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COMMITTEE REPORT
SENATE

2/16/83

FURTHER:

Date: 5/1/83

Mr. President:

The Committee on Judiciary has had SB 127

An Act relating to unlawful conduct of minors.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 127 (Jud) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

2 members N/R

Stephen No Rec.

[Signature]
CHAIRMAN
DO PASS

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99911
907-465-3860

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 27, 1983

SUBJECT: Disclosure of the identity of a minor and the
minor's parents at the court's discretion
(CSSB 127 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee
Attn: John Gabrielli

FROM: James H. Lear
Legislative Counsel *JHL*

You have asked our office to prepare a work draft amendment to CSSB 127 (Judiciary) that would provide for disclosure, in the court's discretion, of the identity of a minor and the minor's parents in relation to children's court proceedings. Since the existing law already gives the courts the discretion to decide whether or not to authorize disclosure of the identity of a minor, all that is necessary to comply with your request is to delete certain portions of the bill that appear to conflict with the existing law.

The provisions of AS 47.10.090 address the issue of disclosure of identity. In particular, subsection (b) states:

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause, in certain individual cases, enters an order prohibiting the disclosure.

Rule 26, Rules of Children's Procedure, reiterates that the court has the discretion to decide whether or not to enter

Senator Bill Ray
Page 2
April 27, 1983

an order authorizing disclosure of a minor's identity.
Rule 26 states:

The name or picture of a child under the jurisdiction of the children's court shall not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization.

Accordingly, two amendments should be made to reconcile CSSB 127 (Judiciary) to existing law. First, on page 8, lines 9 and 10, delete "the court may not disclose the identity of the minor." This language is in direct conflict with the provisions of AS 47.10.090(b), since the court may enter an order authorizing the disclosure of a minor's identity.

Second, on page 9, line 29, delete the word "prohibiting" and insert the phrase "requiring a court order to authorize". Thus, subsection (d) would read:

The provisions of this section requiring a court order to authorize disclosure of information relating to a minor do not apply to a disclosure to a victim or the victim's parent or guardian under AS 47.10.020(a), 47.10.080(a), and 47.10.140(d).

This amendment would clarify that AS 47.10.090(b) does not prohibit disclosure, but rather, restricts disclosure to instances in which a court order is entered authorizing disclosure.

Hopefully, this information is responsive to your request. If not, do not hesitate to contact our office.

JHL:ljb
16/017

PATRICK M. RODEY
3271 MONTCLAIRE CT.
ANCHORAGE, AK 99503

- GABRIELLI -

DURING SESSION:
POUCH V
UNEAU, AK 9981
(907) 465-3717

ALASKA STATE SENATE

March 18, 1983

TO : Senator Bill Ray, Chairman, Senate Judiciary Committee
FROM: Senator Patrick Rodey *PMR*
RE : Senate Bill 127 "An Act relating to unlawful conduct
of minors"

Enclosed is a copy of the response I received from the Department of Law regarding the above-mentioned bill. Also enclosed is a draft proposed by the Department of Law which I suggest should be used as a Committee Substitute for Senate Bill 127.

Enclosure

*if you have an objection
to my name on the bill
please feel free to use
another title*
R.

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 Patrick Rodey
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

In response to your request, 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 sponsor substitute for SB 127, now before the Senate Judiciary Committee. I am also sending a copy of the bill to Senator Ray and to the House 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.

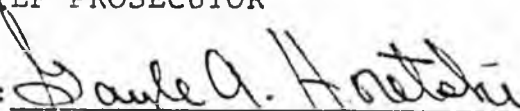
Once a person is tried and sentenced as an adult, that person will be prosecuted as an adult for all subsequent criminal violations. This is to preclude the possibility that a person who has been convicted as an adult and has perhaps served a sentence in an adult facility could be confined in a children's 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 on incorporating its provisions into SB 127.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 
Gayle A. Horetzki
Assistant Attorney General

GAH/lb-09

Attachment

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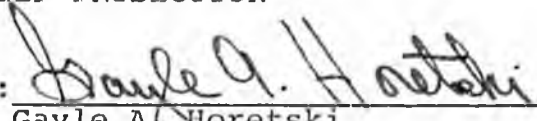
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Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 
Gayle A. Horetzki
Assistant Attorney General

GAH/lb-09

Attachment

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 Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

In response to your request, 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 sponsor or committee substitute for SB127, now before the Senate Judiciary Committee. I am also sending a copy of the bill to Senator Rodey and to the House Judiciary Committee.

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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"

TO : Senator Ray
FROM : John
DATE : 3/22/83
RE : SB 127

Attached please find the cover letter from Gail Horetski of the Dept. of Law, along with their proposed "juvenile waiver" bill.

You had instructed me to take this proposed bill, incorporate several sections of our original SB 127, and have a new committee substitute drafted for further consideration.

However, a problem has arisen:

As explained by Sen. Rodey when he testified, the original SB 127 was a compromise worked out last session between the Dept. of Law and its opponents. The opponents apparently consist of social workers and probation officers, headed by a prominent woman professor and social worker, who are adamantly against the Dept. of Law and have been calling for a special task force to completely revise the entire Juvenile Code.

Thus, if we adopt the Dept. of Law's bill at this point, the opponents will undoubtedly be up in arms and probably feel that they've been cheated because, after working out a compromise last session, they've had no input in the drafting of this new legislation.

Therefore, I propose that before we have a new committee substitute drafted we allow these opponents of the Dept. of Law to testify at our Committee hearing to consider the proposed Dept. of Law draft. After this is done, you can best decide exactly what kind of committee substitute you want drafted.

In any case, pursuant to your instructions, I am making sure that the Dept. of Law's opponents have an opportunity to be heard.

Please let me know if you want me to proceed as originally instructed or as suggested above.

OK
Good idea, John,
BR

CSHB 109 - IS THE GOOD BILL

1 IN THE SENATE

~~BY THE RULES COMMITTEE BY~~
~~REQUEST OF THE GOVERNOR~~
PROPOSED COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 127

2
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

11 * Section 1. AS 12 is amended by adding a new chapter to read:

12 CHAPTER 7. JURISDICTION OVER MINORS.

13 Sec. 12.07.010. JURISDICTION OVER MINORS CHARGED WITH SERIOUS
14 FELONIES. (a) A person 16 years of age or older, but under the age
15 of 18, who is alleged to have committed an offense designated as an
16 unclassified or class A felony must be charged, arrested, and prose-
17 cuted as an adult.

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

21 (c) A person subject to the jurisdiction of the court under this
22 section will be tried under the procedures set out in this title and
23 in the Alaska Rules of Criminal Procedure.

24 (d) References in AS 47.10.010, 47.10.060, and this chapter to
25 the age of a person refer to the person's age at the time of the
26 offense.

27 Sec. 12.07.020. SENTENCING AND DISPOSITION. (a) A person
28 subject to the jurisdiction of the court under AS 12.07.010 who is
29 convicted of the offense charged or of any lesser included offense

1 must be sentenced under the provisions of AS 12.55.

2 (b) If a person under the age of 18 who is subject to the juris-
3 diction of the court under AS 12.07.010 is confined to custody while
4 awaiting trial or sentenced to a period of incarceration upon convic-
5 tion, the person must be committed to the custody of the Department of
6 Health and Social Services for confinement in a correctional facility
7 for adult offenders.

8 (c) A person who has been convicted of an offense after being
9 prosecuted as an adult under AS 12.07.010 must be prosecuted as an
10 adult for any subsequent criminal offense.

11 * Sec. 2. AS 12.55.125 is amended by adding a new subsection to read:

12 (j) Notwithstanding any other provision in this section, a
13 person convicted of his first felony offense while under the jurisdic-
14 tion of the court under AS 12.07.010 is not subject to the mandatory
15 minimum and presumptive sentences required for first offenders.

16 * Sec. 3. AS 12.55.145 is amended by adding a new subsection to read:

17 (f) If a person subject to the jurisdiction of the court under
18 AS 12.07.010 is convicted of a felony offense, the conviction is to be
19 considered a prior conviction for presumptive sentencing purposes.

20 * Sec. 4. AS 47.10.010(a) is amended to read:

21 (a) Except as otherwise provided in this chapter and AS 12.07,
22 proceedings [PROCEEDINGS] relating to a minor under 18 years of age
23 residing or found in the state are governed by this chapter [, EXCEPT
24 AS OTHERWISE PROVIDED IN THIS CHAPTER,] when the court finds the minor

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

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

28 (A) the child being habitually absent from his home or
29 refusing to accept available care, or having no parent, guardian,

1 custodian or relative caring or willing to care for him, includ-
2 ing physical abandonment by

3 (i) both parents,

4 (ii) the surviving parent, or

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

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

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

20 (D) the child having been sexually abused either by
21 his parent, guardian or custodian, or as a result of conditions
22 created by his parent, guardian or custodian, or by the failure
23 of his parent, guardian or custodian adequately to supervise him;

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

27 (F) the child having suffered substantial physical
28 abuse or neglect as a result of conditions created by the child's
29 parent, guardian or custodian.

1 * Sec. 5. AS 47.10.060 is repealed and reenacted to read:

2 Sec. 47.10.060. WAIVER OF JUVENILE JURISDICTION. (a) Upon
3 motion of the prosecutor, and after a hearing, the court shall waive
4 juvenile jurisdiction over a person under the age of 18 if the court
5 finds, based upon the preponderance of the evidence,

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

9 (2) that there is no substantial likelihood that the person
10 can be successfully rehabilitated within the juvenile justice system.

11 (b) In determining the likelihood of successful rehabilitation
12 within the juvenile justice system, the court shall consider

13 (1) the seriousness of the offense;

14 (2) whether the offense constituted a substantial danger to
15 the public;

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

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

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

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

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

28 (8) whether juvenile jurisdiction over the person can be
29 retained long enough to allow for effective treatment or

1 rehabilitation; and

2 (9) the treatment resources available to the juvenile
3 justice system.

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

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Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 24, 1983

The Hon. Bill Ray
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 127

Dear Senator Ray:

I wanted to write and express my agreement with Section 2 of Senate Bill 127 which raises the amount recoverable in a civil action against parents of an unemancipated minor from \$2000 to \$5000. That increase is well justified by simply taking into account the effects of inflation over the last several years.

I also wanted to comment on Section 4 which contains an amendment to AS 47.10.020(a). Apparently new language is being added to that section to provide that the victim may obtain information from the court concerning the manner, "in which it (the court) informally adjusted or disposed of the matter. The court may not disclose the identity of the minor." I disagree with a provision prohibiting the court from disclosing to the victim the identity of a minor who has caused damage to that victim's person or property. I think the statute should very clearly allow the court to disclose the identity of both the minor and his parents to the victim so that if restitution orders made by the court are deemed insufficient or inappropriate, the victim has the information available with which he can pursue the civil remedies provided earlier in the statute. It does not make sense to me to keep this information from the victim, and I believe it sends the wrong message to both the minor and his parents in those cases in which kids are involved in doing damage to person or property. Particularly the kids ought to be told up front that the court will not be part of any procedure that inhibits the "accounting", if you will, between them and the victim. I would recommend that that last sentence be removed from Section 4.

Very truly yours

Thomas F. Schulz
Superior Court Judge

STATE OF ALASKA
THE LEGISLATURE

POU 1 Y STATE CAPITOL
JUNEAU ALASKA 99811
907 463 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 27, 1983

SUBJECT: Disclosure of the identity of a minor and the
minor's parents at the court's discretion
(CSSB 127 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee
Attn: John Gabrielli

FROM: James H. Lear
Legislative Counsel *JHL*

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Senator Bill Ray
Page 2
April 27, 1983

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This amendment would clarify that AS 47.10.090(b) does not prohibit disclosure, but rather, restricts disclosure to instances in which a court order is entered authorizing disclosure.

Hopefully, this information is responsive to your request. If not, do not hesitate to contact our office.

JHL:ljb
16/017

FILE WITH SB127

1408 West Tenth Avenue
Anchorage, Alaska 99501

March 18, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 127

Dear Senator Ray:

This letter is to explain that my letter of March 14, 1983 was written in my capacity as a private citizen who has had personal experience with the juvenile justice system over the past 14 years.

Sincerely,

Vic

Victor D. Carlson

VDC:gp

cc: Senator Rodey
Arthur H. Snowden, II

HEK - send to [unclear]
March 17, 1983

Senator Bill Ray
Pouch V
Juneau, Alaska 99811
(Mail Stop 3100)

Dear Senator *Bill* Ray:

Thank you for taking the time to talk with me recently about Senate Bill 127 relating to juvenile prosecution.

As you requested I am sending you the references for recent research on the effects of legislation in Minnesota and New York which provides for the prosecution of juveniles by the adult courts. That research revealed that instead of increasing the incarceration of juveniles, conviction rates for serious crimes were often lower - than would have been the case in juvenile court. That research is referred to in these articles -

¹Kiersh, 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

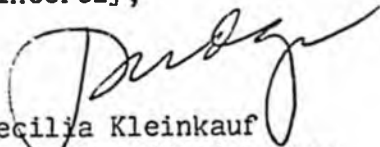
Sobie, Merrie, The Juvenile Offender Act: A Study of the Acts' Effectiveness & Impact on the New York Juvenile Justice System, New York Foundation for Child Development, 1981

Senate Bill 127 does provide for a hearing in juvenile court and also provides a set of criteria for the judge to use in deciding whether the juvenile shall be prosecuted as an adult. That approach is preferable to an automatic waiver and also to the wide latitude now available to the courts. It is interesting to note, however, that Mr. John Pugh, Dept. Commissioner, Dept. of Health & Social Services testified recently before House Judiciary Committee that 16 waiver petitions were filed in juvenile court last year and 12 of them were granted. So it seems the courts are waiving most of the serious juvenile offenders to adult court. Alaska Chapter, National Association of Social Workers has requested statistical information from the court system to verify this or to provide actual data on the use of the waiver. We will share that info with you when we receive it.

TO: Senator Bill Ray
Page #2

I would appreciate being notified of future hearings on SB 127 and perhaps provided an opportunity via a telephone speaker system to give testimony.

Sincerely,



Cecilia Kleinkauf
Assoc Prof/Chairperson

CK:par

cc: Senator Pat Rodey



ACK - COPY TO [unclear] 11-20
SB 127

Superior Court
State of Alaska

THIRD JUDICIAL DISTRICT

303 K Street
Anchorage, Alaska 99501

Chambers of
VICTOR D. CARLSON, Judge

March 14, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 127

Dear Senator Ray:

This letter is written to convey my concerns about the changes which the bill introduced by you and Senator Rodey would create in children's proceedings.

Of major concern is the mixing of criminals (those minors who are waived to adult court) with the run-of-the-mill delinquent. The likelihood of a minor who is waived to adult court receiving a sentence which can be served by the time he becomes 19 is remote. This means a minor who receives at a minimum a 20-year sentence for first degree murder, AS 12.55.125(a), or seven years for an armed robbery, AS 12.55.125(c)(2), will spend the first part of his incarceration in the relative benign environment of the McLaughlin Youth Center and the remainder at a relatively harder institution like Lemon Creek.

The program at McLaughlin Youth Center is effective both on account of the highly motivated personnel and the incentive minors have to change. The addition of persons with long sentences who know they are going to prison at age 18 will disrupt the program and make the job of the McLaughlin Youth Center staff more difficult.

I request that you consider the impact of mixing persons with long sentences into the McLaughlin Youth Center population.

The whole area of vicariously liability for torts committed by another has problems not yet addressed in Alaska. I question if the impression left by proposed AS 34.50.020(d) is intended,

The Honorable Bill Ray
Juneau, Alaska 99811

March 14, 1983
-2-

ie. that only emancipated minors can be sued for their torts. It is my understanding of the current law that a person regardless of age is responsible for his actions so long as he possesses the capacity to control and understand his actions.

Proposed AS 04.10.060(a)(1) provides that "... the court may retain jurisdiction if ...". The "court" is the superior court whether the minor is being sentenced as an adult or being treated a delinquent. I understand what is being proposed but find the language to be ambiguous and ambiguities in criminal statutes present problems for all concerned.

Thank you for considering this letter. I am

Very truly yours,



Victor D. Carlson
Superior Court Judge

VDC:gp

cc: Senator Rodey
Karla Forsythe
William Hitchcock, Esq.



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 24, 1983

The Hon. Bill Ray
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

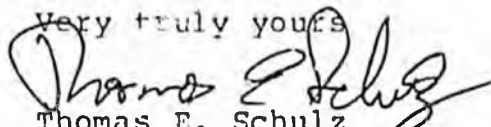
Re: Senate Bill No. 127

Dear Senator Ray:

I wanted to write and express my agreement with Section 2 of Senate Bill 127 which raises the amount recoverable in a civil action against parents of an unemancipated minor from \$2000 to \$5000. That increase is well justified by simply taking into account the effects of inflation over the last several years.

I also wanted to comment on Section 4 which contains an amendment to AS 47.10.020(a). Apparently new language is being added to that section to provide that the victim may obtain information from the court concerning the manner, "in which it (the court) informally adjusted or disposed of the matter. The court may not disclose the identity of the minor." I disagree with a provision prohibiting the court from disclosing to the victim the identity of a minor who has caused damage to that victim's person or property. I think the statute should very clearly allow the court to disclose the identity of both the minor and his parents to the victim so that if restitution orders made by the court are deemed insufficient or inappropriate, the victim has the information available with which he can pursue the civil remedies provided earlier in the statute. It does not make sense to me to keep this information from the victim, and I believe it sends the wrong message to both the minor and his parents in those cases in which kids are involved in doing damage to person or property. Particularly the kids ought to be told up front that the court will not be part of any procedure that inhibits the "accounting", if you will, between them and the victim. I would recommend that that last sentence be removed from Section 4.

Very truly yours


Thomas E. Schulz
Superior Court Judge

FILE

February 10, 1983

377-047-83

Gayle A. Horetski

Juvenile Waiver
legislation

Following a review of Title 11, I have determined that the following offenses are presently classified as "unclassified offenses";

AS 11.41.100 Murder in the First Degree
AS 11.41.110 Murder in the Second Degree
AS 11.41.300 Kidnapping
AS 11.41.410 Sexual Assault in the First Degree
AS 11.71.010 Misconduct Involving Controlled
Substances in the First Degree

The following are classified as "class A felonies";

AS 11.41.120 Manslaughter
AS 11.41.200 Assault in the First Degree
AS 11.41.500 Robbery in the First Degree
AS 11.46.400 Arson in the First Degree
AS 11.56.300 Escape in the First Degree
AS 11.31.110(c)(1) Solicitation (to commit an
unclassified offense)
AS 11.71.020 Misconduct Involving Controlled
Substances in the Second Degree

SB 127

CECILIA "Pudge" KLEINKLUS ^{H/AUS}

SOCIAL WORKER
ASSOC PROF AT UAA

WANTS TASK FORCE TO
REDO ENTIRE JUVENILE
CODE

FISCAL IMPACT

statistics on how often
waiver used, etc - Art
Snowden

Social Workers agreed to
SB 127, as well as D of L,
last year

COMPROMISE WAS ALL
WORKED OUT

SPJ or VCF
may introduce
bill



Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

April 21, 1983

The Honorable Thomas E. Schulz
Superior Court
First Judicial District
415 Main Street, Room 402
Ketchikan, AK 99901

Re: Senate Bill 127

Dear Judge Schulz:

Herewith please find a copy of a newly proposed committee substitute for the captioned bill.

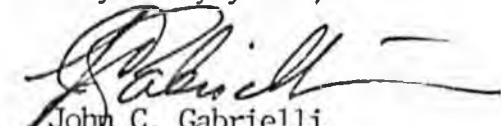
The two sections about which you expressed concern have been retained as sections number 10 and 13 in the proposed committee substitute.

The provision prohibiting disclosure of a minor's identity is still in section 13, but during prior hearings on the original bill at least one Committee member voiced concerns similar to yours. Therefore, it is quite likely that a corrective amendment will be proposed, and the undersigned has initiated research of that issue and the problems involved in providing for discretionary disclosure; e.g. 's precisely which sections of the Alaska Statutes need to be amended to accomplish that objective, and will it involve an amendment of court rules requiring passage by a 2/3 majority vote.

Senator Ziegler, who is a member of the Committee, is aware of your concerns and I am sure he will give them due consideration.

Your input is sincerely appreciated and if I can provide additional information or be of assistance to you in any way, please feel free to call me at 465-4451.

Very truly yours,


John C. Gabrielli
Counsel

JCG:jg
Encl.

cc: Senator Ziegler



Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

April 22, 1983

The Honorable Victor D. Carlson
Superior Court - Third Judicial District
303 K Street
Anchorage, AK 99501

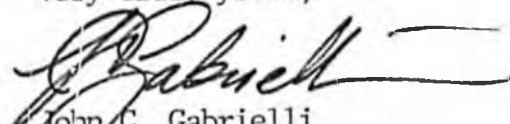
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John C. Gabrielli
Counsel

JCG:jg
Encl.

Ind. Daily News, 3/22/83

Prisons department bill stalled in committee

The Associated Press

JUNEAU — The minority Democrats Monday delayed, at least for two days until the Alaska House meets again, passage of a bill to create a Department of Corrections.

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At one point, lawmakers said they had been told the administration would be satisfied with juvenile correc-

tions in the new department. But that opinion was a personal one of Division of Corrections Director Roger Endell, according to an Endell letter read by Rep. Jim Duncan, D-Juneau.

Endell, Duncan said, now has taken the Sheffield administration position to delay the shift of juvenile corrections from the health and social services department.

But House Judiciary Chairman Charlie Bussell, R-Anchorage, said as late as Saturday Endell said he could live with the juvenile corrections coming into his department July 1, 1983.

It was when minority Democrats failed to get that date delayed a year that they came up with the parliamentary tactic to hold the bill over a day.

Clocks in and other Democrats fought for keeping juvenile corrections in DHSS so the new department could get itself operating with stability.

March 22, 1983

The Honorable Victor D. Carlson
Superior Court Judge
Superior Court, State of Alaska
303 K Street
Anchorage, Alaska 99501


Re: Senate Bill 127

Dear Judge Carlson:

Herewith please find a copy of a "Juvenile Waiver" bill drafted by the Department of Law as a possible Judiciary Committee Substitute for Senate Bill 127.

Any comments you may wish to make are welcome. Also, there will probably be hearings on this proposed legislation in the near future and if you would like to testify, either in person or by teleconference, please let us know so that suitable arrangements can be made.

Very truly yours,


John C. Gabrielli
Counsel

Enclosure

TO : Nancy Groszeck

FROM : John Gabrielli 

DATE : 4/4/83

RE : SB 127 (Juvenile Waiver)

Attached please find the source of the statistics recently cited by John Pugh when he testified before the House Judiciary on CSHB 109.

These are Alaska figures, but they are apparently based on federal, rather than state, definition of the crimes involved.

1982 figures are presently being compiled by the Alaska State Troopers, but there's no word on when they will be available.

The extra copy is for Pudge.

Ext. 4451 if you have any questions.



Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

April 4, 1983

Jim Ayers
Alaska Youth Advocates
204 East Fifth, Room 211
Anchorage, AK 99501

Re: SB 127

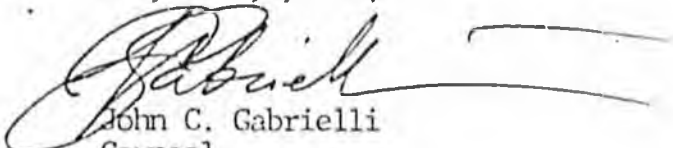
Dear Jim:

Pursuant to our telephone conversation of even date, herewith please find a copy of the Department of Law's proposed draft of a committee substitute for the captioned bill which is currently pending before our committee.

As I indicated, SB 127 is coming up for consideration at a public hearing here in Juneau at 1:30 p.m. on Friday, April 15, 1983, and at that time we expect that Pudge Kleinkauf as well as other opponents of the Department of Law's proposal will testify.

If I can be of further assistance in this or any other matter before our committee, please feel free to call me at 465-4451.

Very truly yours,


John C. Gabrielli
Counsel

JCG:jg
Encl.

MSG 83-00003715 PRY 1 03/25/83 18:51:26 ORIG: LA01 IN= 0020 OUT= 0118
FROM: MARCIE, ANC INFO TO: JUNEAU INFO
TARGET: LJHL SUBJ: MESSAGE FOR JOHN GABRIELLI

PLEASE DELIVER THE FOLLOWING MESSAGE TO JOHN GABRIELLI AS SOON AS POSSIBLE:

TO: JOHN GABRIELLI, AID, SENATOR RAY'S OFFICE

FROM: PUDGE KLEINKHAUF

RE: GROUPS & INDIVIDUALS INTERESTED IN ISSUE OF JUVENILE WAIVER
FOR TELECONFERENCE

DANA FABE, PUBLIC DEFENDER 279-7541

ROBERT HICKERSON, LEGAL SERVICES 272-9431

SHARON EGGERS, AK YOUTH ADVOCATES 274-6541

DENNY PATELLLA, FAMILY CONNECTION 279-0551

MARGARET WOLF 277-1977

JEAN STASSEL, LEAGUE OF WOMEN VOTERS 276-8927

JAN STUMP 694-9279

SALLY KNEELAND 863-2115

JOANIE CLEARY, NORTH PACIFIC RIM NATIVE CORPORATION 276-2121 H-274-9056

SALLY LAUSTER H: 277-6471

JOHN GARVIN, AK CHILDREN SERVICES 276-4515

SHERRY ECHRICH H: 345-7893

KATIE HURLEY, COM ON STATUS OF WOMEN 561-4227

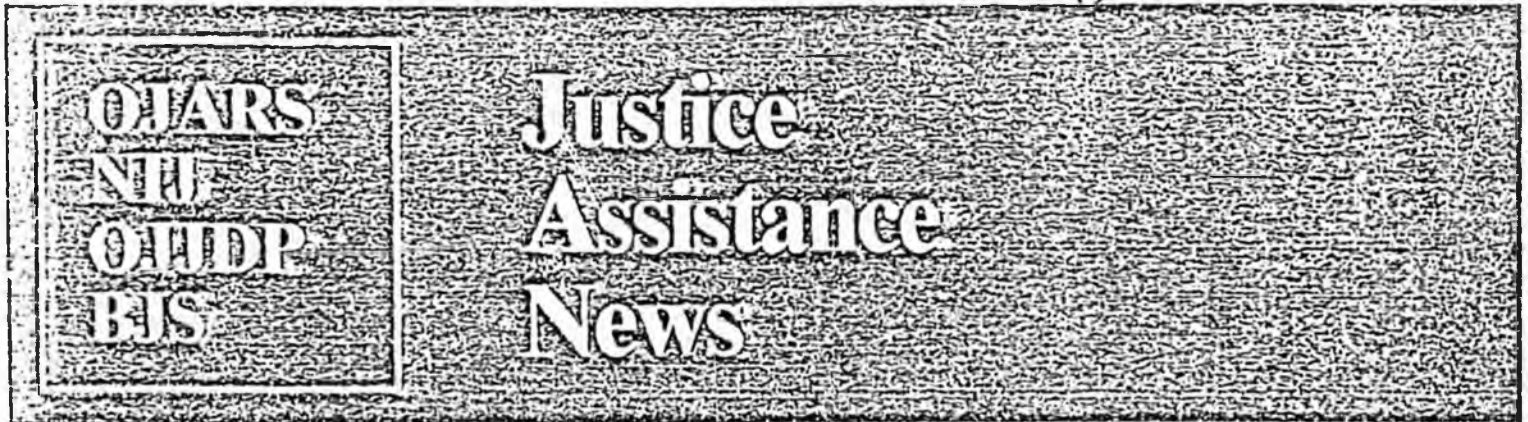
JOAN HURST, CAMP FIRE 279-3551

I WILL BE IN TOUCH WITH YOU THURSDAY, MARCH 31.
THANKS FOR YOUR HELP. PUDGE

EOM



Reference
Summary of Study



NIJJDP Study Reports

Treatment Of Youths In Adult And Juvenile Courts Similar

An overwhelming majority of youths judicially waived to adult courts from juvenile courts receive no confinement at all—contrary to the general view they are treated more strictly in adult courts, according to a study by the National Institute for Juvenile Justice and Delinquency Prevention.

In states with judicial waivers, only 32 percent of the juveniles waived to adult courts were sent there because of a crime against a person—again countering the general view that only violent youths are sent to adult court, said the study, adding that property offenses accounted for 45 percent of the juvenile waivers to adult courts. The other 23 percent included public order and similar minor offenses such as prostitution and being drunk in public.

The study, "Youth In Adult Courts: Between Two Worlds," was a three-year research project conducted by the Academy for Contemporary Problems, Columbus, Ohio. It was conducted under a grant from NIJJDP, the research arm of the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

The project was one of a series of four simultaneous studies dealing with juvenile justice issues that covered 42 months and cost \$2.4 million.

The thrust of the study was to determine how many juveniles were being referred to adult courts, for what types of offenses, and under what circumstances. Every procedure (judicial waiver, concurrent jurisdiction, excluded offense,

lower age of jurisdiction) that can be used to transfer youths to adult court was examined. The goal was to provide policymakers with statistical, legal, and research data.

None of the views expressed in this report is necessarily that of the Depart-

ment of Justice or any of its bureaus or agencies.

In-depth Interviews Conducted

Using 1978 as the base year for data collection, the academy studied how

(continued on page 6)



SEASONS GREETINGS

On behalf of all Justice System Improvement Act agency employees, I want to wish you and your families a happy and healthy holiday season.

The past year has brought many changes to the JSIA program and the criminal justice community. We expect 1983 to present many new changes and challenges, and we are committed to meeting these demands with the same determination and high degree of professionalism that has marked our efforts of the past.

We must find new resources, form new partnerships, and strengthen past alliances as we continue the fight against crime and work to improve the criminal justice system. This will require a greater role for the private sector, public and civic organizations, and the average citizen. This strengthening of business, civic, and public ties with local law enforcement agencies will, I am sure, prove an invaluable asset in the coming year—and in the years that lie before us.

Again, we at the JSIA agencies wish you the very best during this holiday season.

Robert F. Diegelman
Acting Director, OJARS

Methods Vary For Referring Youths To Adult Courts

(continued from page 1)

youths were handled in every county in the U.S., the District of Columbia, and the federal courts. In-depth interviews were conducted in 10 states with prosecutors, judges, public defenders, legislators, civil leaders, and media personnel.

The study said the typical youth referred to adult court was 17, male, and white.

The study revealed that every jurisdiction has at least one legal mechanism for trying youths (under age 18) in criminal courts.

There are 13 states which provide for concurrent jurisdiction between juvenile and adult courts for persons under the age of 18. In these states, forums for trial are determined at the prosecutor's discretion. In six of these states, concurrent jurisdiction applies only to traffic or other minor violations. In the remaining seven states, this discretion is applicable to all offenses, or to most serious offenses committed by older juveniles.

Some Crimes Excluded

Thirty-one states exclude certain crimes from juvenile court jurisdiction. In 20 of these 31 jurisdictions the only exclusions are for traffic offenses and other minor misdemeanors. The remaining 11 states exclude very serious crimes, usually murder and other capital offenses, from juvenile court jurisdiction. Seven of these states have established minimum ages of 13 to 16, under which such youths will be referred to juvenile courts even though they are charged with those designated offenses.

In 37 states where one is a juvenile until age 18, and in the one state where the age is 19, some 12,300 youths were referred to adult court during 1978. In those 38 states over 9,000 juveniles were judicially waived to adult courts, over 2,000 youth were prosecuted for serious offenses in adult courts due to concurrent jurisdiction provisions, and over 1,300 youth were prosecuted as adults because of excluded offenses provisions. These youth were either waived by the juvenile court or the prosecutor exercised authority to try them in adult court, or they were prosecuted as adults because of the serious nature of their crime (such as murder, rape, or armed robbery).

In 12 states where one is a juvenile until age 16 or 17 (e.g., lower ages of

jurisdiction), some 250,000 youths were prosecuted in adult court in 1978. Juveniles who are 16 or 17 in these states are routinely handled as adults for any violation of criminal law, no matter how minor. Only one of these states permitted 16 or 17 year old youths to be referred back to the juvenile courts. In the other 11 states, they are, without exception, arrested, detained, tried, and sentenced as adult offenders.

The most common offenses for which youths in these 12 states were referred to adult court were such "public order" offenses as liquor and drug violations. Further, this pattern was found to be generally consistent in most of the states.

In addition to these youths, the study said that as a result of hundreds of city, county, state, and federal laws, in 1978 an estimated one million persons under 18 were tried in adult courts for misdemeanor offenses such as traffic violations, fish and game offenses, and water safety abuses.

Case Dispositions Studied

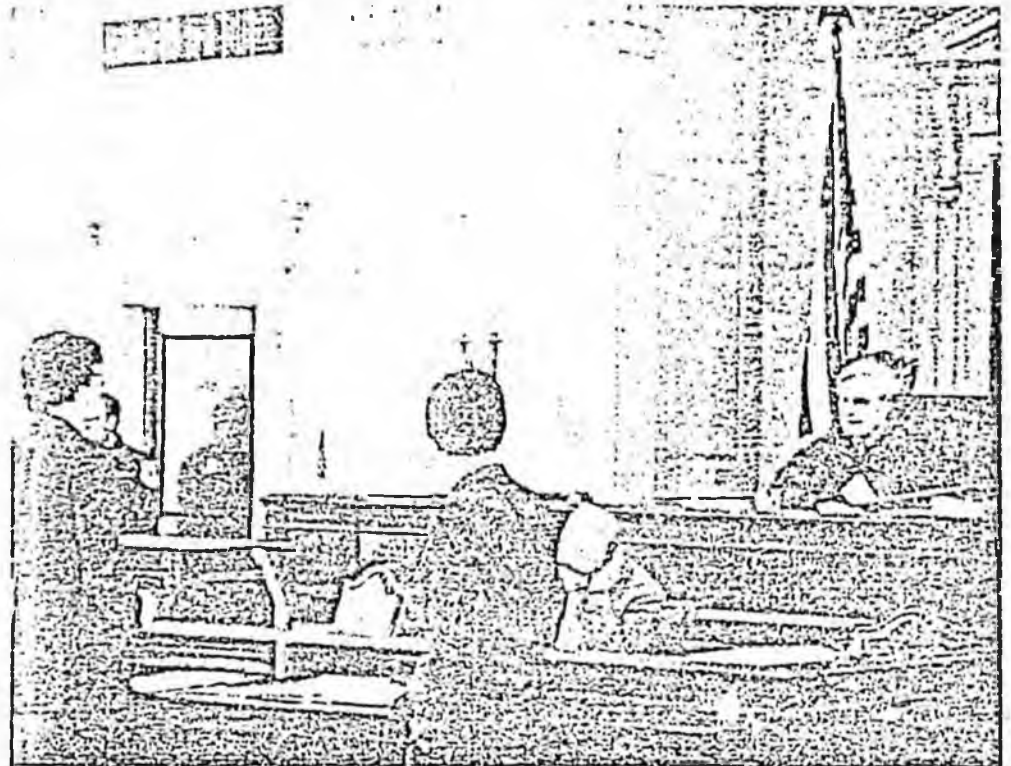
The study also examined adult court dispositions of juvenile cases. Among the 7,318 youths judicially waived to adult court, disposition data were available on 3,418 of them. Ninety percent of

these cases resulted in conviction or guilty pleas. Just over one-half of those convicted received sentences not calling for incarceration—such as fines or probation. Less than one-half of this convicted group received a sentence of confinement. Among those confined, 27 percent received sentences of one year or less, 39 percent received sentences of one to five years, 16 percent received five to 10 years, 14 percent received sentences of over 10 years, 2 percent got intermediate sentences, and 2 percent got life.

Eighty percent of the "known" concurrent jurisdiction (312) and lower age of jurisdiction cases (353) resulted in sentences of one year or less.

Project Director Joseph White said that in many cases the defendant served only a small portion of the sentence. He pointed out that the average length of confinement in juvenile facilities is about nine months, and that these include a significant proportion of non-serious cases.

Commenting on the study, Mr. White said, "the apparent reason for transferring or waiving many juveniles to adult courts—that they will receive stiffer sentences than in juvenile court—does not appear to be substantiated in this research."



The study found that most youths referred to adult courts are not treated more strictly there than they would be in juvenile court.

"The key point is that there are only a small number of juveniles who are being referred to adult courts that are actually being confined for longer periods of time than could have been accommodated in the juvenile system."

Mr. White pointed out that although many cases are transferred to adult courts because of the seriousness of the crime, more than half of the juveniles transferred had not committed crimes against a person.

Waiver Recommended

Based on the examination of every procedure presently used to transfer youths to adults courts, the author recommended that the best way for legislatures to construct appropriate legal mechanisms for the referral of youths to adult courts is through the use of judicial waiver. Only this legal device offers a method by which: both prosecutorial and judicial discretion may be exercised and controlled; juveniles who can be effectively handled by juvenile courts are spared needless contacts with the criminal court system and the unnecessary duplication of defense costs; and the judicial machinery is spared the strain of unnecessary delays in order to transfer juveniles to courts where their cases will ultimately be tried. This conclusion is consistent with recommendations of national juvenile justice standards.

These results are from the first of a three-phase research effort. Phase two involves an examination of court dispositions in selected jurisdictions among three groups of offenders charged with similar offenses:

- Juveniles handled in juvenile court.
- Juveniles handled in adult court.
- Young adults (aged 18 to 26) handled in adult court.

In phase three the sentences received by the juveniles will be studied. Results are expected to be available in about 15 months.

Donna M. Hamparian was the academy's principal investigator and researcher for the study.

Individual copies of the study, "Youth in Adult Courts: Between Two Worlds," are available free of charge by writing the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850, telephone: 301/251-5500. Copies of individual state summaries also are available for a small fee. ■

Law Enforcement Training Offered

The federal government has launched a pilot program offering advanced specialized training courses for state and local law enforcement personnel at the Federal Law Enforcement Training Center in Glynco, Georgia.

Courses include court security, officer survival, questioned documents, advanced law enforcement photography, marine law enforcement techniques, fraud and financial investigation, advanced arson for profit investigation, driver training, protective operations, and undercover investigative techniques. Class fees and room and board are paid by the students.

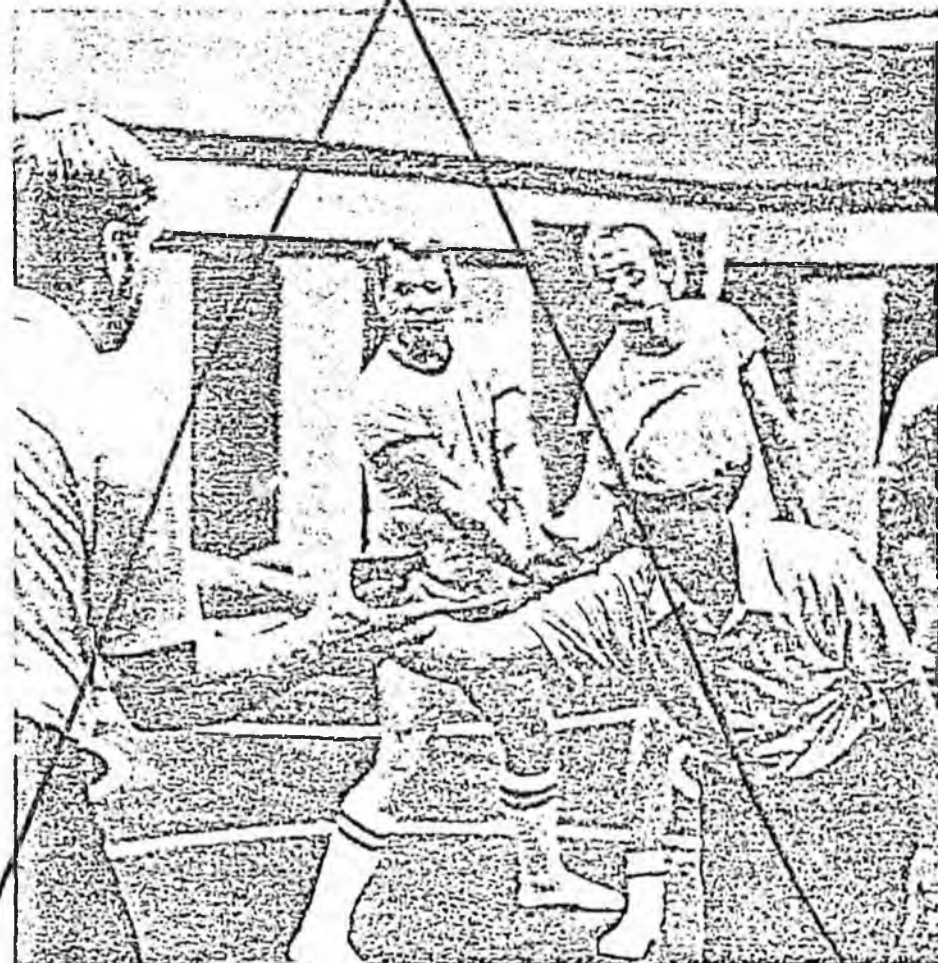
"The goal of this program is to test the hypothesis of offering advanced specialized training for state and local law enforcement personnel on a cost reimbursable basis at the Federal Law Enforcement Training Center," said

George H. Bohlinger, executive director of the training program.

"If this pilot program responds to the real needs and demands for advanced specialized training and provides a quality product, the potential exists for the chartering of a permanent National Center for State and Local Law Enforcement Training."

The program is jointly sponsored by the Departments of Justice and Treasury and is administered through the State and Local Law Enforcement Training Program. It stems from a recommendation of the Attorney General's Task Force on Violent Crime.

Additional information about the program is available by writing to the State and Local Training Coordinator, FLETC, Glynco, Ga. 31524, or calling the Washington, D.C., program office at 202/566-4086. ■



FLETC Physical Specialties Instructors Terry Raines (left) and Lynn Diskin demonstrate a technique for disarming an assailant.

PROPOSAL FOR NEW
YOUTHFUL OFFENDER
FACILITIES -

John Pugh -
AS POTENTIAL WWS

Dave Webb
Mike PRICE FYS
Endell



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 24, 1983

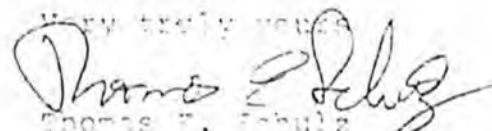
The Hon. Bill Pav
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

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Very truly yours

Thomas E. Schulz
Superior Court Judge

—ACK— send to [unclear]
March 17, 1983

Senator Bill Ray
Pouch V
Juneau, Alaska 99811
(Mail Stop 3100)

Dear Senator Ray:

Thank you for taking the time to talk with me recently about Senate Bill 127 relating to juvenile prosecution.

As you requested I am sending you the references for recent research on the effects of legislation in Minnesota and New York which provides for the prosecution of juveniles by the adult courts. That research revealed that instead of increasing the incarceration of juveniles, conviction rates for serious crimes were often lower - than would have been the case in juvenile court. That research is referred to in these articles -

¹Kiersh, 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

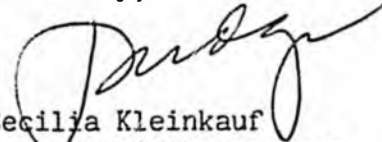
Sobie, Merrie, The Juvenile Offender Act: A Study of the Acts' Effectiveness & Impact on the New York Juvenile Justice System, New York Foundation for Child Development, 1981

Senate Bill 127 does provide for a hearing in juvenile court and also provides a set of criteria for the judge to use in deciding whether the juvenile shall be prosecuted as an adult. That approach is preferable to an automatic waiver and also to the wide latitude now available to the courts. It is interesting to note, however, that Mr. John Pugh, Dept. Commissioner, Dept. of Health & Social Services testified recently before House Judiciary Committee that 16 waiver petitions were filed in juvenile court last year and 12 of them were granted. So it seems the courts are waiving most of the serious juvenile offenders to adult court. Alaska Chapter, National Association of Social Workers has requested statistical information from the court system to verify this or to provide actual data on the use of the waiver. We will share that info with you when we receive it.

TO: Senator Bill Ray
Page #2

I would appreciate being notified of future hearings on SB 127 and perhaps provided an opportunity via a telephone speaker system to give testimony.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Cecilia Kleinkauf', written in black ink.

Cecilia Kleinkauf
Assoc Prof/Chairperson

CK:par

cc: Senator Pat Rodey

ACK - COPY ROJEY THEN
SB 127



Superior Court
State of Alaska

THIRD JUDICIAL DISTRICT

303 K Street

Anchorage, Alaska 99501

Chambers of
VICTOR D. CARLSON, Judge

March 14, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 127

Dear Senator Ray:

This letter is written to convey my concerns about the changes which the bill introduced by you and Senator Rodey would create in children's proceedings.

Of major concern is the mixing of criminals (those minors who are waived to adult court) with the run-of-the-mill delinquent. The likelihood of a minor who is waived to adult court receiving a sentence which can be served by the time he becomes 19 is remote. This means a minor who receives at a minimum a 20-year sentence for first degree murder, AS 12.55.125(a), or seven years for an armed robbery, AS 12.55.125(c)(2), will spend the first part of his incarceration in the relative benign environment of the McLaughlin Youth Center and the remainder at a relatively harder institution like Lemon Creek.

The program at McLaughlin Youth Center is effective both on account of the highly motivated personnel and the incentive minors have to change. The addition of persons with long sentences who know they are going to prison at age 18 will disrupt the program and make the job of the McLaughlin Youth Center staff more difficult.

I request that you consider the impact of mixing persons with long sentences into the McLaughlin Youth Center population.

The whole area of vicariously liability for torts committed by another has problems not yet addressed in Alaska. I question if the impression left by proposed AS 34.50.020(d) is intended,

The Honorable Bill Ray
Juneau, Alaska 99811

March 14, 1983
-2-

ie. that only emancipated minors can be sued for their torts. It is my understanding of the current law that a person regardless of age is responsible for his actions so long as he possesses the capacity to control and understand his actions.

Proposed AS 04.10.060(a)(1) provides that "... the court may retain jurisdiction if ...". The "court" is the superior court whether the minor is being sentenced as an adult or being treated a delinquent. I understand what is being proposed but find the language to be ambiguous and ambiguities in criminal statutes present problems for all concerned.

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Very truly yours,



Victor D. Carlson
Superior Court Judge

VDC:gp

cc: Senator Rodey
Karla Forsythe
William Hitchcock, Esq.

And. Daily News, 3/22/83
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The Associated Press

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But House Judiciary Chairman Charlie Bussell, R-Anchorage, said as late as Saturday Endell said he could live with the juvenile corrections coming into his department July 1, 1983.

It was when minority Democrats failed to get that date delayed a year that they came up with the parliamentary tactic to hold the bill over a day.

Clocks in and other Democrats fought for keeping juvenile corrections in DHSS so the new department could get itself operating with stability.

HB 127

2/28/83 - Discussion w/ Sen Roy -
ALSO TALKED TO Joel Horetski
& Jim LEAR

AGREED -

WAIT UNTIL DEPT OF LIA'S
PROPOSED LEGISLATION IS
REVIEWED (& POSSIBLY AMENDED)
BY GOVERNOR'S OFFICE

THEN

HAVE JIM INCORPORATE THE 2
SECTIONS FROM OUR BILL & DRAFT
A COMPREHENSIVE CS FOR US

IT'LL TAKE AT LEAST 2-3
WKS.