

COMMITTEE REPORT
HOUSE

FURTHER:

(11)

3/25/83

Date: 3/26/83

Mr. Speaker:

The Committee on FINANCE has had HB 109

An Act relating to criminal prosecution of minors.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 109 (Amended) same title
 new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Offered: 3/28/83
Referred: Finance

Original sponsors: Pestinger, Furnace,
Uehling, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 109 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to persons 16 or 17 years of age who
7 are charged with unclassified or class A felonies;
8 and amending the children's proceedings waiver pro-
9 visions."

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

11 * Section 1. AS 12.05 is amended by adding a new section to read:

12 Sec. 12.05.020. JURISDICTION OVER CERTAIN MINORS CHARGED WITH
13 SERIOUS FELONIES. (a) A person 16 or 17 years of age who is charged
14 with an offense designated as an unclassified or class A felony must
15 be arrested and prosecuted as an adult.

16 (b) If the court has waived juvenile jurisdiction over a person
17 under the age of 18 under AS 47.10.060, that person must be prosecuted
18 as an adult.

19 (c) A person who has been convicted of an offense after being
20 prosecuted as an adult under this section must be prosecuted as an
21 adult for any subsequent criminal offense.

22 (d) References in this section to the age of a person refers to
23 the person's age at the time of the offense.

24 * Sec. 2. AS 12.55 is amended by adding a new section to read:

25 Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. A person subject
26 to the jurisdiction of the court under AS 12.05.020 who is convicted
27 of the offense charged or of any lesser included offense must be
28 sentenced under the provisions of this chapter:

29 * Sec. 3. AS 12.55.125(c) is amended to read:

1 (c) A defendant convicted of a class A felony may be sentenced
2 to a definite term of imprisonment of not more than 20 years, and,
3 except as provided in (j) of this section, shall be sentenced to the
4 following presumptive terms, subject to adjustment as provided in AS
5 12.55.155 - 12.55.175:

6 (1) if the offense is a first felony conviction and does
7 not involve circumstances described in (2) of this subsection, five
8 years;

9 (2) if the offense is a first felony conviction, other than
10 for manslaughter, and the defendant possessed a firearm, used a dan-
11 gerous instrument, or caused serious physical injury during the com-
12 mission of the offense, seven years;

13 (3) if the offense is a second felony conviction, 10 years;

14 (4) if the offense is a third felony conviction, 15 years.

15 * Sec. 4. AS 12.55.125(i) is amended to read:

16 (i) A defendant convicted of sexual assault in the first degree
17 may be sentenced to a definite term of imprisonment of not more than
18 30 years, and, except as provided in (j) of this section, shall be
19 sentenced to the following presumptive terms, subject to adjustment as
20 provided in AS 12.55.155 - 12.55.175:

21 (1) if the offense is a first felony conviction and does
22 not involve circumstances described in (2) of this subsection, eight
23 years;

24 (2) if the offense is a first felony conviction, and the
25 defendant possessed a firearm, used a dangerous instrument, or caused
26 serious physical injury during the commission of the offense, 10
27 years;

28 (3) if the offense is a second felony conviction, 15 years;

29 (4) if the offense is a third felony conviction, 25 years.

1 * Sec. 5. AS 12.55.125 is amended by adding a new subsection to read:
2 (j) Notwithstanding any other provision in this section, a
3 person convicted of a first felony offense while under the jurisdic-
4 tion of the court under AS 12.05.020 is not subject to the mandatory
5 minimum and presumptive sentences required for first offenders.

6 * Sec. 6. AS 12.55.145 is amended by adding a new subsection to read:
7 (f) If a person subject to the jurisdiction of the court under
8 AS 12.05.020 is convicted of a felony offense, the conviction is to be
9 considered a prior conviction for presumptive sentencing purposes in
10 subsequent offenses.

11 * Sec. 7. AS 12.80 is amended by adding a new section to read:
12 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. If a person
13 under the age of 18 who is subject to the jurisdiction of the court
14 under AS 12.05.020 is confined to custody while awaiting trial or
15 sentencing or is sentenced to a period of incarceration upon convic-
16 tion, the person must be committed to the custody of the Department of
17 Health and Social Services for confinement in a correctional facility
18 for adult offenders.

19 * Sec. 8. AS 47.10.010(a) is amended to read:
20 (a) Except as otherwise provided in this chapter and AS 12.05.-
21 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS]
22 relating to a minor under 18 years of age residing or found in the
23 state are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN
24 THIS CHAPTER,] when the court finds the minor
25 (1) to be a delinquent minor as a result of violating a
26 criminal law of the state or of a municipality of the state; or
27 (2) to be a child in need of aid as a result of
28 (A) the child being habitually absent from the child's
29 [HIS] home or refusing to accept available care, or having no

1 parent, guardian, custodian or relative caring or willing to care
2 for the child [HIM], including physical abandonment by

3 (i) both parents,

4 (ii) the surviving parent, or

5 (iii) one parent if the other parent's rights and
6 responsibilities have been terminated under AS 47.10.080 or
7 voluntarily relinquished;

8 (B) the child being in need of medical treatment to
9 cure, alleviate, or prevent [HIS] suffering substantial physical
10 harm, or mental harm as evidenced by failure to thrive, severe
11 anxiety, depression, withdrawal, or untoward aggressive behavior
12 or hostility toward others, and the [HIS] parents of the child
13 are unwilling to provide the medical treatment;

14 (C) the child having suffered substantial physical
15 harm or if there is an imminent and substantial risk that the
16 child will suffer such harm as a result of the actions done by or
17 conditions created by the [HIS] parent, guardian or custodian of
18 the child or the failure of the [HIS] parent, guardian or
19 custodian of the child adequately to supervise the child [HIM];

20 (D) the child having been sexually abused either by
21 the [HIS] parent, guardian or custodian of the child, or as a
22 result of conditions created by the [HIS] parent, guardian or
23 custodian of the child, or by the failure of the [HIS] parent,
24 guardian or custodian of the child adequately to supervise the
25 child [HIM];

26 (E) the child committing delinquent acts as a result
27 of pressure, guidance, or approval from the [HIS] parents,
28 guardian or custodian of the child; [.]

29 (F) the child having suffered substantial physical

1 abuse or neglect as a result of conditions created by the
2 [CHILD'S] parent, guardian or custodian of the child.

3 * Sec. 9. AS 47.10.060 is repealed and reenacted to read:

4 Sec. 47.10.060. WAIVER OF JURISDICTION. (a) Upon motion of the
5 prosecutor, and after a hearing, the court shall waive children's
6 court jurisdiction over a person under the age of 18 if the court
7 finds, based upon the preponderance of the evidence,

8 (1) that there is probable cause to believe that the person
9 has committed an offense which would be a felony if committed by an
10 adult; and

11 (2) that there is no substantial likelihood that the person
12 can be successfully rehabilitated under children's court proceedings.

13 (b) In determining the likelihood of successful rehabilitation
14 under children's court proceedings, the court shall consider

15 (1) the seriousness of the offense;

16 (2) whether the offense constituted a substantial danger to
17 the public;

18 (3) whether the offense was committed in an aggressive,
19 violent, premeditated, or willful manner;

20 (4) whether the offense was against persons or against
21 property, greater weight being given to an offense against persons,
22 especially if personal injury resulted;

23 (5) whether the offense is a part of a repetitive pattern
24 of delinquent acts, even though previous offenses may have been less
25 serious;

26 (6) the age, maturity, educational background, and degree
27 of criminal sophistication of the person;

28 (7) the success of any previous attempts to rehabilitate
29 the person;

1 (8) whether children's court jurisdiction over the person
2 can be retained long enough to allow for effective treatment or reha-
3 bilitation; and

4 (9) the treatment resources available under children's
5 court proceedings.

6 (c) The court shall determine the weight to be given to each of
7 the factors listed in (b) of this section and shall issue a written
8 decision. A finding that there is no substantial likelihood of suc-
9 cessful rehabilitation of the person under children's court proceed-
10 ings may be based on any one or a combination of the factors. If the
11 court waives children's court jurisdiction over a person, the court
12 shall order the children's court proceeding closed and the person must
13 then be prosecuted as an adult.

LETTER OF INTENT
FOR
CSHB 109 (Judiciary)

The legislature expressly acknowledges that the enactment of this legislation may likely result in the need for additional correctional facilities in future years.

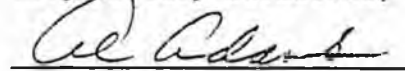
However, it is also clear, as evidenced by the rapid and unpredictable growth in the state's prisoner population, that an accurate assessment of the need for these facilities is not possible at this time.

At the same time, the legislature believes that cost estimates for these facilities can best be determined by detailed planning, analysis, and design of specific facilities in identified locations.

Therefore, the legislature has approved a fiscal note that grants ten per cent of the funds requested by the Division of Adult Corrections for new facilities. These funds shall only be used for planning and detailed design of necessary correctional facilities which are the direct result of the passage of CSHB 109 (Judiciary).

Following the completion of this work, the agency may present to the legislature a capital budget request for these facilities.

Respectfully Submitted,



Al Adams, Chairman
House Finance Committee

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSHB 109 (Judiciary)
 Title...Persons 16 or 17 yrs. charged with major felonies... & waiver proceedings
 Requested by House Finance Committee Date April 26, 1983

II. FISCAL DETAIL
 Agency Affected Department of H & SS--Division of Adult Corrections
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Adult Confinement
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		1008.4	*			
700 GRANTS, CLAIMS, ETC.						
TOTAL		1008.4	*	**	**	**

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		1008.4	*	**	**	**
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME				**	**	**
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The 1008.4 shall be appropriated and expended in compliance with a letter of intent to be adopted by the legislature. As provided for in the letter of intent, these funds represent 10 per cent of the funds initially estimated by the Division of Adult Corrections for the construction of new correctional facilities and are to be used for detailed planning and design of those facilities. The legislature acknowledges that additional bed space may be necessary if this measure is approved, but would prefer to appropriate funds for capital improvements on the basis of clearly delineated plans and cost estimates.

*As noted, the legislature acknowledges that additional funds for capital construction may be necessary in FY 85 but prefers to address the need for and extent of those appropriations at that time.

**Inasmuch as operational costs in the form of additional personnel, contractual services, commodities and the like are closely linked to decisions on capital construction, the legislature declines to endorse any estimates of those costs at this time. When capital construction plans are known, these additional costs will be addressed.

IV. DATE April 26, 1983 PREPARED BY Albert R. Adams
 AGENCY House Finance Committee
 Original: Legislative Finance PHONE 465-3706
 cc: Budget and Management
 Prime Sponsor (First Legislator Name)

The following individuals are expected to testify on CS HB 109
(Judiciary):

Representative Sam Pestinger, prime sponsor

Gail Huretsky, Office of the Chief Prosecutor, Department of Law

Mike Price, Director, Division of Family and Youth Services, DHSS

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB109
Title: "Unlawful Conduct of Minors"
Sponsor: Rep. Pestinger
Requestor: _____

II. FISCAL DETAIL

Agency Affected: Dept. of Admin.
Program Category Affected: Public Defender
BRU, Program of Subprogram(s) Affected:
Third District, Fourth District

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	137.6	145.9	154.7	164.0	173.8	184.2
200 TRAVEL	10.0	10.6	11.2	11.9	12.6	13.4
300 CONTRACTUAL	25.0	26.5	28.1	29.8	31.6	33.5
400 COMMODITIES	3.0	3.2	3.4	3.6	3.8	4.0
500 EQUIPMENT	4.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	179.6	186.2	197.4	209.3	221.8	235.1

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	179.6	186.2	197.4	209.3	221.8	235.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

GENERAL FUND

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Stokes, Admin. Officer Phone: 279-7541
Division: Dana Fabe, Public Defender Date: April 14, 1983

Approved by Commissioner: Commissioner Lisa Rudd Date: 4/28/83
Department: Dept. of Administration

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

ANALYSIS- CSHB109

This bill, if passed, will substantially increase the number of adult felony prosecutions of serious crimes such as murders, sexual assaults, kidnappings and other unclassified Class A felonies which are the serious offenses in the criminal code. These type of felony cases are the most time consuming of any cases handled by this agency due to their complexity and the amount of exposure to the client. Substantial expenditures for expert witnesses and psychiatric evaluations are necessary in these type of cases. Furthermore, while cases in juvenile court are often negotiated and disposed of without court appearances or trial, such serious adult felony cases require the greatest amount of attorney time. Because the majority of juvenile cases are handled in Anchorage and Fairbanks and the resulting new felony prosecutions will occur in those locations, an additional trial attorney for each location is requested.

POSITION PAPER

HOUSE BILL NO. 109

PAGE 1

"An Act relating to criminal prosecution of minors."

House Bill No. 109 would add additional provisions to AS 12.55 and AS 47.10 to accomplish two major purposes. The Act would: 1) alter and further define the process by which a determination is made to waive juvenile court jurisdiction over certain minors and subject them to prosecution as adults; and 2) define the type of facility in which minors who have been prosecuted and sentenced as adults are to serve their terms of imprisonment.

Section 2 of HB 109 would maintain the existing judicial waiver mechanism and mandate waiver of juveniles 16 years old or older upon a court finding of probable cause to believe they had committed an unclassified or class A felony. This Bill would embody in statute the presumption that older youths accused of serious violent crimes are responsible and should be held accountable for their acts as would adults similarly accused. The focus in dealing with such youth under the adult criminal code would be primarily upon retribution and deterrence rather than upon the equal balancing of the interests of the public and the youth under the juvenile code.

The effect of Section 2 of the Bill would be to increase the number of juveniles subject to prosecution under the adult criminal statutes and to increase the liability of such juveniles to sanctions more severe, both in nature and duration, than those to which they would have been liable under the juvenile code. Based on Calendar Year 1981 arrest data, it can be estimated that approximately 31 persons 16 and 17 years of age are arrested annually for crimes in the unclassified and Class A felony categories and would be, therefore, subject to prosecution as adults under the provisions of House Bill No. 109. This would represent an approximate increase of 28 in the number of juveniles prosecuted each year as adults.

The Department supports the conceptual basis for the alteration of AS 47.10.060 proposed in House Bill No. 109 - the presumption that older juvenile offenders accused of serious and violent crimes should be held accountable as adults. It is the Department's position that, though few in number, older youths accused of heinous violent crimes require sanctions qualitatively and quantitatively different from those available under the jurisdiction of the juvenile court. An additional provision is suggested, however, to protect the interests of those juveniles who, though accused of offenses which would require their waiver to adult jurisdiction, are ultimately acquitted or convicted only of lesser included offenses which would not mandate waiver of the juvenile. Such a provision could be added as AS 47.10.060(f) and be worded as follows:

- (f) Any person over whom jurisdiction is waived under (a)(1) of this section who is prosecuted as an adult but is acquitted or convicted of a lesser included offense which would not make him eligible for waiver under (a)(1) shall be subject to juvenile court

POSITION PAPER

HOUSE BILL NO. 109

PAGE 2

jurisdiction for disposition and for subsequent unlawful conduct other than that governed under (a)(1) or (a)(2).

In addition, the Department supports maintaining the existing judicial waiver allowing for adult prosecution of those persistent, repetitive juvenile offenders who have not or are unlikely to respond to treatment within the juvenile justice system. A discretionary waiver mechanism also allows for the prosecution as an adult for the rare juvenile below the age of 16 who has committed an egregious violent crime and is not amenable to rehabilitative treatment within the juvenile justice system.

Section 1 of House Bill No. 109 would provide statutory definition of the type of facility in which minors who have been sentenced as adults are to serve their terms of imprisonment. The Bill would add provisions to AS 12.55.015 to require that those juvenile defendants who had been prosecuted and convicted as adults would, if sentenced to a term of imprisonment, be confined in a juvenile correctional facility until reaching age 19, after which they would be transferred to an adult facility if more than one year remained on their terms of imprisonment. The Department opposes this provision.

It is expected that youth receiving substantial adult sentences for serious crimes would require a much greater level of security than would be provided in juvenile institutions. In addition, administrative prudence would also require that such youths be separated from other less sophisticated juveniles and be provided with rehabilitative programs differing markedly from those designed for younger juvenile offenders. Older youths convicted of serious, violent crimes would best be dealt with in a system designed to provide a continuum of security and rehabilitative program levels to address the range of maturity and sophistication of young adult offenders. Such a continuum could best be provided within the adult correctional system.

Housing juvenile offenders convicted as adults in juvenile facilities on an interim basis would tend to make rehabilitative programs within those facilities less effective. The interim nature of programs designed for juveniles sentenced as adult offenders would render the programs less effective and decrease the level of motivation of those offenders involved in them. In addition, the presence within a juvenile facility of a group of older, more sophisticated, violent offenders would be a disruptive influence on treatment programs for younger offenders. Finally, it is the position of the Department that the protection of sentenced juvenile offenders from abuse or exploitation by adult prisoners within the adult correctional framework would be best achieved administratively rather than through legislation such as Section 1 of HB 109. A classification system assessing each individual offender's characteristics and circumstances and assigning the offender to a facility and program which provides adequate security and appropriate rehabilitative programming is a more appropriate method of providing necessary protection and a decidedly more flexible mechanism for managing prisoner populations.

POSITION PAPER

HOUSE BILL NO. 109
PAGE 3

In summary, the Department is supportive of the concept of holding older juveniles accused of serious, violent crimes accountable within the adult criminal system. However, the Department suggests an additional provision which would preclude any inequities for those juveniles ultimately acquitted after prosecution in the adult system for waivable offenses or after having been convicted of lesser offenses which would not make them eligible for mandatory waiver. The Department opposes the provision requiring juveniles convicted and sentenced under the adult criminal statutes to be housed in juvenile facilities.

RECOMMENDED BY: *Yvonne Elder Walker*
Yvonne Elder Walker
Acting Director
Division of Family and
Youth Services

DATE: *February 3, 1983*

RECOMMENDED BY: *Rogey C. Long*
for Rogey Endell, Director
Division of Adult
Corrections

DATE: *February 14, 1983*

APPROVED BY: *John R. Bay*
for Robert London Smith, Ph.D.
Commissioner

DATE: *2/18/83*

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 109 No. 1 Date on Bill: 1/24/83
 Title: "An Act relating to criminal prosecution of minors."
 Sponsor: Representative Pestinger
 Requestor: House Judiciary Committee

Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		91.8	101.7	107.8
Total		91.8	101.7	107.8

b. Revenues:

Revenue	FY 83	FY 84	FY 85	FY 86

Source of funds to offset fiscal impact of bill:

No information provided.

Assumptions: This bill provides that juvenile offenders may be waived to adult court for criminal prosecution if the court finds after a hearing in juvenile court that the minor (1) has committed an unclassified or class A felony or (2) has committed any offense and is not amenable for treatment as a juvenile. It would require a hearing in every case where a waiver is sought, and this would require the commitment of additional prosecution resources. Based upon current statistics, it is estimated that approximately 30-40 hearings a year would be held. In addition, more attorney and staff resources would be required to prosecute as adults those juvenile offenders who are successfully waived.

Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Daniel W. Hickey

Prepared By: Daniel W. Hickey Phone: 465-3428
 Division: Department of Law - Criminal Division Date: 2/15/83

Approved by Commissioner: Norman C. Gorsuch Date: 2/15/83
 Department: Department of Law

Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
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2/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Page 1 of 5

Bill No.: House Bill No. 109 No. 2 Date on Bill: January 24, 1983
 Title: "An Act relating to the criminal prosecution of minors."
 Sponsor: Representatives Pestinger, Furnace, Uehling, Flood, Barnes, and Bussett
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86				
Capital		15,714.0	-0-	-0-	-0-	-0-		
Operating		-0-	-0-	3,389.7	3,563.0	3,776.7		
Total		15,714.0	-0-	3,389.7	3,563.0	3,776.7		

b. Revenues:

Revenue				-0-	-0-	-0-	-0-	-0-
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2. Source of funds to offset fiscal impact of Bill:

Funding source not identified by Bill author.

3. Assumptions:

Available statistical data indicates there would be 31 juveniles arrested annually for unclassified or class A felonies. This would represent an increase of 28 in the number of juveniles subjected yearly to prosecution as adults. An average of 3 juveniles are waived from juvenile court jurisdiction each year under the existing judicial waiver mechanism. Of the additional 28 juveniles subjected to adult prosecution, 18 would be convicted and sentenced to imprisonment for periods of up to 20 years if adult prosecution and conviction rates are assumed. The first two years of the sentence would be served in a juvenile facility with up to 13 years served in an adult facility if it is assumed all offenders earn their maximum good time based on a formula of one day good time for three days served.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Roger C. Lange and Michael L. Pridemore Phone: 465-3376 & 465-3170
 Division: Adult Corrections and Family and Youth Services Date: February 22, 1983

Approved by Commissioner: Robert L. Anderson, Ph.D. Date: 3/4/83
 Department: Adult Corrections and Family and Youth Services

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
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2/8/83

FISCAL NOTE CONTINUATION

HOUSE BILL NO. 109 No. 2

Page 2 of 5

"An Act relating to criminal prosecution of minors."

COST ESTIMATES

- A. Enactment of House Bill No. 109 will have a significant fiscal impact on the Department of Health and Social Services, both in juvenile and adult corrections. Since the new language would class individuals sixteen years and older as adults for unclassified and class A felonies, the time served by convicted sixteen and seventeen year-olds would increase substantially.

It is the estimate of the Department of Health and Social Services that ultimately an additional 97 beds will be needed to care for this group of individuals in a secure setting. Details of this estimate follow.

B. Youth Services Impact

1. FY 84 Capital Expenses: The construction of facilities to house 40 juveniles sentenced as adult prisoners is based upon the most recent available arrest data (1981).
2. This data shows that approximately 28 additional juveniles would annually be subject to prosecution under adult criminal statutes for unclassified and class A felony offenses. Assuming a conviction rate equal to the conviction rate for adult offenders similarly accused it might be expected that 18 juveniles would be convicted of such offenses annually and sentenced as adults under the provisions of House Bill No. 109.

Analysis of the arrest data yields expected frequency of convictions and sentences which would result in all juveniles sentenced as adults serving at least two years in the juvenile facility prior to transferring to an adult facility and two youths expected to serve their entire sentence of 3.75 years in a juvenile facility. Within two years 36 juveniles would then be serving adult sentences of at least two years in juvenile facilities. This population would stabilize after two years at approximately 38-40 because of the transfer of prisoners to adult facilities.

The FY 84 estimate is based upon 464 square feet for each of 40 maximum security cells; plus 1 station for each of the 2 detention units: one to accommodate 5 staff and 1 to accommodate 6 staff including the typist; and 1 common day room that can be utilized for meals, a rehabilitative program (counseling and education), and recreation. (No costs are included for a kitchen, as meals would be prepared in the existing facilities at McLaughlin and carried to the units.) It is also assumed that the Department's major study for

FISCAL NOTE CONTINUATION

HOUSE BILL NO. 109 No. 2

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expansion would be revised to accommodate construction of the two units to connect with the existing building.

DOT/PF cost estimates for 464 square feet in a maximum security facility during the FY 85 construction season is \$162.0. This includes design and planning costs which would begin in FY 84. The remaining funds would be carried over into FY 85 for construction and equipping the units.

$$\$162.0 \times 40 \text{ cells} = \$6,480.0$$

3. FY 86 Operating Costs and Juvenile Expenses

June 30, 1985 would be the estimated completion date. Operating costs are estimated as follows:

100 Personal Services	\$1,391.6
200 Travel	24.5
300 Contractual Services	119.0
400 Commodities	131.6
500 Equipment	22.6
700 Benefits to Individuals	109.4
	<u>\$1,798.7</u>

The above estimates are based upon 30% of the related costs for the McLaughlin Youth Center's FY 84 Governor's Budget, with 6% added for FY 85 and FY 86.

Personal Services includes 1 Unit Leader, 3 Youth Counselor III's, 5 Youth Counselor II's, and 4 Youth Counselor I's for each unit. The staffing pattern is based on the necessity of operating the units as maximum security facilities. This level of security is required due to the high escape risk presented by those juveniles to be housed and upon the nature of the offenses for which they are sentenced. An Assistant Cook will serve in the existing kitchen, and a Clerk Typist III will provide all clerical support for both units.

Travel of staff to meetings, conferences, courses, and for transportation of new hires is included.

Contractual Services are estimated for the additional costs for communications, utilities, copier usage, equipment rental, inmate laundry, and fire, accident, and liability insurance.

Commodities include purchase of food, replacement of tableware, glassware, bedding, janitorial and cleaning supplies, and general office supplies.

Equipment items necessary for on-duty staff, closed circuit TV monitor of units and a camera for inmate ID are included.

FISCAL NOTE CONTINUATION

HOUSE BILL NO. 109 No. 2

Page 4 of 5

Benefits to Individuals includes costs for medical and dental care, and a work program for 20 inmates.

C. Adult Confinement

It is assumed that no appreciable bed impact will be experienced by the Division of Adult Corrections until FY 1986. This is based on the assumption that the average age of offenders affected by this legislation will be 17 years, and that they will serve two years in a juvenile facility prior to transfer to an adult facility. This fiscal note identifies a need for 57 additional beds in an adult facility.

Based on arrest data indicating 28 additional persons 16 and 17 years of age being subject to adult prosecution annually for crimes in the unclassified or class A felony categories, and using conviction rates and average sentence lengths for adult offenders, the following is predicted:

1. Unclassified Felony

One conviction per year with an average sentence of 15 years to serve (20 years less good time) will require 13 additional beds.

2. Sexual Assault I (Rape) With Gun, Dangerous Weapon, and/or Caused Serious Physical Injury

One conviction per year with a sentence of 7.5 years to serve (10 years less good time) will require 5.5 beds.

3. Sexual Assault I (Rape) Without Weapon/Injury

Three convictions per year with a sentence to serve of 6 years (8 years less good time) will require 12 beds.

4. Class A Felony With Gun

Five convictions per year with a sentence to serve of 5.25 years (7 years less good time) will require 16.25 beds.

5. Class A Felony Without Gun

Eight convictions per year and two sentenced so as to serve all time in a juvenile facility. Therefore, 6 individuals will serve an average of 1.75 years in an adult facility.

$$6 \times 1.75 = 10.5 \text{ beds}$$

6. Total beds required is 57 (rounded).

FISCAL NOTE CONTINUATION

HOUSE BILL NO. 109 No. 5

Page 5 of 5

7. Cost Estimates

- a. Capital Expenditures: Because of the serious nature of the offenses, construction of maximum security beds was considered appropriate at \$162,000 per bed.

57 beds @ \$162,000 per bed
57 x \$162,000 = \$9,234,000

- b. Operating Expenditures: It is estimated that 23 positions will be required to provide security and support for these 57 beds: 1 Correctional Officer III, 20 Correctional Officer II's, and 2 Institutional Counselors. Costs for these positions will not occur until FY 1985, the anticipated opening date for the new beds.

FY 1986 Costs - Adult Confinement

Personal Services	\$1,177,700
Travel	6,400
Contractual Services	184,000
Commodities	187,000
Equipment	5,900
Inmate Gratuities	<u>30,000</u>

TOTAL \$1,591,000

Inflation of 6% for all expenditure object groups was assumed calculating subsequent fiscal years.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSHB 109 (Judiciary)
 Title... Persons 16 or 17 yrs. charged with major felonies... & waiver proceedings
 Requested by House Finance Committee Date April 26, 1983

II. FISCAL DETAIL
 Agency Affected Department of H & SS--Division of Adult Corrections
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Adult Confinement
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		1008.4	*			
700 GRANTS, CLAIMS, ETC.						
TOTAL		1008.4	*	**	**	**

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		1008.4	*	**	**	**
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME				**	**	**
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The 1008.4 shall be appropriated and expended in compliance with a letter of intent to be adopted by the legislature. As provided for in the letter of intent, these funds represent 10 per cent of the funds initially estimated by the Division of Adult Corrections for the construction of new correctional facilities and are to be used for detailed planning and design of those facilities. The legislature acknowledges that additional bed space may be necessary if this measure is approved, but would prefer to appropriate funds for capital improvements on the basis of clearly delineated plans and cost estimates.

*As noted, the legislature acknowledges that additional funds for capital construction may be necessary in FY 85 but prefers to address the need for and extent of those appropriations at that time.

**Inasmuch as operational costs in the form of additional personnel, contractual services, commodities and the like are closely linked to decisions on capital construction, the legislature declines to endorse any estimates of those costs at this time. When capital construction plans are known, these additional costs will be addressed.

IV. DATE April 26, 1983 PREPARED BY Albert R. Adams
 AGENCY House Finance Committee
 Original: Legislative Finance PHONE 465-3706
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 83-001 (Rev. 12/82)

PROPOSED LETTER OF INTENT FOR CSHB 109

The legislature expressly acknowledges that the enactment of this legislation may likely result in the need for additional correctional facilities in future years.

However, it is also clear, as evidenced by the rapid and unpredictable growth in the state's prisoner population, that an accurate assessment of the need for these facilities is not possible at this time.

At the same time, the legislature believes that cost estimates for these facilities can best be determined by detailed planning, analysis, and design of specific facilities in identified locations.

Therefore, the legislature has approved a fiscal note that grants ten per cent of the funds requested by the Division of Adult Corrections for new facilities. These funds shall only be used for planning and detailed design of necessary correctional facilities which are the direct result of the passage of CSHB 109.

Following the completion of this work, the agency may present to the legislature a capital budget request for these facilities.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 109
 Title: "...amending...waiver...provisions."
 Sponsor: Rep. Pestinger
 Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Adm. of Justice
 BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		27.0				
100 PERSONAL SERVICES			33.9	35.9	38.1	40.4
200 TRAVEL		2.5	3.2	3.4	3.6	3.8
300 CONTRACTUAL		4.0	5.1	5.4	5.7	6.0
400 COMMODITIES		2.8	1.0	1.1	1.2	1.3
500 EQUIPMENT		1.5	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	37.8	43.2	45.8	48.6	51.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	37.8	43.2	45.8	48.6	51.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME	-0-	1	1	1	1	1
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: April 5, 1983
 Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: April 5, 1983
 Department: Department of Law

Distribution:

Original to Legislative Finance
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 Copy to Department (for Governor introduced bills)
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CSHB 109
Analysis

This bill provides that persons 16 or 17 years of age who are charged with unclassified or class A felonies will be prosecuted as adults. Unlike the original version of the bill, CSHB 109 (Jud.) makes the waiver of these persons from juvenile to adult court automatic; there is no need for a hearing in juvenile court prior to the waiver. The elimination of the need for these hearings will result in a major savings of prosecutor time and resources.

It is estimated that approximately 30-35 persons a year will be waived into adult court under this bill. This figure includes those persons who are now waived, in the judge's discretion, following a hearing on the person's "amenability to treatment." Considering this, and the fact that the district attorney's offices currently handle those few cases which actually proceed to trial in the juvenile system, it is estimated that the net impact of this bill will be approximately 20 additional felony cases a year statewide, a burden which can largely be absorbed into the current workload of the various district attorney's offices.

CSHB 109
Fiscal Analysis

The changes made in the bill, by the committee substitute, making the waiver from juvenile to adult court automatic, will decrease the resources needed from one full-time Attorney IV and a part-time Legal Secretary to just one part-time Attorney IV. For the purposes of this analysis, position costs are based on salary schedule A. The first year of funding (FY 84) is based on 10 months of expenses to account for the time it takes to establish a new position. Costs beyond FY 84 are on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	<u>AIV (PPT)</u>
Personal Services	27.0
Travel	2.5
Contractual	4.0
Commodities - ongoing	.8
Commodities - single time	2.0
Equipment - single time	1.5
Total	<u>37.8</u>

2nd Year (12 months + 6% annual inflation)

Personal Services	33.9
Travel	3.2
Contractual	5.1
Commodities	1.0
Total	<u>43.2</u>

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.	
2.	TYPE OF POSITION PPT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.			
3.	CONTINUATION LEVEL				JUSTIFICATION						
4.	TYPE OF EXPENDITURE				AMOUNT						
	1		2		3						
	PERSONAL SERVICES										
5.	Salary	2.126 x 10	21,260								
6.	Benefits	15.42	3,278								
7.	Supplemental Benefits		1,303								
8.	Fixed Benefits		1,200								
9.	TOTAL PERSONAL SERVICES		01	27,041							
10.	Travel		02	2,500							
11.	Contractual		03	4,000							
12.	Commodities		04	2,800							
13.	Equipment		05	1,500							
14.	Other										
15.	TOTAL COST			37,841							
<p>This part-time Attorney position will be needed to handle the estimated 20 additional felony cases that will occur as a result of the automatic waiver from juvenile to adult court if CSHB 109 becomes law. The Attorney IV, or full working level of Attorney will be required because those cases to be tried will be either Class A or unclassified felonies, which are the most serious criminal offenses.</p>											
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts 1002									
17.		G.F. Match 1003									
18.		General Funds 1004			37,841						
19.		I-A Receipts 1005									
20.		Program Receipts 1028									
21.		Other									
<p>FOR B&M USE ONLY 4A KEY NUMBER _____</p>											

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM ADMINISTRATION OF JUSTICE
BRU PROSECUTION
COMPONENT THIRD JUDICIAL DISTRICT

FY 84

Page 1 of 1
Revised Date _____

STATE OF ALASKA
FISCAL NOTE
SUMMARY

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 109
Title: Children's Proceedings Waivers
Sponsor: Pestinger
Requestor: _____

II. FISCAL DETAIL

Agency Affected: H&SS
Program Category Affected: Adm of Justice
BRU, Program of Subprogram(s), Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				985.2	1,044.3	1,106.9
200 TRAVEL				6.4	6.8	7.2
300 CONTRACTUAL				184.0	195.0	206.7
400 COMMODITIES				187.0	198.2	210.1
500 EQUIPMENT				5.9	0.0	0.0
600 LAND & STRUCTURES	10,084.5	0.0	0.0	30.0	31.8	32.0
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0.0	0.0	0.0	1,398.5	1,476.1	1,562.9
CAPITAL	10,084.5	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	10,084.5	0.0	0.0	1,398.5	1,476.1	1,562.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	0.0	0.0	0.0	23.0	23.0	23.0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The funding source was not identified by the sponsors of the bill.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael L. Price *Michael L. Price* Phone: 465-3170
Bill Ladwig 465-3376
Division: Family and Youth Services & Adult Corrections Date: 4/5/83
Approved by Commissioner: _____ Date: _____
Department: _____

Distribution:

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3/8/83

CS FOR HOUSE BILL NO. 109
FISCAL NOTE
SUMMARY

PAGE 2

IV. ANALYSIS

A. Assumptions:

Enactment of this Bill would require the Division of Adult Corrections to accommodate an estimated 62.25 full-time equivalent offenders in the 16 and 17 year old age group. There would be no impact on the Division of Family and Youth Services, as juveniles convicted and sentenced would fall within the jurisdiction of Adult Corrections.

B. Program Summary:

1. In FY 83, funds would be required to begin planning and design for construction of maximum security beds because of the serious nature of the offenses. Capital costs are estimated at \$162,000 per bed:

$$62.25 \text{ beds} @ \$162,000 \text{ per bed} = \$10,084,500$$

2. Operating costs would not occur until FY 85 in the Adult Confinement BRU. It is estimated that 23 positions will be required to provide security and support for these 62.25 beds: 1 Correctional Officer III, 20 Correctional Officers II, and 2 Institutional Counselors. Costs for these positions will occur in FY 85, the anticipated opening date for the new beds. Estimated costs are as follows:

100 Personal Services	\$ 985,200
200 Travel	6,400
300 Contractual Services	184,000
400 Commodities	187,000
500 Equipment	5,900
700 Inmate Gratuities	30,000
Total	<u>\$1,398,500</u>

Inflation of 6% for all expenditure object groups was assumed for FY 87 and FY 88.

There would be no resulting costs for the Division of Family and Youth Services.

C. Computations:

N/A

CS FOR HOUSE BILL NO. 109
FISCAL NOTE
SUMMARY

PAGE 3

D. Economic Impact:

There would be a tendency to retain the effectiveness of treatment in the juvenile facilities with the older youths convicted of serious, more violent crimes being provided a continuum of security and rehabilitative program for young adult offenders within the adult correctional system.

E. Impact on Local Governments:

There would be no impact.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB 109
 Title: Persons 16 or 17 yrs old...amending
 Sponsor: Pestinger children's proceedings
 Requestor: waiver provisions

II. FISCAL DETAIL

Agency Affected: DHSS
 Program Category Affected: Adult Confinement
 BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				985.2	1044.3	1106.9
200 TRAVEL				6.4	6.8	7.2
300 CONTRACTUAL				184.0	195.0	206.7
400 COMMODITIES				187.0	198.2	210.1
500 EQUIPMENT				5.9	-0-	-0-
600 LAND & STRUCTURES	10,084.5	-0-	-0-	30.0	31.8	32.0
700 GRANTS, CLAIMS, ETC		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	1398.5	1476.1	1562.9
CAPITAL	10,084.5	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	10,084.5	-0-	-0-	1398.5	1476.1	1562.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME				23	23	23
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bill Ladwig *Bill Ladwig*
 Division: Adult Corrections

Phone: 465-3376
 Date: 4/4/83

Approved by Commissioner:
 Department: Health and Social Services

Date:

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3/8/8

FISCAL NOTE CONTINUATION
HOUSE BILL NO. 109

Cost Estimates

If CSHB 109 is implemented as amended, then 62.25 full time equivalents would be necessary to accommodate those offenders in the 16 and 17 year old age group.

- a. Capital Expenditures: Because of the serious nature of the offenses, construction of maximum security beds was considered appropriate at \$162,000 per bed.

$$\begin{aligned} &62.25 \text{ beds} \times \$162,000 \text{ per bed} \\ &62.25 \times \$162,000 = \$10,084,500 \end{aligned}$$

- b. Operating Expenditures: It is estimated that 23 positions will be required to provide security and support for these 62.25 beds: 1 Correctional Officer III, 20 Correctional Officers II, and 2 Institutional Counselors. Costs for these positions will not occur until FY 1985, the anticipated opening date for the new beds.

FY 1986 Costs - Adult Confinement

Personal Services	\$ 985,200
Travel	6,400
Contractual Services	184,000
Commodities	187,000
Equipment	5,900
Inmate Gratuities	30,000
TOTAL	<u>\$1,398,500</u>

Inflation of 6% for all expenditure object groups was assumed calculating subsequent fiscal years.

1.	POSITION TITLE Probation Officer II (2)				RANGE/STEP 16/A	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.										
2.	TYPE OF POSITION PFT	STAFF MONTHS 24	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.												
3.	CONTINUATION LEVEL				ADDITION															
4.	TYPE OF EXPENDITURE				AMOUNT															
	1		2		3															
	PERSONAL SERVICES																			
5.	Salary			61,752																
6.	Benefits			10,554																
7.	Supplemental Benefits			3,786																
8.	Fixed Benefits			5,760																
9.	TOTAL PERSONAL SERVICES			01	81,852															
10.	Travel			02																
11.	Contractual			03																
12.	Commodities			04																
13.	Equipment			05																
14.	Other																			
15.	TOTAL COST				81,852															
JUSTIFICATION																				
<p>Single Position Cost</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Salary 2573/Mo.</td> <td style="text-align: right;">\$30,876</td> </tr> <tr> <td>Variable Benefits</td> <td style="text-align: right;">5,277</td> </tr> <tr> <td>SBS</td> <td style="text-align: right;">1,893</td> </tr> <tr> <td>Health Insurance</td> <td style="text-align: right;">2,880</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black;">\$38,046</td> </tr> </table> <p>These positions would provide counseling, pre-release planning and preparation for Parole Board Applications.</p>											Salary 2573/Mo.	\$30,876	Variable Benefits	5,277	SBS	1,893	Health Insurance	2,880		\$38,046
Salary 2573/Mo.	\$30,876																			
Variable Benefits	5,277																			
SBS	1,893																			
Health Insurance	2,880																			
	\$38,046																			
	RECEIPT CODE	FUNDING SOURCE																		
16.		Federal Receipts 1002																		
17.		G.F. Match 1003																		
18.		General Funds 1004			81,852															
19.		I-A Receipts 1005																		
20.		Program Receipts 1028																		
21.		Other																		
FOR B&M USE ONLY																				
4A KEY NUMBER _____																				

AGENCY Department of Corrections

PROGRAM Offender Confinement, Reformation & Supervision

BRU Adult Confinement

COMPONENT _____

Page _____ of _____

Revised Date _____

FY 84

13 REQUEST FOR
NEW POSITION

1.	POSITION TITLE Correctional Officer II (20)				RANGE/STEP 13/B	BARC. UNIT G	FORM 12 PAGE/LINE	GOV	APPRV.	DISAPP.																		
2.	TYPE OF POSITION PFT	STAFF MONTHS 240	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEC.																				
3.	CONTINUATION LEVEL				JUSTIFICATION																							
4.	TYPE OF EXPENDITURE			AMOUNT																								
	1		2		3																							
	PERSONAL SERVICES				O.T. 76,000																							
5.	Salary		519,840	Shift																								
6.	Benefits		156,660	Diff 10,000																								
7.	Supplemental Benefits		35,920																									
8.	Fixed Benefits		57,600																									
9.	TOTAL PERSONAL SERVICES		01	856,020																								
10.	Travel		02																									
11.	Contractual		03																									
12.	Commodities		04																									
13.	Equipment		05																									
14.	Other																											
15.	TOTAL COST			856,020																								
<p>Single Position Cost</p> <table> <tr> <td>Salary 2166/Mo.</td> <td>\$25,992</td> </tr> <tr> <td>Overtime</td> <td>3,800</td> </tr> <tr> <td>Shift Differential</td> <td>500</td> </tr> <tr> <td></td> <td><u>\$29,292</u></td> </tr> <tr> <td>Peace Officer Retirement</td> <td>2,827</td> </tr> <tr> <td>Variable Benefits</td> <td>5,006</td> </tr> <tr> <td>SBS</td> <td>1,796</td> </tr> <tr> <td>Health Insurance</td> <td>2,880</td> </tr> <tr> <td></td> <td><u>\$41,801</u></td> </tr> </table> <p>These positions would provide security coverage for prisoners.</p>											Salary 2166/Mo.	\$25,992	Overtime	3,800	Shift Differential	500		<u>\$29,292</u>	Peace Officer Retirement	2,827	Variable Benefits	5,006	SBS	1,796	Health Insurance	2,880		<u>\$41,801</u>
Salary 2166/Mo.	\$25,992																											
Overtime	3,800																											
Shift Differential	500																											
	<u>\$29,292</u>																											
Peace Officer Retirement	2,827																											
Variable Benefits	5,006																											
SBS	1,796																											
Health Insurance	2,880																											
	<u>\$41,801</u>																											
16.	RECEIPT CODE	FUNDING SOURCE																										
17.		Federal Receipts 1002																										
18.		G.F. Match 1003																										
19.		General Funds 1004		856,020																								
20.		I-A Receipts 1005																										
21.		Program Receipts 1028																										
		Other																										
<div style="border: 1px solid black; padding: 5px;"> <p>FOR B&M USE ONLY</p> <p>4A KEY NUMBER _____</p> </div>																												

AGENCY: Department of Corrections

PROGRAM: Offender Confinement, Reformation & Supervision

BRU: Adult Confinement

COMPONENT: _____

Page	of
Revised Date	

FY 84

13 REQUEST FOR
NEW POSITION

1.	POSITION TITLE Correctional Officer III				RANGE/STEP 15/A	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEC.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary	2398	28,776		O.T. 4,118					
6.	Benefits		8,956*		Shift					
7.	Supplemental Benefits		2,040		Diff. 600					
8.	Fixed Benefits		2,880							
9.	TOTAL PERSONAL SERVICES		01		47,370					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04							
13.	Equipment		05							
14.	Other									
15.	TOTAL COST				47,370					
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			47,370					
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

This position would provide supervision for Correctional Officer II staff as well as security for prisoners.

AGENCY Department of Corrections
PROGRAM Offender Confinement, Reformation & Supervision

BRU Adult Confinement

COMPONENT _____

13 REQUEST FOR
NEW POSITION

Page _____ of _____

Revised Date _____

FY 84

STATE OF ALASKA
FISCAL NOTE

Revision Date 3/30, 1983

I. REQUEST

Bill/Resolution No.: CSHB 109
 Title: Children's Proceedings Waivers
 Sponsor: Pestinger
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: H&SS
 Program Category Affected: Social Services
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The funding source was not identified by the sponsors of the bill.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael L. Price *Michael L. Price* Phone: 465-3170
 Division: Family and Youth Services Date: 03/30/83

Approved by Commissioner: _____ Date: _____
 Department: _____

Distributio .:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

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CS FOR HOUSE BILL NO. 109
FISCAL NOTE

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IV. ANALYSIS

A. Assumptions:

Enactment of this Bill would have no fiscal impact on the Division of Family and Youth Services as juveniles convicted and sentenced would fall within the jurisdiction of the Department of Adult Corrections.

B. Program Summary:

There would be no resulting costs for the Division.

C. Computations:

N/A

D. Economic Impact:

There would be the tendency to retain the effectiveness of treatment in the juvenile facilities with the older youths convicted of serious, more violent crimes being provided a continuum of security and rehabilitative program for young adult offenders within the adult correctional system.

E. Impact On Local Governments:

There would be no impact.

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"An act relating to persons 16 or 17 years of age who are charged with unclassified or Class A felonies; and amending the childrens waiver proceedings."

This Bill would make several changes in the manner of dealing with older juvenile offenders accused of serious or violent crimes. It would

1. Require the prosecution of 16 and 17 year old juveniles accused of unclassified or Class A felonies within the adult criminal system;
2. Change the standard for judicially waiving serious or repeat juvenile offenders who would not be subject to automatic exclusion from juvenile jurisdiction, and define factors which the court must consider in making waiver decisions; and
3. Define sentencing and confinement procedures for juveniles who are waived to adult jurisdiction.

AUTOMATIC WAIVER

Under the provisions of CS HB 109 the only method for dealing with juveniles 16 and 17 years of age who are accused of unclassified or Class A felonies would be through criminal proceedings under the adult jurisdiction of the Superior Court. Any such youth suspected by police of having committed an unclassified or Class A felony would be subject to arrest, prosecution, and pre-trial confinement in precisely the same way as would an adult.

Automatic or legislative waiver of the most serious juvenile offenders is an excellent concept that can help resolve one of the most difficult problems of the juvenile justice system. Dealing with older juveniles accused of the most violent crimes within the adult criminal system will allow more appropriate sanctions to be imposed by the court and will provide sufficient time for rehabilitative efforts to be effective.

However, the Department opposes the inclusion of Class A offenses within the category requiring automatic waiver. Inclusion of Class A offenses makes the category of automatically waiveable offenses too broad and would require the waiver of a number of juveniles who could be effectively controlled and rehabilitated within the juvenile justice system. Narrowing the category of automatically waiveable offenses to only unclassified felonies is preferable for several reasons: 1) it would be more economical and the fiscal impact of the bill would be reduced; 2) though serious in nature, Class A category offenses also include offenses which differ significantly from unclassified offenses

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PAGE 2

in the degree of actual violence or harm done to victims; 3) the strengthened judicial waiver mechanism would allow for adequate protection of the public by selectively identifying those juveniles accused of Class A felonies who should be dealt with in the adult criminal system. This selective identification would allow for differentiation among juveniles based on the actual seriousness of the offense and prior behavior of the youth rather than relying solely on the arbitrary classification of offenses. Those juveniles who did not present a danger to the public could be retained within the juvenile system. This flexibility would prevent the development of problems in the adult correctional system in attempting to integrate a group of young, unsophisticated, non-dangerous youth in adult corrections facilities where such youths could potentially fall prey to abuses by adult inmates.

JUDICIAL WAIVER STRENGTHENED

In addition to instituting an automatic waiver this Bill would strengthen the existing judicial waiver. The existing waiver mechanism would be strengthened by a change in the standard of proof necessary for making waiver determinations. In addition, the Bill defines nine specific factors which must be considered by the court in determining the likelihood of successfully rehabilitating a youth within the juvenile system.

This would be far superior to the existing judicial waiver and would provide better definition to the waiver process and guidance for the court in making waiver determinations. The less stringent standard of proof required for waiver would make waiver of juveniles easier to accomplish and would undoubtedly increase the willingness of prosecutors to attempt waivers. The court's ability to determine the weight to be given each of the nine factors it must consider and to make a waiver decision based on any one or a combination of the factors provides the court with a substantial degree of discretion and is also likely to make waivers far easier to accomplish.

SENTENCING OF WAIVED JUVENILES

Under the provisions of CS HB 109 as amended 16 and 17 year old juveniles automatically waived to adult jurisdiction would be sentenced within the adult system unless they were convicted of a lesser included offense that was not an unclassified or Class A felony. In such cases disposition would be within the juvenile system. This would justly deal with youths who, though charged with an automatically waiveable offense, are actually convicted of a lesser offense which would not have made

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them eligible for automatic waiver. This would also provide adequate safeguards to preclude punitive or discriminatory overcharging by police or prosecutors in order to make certain juveniles subject to the more stringent sanctions of the adult system. This provision greatly strengthens the Bill and makes it far superior and more just than the original version.

Another provision of this Bill is very effective in dealing with the problem of differences in levels of maturity and sophistication of juveniles who would be subject to the automatic or judicial waiver. It would also allow for consideration of the differences in the specifics and seriousness of the offenses committed by those juveniles. This provision would require that, although juveniles waived to adult criminal jurisdiction would be sentenced as adult offenders and confined within the adult correctional system, they would not be subject to mandatory minimum or presumptive sentences upon a first felony conviction. This would maintain the integrity of the Bill in holding juvenile offenders accountable for their offenses, but allow the court adequate discretion to consider all pertinent facts in sentencing waived juveniles. Since exclusion from juvenile jurisdiction under the automatic waiver provision is based solely on the offense committed such discretion would be necessary. Studies show that all serious offenses are not the culmination of delinquent careers and that disparity in the sophistication and history of delinquent behavior among waived juveniles must be expected. Sentencing discretion such as is provided by this provision is necessary to justly address this disparity.

CONFINEMENT OF WAIVED JUVENILES

Under this Bill all juveniles subject to adult criminal jurisdiction under either the automatic or judicial waiver provisions would, if confined to custody following arrest, while awaiting trial or sentencing, or after sentencing, be confined in adult correctional facilities.

These provisions are straightforward but unfortunately do not provide sufficient procedural protections. Juveniles would be housed in adult facilities from the time of arrest. The decision about where juveniles should be housed would, then, essentially be made at the discretion of the arresting officer based on the crime the officer chose to allege. Youths would be subject to the unreviewed judgement of police officers and could be housed in adult facilities based on police officer error, punitive overcharging, or discrimination in alleging a more serious charge than would be indicated or could be proven from the facts.

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These problems could be avoided and a more equitable and more certain system provided by requiring that juveniles be housed in juvenile facilities until procedural reviews had occurred. Such reviews would include a grand jury or preliminary hearing before the court, from which an indictment or finding of probable cause had been found to believe that the juvenile had committed an automatically waiveable offense. This would avoid the possibility that juveniles were charged with waiveable offenses simply to allow their incarceration in an adult facility.

EFFECTS OF THE BILL

With the suggested changes CS HB 109 would adequately address the problem of dealing with older, violent, serious, or repetitive juvenile offenders by holding them accountable in the same manner as adults. This would focus directly on the highly publicized problem which is the cause of much public misperception of juvenile crime and juvenile offenders. It would also allow the juvenile justice system to focus on those youths for whom the likelihood of rehabilitation is much greater.

The juvenile justice system could maintain the comprehensive approach to protecting the public and rehabilitating youths through diversion, intervention and services to strengthen families without the necessity of structuring programs, services, and facilities to deal with those older, violent juveniles who differ significantly from the vast majority of juvenile offenders.

The effect of CS HB 109 as amended would be to increase the number of juveniles subject to prosecution under the adult criminal statutes and to increase the liability of these juveniles to sanctions more severe, both in nature and duration than those to which they would have been liable under the juvenile code. With the suggested narrowing of the automatic waiver to include only those juveniles accused of unclassified felonies the Bill would appropriately focus the liability of adult prosecution on older, violent juvenile offenders and other juveniles who had committed specifically heinous crimes or who had records of repetitive delinquent behavior and either had not or would not be likely to be rehabilitated under the aegis of the juvenile justice system.

DHSS POSITION

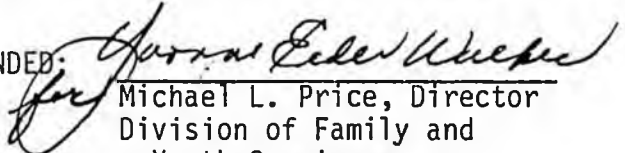
The Department strongly supports the concepts embodied in CS HB 109. It is the Department's position that, though few in number, older youths accused of heinous or violent crimes require sanctions qualitatively and quantitatively different from those available under the jurisdiction of

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the juvenile court. This Bill, with the suggested changes, would provide an effective and comprehensive approach to dealing with older serious, and repeat juvenile offenders. The charges suggested are merely refinements which provide necessary procedural protections to guard against abuses or human error. With the inclusion of suggested refinements the Bill would increase protection of the public and public confidence in the justice system while delaing justly and equitably with juvenile offenders.

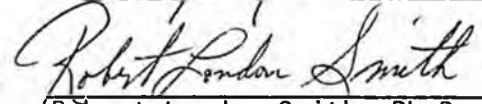
RECOMMENDED:


Michael L. Price, Director
Division of Family and
Youth Services

DATE:

5/19/83

APPROVED BY:


Robert London Smith, Ph.D.
Commissioner

DATE:

5/24/83

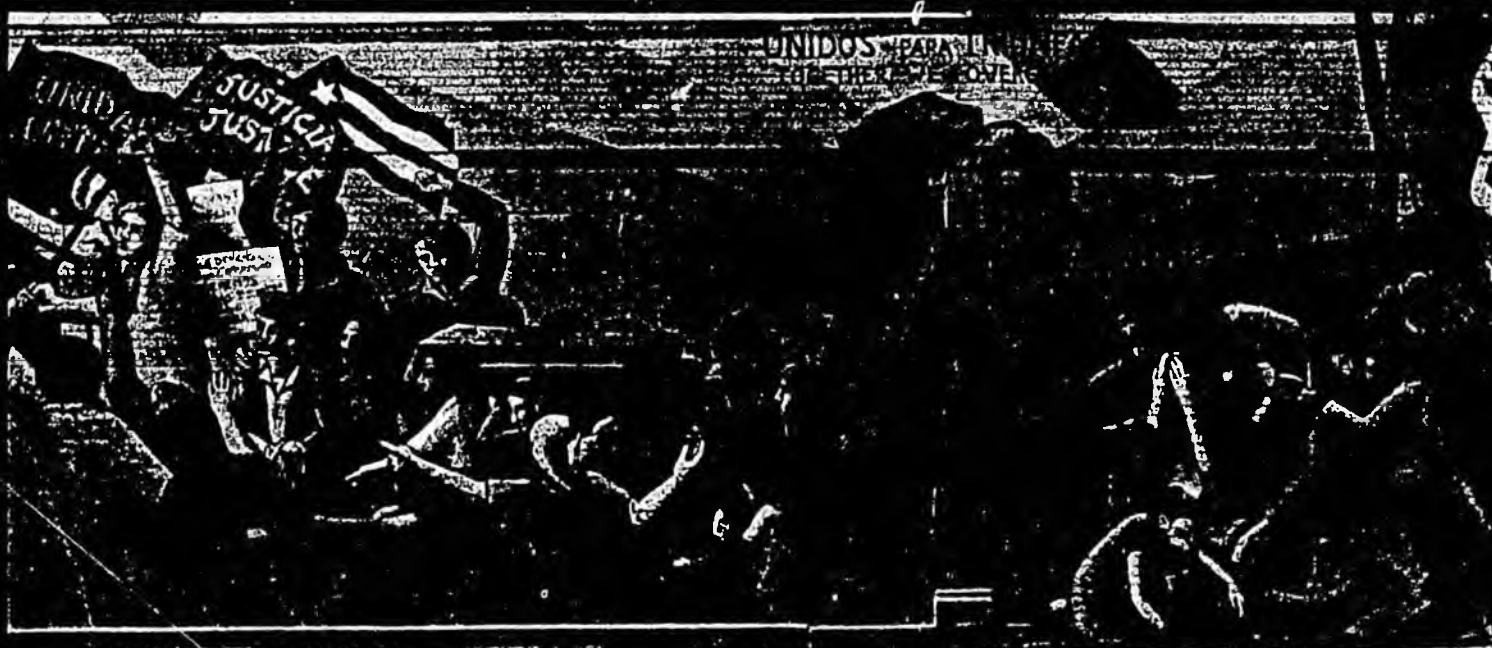
Violent Youth Crime

"I believe—and the Task Force will recommend—that the Attorney General use the full panoply of resources currently aimed at organized criminal activity to prosecute youth gangs which operate in urban areas." — p. 2.

"There is no common definition of the violent offender." — p. 4.

"We must focus on intervention strategies for the chronic, violent juvenile offender." — p. 9

"Until we begin to realistically analyze the special characteristics of this minority, the juvenile justice 'system' will continue to be the playground of the proposal writers and the politicians, with the public as the loser." — p. 10.



"Public art can only live if public artists are willing to be on the scene, to work at points of tension, to be relevant to the most difficult and violent problems of our time and our neighborhoods." — p. 12.

"Becoming a little crazy is one way humans deal with problems they cannot solve — in this case the problem of coping with those 13-year-old assailants we cannot hate, cannot love, and cannot change." — p. 14.

Governor James R. Thompson on

CHANGE: In your Task Force hearings around the country, which issues related to youth crime came up most frequently? In the cities visited, were you able to obtain testimony from all segments of the community — i.e., police, the courts, corrections officials, school representatives, housing groups, victims, advocacy groups, juvenile justice practitioners?

THOMPSON: Every effort was made to elicit testimony from representatives of groups which are actively involved with youth. In Chicago, where we focused on youth crime, we heard from the Superintendent of the Chicago Police Department, the Attorney General of the State, the Cook County State's Attorney, representatives of the American Bar Association, a metropolitan school superintendent, a leading national authority in the area of juvenile crime and a former Chicago youth gang leader.

Witnesses throughout the country expressed concern over the alarming increase in violent crime by juveniles, gang activity in our nation's urban centers, drugs in the schools, and the inability of our juvenile justice system to deal with young people who commit serious offenses. Because of the system's inability to cope with these problems, more and more youngsters are being induced by their older relatives to commit crimes on the ground that they will not be punished if apprehended.

Based on the testimony as well as accompanying empirical data, I am convinced that the problem of serious juvenile crime is reaching epidemic proportions throughout the nation and must be dealt with as a priority.

CHANGE: What will be the impact on states such as Illinois of reduced federal funds for juvenile justice programs and related social services to children and youth in need?

THOMPSON: In Illinois, we are currently funding over 100 community-based programs with federal dollars. These range from programs for serious offenders to programs for status offenders. When these funds are reduced, the already keen competition among programs for the funds will be heightened.

Criminal justice is an issue that should be the primary concern of state and local governments. Our experience with LEAA suggests that the crime problem will not go away simply by funneling money through Washington and back to the communities. Yet, as the transformation to a new federalism progresses, the federal government will continue to assist

the states in funding a number of programmatic initiatives of national importance. I believe that criminal justice, with its juvenile justice component, will be considered, along with education, public aid, and public health, as national priorities.

This is not to suggest in any way that we should revert to the days when experimental projects of all types were funded, administrative costs were exorbitant, and red tape and bureaucratic involvement were stifling. I expect to see a limited, result oriented funding program that focuses on programs that have proven successful in the past and eliminates the administrative problems of the past. The thrust of the federal financial support should center on the apprehension, prosecution, incarceration of violent and other serious offenders. That type of program can encompass a move to reduce juvenile crime.

Illinois can live with a more focused and streamlined federal assistance program even though the dollars aren't as plentiful as they have been in the past, and I suspect the other states can as well.

CHANGE: For years, states have used waiver and binding-over procedures to adult courts to deal with serious/chronic/violent offenders who cannot, they believe, be handled by informal hearings of the juvenile court or through its sanctions and treatment dispositions. National research evidence obtained on a county-by-county basis indicates that 52 percent of the juvenile offenders tried in adult courts received either probation or a fine as their sentence, although 90 percent were found guilty. Moreover, most were waived to adult courts for crimes against property or drug abuse, not for crimes against people. Don't these findings undermine many of the assumptions behind current state moves to increase the number of juveniles tried in adult courts?

THOMPSON: One of the problems with studies of this nature is their inability to account for the natural disinclination of judges to incarcerate young people in adult institutions or, when state law requires, overcrowded, under-programmed juvenile facilities. Therefore, I do not believe that the findings necessarily undermine the current trend of adult trials for juveniles.

Two considerations must be recognized in this context. First, juveniles, particularly those who commit violent crimes, should be held accountable for their violations of the law.

Second, the prospect of rehabilitation, if valid at all, is significantly greater for the juvenile offender.

I would not be opposed to a system that required juveniles (over 14) to be tried as adults if they are charged with crimes of violence so long as they could be sentenced to program-intensive juvenile facilities for a definite period of time. The problem with this system arises from the fact that facilities of this nature — if run correctly — are among the most expensive correctional facilities.

In Illinois, we are currently attempting to strike a balance by allowing judges discretion, on motion of the state's attorney, to try a juvenile as an adult. At the same time, we have created a Habitual Juvenile Offender Act to assure detention when an individual cannot conform to the dictates of society. This combination has enabled us to better control the flow of people to our juvenile institutions and gauge the impact of our juvenile programs in the institutional setting.

CHANGE: In calling for a complete removal of children from adult jails and lockups, the Juvenile Justice Amendments of 1980 responded to the wealth of evidence regarding the damaging effects of mingling children with adults. Do you feel that the JJDP mandate to remove children from jails will strengthen the system's capacity to re-target resources toward the violent juvenile offender?

THOMPSON: In the metropolitan areas of Illinois, I anticipate that this will be true. However, in more rural communities it will be difficult to develop alternatives to detention where none presently exist because of the costs involved. I am encouraged by the federal government's recognition of this problem and confident we will be able to reach a solution.

CHANGE: While eliminating some of the problems of "discretionary justice," the imposition of mandatory sentences for certain types of crime — such as the "Class X" legislation you successfully sponsored in Illinois — usually results in increased institutional populations. Since the cost of secure care far exceeds that of any other sanction, would you support a continuing emphasis on alternatives to incarceration for those offenders who do not present a threat to the community?

THOMPSON: In connection with my successful campaign to abolish parole and install nonprobationable mandatory minimum sentences for violent crimes — now called "Class X"

Juvenile Crime

offenses in Illinois — I surveyed the views of a wide variety of citizens to determine the public's willingness to bear the costs of incarceration. I found that the people of Illinois prefer that their tax dollars be used to keep violent criminals off the streets over any other type of government expenditure. Thus, I am willing to spend what is necessary for secure detention. Beyond that, I am willing to consider alternative dispositions when a clear determination can be made that a particular offender will not pose a threat to society.

In Illinois, we have had considerable success with a statewide program that keeps young people who would otherwise have been committed to a secure institution in their own community. The Unified Delinquency Intervention Services, begun with federal dollars, has now been included in the State budget. The program has provided direct experience that many youth who have committed serious offenses can be maintained more economically in their own communities without increasing the risk of harm to the people who live there.

CHANGE: Youthful gangs are responsible for a growing number of violent crimes in many cities, including Chicago. What kind of efforts are needed to combat this problem?

THOMPSON: At one of the Task Force hearings, a former youth gang leader testified under stringent security precautions. He described in detail the sophisticated, hierarchical structure under which the gangs operate and told how they resemble — in fact model themselves after — the type of organized crime operations we see in movies like the *Godfather*.

According to the witness, the Chicago based gang operates on a multi-state level in the areas of drug distribution, auto theft, burglary, extortion and contract murder. The gangs often use very young children to run the drugs or recruit the children primarily under the guise of the need for protection, but resort to strong-armed tactics if necessary. The gang that the witness described maintains an arsenal of weapons ranging from hand guns to machine guns and from hand grenades to small bombs for distribution to trustworthy members for use in criminal activity.

In response to a question, the witness indicated that only a few gang members would be unable to find employment to support themselves outside the gang structure. He maintained that people remain in gangs

because they prefer the lifestyle. In light of this background information, I believe that gang operations transcend the limits of local prosecutorial jurisdiction. I believe — and the Task Force will recommend — that the Attorney General use the full panoply of resources currently aimed at organized criminal activity to prosecute youth gangs which operate in urban areas. Because the gang problem is a national phenomenon, it must be dealt with through the entire range of power available to the federal government.

CHANGE: Do you think we have gone too far or not far enough in providing legal protections for juvenile offenders? What do you think of proposals to abolish juvenile courts altogether as a means of ensuring the due process protections available in the adult system for young offenders?



THOMPSON: Whenever a person, regardless of his age, faces a loss of liberty as a result of prosecution for an illegal act, he is entitled to all due process protections. The juvenile courts originated because it was felt that youth were not, in every way, on par with adults, that they were not always able to recognize or act in their own best interests. This notion has grown to include an entitlement to many of the same protections that are accorded adults in criminal actions. It thus reflects the dual needs of protecting society while assuring a youth access to the resources he needs. As long as he is provided competent counsel and the other safeguards which have been built into the juvenile court, I see no need to abolish this forum on the theory that it provides inadequate safeguards.

In fact, there is one "safeguard" for juveniles that has been carried too far. Currently statutory restrictions in the procedures pertaining to adult court use of juvenile records may unnecessarily limit the ability of the court to provide the most appropriate sentences or make decisions on bail for juveniles tried as

adults or for adults with juvenile criminal histories. Thus, an adult first offender having an extensive juvenile felony record may be sentenced as if it were his first arrest as a result of legislative mandates or policy expunging or sealing the past record. These criminal histories should be available to assure that the courts have sufficient information upon which to decide whether to release an offender into the community.

CHANGE: Would you support efforts to completely remove from juvenile court jurisdiction all youth who have not been arrested for allegedly committing a criminal act?

THOMPSON: Recent studies in Illinois demonstrate that the juvenile courts, overburdened as they are with delinquents, do not effectively respond to the needs of status offenders.

Because the legal and social issues are sufficiently distinct, neglected or dependent young people as well as those seeking emancipation or affirmation of independent living status should be provided with a forum other than the juvenile courts.

CHANGE: How can we use community resources more effectively to prevent or reduce delinquency?

THOMPSON: Community resources are our first line of defense against juvenile delinquency. These are the early intervention services which can be drawn on by teachers, police officers, family members and others, including the young person, when behavior suggests the risk of potential criminal activity. The resources are best drawn on when used to complement each other. This happens when there is careful planning and good communication and information sharing among providers and referral sources. ■

A former U.S. Attorney for the Northern District of Illinois, Governor James R. Thompson was selected as Co-Chairman of the Attorney General's Task Force on Violent Crime. During the past four months, the Task Force has held hearings around the country, and August 17th, released extensive recommendations aimed at improving the federal government's efforts to control violent crimes.

In this interview CHANGE asked Governor Thompson to comment on some of the key issues affecting juvenile justice, based on his recent Task Force experience, his legislative concerns, and his background as a federal prosecutor.

THE LIFE-STYLE VIOLENT JUVENILE

Throughout history, all organized human societies have feared danger and hated evil. As our perceptual systems have evolved, so have our concepts of these two frightening qualities: where humans once feared dinosaurs, we now fear cancer. And where we once feared evil spirits, we now fear the looming specter of the "violent juvenile offender." No single category of human life-form has generated more of an unfocused and indeed counter-productive response than the image of the rampaging urban juggernaut of destruction, this "violent juvenile offender," and no other type of individual has caused so much reaction without result.

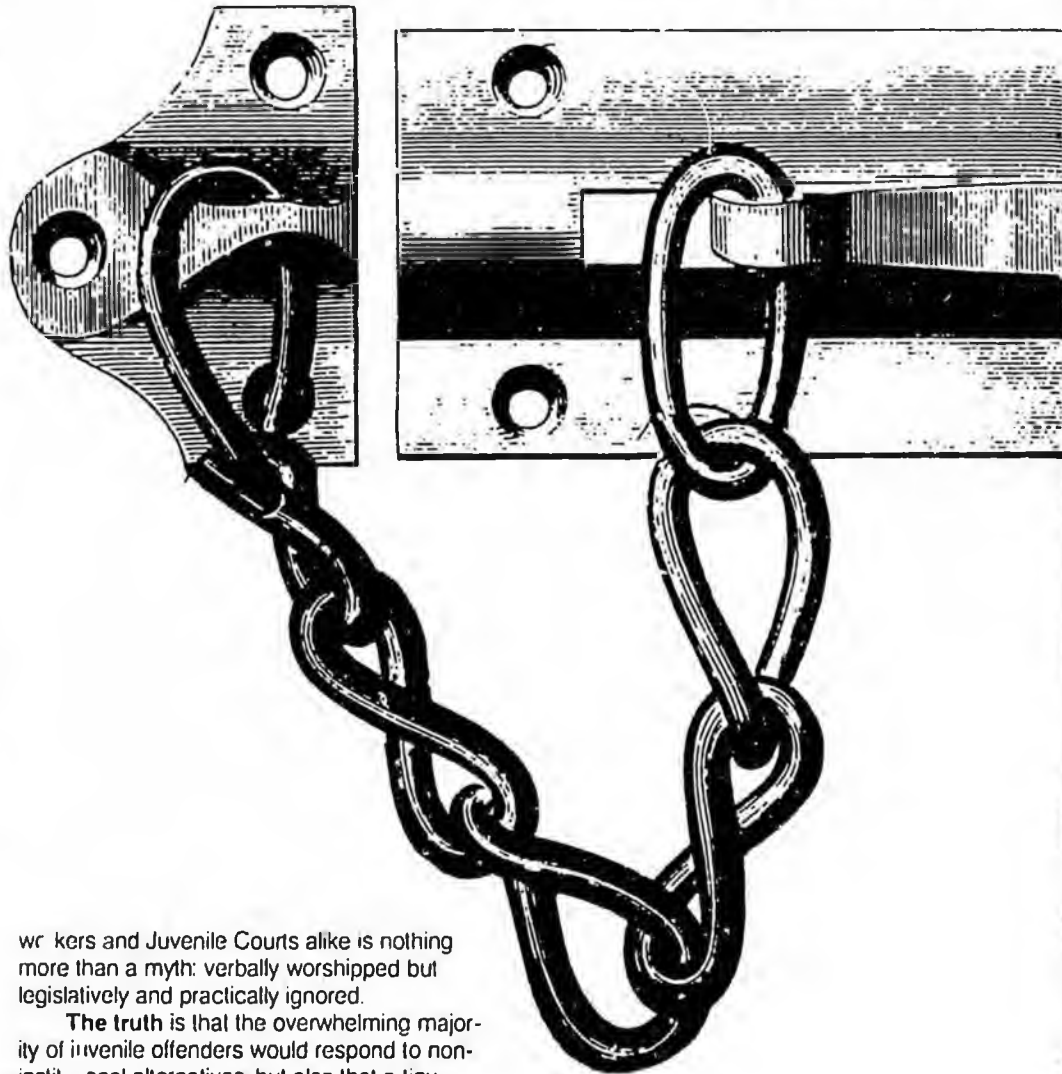
And why not? Is there any concept more frightening than murder, rape, or robbery at the hands of our own children?

As with the great majority of "solutions" to social problems, rhetoric has run far ahead of reality. We conveniently forget the bitter lessons of our own history and loudly demand a return to the "good old days" which our citizens now *perceive* as having produced a vastly different breed of juvenile "delinquent" than the vicious savage who currently roams our streets with impunity, ignoring our social mores and institutions and laughing at the futility of the "juvenile justice system."

Our societal response to this omnipresent threat of juvenile violence has been a perfect circle of impotent futility. We first fail to distinguish between adult and juvenile offenders: if you can do a man's crime, you can do a man's time. And we observe the natural fallout from such a system with horror: some children simply fail to survive adult incarceration, and those who do survive rejoin society well-equipped in the tools of criminal violence. So we self-righteously proclaim that we will no longer co-mingle adult and juvenile criminals, and we establish a separate (but hardly equal) system for our youth. And we soon learn that juvenile incarceration runs like a blood-red thread through the fabric of the lives of virtually every violent professional criminal this country has produced: from Dillinger to Panzram to Chessman to Manson. The conclusion is inescapable: juvenile prison systems are criminogenic in the extreme. Nothing more than crime factories and sodomy schools, they are breeding grounds for the violently recidivistic career criminal.

So we quickly proceed to "deinstitutionalization." And just as quickly learn that some juveniles represent such violent unchecked whirlwinds of destruction that some form of incarceration is a minimal requirement. And then we come full circle to the parody of "waiver" laws by which we will once again treat some juveniles as adults in the pitifully uninformed belief that juvenile crime is a new phenomenon which will respond to old solutions.

The truth is that the juvenile justice "system" is nothing more than a knee-jerk political response to a problem that has now reached epic proportions in America. The "individualization of the offender," so beloved of social



workers and Juvenile Courts alike is nothing more than a myth: verbally worshipped but legislatively and practically ignored.

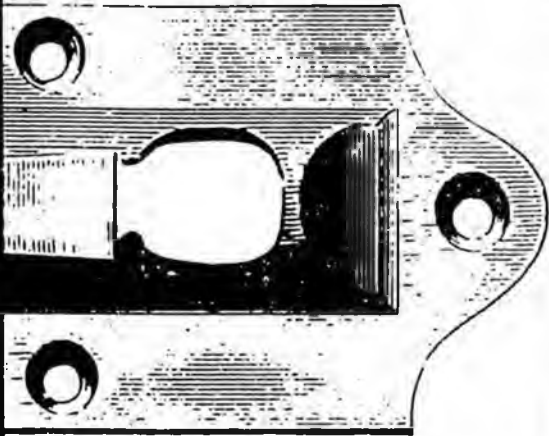
The truth is that the overwhelming majority of juvenile offenders would respond to non-institutional alternatives, but also that a tiny percentage of such youth *require* incarcerative, institutional treatment if they are to have a hope of re-entering society without a commitment to criminal violence as a career.

The truth is that a tiny minority of juveniles has inspired the majority of legislative responses to juvenile crime as a whole. Until we begin to realistically analyze the special characteristics of this minority, the juvenile justice "system" will continue to be the playground of the proposal writers and the politicians, with the public as the loser.

A Proposed Definition

To promote the dual ends of description and analysis, we call our target offender the *life-style violent juvenile*. In doing so, we seek to avoid the murky, ambiguous classifications of the past and focus on what should be the objectives of the current system. This youth exhibits a criminological, social, and economic life-style indelibly marked by chronicity of often-escalating violence. A single episode of violence will not suffice to bring a juvenile within the ambit of this classification. Our target population is characterized by a distortion of societal values, a commitment to immediate gratification, and a (continually reinforced) alienation from societal structures and institutions.

A member of this group will most likely have been previously institutionalized, will



almost certainly have functionally, if not actually, left school for some time. Regardless of his personal family constellation, he will most likely relate to a group or gang of similarly-inclined youth as the major focal point in his life. Traditional concepts will be redefined by his peer group so that they surface in aberrant ways. To such a juvenile, gang rape is not antisocial, mugging is not wrong, and tomorrow is dimly, if at all, perceived. His life is controlled by anonymous institutions and agencies: landlords, the welfare department, the police, and the judicial system. Life is a lottery and gratification delayed is probably gratification denied. Role models are armed robbers, pimps, narcotics dealers, and extortionists, and emulation of such models begins as fantasy, proceeds to peer-level imitation, and finally culminates in active participation.

When the juvenile justice system does intervene in this ugly chain of inevitability, it tends only to reinforce the viability of this juvenile's role models, and he is bombarded with similar, non-competing messages through the years in the "system." If a juvenile is incarcerated because of violent behavior and finds himself in a "helping" institution where physical violence is the only way to avoid sexual exploitation by others, the "might makes right" lessons of the street are reinforced by the professional "change-agents" who hold him in custody.

The life-style violent juvenile perceives few options in his world: he will either exploit or be exploited, and the way to avoid the latter is to acquire sufficient skills in the former. There is a powerful emphasis on advertising that one is not a member of the exploited class: symbols such as clothes, jewelry, and cars are worshipped with a zeal even the most upwardly mobile might find incredible. Life is a mystery: he sees no causal relationship between acts and consequences. In his world, everybody commits crimes: some are caught, even fewer are punished.

When such a juvenile is blithely commingled with a population of youth less acculturated to violence, he runs amok. Confronted with a juvenile ready, willing, and able to commit violent acts, institutional staff generally respond by treating the life-style violent juvenile as a special case, with special privileges. His role? To help the staff manage the institution. In so doing, he employs the tools with which he is most familiar, takes his place within the inmate exploitation-hierarchy, and helps turn the institution into a living hell for

"Vachss and Bakal argue that present modes of responding to such violent youths are inadequate. Present procedures neither protect the rest of us nor reform offenders. The authors therefore propose a multi-stage "treatment" that requires maximum security against escape and against injury of other inmates and their guards. The five stages of incarceration are designed to socialize the violent ones toward more acceptable ways of thinking and doing. A "curriculum" of activities is imposed at Stage Two which must be "passed" before an inmate moves on toward release.

"The treatment model assumes that violent offenders have been behaving adaptively . . . and that reform of the gangster requires his control in a setting that responds immediately "with consequences" to disapproved acts. Vachss and Bakal's idea is to train violent youths toward lawful lives by creating a non-vengeful, yet sometimes punishing, environment in which approved behavior is rewarded and predatory behavior is penalized. This program is not that of a token economy, but rather that of a highly controlled milieu therapy. Vachss and Bakal reject the medical model of treating offenders and they reject the notion of "rehabilitation" since this concept assumes that there was once a structure of action that has only to be recovered. To the contrary, Vachss and Bakal require that the violent ones be trained in a repertoire of behavior that is unfamiliar to them . . . it is apparent that current prisons and "reform schools" reinforce the very violent behavior they are supposed to discourage . . . their proposal deserves a trial."

Canadian Journal of Criminology & Corrections, 21, no. 127, 1980

those juveniles who shouldn't have been there in the first place.

Needed: A Realistic Classification System

The life-style juvenile is the Achilles heel of proponents of deinstitutionalization. They have no answers for such an individual other than to occasionally proclaim he doesn't exist, just as equally uninformed individuals on the other end of the political spectrum proclaim that he represents the "typical" delinquent. The truth is that deinstitutionalization is not an "all or nothing" concept requiring total adoption or total abandonment. In fact, deinstitutionalization cannot hope to succeed without a "secure treatment unit" somewhere well established within the network of services required by any functioning juvenile justice system.

A functioning system will take collective responsibility for *all* juveniles, regardless of criminal background. This mandates nothing less than a maximum security institution somewhere within the continuum of services provided. And it means maximum security in the literal sense: not just a system to maximally ensure society that its inmates will not voluntarily depart, but a system within which the inmates themselves are maximally secure. While the profession seemingly endlessly debates a juvenile's more esoteric rights, we ignore the most fundamental rights of all: the right to be free of violence, forcible rape, and an existence so devoid of hope that too many juveniles each year opt for suicide as an exit visa.

In short, what is proposed is a classification system of juvenile criminals based on reality, not rhetoric. And a systemic response to such individuals by creating specialized treatment units, run along unique but time-tested lines, that will support the concept of deinstitutionalization while simultaneously protecting society's short- and long-term interests.

The juvenile justice profession has already tried "get tough" and "get soft" responses to juvenile crime. Both have failed. It is crystal-clear that it is time to "get smart."

For a complete analysis, including an in-depth look at the life style violent juvenile through interviews, case histories, and observations, and for a comprehensive service-delivery plan for such offenders, including the staffing, operation, and actual floor plans of the proposed Secure Treatment Unit the interested reader should consult The Life-Style Violent Juvenile: the Secure Treatment Approach, by Andrew H. Vachss and Yitzhak Bakal, published by D. C. Heath, Lexington Books, 125 Spring Street, Lexington, MA 02173; \$24.95. For bulk ordering information or direct phone orders, contact Margaret Zusky, 212/924-6460

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 17, 1983

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

In response to a request from Mr. Steve Cramer, I am sending you a copy of a bill drafted by the Department of Law regarding the "waiver" of juveniles charged with serious felony crimes from juvenile to adult court. The bill is provided for your use (if desired) as the basis of a committee substitute for HB 109, now before the House Judiciary Committee. I am also sending a copy of the bill to Senator Ray, Chairman of the Senate Judiciary Committee.

As you know, under the current law, minors accused of committing criminal offenses are handled in the children's court system unless they are "waived" into adult court after a hearing under AS 47.10.060 (i.e., when the special procedures required for minors are waived). Even for the most serious crimes, waiver under existing law is permitted only if the prosecution can prove to the court that the offender is "not amenable to treatment." If a minor charged with a serious offense has not previously come to the attention of the criminal justice authorities, and thus has never been "treated" under the children's criminal justice system, it is extremely difficult to prove that the minor would not be amenable to treatment, despite the heinous or brutal nature of the crime. If retained in the children's system, the offender must be released when he or she reaches the age of 20. Children's court jurisdiction cannot be extended beyond that point, regardless of an offender's lack of progress in treatment or his or her continuing to be a danger to the community.

The attached bill transfers jurisdiction over persons aged 16 and 17 who are accused of unclassified or class A felonies from the children's court to adult criminal court. The bill retains the children's court's ability to waive, in its discretion, in appropriate cases and after a full hearing, the children's proceedings for minors of any age who are charged with felony offenses. The standard for waiver is somewhat altered, however. Upon motion of the prosecutor, an offender charged with a felony will be transferred to adult court if the court finds that there is "no substantial likelihood"

The Honorable Charlie Bussell
Representative

March 17, 1983
Page 2

that the person can be successfully rehabilitated under the jurisdiction of the children's court. The bill lists several factors which the court must consider when determining the likelihood of successful rehabilitation under the children's justice system.

If convicted of the original charge or of any lesser included offense, the defendant would be sentenced as an adult under the current AS 12.55. In order to allow the sentencing judge to consider all relevant factors, however, an offender under the age of 18 would not be subject to mandatory minimum or presumptive sentences on his or her first felony conviction. He or she would be subject to mandatory minimum and presumptive sentences for second or subsequent convictions.

If confined to custody while awaiting trial, or sentenced to a period of incarceration following conviction, the person will be committed to the custody of the Department of Health and Social Services for confinement in an adult facility. It is not considered appropriate to confine persons convicted of serious or brutal felonies to a children's facility, where they could have a detrimental influence upon other, less sophisticated young offenders.

Once a person is tried and sentenced as an adult, that person will be prosecuted as an adult for all subsequent criminal violations. This is to preclude the possibility that a person who has been convicted as an adult and has perhaps served a sentence in an adult facility could be confined in a children's facility following conviction for a subsequent, less serious offense. Again, it is not considered desirable to mingle these older, more sophisticated offenders with the general population found in children's facilities.

This letter is a brief summary of the more important aspects of the attached bill. I would be happy to answer any questions you might have about the bill, and to work with you or the committee staff on incorporating its provisions into HB 109.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 
Gayle A. Koretski
Assistant Attorney General

GAH/lb-09

Attachment

CS HOUSE BILL 109 SUMMARY

CS HOUSE BILL 109 TRANSFERS, FROM THE CHILDREN'S COURT TO ADULT CRIMINAL COURT, JURISDICTION OVER PERSONS AGED 16 AND 17, WHO ARE ACCUSED OF CLASS A OR UNCLASSIFIED FELONIES. FELONIES SUCH AS MURDER, KIDNAPPING, RAPE AND ARSON.

UNDER CURRENT LAW, MINORS ACCUSED OF COMMITTING CRIMINAL OFFENSES ARE HANDLED IN THE CHILDREN'S COURT UNLESS THEY ARE WAIVERED INTO ADULT COURT AFTER A HEARING UNDER AS 47.10.060. EVEN FOR THE MOST SERIOUS CRIMES, WAIVER IS PERMITTED ONLY IF THE PROSECUTION CAN PROVE TO THE COURT THAT THE OFFENDER IS, "NOT AMENABLE TO TREATMENT."

IN 1982, THE 3RD JUDICIAL DISTRICT (ANCHORAGE, KENAI AND THE MAT-SU BOROUGH) HAD A DOZEN CASES WHEREIN A 16 OR 17 YEAR OLD PERSON COMMITTED A CLASS A OR UNCLASSIFIED FELONY. OF THE 12, 6 COMMITTED ARMED ROBBERY, 3 SEXUAL ASSAULT, 2 MURDER IN THE FIRST DEGREE AND 1 MANSLAUGHTER. OF THESE TWELVE, ONLY 2 WERE WAIVERED TO ADULT COURT AND 10 WERE TRIED IN CHILDREN'S COURT.

CHILDREN'S COURT HAS POWER OVER A MINOR FOR ONLY 2 YEARS OR UNTIL THE MINOR'S 19TH BIRTHDAY, WHICHEVER COMES FIRST. THEREFORE, IF A MINOR, 17½ YEARS OLD, COMMITS A CLASS A OR UNCLASSIFIED FELONY AND IS TRIED AND CONVICTED IN JUVENILE COURT, THAT PERSON IS RELEASED ON HIS/HER 19TH BIRTHDAY AND WITH A CLEAN RECORD. (ONCE A MINOR BECOMES AN ADULT, THAT PERSON'S JUVENILE RECORD IS CLOSED).

THIS BILL STATES THAT A 16 OR 17 YEAR OLD WHO IS ALLEGED TO HAVE COMMITTED A CLASS A OR UNCLASSIFIED FELONY MUST BE CHARGED, ARRESTED AND PROSECUTED AS AN ADULT, SENTENCED IF CONVICTED UNDER PROVISIONS OF AS 12.55 AND CONFINED IN A CORRECTIONAL FACILITY FOR ADULT OFFENDERS.

A 16 OR 17 YEAR OLD WHO IS CONVICTED OF A CLASS A OR UNCLASSIFIED FELONY IN ADULT COURT IS NOT SUBJECT TO PRESUMPTIVE SENTENCING OTHERWISE REQUIRED FOR FIRST OFFENDERS. THAT PERSON HOWEVER, WILL BE TRIED AS AN ADULT AND WILL BE SUBJECT TO PRESUMPTIVE SENTENCES FOR ALL SUBSEQUENT CRIMINAL OFFENSES.

ACCORDING TO ANCHORAGE JUVENILE COURT, 3RD JUDICIAL DISTRICT, "MOST CLASS A FELONIES COMMITTED BY MINORS ARE COMMITTED BY PERSONS 16 YEARS OF AGE OR OLDER."

IN ALASKA, THERE ARE APPROXIMATELY 31 JUVENILES ARRESTED ANNUALLY FOR CLASS A OR UNCLASSIFIED FELONIES. UNDER THE EXISTING SYSTEM, ONLY 3 ARE WAIVERED TO ADULT COURT. ESTIMATES INDICATE THAT THIS BILL WOULD INCREASE THE NUMBER OF MINORS PROSECUTED IN ADULT COURT TO 28. OF THESE 28 JUVENILES, 18 WOULD BE CONVICTED AND SENTENCED TO IMPRISONMENT FOR A PERIOD OF UP TO 20 YEARS.

AT THIS TIME, FOURTEEN STATES HAVE PROVISIONS WHICH EXCLUDE SERIOUS AND VIOLENT OFFENDERS FROM THE JUVENILE COURTS. IN SOME STATES, LIKE PENNSYLVANIA, ALL PERSONS CHARGED WITH HOMICIDE ARE TRIED IN ADULT COURT, REGARDLESS OF THEIR AGE. IN COLORADO, A JUVENILE AGE FOURTEEN OR OVER, WHO IS CHARGED WITH COMMISSION OF A VIOLENT FELONY, IS TRIED IN ADULT COURT.

IN VERMONT, NEW YORK, CONNECTICUT AND NORTH CAROLINA, PERSONS 16 YEARS OF AGE OR OLDER, CHARGED WITH ANY CRIME, ARE INITIALLY TRIED IN ADULT COURT.

(Prepared by Rep. Pestinger's office)

CS HB 109 (JUDICIARY)

THE NUMBER OF SERIOUS CRIMES NATIONWIDE COMMITTED BY JUVENILES HAS DRAMATICALLY INCREASED DURING THE PAST 15 YEARS. WHILE YOUTH FROM TEN THROUGH SEVENTEEN YEARS OF AGE CONSTITUTE LESS THAN 14 PERCENT OF OUR POPULATION, THEY COMPRISE ALMOST ONE-HALF (45.5 PERCENT) OF THOSE ARRESTED FOR WHAT ARE CLASSIFIED AS "VIOLENT" CRIMES.

TWENTY STATES HAVE STATUTES WHICH SPECIFY 16 YEARS OF AGE FOR WAIVER.

NINE PERMIT WAIVER FOR ANY OFFENSE.

ELEVEN REQUIRE THAT THE OFFENSE BE A FELONY.

THE SECOND MOST COMMON WAIVER AGE IS 14.

ELEVEN STATES USE THE AGE OF 15 FOR SOME OR ALL OFFENSES.

(Prepared by Rep. Pestinger's office)

COMMENTARY AND SECTIONAL ANALYSIS
FOR CSHB 109, RELATING TO JUVENILE WAIVER PROVISIONS

Section 1.

Subsection (a) of this section provides that a person who is 16 or 17 years of age and who is charged with an unclassified or class A felony offense must be arrested and prosecuted as an adult. In effect, these persons are automatically removed from the jurisdiction of the juvenile court.

Subsection (b) of this section recognizes that a person may, in the court's discretion, also be transferred to adult court following a hearing under AS 47.10.060 (juvenile waiver provisions). If a person is transferred to adult court under this procedure, he will be prosecuted as an adult.

Subsection (c) provides that a person who has been convicted of an offense after being prosecuted as an adult must be prosecuted as an adult for any subsequent criminal offense. There are a couple of reasons for this. A person will be waived into adult court only for the most serious offenses. Following conviction for a serious offense, or for a lesser included offense, the person will be sent to an adult institution if a sentence of imprisonment is received. If a person is paroled, or serves a short sentence, and commits another crime after release and while still under the age of 18, it is not appropriate to send that person to a juvenile facility after he or she has been confined to an adult institution on the

previous offense. The younger, less sophisticated persons who are generally found in juvenile institutions should be protected from contact with more "hardened" criminals. Also the convicted person will almost certainly be on probation or parole for the first offense. Any subsequent criminal offense, felony or misdemeanor, is likely to be a violation of the terms of the probation or parole in the adult court. Thus, it makes sense to prosecute the subsequent offense in adult court, as that court will have to consider the offense in connection with potential revocation of the probation or parole anyway.

Subsection (d) merely makes it clear that references to the age of the person refer to the person's age at the time of the offense, not at the time of prosecution or conviction.

Section 2.

This section makes it clear that a person who has been waived into adult court, either automatically or after a court hearing, who is convicted of the offense charged or of a lesser included offense will be sentenced as an adult under the provisions of title 12, rather than as a juvenile under title 47.

Sections 3 and 4.

These sections amend AS 12.55.125 to cross reference the reader to a new subsection (j) of that statute. Subsection

(j), discussed below in section 5, provides that a person who has been waived from juvenile to adult court is not subject to presumptive sentencing upon his first felony conviction.

Section 5.

This language adds a new subsection (j) to the present AS 12.55.125. This subsection provides that, notwithstanding the presumptive terms set out in the section, a person who has been waived into adult court from juvenile court is not subject to mandatory minimum and presumptive sentences on his first felony conviction. This provision allows the adult court to take all relevant factors into consideration when sentencing a young first felony offender. Any potential harshness which might result in individual cases from the automatic waiver can thus be remedied when the court decides upon the appropriate sentence. In most cases a young person will receive a lighter sentence on a first offense than he would if he were subject to presumptive sentencing. In some cases where the court finds extreme extenuating circumstances, the court may decide to suspend imposition of sentence, or place the person on probation, options which are not available under a presumptive sentencing scheme.

Section 6.

A person who has been waived into adult court and who is convicted of a second felony offense following the first one

is subject to presumptive sentencing on the second offense, however. While it might be appropriate to give a young offender "a break" the first time he commits a serious offense, if he continues to commit felony offenses he should be treated as any other adult repeat offender.

Section 7.

This section provides that a person who is waived into adult court, either automatically or in the court's discretion, will be confined in an adult institution if he is held in custody while awaiting trial or sentencing. This is what happens under the current system. If a juvenile is waived into adult court following a hearing, as now required under AS 47.10.060, he or she is transferred to an adult institution, not left in juvenile institutions to mix with younger, less sophisticated offenders.

The original version of the bill required that young offenders stay in a juvenile facility until age 18, and then transfer to an adult facility. The Department of Health and Social Services strongly objected to this, as it is not appropriate to house murderers, rapists, armed robbers, etc. with youngsters having discipline problems or who had been sent to juvenile institutions for relatively minor offenses.

Additionally, offenders convicted as adults present a serious security risk. A person who knows that he will be transferred to an adult facility at age 18 has an incentive to flee from a juvenile facility before the time set for the transfer. Juvenile facilities are not as a rule designed to provide maximum security.

Section 8.

This section merely cleans up some of the language in AS 47.10.010(a), and makes it clear that persons charged with class A or unclassified felonies are exempted from children's court jurisdiction.

Section 9.

This section rewrites the current juvenile waiver law regarding the circumstances under which a person can be waived in the court's discretion. The standard for waiver is changed from "not amenable to treatment" to "no substantial likelihood that the person can be successfully rehabilitated under children's court proceedings." Subsection (b) specifically enumerates the factors which the court should consider when making this determination. This change is made in order to make it easier to discretionarily waive a juvenile who does not come under the provisions of AS 12.05.020(a) (see section 1) into adult court for serious or repeated criminal conduct.

Under the current law, the "not amenable to treatment" standard requires that the state prove, by a preponderance of the evidence, that the juvenile could not be successfully treated under the juvenile court system. If the juvenile has never before come to the attention of the authorities, it is difficult, if not impossible, to prove that he or she would not be amenable to treatment, regardless of the seriousness of the crime. The "no substantial likelihood" standard had been adopted from the laws of several other states; research has indicated that the courts in these other states appear more willing or able to waive persons than the courts in this state have shown themselves to be. The nine different factors set out in the section have all been taken, either verbatim or with slight modification, from the statutes of other jurisdictions.

Subsection (c) indicates that the court shall consider each factor, and must issue a written decision. A finding of no substantial likelihood of successful rehabilitation may be based on any one or a combination of the factors, however.

1 IN THE HOUSE

BY PESTINGER, FURNACE, UEHLING,
FLOOD, BARNES AND BUSSELL

2

HOUSE BILL NO. 109

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to criminal prosecution of minors."

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

8 * Section 1. AS 12.55.015 is amended by adding a new subsection to
9 read:

10 (e) If the court sentences a defendant to a term of imprisonment
11 and the defendant is a minor over whom children's court jurisdiction
12 is waived under AS 47.10.060, the court shall

13 (1) order that the defendant be confined in an institution
14 designated by the Department of Health and Social Services for offend-
15 ers under 18 years of age; and

16 (2) order that the defendant be transferred to an adult
17 correctional facility when the defendant reaches 19 years of age if
18 more than one year then remains of the defendant's term of imprison-
19 ment.

20 * Sec. 2. AS 47.10.060(a) is repealed and reenacted to read:

21 (a) The court shall order a case closed and, subject to the pro-
22 visions of AS 12.55.015(d), the minor shall be prosecuted as if the
23 minor were an adult if the court finds at a hearing on a petition

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

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

Offered: 3/28/83
Referred: Finance

Original sponsors: Pestinger, Furnace,
Uehling, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 109 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to persons 16 or 17 years of age who
7 are charged with unclassified or class A felonies;
8 and amending the children's proceedings waiver pro-
9 visions."

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

11 * Section 1. AS 12.05 is amended by adding a new section to read:

12 Sec. 12.05.020. JURISDICTION OVER CERTAIN MINORS CHARGED WITH
13 SERIOUS FELONIES. (a) A person 16 or 17 years of age who is charged
14 with an offense designated as an unclassified or class A felony must
15 be arrested and prosecuted as an adult.

16 (b) If the court has waived juvenile jurisdiction over a person
17 under the age of 18 under AS 47.10.060, that person must be prosecuted
18 as an adult.

19 (c) A person who has been convicted of an offense after being
20 prosecuted as an adult under this section must be prosecuted as an
21 adult for any subsequent criminal offense.

22 (d) References in this section to the age of a person refers to
23 the person's age at the time of the offense.

24 * Sec. 2. AS 12.55 is amended by adding a new section to read:

25 Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. A person subject
26 to the jurisdiction of the court under AS 12.05.020 who is convicted
27 of the offense charged or of any lesser included offense must be
28 sentenced under the provisions of this chapter:

29 * Sec. 3. AS 12.55.125(c) is amended to read:

1 (c) A defendant convicted of a class A felony may be sentenced
2 to a definite term of imprisonment of not more than 20 years, and,
3 except as provided in (j) of this section, shall be sentenced to the
4 following presumptive terms, subject to adjustment as provided in AS
5 12.55.155 - 12.55.175:

6 (1) if the offense is a first felony conviction and does
7 not involve circumstances described in (2) of this subsection, five
8 years;

9 (2) if the offense is a first felony conviction, other than
10 for manslaughter, and the defendant possessed a firearm, used a dan-
11 gerous instrument, or caused serious physical injury during the com-
12 mission of the offense, seven years;

13 (3) if the offense is a second felony conviction, 10 years;

14 (4) if the offense is a third felony conviction, 15 years.

15 * Sec. 4. AS 12 55.125(i) is amended to read:

16 (i) A defendant convicted of sexual assault in the first degree
17 may be sentenced to a definite term of imprisonment of not more than
18 30 years, and, except as provided in (j) of this section, shall be
19 sentenced to the following presumptive terms, subject to adjustment as
20 provided in AS 12.55.155 - 12.55.175:

21 (1) if the offense is a first felony conviction and does
22 not involve circumstances described in (2) of this subsection, eight
23 years;

24 (2) if the offense is a first felony conviction, and the
25 defendant possessed a firearm, used a dangerous instrument, or caused
26 serious physical injury during the commission of the offense, 10
27 years;

28 (3) if the offense is a second felony conviction, 15 years;

29 (4) if the offense is a third felony conviction, 25 years.

1 * Sec. 5. AS 12.55.125 is amended by adding a new subsection to read:

2 (j) Notwithstanding any other provision in this section, a
3 person convicted of a first felony offense while under the jurisdic-
4 tion of the court under AS 12.05.020 is not subject to the mandatory
5 minimum and presumptive sentences required for first offenders.

6 * Sec. 6. AS 12.55.145 is amended by adding a new subsection to read:

7 (f) If a person subject to the jurisdiction of the court under
8 AS 12.05.020 is convicted of a felony offense, the conviction is to be
9 considered a prior conviction for presumptive sentencing purposes in
10 subsequent offenses.

11 * Sec. 7. AS 12.80 is amended by adding a new section to read:

12 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. If a person
13 under the age of 18 who is subject to the jurisdiction of the court
14 under AS 12.05.020 is confined to custody while awaiting trial or
15 sentencing or is sentenced to a period of incarceration upon convic-
16 tion, the person must be committed to the custody of the Department of
17 Health and Social Services for confinement in a correctional facility
18 for adult offenders.

19 * Sec. 8. AS 47.10.010(a) is amended to read:

20 (a) Except as otherwise provided in this chapter and AS 12.05.-
21 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS]
22 relating to a minor under 18 years of age residing or found in the
23 state are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN
24 THIS CHAPTER,] when the court finds the minor

25 (1) to be a delinquent minor as a result of violating a
26 criminal law of the state or of a municipality of the state; or

27 (2) to be a child in need of aid as a result of

28 (A) the child being habitually absent from the child's
29 [HIS] home or refusing to accept available care, or having no

1 parent, guardian, custodian or relative caring or willing to care
2 for the child [HIM], including physical abandonment by

3 (i) both parents,

4 (ii) the surviving parent, or

5 (iii) one parent if the other parent's rights and
6 responsibilities have been terminated under AS 47.10.080 or
7 voluntarily relinquished;

8 (B) the child being in need of medical treatment to
9 cure, alleviate, or prevent [HIS] suffering substantial physical
10 harm, or mental harm as evidenced by failure to thrive, severe
11 anxiety, depression, withdrawal, or untoward aggressive behavior
12 or hostility toward others, and the [HIS] parents of the child
13 are unwilling to provide the medical treatment;

14 (C) the child having suffered substantial physical
15 harm or if there is an imminent and substantial risk that the
16 child will suffer such harm as a result of the actions done by or
17 conditions created by the [HIS] parent, guardian or custodian of
18 the child or the failure of the [HIS] parent, guardian or
19 custodian of the child adequately to supervise the child [HIM];

20 (D) the child having been sexually abused either by
21 the [HIS] parent, guardian or custodian of the child, or as a
22 result of conditions created by the [HIS] parent, guardian or
23 custodian of the child, or by the failure of the [HIS] parent,
24 guardian or custodian of the child adequately to supervise the
25 child [HIM];

26 (E) the child committing delinquent acts as a result
27 of pressure, guidance, or approval from the [HIS] parents,
28 guardian or custodian of the child; [.]

29 (F) the child having suffered substantial physical

1 abuse or neglect as a result of conditions created by the
2 [CHILD'S] parent, guardian or custodian of the child.

3 * Sec. 9. AS 47.10.060 is repealed and reenacted to read:

4 Sec. 47.10.060. WAIVER OF JURISDICTION. (a) Upon motion of the
5 prosecutor, and after a hearing, the court shall waive children's
6 court jurisdiction over a person under the age of 18 if the court
7 finds, based upon the preponderance of the evidence,

8 (1) that there is probable cause to believe that the person
9 has committed an offense which would be a felony if committed by an
10 adult; and

11 (2) that there is no substantial likelihood that the person
12 can be successfully rehabilitated under children's court proceedings.

13 (b) In determining the likelihood of successful rehabilitation
14 under children's court proceedings, the court shall consider

15 (1) the seriousness of the offense;

16 (2) whether the offense constituted a substantial danger to
17 the public;

18 (3) whether the offense was committed in an aggressive,
19 violent, premeditated, or willful manner;

20 (4) whether the offense was against persons or against
21 property, greater weight being given to an offense against persons,
22 especially if personal injury resulted;

23 (5) whether the offense is a part of a repetitive pattern
24 of delinquent acts, even though previous offenses may have been less
25 serious;

26 (6) the age, maturity, educational background, and degree
27 of criminal sophistication of the person;

28 (7) the success of any previous attempts to rehabilitate
29 the person;

1 (8) whether children's court jurisdiction over the person
2 can be retained long enough to allow for effective treatment or reha-
3 bilitation; and

4 (9) the treatment resources available under children's
5 court proceedings.

6 (c) The court shall determine the weight to be given to each of
7 the factors listed in (b) of this section and shall issue a written
8 decision. A finding that there is no substantial likelihood of suc-
9 cessful rehabilitation of the person under children's court proceed-
10 ings may be based on any one or a combination of the factors. If the
11 court waives children's court jurisdiction over a person, the court
12 shall order the children's court proceeding closed and the person must
13 then be prosecuted as an adult.