

COMMITTEE REPORT
HOUSE

(11)

FURTHER:

3/1/84

Date: 1/31/84

The Committee on FINANCE has had HB 500

"An Act relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; and amending the children's proceedings waiver provisions."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 500 same title
 new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Albert B. Adams

John J. ...

J.H. ...

W.H. ...

...

MILTON H. ...

MEMBERS HAVING
OTHER RECOMMENDATIONS:

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...

...

Albert B. Adams
CHAIRMAN

Original sponsor: Pestinger

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 530 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to minors charged with felonies; and
7 amending the children's proceedings waiver provi-
8 sions."

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

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

11 Sec. 12.05.020. JURISDICTION OVER CERTAIN MINORS CHARGED WITH
12 SERIOUS FELONIES. (a) A person 16 or 17 years of age who is charged
13 with an offense designated as an unclassified felony shall be prose-
14 cuted as an adult.

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

18 (c) Unless referred to children's court for disposition after a
19 hearing under AS 12.55.007(b), a person who has been convicted of an
20 offense after being prosecuted as an adult under this section shall be
21 prosecuted as an adult for any subsequent criminal offense.

22 (d) References in this section to a person's age refer to the
23 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) A person
26 subject to the jurisdiction of the court under AS 12.05.020 who is
27 convicted of the offense charged or of any lesser included offense
28 shall be sentenced under the provisions of this chapter, unless re-
29 ferred to children's court for disposition after a hearing under (b)

1 of this section.

2 (b) A person subject to the jurisdiction of the court under
3 AS 12.05.020 who is convicted of an offense that is not an unclas-
4 sified felony, and that is lesser than the offense for which chil-
5 dren's court jurisdiction was waived, may petition the court to dis-
6 pose of the offense under AS 47.10.080. The petition for disposition
7 under AS 47.10.080 shall be filed with the court, with a copy to the
8 prosecutor, not less than 30 days before the time set for imposition
9 of sentence. The petition shall state the reasons why disposition
10 under AS 47.10.080 is appropriate. The court shall hold a hearing on
11 the petition. The court may order disposition under AS 47.10.080 if
12 the court finds that the petitioner has proven, by a preponderance of
13 the evidence, that there is a substantial likelihood that the peti-
14 tioner can be successfully rehabilitated under the children's court
15 system. In determining the likelihood of successful rehabilitation
16 under children's court proceedings, the court shall consider the
17 factors set out in AS 47.10.060(b), and comply with AS 47.10.060(c).

18 * Sec. 3. AS 12.55.125 is amended by adding a new subsection to read:

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

23 * Sec. 4. AS 12.55.145 is amended by adding a new subsection to read:

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

28 * Sec. 5. AS 12.80 is amended by adding a new section to read:

29 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. (a) A person 16

1 or 17 years of age who is charged with an unclassified felony and who
2 is held in custody shall be confined in a facility for juvenile of-
3 fenders until indicted for, held to answer following a preliminary
4 hearing on, or charged by complaint or information following a waiver
5 of indictment for an unclassified felony offense. Following indict-
6 ment, preliminary hearing, or waiver of indictment the person, if
7 held in custody, shall be confined in a facility for adult offenders.

8 (b) Except as provided in (a) of this section, a person under 18
9 years of age, who is held in custody for an offense that would be a
10 crime if committed by an adult, shall be confined to a facility for
11 juvenile offenders unless children's court jurisdiction over the
12 person has been waived under AS 47.10.060, and the person has been
13 indicted for, held to answer following a preliminary hearing on, or
14 charged by complaint or information following a waiver of indictment
15 for a felony offense. Following indictment, preliminary hearing, or
16 waiver of indictment, the person, if held in custody, shall be con-
17 fined to a facility for adult offenders.

18 (c) If a person under 18 years of age who is subject to the
19 jurisdiction of the court under AS 12.05.020 is confined to custody
20 while awaiting sentencing, or is sentenced to a period of incarcera-
21 tion upon conviction, the person shall be committed to the custody of
22 the Department of Health and Social Services for confinement in a
23 correctional facility for adult offenders. The department shall
24 provide a person confined to custody in an adult facility under this
25 section with sleeping quarters that are separate from the sleeping
26 quarters for adult offenders until the person reaches 18 years of age.

27 * Sec. 6. AS 47.10.010(a) is amended to read:

28 (a) Except as otherwise provided in this chapter and AS 12.05.-
29 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS]

1 relating to a minor under 13 years of age residing or found in the
2 state are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN
3 THIS CHAPTER,] when the court finds the minor

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

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

7 (A) the child being habitually absent from the child's
8 [HIS] home or refusing to accept available care, or having no
9 parent, guardian, custodian or relative caring or willing to care
10 for the child [HIM], including physical abandonment by

11 (i) both parents,

12 (ii) the surviving parent, or

13 (iii) one parent if the other parent's rights and
14 responsibilities have been terminated under AS 47.10.080 or
15 voluntarily relinquished;

16 (B) the child being in need of medical treatment to
17 cure, alleviate, or prevent [HIS] suffering substantial physical
18 harm, or mental harm as evidenced by failure to thrive, severe
19 anxiety, depression, withdrawal, or outward aggressive behavior
20 or hostility toward others, and the [HIS] parents of the child
21 are unwilling to provide the medical treatment;

22 (C) the child having suffered substantial physical
23 harm or if there is an imminent and substantial risk that the
24 child will suffer such harm as a result of the actions done by or
25 conditions created by the [HIS] parent, guardian or custodian of
26 the child or the failure of the [HIS] parent, guardian or custo-
27 dian of the child adequately to supervise the child [HIM];

28 (D) the child having been sexually abused either by
29 the [HIS] parent, guardian or custodian of the child, or as a

1 result of conditions created by the [HIS] parent, guardian or
2 custodian of the child, or by the failure of the [HIS] parent,
3 guardian or custodian of the child adequately to supervise the
4 child [HIM];

5 (E) the child committing delinquent acts as a result
6 of pressure, guidance, or approval from the [HIS] parents, guard-
7 ian or custodian of the child; [.]

8 (F) the child having suffered substantial physical
9 abuse or neglect as a result of conditions created by the
10 [CHILD'S] parent, guardian or custodian of the child.

11 * Sec. 7. AS 47.10.060 is repealed and reenacted to read:

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

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

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

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

23 (1) the seriousness of the offense;

24 (2) whether the offense constituted a substantial danger to
25 the public;

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

28 (4) the person's role in the commission of the offense;

29 (5) whether the offense is part of a repetitive pattern of

1 delinquent acts, even though previous offenses may have been less
2 serious;

3 (6) the age, maturity, intellectual capacity, educational
4 background, physical and mental health, and degree of criminal sophis-
5 tication of the person;

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

8 (8) the person's exhibited or expressed attitudes toward
9 the victims of the crime, the authorities, society, and self;

10 (9) whether children's court jurisdiction over the person
11 can be retained long enough to allow for effective treatment or reha-
12 bilitation;

13 (10) the treatment resources available under children's
14 court proceedings; and

15 (11) whether the protection of the community requires iso-
16 lation of the person beyond that afforded by juvenile facilities.

17 (c) The court shall determine the weight to be given to each of
18 the factors listed in (b) of this section and shall issue a written
19 decision. A finding that there is no substantial likelihood of suc-
20 cessful rehabilitation of the person under children's court proceed-
21 ings may be based on any one or a combination of the factors. If the
22 court waives children's court jurisdiction over a person, the court
23 shall order the children's court proceeding closed and the person
24 shall then be prosecuted as an adult.

25 (d) In this section, "waive children's court jurisdiction" means
26 to order the transfer of a case from a court having jurisdiction over
27 a person who was a minor at the time of the offense to a court that
28 would have had jurisdiction if the person had been an adult at the
29 time of the offense. A waiver of children's court jurisdiction

1 includes the offense charged, lesser included offenses, and other re-
2 lated offenses.
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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS HB 530
 Title: "An Act relating to
 waiver of juveniles as adults"
 Sponsor: Rep. Pestinger
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Adult Corrections
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Northern, Southcentral & Southeastern
 Regional Corrections, Admin. & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		16.0				
400 SUPPLIES		24.9				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		3.9				
800 MISCELLANEOUS						
TOTAL OPERATING		44.8				
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUND		44.8				
FEDERAL FUNDS						
OTHER						
TOTAL		44.8				

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Al Adams, Chair Phone: 465-3706
 Division: House Finance Committee Date: 4/26/84

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

July 22, 1983

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: SCS CSHB 109 (HESS) am S -
waiver of children's
proceedings for felonies
Our file: 383-108-83

Dear Governor Sheffield:

As Emil Notti requested on your behalf, we have reviewed SCS CSHB 109 (HESS) am S, which is commonly referred to as a "juvenile waiver" bill. The bill provides that a person 16 or 17 years of age who is charged with an unclassified felony must be tried as an adult. It also alters the legal standard for deciding whether a juvenile offender charged with any other felony offense should be handled in juvenile court or whether the court should "waive" its juvenile jurisdiction in favor of handling the case in adult court.

The criminal division of the Department of Law has been seeking changes in the existing juvenile waiver law for several years, and testified in favor of HB 109 throughout the committee process during this last legislative session. However, last minute Senate amendments have so seriously flawed the bill that we are compelled to advise you to veto it.

To understand the problems in the bill which require a veto, it is necessary to briefly review its legislative history. Early this legislative session, HB 109 and SB 127 were introduced to amend existing laws relating to juvenile waiver. Based on several years of first-hand experience by state prosecutors, the criminal division of the Department of Law suggested numerous changes in both bills during testimony before legislative committees. Most of the suggestions were adopted in committee substitutes for both HB 109 and SB 127.

By late April, the portions of HB 109 and SB 127 which dealt with juvenile waiver were virtually identical. Both contained provisions requiring an "automatic" waiver of juveniles

aged 16 or 17 who were charged with serious felony offenses. Both also altered the legal standard for waiver to make it easier for the prosecution to obtain a discretionary judicial waiver of offenders who were not automatically waived.

The major difference in the two bills was that CSHB 109(Jud) automatically waived juveniles charged with both unclassified 1/ and class A felonies, 2/ while CSSB 127(Jud) automatically waived only those charged with unclassified felonies. The House bill also provided that a juvenile offender tried in adult court would be sentenced as an adult, even if convicted of an offense less serious than the one originally charged. The Senate version allowed a person convicted of a class A, or less serious, offense to petition the court to return him to juvenile court for disposition rather than to be sentenced as an adult.

CSHB 109(Jud) was passed by the House on April 29, 1983. On reconsideration the next day, the bill was amended to come closer to the Senate version and provided that a juvenile offender convicted in adult court of only a lesser included offense, other than an unclassified or class A felony, must be "sentenced" (the proper term would be "disposed of") as a delinquent minor in juvenile court. H. Jour. at 1108-1110 and 1133-1135.

On June 25, one day before adjournment, the Senate Health, Education, and Social Services Committee recommended a committee substitute for CSHB 109(Jud) which radically altered crucial portions of the bill, and which disregarded comparable provisions in CSSB 127(Jud). The Senate HESS committee substitute provided automatic waiver only for those persons aged 16 or 17 who were charged with unclassified offenses, and required a return to juvenile court for "sentencing" of an offender who was ultimately convicted of an offense less serious than an unclassified felony. The Senate HESS committee substitute also required a discretionarily waived juvenile offender who was convicted in adult court and sentenced to a period of incarceration to be confined to a juvenile facility until age 18. Other language in the bill continued to require that

1/ Unclassified felonies include murder in the first degree, murder in the second degree, kidnapping, sexual assault in the first degree and misconduct involving controlled substances in the first degree.

2/ Class A felonies include manslaughter, assault in the first degree, robbery in the first degree, arson in the first degree, escape in the first degree, solicitation (to commit an unclassified offense), and misconduct involving controlled substances in the second degree.

juvenile offenders held in custody following either an automatic or discretionary waiver be transferred to adult facilities upon indictment.

The HESS committee substitute was the result of a thirteen minute committee meeting held on June 24, 1983. No testimony was taken during the hearing. Since the Department of Law was not notified of the meeting, no representative from the department was present. Referral of the HESS committee version of the bill to the Senate Judiciary and Finance committees was waived, and the bill was considered by the Senate on June 26, the final day of the session. Section 7 of the bill, dealing with confinement of minors, was amended on the floor to provide that juvenile offenders automatically waived to adult court must be held in juvenile facilities until convicted. The section dealing with discretionarily waived offenders was not amended. SCS CSMB 109 (HESS), as amended, was then adopted. S. Jour. 1555-57, 1578-79. The House concurred in these amendments on the same day. H. Jour. at 2106-2109.

The Senate HESS committee substitute and the amendments made on the floor so altered the original intent and procedures included in the bill that its enactment into law would weaken rather than improve the laws relating to juvenile waiver. In addition, in its present form, SCS CSMB 109 (HESS) am S contains insurmountable equal protection and due process problems and procedures that do not make sense.

The most serious problem in the bill is a procedural scheme which denies equal treatment under the law to persons who have been convicted of identical offenses. As previously noted, the bill automatically waives juvenile offenders charged with unclassified felonies to adult court. Under the bill, if an offender charged with an unclassified felony is convicted of a lesser included offense, such as a class A felony, he must be transferred back to juvenile court for "sentencing" (disposition). However, a juvenile charged with a class A felony who is discretionarily waived after a hearing, and is convicted in adult court of the class A felony, must be sentenced as an adult. There is no provision authorizing the court to transfer the discretionarily waived person back to juvenile court, and there is no provision allowing the adult court to retain jurisdiction over an automatically waived offender convicted of an A felony, regardless of the nature of the crime or the lack of rehabilitative potential of the offender.

What this means is, for example, that an offender who is waived into adult court because he is charged with first degree murder, but who is ultimately convicted for the lesser offense of manslaughter, a class A felony, must be treated as a juvenile. He will spend two or at most three years in a juvenile facility and then must be released. But an offender who was originally charged with manslaughter, because the facts of the killing did not justify a murder charge, and who was

waived into adult court and convicted, will be sentenced as an adult, and faces up to 20 years in prison. Thus, two offenders, both convicted of manslaughter, will receive vastly unequal treatment. One who was automatically waived because there were good reasons to believe that a more serious offense was committed, will go back to juvenile court for disposition. The other who was discretionarily waived for a less serious offense will be treated and sentenced as an adult. This result cannot be justified on any legal, logical, or public policy grounds.

A second major problem with the bill is found in section 7, which now provides that a juvenile offender who is discretionarily waived to adult court must be transferred from a juvenile facility to an adult jail at the time of the waiver until after trial, but requires that the offender then be returned to a juvenile facility upon conviction to serve his sentence until he reaches the age of 18.

The confinement of persons who have been tried, convicted, and sentenced as adults with juvenile offenders is directly contrary to one of the primary purposes of the bill, which was to remove hardened or untreatable juveniles from treatment programs designed for younger, less sophisticated, children. Older offenders convicted of murder, kidnapping or forcible rape should not be confined with youngsters who have committed minor property offenses or are having disciplinary problems.

At the recommendation of the Department of Health and Social Services, divisions of corrections and family and youth services, both bills originally provided that a juvenile offender would be held in a juvenile facility until waived and indicted for a felony offense. At that point the person would be transferred to an adult facility, where he would await trial and serve his sentence if convicted. This procedure is the one followed under present law and makes good policy sense. Shuffling a young defendant back and forth between juvenile and adult facilities makes no sense at all. Additionally, now that the division of corrections is a state agency independent of the Department of Health and Social Services, the transfer of an offender from a juvenile to an adult facility would require a transfer from the custody of one department to another, and then back again.

Another legal problem arises because the Senate changed the House version of the bill to provide that the only juveniles to be automatically waived were those convicted of unclassified felonies. The Senate did so, however, without changing the title, which describes: "An act relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies;" As you know, Rule 41(b) of the Uniform Rules of the Alaska State Legislature prohibits a change in the title of a bill which originated in the other house. In

July 22, 1983

order to get around this rule, the Senate added subsection AS 12.05.020(b), which states that a person 16 or 17 years of age who is charged with a class A felony is subject to juvenile court jurisdiction. This was done so that the bill would "relate to" persons charged with class A felonies, as the title requires.

However, the addition of the language now contained in subsection AS 12.05.020(b) means that a juvenile court adjudication of delinquency for a class A felony would constitute a "prior conviction" for presumptive sentencing purposes on subsequent adult offenses. See, section AS 12.55.145. This result was probably not intended and the policy implications not considered. Juvenile court adjudications have never been treated as "prior convictions," and that treatment is probably inconsistent with the whole concept of the juvenile justice system.

Enactment of this bill into law would actually leave prosecutors less able to effectively prosecute juvenile offenders who have committed serious felony offenses. Those indicted for the most serious offenses such as murder, sexual assault in the first degree (forcible rape), or kidnapping, would be automatically returned to juvenile court for disposition if convicted of a lesser, but still serious, offense. Currently, it is difficult to obtain waiver of a juvenile offender. But once waiver is obtained under the present law, the offender stays in adult court, even if convicted of a lesser offense such as manslaughter or attempted sexual assault. Under this bill, if a prosecutor believes that a 17 year old offender has committed murder, he must choose between charging the offender with murder, and risking the person's automatic return to juvenile court if he is convicted for manslaughter, or charging him only with manslaughter so that he may be sentenced in adult court if convicted. Both of these alternatives are unacceptable.

Because the bill denies equal treatment under the law to persons convicted of identical offenses, because the provisions regulating the place of confinement of juvenile offenders are illogical, and because the bill would render prosecutors less able to effectively deal with 16 and 17 year olds charged with the most serious and violent felonies, CSC CSMB 109 (HESS) am S should be vetoed. We have attached a draft veto message for your consideration.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:GAH:gb
Enclosure

A M E N D M E N T

Offered in the HOUSE

By Uehling

TO: CSHB 530 (Judiciary)

Page 3, lines 23 - 26, delete the last sentence of subsection (c) and insert in its place:

"A person confined to custody in an adult facility under this section shall be assigned by the department to separate quarters so that the person cannot communicate with or view or be viewed by adult prisoners before the person's 18th birthday. A person confined to custody in a juvenile facility under this section shall be assigned by the department to separate quarters so that the person cannot communicate with or view or be viewed by juvenile detainees over whom the jurisdiction of the court has not been waived under AS 47.10.060 and who are not confined under (a) of this section."

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: CS for HB No. 530 (Jud)
Title: "An Act relating to waiver of juveniles as adults."
Sponsor: Judiciary Committee
Requestor: Finance Committee
Date of Request: March 1, 1984

FISCAL DETAIL:

Agency Affected: ADULT CORRECTIONS AGENCY
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Northern, Southcentral & Southeastern Regional Corrections, Admin. & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES				993.9	1,053.5	1,116.7
200 TRAVEL				4.6	4.9	5.2
300 CONTRACTUAL		16.0	51.0	162.8	172.6	182.9
400 COMMODITIES		24.9	79.3	182.1	193.0	204.6
500 EQUIPMENT				6.4		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		3.9	12.2	20.0	21.2	22.5
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	44.8	142.5	1,369.8	1,445.2	1,531.9

CAPITAL	-0-	6,393.8	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	6,438.6	142.5	1,369.8	1,445.2	1,531.9
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	6,438.6	142.5	1,369.8	1,445.2	1,531.9

POSITIONS:

FULL-TIME	-0-	-0-	-0-	19	19	19
PART-TIME						
TEMPORARY						
TOTAL	-0-	-0-	-0-	19	19	19

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the bill sponsor.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Roger C. Lange *Roger C. Lange*
Division: Administrative Services

Phone: 465-3376
Date: March 2, 1984

Approved by Commissioner: *William W. Kalvick*
Department: ADULT CORRECTIONS AGENCY

Date: *March 5, 1984*

Distribution:

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency (ies)

ANALYSIS

A. Assumptions:

Based on FY 1982 Juvenile arrest data and the Department of Law's estimate that 25-35 juveniles per year will be waived into Adult Court, it is estimated that 46.5 additional beds will be needed by the Adult Corrections Agency if CS for H.B. No. 530 is enacted. A detail of this estimate is given in Attachment 1. It is noted that the estimated sentence length for most offenses have been revised downward from the fiscal note on the original bill. Additional information was compiled since that writing indicating that juveniles waived under existing statutes received significantly lower sentences than adults, with the exception of murder.

This legislation will have an additional fiscal impact not addressed in this fiscal note as a result of Section 4. This section will require that prior felony offenses as a juvenile be considered for presumptive sentencing purposes for subsequent felony offenses. Presumptive sentences for second felony convictions carry significantly longer sentences than for first offenses. It is assumed that a number of the juveniles waived as adults will commit subsequent felony crimes. Four or five of these cases per year could result in the long term need for 20 additional beds. Since there is no accurate measurement for this secondary impact, it is not specifically identified in the financial impact of this fiscal note.

B. Program Summary:

1. In FY85, funds would be required to begin planning and design for construction of medium security beds. Because of the serious nature of the offenses, however, it is assumed that a significant number of the offenders would spend some time in a maximum security setting. Capital costs for medium/maximum security beds are estimated to be \$137,500 per bed.

46.5 beds @ \$137,500 = \$6,393,750

2. Full operating costs would not occur until FY87. It is estimated that nineteen (19) positions will be required to provide security and support for these beds: One (1) Correctional Officer III, sixteen (16) Correctional Officers II and two (2) Probation Officers II. Costs for these positions will occur in FY87, the anticipated opening date for the new beds.

FISCAL NOTE

CS for House Bill No. 530

Page 3

Estimated costs are as follows:

100	Personal Services	\$ 993,900
200	Travel	4,600
300	Contractual Services	162,800
400	Commodities	182,100
500	Equipment	6,400
700	Inmate Gratuities	<u>20,000</u>
	Total	\$1,369,800

Operating cost for FY85 and FY86 are for inmate cost of food, clothing, medical, etc., for the estimated persons coming into existing facilities before the new beds can be completed.

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

Attachment 1

<u>Estimated Annual Frequency of Conviction</u>	<u>Presumptive Sentence or Mandatory Minimum</u>	<u>Estimated Average Sentence for 16 and 17 Year Olds Convicted as Adults</u>	<u>Actual Time to Serve With Credit for Good Time</u>
<u>Automatic Waiver</u>			
Unclassified felonies			
2 murder I	20 years	20 years*	2 x 15.0 = 30.0 years
1 murder II	5 years	5 years*	1 x 3.75 = 3.75 years
1 sexual assault 1st (with firearm)	10 years	3 years	1 x 2.25 = 2.25 years
5 sexual assault 1st (without firearm)	8 years	3 years	3 x 2.25 = 6.75 2 probation
<u>Judicial Waiver</u>			
2 Class A felonies (with firearm)	7 years	2 years	1 x 1.5 = 1.5 years 1 probation
3 Class A felonies (without firearm)	5 years	1 year	2 x .75 = 1.5 years 1 probation
	<u>Non-presumptive Range</u>		
2 Class B felonies	0-10 years	1 year	1 x .75 = .75 1 probation
			<u>TOTAL: 46.5 person-years</u>

*Mandatory minimum sentences are used for purposes of this fiscal note. This figure may be low based on two convictions for murder of waived juveniles in the past two years. Each of the juveniles received the maximum sentence of 99 years.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: CSHB530
Title: "... persons 16 or 17
charged with felonies ..."
Sponsor: Rep. Pestinger
Requestor: House Finance
Date of Request: 3/19/84

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: _____
Due Process
BRU, Program or Subprogram(s) Affected: _____
Public Defender Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		67.9	72.0	76.3	80.9	85.8
200 TRAVEL		5.0	5.3	5.6	5.9	6.3
300 CONTRACTUAL		8.0	8.5	9.0	9.5	10.1
400 SUPPLIES		3.0	2.0	2.1	2.2	2.3
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	85.4	87.8	93.0	98.5	104.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	85.4	87.8	93.0	98.5	104.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund

ANALYSIS: Attach a separate page for analysis

Prepared By: Dana Fabe
Dana Fabe, Public Defender
Division: Public Defender Agency Phone: 279-7541
Date: 3/19/84

Approved by Commissioner: Lisa Rudd, Comm. Date: 3/27/84
Agency: Dept. of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE ANALYSIS

CSHB350
Public Defender Agency
March 19, 1984

Page 2 of 3

This bill provides that persons 16 or 17 years of age who are charged with unclassified felonies will be prosecuted as adults. The waiver to adult court is automatic; there is no need for a hearing in juvenile court prior to the waiver.

The Department of Law estimates "that approximately 25-35 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, under existing standards. It is estimated that 10-15 additional felony prosecutions will be required to implement this bill." The Department of Law has stated that it will need an additional full-time attorney to handle this load of new adult cases.

Unclassified felonies are the most serious cases and time consuming cases that this Agency handles, and transferring them into the more adversarial adult justice system will require a great deal of additional attorney time. Thus, if this bill is enacted, one full-time Assistant Public Defender will be needed.

FISCAL ANALYSIS

(One full-time Attorney IV in the Third District, Anchorage)

1st Year (FY85)

Personal Services		67.9
Travel		5.0
Contractual		
Communications	2.0	
Experts	6.0	8.0
Commodities		
Office Supplies	1.0	
Law Library	2.0	3.0
Equipment (One Time)		1.5
	Total	85.4

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary 4464/mo.		53,568							
6.	Benefits		9,165							
7.	Supplemental Benefits		2,550							
8.	Fixed Benefits		2,630							
9.	TOTAL PERSONAL SERVICES		01		67,913					
10.	Travel		02		5,000					
11.	Contractual		03		8,000					
12.	Commodities		04		3,000					
13.	Equipment		05		1,500					
14.	Other									
15.	TOTAL COST				85,413					
	RECEIPT CODE				FUNDING SOURCE					
16.					Federal Receipts 1002					
17.					G.F. Match 1003					
18.					General Funds 1004					
19.					I-A Receipts 1005					
20.					Program Receipts 1028					
21.					Other					
FOR D&M USE ONLY										
4A KEY NUMBER _____										

This full-time Attorney IV position will be needed to handle the estimated 10 to 15 additional serious felony cases that will result from enactment of the juvenile waiver bill. The full working level of Attorney will be required because those cases to be tried will be unclassified felonies, which are the most serious criminal offenses.

13 REQUEST FOR
NEW POSITION

AGENCY Dept. of Administration
PROGRAM Due Process
BRU Public Defender Agency
COMPONENT Third Judicial District

FY 85

Page 3 of 3
Revised Date _____

FISCAL NOTE

Revision Date: _____

REQUEST Page 1 of 4
 Bill/Resolution No.: CSHB 530 (Jud.)
 Title: "... persons 16 or 17 charged with felonies..."
 Sponsor: Rep. Pestinger
 Requestor: House Judiciary
 Date of Request: 2-29-84

FISCAL DETAIL
 Agency Affected: Department of Law
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		67.5	71.6	75.9	80.4	85.2
200 TRAVEL		5.0	5.3	5.6	5.9	6.3
300 CONTRACTUAL		8.0	8.5	9.0	9.6	10.1
400 SUPPLIES		4.5	3.2	3.4	3.6	3.8
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	86.5	88.6	93.9	99.5	105.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND	-0-	86.5	88.6	93.9	99.5	105.4
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
FULL-TIME	-0-	1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2-29-84

Approved by Commissioner: Norman C. Gorsuch Date: 2-29-84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

February 29, 1984

This bill provides that persons 16 or 17 years of age who are charged with unclassified felonies will be prosecuted as adults. The bill makes the waiver of these persons from juveniles to adult court automatic; there is no need for a hearing in juvenile court prior to the waiver.

Juveniles of any age charged with felony offenses below unclassified felonies may be waived to adult court upon motion by the prosecutor and after a hearing in juvenile court.

It is estimated that approximately 25 - 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, under existing standards. It is estimated that 10 - 15 additional felony prosecutions will be required to implement this bill. Additionally, the bill provides that if an offender is ultimately convicted of a lesser offense which is not an unclassified felony, the offender may be transferred back to juvenile court, at the court's discretion, after a hearing to determine if there is a substantial likelihood that the offender can be successfully rehabilitated under the children's court system.

Because we anticipate an increase in the number of serious felonies to be prosecuted, and because defense counsel can be expected to seek to transfer offenders back to children's court whenever prosecution results in a conviction for a lesser offense, precipitating a motion practice to retain adult jurisdiction on the part of state prosecutors, the addition of one full time prosecutor will be necessary if the bill is enacted.

FISCAL ANALYSIS - CSHB 530 (Judiciary)

The bill will require the addition of one full-time Attorney IV prosecutor in the Third Judicial District in Anchorage. Costs beyond FY 85 include a 6% annual inflation factor.

1st Year (FY 85)

	<u>AIV (PFT)</u>
Personal Services	67.5
Travel	5.0
Contractual	
Communications & Copying	4.8
Witness Fees	3.2
Commodities	
Office Supplies	1.8
Library Materials	1.2
Commodities - single time	
New Position Supplies	1.5
Equipment - single time	
New Position Equipment	1.5
	<hr/>
Total	86.5

1.	POSITION TITLE Attorney IV			
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER
3.	CONTINUATION LEVEL			
4.	TYPE OF EXPENDITURE			AMOUNT
	1	7		3
	PERSONAL SERVICES			
5.	Salary	4,464/mo.	53,568	
6.	Benefits		8,785	
7.	Supplemental Benefits		2,550	
8.	Fixed Benefits		2,630	
	TOTAL PERSONAL SERVICES		67,533	
10.	Travel		5,000	
11.	Contractual		8,000	
12.	Commodities		4,500	
13.	Equipment		1,500	
14.	Other			
15.	TOTAL COST		86,533	

RANGE/STEP 24A	ORG. UNIT X	FORM 12	PAGE/LINE	GOV.	APPROV.	DISA
ORU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8		LEG.		

JUSTIFICATION

This full-time Attorney position will be needed to handle the estimated 10 to 15 additional serious felony cases and the substantial motion practice that will result from enactment of the juvenile waiver bill. The Attorney IV, or full working level of Attorney will be required because those cases to be tried will be unclassified felonies, which are the most serious criminal offenses.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	86,533
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

FOR B&H USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY Department of Law
PROGRAM Administration of Justice
ORU Prosecution
THIRD JUDICIAL DISTRICT

CSHB 530 (Jud)
Page 4 of 4
Revised

FY 8



ALASKA BAR ASSOCIATION

P.O. BOX 279, ANCHORAGE, ALASKA 99510, (907) 272-7469

April 5, 1984

FAMILY LAW SECTION

TO: All Members of the House Finance Committee

FROM: The Alaska Bar Association Family Law Section

SUBJECT: CSHB 530

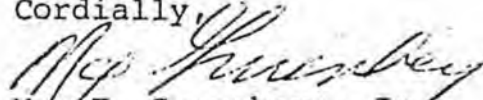
The Family Law Section of the Alaska Bar Association has met to review and consider the impact of several bills presently pending legislative action. Among these is CSHB 530 which would remove jurisdiction over unclassified felonies committed by minors 16 and 17 years of age from juvenile court and also revise other provisions regarding waiver of jurisdiction.

The consensus opinion of Section members reviewing this bill was that mandatory transfer of jurisdiction over all unclassified felonies is an unneeded over-reaction to the deficiencies of the present system. There was concern expressed that this remedy merely transfers the problems of punishment and treatment of these offenders to another system which may be ill-equipped to meet the demands. We feel that more data is needed on the statewide experience with the use or disuse of waiver to determine whether such absolute measures are justified.

The provisions of proposed AS 12.55.007 raised a number of concerns. This section creates an awkward system of potentially two waiver hearings for minors who are waived under AS 47.10.060 and then convicted of a lesser included offense which is less than an unclassified felony. We seriously question the wisdom of such an approach when unamendability to juvenile treatment has already been determined at the initial waiver hearing.

Other aspects of the bill are quite laudable. We support the revisions of AS 47.10.060 which more clearly enunciate the criteria for waiver. We also support the provisions for housing minors waived to adult status in separate quarters from adults until they reach age 18.

Cordially,


Max F. Gruenberg, Jr.
Chairman
718 Barrow
Anchorage 99501
276-6844 or 276-6945

7-23-85
15
355
255

Department of Corrections
Prisoner Profile

The attached pages present a profile of the 1832 prisoners under jurisdiction of the Department of Corrections. 1195 (66%) of these inmates are incarcerated for felony offenses and will be serving terms ranging from five to fifteen years. The remaining 637 (34%) will be serving shorter terms ranging from one day to two years. 787 (42%) are incarcerated for offenses against persons.

Between March 1 and March 17, Alaska's prisoner population grew at an alarming rate. This growth was in the Northern and Central regions and was caused by misdemeanor Driving While Intoxicated arrests. Local police departments and the Alaska State Troopers are arresting and booking these persons into the state's jails and the system is being bogged down. Most of the persons are unsentenced and will be returning to serve an average of 4.5 days for the first offense and 30.5 days for the second or greater offense.

Recommendations

Two changes in the existing statutes should be pursued.

- Good Time Provisions

Prisoners should earn one day of good time for every two days served. As you are aware, they currently receive one day for each three served. Concurrent with this amendment, prisoners should receive one for one while on furlough or other non-institutional settings. Both of these changes would afford us better incentives for inmate behavior and favorable impact the amount of future bed space the State would need to provide in the 1990's.

- Emergency Overcrowding Release

Until such time as additional space is on line we will probably be required to utilize a "safety valve" system. The current plan is clumsy and difficult to administer, requiring the efforts of the Department, Parole Board and Governor. I am confident that, as a departmental responsibility, we could have a release program that increases the number of actual releases without increasing the public's risk.

While we have considered more radical statutory amendments (i.e., repeal of presumptive sentencing, repealing all State misdemeanors) we do not believe we can realistically expect the Administration or Legislature to support such proposals. During the remainder of this calendar year; however, we should be able to identify more options for the Legislature to consider in reducing prison populations.

Between 3/1 and 3/17, we have increased our population by 101 persons.

Southeast Region

	<u>3/1/84</u>	<u>3/17/84</u>	<u>±</u>
M - U	8	13	+ 5
F - U	31	34	+ 3
M - S	23	23	
F - S	<u>131</u>	<u>131</u>	
	193	201	+ 8

Northern Region

	<u>3/1/84</u>	<u>3/17/84</u>	<u>±</u>
M - U	33	60	+27
F - U	69	70	+ 1
M - S	59	55	- 4
F - S	<u>59</u>	<u>78</u>	<u>+19</u>
	220	263	+43

Central Region

	<u>3/1/84</u>	<u>3/17/84</u>	<u>±</u>
M - U	35	71	+36
F - U	257	245	-12
M - S	110	115	+ 5
F - S	<u>647</u>	<u>668</u>	<u>+21</u>
	1,049	1,099	+50

M = Misdemeanant
 F = Felon
 U = Unsented
 S = Sented

Alaska Department of Corrections
 Prisoner Profile
 Summary of Levels
 (3/15/84)

	<u>Sentenced</u>		<u>Unsentenced</u>	<u>TOTAL</u>
	<u>New Code</u>	<u>Old Code</u>	<u>New Code</u>	
Unclassified (20 - 99 yr.)	44	23	25	92
Unclassified (5 - 99 yr.)	83	27	12	122
A - F	292	58	85	435
B - F	188	12	65	265
C - F	200	1	80	281
A - M	102	1	76	179
B - M	16		15	31
OMVIS	99		29	128
Probation/Parole Violations	147		34	181
Other	56		62	118
TOTAL	1,227	122	483	1,832

M = Misdemeanant
 F = Felon
 U = Unsentenced
 S = Sentenced

Alaska Department of Corrections
Prisoner Profile
Crime Classifications
(3/15/84)

	<u>In State</u>		<u>Sentenced</u>		<u>Unsentenced</u>
			<u>FBP</u>		
	<u>New Code</u>	<u>Old Code</u>	<u>New Code</u>	<u>Old Code</u>	<u>New Code</u>
<u>Attempts and Solicitations</u>					
B-Felony	11				1
B-Misdemeanor					4
TOTAL	<u>11</u>				<u>5</u>
<u>Offenses Against Persons</u>					
Unclass (20 - 99 yr.)	20	1	24	22	25
Unclass (5 - 99 yr.)	26	3	42	24	8
A - F	261	16	20	42	78
B - F	56	3	3	5	18
C - F	61		1		12
A - M	56				44
TOTAL	<u>480</u>	<u>23</u>	<u>90</u>	<u>93</u>	<u>185</u>
<u>Offenses Against Property</u>					
A - F	1		1		3
B - F	75	2	1	2	29
C - F	115			1	56
A - M	25			1	22
B - M	10				6
TOTAL	<u>226</u>	<u>2</u>	<u>2</u>	<u>4</u>	<u>116</u>
<u>Offenses Against Family</u>					
A - M	1				
TOTAL	<u>1</u>				
<u>Offenses Against Public Order</u>					
A - F	2		1		1
B - F	15		3		2
C - F	12		1		6
A - M	4				2
B - M	5				4
TOTAL	<u>38</u>		<u>5</u>		<u>15</u>

	<u>In State</u>		<u>Sentenced</u>		<u>Unsentenced</u>
	<u>New Code</u>	<u>Old Code</u>	<u>New Code</u>	<u>Old Code</u>	<u>New Code</u>
<u>Offenses Against Public Health and Decency</u>					
B - F	2				
C - F	1				
B - M	1				1
TOTAL	4				1
<u>Drugs</u>					
Unclass (5 - 99)	15				4
A - F	6				3
B - F	22				15
C - F	9				6
A - M	16				8
TOTAL	68				36
<u>Other</u>					
Traffic	33				5
OMVI's	99				29
Alcohol	7				2
City Ordinances	3				10
Fish & Game	2				2
Federal	1				6
FSJ/FJA/COC	7				25
Fugitive	3				11
Juvenile Detention					1
Probation/Parole Violations	144		3		34
TOTAL	299		3		125
<u>OVERALL TOTALS</u>	<u>1,127</u>	<u>25</u>	<u>100</u>	<u>97</u>	<u>483</u>

Summary

Sentenced - Instate	1,152
Sentenced - FBP	197
Unsentenced	483
TOTAL	1,832

483 unsentenced
1,349 sentenced

M = Misdemeanant
 F = Felon
 U = Unsentenced
 S = Sentenced

POSITION PAPER
HOUSE BILL 530

"An Act relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; and amending the children's proceedings waiver provisions."

This Bill would make several changes in the manner of dealing with juveniles accused of felony offenses. It would:

- 1) Require prosecution within the adult criminal system of 16 and 17 year old juveniles accused of unclassified or class A felonies;
- 2) Change the standard for judicially waiving juveniles 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 relating to juveniles who are waived to adult jurisdiction.

PROBLEMS ADDRESSED BY THE BILL

Recent highly publicized and unpopular court decisions regarding specific juveniles who have committed violent crimes but were not waived to adult jurisdiction have led to a misperception on the part of some segments of the public. Many have concluded from these isolated cases that juvenile crime, particularly violent juvenile crime, is widespread and increasing and that the existing waiver mechanism and the juvenile justice system as a whole are ineffective. The further conclusion has been reached that wholesale changes are necessary. The facts, however, do not substantiate these conclusions.

Juvenile crime, as measured by arrests, decreased by 15.8% during the most recent period for which data is available, 1982. This is below even 1979 in absolute numbers and represents a significant decrease in the rate of arrest since the juvenile population has risen by nearly twenty thousand youths or 15%. There has, unfortunately, been an increase in the numbers of juveniles arrested for the most highly publicized violent crime - murder. However, these arrests comprise only slightly more than one tenth of one percent of the total number of juvenile arrests, and are not indicative of the extent and nature of juvenile crime. They nonetheless receive the most media attention and guide public opinion.

In general juvenile crime may be characterized as property crime - simple thefts account for nearly one third or 28% of juvenile arrests. Liquor law violations result in 26% of all juvenile arrests. Although arrest data is the most comprehensive data available to represent the extent of crime, limitations of these data and some general research findings about juvenile crime must be kept in mind when drawing conclusions from arrest data. First, arrest data do not accurately represent the number of crimes committed since more than one person may

POSITION PAPER

HOUSE BILL 530

PAGE 2

be arrested for a single crime. For instance, if three persons burglarize a store and are arrested, the arrest data seem to indicate that three separate burglaries occurred although only one crime was committed. Second, juveniles tend to commit crimes in groups while adults tend to commit crimes alone. Thus, juvenile arrests seem to indicate a disproportionate number of crimes when in fact they represent a smaller number of crimes but a disproportionate number of participants. Last, juveniles tend to be arrested more frequently than are adults. Juveniles are less sophisticated and are more likely to be caught committing crimes and there is a greater tendency of law enforcement personnel to arrest juveniles.

The public misperception in Alaska follows a national trend which has been reflected in legislation in a number of states to lower the age of criminal responsibility and/or enact broad waiver laws which bring large numbers of juveniles under the jurisdiction of the adult criminal system. These approaches have begun to be discredited recently as there has been an increasing understanding of the fact that those juveniles who have committed violent crimes or have repeatedly committed serious offenses are extremely small in number. National studies have concluded that the most cost effective and efficient approach is to carefully and selectively identify those juveniles and treat them differentially from the vast majority of youth.

The existing judicial waiver mechanism in Alaska has been more thoughtfully criticized, primarily by prosecutors, as one which makes waiver of juveniles to the adult system difficult to achieve. Although this criticism is not entirely justified, the existing mechanism does have a standard of proof which is inadequately defined and therefore open to broad interpretation. In addition, the court is not required to consider specifically defined factors in making waiver determinations. Thus, little guidance is given to the court on the basis for making waiver decisions. Despite the shortcomings of the existing waiver mechanism, fourteen of fifteen waivers attempted from 1979 through 1982 were granted. Waived juveniles were charged with offenses ranging from Murder (3), to Sexual Assault (3), to Burglary (5) to Criminal Mischief (1).

AUTOMATIC WAIVER

House Bill 530 would institute an automatic or legislative waiver of certain juveniles based on age and the offense alleged. Under the provisions of the Bill, 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 pretrial confinement in precisely the same way as would an adult.

POSITION PAPER

HOUSE BILL 530

PAGE 3

Automatic or legislative waiver mechanisms can be effective in identifying youths who cannot be adequately dealt with in the juvenile justice system. However, because such mechanisms as those proposed in HB 530 are essentially unreviewable, irreversible, and carry consequences of extreme significance to both the individual youth and society, they should be very narrowly applied.

The Department of Health and Social Services opposes the inclusion of class A felony offenses within the category requiring automatic waiver. Inclusion of these offenses makes the category of automatically waivable 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 to include only unclassified felonies is preferable for several reasons: 1) it would be more economical - the fiscal impact of the bill would be reduced; 2) though serious in nature, class A felony offenses also include offenses which differ significantly from unclassified offenses in the degree of violence or harm done to victims; and 3) the strengthened judicial waiver mechanism proposed in HB 530 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. The strengthened judicial waiver 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 classification of offenses and age of the juvenile. Those juveniles who do not present a danger to the public could be retained within the juvenile justice system.

JUDICIAL WAIVER

Change in Standard

In addition to instituting an automatic waiver, HR 530 would significantly alter the existing judicial waiver mechanism. The existing judicial waiver mechanism would be strengthened by a change in the standard necessary for making waiver determinations under the provisions of HB 530. The court would be required to find only that there is no substantial likelihood that a juvenile could be successfully rehabilitated under children's court proceedings. The standard of proof required would be a preponderance of the evidence.

Factors Establishing Likelihood of Rehabilitation

The Bill also establishes nine (9) specific factors which must be considered by the court in determining the probability of a juvenile's success or rehabilitation under juvenile court jurisdiction. Although these factors relate in large part to the specific offense alleged and the circumstances surrounding the offense, they also include factors relating to the individual juvenile including age, maturity, the outcome of previous attempts to rehabilitate the juvenile, the adequacy of time

POSITION PAPER

HOUSE BILL 530

PAGE 4

available to the children's court to allow for rehabilitation and the resources for treatment of a juvenile under juvenile court jurisdiction.

The Department recommends that other factors which have a significant bearing on the likelihood of a juvenile's rehabilitation be considered as well. These are:

- 1) the physical and mental health of the juvenile;
- 2) his or her intellectual capacity;
- 3) the alleged role of the juvenile in the offense; and
- 4) the attitudes exhibited and expressed by the juvenile toward authorities, society, the victim or victims if any, and him or herself.

Failure to require consideration of such factors as these would allow decisions about the likelihood of rehabilitation of juveniles to be made without consideration of some of the most important factors contributing to the success or failure of rehabilitative efforts.

SENTENCING OF WAIVED JUVENILES

Referral For Juvenile Disposition

Under the provisions of HB 530, 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 automatically waivable offense. In such cases the juveniles would be referred to juvenile court jurisdiction for disposition. This provision is intended to guard against error and preclude discriminatory or punitive overcharging by prosecutors in order to make certain juveniles subject to the more stringent sanctions of the adult system.

An alternative and preferable approach to providing these safeguards would be to allow a discretionary "transfer back" to juvenile court jurisdiction based on a hearing applying the same standard of "likelihood of successful rehabilitation" used in making judicial waiver decisions. In this way safeguards would be maintained while older juveniles convicted of serious, though not automatically waivable offenses would be held to the same standard for waiver to adult jurisdiction that would have been applicable had an automatically waivable offense been charged. Unless the "transfer back" provision is discretionary, older juveniles accused of automatically waivable offenses would be immune from waiver to adult jurisdiction if convicted of lesser though still serious offenses. This would give these persons special protections not afforded to other youth.

POSITION PAPER

HOUSE BILL 530

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Exemption from Mandatory Sentences

Although juveniles waived to adult criminal jurisdiction would be sentenced as adult offenders and confined within the adult correctional system, under the provisions of HB 530 they would not be subject to mandatory minimum or presumptive sentences for a first felony conviction. This allows the Bill not only to achieve its purpose in holding older juvenile offenders more accountable for their offenses but also affords adequate discretion to the court in fashioning appropriate sentences for these juveniles. Judicial discretion is needed to allow for the significant differences in levels of maturity and sophistication among waived juveniles and between the juveniles and adult offenders.

Since exclusion from juvenile jurisdiction under the automatic waiver provision is based solely on the offense committed and the age of the juvenile, judicial discretion in sentencing would be appropriate. Studies show that all serious offenses are not the culmination of lengthy 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 under the provisions of HB 530 is necessary to justly address this disparity. It would also allow for consideration of the differences in the specifics and seriousness of the offenses committed by juveniles.

CONFINEMENT OF WAIVED JUVENILES

Under this Bill, all juveniles subject to criminal jurisdiction under either the automatic or judicial waiver provisions would, if confined to custody, be confined in adult correctional facilities. These provisions are straightforward but unfortunately do not provide sufficient procedural protections. Since automatically waived juveniles would be housed in adult facilities from the time of arrest, the decision about where these 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 judgment 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 can be proven from the facts. It is likely that errors would occur, juveniles arrested and booked into adult facilities and that upon review by the District Attorney or Court it may be found that the offense alleged by the police officer at the time of booking was not supported by the facts. Thus, a juvenile would have been unjustly and unjustifiably placed in an adult facility.

These problems could be avoided and a more equitable and 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 waivable offense or a

POSITION PAPER

HOUSE BILL 530

PAGE 6

judicial waiver. This would avoid not only inequities arising from error, but also the possibility that juveniles were charged with waivable offenses simply to allow their incarceration in an adult facility. It would also avoid a variety of difficulties in the already overburdened adult correctional system.

EFFECTS OF THE BILL

The effect of HB 530 would be to increase the number of juveniles subject to prosecution under the adult criminal statutes and 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 particularly heinous crimes or who had records of repetitive delinquent behavior.

DEPARTMENT POSITION

The Department strongly supports the concepts embodied in HB 530. Though few in number, older juveniles accused of violent crimes require sanctions qualitatively and quantitatively different from those available under the jurisdiction of the juvenile court.

With the suggested changes - limitation of automatic waiver to unclassified felonies, consideration of additional factors in determining likelihood of successful rehabilitation within the juvenile justice system, confinement of juveniles in juvenile facilities until judicial procedural reviews had occurred, and discretionary rather than mandatory "transfer back" - HB 530 would adequately address the problem of dealing with older, violent 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.

POSITION PAPER

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The changes suggested are merely refinements which provide necessary procedural protections to guard against abuses or human error and to appropriately narrow the focus and reduce the fiscal and social impacts.

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

DATE: Feb. 8, 1984

APPROVED BY: Robert London Smith
Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

DATE: 2/8/84

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 9, 1984

SUBJECT: Corrections to CSHB 530 (Judiciary)

TO: Representative Al Adams
Chairman, House Finance Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

As I mentioned to your aide, Louann Cutler, on the phone recently, there are at least three provisions in CSHB 530 (Judiciary) that were inadequately drafted by our office in our haste to provide the bill to the Judiciary Committee last week. Since the bill has been referred to your committee, I thought it appropriate to bring these to your attention so that they might be corrected if and when your committee hears the bill.

The first correction is the title of the bill, which should read:

"An Act relating to minors charged with felonies; and amending the children's proceedings waiver provisions."

The second correction appears on page 2, line 17, which should read: "factors set out in AS 47.10.060(b), and comply with AS 47.10.060(c)."

The third correction appears at page 6, lines 25 - 29. This subsection should be rewritten to read:

(d) In this section, "waive children's court jurisdiction" means to order the transfer of a case from a court having jurisdiction over a person who was a minor at the time of the offense to a court that would have had jurisdiction if the minor had been an adult at the time of the offense. A waiver of children's court jurisdiction includes the offense charged, lesser included offenses, and other related offenses

Representative Al Adams
Page 2
March 9, 1984

This suggested revision of subsection (d) would more clearly express the intent of the Judiciary Committee substitute. Our office rewrote that subsection when we drafted the final version of the final version of the CS, but because of the rush at the time, the language was not as clear as it might be.

EHH:ojb
J4/058

SECTION-BY-SECTION ANALYSIS OF CSHB 530(JUD)
RELATING TO JUVENILE WAIVER PROVISIONS

Section 1.

This section adds a new provision to AS 12.05, dealing with waiver of juvenile court jurisdiction over persons who have committed serious criminal offenses. Subsection (a) of new AS 12.05.020 provides that a person who is 16 or 17 years of age and who is charged with an unclassified felony offense must be prosecuted as an adult. In effect, these persons are automatically removed from the jurisdiction of the juvenile court.

AS 12.05.020(b) recognizes that, as under current law, a person may also be transferred, in the court's discretion, 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.

As discussed in section 2, below, a person who is transferred to adult court, either automatically or in the court's discretion, but who is ultimately convicted of an offense (not unclassified) which is less serious than the offense for which juvenile court jurisdiction was waived, may be "transferred back" to juvenile court for disposition rather than be sentenced under AS 12.55. as an adult. New AS 12.05.020(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, unless he was transferred back to juvenile court for disposition on the first offense.

There are several reasons for continuing the adult court's jurisdiction over a person who has been previously convicted and sentenced as an adult. It is expected that a person will be "waived" into adult court only for the most serious offenses. Following conviction for the original offense, or for a lesser (but still serious) offense, the person will be sent to an adult institution if a sentence of imprisonment is received. If the person commits another crime while still under the age of 18, it would not be appropriate to send him to a juvenile facility. 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 either still be in custody or have been released 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 is the court which will have to consider

the offense in connection with possible revocation of the probation or parole anyway.

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

Section 2.

Note: due to a drafting oversight, the cross-reference at page 2, line 17 of CSHB 530(Jud) should be to AS 47.10.060(b) and (c), not AS 47.10.060(c) and (d).

Section 2 of the bill adds a new provision to AS 12.55, establishing procedures for sentencing offenders convicted of a crime after waiver to adult court. Under AS 12.55.007 a person who has been waived into adult court, either automatically or after a court hearing, and who is convicted of the offense charged or of a lesser included offense, will be sentenced as an adult under AS 12.55 rather than as a juvenile under AS 47.10, unless the person is "transferred back" to juvenile court for disposition. A person who was waived to adult court, but ultimately convicted of an offense (not unclassified) less serious than the offense for which juvenile court jurisdiction was waived may file a petition seeking return to juvenile court, and the court must hold a

hearing on the petition. The court may transfer the case back to juvenile court if the person can show that there is a "substantial likelihood" that he can be successfully rehabilitated under the juvenile court system. The factors which the court must consider in making a determination of the likelihood of rehabilitation under the juvenile court system are those that apply when a court is considering the discretionary waiver of an offender into adult court, discussed in section 7, below.

Section 3.

This section adds a new subsection (j) to present AS 12.55.125. This new subsection provides that, notwithstanding the presumptive terms set out in AS 12.55.125(a)-(i), a person who has been waived into adult court from juvenile court is not subject to mandatory minimum or presumptive sentences upon his first felony conviction. Thus, the adult court may take all relevant factors into consideration when sentencing a young first felony offender, and is not bound to impose a predetermined sentence. 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.

Based upon a review of sentences imposed upon persons who have been waived into adult court under current law, it is

expected that a young person will almost always receive a lighter sentence for a first offense than he would if he were subject to presumptive sentencing. Under this bill, the court may suspend imposition of sentence, or place the person on probation, options which are not available under the presumptive sentencing scheme.

Section 4.

This section adds a new subsection (f) to existing AS 12.55.145. Under this provision, a person who has been previously waived into adult court and convicted of a felony and who is subsequently convicted of a second felony offense is subject to presumptive sentencing as a second offender. 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 5.

New AS 12.80.060 provides that a person who is waived into adult court, either automatically or in the court's discretion after a hearing, will be confined in an adult institution following indictment if he is held in custody while awaiting trial or sentencing. This is basically what happens under present procedure. Currently, if a juvenile offense is waived into adult court following a hearing under AS 47.10.060,

he or she is transferred to an adult institution, not left in juvenile institutions to mix with and influence young, less sophisticated offenders.

If an offender who has been waived into adult court is sentenced to a period of incarceration after conviction, the sentence will be served in an adult correctional facility. Offenders will be assigned to appropriate facilities through the general corrections classification system. Under language added to AS 12.80.060(c) by the House Judiciary Committee, incarcerated offenders under the age of 18 will be assigned to sleeping quarters separate from those of adult offenders until the juveniles reach the age of 18.

Earlier versions of juvenile waiver bills required that young offenders stay in a juvenile facility until age 18, and then be transferred to an adult facility. The Department of Health and Social Services objected to this, arguing that it was not appropriate to house those charged with or convicted of murder, rape, or armed robbery with youngsters who are discipline problems or who had been sent to a juvenile institution for relatively minor offenses. Additionally, offenders convicted as adults present a serious security risk. A person housed in a youth facility who knows that he will be transferred to an adult facility at age 18 has an incentive to flee from the juvenile facility before the time set for the

transfer. Juvenile facilities are not designed to provide maximum security.

Section 6.

This section merely makes conforming amendments to the language of existing AS 47.10.010(a) to make it clear that persons who are charged with an unclassified felony or who have been discretionarily waived into adult court are exempted from the jurisdiction of the children's court.

Section 7.

This section rewrites the current juvenile waiver law, AS 47.10.060, to alter the circumstances under which a juvenile offender can be waived, in the court's discretion, to adult court.

Subsection (a) provides that the court shall waive juvenile court jurisdiction over an offender if the court finds, based on a preponderance of the evidence, that there is probable cause to believe that the person committed a felony offense and that there is "no substantial likelihood that the person can be successfully rehabilitated under children's court proceedings." The "preponderance of evidence" standard is the burden of proof which the prosecutor must meet under existing law. See In the Matter of F.S., 586 P.2d 607 (Alaska 1978). The revised version of AS 47.10.060 changes the standard for the discretionary

waiver of an offender into adult court from present law's "not amenable to treatment" standard to the "no substantial likelihood" language set out above. The standard has been changed to make it somewhat more likely that a juvenile offender who does not come under the mandatory waiver provisions of AS 12.05.020(a) (see section 1) will be waived into adult court for serious or repeated criminal conduct.

Under the current law, the "not amenable to treatment" standard has been interpreted by the courts to require that the state prove, by a preponderance of the evidence, that the juvenile offender probably could not be successfully treated under the juvenile court system. Experience under the present law has shown that, if the person has never before come to the attention of the authorities, it is extremely difficult to prove that he or she would not be amenable to treatment, regardless of the seriousness of the crime. The "no substantial likelihood" standard strikes a more appropriate balance between the legitimate goal of treatment in the juvenile justice system for those offenders who are likely to benefit from such services and the equally legitimate interests of protection of society and deterrence of crime.

AS 47.10.060(b) specifically enumerates the factors which the court must consider when making a determination as to the likelihood of successful rehabilitation under the children's

court system. Most of the eleven factors set out in the section has been taken, either verbatim or with slight modification, from similar statutes in other jurisdictions.

Subsection (c) indicates that the court must decide how much weight to give to 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. Subsection (d) explains what waiver of children's court jurisdiction means, and provides that the waiver is for the principal charged offense and all included or related offenses. These sections are modelled upon similar provisions contained in the laws of other states.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

MEMORANDUM

DATE: March 21, 1984

TO: Louann Cutler, Administrative Assistant
House Finance Committee

FROM: Liz Blecker, ^{AS} Fiscal Analyst
Legislative Finance Division

SUBJ: Adult Corrections' Fiscal Note for CSHB 530 (Jud)

Passage of CSHB 530 will increase the number of juveniles held in adult institutions. The Adult Corrections' fiscal note identifies both an operating cost and a capital cost. I recommend funding the operating cost.

The operating amount requested for FY 84, \$44,800, is the amount of money needed for maintaining the additional prisoners if they are located in either existing or new facilities. Even if a new institution is not built, Adult Corrections will incur the additional operating expenses.

The capital dollar amount in the fiscal note, \$6,438,600, represents the cost of additional beds to house the waived juveniles. Since Adult Corrections builds institutions, not individual beds, the capital amount identified in this fiscal note would not be enough money to build a new institution. Therefore, I do not recommend funding the capital portion of the fiscal note.

The adult correctional centers are already crowded. Passage of this bill will worsen the existing overcrowding. Building a new correctional center does need to be considered, but as an entire facility.

LB:ro
(hb530)

Offered: 3/1/84
Referred: Finance

Original sponsor: Pestinger

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 530 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND 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 felonies; and amending
8 the children's proceedings waiver provisions."

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

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

11 Sec. 12.05.020. JURISDICTION OVER CERTAIN MINORS CHARGED WITH
12 SERIOUS FELONIES. (a) A person 16 or 17 years of age who is charged
13 with an offense designated as an unclassified felony shall be prose-
14 cuted as an adult.

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

18 (c) Unless referred to children's court for disposition after a
19 hearing under AS 12.55.007(b), a person who has been convicted of an
20 offense after being prosecuted as an adult under this section shall be
21 prosecuted as an adult for any subsequent criminal offense.

22 (d) References in this section to a person's age refer to the
23 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) A person
26 subject to the jurisdiction of the court under AS 12.05.020 who is
27 convicted of the offense charged or of any lesser included offense
28 shall be sentenced under the provisions of this chapter, unless re-
29 ferred to children's court for disposition after a hearing under (b)

1 of this section.

2 (b) A person subject to the jurisdiction of the court under
3 AS 12.05.020 who is convicted of an offense that is not an unclas-
4 sified felony, and that is lesser than the offense for which chil-
5 dren's court jurisdiction was waived, may petition the court to dis-
6 pose of the offense under AS 47.10.080. The petition for disposition
7 under AS 47.10.080 shall be filed with the court, with a copy to the
8 prosecutor, not less than 30 days before the time set for imposition
9 of sentence. The petition shall state the reasons why disposition
10 under AS 47.10.080 is appropriate. The court shall hold a hearing on
11 the petition. The court may order disposition under AS 47.10.080 if
12 the court finds that the petitioner has proven, by a preponderance of
13 the evidence, that there is a substantial likelihood that the peti-
14 tioner can be successfully rehabilitated under the children's court
15 system. In determining the likelihood of successful rehabilitation
16 under children's court proceedings, the court shall consider the
17 factors set out in AS 47.10.060(c), and comply with AS 47.10.060(d).

18 * Sec. 3. AS 12.05.125 is amended by adding a new subsection to read:

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

23 * Sec. 4. AS 12.55.145 is amended by adding a new subsection to read:

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

28 * Sec. 5. AS 12.80 is amended by adding a new section to read:

29 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. (a) A person 16

1 or 17 years of age who is charged with an unclassified felony and who
2 is held in custody shall be confined in a facility for juvenile
3 offenders until indicted for, held to answer following a preliminary
4 hearing on, or charged by complaint or information following a waiver
5 of indictment for an unclassified felony offense. Following indict-
6 ment, preliminary hearing, or waiver of indictment, the person, if
7 held in custody, shall be confined in a facility for adult offenders.

8 (b) Except as provided in (a) of this section, a person under 18
9 years of age, who is held in custody for an offense that would be a
10 crime if committed by an adult, shall be confined to a facility for
11 juvenile offenders unless children's court jurisdiction over the
12 person has been waived under AS 47.10.060, and the person has been
13 indicted for, held to answer following a preliminary hearing on, or
14 charged by complaint or information following a waiver of indictment
15 for a felony offense. Following indictment, preliminary hearing, or
16 waiver of indictment, the person, if held in custody, shall be con-
17 fined to a facility for adult offenders.

18 (c) If a person under 18 years of age who is subject to the
19 jurisdiction of the court under AS 12.05.020 is confined to custody
20 while awaiting sentencing, or is sentenced to a period of incarcera-
21 tion upon conviction, the person shall be committed to the custody of
22 the Department of Health and Social Services for confinement in a
23 correctional facility for adult offenders. The department shall
24 provide a person confined to custody in an adult facility under this
25 section with sleeping quarters that are separate from the sleeping
26 quarters for adult offenders until the person reaches 18 years of age.

27 * Sec. 6. AS 47.10.010(a) is amended to read:

28 (a) Except as otherwise provided in this chapter and AS 12.05.-
29 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS]

1 relating to a minor under 18 years of age residing or found in the
2 state are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN
3 THIS CHAPTER,] when the court finds the minor

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

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

7 (A) the child being habitually absent from the child's
8 [HIS] home or refusing to accept available care, or having no
9 parent, guardian, custodian or relative caring or willing to care
10 for the child [HIM], including physical abandonment by

11 (i) both parents,

12 (ii) the surviving parent, or

13 (iii) one parent if the other parent's rights and
14 responsibilities have been terminated under AS 47.10.080 or
15 voluntarily relinquished;

16 (B) the child being in need of medical treatment to
17 cure, alleviate, or prevent [HIS] suffering substantial physical
18 harm, or mental harm as evidenced by failure to thrive, severe
19 anxiety, depression, withdrawal, or untoward aggressive behavior
20 or hostility toward others, and the [HIS] parents of the child
21 are unwilling to provide the medical treatment;

22 (C) the child having suffered substantial physical
23 harm or if there is an imminent and substantial risk that the
24 child will suffer such harm as a result of the actions done by or
25 conditions created by the [HIS] parent, guardian or custodian of
26 the child or the failure of the [HIS] parent, guardian or custo-
27 dian of the child adequately to supervise the child [HIM];

28 (D) the child having been sexually abused either by
29 the [HIS] parent, guardian or custodian of the child, or as a

1 result of conditions created by the [HIS] parent, guardian or
2 custodian of the child, or by the failure of the [HIS] parent,
3 guardian or custodian of the child adequately to supervise the
4 child [HIM];

5 (E) the child committing delinquent acts as a result
6 of pressure, guidance, or approval from the [HIS] parents, guard-
7 ian or custodian of the child; [.]

8 (F) the child having suffered substantial physical
9 abuse or neglect as a result of conditions created by the
10 [CHILD'S] parent, guardian or custodian of the child.

11 * Sec. 7. AS 47.10.060 is repealed and reenacted to read:

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

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

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

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

23 (1) the seriousness of the offense;

24 (2) whether the offense constituted a substantial danger to
25 the public;

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

28 (4) the person's role in the commission of the offense;

29 (5) whether the offense is part of a repetitive pattern of

1 delinquent acts, even though previous offenses may have been less
2 serious;

3 (6) the age, maturity, intellectual capacity, educational
4 background, physical and mental health, and degree of criminal sophis-
5 tication of the person;

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

8 (8) the person's exhibited or expressed attitudes toward
9 the victims of the crime, the authorities, society, and self;

10 (9) whether children's court jurisdiction over the person
11 can be retained long enough to allow for effective treatment or reha-
12 bilitation;

13 (10) the treatment resources available under children's
14 court proceedings; and

15 (11) whether the protection of the community requires iso-
16 lation of the person beyond that afforded by juvenile facilities.

17 (c) The court shall determine the weight to be given to each of
18 the factors listed in (b) of this section and shall issue a written
19 decision. A finding that there is no substantial likelihood of suc-
20 cessful rehabilitation of the person under children's court proceed-
21 ings may be based on any one or a combination of the factors. If the
22 court waives children's court jurisdiction over a person, the court
23 shall order the children's court proceeding closed and the person
24 shall then be prosecuted as an adult.

25 (d) In this section, "waive children's court jurisdiction" means
26 an order of a court having jurisdiction over a child that transfers
27 the case to a court that would have jurisdiction had the act been
28 committed by an adult. A waiver of jurisdiction is for the offense
29 charged and all included or related offenses.

Introduced: 1/20/84
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY PESTINGER

2

HOUSE BILL NO. 530

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND 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 shall
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 shall be prose-
18 cuted as an adult.

19 (c) A person who has been prosecuted as an adult under this
20 section, convicted, and sentenced as an adult as provided in AS 12.-
21 55.007 shall be prosecuted as an adult for any subsequent criminal
22 offense.

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

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

26 Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. A person subject
27 to the jurisdiction of the court under AS 12.05.020 who is convicted
28 of the offense charged or of any lesser included offense that is an
29 unclassified or class A felony shall be sentenced under the provisions

1 of this chapter. If the person is convicted only of a lesser included
2 offense other than an unclassified or class A felony, the person shall
3 be sentenced as a delinquent minor under AS 47.10.

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

5 (c) A defendant convicted of a class A felony may be sentenced
6 to a definite term of imprisonment of not more than 20 years, and,
7 except as provided in (j) of this section, shall be sentenced to the
8 following presumptive terms, subject to adjustment as provided in AS
9 12.55.155 - 12.55.175:

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

13 (2) if the offense is a first felony conviction, other than
14 for manslaughter, and the defendant possessed a firearm, used a dan-
15 gerous instrument, or caused serious physical injury during the com-
16 mission of the offense, or knowingly directed the conduct constituting
17 the offense at a uniformed or otherwise clearly identified peace
18 officer, fire fighter, correctional officer, emergency medical techni-
19 cian, paramedic, ambulance attendant, or other emergency responder who
20 was engaged in the performance of official duties at the time of the
21 offense, seven years;

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

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

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

25 (i) A defendant convicted of sexual assault in the first degree
26 or sexual abuse of a minor in the first degree may be sentenced to a
27 definite term of imprisonment of not more than 30 years, and, except
28 as provided in (j) of this section, shall be sentenced to the follow-
29 ing presumptive terms, subject to adjustment as provided in AS

1 12.55.155 - 12.55.175:

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

5 (2) if the offense is a first felony conviction, and the
6 defendant possessed a firearm, used a dangerous instrument, or caused
7 serious physical injury during the commission of the offense, 10
8 years;

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

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

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

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

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

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

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

22 Sec. 12.80.060. CONFINEMENT OF CERTAIN MINORS. If a person
23 under the age of 18 who is subject to the jurisdiction of the court
24 under AS 12.05.020 is confined to custody while awaiting trial or
25 sentencing or is sentenced to a period of incarceration upon convic-
26 tion, the person shall be committed to the custody of the Department
27 of Health and Social Services for confinement in a correctional facil-
28 ity for adult offenders.

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

1 (a) Except as otherwise provided in this chapter and AS 12.05.-
2 020, AS 12.55.007, and AS 12.80.060, proceedings [PROCEEDINGS] relat-
3 ing to a minor under 18 years of age residing or found in the state
4 are governed by this chapter [, EXCEPT AS OTHERWISE PROVIDED IN THIS
5 CHAPTER,] when the court finds the minor

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

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

9 (A) the child being habitually absent from the child's
10 [HIS] home or refusing to accept available care, or having no
11 parent, guardian, custodian or relative caring or willing to care
12 for the child [HIM], including physical abandonment by

13 (i) both parents,

14 (ii) the surviving parent, or

15 (iii) one parent if the other parent's rights and
16 responsibilities have been terminated under AS 47.10.080 or
17 voluntarily relinquished;

18 (B) the child being in need of medical treatment to
19 cure, alleviate, or prevent [HIS] suffering substantial physical
20 harm, or mental harm as evidenced by failure to thrive, severe
21 anxiety, depression, withdrawal, or untoward aggressive behavior
22 or hostility toward others, and the [HIS] parents of the child
23 are unwilling to provide the medical treatment;

24 (C) the child having suffered substantial physical
25 harm or if there is an imminent and substantial risk that the
26 child will suffer such harm as a result of the actions done by or
27 conditions created by the [HIS] parent, guardian or custodian of
28 the child or the failure of the [HIS] parent, guardian or custo-
29 dian of the child adequately to supervise the child [HIM];

1 (D) the child having been sexually abused either by
2 the [HIS] parent, guardian or custodian of the child, or as a
3 result of conditions created by the [HIS] parent, guardian or
4 custodian of the child, or by the failure of the [HIS] parent,
5 guardian or custodian of the child adequately to supervise the
6 child [HIM];

7 (E) the child committing delinquent acts as a result
8 of pressure, guidance, or approval from the [HIS] parents, guard-
9 ian or custodian of the child; [.]

10 (F) the child having suffered substantial physical
11 abuse or neglect as a result of conditions created by the
12 [CHILD'S] parent, guardian or custodian of the child.

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

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

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

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

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

25 (1) the seriousness of the offense;

26 (2) whether the offense constituted a substantial danger to
27 the public;

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

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

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

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

9 (7) the success of any previous attempts to rehabilitate
10 the person;

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

14 (9) the treatment resources available under children's
15 court proceedings.

16 (c) The court shall determine the weight to be given to each of
17 the factors listed in (b) of this section and shall issue a written
18 decision. A finding that there is no substantial likelihood of suc-
19 cessful rehabilitation of the person under children's court proceed-
20 ings may be based on any one or a combination of the factors. If the
21 court waives children's court jurisdiction over a person, the court
22 shall order the children's court proceeding closed and the person
23 shall then be prosecuted as an adult.