

H B

109

POSITION PAPER

CS FOR HOUSE BILL 109 am  
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"An act relating to persons 16 or 17 years of age who are charged with unclassified or Class A felonies; and amending the childrens waiver proceedings."

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

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

AUTOMATIC WAIVER

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

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

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

## POSITION PAPER

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

JUDICIAL WAIVER STRENGTHENED

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

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

SENTENCING OF WAIVED JUVENILES

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

## POSITION PAPER

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

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

CONFINEMENT OF WAIVED JUVENILES

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

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

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

EFFECTS OF THE BILL

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

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

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

DHSS POSITION

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

POSITION PAPER

CS FOR HOUSE BILL 109 am  
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the juvenile court. This Bill, with the suggested changes, would provide an effective and comprehensive approach to dealing with older serious, and repeat juvenile offenders. The changes suggested are merely refinements which provide necessary procedural protections to guard against abuses or human error. With the inclusion of suggested refinements the Bill would increase protection of the public and public confidence in the justice system while dealing justly and equitably with juvenile offenders.

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

DATE: 3/13/83

APPROVED BY: *Robert London Smith*  
Robert London Smith, Ph.D.  
Commissioner

DATE: 5/24/83

STATE OF ALASKA  
- FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST CS for HB  
Bill/Resolution No.: #109 (Jud.) a.m.  
Title: ..persons 16 or 17 yrs. old..amend.  
Sponsor: Rep. Pestinger  
Requestor: \_\_\_\_\_

II. FISCAL DETAIL  
Agency Affected: Health & Social Services  
Program Category Affected: Justice  
BRU, Program of Subprogram(s) Affected:  
Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES				985.2	1044.3	1106.9
200 TRAVEL			2.0	6.4	6.8	7.2
300 CONTRACTUAL		14.4	43.9	184.0	195.0	206.7
400 COMMODITIES		24.8	75.4	187.0	198.2	210.1
500 EQUIPMENT				5.9		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		2.5	9.5	30.0	31.8	32.0
<b>TOTAL OPERATING</b>	-0-	41.7	130.8	1398.5	1476.1	1562.9
<b>CAPITAL</b>	-0-	9052.0	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	9093.7	130.8	1398.5	1476.1	1562.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	23	23	23
PART-TIME						
TEMPORARY						

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

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376  
 Division: Adult Corrections Date: May 11, 1983  
 Approved by Commissioner: *Walter London Smith, Ph.D.* Date: 5/16/83  
 Department: Health & Social Services

Distribution:

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

3/8/83

IV. ANALYSIS

A. Assumptions

1. If CSHB 109 (Judiciary) am is implemented, there will be a requirement for 62.25 beds. The calculation for this follows:

<u>Annual Frequency of Convictions</u>	<u>Presumptive Sentence</u>	<u>Est. Avg. Sent. for 16-17 Yr. Olds Convicted As An Adult</u>	<u>Actual Time to Serve w/Credit For Good Time</u>
1 unclassified felony	20 Years	15 Years	11.25 x 1 = 11.25
5 Class A felonies (w/firearm)	7 Years	6 Years	4.5 x 4 = 18.0 Yrs. 1 probation
8 Class A felonies (w/o firearm)	5 Years	4 Years	3 x 8 = 18.0 Yrs. 2 probation
1 sexual assault 1st (w/firearm)	10 Years	7 Years	5.25 x 1 = 5.25 Yrs.
3 sexual assault 1st (w/o firearm)	8 Years	5 Years	3.75 x 2 = 7.5 Yrs. 1 probation
	<u>Non-Presumptive</u>		
2 Class B felonies	0-10 Years	2 Years	1.5 x 1 = 1.5 Yrs. 1 probation
2 Class C felonies	0-5 Years	1 Year	.75 x 1 = .75 Yrs. 1 probation
			Total 62.25 Man Years

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

B. Program Summary

1. Positions

It is estimated that 23 positions will be required to provide security and supervision for the 62 additional bed spaces. The positions are:

- 1 - Correctional Officer III
- 20 - Correctional Officers II
- 2 - Probation Officers II

These positions would be needed July 1, 1985, the estimated opening date for the new beds.

2. Other Expenditures

- a. Capital Expenditures: Because of the serious nature of the offenses, construction of maximum security beds were originally considered appropriate at \$162,000 per bed. However, because of the age of the offenders, it is now assumed they will be placed in medium security beds, but separate from older inmates. The number of beds was also rounded to 62, at a cost of \$146,000 per bed.

62 beds @ \$146,000 per bed  
62 x \$146,000 = \$9,052,000

- b. Incremental cost will be incurred for 16 and 17-year-olds beginning in FY 1984. These costs include:

Contractual Services: Medical costs at \$1800 per inmate year for 8 full time equivalent inmates. 8 x \$1800 = \$14,400  
Commodities: Food, clothing, bedding, etc. for 8 full time equivalent inmates at \$8.43 per day. 8 x \$8.48 x 365 = \$24,762  
Grants: Inmate gratuities paid for work crew participants. Estimated need \$2,500.

FY 1986 Costs - Adult Confinement

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

FISCAL NOTE

CS for House Bill No. 109 (Judiciary) am

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D. Economic Impact:

Passage of this bill will have effect on the state budget, but little impact on the State's economy.

E. Impact on Local Governments:

· Passage of this bill will not have impact on local government units.

POSITION TITLE Probation Officer II (2)				RANGE/STEP 16/A	HAIRC. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
TYPE OF POSITION PPT	STAFF MONTHS 24	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		

CONTINUATION LEVEL		ADDITION	AMOUNT
1	2	3	
PERSONAL SERVICES			
Salary	61,752		
Benefits	10,554		
Supplemental Benefits	3,786		
Fixed Benefits	5,760		
TOTAL PERSONAL SERVICES	01		81,852
Travel	02		
Contractual	03		
Commodities	04		
Equipment	05		
Other			
TOTAL COST			81,852

JUSTIFICATION

Single Position Cost

Salary 2573/Mo.	\$30,876
Variable Benefits	5,277
SBS	1,893
Health Insurance	2,880
	<u>\$38,076</u>
	40,926

These positions would provide counseling, pre-release planning and preparation for Parole Board Applications.

RECEIPT CODE	FUNDING SOURCE	AMOUNT
	Federal Receipts 1002	
	G.F. Patch 1003	
	General Funds 1004	81,852
	I-A Receipts 1005	
	Program Receipts 1020	
	Other	

FOR BSM USE ONLY

AA KEY NUMBER \_\_\_\_\_

3 REQUEST FOR NEW POSITION

AGENCY Department of Corrections

PROGRAM Offender Confinement, Reformation & Supervision

DRU Adult Confinement

COMPONENT \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

Revised Date \_\_\_\_\_

FY 84

POSITION TITLE Correctional Officer: II (20)				RANGE/STEP 13/B	ORG. UNIT G	FORM 12 PAGE/LINE	COY.	APPROV.	DISAP.
TYPE OF POSITION PPT	STAFF MONTHS 240	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		

CONTINUATION LEVEL		ADDITION	AMOUNT
TYPE OF EXPENDITURE			
1	2	3	
PERSONAL SERVICES			O.T. 76,000
Salary	519,840		Shift
Benefits	156,660		Diff 10,000
Supplemental Benefits	35,920		
Fixed Benefits	57,600		
TOTAL PERSONAL SERVICES		01	856,020
Travel	02		
Contractual	03		
Commodities	04		
Equipment	05		
Other			
TOTAL COST			856,020

JUSTIFICATION

Single Position Cost

Salary 2166/Mo.	\$25,992
Overtime	3,800
Shift Differential	500
	<u>\$30,292</u>
Peace Officer Retirement	2,827
Variable Benefits	5,006
SBS	1,796
Health Insurance	2,880
	<u>\$42,801</u>

These positions would provide security coverage for prisoners.

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	856,020
	I-A Receipts 1005	
	Program Receipts 1028	
	Other	

FOR GPM USE ONLY  
 9A KEY NUMBER \_\_\_\_\_

REQUEST FOR NEW POSITION

AGENCY: Department of Corrections

PROGRAM: Offender Confinement, Reformation & Supervision

BRU: Multi Confinement

COMPONENT: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

Revised Date \_\_\_\_\_

FY 84

POSITION TITLE <b>Correctional Officer III</b>				RANGE/STEP <b>15/A</b>	ORG. UNIT <b>G</b>	FORM 12 PAGE/LINE	COV.	ADDITION.	DISAPP.
TYPE OF POSITION <b>PPT</b>	STAFF MONTHS <b>12</b>	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		

CONTINUATION LEVEL	ADDITION	
TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
Salary 2399	28,776	O.T. 4,118
Benefits	8,956*	Shift
Supplemental Benefits	2,040	Diff. 600
Fixed Benefits	2,880	
TOTAL PERSONAL SERVICES	01	47,370
Travel	02	
Contractual	03	
Commodities	04	
Equipment	05	
Other		
TOTAL COST		47,370

JUSTIFICATION

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

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	47,370
	I-A Receipts 1005	
	Program Receipts 1020	
	Other	

FOR BSM USE ONLY  
 SA KEY NUMBER \_\_\_\_\_

AGENCY Department of Corrections

PROGRAM Offender Confinement, Reformation & Supervision

BRU Adult Confinement

COMPONENT \_\_\_\_\_

**FY 84**

Page \_\_\_\_\_ of \_\_\_\_\_  
 Revised Date \_\_\_\_\_

**3 REQUEST FOR NEW POSITION**

February 15, 1983



House Judiciary Committee  
Rep. Charles Bussell, Chair  
Pouch V  
Juneau, Alaska 99811

Dear Rep. Bussell & Members of the House Judiciary Committee:

I am writing to express my concern about HB109 which is now before you. This legislation proposes changes to present state law relating to the court's jurisdiction over minors who are charged with certain crimes. At present, AS 47.10.060 statutes provide that any minor, regardless of the crime he/she has committed, is dealt with by the juvenile court unless a hearing determines that the minor should be prosecuted as an adult. In that event, the court "waives" jurisdiction of the juvenile over to the adult courts. In my opinion, present statutes provide adequately for the protection of both the juvenile and society, and do not need to be changed.

In considering changes to AS 47.10.060 I would urge the committee to consider that -

1. No accurate data has been compiled of the actual incidence of juvenile waiver in Alaska nor of the commission of class A or unclassified felonies by juveniles.
2. Research into the effects of similar legislation in New York & Minnesota revealed that instead of increasing the incarceration of juveniles, conviction rates for serious juvenile crime proved to be lower and utilized more frequently than would have been the case in juvenile court.
3. The fiscal implications of this bill for an already over-burdened court and corrections system will be substantial.
4. If the concern is to clarify the use of the juvenile waiver or provide for longer sentences for juveniles convicted of serious crimes there are other, better ways to accomplish the goal than enacting "wholesale" legislation.

Section 2 of HB109 appears to be addressing the sponsors' concern that without legislation mandating the waiver of certain juveniles to adult court, the judge will not do so. Yet, the only actual criteria for the use of the waiver are -

1. age of the juvenile
2. probable causes to believe that the minor
  - a. has committed an unclassified or Class A felony
  - b. is a delinquent

The non-amenability to treatment provision is extremely difficult to assess and could become meaningless. If the legislature wishes to insure use of the waiver then adding additional specific criteria for its use is, in my opinion, a better way to accomplish the goal. For instance, I believe the court should be required to consider such things as; (1) the minor's past record of offenses, (2) mitigating circumstances, (3) harm to the victim(s), (4) use of a weapon etc.

Section 1 of HB109 is laudable in its intent to incarcerate a juvenile in a juvenile correctional facility even though an adult court would do the sentencing. The incidence of homosexual rape in correctional facilities is well know. I believe, however, that if the intention of HB109 is to incarcerate juveniles convicted of serious crimes longer than is presently possible, another approach is preferable. Alaska Statutes presently provide that a juvenile can only be institutionalized for two years or until his/her 19th birthday unless the State petitions the court for a longer sentence and the juvenile agrees. In such a case the juvenile can be institutionalized until aged 21.

I would suggest that Title 47 might be amended to provide that where the juvenile is institutionalized as the result of having been found guilty of a Class A or unclassified felony that the State be given the power to petition for the extension of the juvenile's sentence without the concurrence by the juvenile if the State believes the juvenile needs additional treatment. Such a provision could serve to lengthen the availability of treatment without subjecting the young person to the adult correctional systems' dangers.

If the legislature believes that the present statutes need to be amended, then I suggest a more thoughtful and comprehensive approach. In 1975 and 1976 when reform of children's law was deemed necessary, the legislature established the Children's Code Task Force to review those statutes, study other State's laws and recommend coordinated and comprehensive revisions. I had the privilege to be a member of that Task Force and believe it to be a rational and progressive method of statute review which has obvious advantages over a piecemeal approach. I urge you to consider establishing a similar commission or task force to recommend needed statute changes to the legislature. The issues addressed in HB109, together with other issues legislators believe need attention, could be assigned to such a task force with requirements for a report to the Second Session of the 13th Alaska Legislature.

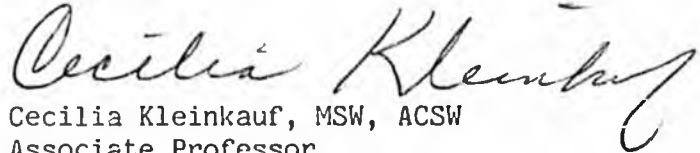
House Judiciary Committee

RE: HB109

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In closing, may I reiterate that the very small number of juveniles represented by this legislation and the adequacy of present statutes for dealing with these cases in my opinion make this legislation unnecessary.

Sincerely,



Cecilia Kleinkauf, MSW, ACSW  
Associate Professor  
Chair, Social Work Department  
University of Alaska, Anchorage

CK:par

NOTE: These views are my own and do not reflect a University position.

<sup>1</sup> Kiersh, Edward, "Minnesota Cracks Down on Chronic Juvenile Offenders,"  
Correction Magazine, (New York) 7 (6) 21-28, 1981

Roysher, Martin; Edelman, Peter, Treating Juveniles as Adults in New York:  
What Does it Mean & How Is It Working? Albany, New York State Division  
for Youth 1980

Sobie, Merrie, The Juvenile Offender Act: A Study of the Acts' Effectiveness  
& Impact on the New York Juvenile Justice System, New York Foundation  
for Child Development, 1981.

3/25/83, JUNE, ANC LIO, MSG 3652

TO: REPRESENTATIVES BARNES, [REDACTED], CLOCKSIN, HAYES, LISKA, MALONE,  
AND WENDTE

JR

FROM: SHARON EGGERS, AK YOUTH ADVOCATES  
204 EAST 5TH AVENUE, ANCHORAGE, AK 99501  
274-6541

NOT ENOUGH DATE TO MAKE SUCH A DRASTIC CHANGE AS HB 109 PROPOSES, STATES  
WITH SIMILAR LEGISLATION HAVE HAD UNFAVORABLE RESULTS. COST WOULD BE  
MILLIONS AND PRESENT PROBLEMS WOULD ONLY BECOME WORSE. DO YOU HAVE ENOUGH  
INFORMATION TO ABOLISH THE REHABILITATION MODEL? IMPROVING EXISTING  
STATUTES WILL BRING BETTER RESULTS.

\*\*\*\*\*

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3/25/83, JUNE, ANC LIO, MSG 3652

TO: REPRESENTATIVES BARNES, BUSSELL, CLOCKSIN, HAYES, LISKA, MALONE,  
AND WENDTE

FROM: SHARON EGGERS, AK YOUTH ADVOCATES  
204 EAST 5TH AVENUE, ANCHORAGE, AK 99501  
274-6541

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Alaska State Legislature

HOUSE MAJORITY LEADER

MEMBER

RULES COMMITTEE

JUDICIARY COMMITTEE

LEGISLATIVE COUNCIL

POLICY COMMITTEE

ALASKA REPRESENTATIVE

STATES RIGHTS COORDINATING COUNCIL

WESTERN LANDS TASK FORCE

CITIZENS ADVISORY COMMISSION  
ON ALASKA LANDS



House of Representatives

REPRESENTATIVE

RAMONA I BARNES

ANCHORAGE

2230 PAXSON  
ANCHORAGE, ALASKA 99504  
(907) 337-7904

POUCH V

JUNEAU, ALASKA 99811  
(907) 465-3718

March 1, 1983

Ms. Cecilia Kleinkauf, MSW, ACSW  
Associate Professor  
Chair, Social Work Department  
University of Alaska  
Anchorage, Alaska 99504



Dear Ms. Kleinkauf:

Thank you for your letter of February 15th regarding HB 109; proposing changes in criminal prosecution of minors.

It may be that present statutes provide adequately in this regard as you assert. If this is true, however, then the interpretation and implementation of those statutes by the courts are woefully inadequate, in my opinion.

Regarding the appointment of a task force, I believe the need is urgent enough that we must take some immediate corrective action. The appointment of such a task force collection of data, hearings, etc. could go in ad infinitum. Meanwhile, juveniles commit atrocious crimes and escape with little more than a "wrist tapping" sentence.

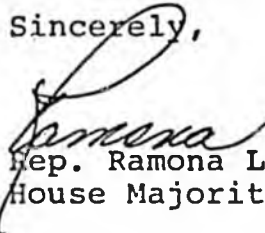
I do agree with you that this legislation in large measure is attempting to do what judges were either unwilling or unable to do in handling juveniles convicted of serious crimes under present statutes. I also agree that the provision of the current law that a juvenile cannot be imprisoned past age 19 unless the juvenile concurs is patently absurd, and must be changed. I cannot comprehend how supposedly intelligent people could have enacted such a law.

In large measure, I do agree with you on the need for special handling and understanding of juvenile criminals. However, those who commit heinous crimes must be removed

from society until it is reasonably certain they have been rehabilitated, or they have served a sufficiently long sentence to serve as a deterrent to themselves and others from such criminal activities.

Your comments are always welcome.

Sincerely,

  
Rep. Ramona L. Barnes  
House Majority Leader

RLB/rv

cc: Rep. Bussell ✓

MSG 83-00012215 PRTY 1 04/26/83 12:18:09 ORIG: LA01 IN= 0005 OUT= 0060  
FROM: SHIRLEE AND LIO TO: POMS JUNEAU INFO  
TARGET: LJHL SUBJ: POM

---

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES  
FROM: ROBERT CLARK, P.O. BOX 4-1908, ANCHORAGE 99509  
(RES: ATKINSON DR.) H 333-5295 W 266-1680  
RE: HOUSE BILL 109

JR

A TRAVESTY OF JUSTICE OCCURS IN SOME CASES OF VIOLENT JUVENILE  
CRIME. THE PERPETRATOR MAY BE 17 YEARS OLD, BUT BY THE TIME  
HIS CASE COMES UP, HE HAS ATTAINED MAJORITY. THEN HE IS FREED  
AND HIS RECORD IS DESTROYED. PLUG THIS LOOPHOLD AND PASS  
HB 109.

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Document Name: letter HB 109  
Diskette Name: CHARLI

March 26, 1983

WaV

Dear Vsv:

Thank you for taking the time and effort to send a Public Opinion Message containing your thoughts on HB 109. HB 109 has had extensive hearing and Committee work in the House Judiciary Committee.

CSHB 109 passed from the Committee this past week and is now in the House Finance Committee. I'm enclosing a copy of the bill in it's present form and as you can see, it applies only to 16 and 17 year olds who have been charged with a class "A" or unclassified felony.

Any person so charged, in the opinion of the majority of the Committee and I dare say the majority of Alaska's people, believe that that person should be charged as an adult.

Any fears you may have about the bill affecting rehabilitation are invalid, as the bill does not address any form of reduction on that subject.

As the new Department of Corrections is formed, an correction activity will have one boss at least and the new department will be able to provide far greater, better managed and there by more successful rehabilitation services to all inmates.

Thank you again for letting me know your views and becoming involved with the Legislative process.

Best regards,

Representative Charlie Bussell  
Chairman, Committee on Judiciary

Enc.  
CB:cmz

Document Name: add HB 109  
Diskette Name: CHARLI

WaVMatthew A. Johnson  
7217 Violet Place  
Anchorage, Alaska 99502  
VsVMr. Johnson

WaVJanice Stump  
PO Box 325  
Eagle River, Alaska 99577  
VsVMs. Stump

WaVMarsha Schneider  
Ak Chapter Nat'l Assoc.  
of Social Workers  
PO Box 10430  
Fairbanks, Alaska 99701  
VsVMs. Schneider

WaVThelma P. Langdon  
Alaska Children's Services  
1200 East 27th Avenue  
Anchorage, Alaska 99504  
VsVMs. Langdon

# Alaska State Legislature



Received  
2/13/83 JH

## Speaker of the House of Representatives

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3720

February 2, 1983

Kathy Apple, RN  
Family Therapist

Rosemary Unterseher, ACSW  
Clinical Supervisor

Family Connection  
204 East Fifth Avenue, Suite 215  
Anchorage, AK 99501

Dear Ms. Apple and Ms. Unterseher:

One of the major concerns of the Thirteenth Legislature and the Majority Coalition continues to be reduction of crime and improvements to the justice system. In the pursuit of those goals, input from agencies such as yours and people with experience in the system is appreciated.

I have enclosed a copy of House Bill 109 which addresses some of the concerns of your letter of January 17. Your letter is being referred to the Judiciary Committee of the House for review and possible action.

As you follow the legislation introduced this session, please do not hesitate to contact me on issues that are of concern to you. Thank you for taking the time to advise me on these issues.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joe L. Hayes".

Joe L. Hayes  
Speaker of the House

✓ cc: Rep. Charles Bussell, Chairman  
Judiciary Committee

JLH/jd



JAN 19 1983

## A counseling agency for youth and their families

204 E. 5th Ave., Suite 215, Anchorage, Alaska 99501

(907) 279-0551

January 17, 1983

Representative Joe L. Hayes  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Hayes:

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the State's juvenile justice system.

Family Connection has provided Family Therapy services to a variety of youth institutionalized at McLaughlin Youth Center for the past three years. We are contracted to join the treatment team for a particular youth by either McLaughlin staff or Juvenile Probation staff. We have worked primarily with youth and their families prior to release from McLaughlin. Our goal has been to facilitate a smooth transition for the youth back into the family and community and to reduce the rate of recidivism. We specifically look at how the family functions and the interactional process that produces delinquent behavior.

We have been impressed with the expertise and professionalism of both McLaughlin staff and Juvenile Probation staff. They work with dedication to treat, rehabilitate and return youth to the community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughlin Youth Center for rehabilitation, rather than to the Adult Justice System. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment. Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

January 17, 1983

Page 2

First, the waiver is not used enough. Clearly, there have been youth who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

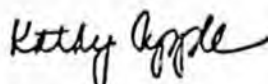
Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treatment the youth is still unchanged and dangerous, according to State law the youth must still be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the Juvenile Justice System. How can we ethically release a youth into the community knowing the youth is a danger to society.

Another problem involves the length of institutionalization. A youth cannot be held longer than two years or until their 19th birthday. We have observed a youth who committed a violent murder receive a sentence of less than one year. In this case the youth simply refused to participate in treatment. Therefore, he is not adequately treated or punished. Again, treatment staff are put in a bind by the court as they are given an impossible task to perform with no recourse to protect either the treatment process or the community.

The State of Alaska has done well in providing rehabilitation for youth, while at the same time protecting the safety of our people. However, there are serious handicaps in Alaska's Juvenile Law that we feel need immediate attention, particularly with the present climate of overreaction. We would be greatly discouraged to see the State lose the flexibility in our laws to rehabilitate and punish by giving way to oversimplified, reactionary solutions.

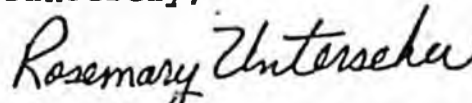
We hope this letter will initiate a process of change. We are willing to devote our time to this issue and would like your feedback as to where we might direct our energies. Also, we would like to know what the role of your office will take in initiating change.

Sincerely,



Kathy Apple, RN  
Family Therapist

Sincerely,



Rosemary Unterseher, ACSW  
Clinical Supervisor

KA/RU/MT

cc: all Judicial Members



# Alaska State Legislature

## House of Representatives

Judiciary  
Finance  
Received  
1/31/83

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

DATE: January 28, 1983  
TO: ALL SPONSORS OF HB 109  
FROM: Rep. Mike Szymanski

Attached is correspondence regarding the issue of legal age of majority. I am forwarding you this because a copy of your bill was included in the material sent to me by Family Connection.

I think they raise some valid points and I am a little concerned that HB 109 might result in inflexibility in the juvenile justice system. If I am reading Section 2 correctly, sub-paragraph (1) could result in every minor over the age of 16 being prosecuted as an adult.

As I noted in my return letter to Family Connection, I do not believe that all minors should be prosecuted as adults. My experience in working with delinquent youth has convinced me that positive redirection is possible with proper treatment.

I would appreciate hearing your views.

Attachments



## A counseling agency for youth and their families.

204 E. 5th Ave., Suite 215, Anchorage, Alaska 99501

(907) 279-0551

January 17, 1983

Representative Mike Szymanski  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Szymanski:

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the State's juvenile justice system.

Family Connection has provided Family Therapy services to a variety of youth institutionalized at McLaughlin Youth Center for the past three years. We are contracted to join the treatment team for a particular youth by either McLaughlin staff or Juvenile Probation staff. We have worked primarily with youth and their families prior to release from McLaughlin. Our goal has been to facilitate a smooth transition for the youth back into the family and community and to reduce the rate of recidivism. We specifically look at how the family functions and the interactional process that produces delinquent behavior.

We have been impressed with the expertise and professionalism of both McLaughlin staff and Juvenile Probation staff. They work with dedication to treat, rehabilitate and return youth to the community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughlin Youth Center for rehabilitation, rather than to the Adult Justice System. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment. Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

January 17, 1983  
Page 2

First, the waiver is not used enough. Clearly, there have been youth who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

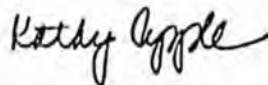
Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treatment the youth is still unchanged and dangerous, according to State law the youth must still be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the Juvenile Justice System. How can we ethically release a youth into the community knowing the youth is a danger to society. ?

Another problem involves the length of institutionalization. A youth cannot be held longer than two years or until their 19th birthday. We have observed a youth who committed a violent murder receive a sentence of less than one year. In this case the youth simply refused to participate in treatment. Therefore, he is not adequately treated or punished. Again, treatment staff are put in a bind by the court as they are given an impossible task to perform with no recourse to protect either the treatment process or the community. - WAIVER CASE

The State of Alaska has done well in providing rehabilitation for youth, while at the same time protecting the safety of our people. However, there are serious handicaps in Alaska's Juvenile Law that we feel need immediate attention, particularly with the present climate of overreaction. We would be greatly discouraged to see the State lose the flexibility in our laws to rehabilitate and punish by giving way to oversimplified, reactionary solutions.

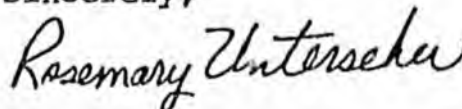
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Sincerely,



Kathy Apple, RN  
Family Therapist

Sincerely,



Rosemary Unterseher, ACSW  
Clinical Supervisor

KA/RU/MT

cc: all Judicial Members



# Alaska State Legislature

## House of Representatives

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

January 26, 1983

Kathy Apple and Rosemary Unterseher  
Family Connection  
204 East Fifth Avenue, Suite 215  
Anchorage, Alaska 99501

Dear Kathy and Rosemary:

Thank you for your letter of January 17 regarding the State juvenile justice system. It was very well written and informative.

I am aware that there are several bills in the making which will affect the age of majority regarding criminal prosecution. Most favor lowering the age to 16 for felonies. I am not sure that they are reactionary.

As you pointed out, current Alaska law has been abused as written. The waiver provision has not been used enough. I believe this has resulted in general public distrust of the entire juvenile justice system. It is unfortunate, but a fact. (And as legislators we are responsive to the public will.) WE ARE ??

But like you, I would also hate to see the State lose its ability to be flexible in cases involving misguided youth. I agree that society is best served if treatment can rehabilitate problem youth and reintegrate them into society as productive citizens.

The key, as you also pointed out, is to write laws that provide for both flexibility and sternness. There are some cases where the youth is not amenable to treatment and should be treated as an adult in order to protect society. A good law would deal justly with both situations.

I personally do not anticipate drafting any legislation on this subject this session. I am also not serving on any committees which will deal with the bills that have been introduced.

Kathy Apple and  
Rosemary Unterseher

-2-

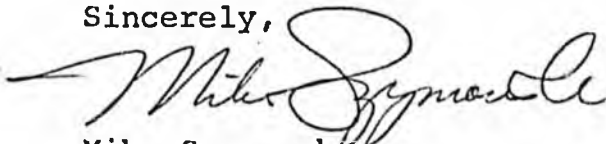
January 26, 1983

I am, however, very interested in youth rehabilitation and plan to follow the issue closely. Any information or suggestions you can provide me would be greatly appreciated. If you have specific recommendations on the proper design of a law, please forward them and I will discuss them with my fellow legislators.

Also, if you have not already done so, I would advance your concerns to all members of both the Senate and House Judiciary Committees. It is in Judiciary that the proposed bills will first be heard. Representatives Clocksin, Bussell, Liska, Hayes, Barnes, Malone and Wendte are serving on the House Judiciary Committee. I do not have a list of Senate members.

Thank you again for expressing your concerns. If you have any questions please contact me or my staff in Juneau at 465-4978.

Sincerely,



Mike Szymanski  
Representative

Alaska State Legislature



Senate


LEGISLATIVE ADDRESS

POUCH V - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907/465-3473

SENATOR  
FRITZ PETTYJOHN  
SRA BOX 2385 M  
ANCHORAGE, ALASKA 99510  
907/345-5174

2-10-83  
EB

TO: Representative Barnes  
Representative Bussell  
Representative Hayes  
Representative Liska  
Representative Pestinger

FROM: Senator Fritz Pettyjohn 

DATE: February 8, 1983

SUBJECT: Juvenile Justice

Attached is a copy of a Letter to the Editor of the Anchorage Daily News from staff members of Family Connection, Inc. in regards to juvenile justice.

Point 1 is addressed by HB 109. Points 2 and 3 could also be looked into?

Attachment

## LETTERS FROM THE PEOPLE

### Suggestions for juvenile justice

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the state's juvenile justice system.

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Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

① First, the waiver is not used enough. Clearly, there have been youths who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

② Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treatment the youth is still unchanged and

dangerous, according to state law the youth still must be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the juvenile justice system. How can we ethically release a youth into the community knowing the youth is a danger to society?

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— Kathy Apple, RN  
Family Therapist

— Rosemary Unterseher, ACSW  
Clinical Supervisor  
Family Connection

Anchorage Daily News 2/8/83

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Phone: 465-3672  
 Division: Administrative Services Division Date: April 5, 1983  
 Approved by Commissioner: Richard I. Pegues / for Date: April 5, 1983  
 Department: Department of Law

Distribution:

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

CSHB 109  
Analysis

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

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

CSHR 109  
Fiscal Analysis

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

1st Year (10 months)

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

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

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

1.	POSITION TITLE Attorney IV			RANGE/STEP 24A	BARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	2,126 x 10	21,260						
6.	Benefits	15.42	3,278						
7.	Supplemental Benefits		1,303						
8.	Fixed Benefits		1,200						
9.	TOTAL PERSONAL SERVICES		01	27,041					
10.	Travel		02	2,500					
11.	Contractual		03	4,000					
12.	Commodities		04	2,800					
13.	Equipment		05	1,500					
14.	Other								
15.	TOTAL COST			37,841					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		37,841					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY									
4A KEY NUMBER _____									

This part-time Attorney position will be needed to handle the estimated 20 additional felony cases that will occur as a result of the automatic waiver from juvenile to adult court if CSHB 109 becomes law. The Attorney IV, or full working level of Attorney will be required because those cases to be tried will be either Class A or unclassified felonies, which are the most serious criminal offenses.

**13** REQUEST FOR  
NEW POSITION

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

**FY 84**

Page 1 of 1  
Revised Date \_\_\_\_\_

HB 109 file

# City / State / Religion B

## Juvenile crime bill gets support

Times Staff and Associated Press

Juneau — A bill that requires some juveniles accused of violent crimes to be tried as adults all but passed the House Friday on a 29-8 vote.

If the proposal doesn't come up for a second vote today, it will be sent automatically to the Senate.

The bill would let 16- and 17-year-old minors be tried as adults for the most serious felonies, called unclassified and class A felonies. They include murder, attempted murder, kidnapping, attempted kidnapping, rape, arson and possession of explosives with intent to commit murder or kidnapping.

Within hours after the House vote, the Senate Judiciary Com-

mittee took up a similar version of the bill.

But the Senate bill contains two major differences. It would limit the crimes for which a juvenile 16 or 17 years old must be prosecuted as an adult to unclassified felonies, the most serious violent crimes. And it would let a minor tried as an adult but convicted by a jury of a lesser charge to be handled by juvenile courts.

Both bills also would make it easier for prosecutors to get judges to send a juvenile charged with lesser felonies up to the adult courts for trial.

On the House floor, Rep. Don Clocksin, D-Anchorage, tried to amend the bill so that a minor tried as an adult but convicted of a lesser offense could be sen-

tenced to treatment by the juvenile courts.

But bill sponsor Rep. Sam Pestinger, R-Anchorage, said his proposal gives the judge the choice of sentencing the minor to prison, probation or treatment.

Rep. Mike Miller, D-Juneau, said the bill would destroy the concept that a person is innocent until proven guilty. If a teen-ager is convicted of a lesser crime, the state shouldn't sentence him as an adult, he said.

Clocksin's amendment failed on a 20-17 vote.

Pestinger called his bill "practical crime prevention."

"It identifies the most serious crime, and applies our resources to the most serious crimes," he said.

But Clocksin said the bill

doesn't prevent crime. It deals with how to handle teen-agers after they've been charged with a crime.

In the Senate Judiciary Committee, debate bogged down over what standard judges should apply when deciding whether to send a minor to the adult court.

The bill before them called for no waiver if there's a "substantial likelihood" the minor will commit no more crimes.

Sen. Bill Ray, D-Juneau, said if the juvenile has committed crimes in the past he's likely to commit more.

But Gail Horetski, an assistant attorney general, said murder and rape often are crimes of passion that are the first offenses committed by juveniles.

STATE OF ALASKA  
 FINANCIAL STATEMENT OF FISCAL IMPACT

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

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

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

Funding source not identified by Bill author.

3. Assumptions:

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

4. Disclaimer:

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

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

Approved by Commissioner: Peggy Landon Smith, Ph.D. Date: 3/4/83  
 Department: Health & Social Services

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

"An Act relating to criminal prosecution of minors."

COST ESTIMATES

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

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

B. Youth Services Impact

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

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

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

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

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

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

### 3. FY 86 Operating Costs and Juvenile Expenses

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

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

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

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

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

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

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

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

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

C. Adult Confinement

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

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

1. Unclassified Felony

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

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

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

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

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

4. Class A Felony With Gun

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

5. Class A Felony Without Gun

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

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

6. Total beds required is 57 (rounded).

7. Cost Estimates

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

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

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

FY 1986 Costs - Adult Confinement

Personal Services	\$1,177,700
Travel	6,400
Contractual Services	184,000
Commodities	187,000
Equipment	5,900
Inmate Gratuities	<u>30,000</u>
TOTAL	\$1,591,000

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

"An Act relating to criminal prosecution of minors."

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

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

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

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

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

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

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

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

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

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

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

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

DATE: *February 3, 1983*

RECOMMENDED BY: *Roger C. Lange*  
*for* Roger Endell, Director  
Division of Adult  
Corrections

DATE: *February 14, 1983*

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

DATE: *2/18/83*

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 109  
 Title: An Act relating to criminal prosecution of minors  
 Sponsor: Rep Pestinger  
 Requestor: House Judiciary



Date on Bill: 1-24-83

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue				
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2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor

3. Assumptions:

No fiscal impact

4. Disclaimer:

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

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: \_\_\_\_\_

Approved by Commissioner: [Signature] Date: 2/4/83  
 Department: Public Safety

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 109 Date on Bill: 1/24/83

Title: "An Act relating to criminal prosecution of minors."

Sponsor: Representative Pestinger

Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue				
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2. Source of funds to offset fiscal impact of bill:

No information provided.

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

4. Disclaimer:

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

Prepared By: *Daniel W. Hickey* Phone: 465-3428

Division: Department of Law-Criminal Division Date: 2/15/83

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

5. Distribution:  
Original to Legislative Finance  
Copy to OMB  
Copy to Sponsor  
Copy to Requestor

2/8/83

# STATE OF ALASKA

## DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

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

March 17, 1983

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

Dear Representative Bussell:

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

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

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

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

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

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

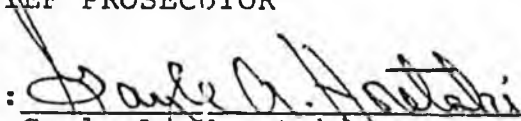
Once a person is tried and sentenced as an adult, that person will be prosecuted as an adult for all subsequent criminal violations. This is to preclude the possibility that a person who has been convicted as an adult and has perhaps served a sentence in an adult facility could be confined in a children's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

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

Sincerely yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By:   
Gayle A. Horetzki  
Assistant Attorney General

GAH/lb-09

Attachment

