HB

530

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST:
Bill/Resolution No.: House Bill No. 530
Title: "An Act relating to waiver of juveniles as adults."
Sponsor: Rep. Pestinger
Requestor: House Judiciary Committee
Date of Request: January 25, 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	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES				1,520.1	1,611.4	1.708.0
200 TRAVEL				7.1	7.5	8.0
300 CONTRACTUAL		25.0	79.5	218.8	231.9	245.8
400 COMMODITIES		38.8	123.8	223.4	236.8	251.0
500 EQUIPMENT				6.4	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		6.0	19.1	36.0	38.2	40.4
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	69.8	222.4	2,011.8	2,125.8	2,253.2
CAPITAL	-0-	10,621.5	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	10,691.3	222.4	2,011.8	2,125.8	2,253.2
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	10,691.3	222.4	2,011.8	2,125.8	2,253.2

POSITIONS:

FULL-TIME	-0-	-0-	-0-	29	29	29
PART-TIME						
TEMPORARY						
TOTAL	-0-	-0-	-0-	29	29	29

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: William W. Ludwig for Roger C. Lange
Division: Administrative Services
Phone: 465-3376
Date: February 21, 1984

Approved by Commissioner: [signature]
Department: ADULT CORRECTIONS AGENCY
Date: 2/21/84

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

12/1/8

ANALYSIS

A. Assumptions:

Based on FY 1982 Juvenile arrest data and the Department of Law's estimate that 45-50 juveniles will be waived into Adult Court, it is estimated that 72.75 additional beds will be needed by the Adult Corrections Agency,. A detail of this estimate is given in Attachment 1.

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 security beds are estimated to be $146,000 per bed.

72.75 beds @ $146,000 = $10,621,500

2. Full operating costs would not occur until FY87. It is estimated that twenty-nine (29) positions will be required to provide security and support for these beds: One (1) Correctional Officer III, twenty-six (26) 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. Estimated costs are as follows:

100	Personal Services	$1,520,100
200	Travel	7,100
300	Contractual Services	218,800
400	Commodities	223,400
500	Equipment	6,400
700	Inmate Gratuities	36,000
	Total	$2,011,800

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

Estimated Annual Frequency of Convictions	Presumptive Sentence	Estimated Average Sentence for 16 and 17 Year Olds Convicted as Adults	Actual Time to Serve With Credit for Good Time
*Unclassified felony (automatic waiver)			
2 murder I	20 years	15 years	11.25 x 2 = 22.5 years
1 murder II	5 years	4 years	3.0 x 1 = 3 years
1 sexual assault 1st (with firearm)	10 years	7 years	5.25 x 1 = 5.25 years
5 sexual assault 1st (without firearm)	8 years	5 years	3.75 x 3 = 11.25 2 probation
3 Class A felonies (with firearm)	7 years	6 years	4.5 x 2 = 9 years 1 probation
5 Class A felonies (without firearm)	5 years	4 years	3 x 4 = 12 years 1 probation
	Non-presumptive Range		
6 Class B felonies	0-10 years	3 years	2.25 x 4 = 9 2 probation
2 Class C felonies	0-5 years	1 year	.75 x 1 = .75 years 1 probation
			TOTAL: 72.75 person-years

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: An Act relating to..... class A felonies, waivers
Sponsor: Pestinger
Requestor:
Date of Request: 2/6/84

FISCAL DETAIL
Agency Affected: HEALTH AND SOCIAL SERVICES
Program Category Affected: Social and Economic Assistance for the General Population
BRU, Program or Subprogram(s) Affected: Youth Correctional Services

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						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael R. Price
Division: Family and Youth Services
Phone: 465-3170
Date: 2/6/84

Approved by Commissioner: Robert London Smith Ph.D. Date: 2/8/84
Agency: Dept of Health & Social Services

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: 388-108-83

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) am 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

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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 CSHB 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 CSHB 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

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 CSHB 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

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 27, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SCS CSHB 109(HESS) am S -- 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.

Dear Mr. Speaker:

Under the authority granted by art. II, sec. 15, of the Alaska Constitution, I have vetoed Senate Committee Substitute for Committee Substitute for House Bill No. 109 (HESS) am S, commonly referred to as a "juvenile waiver" bill. I have vetoed this bill because it weakens rather than improves existing laws relating to juvenile waiver. If this bill were enacted into law it would leave prosecutors less able to effectively prosecute juvenile offenders who have committed serious felony offenses.

The bill contains insurmountable equal protection and due process problems. It denies equal treatment under the law to persons who have been convicted of identical offenses. The bill automatically waives juvenile offenders charged with unclassified felonies to adult court. If an offender charged with an unclassified felony were convicted of a lesser included offense, such as a class A felony, he would be transferred back to juvenile court for "sentencing" (disposition). However, a juvenile charged with a class A felony who was discretionarily waived after a hearing, and was convicted in adult court of the class A felony, would be sentenced as an adult.

If the bill became law, it would mean that an offender who was waived into adult court because he was charged with first degree murder, but who was ultimately convicted for the lesser offense of manslaughter, a class A felony, would be treated as a juvenile. He would "serve" 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, would be sentenced as an adult, and faces up to 20 years in prison. Thus, two offenders, both convicted of manslaughter, would receive vastly unequal treatment. One who was automatically waived because there were good reasons to believe that a more serious offense was committed would go back to juvenile court for disposition. The other who was discretionarily waived for a less serious offense would be treated and sentenced as an adult.

If this bill were to become law, a prosecutor who believes that a 17 year old offender has committed murder 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. A prosecutor should not have to make such a choice. The jury should be the one to decide of which crime, if any, a defendant is guilty.

The bill also 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 reached the age of 18. This shuffling back and forth between juvenile and adult facilities makes no sense at all.

Persons who have been tried, convicted, and sentenced as adults should not be confined with juvenile offenders. Hardened or untreatable juveniles do not belong in treatment programs designed for younger, less sophisticated, children. If this bill were to become law, older offenders convicted of murder, kidnapping or forceable rape would be confined with youngsters who have committed minor property offenses or are having disciplinary problems. I cannot accept that result.

The bill presents other legal and public policy problems, but the two factors discussed above are themselves serious enough to require veto of the bill. As you are aware, my Administration worked closely with the Legislature on Senate Bill No. 127, which would have rationally strengthened existing law and would have enabled the courts to deal more effectively with juvenile offenders charged with serious, violent felonies. This bill, unfortunately, reaches an exactly opposite result, and that is why I have vetoed it.

Sincerely,

Bill Sheffield
Governor

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: "...amending children's proceedings waiver provisions."
Sponsor: Rep. Pestinger
Requestor: House Judiciary
Date of Request: 2-3-84

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)

GENERAL FUND	-0-	86.5	88.6	93.9	99.5	105.4
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Date: 2-6-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues / FOR) Date: 2-6-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 530

February 6, 1984

This bill provides that persons 16 or 17 years of age who are charged with unclassified felonies and Class A 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 Class A may be waived to adult court upon motion by the prosecutor and after a hearing in juvenile court.

It is estimated that approximately 45-50 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 20-25 additional felony prosecutions will be required to implement this bill, necessitating the hire of one full-time prosecutor.

FISCAL ANALYSIS - HB 530

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)

	AIV (PFT)
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
Total	86.5

POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
Attorney IV				24A	X				
TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	12				Anchorage	8			

CONTINUATION LEVEL | | ADDITION | |

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
4.	Salary 4,464/mo.	53,568	
5.	Benefits	8,785	
6.	Supplemental Benefits	2,550	
7.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,533
0.	Travel	02	5,000
1.	Contractual	03	8,000
2.	Commodities	04	4,500
3.	Equipment	05	1,500
4.	Other		
5.	TOTAL COST		86,533

	RECEIPT CODE	FUNDING SOURCE		
6.		Federal Receipts	1002	
7.		G.F. Match	1003	
8.		General Funds	1004	86,533
9.		I-A Receipts	1005	
0.		Program Receipts	1023	
1.		Other		

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4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This full-time Attorney position will be needed to handle the estimated 20 to 25 additional felony cases that will occur as a result of the automatic hearing waivers from juvenile to adult court if HB 530 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.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

THIRD JUDICIAL DISTRICT

Revised Date

FY 85

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: An Act relating to..... class A felonies, waivers
Sponsor: Pestinger
Requestor:
Date of Request: 2/6/84

FISCAL DETAIL
Agency Affected: HEALTH AND SOCIAL SERVICES
Program Category Affected: Social and Economic Assistance for the General Population
BRU, Program or Subprogram(s) Affected: Youth Correctional Services

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						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael L. Price
Division: Family and Youth Services
Phone: 465-3170
Date: 2/6/84

Approved by Commissioner: Robert London Smith Ph.D. Date: 2/8/84
Agency: Dept of Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

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 <u>not</u> accurately represent the number of crimes committed since more than one person may

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.

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, HB 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

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.

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

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.

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

Alaska Youth Advocates, Incorporated

SHEILA A. GADDIS
EXECUTIVE DIRECTOR

600 Cordova, Suite 3
Anchorage, Alaska 99501
907-274-6541

February 1, 1984

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 530
Waiver of Juvenile Court Jurisdiction

Dear Representative Bussell,

Alaska Youth and Parent Foundation (commonly known as Alaska Youth Advocates, Inc.) is opposed to the proposed amendments to Alaska Statutes 12.05.020, 12.55, 12.80, and 47.10.060 waiving juvenile court jurisdiction. We propose a case-by-case determination regardless of the minor's age as one viable alternative.

There is not time or space to cite the long, costly, involved and ultimately useless battle fought over juvenile waiver legislation in other jurisdictions.

Legislative enactments similar to proposed House Bill No. 530:

1) have forced taxpayers to spend an ever increasing amount of their tax dollars on maximum security prisons,
2) have allowed minors to be warehoused for many years past their majority,
3) have not solved the problem of juvenile street crimes and,
4) have not solved the problem of increased juvenile participation in serious felonies.

Waiver bills pave the way for minors of any age to be confined as adults without benefit of treatment, rehabilitation, or consideration of their special, (yes special) status and in violation of their procedural due process rights.

In formulating removal procedures as part of the overall plan for treatment of juvenile offenders/delinquents, it must be presumed that the legislature had studied and considered potential confusion inherent in this bifurcated system as well as any threats to an accused juvenile's procedural due process rights created thereby. Thus it can only be concluded that the legislative intent was to incorporate certain well-defined safeguards into the removal process so that it might jealously protect those constitutional rights readily recognized, and nothing less than strict adherence to these statutory procedures would violate the legislature's purpose and intent. These constitutional safeguards are conspiciously missing.

Sec 47.10.060 (2)(b) fails to mention other factors the juvenile judge should properly consider such as:

1) the availability of an appropriate environment,
2) the possibility of rehabilitation,
3) the family relationship and control,
4) the history of abuse (sexual and physical),
5) the persistency and seriousness of past adjudicated criminal offenses,
6) the safety of the community and,
7) the best interests of the child.

The public, and certainly the child, will be placed in greater jeopardy by warehousing these youth for a large portion of thir adult lives. We need only look to New York, Illinois, and California, to name a few, to realize violent juvenile crime is on the increase in spite of similar legislative waiver provisions. We will be placing troubled youth in a job training environment, learning to become vicious, dangerous adult members of society.

Sincerely,

Louis C. Jacobs
Executive Director

FAMILY CONNECTION

A counseling agency for youth and their families

204 E. 5th Ave., Suite 215, Anchorage, Alaska 99501 (907) 279-0551

JAN 19 1983

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.

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 treament 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

Kathy Apple, RN
Family Therapist

Sincerely,

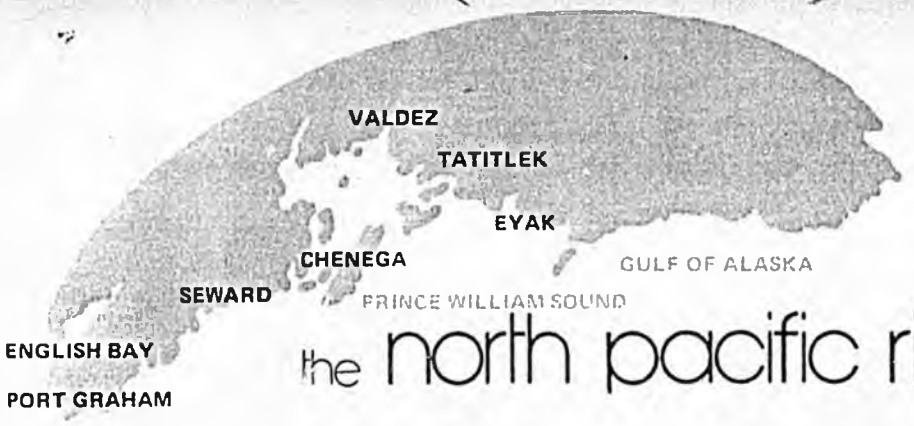
Rosemary Unterseher

Rosemary Unterseher, ACSW
Clinical Supervisor

KA/RU/MT
cc: all Judicial Members

HB109
HB103

Judiciary Referral



the north pacific rim

April 4, 1983

Representative Charlie Bussell
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

I am writing to inform you of our opposition to certain parts of the CSHB 103 (Jud.), "An Act establishing a Department of Corrections...". We are also opposed to CSHB 109 which you will be hearing later this month. It proposes to amend the children's proceedings waiver provisions, and relates to the criminal prosecution of minors. Please consider the concerns of The North Pacific Rim (TNPR) as you deliberate and decide on these bills.

While TNPR agrees that establishing a separate Department of Corrections is a positive move, we object to the inclusion of juveniles in this bill. Juveniles who commit crimes can be better served by remaining under the jurisdiction of the Department of Health & Social Services. It is through a rehabilatative approach, such as that offered by DHSS, that juveniles can gain the needed insight, resources, and skills to lead more socially acceptable lives.

With the great demand for resources within each Department, the needs of juvenile offenders risk becoming secondary to the needs of adults. This is especially true when one considers 1) the larger adult caseload, 2) the new focus on developing a correctional industries program, and 3) the high cost of rehabilatative treatment needed by both adults and juveniles.

903 W. Northern Lights Blvd., Suite 203 / Anchorage / Alaska 99503 / Ph. (907) 276-2121

The Non-Profit Corporation Serving The People Of The Chugach Native Region

TNPR is also concerned that the inclusion of juvenile offenders under the Department of Corrections would adversely affect the quality of services they receive. In the villages and rural areas, the same Probation Officer would most likely have both adults and minors on their caseloads. The attitude that one develops after working with adult offenders would not generally serve the best interest of the minor. In working with minors, even those determined "criminal", it is important that the Probation Officer retain some faith in the human spirit and in the person's ability to change.

Finally, we are fearful that the combination of youth with adult corrections will result in less diverson for youth, as well as a decreased emphasis on youth facilities. Of the 6,128 juvenile arrests in 1981, only 648 were adjudicated delinquents, and only 95 were sentenced to a closed youth facility such as McLaughlin. This means that over 6,000 youth were diverted from closed institutions, thereby keeping costs down and preventing the less dangerous youth from entering the criminal system.

Of course, there are those minors who are "unamenable to treatment", or who commit certain types of felonies such as murder and rape. These are the youth who are dealt with in CSHB 109 (Jud.). Section 9 of CSHB 109 outlines quite adequately the circumstances under which a waiver of children's court jurisdiction should be used. We think that Section 1 of CSHB 109 (Jud.) should be deleted entirely from the bill. A decision to try a 16 year old as an adult should be made on a case by case basis. The waiver as it stands in the current law can be used in this way; and yet its use in past years has been minimal. I would like to see an investigation of the reasons for the lack of use of the waiver before it is established as a general policy for all 16 and 17 year old suspected felons.

In addition, the presumptive sentences outlined in Sections 3 and 4 are too harsh for minors. Without treatment, the youth sentenced to such long terms will have little hope of leading normal, well-adjusted lives upon release. Two to three years in McLaughlin would serve the offender, society, and the State much better. If the youth is not amendable to treatment, it is unnecessary to pass this law if the goal is to have an effective system for treating criminal youth. The waiver in the current law is quite adequate.

In sum, The North Pacific Rim strongly opposes passage of CSHB 109 (Jud.), and we oppose inclusion of juveniles in the proposed new Department of Corrections. Thank you for your time and consideration of our concerns.

Sincerely,

The North Pacific Rim
Richard A. Rolland
Director
Health & Social Services

FOR MORE INFORMATION CONTACT:
Connie Kastelnik 212-887-4060

FOR IMMEDIATE RELEASE
FEBRUARY 13, 1983
PLEASE CREDIT "ABC NEWS"

One out of five Americans has been a crime victim in the past year, according to a new ABC News poll, and 13 percent of the adult population - nearly 22 million people - have been victims of violent crime.

The results of a special ABC News crime poll on the perceptions and realities of crime will be broadcast nationally during two weeks of special ABC News programming on "Crime in America," beginning Sunday, February 13.

The poll also revealed that three out of 10 Americans living in cities were victims of crime last year, along with nearly one quarter of all suburbanites and about one in seven Americans living in small towns and rural areas.

The ABC News poll also found that:

- Blacks are two-and-one-half times more likely than whites to be confronted by violent criminals. Twenty-six percent of all Blacks say they have been violent crime victims, compared to 10 percent of all whites.

- One in 12 Americans has had a close relative murdered, and one in eight knew someone in their neighborhood who was slain. Blacks are more than three times as likely as whites to have had a relative murdered. Twenty percent of blacks have had a relative slain, compared to six percent of whites.

- Twenty-six percent of those surveyed said they worried at least a "good deal of the time" about being murdered. Forty-three percent of victims of crime worry about being murdered, compared to 23 percent of people who never have been victims of violent crime.

- Nearly half of the women polled - 46 percent - said they worry about rape either a good deal or a great amount. Three percent report that they have been raped.

MORE MORE MORE

- Fifty-eight percent of those polled said unemployment, poverty, and related problems are the factors more responsible for crime in the U.S. Eighteen percent blamed drugs and 15 percent blamed breakdowns in family, society, morals, etc.

- A majority of 56 percent feels most judges have more sympathy for criminals than for their victims. Nearly two-thirds think judges have been giving shorter sentences in the last few years, and 88 percent said that is not the way they want it.

- Seventy-six percent want the death penalty for murderers. Seventy percent approve of building more prisons so that longer sentences can be given to criminals and 88 percent of these people are willing to have their taxes raised to pay for the new prisons.

- Seventy percent felt prisons mainly should be places that "teach criminals how to be useful, law-abiding citizens when they get out" rather than places to "punish criminals."

- Most people - 65 percent - disagree that armed citizen patrols are the only way to solve the crime problem. Forty-seven percent believe the best protection against crime is a strong police department.

- More than two-thirds of the gun owners polled said they would use their firearms if a burglar broke into their home. Nearly half of the American households - 47 percent - have firearms.

- Eighty percent said there would be less crime if more parents strictly disciplined their children. Exactly half of those polled said juveniles between the ages of 14 and 18 should be punished as adults if they commit a crime, and 46 percent said they should not be punished as adults.

Some 2,500 people were interviewed for the ABC News poll between December 7 and 18. The margin of error is plus or minus three percent.

(EDITOR'S NOTE: ABC News' two-week programming effort on "Crime in America" will focus on the myths and realities of crime, law enforcement, criminal justice and the prison system in the U.S. It will begin Sunday, February 13 with a special edition of "This Week with David Brinkley," with guests William Webster, FBI Director and William French Smith, Attorney General. The two weeks of programming (February 13 to February 25) will continue on "World News This Morning," "Good Morning America," World News Tonight," "Nightline," "20/20," "The Last Word" and "Viewpoint."

# #

TIMES
11.4.83

Kids may be tried as adults

by Jeff Berliner
Times Writer

District Attorney Victor Krumm on Thursday unveiled an administration proposal to try 16- and 17-year-old accused murderers in adult court.

Other juveniles accused of violent felonies also would have their cases moved to adult court under the proposal.

Krumm said it is "intolerable that a juvenile who commits a murder is held for two or three years" in McLaughlin Youth Center in Anchorage.

He unveiled the new juvenile waiver bill at the opening of a two-day conference on the connection between child abuse and juvenile delinquency, co-sponsored by the state Division of Family and Youth Services.

Division research shows that up to 20 youths every year are accused of committing crimes serious enough to bump them up to adult court, if prosecutors petition the court to accept them. In the past several years only a fraction of these cases actually ended up in state superior court.

Krumm, the Anchorage district attorney, cited the "soaring" rate of violent crimes committed by juveniles.

Although Gov. Bill Sheffield vetoed a juvenile waiver bill passed last legislative session, this bill satisfies his concerns and has the backing of the Department of Law, said assistant attorney general Gayle Horetski, who is putting the finishing touches on the proposal.

Charges of murder, rape or kidnapping would automatically put 16-and 17-year-old youths in adult court, Horetski said.

Younger defendants and teenagers charged with other crimes also could have their cases moved to adult court after a hearing.

But, Horetski said, this bill "makes it easier" for prosecutors to prove that those under 16 or those charged with felonies other than murder, rape and kidnapping should be taken out of the juvenile justice system.

Under current law, a juvenile may be placed in adult court at a judge's discretion following a hearing.

Delinquency expert attacks proposal

Continued from page A-1

This proposal, Horetski said, for the first time establishes nine standards for taking the teens out of juvenile court. The standards include seriousness of the crime, prior offenses, previous rehabilitation efforts, the amount of time required to rehabilitate the youth, and protection of the public.

The proposal Krumm unveiled came under immediate attack by the conference's keynote speaker, New York attorney and delinquency expert Andrew Vachss.

"How many 16-year-old kidnappers did you have in Alaska last year?" he asked, noting that such a law has "political utility" but will not bring needed change to the guilty youth or society.

"I don't think we had any," Horetski said, "but we sure had a lot of (under-age) murderers."

Vachss, who ran a prison for teens in Massachusetts, said in an interview later he would neither put the violent young offenders in a "soft" setting for youths nor put them in an adult prison.

He said he opposes mixing the violent teens with runaways in McLaughlin and said placing a 16-year old murderer in a state jail would likely transform him into an involuntary homosexual and a better criminal.

The answer, Vachss said, is a prison just for these violent youngsters, even if it is part of McLaughlin.

Teen-age murderers are released from McLaughlin when they become adults and most spend no more than two or three years in state custody, Krumm said.

Most violent teen-age offenders are not brought to the district attorney's attention "unless the crime is a triple murder in front of a lot of people," Horetski said. As a result, they end up in McLaughlin for a couple of years with little or no fanfare.

Serious cases that do come to prosecutors' attention often are ignored without any attempt to move them into adult court, Horetski said, because it is so difficult to do under current law.

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Serious cases that do come to prosecutors' attention often are ignored without any attempt to move them into adult court, Horetski said, because it is so difficult to do under current law.

Alaska State Legislature

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

Senate

LEGISLATIVE ADDRESS
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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

Anchorage Daily News 2/8/83

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.

Family Connection has provided family therapy servic- 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 their 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 McLaughline Youth Center for rehabilitation, rather than to the adult justic 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.

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?

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?

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.

— Kathy Apple, RN
Family Therapist
— Rosemary Unterseher, ACSW
Clinical Supervisor
Family Connection