statement in part was:

"Gloria Greene, nine years old, was discovered shortly before midnight in some woods near Houghtaling School. "She was dead.

"The circumstances of her death indicate this was a homicide. An autopsy has been ordered."

He said the investigation was being headed by detectives Leighton and Tom Varnell, but Currall said investigators have been told to make no comments on the case.

Currall said he might make another announcement on the case Friday morning if he received a report on the autopsy by then.

Early this afternoon Currall confirmed the arrest but said he had no details.

"I just now stepped out of the grand jury room. You probably know more about it than I do."

Currall had been up all night working on the disappearance and this morning had to present grand jury evidence in other, unrelated cases.

Gloria was born July 14, 1968, in Rutland, Vermont. She entered Ketchikan schools at Houghtaling in September, 1976, after transferring from Bennington, Vermont. Her family's home address is 1733 Second Ave.

Mrs. Greene told authorities during the search the girl was wearing an orange parka and blue trousers. Her usual route from school was Carlanna and Tongass Avenue.

Judicial reform group looking at change of judge

MAY 15 1979

By JIM MOORE
Daily News Staff Writer

The changing of judges during the Fred Shewey Jr. murder case may be illegal and could possibly lead to a mistrial, according to Bill Temple, a spokesman for the Alaska Committee for Judicial Reform, which held a meeting Friday in the Lutheran Church.

Judge Thomas Schulz began the case and Judge Thomas Stewart finished the case with the sentencing hearing. In between, Stewart sat in on the hearing of whether Shewey should be tried as a juvenile and Schulz was at the bench during the evidentiary hearing.

Legal counsel has said there is a good strong possibility that the judge changing was illegal, Temple said. This is one last facet of the Shewey case that the committee is looking into.

Primarily, the committee is interested in "preventing this kind of thing from happening again," Temple said.

Light sentencing and school safety improvements were also discussed at the meeting.

Temple cited a case from Mark Wheeler, an artist in Ketchikan, who had just returned from Singapore. A murder occurred in Singapore and two days later, the killer was beheaded.

Temple said he doesn't advocate that type of treatment but said, "Stiff sentencing is a definite crime deterrent. If you know what's going to happen to you, you don't commit the crime."

A school safety improvement that the committee would like to see is the use of safety patrols at intersections. Roxanne Green, chairman of the committee, said the school board is in support of having patrols in busy parts of town and around the schools.

In addition, Ms. Green is trying to arrange a helping hands project through the newly formed P.T.A. Children would draw hands which would then be placed in windows in houses around the schools. Students would then know where to go for safety if problems arise.

Ketchikan Daily News

KETCHIKAN, ALASKA, WEDNESDAY, FEBRUARY 1, 1978

...tson answers road impact ...

...not disqualify the (2.1 million acre Misty Fiords) area from wilderness classification but would actually enhance the use and enjoyment of the wilderness as the road could be converted to into an excellent trail," said Ketchikan forest supervisor Jim Watson, who granted the special-use road permit to U.S. Borax and Chemical Corp. on November 4.

The road is scheduled to be built from saltwater to a proposed molybdenum bulk sampling plant about 45 miles east of Ketchikan.

Sandor will decide whether arguments against the road are sufficient to uphold an appeal of the road permit.

Watson prepared a 37-page response to arguments against the road, primarily from conservation and fishing groups who said an environmental impact statement for the project does not comply with the National Environmental Policy Act, that it goes against Carter administration principles, that it is based upon an overly restrictive interpretation of the Forest Service's legal authority under the Wilderness Act.

"There is no reason to suggest that the road will adversely affect king salmon, or any other salmon for that matter, to the extent that they might become extinct.

"Having the road there would facilitate management of that resource ... because easy access would exist for needed machinery to do stream improvement work such as debris removal and construction of rearing pools," Watson said.

Work by a team of fish biologists and watershed specialists "has determined that the road will not occupy any of the river channel of either Keta River or Hill Creek. The problem of bridge 'wipe outs' refers to one bridge, not several, that might result from snow avalanche, not flooding," he said.

The Forest Service has stated that a second environmental impact statement would "be required covering the mining project and related activities, should it be proposed. "An en-...

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"Gloria Greene, nine years old, was discovered shortly before midnight in some woods near Houghtaling School. "She was dead.

"The circumstances of her death indicate this was a homicide. An autopsy has been ordered."

He said the investigation was being headed by detectives Leighton and Tom Varnell, but Currall said investigators have been told to make no comments on the case.

Currall said he might make another announcement on the case Friday morning if he received a report on the autopsy by then.

Early this afternoon Currall confirmed the arrest but said he ...

Greene girl was smothered, pathologist rules; accused youth is detained after hearing today

9-year-old Christa Greene was smothered, a state pathologist has ruled, but the name of a teenager accused in the crime has not yet been released, District Attorney Geoffrey Currall said today.

Currall said that at this time authorities are seeking no other suspects in the death of the Houghtaling Elementary School fourth grader, whose body was found Tuesday night near her school.

The Ketchikan youth was ordered detained this afternoon following a hearing today on whether there was probable cause to continue to hold him in custody. The closed hearing got underway at 10:30 a.m. today and ended shortly after noon. The district attorney's office said the youth was detained, but gave no details of the hearing.

Currall, in a 10 a.m. press conference with newspaper and radio reporters, said he is under strict court orders about what he can and cannot say in public.

He revealed little new information about the case, but gave reporters a rundown of juvenile court proceedings.

Currall said he has filed a motion with Superior Court Judge Thomas Schulz asking that the case be transferred to adult court. He expects a ruling on the motion sometime after next week.

The 17-year-old was arrested by city police and has been charged with first degree murder. He remains in custody.

Highlights of Currall's statements were that a state pathologist ruled, following an autopsy in Anchorage, that the "medical cause of death was asphyxia by smothering," Currall said.

He would not say if there were other obvious physical injuries, but said that "rumors" of "dismemberment and mutilation" are false.

He said the suspect is a Ketchikan youth who was arrested Wednesday by city police. Currall said investigation is continuing but that police are "not at the present time seeking other suspects."

If the case is not moved to adult court, all proceedings will continue in juvenile court. In that case all proceedings will be closed to the press and the public under state law, Currall said.

This morning's hearing was to determine if there is probable cause that a crime was committed and if there is probable cause that the youth was involved, Currall said. This morning's hearing is called a detention hearing.

If the judge rules, following a waiver hearing, to handle the case in adult court, all proceedings will be open and the defendent will be treated as an adult, even for sentencing.

If found guilty as a juvenile the defendent would be subject to a maximum jail sentence of two years or until his 19th birthday, "without his consent."

If found guilty as an adult he would be subject to sentencing as an adult, Currall said.

The determing factor in the judge's decision whether to try the defendent as an adult or a juvenile is "whether the juvenile is amenable to treatment within the time limits" of his sentencing, Curral said.

He said the term "amenable to treatment" is a gray area of the law that has not been well defined.

If the juvenile is found to be amenable, the case will be retained in juvenile court.

Following today's hearing, the defendant, if treated as a juvenile, will have an "adjudicatory hearing," which is the equivalent to a trial, Currall said. Following that hearing if he is found guilty he will have a "disposition" hearing at which he will be sentenced.

Friday in Superior Court

Frederick A. Shewey Jr., 18, who pleaded guilty to a charge of second-degree murder, will be sentenced Friday, 1:30 p.m., in State Superior Court in Ketchikan.

Charges of felony murder and attempted rape were dismissed.

Shewey was arrested Feb. 1, a day after the body of Gloria Greene, 9, was found in a bushy area near Houghtaling Elementary School. Greene, a fourth grader at Houghtaling, had been smothered.

Judge Thomas Stewart had ruled that Shewey could not be tried as an adult, but that decision was reversed on June 16 by the Alaska Supreme Court.

Shewey was 17 when he was charged.

hewey ntenced

Frederick A. Shewey Jr., 18, told Judge Thomas Stewart that he was sorry, and that no matter how the sentencing turned out he was going to cure himself.

"I'm going to change my whole lifestyle," he told the judge before he was sentenced Friday in Superior Court in Ketchikan for the murder of Gloria Greene, 9.

Shewey was sentenced to serve 15 years, the minimum sentence allowed under the law, with five years suspended on condition that he violate no federal, state, or local laws.

Shewey had pleaded guilty to a charge of second-degree murder. Charges of first-degree murder, felony murder, attempted rape and kidnapping were dropped.

Greene's body was found Jan. 31 near Houghtaling School, where she attended fourth grade. Shewey was arrested the following day and charged with her suffocation death.

Judge Stewart's sentence asks the division of corrections to supply Shewey with psychological help in a suitable program.

Shewey was given credit for the 14 months he has served, so he will be eligible for parole in about two years. "The chance for parole is there," Stewart told Shewey, "the likelihood at least in a large measure is up to you."

John Borbridge told the Daily News [illegible] if HR 39 is enacted it would [illegible]

[illegible]vealed:

in custody on murder charge

[illegible] Tuesday evening after her mother, Dorothy Greene, of 1733 Second Avenue reported to police at 5:45 p.m. that Gloria had not come home from school. The child was a fourth grade pupil at Houghtaling Elementary School.

City police, Alaska State Troopers, fire department personnel, members of the Ketchikan Volunteer Rescue Squad and of the Explorer Scouts joined in the search. The child's body was found about 11:45 p.m. Tuesday at a location across Baranof Avenue from Houghtaling School.

Gloria was born in Rutland, Vermont, July 14, 1968. Her mother, Dorothy Greene, is a licensed practical nurse at Island View Manor. The family moved here from Vermont a year and a half ago.

An autopsy was ordered to determine the cause of the child's death. District Attorney Geoffrey Currall said he probably will have a report from the autopsy Friday morning.

Currall and city police detective Ronald Leighton, who conducted the investigation, declined to comment on circumstances that led to the arrest of the 17-year-old murder suspect. He was arraigned before Superior Court Judge Thomas E. Schulz about 4 p.m. Wednesday.

[illegible] maintain precautions despite arrest

[illegible] school today continued safety [illegible] the murder of a Houghtaling [illegible] grader Tuesday.

[illegible] Cusack said the precautions [illegible] notice" despite the arrest of [illegible] been charged with first degree

[illegible] precautions and will maintain [illegible] someone is apprehended, [illegible] is over. Besides these [illegible] for kids to learn anyway,"

[illegible] public and some of its private [illegible] were warned against walking [illegible] accepting rides from strangers [illegible] through woods.

[illegible] safety precautions, and some put extra teachers and aides outside school buildings during breaks and before and after school.

At Houghtaling, Principal Tom Cusack met with all students at two separate assemblies. "We're playing it up seriously," he said. "We are taking an open approach. We told them she is dead, we told them she was killed, we told them someone hurt her."

Cusack said some older students are talking about the death with their teachers. In the girl's classroom, her classmates were concerned. Their homes were called Tuesday evening while police and school officials searched for Gloria.

At White Cliff Elementary School, Principal Dave Dossett was "surprised with the number of students who knew about it (the girl's death) this morning."

Letters enumerating safety precautions are being sent

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