SB

264

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 264

Sponsor: RODEY

Date referred to committee: 3/29/85

Synopsis completed:

Fiscal note:

Further referrals: JUDICIARY

CONTACTS:

x Rodey (~~Kevin Bruce~~ Suzanne LaPierre) 3717 → 276-6731

✓ Corrections, Andy Nelson

✓ H&SS x Mike Price - Norma Lang 3030 "~~[illegible]~~"

✓ Law x Hal Brown - Gail Horetski

✓ x Art Snowden Karla Forsythe court 264-8228 ~~264-0634~~

✓ Dana Fabe, Public Defender x Dan Hensley 4911

Beth Ballie PO Box 55035 N. Pole 99705 488-3495

Karen Steinman, Anch. 337-5745

x Sherry Goll 4925

x Liz Hickerson 276-6921

Suzi Trycke - Mun. Anch.

League Women Voters

+ Judge Kleinkauf 786-1725

x Brant McGee, OPA 274-1684

no: "...cted of crime" but "adjudicated delinquent for an activity"

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

Senate Health Education & Social Services Committee 2/18/86, 1:36pm
" " " " " " 4/17/86, 1:37pm

file SB 264
JAN 15 1986

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

SENATOR PATRICK RODEY, CHAIRMAN
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

MEMORANDUM

TO: Senator Bettye Fahrenkamp, Chair
Senate HESS Committee

FROM: Senator Pat Rodey, Chair
Senate Judiciary Committee

DATE: January 14, 1986

RE: SB264 - Juvenile Waiver

Attached you will find a petition forwarded to me by Senator Frank Ferguson from residents of Teller requesting stronger laws against juvenile offenders. Please include this petition in your file on SB264.

Thank you.

PETITION FOR BETTER JUVENILE LAWS

1. All persons 16 years or over charged with an offense designated as a felony (rape, murder, felony assault) shall be prosecuted as an adult.
2. All minors under 16 commiting a non-felony offense shall: A. Pay a fine commensurate with the offense and /or do public service if they are a first offenders.
B. Be institutionalized and compelled to do physical work, if they are a second offenders.
3. All juveniles under 16 contained for a felony should be re-evaluated at 18.

	NAME	ADDRESS	PHONE
1.	Karen L. Blodgett	Box 532 Teller Ak	99778- phone # 642-3281
2.	Carol A Howard	Box 502 Teller AK	99778
3.	Andrew A. Toptok	P.O.Box 585 Teller, Ak	99778
4.	Millie Lee	Box 562 Teller, AK	99778
5.	Kenny Hughes	Box 586 Teller, AK	99778
6.	Enid Hughes	Box 581 Teller AK	99778
7.	Edward J Kakaruk Sr	Box 540 Teller, Ak	99778
8.	Betsy Kakaruk	"Box 540 Teller Alaska	99778
9.	Irene J. Kakaruk	Box 540 Teller Ak	99778
10.	Ruby Toptok	Box 551 Teller AK	99778
11.	Rose Okbook	Box 504 Teller ak	99778
12.	James Okbook	Box 504 Teller ak	99778
13.	Donald Ivan Kaut	Box 574 TEA	99778
14.	Theresa Toolook	Box 510 Teller	99778
15.	James Omiak	Box 507 Teller Ak	99778
16.			
17.			
18.			
19.			
20.			

STATE OF ALASKA
THE LEGISLATURE

ADDRESSES PROPOSED AMENDMENT

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM 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

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

COPY JUDICIARY MEMBERS AND FILE WITH BILL

ADDRESSES PROPOSED AMENDMENT

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

Thomas E. Schulz
Superior Court Judge

Introduced: 2/15/85
Referred: Health, Education & Social Services, Judiciary and Finance

Superseded

IN THE HOUSE

BY PETTYJOHN, MARTIN AND PIGNALBERI

HOUSE BILL NO. 205

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

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

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

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

Sec. 12.55.007. SENTENCING OF CERTAIN MINORS. (a) A person subject to the jurisdiction of the court under AS 12.05.020 who is convicted of the offense charged or of any lesser included offense shall be sentenced under the provisions of this chapter, unless referred to children's court for disposition after a hearing under (b)

of this section.

(b) A person subject to the jurisdiction of the court under AS 12.05.020 who is convicted of an offense that is not an unclassified felony, and that is lesser than the offense for which children's court jurisdiction was waived, may petition the court to dispose of the offense under AS 47.10.080. The petition for disposition under AS 47.10.080 shall be filed with the court, with a copy to the prosecutor, not less than 30 days before the time set for imposition of sentence. The petition shall state the reasons why disposition under AS 47.10.080 is appropriate. The court shall hold a hearing on the petition. The court may order disposition under AS 47.10.080 if the court finds that the petitioner has proven, by a preponderance of the evidence, that there is a substantial likelihood that the petitioner can be successfully rehabilitated under the children's court system. In determining the likelihood of successful rehabilitation under children's court proceedings, the court shall consider the factors set out in AS 47.10.060(b), and comply with AS 47.10.060(c).

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

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

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

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

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

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

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

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

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

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

(a) <u>Except as otherwise provided in this chapter and AS 12.05.-020, AS 12.55.007, and AS 12.80.060, proceedings</u> [PROCEEDINGS]

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

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

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

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

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

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

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian or custodian or the failure of the parent, guardian or custodian adequately to supervise the child;

(D) the child having been sexually abused either by the child's parent, guardian or custodian, or as a result of

conditions created by the child's parent, guardian or custodian, or by the failure of the parent, guardian or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian or custodian;

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

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

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

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

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

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

(1) the seriousness of the offense;

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

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

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

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

serious;

(6) the age, maturity, intellectual capacity, educational background, physical and mental health, and degree of criminal sophistication of the person;

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

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

(9) whether children's court jurisdiction over the person can be retained long enough to allow for effective treatment or rehabilitation;

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

(11) whether the protection of the community requires isolation of the person beyond that afforded by juvenile facilities.

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

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

related offenses.

from Maureen Weeks / Sen. Halford's Office
? Composed by Dana Fabe, PDA?

compromise but needs to be refined
- limit to unclassified felonies
- SIS.

Having done the juvenile waiver hearings on Blanchard and Burris (the taxicab driver killing) and having talked to several people in the office, most notably (who has done several waiver hearings) I wanted to outline a suggestion for new juvenile waiver legislation, which I believe would accomplish each of the following goals better than the present law: Protection of the public, treatment of the juveniles, judicial efficiency, and a more realistic standard.

As you know, AS 47.10.060(d) authorizes the Superior Court to waive a juvenile into adult court if "he probably cannot be rehabilitated by treatment. . . before he reaches 20 years of age." The present law requires the prosecutor to make a relatively quick decision as to whether to seek waiver, a decision frequently based on incomplete psychiatric data. It requires a court to make a prospective and necessarily highly speculative judgment largely based on almost invariably conflicting psychiatric data. The judgment the court must make is so highly speculative that it may involve guessing as to the likelihood of success of four or five years of treatment (Burris, for example, had just turned 15 years of age at the time the cabdriver was killed) of a kid who has never been treated before. Only an arrogant or dishonest person could claim any confidence in such a prediction (which may explain why the disciplines of psychiatry and psychol play such a prominent role in such juvenile proceeding. .

Here is an outline of the new juvenile legislation I think we should consider proposing to the next legislature:

could do automatic waiver for unclassified if over age 16

1. In any case of an unclassified or class A felony offense committed by a juvenile (of any age), the state could decide to initially prosecute that individual as an adult merely by filing a notice of waiver and an information supported by probable cause, filed in Children's Court. The case would then be automatically transferred to the adult system and the juvenile arraigned in District Court. The case would then proceed as would any other adult case up through sentencing.

2. Assuming conviction, the juvenile would remain within the jurisdiction of Health & Social Services after

sentencing, just as though he had never been waived into adult court. At sentencing, a hearing before the sentencing judge would automatically be set sometime between the time the defendant turned 19 years and 6 months and 20 years. That hearing would be identical to the present amenability hearing, with several differences. First, and most importantly, the court's determination would be based on a retrospective, rather than prospective, judgment based on far more data - both psychiatric and custodial behavior - than is presently available. Second, the Superior Court would have more flexible jurisdiction and discretion than is presently the case in that it would be given the authority to do the following things: (a) find that the offender is not rehabilitated and reaffirm the original sentence; (b) find that the offender is rehabilitated, vacate the adult judgment and release the offender; (c) find the offender substantially rehabilitated and conditionally vacate the adult sentence (the equivalent of an SIS) by, for example, ordering him to serve one year in an adult facility and be on probation for five years. In other words, this hearing would have elements of both an amenability and a Rule 35 hearing.

3. The standard to be applied by the Superior Court at this pre-twenty amenability hearing would not be whether the juvenile will be rehabilitated but whether the juvenile has been rehabilitated. And I would propose a relatively straightforward definition of "rehabilitation" -- that is, whether, at the time of the amenability hearing, the defendant poses a significant danger to the community.

Here are the advantages I see to this proposed legislation:

1. Achieves better protection of the public by assuring that judgments as to the rehabilitation of potentially dangerous offenders will not be made without adequate time and data.

2. In the case of juveniles who are waived under the present system, the new system would avoid the kinds of lengthy trial delays presently resulting from the waiver hearings and their concommitant appeals.

3. Because Health & Social Services takes the position now that juveniles should not begin treatment until after a decision has been made as to waiver, this new system would significantly speed up treatment. What happens now, as a practical matter, is that juveniles awaiting waiver hearings are held in the MYC detention unit, and cannot go into the treatment unit until after the waiver hearing, assuming that they are not waived. Under the proposed system, there would be no reason to delay treatment of any juveniles sent to McLaughlin since, even if the state did prosecute a particular juvenile offender as an

adult, the juvenile would generally remain at MYC.

3. Substantial prosecutorial and judicial economy would result from the proposed system. Most notably, under the present system, we are required to have a probable cause hearing prior to the amenability hearing, and then, assuming the juvenile is waived, proceed to grand jury. Under the new system, there would be no need for a probable cause hearing since the amenability hearing would occur after judgment.

4. The proposed system would not only minimize the degree of speculation the court would be required to indulge in but could significantly minimize the importance of the psychiatric evidence by giving the court a much firmer base of data -- a significant institutional record, including grades; relationship with staff and peers; and other behavioral data -- than at present.

5. By creating, in essence, a hybrid-system -- where elements of both the adult and juvenile system are combined in the treatment and prosecution of the offender - we give the system greater flexibility in dealing with younger offenders. We avoid having to make harsh black and white decisions based on little more than speculation as to future behavior. For example, the third member of the trio that killed the cabdriver is J.W., Jr., sixteen years old. The psychiatric reports on him were relatively favorable, he was neither the shooter nor the leader, and there was no basis on which I could justifiably seek waiver on him. However, I am far from satisfied that he will not present a significant danger to the community when he is released from McLaughlin by age 20. Under the proposed system, I would have had no reservations about prosecuting him as an adult, and having his progress or lack thereof carefully investigated and evaluated in three and a half years.

6. The Chaney criteria of deterrence and reaffirmation of societal norms will be better served. The community will see that juveniles are being prosecuted as adults for very serious crimes. And the possibility of deterring some juveniles from committing serious crimes should not be overlooked either. (In the Mildred Landesman killing - the old lady who was beaten over the head 13 times with an axe handle - Plumbley, the 18 year old, told Ridgley, the 16 year old, that Ridgley should be the one to club her because he was not yet 18 and wouldn't be prosecuted for it.)

7. The proposed system gives the serious juvenile offender greater incentive to succeed in treatment. Under the present system, before there is any treatment, the serious juvenile offender is told whether he will be released by the age of 20 or whether he will be treated as an adult. In cases where

the juvenile is not waived, his incentives to succeed in treatment are relatively small, since he knows he will be released by age 20 regardless of how poorly he does within the institutional setting. Under the proposed system, he would have every reason to do well.

8. This proposed legislation could be either complimentary to or independent of an automatic waiver system at, say, age 16 -- that is, whether the legislature passed such legislation or not, this proposal would still be useful.

Arguments against the proposed system could include the following: (1) By giving the prosecution the right to decide which serious juvenile offenders would be prosecuted as adults, the privacy rights of some juveniles would be infringed, since, under the present system, those juveniles that the state unsuccessfully seeks to waive still have their privacy rights protected; (2) the new system would give unfettered discretion to the prosecution, without any judicial review, of which juvenile offenders to prosecute as adults, at least in the case of Unclassified and Class A felonies.

As to the privacy concern, one response is that that is a very small price to pay for a system that both insures better treatment of serious juvenile offenders and better protects the public. Also, only a very small number of juveniles would be affected - i.e., those whom we unsuccessfully seek to waive under the present system.

As to the second concern that the new system would give prosecutors more discretion, one response is that prosecutors always have virtually unlimited charging discretion, at least in adult cases. Moreover, it is hard to object to a system which provides for more treatment, and provides greater incentives for rehabilitation.

In summary, the present juvenile waiver system is the least substantial, most speculative standard I have ever had to apply in a court proceeding. The proposed system would, I believe, be an improvement, whether or not an automatic sixteen-year-old waiver bill were enacted by the legislature.

Trial Courts
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

WILLIAM D. HITCHCOCK
Master, Trial Courts

January 8, 1985

The Honorable Patrick Rodey
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey,

Thank you for your letter of November 2, 1984 regarding changes in the Alaska Juvenile Code. I regret that it has taken me so long to respond to it.

There are indeed changes that need to be made in the present code. Two areas which are of great concern to me are: (1) whether the juvenile justice system should be handling serious delinquent offenders; and (2) the system's almost total lack of control over runaways and status offenders.

Various waiver bills have been introduced in the last two legislative sessions as I'm sure you are aware. The debate has centered around whether mandatory "legislative" waiver is needed or whether the situation can be handled by strengthening the language of the statutes governing discretionary waiver. I believe that the only effective answer is the legislative removal of juvenile jurisdiction over certain classes of crime committed by those over 16 years of age. Certainly unclassified felonies should be removed, and possibly even Class A's. Coupled with this must come some legislation to insure that affected minors will be fairly and humanely dealt with in the adult system. A youthful offender incarceration component is vital to the welfare of 16 and 17 year olds transferred to the adult system.

Jurisdiction over nondelinquent runaways is a delicate area. When this population was removed from the restrictive controls of delinquency jurisdiction in 1977, it was my understanding that services would be provided and programs developed within the social services system. For one reason or another this has largely not

happened. We are confronted today with a system that simply cannot practically intervene and protect these incorrigable "status offenders" who as a result become victimized on the streets and eventually work their way into the system as delinquents.

This is a serious social issue that cannot be cured by a piecemeal approach to legislation such as that which occurred during the 1984 session. I am speaking of various bills that were introduced, primarily in the house, which ranged from eliminating parental support liability for nonabused minors who refused to stay at home to recriminalizing runaway behavior.

Perhaps the best legislative response I can suggest in this area would be the creation of a task force composed of representatives from youth corrections, social services, the legal field and other disciplines to draft appropriate legislation and make independent funding proposals. I realize that it was just such a task force which led to the major revisions of 1977 and that there are certain ills to that process. However, I don't believe we can tackle the problem effectively any other way.

Your interest in this area is appreciated. I hope these thoughts are of some use to you.

Very truly yours,

William D. Hitchcock
Master, Children's Court

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY CONVICTION	SECOND FELONY CONVICTION	THIRD FELONY CONVICTION
"A" Felony	0-20 3-[6]*-20	5-[10]-20	7½-[15]-20
"B" Felony	0-10	0-[4]-10	3-[6]-10
"C" Felony	0-5	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder or kidnapping	- $75,000
A, B, or C Felony	- $50,000
A misdemeanor	- $ 5,000
B misdemeanor	- $ 1,000
Violation	- $ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - $100,000 or
3 X pecuniary gain
- whichever is greater

KEY

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

* Six year presumptive term applies if first A felony conviction, other than manslaughter, and defendant used or possessed a firearm during the offense or caused serious physical injury.

MAXIMUM TERMS OF IMPRISONMENT FOR MISDEMEANORS

A misdemeanor - 1 year

B misdemeanor - 90 days

2-1

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder in the First Degree
AS 11.41.100
20-99 years

Murder in the Second Degree
AS 11.41.110
5-99 years

Kidnapping
AS 11.41.300
5-99 years

CLASSIFIED FELONIES

A	B	C
Attempted Murder or Kidnapping AS 11.31.100(d)(1)	Attempted A felony AS 11.31.100(d)(2)	Attempted B felony AS 11.31.100(d)(3)
Solicitation of Murder or Kidnapping AS 11.31.110(c)(1)	Solicitation of A felony AS 11.31.110(c)(2)	Solicitation of B felony AS 11.31.110(c)(3)
Manslaughter AS 11.41.120	Assault II AS 11.41.210	Criminally Negligent Homicide AS 11.41.130
Assault I AS 11.41.200	Sexual Assault II AS 11.41.420	Custodial Interference I AS 11.41.320
Sexual Assault I AS 11.41.410	Unlawful Exploitation of a Minor AS 11.41.455	Sexual Assault III AS 11.41.430

2-2

CLASSIFIED FELONIES

A	B	C
Robbery I AS 11.41.500	Robbery II AS 11.41.510	Sexual Abuse of a Minor AS 11.41.440
Arson I AS 11.46.400	Extortion AS 11.41.520	Incest AS 11.41.450
Escape I AS 11.56.300	Theft I AS 11.46.120	Coercion AS 11.41.530
Criminal Possession of Explosives with Intent to Commit Murder or Kidnapping AS 11.61.240(b)(1)	Issuing a Bad Check, $25,000 or more AS 11.46.280(d)(1)	Theft II AS 11.46.130
	Burglary I AS 11.46.300	Concealment of Merchandise, $500 or more AS 11.46.220(c)(1)
	Arson II AS 11.46.410	Removal of Identification Marks, $500 or more AS 11.46.260(b)(1)
	Criminal Mischief I AS 11.46.480	Unlawful Possession (of Altered Property), $500 or more AS 11.46.270(b)(1)
	Forgery I AS 11.46.500	Issuing a Bad Check, $500 or more AS 11.46.280(d)(2)
	Scheme to Defraud AS 11.46.600	Fraudulent Use of a Credit Card, $500 or more AS 11.46.285(b)(1)
	Defrauding Creditors, $25,000 or more AS 11.46.730(c)(1)	

2-3

CLASSIFIED FELONIES

B

Bribery
AS 11.56.100

Receiving a Bribe
AS 11.56.110

Perjury
AS 11.56.200

Escape II
AS 11.56.310

Intereference with Official Proceedings
AS 11.56.510

Receiving a Bribe by a Witness or Juror
AS 11.56.520

Criminal Possession of Explosives with Intent to Commit A felony
AS 11.61.240(b)(2).

Promoting Prostitution I
AS 11.66.110

C

Obtaining a Credit Card by Fraudulent Means
AS 11.46.290(a)(1),(2)

Burglary II
AS 11.46.310

Criminal Mischief II
AS 11.46.482

Forgery II
AS 11.46.505

Criminal Possession of Forgery Device
AS 11.46.520

Criminal Simulation $500 or more
AS 11.46.530(b)(1)

Offering a False Instrument for Recording
AS 11.46.550

Falsifying Business Records
AS 11.46.630

Commercial Bribe Receiving
AS 11.46.660

Commercial Bribery
AS 11.46.670

2-4

CLASSIFIED FELONIES

	C
	Defrauding Creditors, $500 - $25,000 AS 11.46.730(c)(2)
	Endangering Welfare of Minor AS 11.51.100
	Perjury by Inconsistent Statements AS 11.56.230
	Escape III AS 11.56.320
	Permitting an Escape AS 11.56.370
	Promoting Contraband I AS 11.56.375
	Jury Tampering AS 11.56.590
	Misconduct by a Juror AS 11.56.600
	Tampering with Physical Evidence AS 11.56.610
	Hindering Prosecution I AS 11.56.770
	Terroristic Threatening AS 11.56.810

2-5

CLASSIFIED FELONIES

	C
	Riot AS 11.61.100
	Misconduct Involving Weapons I AS 11.61.200
	Criminal Possession of Explosives with Intent to Commit B Felony AS 11.61.240(b)(3)
	Unlawful Furnishings of Explosives AS 11.61.250
	Promoting Prostitution II AS 11.66.120
	Promoting Gambling I AS 11.66.210
	Possession of Gambling Records I AS 11.66.230

2-6

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

MISDEMEANORS AND VIOLATIONS

A	B	VIOLATIONS
Attempted C Felony AS 11.31.100(d)(4)	Attempted A or B misdemeanor AS 11.31.100(d)(5)	Littering AS 11.46.488
Solicitation of C Felony AS 11.31.110(c)(4)	Solicitation of A or B misdemeanor AS 11.31.110(c)(5)	Failure to Permit Visitation with a Minor AS 11.51.125
Assault III AS 11.41.230	Theft IV AS 11.46.150	Refusing to Assist Peace Officer or Judicial Officer AS 11.56.720
Reckless Endangerment AS 11.41.250	Concealment of Merchandise, less than $50 AS 11.46.220(c)(3)	Gambling- First Offense (Second offense & each subsequent offense is Class B misdemeanor) AS 11.66.200
Custodial Interference AS 11.41.330	Removal of Identification Marks less than $50 AS 11.46.260(b)(3)	Selling or Giving Tobacco to a Minor AS 11.76.100
Theft III AS 11.46.140	Unlawful Possession (of Altered Property), less than $50 AS 11.46.270(b)(3)	
Concealment of Merchandise, $50-$500 AS 11.46.220(c)(2)	Issuing a Bad Check, less than $50 AS 11.46.280(d)(4)	
Removal of Identification Marks $50 - $500 AS 11.46.260(b)(2)	Fraudulent Use of a Credit Card, less than $50 AS 11.46.285(b)(3)	
Unlawful Possession (of Altered Property), $50 -$500 (AS 11.46.270(b)(2)		

2-7

MISDEMEANORS

A	B
Issuing a Bad Check, $50-$500 AS 11.46.280(d)(3)	Criminal Trespass II AS 11.46.330
Fraudulent Use of Credit Card, $50 - $500 AS 11.46.285(b)(2)	Criminal Mischief IV AS 11.46.486
Obtaining a Credit Card by Fraudulent Means AS 11.46.290(a)(3)	Criminal Simulation, less than $50 AS 11.46.530(b)(3)
Criminal Trespass I AS 11.46.320	Unlawful Evasion II AS 11.56.350
Criminally Negligent Burning AS 11.46.430	Hindering Prosecution II AS 11.56.780
Failure to Control or Report a Dangerous Fire AS 11.46.450	Impersonating a Public Servant AS 11.56.830
Criminal Mischief III AS 11.46.484	Disorderly Conduct AS 11.61.110 (10 day maximum)
Forgery III AS 11.46.510	Harrassment AS 11.61.120
Criminal Simulation, $50-$500 AS 11.46.530(b)(2)	Obstruction of Highways AS 11.61.150
Obtaining a Signature by Deception AS 11.46.540	Misconduct involving Weapons III AS 11.61.220

2-8

MISDEMEANORS

A	B
Criminal Impersonation AS 11.46.570	Criminal Possession of Explosives with Intent to Commit A or B Misdemeanor AS 11.61.240(b)(5)
Misapplication of Property AS 11.46.620	Prostitution AS 11.66.100
Deceptive Business Practices AS 11.46.710	
Misrepresentation of Use of a Propelled Vehicle AS 11.46.720	
Defrauding Creditors, $500 or less AS 11.46.730	
Criminal Nonsupport AS 11.51.120	
Contributing to the Delinquency of a Minor AS 11.51.130	
Unlawful Marrying AS 11.51.140	
Receiving Unlawful Gratuities AS 11.56.120	
Unsworn Falsification AS 11.56.210	

2-9

A

Escape IV
AS 11.56.330

Unlawful Evasion I
AS 11.56.340

Promoting Contraband II
AS 11.56.380

Tampering with a Witness
AS 11.56.540

Simulating Legal Process
AS 11.56.620

Resisting or Interfering with Arrest
AS 11.56.700

Compounding
AS 11.56.790

Making a False Report
AS 11.56.800

Tampering with Public Records
AS 11.56.820

Official Misconduct
AS 11.56.850

Misuse of Confidential Information
AS 11.56.860

2-10

A

Misconduct Involving a Corpse
AS 11.61.130

Cruelty to Animals
AS 11.61.140

Misconduct Involving Weapons II
AS 11.61.210

Possession of Burglary Tools
AS 11.61.230

Criminal Possession of Explosives with Intent to Commit C Felony
AS 11.61.240(b)(4)

Promoting Prostitution III
AS 11.66.130

Promoting Gambling II
AS 11.66.220

Possession of Gambling Records II
AS 11.66.240

Possession of Gambling Device
AS 11.66.260

Interference with Constitutional Rights
AS 11.76.110

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

superseded

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM April 24, 1985

SUBJECT: Sectional Analysis of SB 264

TO: Senator Patrick Rodey
Chairman, Senate Judiciary Committee
Attn: Kevin Bruce

FROM: George W. Edwards GWE
Legislative Counsel

This is in response to your request for a sectional analysis of SB 264.

Section 1 AS 12.55.015 is amended by adding a new subsection that provides that when a court sentences a minor over whom children's court jurisdiction has been waived under AS 47.10.060, the court shall order that the minor be confined in a juvenile correctional facility until age 18 and then transferred to an adult facility if more than one year of the person's sentence remains to be served.

Section 2 AS 34.50.020(a) is amended to provide that except as provided in subsection (e) a person, municipal corporation, association, village, school district, or religious or charitable organization may recover civil damages not to exceed $5,000, rather than the former $2,000, for willful or malicious destruction of property by a juvenile.

Section 3 AS 34.50.020 is amended by adding new subsections. Subsection (c) provides that for purposes of this section a minor is considered emancipated and the minor's parent, guardian, or legal custodian is not liable for property damage caused by the minor if

(1) the disabilities of minority have been removed under AS 09.55.590;

(2) the minor is a state resident at least 16 years old, living separate from parent, guardian, or legal custodian,

and capable of self-support and management of personal affairs; or

(3) the minor is living separate from parent, guardian, or legal custodian and engages in conduct that results in a judgment under AS 47.10.080(a) of delinquency that is the basis for a civil action for damages to property under this section.

Subsection (d) provides that if a court determines a minor to be emancipated under subsection (c) the minor may be sued civilly as if the minor were an adult.

Subsection (e) provides that the provisions of subsection (a) do not apply when the minor who causes damage is a ward of the state under AS 47.10.080(f).

Section 4 AS 47.10.020(a) is amended to provide that when a court informally disposes of a juvenile matter it shall disclose to the victim, upon request, the manner in which it disposed of the matter. The court may not disclose the identity of the minor under this section.

Section 5 AS 47.10.060(a) is repealed and reenacted to provide that a court may close a juvenile case and permit the minor to be prosecuted as an adult subject to the sentencing provisions of AS 12.55.015(e) if the court finds at a hearing that

(1) the minor was at least 16 at the time of the offense and there is probable cause to believe the minor committed an unclassified felony or class A felony; or

(2) the minor is not amenable to treatment as a juvenile and there is probable cause to believe that the minor is delinquent.

Section 6 AS 47.10.060 is amended by adding a new subsection that provides that if a case is closed under (a)(1) of the section the minor may petition the court within 10 days to reopen the juvenile case. The case must be reopened if the court finds by a preponderance of the evidence that justice would be best served if the minor were prosecuted as a juvenile. In making the finding the court is required to consider

(1) the criminal history, personal history, and likelihood of rehabilitation of the minor;

(2) the seriousness of the minor's present offense in relation to former offenses;

(3) the need to confine the minor to protect the public;

(4) the circumstances of the offense and the extent of the harm done or danger posed by the minor;

(5) the deterrent effect of prosecuting the minor as an adult; and

(6) the best interest of the minor.

Section 7 AS 47.10.080(a) is amended to provide that after disposition of a juvenile case the court must disclose the results to the victim as required in AS 47.10.020(a).

Section 8 AS 47.10.090 is amended by adding a new subsection permit disclosure of that information to a victim or a victim's parents under AS 47.10.020(a), 47.10.080(a), or 47.10.140(d).

Section 9 AS 47.10 is amended by adding a new section 47.10.125:

FINGERPRINTING OF MINORS. Subsection (a) provides that a law enforcement agency or the Department of Health and Social Services may fingerprint a minor only

(1) with a search warrant;

(2) when the minor is prosecuted as an adult under AS 47.10.060(a);

(3) when the minor is in custody for an offense that if committed by an adult would constitute a felony and the fingerprints are needed to further the investigation;

(4) when the minor is adjudicated a delinquent for commission of an offense that would have been a felony if committed by an adult;

(5) upon consent of both the minor and the minor's parent or legal guardian who have been advised that the fingerprints cannot be taken without their consent; and

(6) by order of the court.

Subsection (b) requires that fingerprints of minors be kept separate from those of adults, kept within the state rather than at a federal central depository, and made available only to public agencies for investigation purposes or to the minor or the minor's attorney.

Subsection (c) requires that fingerprints taken under this section be destroyed by the authority charged with their maintenance when the minor is found not to be under court jurisdiction for the offense charged or the minor is not adjudicated on the offense within two years.

Section 10 AS 47.10.140(d) is amended to require the court to disclose the results of a juvenile probable cause hearing to the victim under AS 47.10.020(a).

Sections 11-12 Rule 24 of the Alaska Rules of Children's Procedure is amended to eliminate the existing court restriction on fingerprinting as proposed in this Act.

Sections 13-14 Children's Rule 24 is amended by adding a new section that provides that a child may not be fingerprinted while in custody except in accordance with AS 47.10.125.

GWE:csh
c4/011

Date: 2/14/86
From: Sandra Schubert
Phone: 465-3834

MEMORANDUM

From the Office of
Senator Bettye Fahrenkamp

To: Interested Persons

MESSAGE:

SB 264 is scheduled for a public hearing before the Senate HESS Committee at 1:30 pm On Tuesday, February 18, 1986. Senator Rodey, the bill's sponsor, has asked that the committee consider the draft attached.

ALASKA LITHO, INC.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HE55 4-25-85 1:45pm

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, April 25, 1985

DATE: April 25, 1985

Today, Thursday, April 25, at 1:30 pm in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear an additional bill:

SB 264, An Act relating to unlawful conduct of minors; and amending Rule 24 of the Alaska Rules of Children's Procedure.

SB 264 addresses the treatment of minors who have committed unlawful acts. Under current statute, persons under the age of 18 are tried in children's court unless the court determines that the minor is delinquent and not amenable to treatment. Under SB 264, the case would automatically be waived from juvenile to adult court if the minor is 16 or 17 years old and has committed an unclassified or class A felony. Such minors could be fingerprinted, and would be housed in juvenile facilities.

SB 264 also addresses the emancipation of minors for purposes of civil suits and the disclosure of information regarding juvenile matters. Existing law gives the courts discretion in authorizing disclosure of the identity of a minor; the attached bill is marked with a proposed amendment that clarifies that this discretion would be unaffected by the bill.

A sectional analysis of SB 264 is attached.

ALASKA WOMEN'S LOBBY
POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

February 18, 1986

Testimony before the Senate Health Education and Social Services Committee
Hon. Bettye Fahrenkamp, Chair

Madam Chair and members of the Committee:

The Alaska Womens Lobby appreciates the opportunity to come before you once again to oppose legislation which would allow the automatic waiver of juveniles into adult court.

In deciding our legislative priorities for 1986, we would have preferred to have made support for a bill our number one priority. However, our concern over the issue of juvenile waiver is so strong that opposing Senate Bill 264 was deemed the most important.

We believe that an age determinent system rather than a case-specific system will force many of the wrong children into adult court.

Once a child is waived into adult court, the legal procdeures needed to permit the return of a case to juvenile court are complex. The quality of legal services provided the child becomes a major factor, rather than simply his behavioral profile.

When a child receives the harsher penalty of the adult court, crime may actually increase over the long run.

We know that our existing prisons do not successfully rehabilitate inmates. Prisons are often places of violence where survival rather than rehabilitation becomes the inmates prime concern. Younger inmates, either by choice or by necessity, adapt to the violence. When they are released, they have learned skills that prepare them not for a trade or profession, but for crime--often more vicious than those originally committed.

We believe that determination on a case-by-case basis remains the best way to balance the interests of the individual and those of the state. The recent case in Anchorage where a 14-year-old girl accused of a heinous crime was waived into an adult facility under the present system demonstrates the courts' ability to take this action when appropriate.

We respectfully submit that no change to the waiver provisions are necessary for justice to be served, and would urge you to take no action on the legislation before you today.

Thank you.

THE ALASKA WOMEN'S LOBBY
Sherrie Goll, Lobbyist

SB 264 JUVENILE WAIVER

CURRENT STATUTE ALLOWS JUVENILES OF ANY AGE TO BE WAIVED TO ADULT COURT FOR ANY CRIME IF CHILD IS NOT AMENABLE TO TREATMENT. BURDEN IS ON PROSECUTOR TO CONVINCE THE COURT.

SB 264 = AUTOMATIC WAIVER FOR 16/17 YEAR OLDS FOR UNCLASSIFIED FELONIES (MURDER, SEXUAL ASSAULT, SEXUAL ABUSE OF MINOR, KIDNAPPING).

1. NO PROVISION FOR REMANDING TO JUVENILE COURT
2. EXEMPT FROM PRESUMPTIVE SENTENCING LAWS
3. HOUSED IN JUVENILE FACILITIES
4. OTHER KIDS COULD BE WAIVED PER THE EXISTING MECHANISM.

BILL ALSO:

1. ALLOWS FINGERPRINTING OF WAIVED MINORS AND MINORS WHO COMMIT FELONY CRIMES.
2. ALLOWS AN EMANCIPATED MINOR TO BE SUED CIVILLY AS IF THE MINOR WERE AN ADULT.

ISSUES:

1. WAIVER SYSTEM IN PLACE CURRENTLY. ISN'T IT WORKING?
2. PHILOSOPHY: REHABILITATIVE NATURE OF JUVENILE SYSTEM VS. PUNITIVE ADULT SYSTEM. 1985 STATE REPORT ON JUVENILE CRIME SHOWS IT'S NOT INCREASING, IS LARGELY NONVIOLENT, AND THAT THE REHABILITATION SYSTEM WORKS.
3. HOUSING: DEPT. HEALTH AND SOCIAL SERVICES WANTS WAIVED JUVENILES HOUSED SEPARATELY FROM OTHER JUVENILES. NO FACILITIES FOR THIS EXIST. WAIVED KIDS ARE CURRENTLY HOUSED WITH ADULTS.
4. FISCAL IMPACT (HOUSING; JURY TRIALS IN ADULT SYSTEM BUT NOT IN JUVENILE).

Changes in C.S.

1. original applied to Class A felonies too
2. provided for remand to juvenile court

SB 264 (RODEY) UNLAWFUL CONDUCT OF MINORS superseded

1. AUTOMATIC WAIVER FROM JUVENILE TO ADULT COURT FOR 16 AND 17 YEAR OLDS WHO HAVE COMMITTED UNCLASSIFIED OR CLASS A FELONIES.
2. ALLOW FINGERPRINTING OF THESE INDIVIDUALS.
3. WOULD BE INCARCERATED IN JUVENILE FACILITIES.

CURRENT PROCEDURE: Is there a problem with the current system?

CASE CAN BE WAIVED FROM JUVENILE TO ADULT COURT (FOR ANY CRIME AND ANY AGE VICTIM) IF THERE'S GREAT LIKELIHOOD THAT THE CHILD IS DELINQUENT AND IS UNAMENABLE TO TREATMENT. Forces prosecutor to prove to judge that child belongs in adult system

COURT RULES PROHIBIT FINGERPRINTING OR PHOTOGRAPHING OF MINORS.

UNDER BOTH EXISTING LAW AND SB 264, THERE IS A PROCEDURE FOR REMANDING TO JUVENILE COURT.

CONCERNS: -EMPHASIS OF JUVENILE COURT IS REHABILITATION, NOT PUNISHMENT. Adult penalties are harsher.
-WHAT ALLOWANCE FOR FIRST TIME OFFENDERS?

-WHERE HOUSED WHILE AWAITING SENTENCING? (KEVIN MAY HAVE AMENDMENT REQUIRING JUVENILE FACILITIES)

POSITION: COURT SYSTEM NEUTRAL; NO FISCAL NOTE.

DEPT. ~~HEALTH & SOCIAL SERVICES NEUTRAL; NO FISCAL NOTE.~~

PUBLIC DEFENDER OPPOSED

DEPT. LAW HASN'T DEVELOPED POSITION
CORRECTIONS HASN'T DEVELOPED POSITION; NO FISCAL IMPACT [redacted]

UNCLASSIFIED FELONIES: MURDER 1st DEGREE, MURDER 2nd DEGREE, KIDNAPPING.

CLASS A FELONIES: ATTEMPTED MURDER OR KIDNAPPING, MANSLAUGHTER, ~~SEXUAL~~ SEX ASSAULT 1st, ROBBERY 1st, ARSON 1st

Heir
4/14/86

Original sponsors: Rodey, Faiks,
Abood, et al

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR SENATE BILL NO. 264 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the waiver of children's court jurisdiction, and to the detention, fingerprinting, and sentencing of minors; and amending Rule 24 of the Alaska Rules of Children's Procedure."

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

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

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

(1) order that the defendant be confined in an institution designated by the Department of Health and Social Services for offenders under 18 years of age; and

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

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

(j) A person convicted of a first felony offense after waiver of children's court jurisdiction under AS 47.10.060 is not subject to the mandatory minimum and presumptive sentences required for first offenders.

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

Sec. 47.10.060. WAIVER OF JURISDICTION. (a) The court shall

order a case closed, and a minor may be prosecuted as an adult, if the court finds at a hearing on a petition

(1) that the minor was 16 years of age or older at the time of the offense and that there is probable cause to believe that the minor has violated AS 11.41.100, 11.41.110, 11.41.300, 11.41.410, or 11.41.434; or

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

(b) In determining whether a minor is amenable to treatment under this chapter, the court shall consider

(1) the seriousness of the offense;

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

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

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

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

(6) the age, maturity, educational background, and degree of criminal sophistication of the minor;

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

(8) whether children's court jurisdiction over the minor can be retained long enough to allow for effective treatment or rehabilitation; and

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

(c) The court shall determine the weight to be given to each of the factors listed in (b) of this section and shall issue a written decision. A finding that a minor is not amenable to treatment under this chapter may be based on any one or a combination of the factors.

(d) A minor ordered held pending trial or sentencing as an adult under (a) of this section shall be confined in an institution designated by the Department of Health and Social Services for offenders under 18 years of age.

* Sec. 4. AS 47.10 is amended by adding a new section to read:

Sec. 47.10.125. FINGERPRINTING OF MINORS. (a) A law enforcement agency or the Department of Health and Social Services may fingerprint a minor only

(1) in accordance with a search warrant;

(2) if children's court jurisdiction over the minor has been waived under AS 47.10.060(a) and the minor is being prosecuted as an adult;

(3) if the minor is adjudicated a delinquent for the commission of an offense that would constitute a felony if committed by an adult;

(4) with the consent of the minor and a parent or legal guardian of the minor, both of whom shall have been advised that the fingerprints may not be taken without their consent; or

(5) by order of the court.

(b) Fingerprints of a minor shall be ker separate from those of adults, shall be kept within the state rathe· than at a federal central depository, and shall be made available on request only to the following:

(1) a public agency for use in the investigation and prosecution of criminal offenses for which the fingerprinted minor is a suspect;

(2) the minor or the minor's attorney.

(c) Fingerprints of a minor taken under this section shall be destroyed by the authority charged with their maintenance

(1) if the minor is adjudicated for the offense regarding which the minor's fingerprints were taken and is found not to be within the jurisdiction of the court for the offense; or

(2) if the minor is not adjudicated for the offense regarding which the minor's fingerprints were taken within two years of the date the fingerprints were taken.

* Sec. 5. AS 47.10.130 is amended to read:

Sec. 47.10.130. DETENTION. A [NO] minor under 18 years of age who is detained pending hearing may not be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view prisoners 18 years of age or older except those incarcerated under AS 47.10.100 [ADULT PRISONERS CONVICTED OF, UNDER ARREST FOR, OR CHARGED WITH A CRIME]. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately.

* Sec. 6. AS 47.10.190 is amended to read:

Sec. 47.10.190. CONDITIONS GOVERNING DETENTION. When the court commits a minor to the custody of the department, the department shall arrange to place the minor [JUVENILE] in a detention home, facility or another suitable place that [WHICH] the department designates for that purpose. A minor [JUVENILE] detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from prisoners 18 years of age or older

except those incarcerated under AS 47.10.100 [ADULTS].

* Sec. 7. Rule 24, Alaska Rules of Children's Procedure, is amended to read:

No child shall be [FINGERPRINTED OR] photographed while in custody except with the consent of the children's court upon good cause shown. Such cause exists where the child is in custody for a serious offense against persons or property or where identification of the child appears necessary for the safety of the child or others.

* Sec. 8. Section 7 amends Rule 24 of the Alaska Rules of Children's Procedure by deleting the reference to fingerprints.

* Sec. 9. Rule 24, Alaska Rules of Children's Procedure, is amended by adding a new subsection to read:

(b) A child may not be fingerprinted while in custody except in accordance with AS 47.10.125.

* Sec. 10. Section 9 amends Rule 24 of the Alaska Rules of Children's Procedure by incorporating the statutory requirements for obtaining fingerprints from a child in custody.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST:

Bill/Resolution No.: SB 264

Title: "An Act relating to unlawful conduct of minors; and amending Rule 24 of the Alaska Rules of Childrens Procedures."

Sponsor: Senator Rodey

Requestor: (S) HESS

Date of Request: April 25, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS

Program Category Affected: Administration of Justice

BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation and Supervision

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

This legislation will have no fiscal impact on the Department of Corrections.

Prepared By: William W. Ladwig (William W Ladwig) Phone: 465-3376

Division: Deputy Commissioner - Administration Date: April 25, 1985

Approved by Commissioner: (Roger Paddock) Date: April 25, 1985

Agency: DEPARTMENT OF CORRECTIONS

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 264
Title : An Act Relating to Detention and Unlawful Conduct of Minors

Sponsor : Rodey, Faiks, Abood
Requestor : Senate HESS
Date of Request : 2/26/86

FISCAL DETAIL

Agency Affected : Alaska Court System
BRU : Trial Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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						

ANALYSIS : Attach a separate page if necessary

No fiscal impact. Based on information provided by Department of Health and Social Services, an additional 12-14 juveniles will be waived to adult court for trial. Fiscal impact of additional trials to be absorbed by existing staff.

Prepared by : Robert G. Fisher — Phone : 264-8215
Division : Alaska Court System — Date : 2/28/86

Approved by Commissioner : Arthur H. Snowden, II — Date : 2/28/86
Agency : Alaska Court System

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

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSSB 264 (HESS)

Neutral

February 21, 1986

The Department supports the provisions of Sections 1 - 7.

Section 8, AS 47.10.125 (g), requires that we maintain files separate from adults. This would serve no practical purpose since our files are kept in a computer. We could keep them in state without a problem and the hard copy could be kept in separate cabinets, but the data from the minutia should be in the computer.

Fingerprints obtained under this section should not be purged.

Prince George County in Maryland has an Automated Fingerprint System. They also fingerprint juveniles. They found their data base consists of 6% juveniles and 94% adults. Over half of the latent prints identified, using their equipment, are identified as juvenile prints contained in their files.

Robert J. Sundberg

Sec. 47.10.060. Waiver of jurisdiction. (a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as an adult.

(b) *[Repealed, § 8 ch 110 SLA 1967.]*

(c) *[Repealed, § 8 ch 110 SLA 1967.]*

(d) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

(e) A person who has been tried as an adult under this section, or the Department of Health and Social Services on the person's behalf, may petition the superior court to seal the records of all criminal proceedings, except traffic offenses, initiated against the person, and all punishments assessed against the person, while the person was a minor. A petition under this subsection may not be filed until five years after the completion of the sentence imposed for the offense for which the person was tried as an adult. If the superior court finds that the punishment assessed against the person has had its intended rehabilitative effect, the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil rights removed because of a conviction. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. (§ 9 art I ch 145 SLA 1957; am § 1 ch 118 SLA 1962; am §§ 3, 8 ch 110 SLA 1967; am § 6 ch 104 SLA 1971; am § 13 ch 63 SLA 1977)

Cross references. — For hearings before the juvenile court, see AS 47.10.070. See also, Children's Rule 3, Alaska Rules of Court.

NOTES TO DECISIONS

Non-criminal treatment of child offenders is to be rule. — The statutory framework for dealing with child offenders contemplates that non-criminal treatment is to be the rule and adult criminal disposition the exception. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Section provides means to determine amenability to treatment available for child offenders. — The waiver procedure set out in this section and in Rule of Children's Procedure 3 provides the means by which the children's court judge determines, prior to adjudicating the delinquency petition, that an accused child is not a suitable subject for the treatment available for child offenders. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Alaska State Legislature

Pouch V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: SENATOR VICTOR FISCHER
FROM: ELIZABETH J. HICKERSON
RE: JUVENILE WAIVER STATISTICS
DATE: JANUARY 29, 1984

The following information reflects the number of requested juvenile waivers and the number denied, granted or pending over the last five years in the State of Alaska.

1st Judicial District
5 waivers requested, 2 granted, two denied and one withdrawn

2nd Judicial District
1 waiver requested, granted

3rd Judicial District (since Sept. 1978)
7 waivers requested, 5 granted, 1 denied, 1 pending
(additional information attached for 1967-76)

4th Judicial District
4 waivers requested, 3 granted, 1 denied

Total: 17 waivers requested: 11 granted, 4 denied, 1 pending, 1 withdrawn

Attached are letters supporting these statistics from Jay Warner, Children's Intake Officer, 3rd Judicial District and Sharon Henson, Administrative Assistant, Alaska Court System.

If I can be of further assistance on this matter, please contact my office.

DIVISION OF FAMILY AND YOUTH SERVICES
STATISTICS 1-15-86

	FY 1978	FY 1983	FY 1985
I. At Risk Population	135,218	153,536	171,000
	---------- 26% increase ----------		

Youth Services	CY 1980	CY 1985	%INCREASE /CHANGE	
Average # youth under probation supervision	847	1,448	+71%	Focusing more resources
# youth admitted to youth services detention facilities	1,198	1,995	+67%	
Average daily census/youth services detention facilities	45.4	88.2	+95%	
# youth admitted to youth services treatment facilities	86	171	+99%	
Average daily census/youth services treatment facilities	83.9	11.7	+33%	

II. Intices of juvenile crime indicate continued decreases for the last seven (7) years.

	1979	1980	1981	1982	1983	1984	1985
Total arrests	5,697	5,569	6,128	5,509	5,349	5,250*	----
Total intakes	-0-	5,857	6,368	6,079	6,188	6,318	6,212
Arrest rate per 1000 0-18 years	43.15	42.59	42.99	36.35	33.41	31.42	N/A
Intake rate per 1000 0-18 years	N/A	44.79	44.46	40.08	38.65	37.82	36.32

*Projection based on partial Department of Public Safety 1985 statistics.

III. Total arrest for juvenile violent crimes.

Murder	3	2	2	8	2	N/A	N/A
Manslaughter	0	0	0	0	2	N/A	N/A
Rape	13	7	8	14	29	N/A	N/A
Robbery	32	25	23	13	10	N/A	N/A
Aggrevated Assault	46	82	59	86	75	N/A	N/A
Total Juvenile Arrests for Violent Crimes	94	116	92	121	118	N/A	N/A
Juvenile Arrest Rate Violent Crimes per 1000	.71	.88	.64	.79	.70	N/A	N/A

IV. Information for Anchorage and Fairbanks

	1979	1980	1981	1982	1983	1984	1985
Total Intakes Anchorage	2,431	2,270	2,741	2,235	2,283	2,111	2,156
Total Juvenile Arrests Anchorage	1,997	1,927	2,266	1,863	1,957	N/A	N/A
Total Intakes Fairbanks	1,296	1,339	1,323	1,163	1,108	953	798
Total Juvenile Arrests Fairbanks	445	483	526	391	362	N/A	N/A

V. Twenty six (26), or 75% of petitions for waiver have been granted. (Information for years 1983 to 1985.)

Murder, First Degree	10
First and Second Degree Sexual Assault (or attempts)	5
Burglary	4
Second Degree Theft	1
Second Degree Criminal Mischief	1
Possession of Marijuana	1
Minor Consuming	1
TOTAL	26

VI.

	FY 1981	FY 1985
Youth Services BRU	7,318.7	13,545.3
Foster Care	1,338.6	1,936.9
Institutional Care	1,139.2	1,207.6
TOTALS	9,796.5	16,689.8

+ facilities built/expanded.

46x

None

S.E. - Johnson Center, Juneau

Anchorage

40% expansion in 4 yrs.

2-18-86

DIVISION OF FAMILY AND YOUTH RECIDIVISM STUDY

In FY 82, the Division of Family and Youth Services initiated a study of recidivism among those delinquents released from DFYS' institutional treatment programs who have reached age 18. The study tracks the adult criminal records of youth released in each fiscal year. Those released during FY 81 have been traced nearly 5 years, and those released in each succeeding fiscal year have been tracked proportionately less time from the time of their release to January, 1986.

Because of limited staff resources and time, and because the youth studied represent the most serious of delinquent youth, the study was limited to felony arrests. The following summarizes the results to date.

The study shows that of 482 youth released, 356, or 74% have not been re-arrested for a felony. Of the 26% who have been arrested for felonies, 60% have committed only one felony offense. A small group of multiple offenders -- 5% of the youth released--are responsible for 40% of felony offenses committed by the group of youth released.

YOUTH DISCHARGED FY 81 - FY 85

Total Discharged	Number Arrested for Felony	% Arrested for Felony	# Not Arrested for Felony	% Not Arrested for Felony
482	126	26%	356	74%

BREAKDOWN OF OFFENSES BY YOUTH ARRESTED

Total Offenses		Unclassified Felony	A Felony	B Felony	C Felony
#	211	1	15	54	141
%	100	Less than 1%	7%	26%	67%

rec 12-30-85
"Comm Youth"/SWD

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-6730

TONY KNOWLES, MAYOR

COMMISSION YOUTH
825 "L" Street

December 26, 1985

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

Dear Senator Rodey:

Earlier this year you nad asked the Anchorage Commission on Youth to respond to SB 264, an act relating to juvenile waiver. After researching and discussing the issue, the Commission unanimously voted to not support any proposed legislation to change the waiver laws and submit the following testimony to you and other concerned lawmakers.

To begin with, the Commission was unable to come up with any solid reasons to change the waiver laws. We feel it is a "non-issue", having been brought to the forefront of public discussion because of a few isolated incidences of juvenile crime.

As it exists now, there have been very few cases involving serious violent crimes that prosecutors have been unable to obtain a waiver of jurisdiction. Your answer to this fact has been that prosecutors are unwilling to attempt waiver because it is time consuming and difficult to prove that the minor is not amenable to treatment under the current system. The Commission responds to this charge in two ways. First, should not the process of waiver be difficult, inherently possessing a number of checks and balances before the child offender is committed to a life behind bars? Second, it would seem unprofessional for prosecutors to say they are not willing to do their publicly mandated work of protecting the people because it is time consuming. If this is the case, then we suggest hiring more prosecutors.

The second point that the Commission would make is that it was less than five years ago that the responsibility for juvenile offenders switched from the Division of Corrections to Family & Youth Services. In the recent report on Juvenile Justice in Alaska, prepared by D.F.Y.S., it appears that this switch was indeed a wise decision by our lawmakers. "Despite widespread and persistent beliefs, juvenile crime in Alaska is neither increasing or

becoming more violent," says the first sentence in this report. Automatic waiver is a regression back to an old system that had few sucesses in rehabilitating juvenile offenders. In a few short years, the state has made significant strides in prevention and early intervention when it comes to juvenile crime. The data shows that this emphasis has worked and can continue to work with continued funding.

Though we have not seen a fiscal note for SB 264, or its House compliment, HB 205, we have seen fiscal notes for similar bills introduced in other years. One of these bills, CSHB 109 (1983), puts the cost around $1.5 million. In a time of fiscal constraint, the Commission does not believe that expenditures for additional prison cells to house juveniles is warranted, particularly if these costs would negatively effect expenditures for prevention and early intervention.

Finally, the Commission would like to respond to the popular claim that by passing an automatic waiver law, the community sends a strong message to juveniles that they will be severely dealt with when committing a violent crime. Frankly, we have never seen any data to support this claim and doubt that a potential juvenile offender is likely to reconsider before commiting a violent and/or heinous crime against another person, if he/she knew that they would be "severely dealt with". Granted, some youth have been exploited by others to believe that they will not get in trouble for commiting a crime because they are a juvenile. This, we fear, will never change, as there will always be vulnerable young people who will believe the lies of exploitive adults, unless, of course, we educate them first, regarding our laws and legal system. Educational programs like the Police/School Liaison Project, jointly funded by the Municipality and the Anchorage School District, sends a far clearer message to young people about crime and punishment than SB 209 or HB 205 ever could.

Thank you for the opportunity to respond to this issue.

Sincerely,

Dean W. Kriner, Jr.
Chairman

cc: Members of Senate H.E.S.S. Committee
Members of Senate Judiciary Committee
Members of House H.E.S.S. Committee
Members of House Judiciary Committee
Members of House Finance Committee
Patrick Reinhart, Staff Support/Commission on Youth
Jewel Jones, Director, Department of Health & Human Services
John Franklin, Commissioner of Public Safety, M.O.A.
Chip Dennerlein, Intergovernmental Affairs, M.O.A.
Dave Walsh, Chairman, Anchorage Assembly

file SB 264

APR 1 1986

ALEC's Juvenile Justice Reform Project To Reveal Model Code

By Benedict Koller, Esq.
Director, ALEC's Juvenile Justice Reform Project

ALEC is making plans to revolutionize America's juvenile justice system. Under a grant from the Office of Juvenile Justice and Delinquency Prevention and through a contract with the Rose Institute of Claremont McKenna College, ALEC will reveal its Model Juvenile Justice Code at the National Training Conference for State Legislators on April 28-29.

Among the national figures who will speak at the conference are U.S. Attorney General Edwin Meese III; U.S. Senator Strom Thurmond, Chairman of the Senate Judiciary Committee; Missouri Attorney General William Webster; Richard Daley, State's Attorney for Cook County, Illinois; Jerry Wasson, Director of the Juvenile Rehabilitation Division in Washington State; Dr. Barry Feld, professor at the University of Minnesota Law School; and John Walsh, founder of The Adam Walsh Resource Center for Missing Children.

The conference will examine the deficiencies in modern juvenile justice systems across the country, and explore alternatives in juvenile justice reform. ALEC will present its Model Code at the conference for comment from state legislators and juvenile justice professionals, in an effort to achieve a consensus on the most effective legislative remedy for juvenile justice reform.

Among the fundamental principles on which the ALEC Model Code is based are:

- Sanctions imposed on the juvenile should be in proportion to the seriousness of the offense committed, and not simply on the court's subjective view of the juvenile's needs;
- Such sanctions should be imposed for a determinate period rather than at the discretion of the correctional program director;
- Juvenile proceedings should be open to the public, and juvenile court should account for all actions taken in connection with a given juvenile;
- The juvenile should be represented by counsel at all critical stages of the proceeding when the juvenile risks being confined;
- The procedure for transferring a juvenile into adult court for trial should be carefully established and monitored; and
- Juveniles should be encouraged to participate in the proceedings.

U.S. Attorney General Edwin Meese III

U.S. Senator Strom Thurmond

Missouri Attorney General William Webster

Richard Daley, State's Attorney Illinois

The fundamental principles on which ALEC's Model Code is based concur with those used in five other recent national studies. They are nearly identical to those promulgated by the ABA's Juvenile Justice Standards Implementation Project, which sought to serve as a basis for complete revision of state juvenile justice codes.

Contours of the Model Code

The Model Code was drafted by picking and choosing "good ideas" in other juvenile codes around the country. For example, the Code's sentencing standards were borrowed from the Washington State code, the discovery provisions from the New York code, and the community arbitration procedures from the Florida code.

Detention

A significant feature of ALEC's Model Code is its policy on detention; that is, confining juveniles prior to trial. Under most state codes, a juvenile arrested for a serious crime cannot be held unless the prosecutor can show that the juvenile will commit another crime and run away if released or no parent is available to adequately supervise the child. Except in the most obvious of circumstances, there is nothing to prevent a serious offender from being 'back on the street' literally hours after being taken into custody.

The Model Code, however, requires that juveniles arrested for serious offenses, or with extensive offense histories be detained prior to trial upon showing at a detention hearing that there is probable cause the juvenile committed the offense. To accomodate this policy of detention, the Code expedites all trials for detained juveniles—a chief deterrent factor for recidivism.

Due Process

ALEC's Model Code is essentially based on notions of justice and fair play, providing the following due process rights: the rights to counsel, cross-examination and subpeona of witnesses, trial by jury (except in minor matters), introduction of evidence, speedy trial, proof beyond a reasonable doubt (in delinquency proceedings), appeal, and the right against self-incrimination.

The Code's departure from traditional rehabilitation policies is consistent with our underlying philosophy. Under current policy there is an increasing tendency to transfer more and more juvenile offenders to the adult criminal system; this would seem to be inconsistent with the system's stated goal of rehabilitation. ALEC's Model Code will transfer very few juveniles to the adult court—only those who are charged with capital crimes.

Sentencing Guidelines

The Code envisions the establishment of a state sentencing commission appointed by the governor to set forth mandatory and determinate sentencing provisions for juvenile offenders which account for the juvenile's age, offense history, seriousness of the offense, and other aggravating or mitigating factors. Such a system also departs from current juvenile sentencing policies, which vest the court with virtually complete discretion to decide what form of 'treatment' best suits the child.

Restitution and Victim's Rights

Another important factor in keeping with the underlying policy of holding ju-

Code, continued on page 6

[redacted]
REP TERRY MARTIN
STATE CAPITOL ROUCH V
JUNEAU AK 99811

Getting Away With Murder: Why the Juvenile Justice System Needs an Overhaul

By Alfred S. Regnery
Administrator of the Office of Juvenile Justice and Delinquency Prevention

Children commit nearly one-third of the serious crimes in America. Our system of rendering justice for their crimes, however, is antiquated and largely incapable of dealing with the offenses they commit. Disliked by the public, by those who work in it, and even by many offenders, the juvenile justice system, which is supposed to act only in the "best interests of the child," serves neither the child, his victim, nor society.

Juvenile crime rates since the 1950s have tripled, yet the theories and policies we use to deal with such crime fail to hold offenders accountable and do not deter crime. At best they are outdated; at worst, they are a total failure, and may even abet the crimes they are supposed to prevent.

Some people still refuse to accept the fact that juveniles commit crimes. Prevailing social theory during much of the 20th century has been based on the belief that children under 18 do not have the mental capacity to distinguish between right and wrong, and thus should not be held accountable for their behavior, as are adults.

Despite these attempts to treat juvenile crimes as trivial indiscretions committed by misguided youth, the statistics suggest something different—a grave problem on a national scale. There are currently about 15 million Americans between 14 and 17, or about seven percent of the entire U.S. population; but about 30 percent of all people arrested for serious crimes are juveniles—a total of some 1.5 million arrests per year. (Police generally estimate that there are at least five offenses for each arrest.)

The violence and intensity of these crimes is staggering. Of those arrests, 2,000 were for murder, 4,000 were for rape, and 34,000 were for aggravated assault. Despite the beliefs of certain social theorists, juveniles do commit crimes at a rate significantly higher than the rest of the population. In fact, 16-year-old boys commit crimes at a higher rate than any other single age group. These are criminals who happen to be young, not children who happen to commit crimes.

The bulk of our crime—probably 75 percent of all serious offenses—is committed by chronic offenders. These people comprise fewer than 10 percent of the population (in the case of juveniles, probably closer to seven percent) yet because of the high rate at which they commit felonies, sometimes as many as 100 or more a year, they are responsible for a great proportion of robberies, burglaries, muggings and aggravated assaults, car thefts, rapes, and even a significant number of murders.

Chronic offenders pose the greatest threat to society and the greatest challenge to juvenile justice programs across the country.

Such children present problems to the juvenile justice system which evade all philosophical notions about crime. They present a problem which neither the social theorists, nor the police and prosecutors who would like to lock them up, can hope to alleviate more than temporarily. Chronic offenders pose the greatest threat to society and the greatest challenge to juvenile justice programs across the country.

Sadly, the juvenile justice system has shown little ability either to help such youngsters or to protect society from their crimes. In most of our major cities (where most serious juvenile crime exists), there is virtually no chance that juveniles who are first or second offenders will be punished. The lesson that the system provides to the offender is that he can continue to commit such acts because there is no penalty. The criminal's punishment is limited to listening to the psychobabble of social workers and therapists.

Rehabilitation has been the premise of the juvenile court system throughout the 20th century, but it has failed miserably. The late Robert Martinson reviewed the results of over 200 separate efforts to measure the effects of programs designed to rehabilitate convicted adult offenders. Martinson concluded, in what has become one of the most quoted phrases in modern criminology, that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far had no appreciable effect on recidivism."

Martinson did his review in the late 1960s; since that time, rehabilitation has sunk further in esteem, both in the eyes of the public and the professionals. The criminal justice system has all but given up on the concept. Virtually no successful juvenile programs—those that reduce recidivism to an appreciable degree—rely on rehabilitation.

What can be done to ameliorate the problem of juvenile crime? First, the main focus of the justice system should be the deterrent approach, which views punishing the criminal as the best way to prevent future violations, protect the community and achieve justice. This does not mean that we should not continue to look for rehabilitation programs that actually work, even if the record does not give us grounds for optimism. It does mean that rehabilitation should not be a substitute for justice.

For the past 85 years, the courts have been making decisions about juveniles based almost exclusively on "what is in the best interests of the child." Ironically, the remedies proposed have not measurably helped children's interests. Our juvenile courts should continue to act for the benefit of children, but they should also seek justice and consider the rights of the victims of crime.

The juvenile justice system should abandon its practice of sealing the records of young criminals when they become adults. The rationale for this practice was the idea that these youths should have "learned their lesson" by the time they turned 18, and should be permitted to begin their new life as

System, continued on page 6

Code, continued from page 4

venile offenders accountable is the Model Code's insistence that offenders make restitution to victims. Curiously, most state codes have overlooked the fact that one purpose of a justice system is to restore the loss caused by the wrongful act of another.

The Model Code mandates as much as practical the restoration of that loss. Moreover, if the juvenile is unemployed, the probation department will assist him in finding a job so that the offender may make restitution. If the juvenile still cannot make restitution, the amount he owes will be statutorily converted to certain hours of community service work.

The Code looks out for the victim as well as for the rehabilitation of the juvenile. States are becoming increasingly aware of victim's rights but few states have legislated compensation for these victims.

Status Offenders

Modern juvenile courts have begun to remove certain juveniles from the juvenile justice system: runaways, habitual truants, youths beyond the control of their parents or school administrators, and drug and alcohol abusers. Known as 'status offenders,' these are minors who commit acts which would not be crimes if they were committed by adults.

While the Model Code does not remove these youths from its jurisdiction, it does not treat them like delinquents. Runaways, for example, are placed in short-term shelter homes until they can be reconciled with their families. If the juvenile runs away from the shelter home, he or she faces mandatory incarceration in a county juvenile facility under the contempt powers of the court. Habitual truants and other undisciplined youths face similar sanctions for failing to abide by court-imposed and officer-supervised community treatment plans.

Closely entwined with the problem of runaways is the problem of missing and abused children. While the Code does not touch the complex issue of abused children, it provides a plan for facilitating the reporting and finding of missing children. Computerized information is circulated within a national information center, and reports are standardized to aid handling. A toll-free hotline is established and fingerprinting services are made available for parents.

ALEC's Model Code takes a dim view of alcohol-related offenses. Alcohol offenders are required to undergo an alcohol and drug dependency evaluation, which may compel the juvenile to receive out-patient treatment. For drunk driving offenses, youths face an automatic revocation of driving privileges until they reach the age of 18. In addition, the judge is empowered to use such creative measures as requiring juveniles to attend alcohol education classes or visit the emergency room at a local hospital where drunk drivers and their victims are received.

Recommendations

As part of the national commitment to reduce costs and improve judicial expediency, ALEC's Model Code makes recommendations for implementation of such policies in the juvenile justice system. The Code encourages detention facilities to be run by private agencies, educational classes to be furnished by community-based programs, and community work supervision to be administered by local officials. It also seeks to establish a community arbitration system for juvenile offenders. Such features help transform the uniform characteristics of a model code into one that is unique to the particular state implementing it.

The Model Code will be fully revealed at the Juvenile Justice Conference for State Legislators on April 28-29, to be held at the Washington Marriott in Washington, D.C., after which interested parties may request copies of the draft Code. Two regional training conferences will be in early June. For more information regarding the Conference, contact Sharon Werning, Conference Coordinator, at (202) 547-4646. ■

System, continued from page 5

adults without previous errors being held against them.

However, statistics show that the most fertile age for crime is between 16 and 24. Thus many juvenile criminals are just getting started on a career of crime. To seal their records is to conceal from the police and prosecutors their previous actions, making crime prevention difficult. Not only does this make it tougher for the police to identify crime subjects, but juveniles enter adulthood under the illusion that they can get away with criminal behavior—get away with murder, so to speak. To their shock, many of them discover that this is not the case after age 18.

Another step that juvenile justice professionals should consider is reducing the traditional distinction between juveniles and adults. Criminals should be treated as criminals. Anyone familiar with the nature of juvenile crime will not make the argument that juvenile crimes differ in their magnitude or brutality than adult crimes; in many cases the reverse is true. So the current approach, which makes a radical distinction between criminals under 18 and those over 18, is often counterproductive.

Various states are experimenting with innovative approaches to controlling juvenile crime. Many large cities, for example, are beginning to focus their resources on chronic offenders, who commit most violent crime. Techniques include improved record keeping, specialized crime analysis techniques, and "vertical prosecution"—where one prosecutor sticks with a case from arrest through sentencing.

Another promising state initiative is restitution, a program in which property offenders are required to reimburse their victims. This has the advantage of giving the community back some of the goods it loses through theft and vandalism, and it also helps teach accountability and responsibilty to the offender.

The juvenile system also needs to rely more on the private sector, as well as on volunteer citizens to assist young offenders, instead of placing total reliance on government and professionals. A number of privately owned and operated correctional programs now exist, for example, usually at substantially lower costs than public institutions; these programs are often more innovative and responsive to the needs of both the offender and society than public programs.

The private sector is also increasing its role and influence in probation services, either by assisting public systems, or by actually running probation on a contract basis. These programs use parents and other volunteers to work with marginally delinquent youth. Yet officials within the system, and public employee unions, often do everything in their power to torpedo such services, usually out of fear that volunteers will displace their salaried positions.

Through the Office of Juvenile Justice and Delinquency Prevention, the federal government has been encouraging these initiatives. But the primary responsibility to tackle the problems of juvenile crime rests with state and local governments. The American Legislative Exchange Council's Juvenile Justice Re-

continued on page 8

COMMITTEE REPORT

SENATE

FURTHER: JUDICIARY
FINANCE

3/29/85

Date 4-16-86

Mr. President

The Committee on HESS considered SB 264

relating to unlawful conduct of minors; and amending Rule 24 of the Alaska Rules of Children's Procedure.

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

[ ] do pass

[ ] do pass with attached amendment(s)

[✓] replace with/or adopt CS for SB 264
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Do Pass w/ Attached Amendment

Chairman

Chairman recommendation

SB 264

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 6, 1985

MEMORANDUM

TO:

FROM: Nancy Pease *N Pease*
Legislative Analyst

RE: Culpability of Juvenile Offenders
Research Request 85-116

You requested information on the culpability of juvenile offenders. Specifically requested were:

- the current statutes establishing the age of culpability;
- the current limitations on the age of culpability for juveniles;
- implications of setting the age of culpability at 10 to 12 years;
- implications and aspects of changing juvenile proceedings statutes to allow charges to be used for both detention and adjudication.

Juvenile Court Jurisdiction

Alaska Statute 47.10.060 assigns to the juvenile court the jurisdiction over delinquent minors under 18 years of age residing or found in the State (see attachment A). A youth is generally adjudged to be delinquent by the juvenile court if he or she has committed an act which, if committed by an adult, would violate a criminal law of the State or a municipality.[1] However, the juvenile court does not have jurisdiction over youths who commit certain less serious offenses. A minor accused of a traffic offense, a violation of a fish and game statute or regulation, or a violation pertaining to parks and recreation facilities is charged, prosecuted and sentenced in the district court in the same manner as an adult [AS 47.10.010(b)].

---

[1]A judgment of delinquency indicates only that the youth has committed an offense. Unlike a conviction in an adult court, a delinquency finding is not a determination of guilt (culpability).

Waiver of Juvenile Court Jurisdiction

A juvenile court may waive its jurisdiction over minors in limited circumstances. Under the provisions of AS 47.10.060, if the juvenile court finds probable cause that a person under 18 years of age is delinquent and finds that the person cannot be rehabilitated before his 20th birthday by treatment through the Department of Health and Social Services (DHSS), the juvenile court shall order the case closed. After a case is closed in juvenile court, the juvenile under 18 years of age may be prosecuted as an adult.

Limitations on the Age of Culpability

Under current Alaska law, the juvenile court has the discretion to waive from its jurisdiction a minor of any age, accused of any offense, if the court is petitioned by the State prosecutor. A juvenile whose case is petitioned is entitled to a waiver hearing in juvenile court and is entitled to be notified of the hearing, to attend the hearing, and to be represented by counsel at the hearing.

To justify waiving a minor's case from juvenile court, the judge or hearing officer must find probable cause to believe that the youth committed an act which, if committed by an adult, would constitute a crime. The judge or officers must also find that the minor is unamenable to rehabilitation through the programs of the Department of Health and Social Services before his 20th birthday.[2] Alaska Statute 47.10.060(d) states that a minor's amenability to treatment shall be assessed on the following factors:

- the seriousness of the offense the minor is alleged to have committed;
- the minor's history of delinquency;
- the probable cause of the minor's delinquent behavior, and;
- the facilities available to the DHSS or the proper authority for treating the minor.

---

[2]The juvenile courts's jurisdiction over a minor never extends beyond the minor's 19th birthday except that the Department of Health and Social Services may apply for, and the court may grant, an additional one-year period of supervision past age 19 if continued supervision is in the best interest of the person and the person consents to it. (AS 47.10.100).

According to Gayle Horetski, Assistant Attorney General, the court also bases the waiver decision on the minor's age, his past response to rehabilitation (if applicable), his psychiatric evaluation and the danger the minor represents to society.

Statistics from the Division of Family and Youth Services show that most of the cases which the court waives involve youths aged 15 to 17 who have been accused of burglary or sexual assault.[3] However, Russ Webb of the State Division of Youth Services stated that the juvenile court has occasionally waived cases involving Class A misdemeanors. Class A misdemeanors include acts such as tampering with a fire protection device in a public building, intentionally damaging property in an amount of more than $50 but less than $500 (AS 11.46.484), or failure to leave a place open to the public when ordered to do so by the person in charge (AS 11.46.320).

The juvenile court waives to adult court about 85 percent of the cases in which the district attorney petitions for a waiver. According to Assistant Attorney General Gayle Horetski, the State prosecutors appear successful in requesting waivers because they are very selective as to which cases they petition. However, she stated that State prosecutors rarely seek waivers because of the considerable time and cost of proving that a juvenile is not amenable to treatment by the DHSS. She mentioned that a State prosecutor is especially unlikely to succeed in obtaining a waiver for a juvenile offender who has not previously participated in a rehabilitation program.

Attempts to Change Juvenile Court Jurisdiction

In the past five years, Alaska State legislators have introduced several bills to reduce the jurisdiction of juvenile courts. The most recent bill, HB 109 (vetoed by Governor Sheffield in 1983) would have automatically waived to adult court the cases of 16 and 17 year olds charged with offenses designated as unclassified felonies.[4] House Bill 109 would also have exposited and assigned priorities to the factors which a judge must consider in determining a juvenile's amenability to treatment. Ms. Horetski spoke in favor of such a bill, stating that under current waiver procedure, the prosecutor faces a considerable burden in

---

[3]Phone conversation with Russ Webb, Division of Youth Services, Alaska Department of Health And Social Services.

[4]Crimes designated unclassified felonies are: murder; kidnapping; sexual assault in the first degree; sexual abuse of a minor in the first degree; and, misconduct involving controlled substances in the first degree.

proving that a juvenile will not be amenable to treatment and that the judge is not given much guidance in identifying or weighting the factors that predict a juvenile's chances of rehabilitation. Ms. Horetski also cited instances in which juveniles implicated in serious crimes have served short amounts of time in juvenile correction programs before their mandatory release at age 19.

Implications Of Reducing the Age of Culpability to 10 or 12 Years

According to Mr. Webb of the Division of Youth Services, reducing juvenile court jurisdiction to offenders under 10 or 12 years of age would affront two principal precepts upheld by the Alaska Supreme Court:

- a person under 18 years of age does not have mature judgment and may not fully realize the consequences of his acts, and therefore should not generally have to bear the stigma of a criminal conviction for the rest of his life, and;
- the express purpose of the juvenile justice system is rehabilitation of offenders rather than punishment.[5]

According to Mr. Webb, the State might possibly be required to build a separate correctional system to house and rehabilitate youths convicted and sentenced in adult courts. Ten to twelve-year-olds sentenced in adult court could not be held in existing juvenile facilities, yet might be victimized by adult inmates if housed in adult correctional facilities.[6] In addition, immature offenders require rehabilitaion programs different from those aimed at adults because youths 10 to 17 years old are still developing their identities and their personalities, still maturing physically, and still in need of basic education. Mr. Webb mentioned that prisoners incarcerated as waived juveniles would also increase Alaska's prison population in adult facilities as juveniles presumptively sentenced to long terms would be transferred into adult prisons as they turned 19 or 20.

---

[5] In re P.H., Alaska Supreme Court Opinion No. 857, 504 Pacific 2d 837 (1972), and Rust v. State, Alaska Supreme Court Opinion No. 1668, 582 Pacific 2d 134 (1978).

[6] Sixteen and seventeen-year-olds convicted as adults are currently housed in adult correctional facilities. Alaska law guarantees prisoners that their human rights shall be protected while they are incarcerated.

Allowing Charges To Be Used For Both Adjudication and Detention

Current court procedure allows the same charge to be used for both the detention hearing and the adjudication of an alleged delinquent. However, evidence of a juvenile's tendency toward delinquent behavior may be submitted at a detention hearing but not an adjudication proceeding.

Mr. Webb explained that the State prosecutor may petition to detain an arrested juvenile rather than release him to the custody of his guardians pending adjudication. The detention hearing, held within 48 hours of the juvenile's arrest, is analagous to an adult detainee's bail hearing.

The prosecutor may submit evidence unrelated to the alleged crime if the evidence helps the court to measure whether the detainee would pose a danger to himself or society if released from custody. Thus, in a juvenile detention hearing, the State prosecutor may submit, in addition to evidence of the crime, the detained juvenile's delinquency record, his family history, his school records, a psychological evaluation, and so on. This extraneous information may also be submitted during a waiver hearing and a disposition (analagous to adult sentencing) but not during an adjudicaton for an actual offense. In an adjudication, as in an adult court trial, the issue is whether the defendent committed a specific crime, not the defendant's general criminal tendencies. Only evidence which bears directly on the crime charged may be submitted during an adjudication.

* * *

I hope you find this information useful. If you have further questions, please let us know.

NP

Attachments

file

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M August 23, 1985

SUBJECT: Sectional analysis of CSSB 264 (HESS) (6/26/85 draft)

Superseded

TO: Senator Patrick Rodey

FROM: Edward H. Hein EH
Legislative Counsel

Section 1 provides that a minor who is tried as an adult, convicted and sentenced to imprisonment must be placed in a correctional institution for juveniles until the age of 18, then transferred to an adult institution only if more than a year still remains of the sentence to be served.

Sec. 2 exempts from mandatory minimum and presumptive sentences a minor tried as an adult and convicted of a first felony offense.

Sec. 3 increases to $5,000 from $2,000 the amount of damages that may be awarded in a civil action against a parent or guardian of a minor for the malicious or willful destruction of property by the minor.

Sec. 4 relieves a parent or guardian from liability for property damage by an emancipated minor and sets out three ways a minor may become legally emancipated.

Sec. 5 provides that if a children's court matter is informally adjusted or disposed of without hearing the court must disclose the outcome of the case upon request of a victim, or parent or guardian of a victim, of the minor's conduct that is the subject of the case.

Sec. 6 rewrites the law on waiver of children's court jurisdiction. This section provides that a minor may be prosecuted as an adult if the children's court determines at a hearing either (1) that the minor was 16 years of age or older at the time of the offense and that there is probable cause to believe that an unclassified felony was committed

or (2) that the minor is "not amenable to treatment," i.e., cannot be rehabilitated before reaching majority, and that there is probable cause to believe that the minor is delinquent. In determining whether the minor is amenable to treatment the court must consider nine factors. Any one of these factors can be sufficient justification for a waiver of jurisdiction and the court has discretion to weight these factors as it pleases. A minor awaiting trial or sentencing as an adult must be confined in an institution for juvenile offenders.

Sec. 7 requires the children's court to disclose the results of a delinquency or child-in-need-of-aid hearing to the victim of the minor on request.

Sec. 8 exempts from the children's court confidential records provisions of AS 47.10.090 any disclosures requested to be made to a minor's victim in accordance with sections 5, 7 and 11 of the bill.

Sec. 9 specifies five circumstances under which a minor may be fingerprinted by a law enforcement agency or by the Department of Health and Social Services. These include (1) under a search warrant; (2) in a prosecution of the minor as an adult; (3) if the minor is a delinquent and committed a felony-type offense; (4) with the informed consent of the minor and a parent or guardian; or (5) by court order. The fingerprints must be kept separate from adult fingerprint files and may not be sent to a federal central depository. The fingerprints of a minor may be made available only to a public agency for criminal investigations and prosecutions in which the minor is a suspect or to the minor or the minor's attorney if the minor is involved in a court proceeding. The minor's fingerprints must be destroyed if the minor is tried/adjudicated and found not to be in the court's jurisdiction for that offense, or if the minor is not tried/adjudicated for the offense within two years.

Sec. 10 requires that minors awaiting a hearing, if incarcerated in a jail, be separated from adult prisoners other than adults who have not reached their 19th birthday and who are under the jurisdiction of the children's court.

Sec. 11 provides for disclosure of results of a delinquency hearing to the victims or parents of victims of the minor.

Sec. 12 requires minors detained in "a jail or similar institution" to be kept separate from adult prisoners other than adults under 19 years of age who are still under the jurisdiction of the children's court.

Sec. 13 amends Rule 24 of the children's court rules by deleting the prohibition against fingerprinting minors except with the consent of the court.

Sec. 14 describes the effect of sec. 13 of the bill, as required by Uniform Rule 39(e).

Sec. 15 amends Rule 24 of the children's court rules by incorporating the statutory requirements for obtaining fingerprints from a minor in custody.

Sec. 16 describes the effect of sec. 15, as required by Uniform Rule 39(e).

EHH:lmb
L5/006

Juvenile crime — Is adult treatment the answer?

By WALLACE MLYNIEC

Despite statistics that show a national decline in both violent crime and crime committed by children, Alaska statistics indicate an opposite trend. In an attempt to reverse this trend, many people in Alaska have, as have citizens in other states with high crime rates, begun to call for tougher criminal laws and a reduction of the age at which a child is subject to the adult criminal process. Implicit in these demands is the belief that if laws get tougher and if children are subject to harsher penalties, crime will be reduced. Although these ideas seem logical, closer scrutiny reveals their invalidity. Moreover, the system envisioned by supporters of those ideas will cause more problems than it resolves.

There is little doubt that a system of jurisdiction based solely on age will result in speedier and less expensive processing of cases involving children who require the harsher penalities of the adult court. Full court hearings do take time and force prosecutors prove to a judge that a child belongs in the adult rather than the juvenile system. Unfortunately, an age determinant system also drags many of the wrong children into the adult court. According to the U.S. Department of Justice, only 11 percent of the cases referred to juvenile court are crimes against persons. Homicide, rape, and robbery accounts for less than 3 percent of all such referrals. These studies also indicate that the majority

of children treated as adults are charged only with property offenses and not with dangerous, violent crimes.

Court procedures which permit the return of a case to the juvenile court upon a showing by the child that he is amenable to rehabilitation do not substantially improve the results since that procedure is dependent upon the quality of the legal services provided to the child rather than his behavioral profile. Finally, anyone who has participated in a bureaucratic urban court system knows that justice often become subordinate to political pressure, quick judgments based on sparse information and calendar control. As a result of these and other factors, many of the children sent to the adult system are sent there inappropriately.

When a child recives the harsher penalty of the adult court, crime may actually increase over the long term. Reformers often forget that few people who commit crime spend the rest of their lives in jail. At some time, they are paroled or they complete their jail terms, If, during the period of incarceration, nothing occurs to redirect an inmate's behaviortoward more productive outlets, imprisonment creates only a short term reduction in crime rate. No one believes that existing prisons rehabilitate inmates. Most people concede that prisons are places of violence where survival rather than rehabilitation becomes an inmates paramount concern.

Cunning and domination are the skills that inmates need and learn. The development of these skills is even more important among young inmates. Older inmates learn to live through their period of incarceration without becoming caught up in theviolence. Younger inmates, either by choice or by necessity, must adapt to the violence. By the time they are released, they have learned skills that have prepared them neither for a trade nor a profession, but for crime, often more vicious than those committed before. Finally, the harsh penalties and reduction in crime sought by proponents of lowering the age of jurisdiction are often illusory. The Academy for Contemporary Problems recently found that while 90 percent of the children treated as adults pleaded guilty, fewer than one-half were incarcerated. The majority received fines or probation. Only 14 percent received prison sentences longer than 10 years but even most of them will be released prior to the expiration of their maximum terms. If those released or receiving short terms of ment were processed in the juvenile nature of their crimes and the exten juvenile records would virtually institutiona placements. Thus, sh crime reduction would occur through tation and long term reduction throu bilitation would at least be possible.

Crime in America, no matter numbers, remains a serious problem can be faulted for seeking ways to pr rest of us from vicious attacks or m incursions onto our property. Yet w take simplistic approaches based on or inaccurate premises and expect res causes of crime are basically unkno probably many. What is certain, hov that we should not seek easy solution not accomplish the legitimate ends we achieve, especially if those solutions hurt untold numbers of young people. ual determination on a case by ca remains the best way to balance the ing interests of individuals and so may cost a little more and take a littl Nonetheless, it provides the best me achieving the correct result.

☐ Wallace Mlyniec, a member of the Alas professor of law at Georgetown Univ Washington, D.C., and director of the Ge juvenile justice program.

must consider record of prior felony offense as well as age + alleged offense
establish presumptive criteria — prosecutor must still file waiver motion but burden shifted to defendant
result: criteria too simplistic & too rigid to be reliable

SB 264 w Conf Eugene 9/85

ABSTRACT • • •

In Minnesota, the 1980 legislature statutorily defined a class of juvenile offenders presumed on the basis of age, alleged offense, and record of prior felony offenses to be unfit for treatment in the juvenile court. In this article we evaluate the effect of Minnesota's revised waiver statute by comparing cases in which waiver proceedings were initiated and in which transfer occurred for two time periods, before and after adoption of the legislatively defined presumptive criteria. Our findings suggest that the objective criteria adopted by the Minnesota legislature are not, in themselves, an adequate means for selecting juveniles for transfer to adult court. The criteria identify many juveniles whose records on close examination do not appear to be very serious and fail to identify many juveniles whose records are characterized by violent, frequent, and persistent delinquent activity.

Prosecuting Juveniles as Adults

The Quest for "Objective" Decisions

LEE ANN OSBUN
Iowa State University

PETER A. RODE
Urban Coalition of Minneapolis

WAIVER: PURPOSE, HISTORY, AND MAJOR TRENDS

Since the inception in the United States of a specialized judicial institution for dealing with children and youthful offenders, controversy has surrounded the determination of the boundary between the juvenile and the adult court. In all states, the age of the offender has been the major factor employed in deciding whether juvenile or adult court jurisdiction will attach in a particular case. Although the age specified has varied among states and, over time, within states, most statutes now set 18 as the age of original criminal court jurisdiction,[1] thereby providing that all juveniles 17 or younger initially are subject to the jurisdiction of the juvenile court. In addition to demarcation by age, all states provide for the consideration of other factors in determining jurisdiction in some cases. While age is the initial criterion used to decide a youth's eligibility

CRIMINOLOGY, Vol. 22 No. 2, May 1984 187-202

for juvenile court, other factors (such as seriousness of the alleged offense, past record, dangerousness, and suitability for treatment within the juvenile system) also may enter into the jurisdictional decision. The additional criteria specified and the legal mechanisms for making the decision to waive juvenile court jurisdiction vary tremendously from state to state. The stated intent of these varying standards and mechanisms, however, has been the same: to recognize and to provide for cases in which public safety or individual needs are served better by handling chronological juveniles as adults.

Historically, authority to make decisions regarding the waiver of juveniles to the adult criminal system was granted to the juvenile court judge, who exercised discretion within very broad guidelines set by the state legislature. Consistent with the informal, individualized approach derived from the *parens patriae* doctrine, formal rules of procedure and specific substantive standards rarely were utilized. Prior to reforms beginning in the 1960s then, judges could be said to have "made waiver decisions in an atmosphere of informal procedure and unfettered discretion" (Whitebread and Batey, 1981: 210-211).

The United States Supreme Court's 1966 ruling in Kent v. United States marked the beginning of major change in the waiver process. In addition to granting basic procedural rights to defendants, the Court in this case also listed eight substantive factors that judges might consider in making waiver decisions (Kent v. United States, 1966). In following years, state legislatures offered judges further guidance by specifying the findings needed to justify waiver and by providing lists of criteria to be considered during waiver proceedings (Sorrentino and Olsen, 1977; Simmons, 1978; Wagner, 1979).

Despite the procedural safeguards and substantive criteria enacted in the wake of the Kent decision, judicial discretion in the waiver process has been subjected to continued criticism. The substantive criteria still are considered by many to be too ambiguous to provide an adequate limitation of judicial discretion. Interpretation of the standards remains subjective and "the large number of factors that may be taken into consideration provides ample opportunity for selection and emphasis" as needed to justify the desired outcome (Zimring, 1981: 195). The potential for abuse of discretion continues to be high. The lack of specificity within the standards, for example, may allow judges to legitimate essentially political decisions (such as those made in response to public outrage over a particular crime) in the language of individual rehabilitation (Sorrentino and Olsen, 1977: 510-511; Malmquist, 1979). Others suggest that an ambiguous and discretionary waiver process has contributed substantially to the court's perceived inability to deter serious juvenile crime. Judicial waiver, according to these critics, inherently is unable to provide the certainty of punishment—in this case, the certainty of prosecution as an adult—that they say is an essential element of effective deterrence (Feld, 1981: 515-518).

Additional criticisms of judicial discretion in the waiver decision are directed not at the ambiguity of the standards guiding the decision, but at the fundamental assumptions on which those standards are based. Standards or guidelines for the waiver decision usually are intended to provide indicators of a juvenile's dangerousness or nonamenability to treatment. But critics contend that it currently is impossible to predict with any accuracy whether or not treatment and rehabilitation are possible in a particular case or if a person is dangerous. If this is so, increased clarity and specificity in the standards for judicial waiver will do nothing to improve the decision-making process. According to this argument, the problem lies not in ambiguous language but in a lack of knowledge. If there are no reliable empirical methods for diagnosing, classifying, or treating juvenile offenders, the principles of amenability and dangerousness have no value for the waiver decision and should be abandoned (Feld, 1978).

Partially in response to such criticisms, a number of states have attempted to define a more objective basis for waiver decisions. Although a recent study of juvenile codes effective in 1981 found that 47 states have judicial waiver provisions in their juvenile codes, other transfer mechanisms often coexist with and affect judicial authority. For example, 14 states specify by statute certain offenses that automatically are excluded from juvenile court jurisdiction. These provisions referred to as "excluded offense" or "automatic transfer" legislation, at least four states have attempted to confine judicial discretion using objective criteria to establish a presumptive or *prima facie* case that certain youths should be transferred (Hamparian et al., 1982: 44-65).[2]

While state legislatures increasingly have been willing in the past several years to consider and to enact both excluded offense provisions and provisions that specify the elements of a presumptive case for waiver, such attempts to reduce discretion in the waiver process are not without fault. Most statutes that attempt to more objectively define those juveniles who should be transferred to criminal court rely only on age and present offense and not on prior record. This approach has been criticized as being an overly broad method of effecting transfer (Zimring, 1981: 199-200) and as ignoring research findings that suggest that many juveniles arrested initially for serious, violent offenses will not face repeated charges of the same kind (Hamparian et al., 1978). In general, evidence indicates that when present offense is emphasized in selecting juveniles for transfer, there is a danger of identifying many first-time offenders for whom no treatment has been attempted and who are not likely to recidivate.

The controversies surrounding the process by which juveniles are transferred to the adult legal system point to larger issues in juvenile justice and criminal justice policy. Foremost among these issues is that of the discretionary authority accorded individual decision makers (law enforcement officers, prosecutors, judges, corrections officials) within the juvenile and criminal justice systems. Granted that the particular circumstances of each person and each offense may legitimately influence official decisions, how can equity be achieved while the arbitrary, prejudicial, and inconsistent application of the law is prevented? The more discretion given to individual decision makers, the greater the potential for abuse of that discretion.

In the past several years policymakers have moved to reduce the application of discretion in the criminal justice system by adopting measures intended to assure the like treatment of like cases. Attention has been directed to "channeling, reducing, and controlling" individual discretion in decisions such as those of pretrial release and of sentencing (Nagel, 1982). As part of this trend, for example, state legislatures have considered, and in some cases adopted, proposals to provide for fixed or determinate sentences imposed on the basis of an offender's current offense and past record. A major justification for mandatory sentencing plans is that reduction of judicial and parole board discretion correspondingly will reduce inequalities and discrepancies in sentencing. Whether or not this objective is likely to be achieved is a matter of continuing debate (Feeley, 1983: 148).

The issue of discretion in the juvenile justice system is even more problematic since the juvenile court was created expressly to provide individual and particularistic treatment to those defined by age as children. Gradually, however, in the face of what some viewed as the harsh and arbitrary treatment of children under its jurisdiction, the juvenile court has been modified to incorporate many of the due process protections found in adult criminal court. Furthermore, in some states objective dispositional guidelines based on current offense and prior record are receiving serious consideration. As the juvenile court shifts from a parens patriae to an increasingly legalistic basis and considers the adoption of dispositional practices common to adult courts, the logic of its continued existence as a separate institution is being questioned (Conrad, 1981).

The present study, while not attempting to address directly the general issues of discretion and of the continued existence of the juvenile court, analyzes a specific policy that bears on them both. By examining the kinds of juvenile cases that are transferred to adult court, something may be learned about the efficacy of age as the primary determinant of juvenile court jurisdiction. By analyzing the kinds of cases in which waiver proceedings were initiated before and after implementation of statutorily defined "objective" criteria for waiver, something may be learned about the effect of such criteria as an alternative to the traditional exercise of discretion.

REVISIONS IN MINNESOTA WAIVER PROVISIONS

Minnesota is one of those states that have moved recently to limit judicial discretion and to establish a more objective basis for the waiver of juvenile court jurisdiction. Prior to 1980 the Minnesota Juvenile Court Act provided that a juvenile 14 years of age or older could be transferred to adult court if the juvenile court judge found that "the child is not suitable to treatment" or that the "public safety is not served" by handling the child within the juvenile court.[3] No further substantive guidance was provided by statute. In 1980 the state legislature established a classification scheme that defined a class of juvenile offenders *presumed* to be unfit for juvenile court treatment. These juveniles are identified on the basis of their age, alleged offense, and record of prior felony offenses. Briefly, a prima facie or presumptive case for waiver can be established if the juvenile was at least 16 years old at the time of the offense and meets one of the combinations of alleged offense and prior record shown in Table 1.[4]

The general purpose of the statutory revision was to facilitate the transfer to adult court of juveniles identified as serious offenders. By allowing the prosecutor to establish a presumptive case for waiver in those instances where the specific criteria are met, the effect of the change is to shift the initial burden of proof from the prosecutor to the defendant in this special category of cases.[5] Cases that do not meet the criteria also may be waived, although the burden of proof then rests on the prosecutor, who must show that the child is unsuitable to treatment or dangerous.

In substance, the presumptive criteria were intended to balance the severity of the alleged offense with the extent of the juvenile's prior record in identifying candidates for adult prosecution. As the severity level of the alleged offense increases, the number of prior felonies required decreases. Property and drug felony offenses require the most extensive prior record; violent felonies require the least extensive prior record.

Minnesota's statutory revisions come at a time when the very foundations of judicial discretion as exercised in the waiver process (and throughout the juvenile system) are being challenged, and when proposals to replace or to limit judicial discretion with objective formulas are being advanced by scholars and practitioners of juvenile justice. However, while the use of objective classification schemes to make waiver decisions has grown rapidly in recent years, these schemes often have

TABLE 1
Requirements for a Presumptive Case for Transfer

Alleged Offense	Prior Record[a]
(1) Murder I	No prior record required.
(2) Murder II or III Manslaughter I Criminal Sexual Conduct I Assault I	Adjudicated delinquent for *one* felony offense committed in the preceding 24 months.
(3) Manslaughter II Kidnapping Criminal Sexual Conduct II Arson I Aggravated Robbery Assault II	Adjudicated delinquent for *two* felony offenses, not in the same behavioral incident, committed in the preceding 24 months.
(4) Any other felony (e.g., burglary, auto theft, drug-related felonies)	Adjudicated delinquent for *three* felony offenses, not in the same behavioral incident, committed in the preceding 24 months.

a. One year after the waiver statute was enacted, the legislature modified the prior record requirement by eliminating the requirement that delinquency be adjudicated officially in order for prior offenses to be counted. Since the adjudication requirement was in effect at the time of the study, it is the version used in the following analysis. Additional data collected by the authors indicates that the conclusions reached here would be the same regardless of which version of the criteria was utilized.

been criticized as being imprecise and overly inclusive in defining those juveniles who should be transferred to adult court. Minnesota's 1980 statute attempts to limit judicial discretion while also meeting some of the criticisms directed at objective classification formulas used in other states. Because the statute provides one of the most detailed and balanced formulas enacted to date, Minnesota's recent experience under the revised law provides an important opportunity to assess the utility of objective formulas in identifying those juveniles who require the sanctions of the adult criminal system.

METHODOLOGY

To evaluate the effect of Minnesota's revised waiver statute, demographic and case history data were obtained from juvenile court files in Hennepin County, an urban county of 900,000 people centered around the city of Minneapolis.[6] Hennepin County was chosen because in Minnesota serious youth crime, the intended target of the new waiver statute, is primarily an urban problem. In 1979, for example, 40.7% of juveniles arrested in Minnesota for major offenses against persons came from Hennepin County.[7] As the state's most populous county, it also has the largest juvenile court caseload and transfers more juveniles to adult court than any other county.

In Hennepin County waiver proceedings are initiated by the county attorney. The prosecutor may choose to initiate waiver proceedings in cases that meet the recently enacted presumptive criteria, but is not required to do so. Furthermore, proceedings may be initiated in cases which do *not* meet the criteria but in which the juvenile's unsuitability to treatment or dangerousness can be claimed on other grounds. Because of these possibilities, demographic and case history data were obtained from juvenile court files for two analytically distinct categories of cases: (1) those in which the juvenile's age, alleged offense, and prior record were sufficient to satisfy the presumptive criteria; and (2) those in which waiver proceedings actually were initiated by the prosecutor. Examination of cases in the first category allows a determination of the number of cases meeting the presumptive criteria that were considered for transfer. Analysis of the second category, however, provides a description of all cases in which transfer proceedings were begun.

Overall 145 cases met either or both of the above conditions during the 18 months covered by the study. The group in which proceedings were initiated was identified readily through log books maintained by the juvenile court and the county attorney's office. Identification of the cases that met the presumptive criteria—out of the thousands of cases petitioned into court each year—was more difficult. The county's computerized tracking system provided an initial list of juveniles who were over 16 years of age and were charged with felony offenses during the designated study periods. The final selection was completed after a case-by-case examination of individual files that had passed the initial screening.

While the county attorney is responsible for initiating waiver proceedings, the judge retains authority for making the waiver decision. Therefore, it was also important to determine which of the initiated cases actually were transferred for criminal prosecution. Each case in the study was followed from initial court petition through final disposition, including trial and sentence in criminal court for those transferred to the adult system. The date of birth, sex, and race of each juvenile were recorded as was information on the juvenile's court record. Court record information included: (1) the date, type, and outcome of all prior and present offenses petitioned into court; and (2) all previous dispositions received by the juvenile.

Data for the study were obtained from three six-month time periods: January 1 through June 30, 1979; January 1 through June 30, 1980; and January 1 through June 30, 1981. The last six-month period followed implementation of the revised statute, while the first two periods occurred during the time before the revisions took effect.

RESULTS

WAIVER DECISIONS AND THE PRESUMPTIVE CRITERIA

General trends in the use of waiver proceedings in Hennepin County from the beginning of 1978 through the middle of 1981 are illustrated in Table 2. While the number of waiver motions *filed* by the county attorney during each six-month period remained virtually unchanged, the percentage of waiver motions *granted* increased substantially during the first six months of 1981 following implementation of the presumptive criteria. The increase in transfers granted cannot be attributed primarily to implementation of these criteria, however, as the percentage of waiver motions granted was virtually the same for cases that did not satisfy the presumptive criteria as it was for cases that did (83.3% and 82.6% respectively), indicating that the court's approval of waiver requests had increased across the board.

The next step in the analysis was to compare both cases in which waiver was sought and cases in which waiver was granted with the requirements of the presumptive criteria. As Table 3 indicates, a majority of cases in both categories failed to meet the presumptive criteria. That is, most juveniles transferred to adult court as well as most for whom waiver proceedings were initiated did not belong to the special class of offenders

TABLE 2
Use of Waiver Proceedings in Hennepin County: 1978-1981

Time Period	Motions Filed	Motions Granted	Percentage Granted
January-June 1978	28	14	50.0
July-December 1978	32	15	46.9
January-June 1979	35	19	54.3
July-December 1979	33	20	60.6
January-June 1980	38	17	44.7
July-December 1980	30	19	63.3
Six-month average for 1978-1980:	32.7	17.3	53.1
January-June 1981	35	29	82.9

who are now presumed by law to be unfit for juvenile court treatment. Following enactment of the revised statute, there was a slight increase in the proportion of transferred cases that did satisfy the criteria—from 22.2% before enactment to 34.5% after enactment. Despite this, however, even in the post-implementation period of January through June 1981, two-thirds of the juveniles transferred to adult court did not possess records sufficient to establish an initial presumption in favor of the transfer.

Even though most juveniles transferred do not meet the presumptive criteria, it might be assumed that juveniles who *do* satisfy the criteria are very serious offenders who are always or almost always transferred to adult court. The data do not support this assumption. Many juveniles who met the statutory requirements were never considered formally for transfer. While there was, as Table 4 indicates, an increase in the waivers granted for this group of offenders, this increase may be attributable partly to the previously discussed across-the-board increase in motions granted. Furthermore, even after the revised statute became effective, prosecutors chose to file waiver motions for only about half of the juveniles (54.5%) who met the criteria, while fewer (45.5%) actually were transferred to adult court.

Tables 3 and 4 suggest that there has been some change in the degree of correspondence between satisfaction of the presumptive criteria and involvement in waiver proceedings. What is more significant, however, is the continuation of large disparities even after the waiver process was

TABLE 3
Proportion of Cases Initiated and Transferred that Met the Presumptive Criteria

	Before Enactment[a]		After Enactment[b]	
	Number	Percentage	Number	Percentage
Initiated Cases				
Met criteria	15	20.5	12	34.3
Did not meet criteria	58	79.5	23	65.7
Total	73	100.0	35	100.0
Transferred Cases				
Met criteria	8	22.2	10	34.5
Did not meet criteria	28	77.8	19	65.5
Total	36	100.0	29	100.0

a. Cases petitioned into court from January 1 through June 30, 1979 and January 1 through June 30, 1980.
b. Cases petitioned into court from January 1 through June 30, 1981.

TABLE 4
The Use of Waiver Proceedings in Cases that Satisfy the Presumptive Criteria

	Before Enactment[a]		After Enactment[b]	
	Number	Percentage	Number	Percentage
Total Cases Satisfying the Presumptive Criteria	42	100.0	22	100.0
Waiver Motion Filed	15	35.7	12	54.5
Waiver Granted	8	19.1	10	45.5

a. Cases petitioned into court from January 1 through June 30, 1979 and January 1 through June 30, 1980.
b. Cases petitioned into court from January 1 through June 30, 1981.

modified. Despite legislation that singles out for special consideration those juveniles who meet certain requirements of age, alleged offense, and prior record, prosecutors precluded waiver to adult court in almost one-half of the cases meeting the stated criteria.[8] Conversely, almost two-thirds of the cases in which motions for waiver were filed did not satisfy the criteria. It would appear then that the objective criteria in themselves have not provided prosecutors and judges with an adequate guide for deciding which juveniles should be handled as adults. Their decisions indicate that from their perspective the criteria identify many juveniles who should be retained in juvenile court and fail to identify many who should be transferred to adult court.

THE OBJECTIVE CRITERIA AND IDENTIFICATION OF SERIOUS OFFENDERS

Waiver decisions made by juvenile justice officials frequently did not coincide with the waiver decisions suggested by the legislatively defined presumptive criteria. This lack of coincidence does not mean that the criteria are totally useless; it does mean that the objective standards provided by the revised waiver statute do not in themselves give decision makers an adequate definition of juveniles to be transferred to adult court. The question remains as to why the objective criteria are an inadequate substitute for prosecutorial and judicial discretion in waiver decisions. More specifically, it is important to ask whether or not the criteria are effective in identifying those juvenile offenders considered serious, hard-core, or violent.

To address this question profiles were constructed of: (1) those juveniles meeting the presumptive criteria and (2) those juveniles involved in waiver proceedings. Variables used in constructing the profiles are those commonly accepted as indicative or definitive of serious delinquency: severity of the present offense (violent versus property or drug-related offenses); number of felony offenses charged in the present case; number of offenses, felony offenses, and violent offenses previously admitted or proven in court; length of time covered by the juvenile's official delinquency record (an indicator of the persistence of delinquent behavior and of the amount of time exposed to treatment within the juvenile system); and prior commitment to one of the state's juvenile institutions. No attempt was made to obtain an independent judgement of the youth's dangerousness or amenability to treatment or to measure subjective concepts like sophistication and cruelty. Only objective and verifiable data that can be readily and consistently found in official court records were utilized to construct the profiles.

Table 5 compares the profiles of juveniles whose age, offense, and prior record were sufficient to meet the presumptive criteria with those of juveniles who actually became involved in the waiver process. For this table, data from the entire 18-month study period were aggregated. Prosecutorial rather than judicial decisions were used because they represent the initial screening of waiver cases. Essentially the same results were obtained when judicial decisions to grant waiver were analyzed.

The differences between the group profiles presented in Table 5 are reduced somewhat by the fact that 27 cases were selected by both methods and therefore were counted in both groups. Even so, it is clear that those juveniles who satisfied the presumptive criteria possessed less serious records (as measured by the variables listed above) than those juveniles who actually became involved in the waiver process. Fewer than half of the juveniles identified by the presumptive criteria were charged with violent felonies or with multiple felonies. While they had, on the average, more prior felony offenses than the waiver group, their prior record was less likely to include violent offenses. Fewer than one-third of the presumptive criteria group had an official delinquency record that spanned more than three years, while almost 60% of the waiver group had official records spanning three years or more. Fewer than one-third of the presumptive criteria group had been placed previously in a state juvenile institution.

To provide an additional perspective, Table 6 focuses on cases that satisfied the presumptive criteria, and compares those that were accepted by the prosecutor as appropriate for waiver and those that were rejected. The pattern demonstrated previously in Table 5 clearly is repeated. Cases accepted for waiver were on the whole significantly more serious than

TABLE 5
Comparison of Waiver Cases and Cases Selected by Objective Criteria

	Presumptive Criteria Satisfied		Motion for Waiver Filed	
	Number	Percentage	Number	Percentage
Total number of cases	64	100.0	108	100.0
Charged with violent felony	24	37.5	60	55.6
Charged with multiple felonies	28	43.8	68	63.0
Avg. number of prior offenses	7.1	—	7.6	—
Avg. number of prior felonies	4.2	—	3.1	—
One or more prior violent felonies	12	18.8	30	27.8
Juvenile court involvement exceeding three years	18	28.1	64	59.3
Avg. length (yrs.) of juvenile court involvement	2.2	—	3.4	—
Prior commitment to state institution	20	31.3	47	43.5

cases that were rejected. Most importantly, the data indicate that the presumptive criteria identify a rather large subgroup of juveniles who do not on closer examination appear to be very serious offenders. Though technically satisfying the minimum requirements established by the legislature, these youths (left-hand column of Table 6) typically are property offenders who have no history of violent offenses, either past or present. They also began their delinquency careers relatively late, have been known to the court for only one or two years, and consequently have been exposed to few of the treatment resources available to the court. While Table 5 suggests that the presumptive criteria fail to identify many juveniles with serious records, Table 6 shows that the criteria identify many juveniles whose overall records could not reasonably be described as serious, violent, or hard-core.

DISCUSSION

Judicial discretion in the making of waiver decisions has been subject to considerable criticism in recent years. Critics claim that the subjective guidelines under which most courts operate are extremely vague, and that the individualized and clinical methods used to determine the desirability of adult prosecution are unreliable. Discretionary waiver procedures therefore invite abuses and result in the faulty identification

TABLE 6
Prosecutor's Decision to Request Waiver in Cases Satisfying Presumptive Criteria

	Motion for Waiver Not Filed		Motion for Waiver Filed	
	Number	Percentage	Number	Percentage
Total number of cases	37	100.0	27	100.0
Charged with violent felony	8	21.6	16	59.3
Charged with multiple felonies	10	27.0	18	66.7
Avg. number of prior offenses	6.3	—	8.1	—
Avg. number of prior felonies	4.1	—	4.3	—
One or more prior violent felonies	3	8.1	9	33.3
Juvenile court involvement exceeding three years	5	13.5	13	48.2
Avg. length (yrs.) of juvenile court involvement	1.5	—	3.2	—
Avg. age at first delinquency petition	15.5	—	14.3	—
Prior commitment to state institution	6	16.2	14	52.0

of hard-core offenders. Support has been garnered for the replacement of subjective criteria with legislatively-defined objective standards by those who maintain that "a properly constructed legislative matrix, based on combinations of present offense and prior record, will identify hard-core youth more accurately and objectively than does individualized judicial inquiry" (Feld, 1978: 523).

Several states recently have established objective criteria that either automatically exclude certain juveniles from juvenile court jurisdiction or create a presumption in favor of exclusion. In 1980 Minnesota enacted a detailed statutory formula to govern its waiver process. The formula combines the variables of age, alleged offense, and prior record to identify juveniles presumed to be unfit for retention in the juvenile system.

Contrary to the claims of its supporters, the objective criteria adopted by the Minnesota legislature have not proven to be an adequate means for selecting juveniles for transfer to adult court. The criteria single out many juveniles whose records do not appear to be very serious and fail to identify many juveniles whose records are characterized by violent, frequent, and persistent delinquent activity. Despite its defects and potential for abuse, the traditional discretionary process used by prosecutors and juvenile court judges to make waiver decisions appears to be

more successful than the objective criteria alone in identifying the more serious juvenile offenders. Although critics of the discretionary waiver process contend that waiver decisions should be based only on objective variables related to the juvenile's behavior, the present study suggests that objective formulas—even those as sophisticated and balanced as Minnesota's—are too simplistic and too rigid to summarize such behavioral data in a reliable and consistent manner.

Critics of judicial waiver have emphasized the unreliability of clinical predictions of dangerousness and amenability to treatment while failing to recognize that judicial and prosecutorial discretion has never in practice been limited to such predictions. Discretion may, for example, involve the examination of important distinctions regarding the present offense (such as the extent of victimization) that are not captured by the formal charge alone. It may involve the synthesizing of information about the pattern of the juvenile's delinquent career, the nature of his response to prior treatment efforts, and numerous other factors not easily reducible to simplistic objective formulas. Abuses and mistakes undoubtedly occur when the discretionary process is used to determine who should be waived to adult court. The research presented here, however, suggests that objective selection formulas offer no simple solution to this complex problem.

While it might be tempting to believe that the problem lies solely in the quality of the objective criteria devised so far and that further research could help to construct actuarial or objective tables with far greater analytic power, the plausibility of such an approach is questionable. First, while the literature on clinical diagnosis and prediction generally has been quite negative, several studies of actuarial prediction as applied to criminal justice also have produced dismal results (Monahan, 1981: 101-104). Second, any effort to reduce the number of false negatives (juveniles who do not meet the criteria and yet are waived) probably would increase the number of false positives (juveniles who do meet the criteria but whose records generally are considered too weak to warrant transfer). Finally, it is important to remember that so-called objective data available from court records are based on previous exercises of discretion (decisions regarding arrest, prosecution, plea-bargaining, and disposition) that pervade the juvenile justice system and that are based only indirectly on the child's actual behavior. In short, there is no indication that further efforts to improve the reliability of objective waiver formulas would obtain significant results.

NOTES

1. Eight states set the age at 17 and four states set the original age of criminal court jurisdiction at 16 years of age (Hamparian et al., 1982: 43-44).

2. Seven states plus the District of Columbia allow the prosecutor to file charges in either juvenile or adult court against juveniles at specified ages for specified offenses (Hamparian et al., 1982: 62). However, these provisions, known as "concurrent jurisdiction," "direct file," or "prosecutorial choice" provisions, represent a transfer of discretion rather than an attempt to limit or eliminate discretion through objective criteria.

3. Since 1959 the waiver process has been governed by Minnesota Statute 260.125 as amended.

4 In this study the prima facie criteria refer to the criteria specified in Minnesota Statute 260.125 Subds. 3(2), 3(3), 3(4), and 3(5). Another section of the new waiver statute states that a prima facie case is established if the child "is alleged by delinquency petition to have committed an aggravated felony against the person and (a) in committing the offense, the child acted with particular cruelty or disregard for the life or safety of another; or (b) the offense involved a high degree of sophistication or planning by the juvenile." This section was excluded from the study because it could not be considered as part of an objective waiver formula due to the highly subjective nature of the factors listed. In any event, no cases that cited this section as a reason for waiver were found in Hennepin County.

5. If the presumptive case is unrebutted—if the defendant does not introduce significant evidence bearing on the issues of suitability for treatment or dangerousness—transfer for adult prosecution will occur (In re Welfare of Givens, 1981). On the introduction of significant evidence bearing on the allegations of unsuitability and dangerousness, the burden of proof moves back to the prosecutor.

6. Data from Hennepin County were collected as part of a larger study of waiver in ten Minnesota counties (Osbun and Rode, 1982). The data base for the larger study includes all cases in which reference proceedings were initiated between January 1, 1978 and June 30, 1981 in ten Minnesota counties.

7. Based on raw figures on Part I offenses against persons supplied by the Minnesota Bureau of Criminal Apprehension.

8. It should perhaps be noted that a wide variety of behaviors are included within the legal definition of a given offense. Thus the offense charged is not always a reliable indicator of the seriousness of the behavior. This fact may help explain prosecutorial choices at the same time that it calls into question the utility of charged offense as an objective criterion for reference.

REFERENCES

CONRAD, J. P. (1981) "Crime and the child," pp. 179-192 in J.C. Hall et al. (eds.) Major Issues in Juvenile Justice Information and Training: Readings in Public Policy. Columbus, OH: Academy for Contemporary Problems.

FEELEY, M. M. (1983) Court Reform on Trial: Why Simple Solutions Fail. A Twentieth Century Fund Report. New York: Basic Books.

FELD, B. C. (1981) "Legislative policies toward the serious juvenile offender: on the virtues of automatic adulthood." Crime and Delinquency 27 (October): 497-521.

———(1978) "Reference of juvenile offenders for adult prosecution: the legislative alternative to asking unanswerable questions." Minnesota Law Rev. 62 (April): 515-618.

HAMPARIAN, D. M., L. K. ESTEP, S. M. MUNTEAN, R. R. PRIESTINO, R. G. SWISHER, P. L. WALLACE, and J. L. WHITE (1982) Youth in Adult Courts:

Between Two Worlds. National Institute for Juvenile Justice and Delinquency Prevention. Washington, DC: U.S. Department of Justice.
HAMPARIAN, D. M., R. SCHUSTER, S. DINITZ, and J. P. CONRAD (1978) The Violent Few: A Study of Dangerous Juvenile Offenders. Lexington, MA: D.C. Heath.
KENT v. UNITED STATES (1966) 383 U.S. 541.
MALMQUIST, C. P. (1979) "Juveniles in adult courts: unresolved ambivalence," pp. 444-456 in S.C. Feinstein and P.L. Giovacchini (eds.) Adolescent Psychiatry: Developmental and Clinical Studies. Vol. 7. Chicago: Univ. of Chicago Press.
MONAHAN, J. (1981) Predicting Violent Behavior: An Assessment of Clinical Techniques. Beverly Hills, CA: Sage.
NAGEL, S. S. (1982) "Discretion in the criminal justice system: analyzing, channeling, reducing, and controlling it." Emory Law J. 31 (Summer): 603-633.
OSBUN, L. A. and P. A. RODE (1982) "Changing boundaries of the juvenile court: practice and policy in Minnesota." A Report of the Supreme Court Juvenile Justice Study Commission. Minneapolis: Office of Delinquency Control, University of Minnesota.
SIMMONS, J. (1978) "Waiver in Indiana—a conflict with the goals of the juvenile justice system." Indiana Law J. 53 (Spring): 601-614.
SORRENTINO, J. N. and G. K. OLSEN (1977) "Certification of juveniles to adult court." Pepperdine Law Rev. 4: 497-522.
WAGNER, J. P. (1979) "Wisconsin's new juvenile waiver statute: when should we wave goodbye to juvenile court protections?" Wisconsin Law Rev. 1979: 190-216.
In re WELFARE OF GIVENS (1981) 307 N.W. 2d 489 [Minnesota].
WHITEBREAD, C. H. and R. BATEY (1981) "The role of waiver in the juvenile court: questions of philosophy and function," pp. 207-226 in J.C. Hall et al., (eds.) Major Issues in Juvenile Justice Information and Training: Readings in Public Policy. Columbus, OH: Academy for Contemporary Problems.
ZIMRING, F. E. (1981) "Notes toward a jurisprudence of waiver," pp. 193-205 in J.C. Hall et al., (eds.) Major Issues in Juvenile Justice Information and Training: Readings in Public Policy. Columbus, OH: Academy for Contemporary Problems.

Lee Ann Osbun is Assistant Professor of Political Science at Iowa State University. She received her Ph.D. from the University of Minnesota and has held several positions in state government research and administration, including two years as Project Coordinator for the Minnesota Supreme Court Juvenile Justice Study Commission. She recently completed a study of child day care policy in Iowa and is engaged in research on democratic participation and issues in state criminal justice policy.

Peter A. Rode is a Research Associate for the Urban Coalition of Minneapolis and was Research Director for the Minnesota Supreme Court Juvenile Justice Study Commission from 1980 to 1982. He has conducted research on resistance to military authority by lower-ranking soldiers and presently is investigating racial disparities in charging and sentencing decisions.

ABSTRACT • • •

The justice model has emerged as an alternative to the discredited rehabilitative ideal as a basis for sanctioning policy. Retributivism or just deserts is offered as the primary justification for the criminal sanction in this model, although sometimes in combination with incapacitation and deterrence as companion rationales for sanctioning. Desert is, additionally, an integral component of a sense of justice that is presented as an attribute of the justice model. Desert, both as a rationale for sanctions and as the basis for justice, is drawn from the philosophical models of Immanuel Kant and John Rawls. However, these models have some rather disturbing implications that have not been addressed by proponents of the justice model. A critical examination of them and their implications for criminology is therefore in order.

Justice, Sanctioning, and the Justice Model

GRAY CAVENDER
Arizona State University

Over the past several years there has been a renewed attentiveness to the policy implications of two somewhat philosophical topics: the criminal sanction and the concept of justice (American Friends Service Committee, 1971; van den Haag, 1975; von Hirsch, 1976; Fogel, 1979; Clarke, 1982). A revitalization of criminological interest in these matters was occasioned by a series of challenges to and the apparent collapse of the rehabilitative ideal.

The rehabilitative ideal was based on the assumption that criminal behavior was caused by factors that were beyond the control of an offender, factors that could be identified by experts who would then design treatment programs that would remedy the problem and thereby protect the offender and society from criminal behavior (Allen, 1981). This was the dominant theme of sanctioning from the late 1800s until significant criticisms were levied against the rehabilitative ideal during the 1970s. The rehabilitative ideal was condemned as an ineffective crime control strategy when evaluated in terms of recidivism and as a policy that fostered unfairness. The second criticism stemmed from the deter-

CRIMINOLOGY, Vol. 22 No. 2, May 1984 203-213

Trial Courts
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501

CHILDREN'S INTAKE OFFICE
Jay L. Warner
Michaela Gisler
Sandra Bonacker

January 9, 1984

Ms. Elizabeth J. Hickerson
Senior Advisor
Alaska State Legislature
1024 West 6th Avenue, Suite 203
Anchorage, Alaska 99501

Dear Ms. Hickerson:

In regard to your letter of January 5, 1984, I am supplying the following information: Due to the fact that the waivers have been so few here, I can give you information on everyone who has been handled in the Third Judicial District since I have been here which has been since 1968. The reason there have been so few waivers, in my opinion, is because of the degree of difficulty the statutes have placed on the State.

February, 1967: Armed Robbery waived to stand trial as an adult. Juvenile in t case had an extensive prior record and was almost 18 years of age.

July, 1969: Burglary in a dwelling; Contributing to the Delinquency of a Minor and Liquor Violation. Minor was 19 years of age; waiver was denied; you would have to consult with the Judge for the reason for denial.

May, 1971: Conspiracy to Kidnap; Kidnapping; Assault with a Deadly Weapon and Assault and Battery. Although the crimes were committed when the minor was 17, she was not arrested until age 18. She was waived to stand trial as an adult.

September, 1974: Assault with a Deadly Weapon; Concealing a Deadly Weapon. This 17 year old minor had already been institutionalized for shooting two people when he was 15 years of age. The present offenses also involved shooting another person. He was waived.

October, 1976: Two counts Armed Robbery. This 17 year old male had an extensive prior record and was waived.

September, 1978: First Degree Murder. This 16 year old boy was accused of Contract Murder. After a lengthy hearing he was not waived. You would need to talk to the Judge for the reason he was not waived.

December, 1979: Two counts of First Degree Murder; two counts of Armed Robbery. This 17 year old had a lengthy record and was waived to stand trial.

December, 1980: Armed Robbery; Attempted Rape. Although these offenses were

committed when the minor was 17, he was not apprehended until 18 and brought back to the State from Oklahoma where he had been recently put on probation for Burglary in that State. Although the Court found grounds for waiver, the minor consented to the waiver and was waived.
December, 1981: Fifteen counts of Second Degree Burglary. This 17 year old, with an extensive prior record, was waived.
September, 1982: First Degree Burglary; Second Degree Theft; First Degree Murder. This 17 year old girl with an extensive prior record was waived.
September, 1982: First Degree Burglary; Second Degree Theft; First Degree Murder. This 16 year old male, with an extensive prior record was waived.
December, 1983: Three counts of First Degree Murder; Three counts of Attempted First Degree Murder, waiver is still pending.

In the above cases where it was alluded to the fact that the minor had an extensive record, this is meant to include that the minor had been on juvenile probation as well as juvenile institutional placements. I hope this information will be of some value to you.

As a citizen of the State of Alaska, I would urge that the Bill passed last year by the House, regarding Juvenile Waivers be re-introduced and passed by both Houses and signed by the Governor as I feel it would benefit citizens of the State as well as the juveniles who perpetrate crimes against the State. The Bill, regarding waivers, that the Governor vetoed last year was ineffective and "watered down". Thank you.

Yours truly,

Jay L. Warner
Juvenile Intake Officer
Third Judicial District

JLW/mer

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

January 24, 1984

Ms. Elizabeth J. Hickerson
Senior Advisor
Senate Advisory Council
1024 West 6th Avenue, Suite 203
Anchorage, Alaska 99501

Dear Elizabeth:

First, let me apologize for being so tardy with this letter. My printer has been down for the last four days and my work has just been piling up.

You asked me to obtain the number of juvenile waivers in the first, second and fourth judicial districts. Mr. Jay Warner supplied you with the needed information on the third judicial district.

In the first judicial district there has been five waivers requested in the last five years. Two of these waivers were granted, two denied and one withdrawn. In the second judicial district there has been one waiver requested in the last five years and it was granted. In the fourth judicial district there were four waivers requested in the last five years. Three of these waivers were granted and one was denied.

If I can be of further assistance to you, please let me know.

Sincerely,

Sharon

Sharon M. Henson
Administrative Assistant

SB 264

Eugene 9/85 W. Conf

premise: weaknesses in "get tough" approach

Conflicting Trends in Juvenile Justice Sanctioning: Divergent Strategies in the Handling of the Serious Juvenile Offender

By Troy L. Armstrong and David M. Altschuler

Introduction

Increasing alarm over the problem of serious juvenile crime has generated intense feelings on the part of both the general public and the professional juvenile justice community. The professional perspective has been characterized by conflicting opinions about the origins, scope, handling and implications of the problem. This dispute among researchers, academics, practitioners and legislators has led to the emergence of at least two clearly identifiable and strongly opposing points of view. For convenience we will refer to these two approaches as the community-based and the "get tough" movements. Roots for this divergence in opinion must be traced ultimately to the assumptions, precepts and practices of the juvenile court movement.

Launched at the turn of the present century, this movement established those basic principles which were to govern the specialized treatment of youthful offenders over the next 80 years. At the heart of the juvenile court tradition lies the rehabilitative/treatment model espoused as essential for the handling of juvenile offenders. Eventually, disenchantment with the apparent shortcomings and purported excesses of this movement led to the emergence of widespread criticism. On the liberal end of the justice spectrum, one finds proponents of community-based treatment who support the use of non-institutional settings for a wide range of offenders. These individuals draw inspiration and direction from and contribute to the reform efforts of the deinstitutionalization/diversion movement. At the opposite end of the spectrum are proponents of a control/punishment model who advocate the imposition of a harsher set of procedures and sanctions.

Woven throughout our discussion of the two opposing approaches is the argument that the rehabilitative ideal as originally embodied in the juvenile court movement should not be arbitrarily discarded but rather should be strengthened by linking it closely to the principles of consequences, individual accountability and social responsibility. Reflecting our own preferences for the selective use of community-based alternatives, we argue further that rehabilitation strengthened in this fashion can be effective with certain kinds of severely delinquent youths who have been placed in *specially designed* community-based programs.

In discussing the basic thrust of the community-based approach, we will draw upon recently completed research where we have described and analyzed the overall organizing framework and intervention strategies of 11 programs across the country designed to

serve serious juvenile offenders.[1] In addition, by critically exploring the assumptions and characteristics of the "get tough" approach, we hope to reveal certain inherent weaknesses Finally, as part of our overall analysis of official responses to this offender population, we will examine the definitional ambiguity which has added confusion to an already complex subject.

The Juvenile Court Movement: Origins and Directions

Crucial to the rise of the juvenile court movement was the extensive penological theorizing of the early and mid-19th century. A central theme was the call for the differential treatment of juvenile offenders due to the inherent dangers of housing youthful and adult criminals together.[2] By 1850, this plea had led to the emergence of the reformatory movement where special correctional or training "schools" were established for juvenile offenders throughout the country.[3] The reformatory was distinguished from the traditional penitentiary by a policy of indeterminate sentencing and "organized persuasion" rather than "coercive restraint."[4]

Arising from these policies was the notion that if the handling of errant children required a special concept of responsibility with rehabilitation as its primary goal, the decision-making procedures for determining innocence or guilt would have to be different. Thus, the juvenile court movement represented a logical extension of the recognition that juvenile offenders required different processing and treatment. The emergence of the juvenile court marked the creation of juvenile delinquency as a behavioral category defined by a separate set of legal attributes.[5] Two principles which characterized criminological thought in the latter half of the 19th century had merged to form this concept of delinquency: children under a certain age were not responsible for criminal acts, and wayward children were in need of the protection and guidance provided by the court.

From its inception the juvenile court related to the juvenile offender as if he were a wayward child in need of nurturance. Several procedural consequences followed from this stance. First, the court established a traditio of looking at the circumstances lying behin the offender's misconduct and of payin much less attention to the nature of the crim nal act. In essence, the tendency has been t absolve the youth of responsibility for the ac and to seek the cause of difficulty in th youth's wider sociocultural environment i order to administer the appropriate rehabili tative measures. Second, to provide help fo misguided children the court has operat with a rehabilitative/treatment model of ju tice in which the primary goal was to emplo therapeutic measures "designed to effec changes in the behavior of the convicted per son in the interest of his own happiness health, and satisfaction."[6]

Reform of the Juvenile Court

The wide discretion exercised by the juve nile court over the behavior of youthfu offenders continued without objection unti the 1960s when persistent criticisms led to a major re-examination of many of the princi ples and practices which had previously beer highly regarded and viewed as virtually unas sailable. This reaction to the perceived short comings and failures of the court came mainly from the liberal wing of the juvenile justice community and marked the beginning o fundamental changes in the system.

A significant development in this call for reform was the increasingly active role taker by the federal government in stimulating planned change in the juvenile justice arena One landmark event in the federal initiative was the issuance of a major report by the President's Commission on Law Enforcement and Administration of Justice. As Blackmore pointed out,

> Its report, more than any other document o the time established the language of crimina justice reform for the seventies. Diversion, sen tencing alternatives, alternatives to incarcera tion, decriminalization, deinstitutionalizatior and reintegration are just a few of the more significant terms the commission popularized.[7]

The official Commission Report, *The Challenge of Crime in a Free Society*, was released in 1967 and called for a major overhaul of juvenile justice in each distinct facet of the

total system: enforcement and apprehension, courts and probation, corrections and parole. About the failure of the juvenile justice system, the Commission stated,

> Studies conducted by the Commission, legislative inquiries in various states, and reports by informed observers compel the conclusion that the great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the juvenile offender.[8]

The recommendations announced by the Commission were largely responsible for the wave of reform efforts which swept across local jurisdictions throughout the United States by 1970.

The set of criticisms leveled by the President's Commission are often referred to as the four Ds of juvenile justice reform: *decriminalization, due process, deinstitutionalization* and *diversion*.[9] Each related to a specific aspect of judicial processing which had been shown in its present form to run counter to the well-being and fair treatment of the youthful offender.

Among these four reform thrusts, due process, deinstitutionalization and, to a much more limited extent, diversion bear directly upon the community-based treatment of serious juvenile offenders. Measures to introduce *due process* into juvenile court proceedings were a reaction to the flagrant abuse of discretion in the decision-making process which affected the disposition of cases. A series of Supreme Court rulings starting with the 1967 *In re Gault* decision have introduced a number of statutory and constitutional guarantees into proceedings. However, these decisions have yet to accord juveniles all of the rights which adult defendants possess. The operating principles of the juvenile court continue to distinguish it in many ways from criminal court.

Efforts to *deinstitutionalize* and to *divert* adolescent offenders emerged as closely related activities in the reform of the juvenile justice system. As Klein suggests, "Both are attempts to replace formal, institutional processing with various forms of community treatment."[10] Closely linked in terms of their goals, deinstitutionalization and diversion were both responses to an especially glaring failure in the juvenile court movement, namely, the tendency of the court to commit even larger numbers of youngsters to institutions for the supposed purpose of helping them. This propensity for a wider and wider use of the reformatory model eventually led to a "warehousing" phenomenon in which large numbers of juveniles were being placed in children's jails differing little from adult prisons. In contrast to the founding philosophy behind the juvenile court movement which stressed that erring children should be protected and enriched rather than subjected to the harshness of the adult criminal system, the guiding principle for the humane treatment of juvenile offenders had been undermined, evolving into one relying upon the development of efficient mechanisms for the purpose of placing ever larger numbers of youths in secure, institutional custody.

The Community-Based Approach

The principal thrust of deinstitutionalization/diversion strategies to reverse the excesses of many years of overreliance upon secure, institutional placement came in a concerted, national effort to develop coherent systems of community-based alternatives for juvenile offenders at the state and local levels. Initially, emphasis was placed on so-called "lightweight" youngsters who had been charged with petty or status offenses and were thought generally to benefit most by being deflected from further involvement with the formal system. Points in processing where such alternative programs were usually placed included police contact, court intake, detention and other pre-adjudicatory locations.

Eventually, the community-based movement came to embrace youthful offenders exhibiting the entire gamut of criminal misconduct. This broadened response included those youngsters who were felt to be serious juvenile offenders. None of the programs for this difficult delinquent population, however, was initiated very early in the widespread move to develop community-based programs for youngsters either being removed from

correctional institutions or being diverted from further penetration into the system. This fact suggests that most program planners and administrators were reluctant to take on the responsibility for placing such offenders in community-based settings, may have believed it ill-advised, or succumbed to community opposition, resistance and public pressure. The decision to extend non-institutional (though not necessarily non-secure) care to youngsters who are generally viewed as the most difficult to manage and, on occasions, pose a physical threat to their communities has certainly played a role in stimulating recent efforts to crack down on the "permissive" approach to dealing with the problem of delinquency.

At this point we will turn our attention to a consideration of the characteristics of this "get tough" approach. This inquiry will include a review of the charges leveled by proponents of this approach against the rehabilitative/treatment model of justice and especially the attacks against the precepts and practices of more recently launched community-based interventions for serious juvenile offenders.

The "Get Tough" Approach

In response to the perceived failures and inadequacies of a national juvenile justice policy emphasizing diversion and deinstitutionalization, there has arisen across the country a tidal wave of so-called "get tough" proposals. These include:

(1) a variety of ways to automatically waive or transfer youths charged with certain crimes from juvenile court jurisdiction to criminal court (the criteria for transfer sometimes requiring previous felony convictions);
(2) lowering the age at which all young offenders come under the jurisdiction of criminal courts; and
(3) imposing mandatory periods of incarceration upon conviction for specific offenses (previous convictions sometimes being required).

Common to all of these measures is the sincere belief of proponents that such actions will protect law-abiding citizens and reduce the rate at which serious crimes are committed. The logical connection made is that predictable and largely inflexible consequences — if sufficiently strict and harsh — will have a major deterrent effect and thereby better protect the public. However, as we look more closely at the way in which these measures are expected to accomplish these goals, a number of critical questions arise.

The first two measures listed above — the use of automatic waiver and lowering the age of criminal court jurisdiction — are seen largely as means to insure that particular categories of offenders will face more severe and certain punishment, namely, incarceration. The use of certain and lengthy incarceration as a means to establish deterrence rests upon the premise that increasingly severe penalties will affect the perceptions of offenders about the risks entailed in the commission of future crimes. This assumes that (1) the measures will, in fact, raise the risks and (2) offenders will, to some degree, take into account the penalty associated with conviction.

It remains our belief, however, that these assumptions are rooted in highly questionable thinking. First, the relationship between the crime rate and the severity of punishment (specifically imprisonment) is far from being straightforward and is the subject of considerable debate.[11] Central to the criticisms are the arguments that (1) for more serious crimes, potential offenders are more likely to consider the possibility of apprehension and not the consequences of subsequent sanctioning, and (2) there are many instances in which little thought is given to apprehension, i.e. dire straits, impulsive behavior, diminished capacity, etc. Bowker has even argued that there is evidence the incarceration rate may, in fact, propel the crime rate.[12] The fact is no one has been able to demonstrate with any degree of certainty that deterrence is achieved by imposing harsher penalties. Given the current knowledge about human behavior in general and offender behavior in particular, one might be well advised to heed Bowker's observation that it is foolish to plunge ahead as if a sensible policy direction is clear.

Second, the nature of the relationship between crime and severity of punishment is

further complicated by the fact that sentencing represents only one aspect of a multifaceted system of justice. A number of intervening factors and processes play a critical role following the apprehension of a suspect and preceding the adjudication and disposition of the case. These considerations bear directly upon the argument that certain and swift punishment will occur in the criminal justice system. Therefore, we must consider the impact of the following: police decision about what charge to bring; role played by states' attorneys or prosecutors in determining the chargeable offenses; kind of negotiations engaged in by defense attorneys or public defenders; findings of juries; decisions of judges, magistrates or court referees; and influence of authority granted to correctional officials and parole bodies. In practical terms, incarceration is unlikely to be meted out "quickly and surely" following the commission of a crime. Moreover, there are innumerable opportunities for especially severe and inflexible penalties to be circumvented.

Consequently, it should come as no surprise that experiences with determinate sentencing and mandatory waiver for particular categories of offenders suggest that automatic penalties and theoretically immutable patterns of processing are, in fact, often accompanied by responses in other parts of the system which lessen the certainty of application and, contrary to all intentions, raise the possibility for fewer of these offenders to be subjected to the penalties.[13] Such responses may include downgrading of initial charges, later plea bargaining, fewer convictions by juries and, upon conviction, more lenient treatment at the hands of a criminal court than might be received through the juvenile court.

We would be remiss not to point out that criminal courts are already overburdened and are frequently criticized for the amount of time they consume in commencing trials and in processing cases. In addition, several inquiries on the use of discretionary transfer of juvenile offenders to criminal court indicate only a slight utilization of this option.[14] For example, Hamparian's study which examined procedures in Columbus, Ohio, concluded that the judges themselves have not been persuaded there is hope for exacting control of the chronic juvenile offender in adult courts and correctional facilities.

In addition to creating a credible deterrent effect, an equally important motive for imposing mandatory and more lengthy periods of incarceration is the provision of immediate community protection. This argument in favor of incapacitation is based on the presumed short-run benefits afforded a frightened public since the offender is theoretically securely locked away and isolated from community contact. Embedded in this argument are the beliefs that (1) community protection cannot be equally served in less onerous ways and (2) deterrence is best served by the strongest and most severe initial response, i.e. a prison sentence with no opportunity for early release. We will briefly discuss the plausibility of both of these beliefs in light of what is currently known about community protection and the value of imprisonment as a means to deter future criminal misconduct.

The assumption is that incarceration is the best way to immediately protect the public. However, the problem of escape or "running" is one endemic to most juvenile correctional systems. For example, research on the closing of the training schools in Massachusetts indicates that AWOL rates from one of the institutions and from all of the community-based programs established to replace these schools were identical.[15] This fact certainly raises the distinct possibility that the institutional system is no more able to keep an offender from getting back on the streets by escaping than is the community-based system. Furthermore, the evidence in Massachusetts suggests

> that the pattern of running is not simply dependent on the characteristics of the youth but that youths are responding, at least in part, to the characteristics of the program. Programs with poor services will experience the most runs, making it critical that considerable thought and effort be given to providing constructive experiences for youths in order to hold on to them.[16]

In short, it may well be the case that the kinds of non-institutional programs which we will later describe (1) are capable of holding on to offenders at least as well as institutional pro-

grams and (2) operate without the risks that brutal conditions will "turn a marginal inmate into a raging animal."[17]

Rooted in the concept of deterrence is also the belief that the strongest initial response will deter future criminality, i.e. recidivism is inversely related to the level of harshness and suffering experienced while incarcerated. A number of important points should be made regarding this claim. Evidence indicating that institutional control can reduce future criminal activity is entirely lacking.[18] Given this circumstance, we are compelled to question the validity of the premise that there is a deterrent impact on individuals who experience first-hand the most severe forms of punishment the state has at its command.

A frequently stated reason explaining the failures of imprisonment to stop a person's involvement in crime is that prisons are simply not capable of rehabilitation. This assertion could just as easily be restated to the effect that prisons are not notably successful in demonstrating a deterrent impact on released prisoners. The fact that this claim is not stated as a failure of prisons to *deter* future criminal misconduct conveniently allows "get tough" proponents to attribute the poor record of prisons to a failure of rehabilitation. The possibility that brutal and inhumane conditions and practices may exacerbate criminal tendencies is summarily swept aside. In short, statements that prisons do not or cannot rehabilitate are simply another way of saying these institutions do not or cannot deter crime. To the extent they are failing, it is unlikely this can truthfully be blamed on the overabundance of rehabilitative programming in prisons or training schools.

While imprisonment is theoretically one option for achieving deterrence, there are actually an endless variety of ways in which social control can be imposed on young offenders.[19] The challenge is to provide those controls in such a way that the consequences are understood as a way to hold the young offender accountable while promoting social responsibility and meaningful change. This challenge is being met in certain programs, but much remains to be done.

Considerations About the Incidence and Definition of Serious Juvenile Crime

Much of the momentum for the recent wave of "get tough" measures has come from pronouncements about the current level of serious juvenile crime, namely, that the problem has reached epidemic proportions. This argument is usually stated to indicate that not only has the incidence of such criminal activity greatly increased but also much if not most of such youthful misconduct is violent in nature. In addition, those advocating the harsher sanctioning of severely delinquent youngsters argue that youthful felons, who tend to be grouped together by "get tough" proponents for purposes of classification, deserve special considerations in processing (automatic use of waiver, widening of criteria for waiver and determinate sentencing). They point out further that youths who have committed index crimes against persons pose an acute danger to the community and require placement in secure institutional custody. These assertions do, indeed, contain some element of truth, especially with regard to the issue of potential dangerousness posed by a very small number of these offenders. Yet, much of the content of these arguments deserves to be highly qualified, even to the degree of casting serious doubts on the validity of the entire approach and its proposed means for reducing and solving the current juvenile crime problem. As part of our critical examination of the assumptions and precepts of the "get tough" school, we will explore in some detail the three key assertions stated above:

(1) Exactly who is the serious juvenile offender warranting the imposition of new, severe sanctioning measures?
(2) What is the current level of violent juvenile crime and has it been increasing at a rapid rate in recent years?
(3) Are all youngsters who have committed index crimes against persons sufficiently dangerous as to automatically require placement in secure institutional custody?

It is best to begin our inquiry into these issues by looking at the difficulties presented by attempts to define the serious juvenile offender. Proponents of the "get tough" posi-

tion have repeatedly issued blanket calls for imposing harsher sanctions on *the serious juvenile offender.* Yet, considerable confusion exists regarding who belongs in this category. Few conceptual problems in criminology have been less amenable to clear solution than the development of an acceptable operational definition of the serious juvenile offender. In this regard, we have elsewhere indicated that,

> . . . where the legal definition of seriousness is explicit, we found considerable variation across jurisdictional boundaries. This finding supports evidence increasingly reported in the literature — namely, that there is no common definition of the serious juvenile offender.[20]

Notwithstanding, it is crucial to arrive at some mutually acceptable perceptions about the parameters of the category or, at the very least, to have a shared understanding of the problems entailed in generating such a definition. This exercise must precede any attempt to develop eligibility criteria, design services or target potential clients for specific programs, whether institutional or community-based in nature.

In addressing this problem, McDermott and Joppich have suggested,

> the task of defining the "serious juvenile offender" would be simplified if by "serious *offender*" we simply meant "a juvenile offender who has committed (or is alleged to have committed) a serious *offense*." However, a review of the literature quickly reveals that the "serious juvenile offender" is not always defined as a juvenile offender who commits a serious offense; chronicity or repetitiveness of offending is often a defining characteristic of the "serious juvenile *offender*." Thus, we are concerned here with two conceptually distinct questions:
>
> (1) What is a *serious* juvenile *offense*? and
>
> (2) Who is the *serious* juvenile *offender*?[21]

By posing these two separate, yet clearly related questions, they have demonstrated the need to consider two essential dimensions of seriousness — namely, the severity of the individual criminal act and the repetitiveness or chronicity of law-violating behavior.

Any attempt to determine the severity of a particular criminal offense usually entails an evaluation of the *characteristics* (a premeditated or spontaneous act, degree of malicious intent, use of weapon, etc.) and the *consequences* (value of property damaged or stolen, extent of injury to victim) of the act. Although many researchers of serious crime exclude from their lists all crimes other than felonious acts of violence against persons (the FBI Index Crimes of murder and non-negligent homicide, robbery, aggravated assault and forcible rape), a more inclusive definition extending to major crimes against property can easily be justified. Only when the decision is arbitrarily made to restrict the definition of serious crime to those acts which physically threaten or actually harm persons is violence the key determinant. Certainly, the act of stealing, damaging or destroying valuable property can be seen as a serious matter posing a major threat to the well-being of a community. Several such property crimes (burglary, larceny and motor vehicle theft) were thought to be sufficiently serious to be included in the list of FBI Index Crimes.

Ultimately, the scaling of criminal behavior must involve some valuational scheme. In this regard, Zimring has noted,

> If the definition of juvenile criminality is largely arbitrary, the definition of serious crime invites the analyst to embark on a difficult and ultimately illusive search for an acceptable standard of severity.[22]

The possible avenues suggested by Zimring for pursuing this goal include: (1) a purely subjective approach based upon a sense of loss felt by the victim as a result of the infliction of criminal harm, (2) an objective approach depending upon the collective judgment of a particular audience to establish a seriousness scale and (3) a "value informed" selection of serious crimes which relies upon the evaluator's own judgment in determining the severity of particular offenses. Consequently, the selection of particular kinds of unlawful behavior for inclusion in the category of serious offenses can range over a variety of different criminal acts and can reflect a number of philosophical positions.

Once severity has been determined, the next step toward generating a workable definition is taken by introducing the notion of chronicity, the other key variable in this process. On the basis of previous arrests, offend-

ers are frequently classified into three groups: first offenders, recidivists (two to four contacts) and chronics (five or more contacts). By intersecting severity of offense and repetitiveness of criminal behavior, one produces a matrix of categories reflecting various combinations of these two indicators. McDermott and Joppich argue that, in theory, this procedure produces four possible offender types:

(1) offenders who commit five or more serious crimes and perhaps one or more non-serious crimes;
(2) offenders who commit less than five serious crimes and perhaps one or more non-serious crimes;
(3) offenders who commit five or more non-serious crimes and no serious crimes; and
(4) offenders who commit less than five non-serious crimes and no serious crimes.[23]

Based on this scheme, these authors conclude that type-one offenders are serious juvenile offenders, that at least some type-two offenders should be regarded as serious juvenile offenders and that some of type-three and four offenders could possibly be regarded as serious juvenile offenders. Further, they suggest in any attempt to determine which type-two, three and four offenders to label as serious juvenile offenders that the Sellin-Wolfgang seriousness scale be used. Such a scale permits *cumulative seriousness* to be the guide for any classification of offenders. A similar solution to some of the definitional dilemmas surrounding the serious juvenile offender has been suggested by Smith et al.[24]

Based upon this brief examination of some of the issues critical in developing a workable definition of the serious juvenile offender, we see that an entire range of definitions tends to emerge, reflecting a variety of circumstances, antecedents and interpretations. These variants seem to indicate the need for a wide spectrum of intervention strategies, not a single monolithic response. This situation has critical implications for the appropriateness of both the community-based and the "get tough" approaches to handling the serious juvenile offender.

> Clearly the youth who is chronically violent is viewed as a serious offender and will with rare exceptions be placed in a secure setting. At other extreme, however, is the chronic st offender who has never committed a ser crime. Obviously, somewhere between tl two extremes are to be found those youngs who have been adjudicated for one or n serious crimes against persons and/or prop and have properly established a patterr repetitive criminal activity. It is this kinc youthful offender who is labeled by the sys as seriously delinquent but, in some case placed in community-based settings.[25]

Prevalence

Next, we will explore the claim made "get tough" advocates that a sizable incre in serious crime among adolescents — es cially crimes of violence — has been occ ring over the recent past. Strasburg has no that, "between 1960 and 1975, juvenile arr for violent crimes has risen 293%."[26] T startling increase must be qualified, ho ever, by the fact that a 52 percent incre occurred in the size of the adolescent popu tion in the United States during the 196 Arrest rates per 100,000 population of ju niles-at-risk also indicate that violent cri nal activity among adolescents intensif between 1960 and 1975.[27] Nonetheless, c tion is advised in drawing conclusions abo this trend of increasing violence. Althou aggregated data from the Uniform Cri Reports (UCRs) indicate a sizable increas youth violence during the 1960s across four "Index Crimes Against Persons," t escalation has been followed in the 1970s b period of relative stability in the rates of th of these four crime categories. Only agg vated assault has continued to show la increases in the 1970s.

Equally important in any discussion serious juvenile crime is the fact that agg vated assault, along with robbery, seems to the special domain of young offenders. Bas upon their analysis of UCR data, Smith et point out that "aggravated assault and ro bery account for over 90 percent of all ju nile arrests for violent index crimes duri every year from 1964 to 1976."[28] But amo all types of violent crime, these two categor are the least informative about the degree

seriousness of the offense. For example, aggravated assault can range from spur-of-the-moment fistfights to coldly calculated shootings. Similarly, robberies can range from the unarmed extortion of lunch money in the schoolyard to armed, life-threatening encounters. The point is that within these two categories the differences between two individual crimes may be as great as the difference between violent and non-violent crime. This fact has led Zimring to label these categories as "heterogeneous" since the characteristics of such crimes may vary enormously.[29] In addition, most offenders under the age of 20 who engage in robbery are unarmed, and arrests for both robbery and assault often involve a large number of accessories as well as principal offenders.

We can draw several conclusions from these observations:

(1) *When the offense category is extremely serious and involves the crimes of homicide/non-negligent manslaughter and forcible rape, the number of youths under 18 years of age arrested for these acts is small.* In fact, the UCRs indicate no dramatic increase over any extended period of time in the number of juvenile murderers and rapists since the collecting of such data began. In addition, the probability of large numbers of youthful accessories being involved in serious crimes against persons greatly inflates these crime rates which are derived from UCR data, thereby significantly distorting the accuracy of these statistical findings.

(2) *Those youngsters who are engaging in index crimes against persons are being arrested mainly for robbery and aggravated assault, but the extent to which the commission of such acts by juveniles is inflicting major physical/psychological harm and/or is actually life-threatening is subject to wide variation.* Both of these categories can include misconduct ranging from quite serious to rather innocuous acts. Also, youngsters in the commission of these crimes are much less likely to be armed with a deadly weapon than are adult offenders.

Consequently, claims being made by certain hard-line factions within the juvenile justice community about the epidemic level of violent crime being perpetrated by juveniles are exaggerated. In addition, the interpretation of the nature of such criminal behavior is in many cases misleading.

A careful analysis of available data seems to suggest that the greatest threat posed by adolescent offenders is not in terms of the extent to which they are engaged in "Index Crimes Against Persons," but rather the extent to which they are engaged in "Index Crimes Against Property." In contrast to violent crimes, where young adults (18 to 25 years of age) have consistently shown a greater involvement than have either juveniles (under 18 years of age) or older adults (25 years of age and older), serious property crimes are committed in greatest numbers by juvenile offenders.[30] Strasburg cites 1975 UCR data, showing that among all juveniles arrested for Index Crimes that year, 90 percent were arrested for index offenses against property and only 10 percent for index offenses against persons.[31] Supporting this position are the findings of Smith et al., which show that following the rapid increase in arrests of juvenile offenders for violent crimes during the 1960s, the proportion of serious property to violent crime arrests stabilized at about a nine-to-one ratio.[32]

By stressing the disproportionate extent to which youngsters are engaged in serious crimes against property (burglary, larceny and auto theft), we are not trying to negate the significance of those violent crimes committed by juveniles. But we do feel that in trying to develop consistent policies which represent rational responses to the scope and characteristics of serious youthful misconduct, crimes against property — given the scale of their occurrence — should command more of our total attention and may entail different considerations in devising intervention strategies to serious youth crime. Is automatic incapacitation the most promising approach to dealing with adolescent burglars and car thieves? To what extent are these kinds of offenders posing an immediate threat to their communities, requiring the drastic

and expensive step of utilizing secure institutional custody? In framing their responses to youth crime, officials need to conduct a thoughtful assessment of such questions.

Dangerousness

Finally, we will turn our attention to the question of the degree of dangerousness posed by the serious juvenile offender. Although this matter is an issue of some importance in responding to the chronic property offender, the stakes become much higher with the violent offender since decisions made about processing this group can easily have serious, even fatal consequences for potential victims. The potential threat to the community posed by these offenders lies at the heart of most procedural changes favored by "get tough" proponents and requires careful review.

If one is trying to determine a sense of the level of potential harm the serious offender poses for his community, two interrelated issues must be addressed: *dangerousness* and *prediction of future behavior.* Among assaultive youths is a small group who will occupy a spot at the most violent end of any continuum of aggressive behavior. In referring to these individuals as "life-style violent juveniles," Vachss suggests

> This youth exhibits a criminological, social, and economic life-style indelibly marked by chronicity of often-escalating violence. A single episode of violence will not suffice to bring a juvenile within the gamut of this classification. Our population is characterized by a distortion of societal values, a commitment to immediate gratification, and a (continually reinforced) alienation from societal structures and institutions.[33]

These offenders have been repeatedly arrested and adjudicated for assaultive acts against persons and can be appropriately labeled as chronically violent juvenile offenders. They are, indeed, dangerous, pose enormous threats to their communities and require placement in secure facilities. It is these youngsters who are responsible, in large part, for stimulating the recent national trend for imposing tighter controls and more severe sanctions on juvenile offenders. As suggested, however, the number of juveniles who are chronically violent is extremely small. short, while most researchers believe strong that this small group of dangerous adolesce offenders should be responded to in a fi fashion, there is meager evidence to suppo the call to radically restructure waiver mec anisms, lower the maximum age for juven court jurisdiction or impose mandato incarceration for entire categories of offens

The reported infrequency of chronic v lent behavior among youngsters raises t critical point as to the number of acts of v lence necessary for labeling an individu dangerous. Armstrong and Altschuler ha observed,

> There must be some convincing indicat that a pattern of violent behavior has alrea been established or will over time beco established. As Mann suggests, a single in dence of violent behavior on the part of a ju nile offender hardly qualifies that individua a dangerous offender. The vast majority juveniles who are arrested for a violent never commit another "Index Crime Agai Persons." Two important sets of research fi ings support this assertion. In a Vera Instit study cited by Strasburg, 29 percent of a sam of delinquent youngsters from three counties New York State had been charged at least o with a serious violent crime. However, the p portion of offenders charged with serious v lence on more than one occasion was mu smaller, amounting only to six percent of total sample. These figures parallel the earl findings of Wolfgang and his colleagues in th classic Philadelphia cohort study. Conseque ly, great caution must be exercised in trying predict future violent behavior based upon c prior act. In fact, although the mathemati odds favoring future violent behavior incre with subsequent violent crimes, even in th cases prediction is a risky matter. Wenk et assert that when using the very best predictor future violence — a record of past viol behavior — predictions of violence are s incorrect in 19 of 20 cases.[34]

These observations suggest that a decisi to automatically incapacitate a youth w has committed an "Index Crime Against P sons" is a risky step to take if predicated up a prediction of future aggressive behavi unless a substantial history of such acts on i part already exists. Of course, the severity the individual act may serve as a basis f

making the decision, but in the case of the heterogeneous categories of robbery and aggravated assault the decision should include considerations other than simply relying upon the labeled category of the offense. To assume a perspective advocated by many proponents of "get tough" measures — that the commission of any of the four "Index Crimes Against Persons" should qualify the youth as a public menace and should constitute sufficient grounds for initiating steps leading to secure institutional custody — is a fundamental misreading of the behavioral profiles of many adolescent offenders.

These findings regarding the issues of definitional ambiguity, frequency and severity of serious juvenile crime suggests that less drastic responses may be possible in many cases. The most promising direction, in our view, lies in a range of community-based interventions for certain kinds of severely delinquent youngsters.

Research on Community-Based Programs for Serious Juvenile Offenders

In spite of the recent surge of legislative efforts to redefine large numbers of youthful offenders as suitable for prosecution in criminal courts, a number of states are still strongly committed to the principles of rehabilitation and reintegration of severely delinquent youngsters within the confines of the juvenile justice system. This stance represents a belief that adolescence can be a troublesome stage in the maturational process, characterized by a multitude of special problems and needs. When this perception of juvenile misconduct is embraced, delinquent youth are viewed generally as young people who have committed crimes rather than as criminals who happen to be juveniles. Programmatically, this translates frequently into the use of non-institutional, community-based settings which emphasize the rational and reasoned use of various levels of control and supervision.

In a recently completed study, we describe and analyze the overall organizing framework and intervention strategies of 11 programs across the country designed to serve serious juvenile offenders.[35] We can characterize these programs generally as trying to provide more humane care while maximizing reintegrative potential and minimizing present and future involvement in illicit forms of social behavior and conduct. An equally important feature of these programs is the gradual phasing and transition to open community living.

The research we undertook was based upon the desire to locate programs providing services to serious juvenile offenders in community-based settings; determine how these programs originated and developed; discern the principles, philosophy and reasons underlying program practices and operation; and discover what kinds of clients were being admitted. We did not carry out an evaluative or summative study of the programs.

We began our search for programs with the assumption that both residential and non-residential programs would be working with this difficult population. This notion was, in fact, confirmed by the research. We also found support for the findings of earlier research which indicated a paucity of programs exclusively serving juveniles convicted of violent crimes against persons. We chose programs exemplifying a wide range of treatment and clinical techniques, staff compositions, lengths of stay, etc. In addition, we decided to exclude programs not engaged in direct service provision as distinct from service brokerage and case management in order to obtain a purposive sample consisting of primary service providers.

Between May and November of 1980, our research team traveled more than 16,000 miles across the country visiting a fascinating array of programs. Among the residential programs, the number of clients ranged from four to 40; the average age extended from 13.8 to 16.3 years; staff size varied from two to 18; and direct supervision was maintained over clients from 3.7 to 18 months. The per diem costs in the five residential programs ranged from a low of $23 to a high of $80. Among the non-residential programs, the number of clients ranged from 11 to 31; the average age extended from 14.1 to 16.3 years; staff size varied from five to 27; and direct supervision was maintained over clients from

4.8 to 12 months. The per diem costs in the six non-residential programs ranged from a low of $7 to a high of $43.

The scope of this article does not permit a detailed discussion of individual programs or specific comparisons across selected programs. Instead, we will concentrate on several observations concerning the ability of the programs to serve serious offenders in ways which (1) assure public safety and (2) provide a reasonably sound basis for assuming the programs can succeed in deterring future criminal misconduct.

Contrary to popular belief, we have found that community-based programs are able to exert quite high levels of control and supervision, and are capable of transmitting to their clients a very clear sense that serious consequences follow from both criminal transgressions and continued inappropriate social behavior. There are, however, two related factors which have contributed to the widespread perception that providing security and asserting control are not part of, or cannot result from, community-based intervention strategies.

One factor contributing to this perception is that some helping professions have in the past frowned upon the use of control.[36] This position has fueled the false notion that a fundamental incompatibility exists between control and treatment.[37] In reality, however, developing social and personal controls are very much part of what occurs in well-developed, community-based alternative programs. These controls are part of the repertoire of social skills which are imparted during the normal maturational process for most youngsters. For this difficult population, however, a greater opportunity may exist for the transmission of such skills in community-based settings than in institutional facilities.

The second factor is that proponents of "get tough" responses are quick to assume that community-based programs are too lax and consequently are unable inherently to act as a deterrent. Once again, this notion of laxity was not generally borne out in our research. We found that the degree of laxity or strictness varied both within and between programs, and was a function of the appar need for more constant and close surveilla of particular offenders and the rate of e young person's progress within the progra

Programs which contained youngst who, for various reasons, were presumed need much closer or even constant super sion, did provide higher degrees of surv lance. This goal was achieved, however, distinctly different ways depending upon overall organizing framework of the p gram. For example, it was accomplish through staff who were numerous enough work closely and intensely with the you sters and through programming which k the clients focused and busy during th hours of participation. It was also acco plished through intensive community tra ing which incorporated unannounced s checks, frequent and regular telephone c tacts, mandatory meetings, advanced sch uling of all activities and the availability residential backup for brief stays.

". . . the rehabilitative ideal as or inally embodied in the juvenile co movement should not be arbitrar discarded but rather should strengthened by linking it closely the principles of consequences, in vidual accountability and soci responsibility."

Obviously, a great deal of thought a energy went into developing the vari approaches and techniques used in the p grams. Programs requiring a greater deg of security were capable of providing it wi out losing sight of the equally important go related to the acquisition of responsibili accountability and social control. A numb of the programs, for example, made use differential reinforcement — sometim achieved through the mechanism of cont gency contracting — to exert contr Increased mobility, autonomy and respon bility were used as privileges which had to earned. In this way, limit setting and co structive reactions to stress were reinforce Sanctions for rule infractions and misbeha

ior included reprimand and individualized talk sessions, written exercises, work hours, curfews, mobility restrictions, loss of home visits, reduction in allowable activities, brief room confinement, group encounters, peer pressure, monetary restitution or reduction in allowance, stigmatizing garb, physical restraint in countering aggression or violent outbursts, reports to probation/youth authority/courts and program termination which was usually followed by return to the referral source for additional action. Given that progression in some of the programs was specifically tied to how youngsters *handled and reacted to* newly acquired privileges, variation in terms of degree of freedom of movement and level of earned responsibility was found to be operating within a single program.

The point must be made that certain community-based programs will, indeed, be more secure than others, some being rather secure at the beginning for all new clients and others being highly secure for clients throughout their participation. The manner and methods used to establish security are the principal determinants for providing the vital distinction between an impersonal, isolating and potentially alienating approach and one which insures a careful monitoring of the offender while minimizing maladaptive responses to prolonged isolation.

Much confusion surrounds the identification of concrete indicators of community-basedness in programming for youthful offenders. The critical ingredient in causing a program to be truly community-based is whether efforts are being made or actions being taken to involve community support systems and offenders' social networks in three distinct ways: (1) as recipients of service, (2) as providers of service and (3) for socially integrative purposes, e.g. visiting friends and family and having "normalized" contact with non-program clients and staff. It is the frequency, duration and nature of such contacts which provide the basis for determining community-basedness.[38] Once it is recognized that pre- and post-program experiences in the community are more likely to affect long-term outcomes than program experiences, it is a logical step to stress the need to link clients up in some meaningful way with the forces in the community.[39]

> To the extent that a youngster's experiences with a program in no way reflect or resemble life in the postprogram community to which he or she will return, the program is virtually admitting defeat even before the youngster has had an opportunity to prove him or herself.[40]

Care must also be taken to recognize that there is an important difference between community-based characteristics as defined and social climate within a program. Community-based linkages in the absence of humane and decent treatment within a program are unlikely to lead to the resolution of behavioral, cognitive or emotional problems and vice versa. Therefore, it is essential that small, community-based programs be subject to regular scrutiny. With the proliferation in the last several years of private, non-profit enterprises, the need for quality control and monitoring systems becomes all the more critical.

Conclusions

In conclusion, two clearly distinct and opposing schools of thought for responding to serious juvenile crime have emerged over the past few years. The community-based approach arose as part of more broadly based reform efforts to overcome the shortcomings and failures of the rehabilitative/treatment model as practiced by the traditional juvenile court movement. These changes represented a refinement of the rehabilitative ideal, stressing the advantages of community linkages, individual accountability, responsibility and social control. The "get tough" approach was, in part, also a reaction to the excesses and failures of the traditional juvenile court movement, but additionally represented an attack on the supposed overpermissiveness of the subsequent reform measures of which community-based programming was a critical element. This approach borrowed heavily from the control/punishment model of justice which has long operated in the adult system. As an overall strategy, these efforts represented a commitment to the theoretical precepts of retribution, incapacitation and

deterrence. At the cutting edge of these endeavors are an expansion of the statutory definitions qualifying youthful offenders for waiver/transfer to criminal court and the introduction of determinant sentencing procedures for sanctioning juveniles in the justice system.

In this paper our analysis of many of the assumptions and precepts of the "get tough" approach seems to suggest a number of distortions, basic fallacies and oversimplifications. These problems suggest a need to move away from a purely punishment/control model toward a more effectively rehabilitative model, one informed, however, by a concern for control and supervision in the process of facilitating rehabilitation. In examining the strategies and organizing frameworks of the community-based approach to handling certain serious juvenile offenders, we have identified approaches which offer what we believe to be a more rational response to the special problems of this difficult population; one which incorporates enlightened social control, graduated consequences, supportive intervention and meaningful preparation for reintegration. Finally, we would note that important insights about the problems posed by the serious juvenile offender can be found in both the community-based and the "get tough" approaches, and caution is urged for avoiding the tendency to totally disregard the warnings of either of these schools of thought. Neither punishment eschewing decency nor rehabilitation lacking reasoned control will lead to a useful solution to this difficult and complex problem.

Authors' addresses:
Troy L. Armstrong
1836 W. Grace
Chicago, IL 60613

David M. Altschuler
4307 N. Wolcott
Chicago, IL 60613

Troy L. Armstrong, Ph.D.: Project Director, National Juvenile Restitution Project: Dissemination and Reassessment of the Federal Initiative. David M. Altschuler, Doctoral Candidate: The School of Social Service Administration, The University of Chicago, Chicago, Ill.

An earlier version of this article was presented St. Louis, Mo., at the 1981 Annual Meeting of th Midwestern Association of Criminal Justice Educ tors. Funding for the research was provided to th National Center for the Assessment of Alternativ to Juvenile Justice Processing under Grant N 79-JN-AX-0018 (S-1) by the National Institute Juvenile Justice and Delinquency Prevention, U. Department of Justice, and to David Altschul under Graduate Research Fellowship Grant No. 7 NI-AX-0010 from the National Institute of Justic We would like to thank David Reed for his commen on a previous draft.

Notes

[1]Troy L. Armstrong and David M. Altschule *Community-Based Program Interventions fo Serious Juvenile Offenders: Targeting, Strategie and Issues* (Chicago: National Center for the Asses ment of Alternatives to Juvenile Justice Processin School of Social Service Administration, The Un versity of Chiago, 1982).

[2]Anthony M. Platt, *The Child Savers: The Inver tion of Delinquency* (Chicago: University of Chicag Press, 1969).

David Rothman, *The Discovery of the Asylum Social Order and Disorder in the New Republic* (Bos ton: Little, Brown and Co., 1971).

Steven L. Schlossman, *Love and the America Delinquent* (Chicago: University of Chicago Pres 1977).

[3]Ruth Caven, *Juvenile Delinquency: Develop ment, Treatment and Control* (New York: Thoma Crowell, 1962), p. 411.

[4]Platt, *Child Savers*, p. 46.

[5]Troy L. Armstrong, "Organizational Response t Planned Change: The Political Economy of Juveni Justice Reform in Illinois, 1969-1975" (Ph.D. disse tation, Boston University, 1980).

[6]Francis A. Allen, *The Borderland of Crimina Justice* (Chicago: University of Chicago Press, 1964 p. 26.

[7]John Blackmore, "Community Corrections *Corrections Magazine* (1980): 8.

[8]U.S. President's Commission on Law Enforce ment and the Administration of Justice, *The Cha lenge of Crime in a Free Society* (Washington, D.C Government Printing Office, 1967), p. 80.

[9]LaMar T. Empey, *American Delinquency: I Meaning and Construction* (Homewood, Ill.: Th Dorsey Press, 1978).

[10]Malcolm W. Klein, "Deinstitutionalization an Diversion of Juvenile Offenders: A Litany of Impe iments," in *Crime and Justice: An Annual Review Research*, Vol. 1, ed. Norval Morris and Micha Tonry (Chicago: University of Chicago Press, 1979 p. 145.

[11]Johannes Andenaes, "General Prevention Revi ited: Research and Policy Implication," *Journal Criminal Law and Criminology* September (1975 338-368.

David Biles, "Crime and the Use of Prison," *Federal Probation* June (1979): 39-43.

Lee H. Bowker, "Crime and the Use of Prisons in the United States: A Time Series Analysis," *Crime and Delinquency* April (1981): 206-212.

Philip J. Cook, "Research in Criminal Deterrence: Laying the Groundwork for the Second Decade," in *Crime and Justice: An Annual Review of Research*, Vol. 2, ed. Norval Morris and Michael Tonry (Chicago: University of Chicago Press, 1980), pp. 211-288.

Barry C. Feld, "Legislative Policies Toward the Serious Juvenile Offender: On the Virtues of Automatic Adulthood," *Crime and Delinquency* October (1981): 497-521.

Andrew von Hirsch and Kathleen Hanrahan, "Determinant Penalty Systems in America: An Overview," *Crime and Delinquency* July (1981): 289-316.

Herbert Jacobs, "Rationality and Criminality," *Social Sciences Quarterly* 59 (1979): 584-585.

Jack H. Nagel, "Crime and Incarceration: A Reanalysis," *Fels Discussion Paper No. 112* (Philadelphia: School of Public and Urban Policy, University of Pennsylvania, 1977).

William G. Nagel, "On Behalf of a Moratorium of Prison Construction," *Crime and Delinquency* April (1977): 154-172.

Daniel Nagin, "General Deterrence: A Review of the Empirical Evidence," in *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*, ed. A. Blumstein, J. Cohen, and D. Nagin (Washington, D.C.: National Academy of Sciences, 1978).

Franklin E. Zimring, *Perspectives on Deterrence* (Washington, D.C.: Center for Studies of Crime and Delinquency, 1971).

[12]Bowker, "Crime and the Use of Prisons."

[13]Hirsch and Hanrahan, "Determinant Penalty Systems."

Charles Shireman, "Point of View: When is a Youth a Criminal?" *Chicago Tribune* July 7 (1981).

Donna M. Hamprian et al., *The Violent Few: A Study of Dangerous Juvenile Offende* (Lexington, Mass.: Lexington Books, 1978).

[14]Richard M. Daley, "Punishing Vio t Juvenile Criminals," *Chicago Tribune* Aug. 18 (1 1).

Hamparian et al., *Violent Few*.

[15]Robert B. Coates, Aldin D. Miller, and Lloyd E. Ohlin, *Diversity in a Youth Correctional System: Handling Delinquents in Massachusetts* (Cambridge, Mass.: Ballinger Publishing Co., 1978).

[16]Ibid., p. 106.

[17]"Editorial: The Case for Decent Prisons," *Chicago Tribune* Aug. 18 (1981).

[18]American Bar Association, *ABA Task Force on Crime* (Washington, D.C.: American Bar Association, 1981).

Hamparian et al., *Violent Few*.

Marvin E. Wolfgang, Robert M. Figlio, and Thorsten Sellin, *Delinquency in a Birth Cohort* (Chicago: University of Chicago Press, 1972).

[19]Charles H. Whitebread and Robert Batey, "The Role of Waiver in the Juvenile Court: Questions of Philosophy and Function," in *Major Issues in Juvenile Justice Information and Training: Readings in Public Policy*, ed. John C. Hall et al. (Columbus, Ohio: Academy for Contemporary Problems, 1981).

Armstrong and Altschuler, *Community-Based Program Interventions*.

[20]David M. Altschuler and Troy L. Armstrong, "Community Based Programs for Serious Juvenile Offenders," *Change: A Juvenile Justice Quarterly* 5, no. 1 (1981): 5.

[21]M. Joan McDermott and Gisela Joppich, *The Serious Juvenile Offender* (Hackensack: National Council on Crime and Delinquency, National Assessment Center for Integrated Data Analysis, 1980), p. 2.

[22]Franklin E. Zimring, "Background Paper," in *Confronting Youth Crime, Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders* (New York: Holmes and Meier, 1978), p. 16.

[23]McDermott and Joppich, *Serious Juvenile Offender*, p. 10.

[24]Charles P. Smith et al., *A National Assessment of Serious Juvenile Crime and the Juvenile Justice System: The Need for a Rational Response*, Vol. II (Sacramento: National Juvenile Justice System Assessment Center, 1979).

[25]Altschuler and Armstrong, "Community-Based Programs," p. 5.

[26]Paul A. Strasburg, *Violent Delinquents: A Report to the Ford Foundation from the Vera Institute of Justice* (New York: Monarch, 1978), p. 13.

[27]Armstrong and Altschuler, *Community-Based Program Interventions*, p. 18.

[28]Smith et al., *National Assessment of Serious Juvenile Crime*, p. 97.

[29]Franklin E. Zimring, "American Youth Violence: Issues and Trends," in *Crime and Justice: An Annual Review of Research*, Vol. 1, ed. Norval Morris and Michael Tonry (Chicago: University of Chicago Press, 1979), p. 81.

[30]Armstrong and Altschuler, *Community-Based Program Interventions*, p. 21.

[31]Strasburg, *A Report to the Ford Foundation*.

[32]Smith et al., *National Assessment of Serious Juvenile Crime*, p. 91.

[33]Andrew H. Vachss, "The Life-Style Violent Juvenile," *Change: A Juvenile Justice Quarterly* 5, no. 1 (1981): 11.

[34]Armstrong and Altschuler, *Community-Based Program Interventions*, p. 11.

Dale Mann, *Intervening with Convicted Serious Juvenile Offenders* (Washington, D.C.: National Institute for Juvenile Justice and Delinquency Prevention, 1976).

Strasburg, *A Report to the Ford Foundation*.

Wolfgang, Figlio, and Sellin, *Birth Cohort*.

Ernst Wenk, Robert L. Emrich, and James O. Robison, *Assaultive Youth: An Exploratory Study*

of the Assaultive Exper nce and Assaultive Potential of California Youth Authority Wards (Davis, Calif.: National Council on Crime and Delinquency Research Center, 1972).

[35]Armstrong and Altschuler, *Community-Based Program Interventions.*

[36]Irving Weisman and Jacob Chwast, "Control and Values in Social Work Treatment," *Social Casework* November (1960): 451-456.

[37]Vicki Agee, *Treatment of the Violent Incorrigible Adolescent* (Lexington, Mass.: D.C. Heath and Co., 1979).

[38]Coates, Miller, and Ohlin, *Diversity in a Yo Correctional System.*

[39]Ibid.

James Whittaker, *Caring for Troubled Child Residential Treatment in a Community Con* (San Francisco: Jossey-Bass Publishers, 1979).

[40]David M. Altschuler and Robert B. Coates, Conceptualization of Community-Based Services Juvenile Offenders — Some Practical Implicatio photocopied (1981).

prepared by Office of Justice Assistance, Dept Law

AGE, SEX AND RACE OF PERSONS ARRESTED
UNDER 18 YEARS OF AGE
STATEWIDE
1981

			10 and UNDER	11-12	13-14	15	16	17	TOTAL UNDER 18	WHITE	BLACK	NATIVE	OTHER
MURDER / NONNEG MANSL.	01A	M	0	0	1	0	0	1	2				
		F	0	0	0	0	0	0	0	2	0	0	0
MANSLAUGHTER BY NEGLIGENCE	01B	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
FORCIBLE RAPE	02	M	0	0	2	2	3	1	8				
		F	0	0	0	0	0	0	0	2	1	3	2
ROBBERY	03	M	0	0	3	1	9	7	20				
		F	0	0	0	3	0	0	3	9	7	5	2
AGGRAVATED ASSAULT	04	M	2	8	5	9	10	18	51				
		F	0	0	1	3	0	4	8	40	0	12	7
BURGLARY	05	M	33	39	130	88	101	107	498				
		F	1	8	8	1	5	1	24	369	34	37	82
LARCENY / THEFT	06	M	181	218	300	188	199	199	1275				
		F	53	78	146	62	73	62	474	1279	148	236	86
MOTOR VEHICLE THEFT	07	M	4	12	45	38	38	38	175				
		F	1	1	5	3	4	3	17	121	5	25	41
OTHER ASSAULTS	08	M	3	5	16	12	28	29	93				
		F	0	3	13	10	9	9	44	67	7	36	27
ARSON	09	M	3	4	9	2	2	2	22				
		F	1	0	0	0	0	0	1	13	0	3	7
FORGERY & COUNTERFEITING	10	M	0	1	4	0	2	6	13				
		F	0	0	1	1	3	1	6	14	1	1	3
FRAUD	11	M	1	0	2	5	3	6	17				
		F	0	0	3	1	3	8	15	27	2	2	1
EMBEZZLEMENT	12	M	0	0	0	0	4	6	10				
		F	0	0	0	0	3	6	9	16	3	0	0
STOLEN PROPERTY	13	M	0	1	2	1	2	1	7				
		F	0	0	0	0	2	0	2	7	0	2	0
VANDALISM	14	M	66	38	47	36	36	45	268				
		F	7	2	3	3	3	12	30	205	8	38	47
WEAPONS	15	M	4	2	9	12	9	13	49				
		F	0	0	2	1	0	2	5	35	2	13	4
PROSTITUTION & COMM VICE	16	M	0	0	1	0	0	0	1				
		F	0	0	0	0	3	1	4	4	0	1	0
SEX OFFENSES	17	M	0	1	7	5	10	3	26				
		F	0	0	0	0	0	6	6	25	0	1	6
SALE - OPIUM,COCAINE,ETC.	18a	M	0	0	1	0	0	1	2				
		F	0	0	0	0	2	0	2	3	0	0	1
SALE - MARIJUANA	18b	M	0	1	2	1	4	0	8				
		F	0	0	1	1	0	1	3	8	0	1	2
SALE - SYNTHETIC DRUGS	18c	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
SALE - OTHER NON-NARCOTIC	18d	M	0	0	1	5	0	2	8				
		F	0	0	1	0	0	0	1	5	1	2	1
POSS - OPIUM,COCAINE,ETC.	18e	M	0	0	1	0	2	5	8				
		F	0	0	2	0	1	0	3	9	0	1	1
POSS - MARIJUANA	18f	M	1	4	50	40	73	67	235				
		F	1	1	22	20	15	8	67	260	10	26	6
POSS - SYNTHETIC DRUGS	18g	M	0	1	5	0	1	0	7				
		F	0	0	4	0	0	0	4	11	0	0	0
POSS - OTHER NON-NARCOTIC	18h	M	0	0	0	2	0	1	3				
		F	0	0	1	0	0	0	1	3	0	0	1
GAMBLING	19	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
OFFENSES AGAINST FAMILY	20	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
DRIVING UNDER THE INFLUENCE	21	M	2	0	1	3	18	61	85				
		F	0	0	1	0	3	8	12	73	0	15	9
LIQUOR LAWS	22	M	2	8	40	113	289	421	873				
		F	0	5	99	111	132	189	536	666	2	344	397
DRUNKENNESS	23	M	1	1	0	0	1	2	5				
		F	0	0	2	3	1	3	9	5	1	8	0
DISORDERLY CONDUCT	24	M	0	0	9	11	15	31	66				
		F	0	0	6	7	3	16	32	58	2	30	8
VAGRANCY	25	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
ALL OTHER OFFENSES	26	M	8	15	41	37	74	81	256				
		F	5	8	27	15	19	21	95	261	11	44	35
SUSPICION	27	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
CURFEW	28	M	6	9	67	01	83	63	309				
		F	5	6	58	65	32	32	198	285	5	92	125
RUNAWAY	29	M	4	5	22	7	13	6	57				
		F	2	7	30	12	7	2	60	82	1	22	12
TOTALS			397	492	1259	1020	1352	1608	6128	3964	251	1000	913

SB 264 Rec 5-28-85

Juvenile & Family Court
JOURNAL

Special Issue — Summer 1984

juvenile waiver - p. 13
nothing on fingerprinting juveniles

The Juvenile Court and Serious Offenders

38 Recommendations

The National Council of Juvenile and Family Court Judges

PREAMBLE

The National Council of Juvenile and Family Court Judges reaffirms its longstanding position that the work of the juvenile and family court is of vital importance to American society.

The daily responsibilities of the court in protecting society, intervening in family disputes, rehabilitating youth and setting an example in the community require that the stature of the court be enhanced among the judiciary and the public by the provision of adequate resources and mechanisms which support the immense responsibility of juvenile court personnel and the juvenile justice system.

While youth must be held accountable for their behavior, proposals which would materially and adversely alter traditional individualized rehabilitative models and treatment philosophies of the juvenile justice system are unacceptable. Juvenile justice resources should accordingly primarily continue to be directed toward individualized treatment.

Juvenile and family court judges must act as leaders, advocates and catalysts in the planning, development, maintenance and allocation of juvenile court and juvenile justice system resources. The judge must actively seek opportunities to explain the goals, plans and problems of the juvenile and family courts through the media, court-citizen committees and civic groups and should strive to generate the involvement and support of the private sector in the work of the court.

National Council of Juvenile and Family Court Judges
Office of Planning and Development
University of Nevada
P.O. Box 8970
Reno, Nevada 8970
(702) 784-6012

This document was prepared under grant number 79-JN-AX-0016 from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Points of view or opinions in this document are those of the author and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

UNIVERSITY OF NEVADA
P.O. BOX 8978
RENO, NEV. 89507
(702) 784-6012

ORGANIZED MAY 22, 1937

LOUIS W. McHARDY / Executive Director

Dear Judge, Legislator or Civic Leader,

Endorsed by a great majority of the nation's juvenile and family court judges, the 38 recommendations in this report, if heeded, can go far toward ameliorating problems of serious juvenile crime in every state.

Will you and your staff please review this material and decide if it can be helpful in the reassessment of your laws, jurisdictional procedures and practices relating to the control and treatment of serious juvenile offenders.

For further information, technical assistance in implementing these recommendations or to obtain speakers please contact:

Planning and Development Office
National Council of Juvenile and Family Court Judges
P.O. Box 8970
University of Nevada-Reno
Reno, Nevada 89507

(702) 784-6686

Hon. John P. Steketee
President, 1984-1985

FOREWORD

Introduction

In recent years, America's juvenile courts — their personnel, their practices, their philosophies — have been the target of criticism from academicians, researchers, lawyers, legislators, elected officials and other well-intentioned people. Unfortunately and ironically, very little effort has ever been made to draw upon the experience, expertise and opinions of those most primarily involved — the nation's judges who exercise juvenile justice jurisdiction.

Serious Juvenile Offender

Among the most hotly debated and volatile issues addressed within the criticism leveled at the juvenile and family courts in recent years has been the handling and treatment of the most serious juvenile offenders. Again, ironically, the juvenile court seems to have received about equal measures of complaint from those who believe that this variety of juvenile offender is being treated too leniently or not at all; and from those who believe that the courts impose unreasonably harsh and unjustifiable sanctions upon such youth.

What is often overlooked is the fact that only about 5% of juvenile delinquency adjudication in this country involves what has been labeled the "serious violent offender," those charged with the most serious personal crimes, and those about whom the public justifiably is most concerned.

Challenging Issues

Nevertheless, this small percentage of our delinquent youth presents the juvenile court and the public with a number of complex and challenging issues to examine and, hopefully, resolve in a way that both recognizes the need to protect the public and yet does not lose sight of the individualized treatment and rehabilitation goals and principles which are the essence of the juvenile justice system.

The issues involved are weighty and not easily answered. They involve literally, the very future of our society and its willingness to provide the appropriate authority and resources to assure that the nation's courts can effectively deal with the serious juvenile offender.

Recommendations

The recommendations which follow run the gamut of some of the most controversial and significant issues facing the court and the public today — issues such as whether and, if so, when to protect the confidentiality of the juvenile and his family; whether to transfer a juvenile offender to adult court for trial and punishment; whether effective treatment and rehabilitation of certain offenders is even possible; and what constitutes effective treatment for the serious offender.

Metropolitan Court Judges

These recommendations are the work product of judges from throughout the country. More specifically, they are the product of an effort initiated and carried out by the National Council of Juvenile and Family Court Judges' Metropolitan Court Judges Committee, which consists of over 30 of the Presiding Judges of the nation's largest cities and court systems.

The National Council's research arm, the National Center for Juvenile Justice, has calculated that over half of all the serious juvenile crime in the nation occurs within the jurisdiction of these metropolitan courts.

As Presiding Judges of the courts exercising juvenile justice jurisdiction within these large jurisdictions, the Metropolitan Court Judges Committee members are particularly qualified to speak out on the issues and they, with the assistance of nationally recognized consultants, critic advisors and Council staff, whose names are listed in the back of this document, have done the National Council and the public a service by offering their viewpoints as practicing judges on the many important issues involving the serious juvenile offender.

Proactive Stance

Judges are often, and not always without reason, criticized for being "reactive" to the comments of others on public policy issues involving their areas of responsibility. I think the reader will find that, regarding the positions and policies recommended in this document, our judges have demonstrated a thoroughly "proactive" stance.

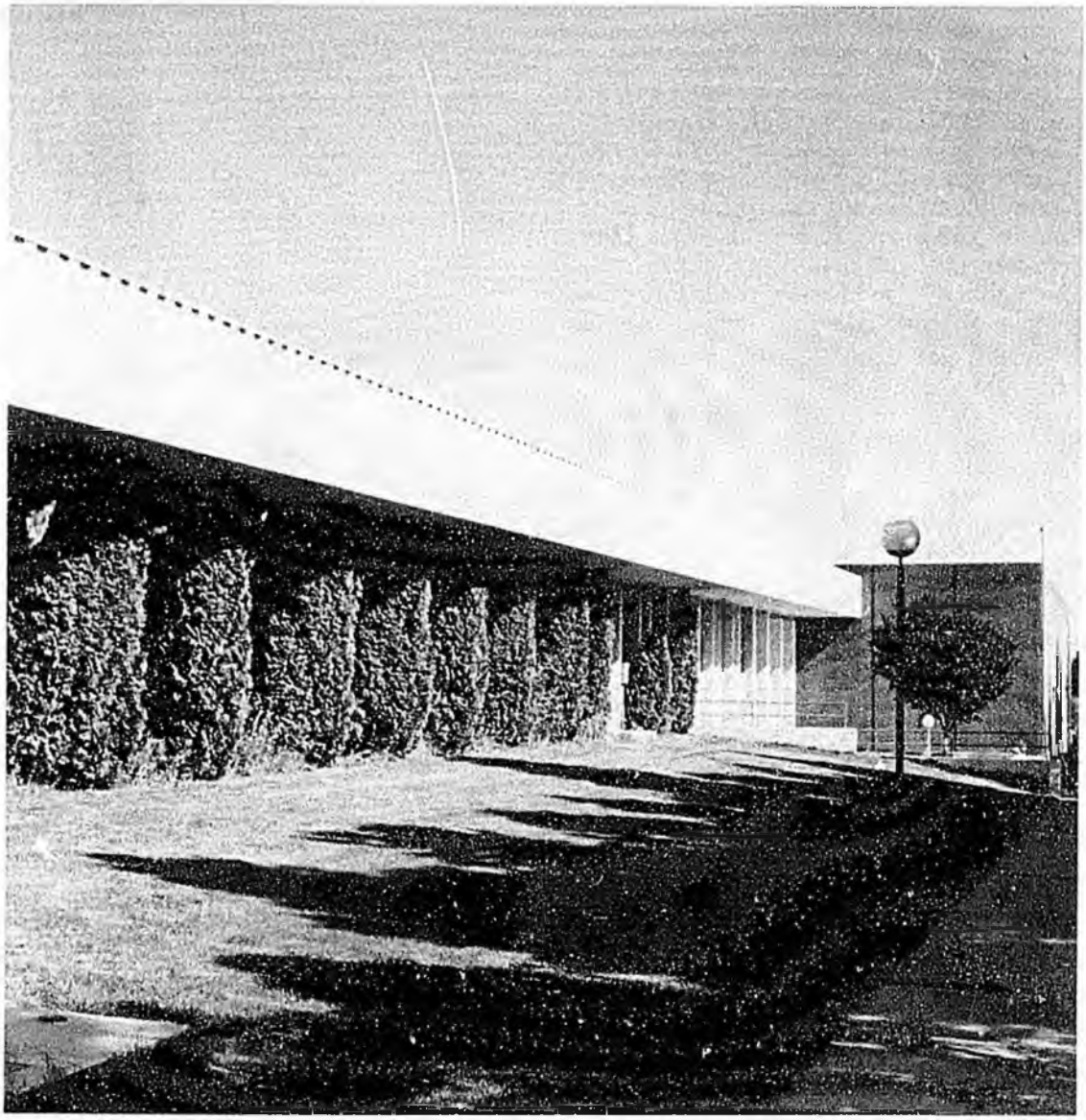
The National Council owes much to the quiet and effective leadership of the Metropolitan Court Judges Committee Chairman, Judge Nicholas A. Cipriani of Philadelphia, who toiled with the other committee members throughout a series of intense debates over the past year. The initial policy recommendations were based on extensive issue papers prepared by consultants retained under funds provided for this project by

the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Two three-day sessions were held late in 1983 to thoroughly debate the papers, the issues and the recommendations. More than 25 presiding metropolitan judges, assisted by consultants, critic advisors and staff, contributed to over 1500 pages of issue papers, commentary and discussion transcripts, from which this document has been distilled and developed.

Following these sessions, the initial recommendations from the committee were reviewed, debated and amended by the National Council's Board of Trustees at the Mid-Winter Board Meeting in January, 1984, in Savannah, Georgia and received the Board's approval, subject to approval by the membership of the National Council.

Such approval, following debate, was unanimously given at the 47th Annual Conference, July 12, 1984, in Colorado Springs. Thus, this document reflects official policy of the National Council.

Hon. B. Thomas Leahy
President, 1983-84
August, 1984



Judicial College Building, Headquarters for the National Council of Juvenile & Family Court Judges University of Nevada, Reno.

Recommendations

I Disposition Policies

1. Serious Juvenile Offenders Should Be Held Accountable By the Courts
2. Individualized Treatment Should Be Considered for Every Juvenile
3. Rehabilitation Should Be a Primary Goal of the Juvenile Court
4. Social Investigations Should Be Used for Individualized Treatment

II Causes and Prevention

5. Families and Schools Should Be Strengthened to Reduce Delinquency
6. Close Liaison Should Be Maintained Between the Courts and the Schools
7. The Impact of School Problems on Delinquency Should Be Researched
8. Business and Labor Should Provide Jobs and Job Training for Juveniles
9. The Causes of Delinquency Should Be Studied In Depth

III Dispositional Guidelines

10. Guidelines Should Be Developed to Reduce Disparities
11. Provide Judicial Discretion for Individualized Treatment
12. A System-Wide Commission Should Devise the Guidelines

IV Transfer to the Adult Criminal Court

13. Offenders Unamenable to Juvenile Treatment Should Be Transferred
14. The Juvenile Court Should Make the Transfer Decision
15. A New Transfer Decision Should Be Required for Subsequent Offenses

V Confidentiality

16. Open Hearings
17. Police Should Be Informed of Court Actions in Their Cases
18. Juvenile Records Should Be Provided to Adult Courts When Sentencing
19. Legal Records of Juveniles Should Be Open to Those Who Need to Know
20. The Effects of Expunging Juvenile Records Should Be Researched

VI Treatment Considerations

21. Programs in the Community Should Provide Adequate Public Protection
22. Programs Should Provide Assistance to Strengthen Families
23. Programs Should Provide Progress Reports and Family Involvement
24. Re-Entry into the Community Should Be Phased
25. Methods of Treating Serious Offenders Should Be Further Researched

VII Specific Programs

26. Secure Facilities Should Be Provided for High-Risk Juveniles
27. Substance Abuse Programs Should Be Provided for Juveniles
28. Mental Treatment Facilities Should Be Designed for Juveniles
29. All Programs Should Be Studied for Adverse Impact on Families

VIII Status of the Court

30. Courts for Children Should Have the Stature of General Trial Courts
31. Judges Should Have Long-Term Assignment to This Complex Court
32. Judges Should Lead in Developing Community Resources for Children
33. Research Should Have the Participation of Judges

IX Resources

34. On-Going Training Should Be Provided for the Professional Staff
35. Courts Should Have a Broad Range of Dispositional Resources
36. Judges Should Ensure the Efficient Use of Existing Resources
37. Technical Assistance Should Be Provided for Court Operation
38. Training in Juvenile and Family Law Should Be Provided

THE FACTS

A Definition of "Serious Juvenile Crime"

The term "serious crime" historically has had no widely accepted definition. Definitions have varied with political philosophies and the prevailing winds of public sentiment as well as empirical research and delinquency theory. However, when researchers are asked to trend changes in the volume of serious crime, they are forced to utilize a definition that is consistent with available data. This practical restriction leads most to adopt as a measure of serious crime the FBI's statistics on the following offenses: murder/non-negligent manslaughter, forcible rape, robbery, aggravated assault (which, as a group, are labeled "Violent Offenses"), burglary, larceny-theft, and motor vehicle theft (which, as a group, are labeled "Serious Property Offenses"). Therefore, in the work that follows, "Serious Juvenile Crime" is defined as the "Violent" and "Serious Property" offenses committed by individuals who are below 18 years of age.

FBI Uniform Crime Reports' Arrest and Clearance Data

It is a common exercise to compare the number of juveniles and adults arrested for serious crime and to conclude from this comparison the relative contribution of juveniles to the nation's serious crime problem. While juvenile arrest statistics reflect the number of juveniles who come in contact with law enforcement, they are a poor measure of the contribution of juveniles to the nation's total crime problem, for they are a count of persons arrested and not crimes committed. Juveniles tend to commit crime in groups more often than adults and are, in general, more easily apprehended. Therefore, to compare the arrest figures of juveniles and adults, and to interpret the comparison as a measure of the proportion of serious crime committed by each group, tends to overestimate the juvenile contribution to serious crime.

Each year a large number of serious crimes are reported to law enforcement agencies. Some of these crimes are "cleared" by arrest. A reported crime is cleared by arrest when a law enforcement agency has identified the offender and has sufficient evidence to charge the individual and take the individual into custody. Each year the FBI reports the percentage of crimes cleared in cities that were cleared by the arrest of a juvenile. Obviously, clearance statistics are a much better measure of the juvenile contribution to the serious crime problem than are arrest statistics. Clearance statistics are based on a count of crimes and not on a count of persons arrested; consequently, a portion of the bias in arrest figures is overcome even though that bias caused by the fact that juveniles are more easily apprehended is still present.

Violent Juvenile Crime

Between 1964 and 1982 juveniles were responsible for about one in every ten violent crimes cleared (see Figure 1) and involved in two of every ten violent crime arrests. This difference can be explained by the fact that juveniles tend to commit crimes in groups. Both clearance and arrest data indicate that the relative responsibility of juveniles for the nation's violent crime problem has not changed since the mid-1960s. However, the volume of violent crime committed by juveniles has increased; between 1964 and 1982 the number of juvenile violent crime arrests increased by 90%. But during the same period the number of adult arrests increased by 180%. Therefore, the growth in the volume of violent crime in this country between 1964 and 1982 should not be characterized as a growth in juvenile violence alone. The responsibility for the growth in the volume of crime is shared proportionately by juveniles and adults.

Serious Juvenile Property Crime

The portion of the nation's serious property crime problems attributed to juveniles has decreased dramatically since the mid-1960s. In 1964, 43% of all serious property crimes cleared were cleared by the arrest of juveniles, compared to only 24% of the total in 1982 (see Figure 2). From 1964 through 1982, while the number of juvenile serious property crime arrests increased by 40%, the number of adult arrests increased by 220%. Consequently, juvenile arrests made up a much larger proportion of all serious property crime arrests in 1964 than they did in 1982. In 1964, 55% of all persons arrested for a serious property crime were juveniles, compared to only 34% in 1982. Therefore, the growth in the number of serious property crimes between 1964 and 1982 can largely be attributed to a growth in the number of serious property crimes committed by adults.

Figure 1
Violent Crimes
Proportion Cleared: 1964-1982

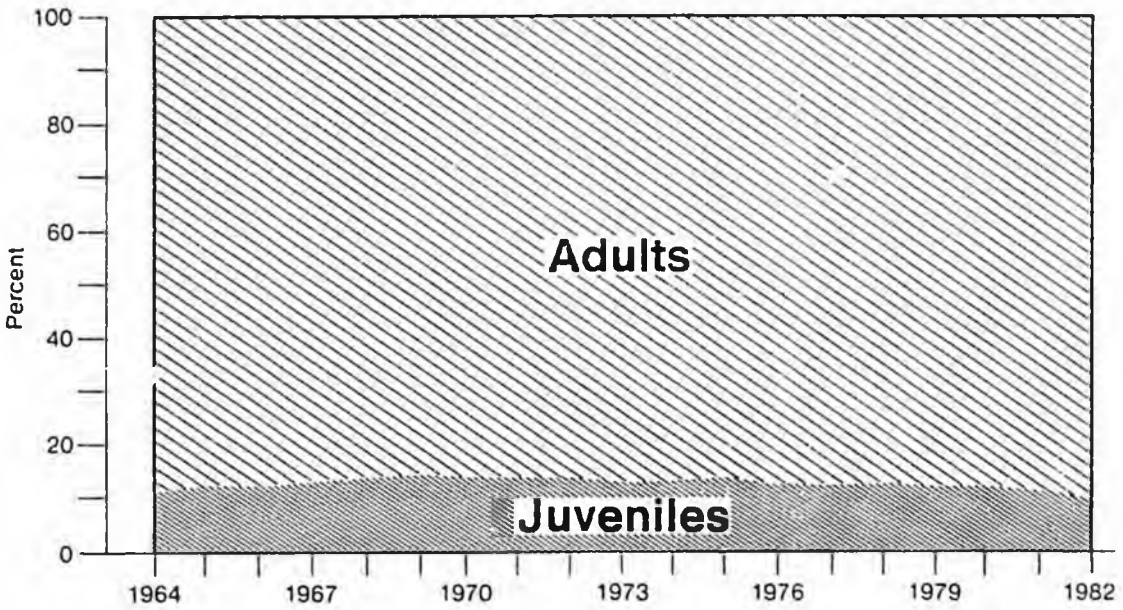
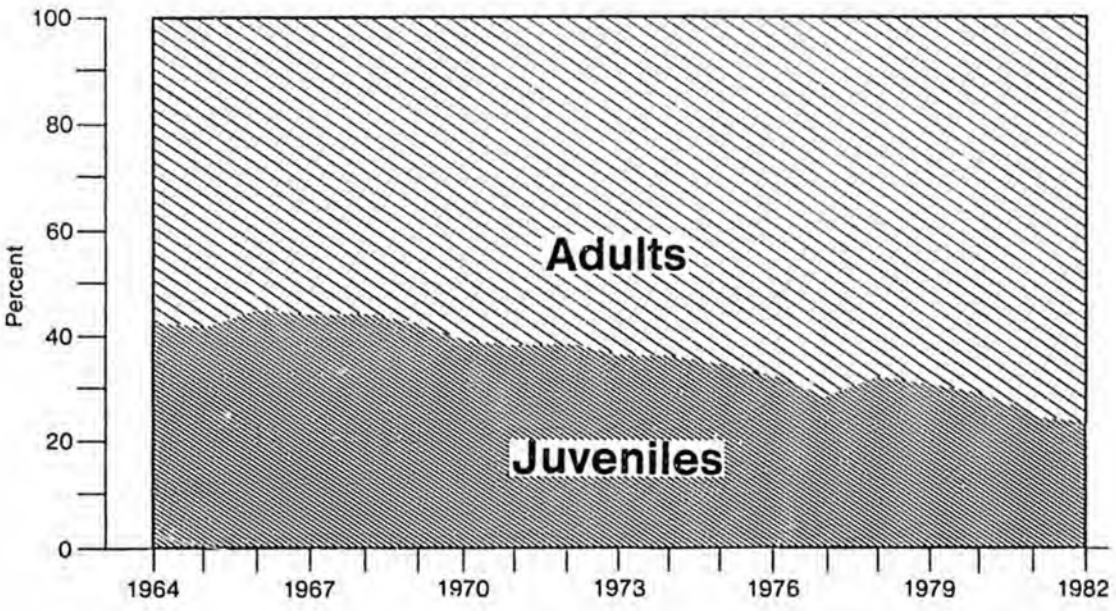


Figure 2
Serious Property Crimes
Proportion Cleared: 1964-1982



Serious Juvenile Offender Characteristics

The Council's National Center for Juvenile Justice, through the support of the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, has established the National Juvenile Court Data Archive, which stores all available data on the juvenile courts' handling of youth referred for a delinquent or status offense. From this archive, 275,000 automated delinquency case records describing the activities of the juvenile courts in seven states (Alabama, California, Florida, Iowa, Kansas, Nebraska and Pennsylvania) in 1980 were analyzed and the results were used to develop the following information on serious juvenile offenders referred to juvenile courts.

In this sample, seven percent of all delinquency referrals were charged with a violent offense and another 46 percent with a serious property crime. Therefore, over half of all the delinquency cases processed by these juvenile courts involved a youth charged with a serious crime. Who were the serious offenders? Eight of every ten individuals referred for a violent or serious property offense were male. Forty-three percent of all youths charged with a violent offense, and 53% charged with a serious property offense, were 15 years of age or younger. Fifty-six percent of all youths charged with a violent offense, and 45% charged with a serious property offense, had at least one previous referral to juvenile court.

Metropolitan Courts

There were substantial differences between the character of juvenile court caseloads of metropolitan and nonmetropolitan areas in this seven state sample. Metropolitan courts, due to their larger populations, had much larger caseloads than courts in nonmetropolitan areas. However, even after controlling for differences in the number of juveniles in the general population, metropolitan juvenile courts had twice the rate of violent crime cases and a 16% higher rate of serious property crime cases than did the nonmetropolitan courts in the sample. In addition, compared to nonmetropolitan courts, a greater percentage of serious crime referrals to metropolitan courts involved a juvenile with a prior court history. Therefore, metropolitan areas not only had a greater proportion of their youth population involved in serious crime, but these youth were also more likely to be recidivists.

Metropolitan juvenile courts are faced with a greater serious crime problem than nonmetropolitan courts, and funding programs must be sensitive to this increased burden and responsibility.

Each of the following thirty-eight recommendations was approved by the members of the National Council of Juvenile and Family Court Judges on July 12, 1984, at their Forty-Seventh Annual Conference in Colorado Springs, Colorado.

I DISPOSITION POLICIES

Serious Juvenile Offenders Should Be Held Accountable By the Courts

The primary focus of the juvenile court for the disposition of serious, chronic or violent juvenile offenders should be accountability. Dispositions of such offenders should be proportionate to the injury done and the culpability of the juvenile and to the prior record of adjudication, if any.

The National Council of Juvenile and Family Court Judges recognizes that the principal purpose of the juvenile justice court system is to protect the public. For chronic offenders, violent offenders and juveniles who commit serious crimes, the public is best protected by holding them accountable, restricting their liberty as necessary and imposing consequences proportionate to the injuries done.

Individualized Treatment Should Be Considered for Every Juvenile

The needs of all serious, chronic or violent juvenile offenders are not the same. While many require secure placement, decisions regarding levels of security and intensity of treatment should be tailored to meet the offender's individual needs while being sensitive to concerns for public safety.

Since no two children have the same personality, strengths and weaknesses, nor the same family supports and pressures, their dispositions must be individualized. While the severity of the present and prior offenses are critical in determining an appropriate response, the needs, circumstances and problems of the individual offender can vary enormously and dictate flexibility in intervention. Given this variation, responses can range from placement in secure, institutional facilities to relatively open, community-based programs.

Rehabilitation Should Be a Primary Goal of the Juvenile Court

To the extent public safety will permit, the primary goal of the juvenile court should be rehabilitation, but with consideration for general deterrence, general prevention and the strengthening of social institutions such as families, schools and community organizations.

Historically, the juvenile courts have adopted the principle that the public is best protected and the children best helped by focusing on the future and preventing new offenses by rehabilitating the individual delinquent, rather than focusing on the past by punishing an offense which is over and done. Rehabilitation has been remarkably successful for most juvenile offenders. It has not been successful for the small number of chronic and serious offenders. For them, strict accountability appears necessary.

Social Investigations Should Be Used for Individualized Treatment

A thorough diagnostic assessment should be undertaken for all adjudicated serious, chronic or violent juvenile offenders and a treatment and placement plan submitted to assist the court at the dispositional hearing.

Recognizing that jurisdiction over actual facility placement varies from state to state, the location of the diagnostic assessment (juvenile court vs. juvenile corrections agency) is intentionally unspecified in the original recommendation. The recommendation focuses on strengthening the process of determining where to place the serious juvenile offender regardless of which juvenile justice system component has authority to make that determination, but stresses the conviction of the judges that placement decisions should be judicial decisions.

II CAUSES AND PREVENTION

Families and Schools Should Be Strengthened to Reduce Delinquency

There exists strong evidence that the prevention of serious delinquency by the family, by the school, by friends and by socially organized communities is often more effective than that provided by the law.

When social institutions are strong, communities well organized, parents and schools competent and caring, there is a very small serious delinquency problem. The deterrence provided by the juvenile justice system in such communities is an important backup, and should be supported and strengthened by the court. However, when these institutions are weak and provide little or no prevention, serious questions can be raised about whether the court can have a substantial effect.

Close Liaison Should Be Maintained Between the Courts and the Schools

There should be a close and continuing relationship between the juvenile court and school authorities in every community.

The court, the school and the police should cooperate in developing and implementing policies to deal with the problems of delinquency. There is a pressing need to examine the relationships between student abilities, inclinations and performance, classroom curricula, school attendance and delinquency.

The Impact of School Problems on Delinquency Should Be Researched

Research is necessary to assist in the formulation of court and community policy as to truancy enforcement, compulsory school laws, crimes in the schools, under-education and frustrated learning experiences.

We need to know how curriculum tracking or its absence in elementary and secondary schools affects delinquency. We need to know which truants should be compelled back to school and which should be encouraged in vocational directions. And, we need to know how to recruit and retain highly skilled and motivated teachers to inner city schools. Included in the needed research is a program of study designed to determine why some schools or school administrators are successful in keeping truancy and serious delinquency low while others are not.

Business and Labor Should Provide Jobs and Job Training for Juveniles

Juvenile court judges should enlist the aid of business and labor to provide more youth employment and training opportunities.

The plight of many inner-city communities is aggravated by high unemployment, poor schools and ineffective social institutions. Jobs, like the school and family, can be an important socializing force in the community. When a youth can be committed to a job and the advancement a job provides, then that youth will be less likely to engage in serious delinquency. A partnership created between schools, businesses and the government to develop projects to tie schooling and employment together may offer the best hope. Because of their involvement in the youth problem, and because of their special knowledge of the hardships posed by excessive levels of youth unemployment, juvenile court judges have a special role to play in fostering these partnerships. By calling for juvenile court judges to be more active in enlisting the aid of business and labor,

this recommendation is in no way intended to diminish the responsibility of federal, state and local governmental agencies in providing youth employment and training.

The Causes of Delinquency Should Be Studied In Depth

Adequate funds should be made available at the national level to provide for both short and long-term research into the causes and prevention of delinquency. The quality and utility of the research to improve the functioning of the juvenile justice system should be enhanced by closer interaction between research investigators, judges, lawyers, probation officers and treatment staff.

Dissemination of such research should be in a manner which makes the results accessible to persons working within the system. Long-term research on the causes and prevention of delinquency is critical if there is to be hope that in the future we will be closer to the solutions necessary for the reduction of delinquency. The results of previous long-term delinquency research demonstrate that such hope is not ill-founded. Criminology is a young science; one that needs and deserves support.

III GUIDELINES

Guidelines Should Be Developed to Reduce Disparities

Guidelines incorporating all decisional factors should be adopted as a means of reducing dispositional disparity for serious, chronic or violent offenders. The guidelines should be focused primarily on accountability, fitting the severity of the disposition to the severity of the present and past offenses.

Guidelines which specify the criteria to be used in sentencing serious juvenile offenders, and which distinguish between them and the remainder of the delinquent population, can provide consistency with individualization.

Guidelines must be flexible, subject to continuous review and revision, to accommodate changing public and professional views of the legitimate social role of punishment in the sentencing of serious offenders.

Provide Judicial Discretion for Individualized Treatment

Provision should be made in any guidelines for the judge to be able to depart from the presumptive disposition upon setting forth in writing the specific aggravating and mitigating factors found to justify such departure.

Guidelines for dispositions for the serious juvenile offender are urged. Often, full discretion tends toward greater inconsistencies. But, legislatively-imposed mandatory sentencing schemes, enacted to promote equity of sentences, tend to be both too extreme and too limited in scope. That is, disproportionately severe penalties are mandated or the necessary exercise of judicial discretion is drastically restricted, and other sources of disparities in decisionmaking are ignored. The essential feature of any guideline system must be to preserve the discretion of the judge to depart from the guidelines' prescriptions if the judge feels that the interests of justice or equity will be better served.

Guidelines should include controls on plea bargaining so that a new disparity does not arise by shifting discretion from the judges to the lawyers.

A System-Wide Commission Should Devise the Guidelines

The guidelines for each state should be drawn, researched and, from time to time, modified by a commission of that state consisting of representatives of all sectors of the juvenile justice system.

The guidelines should be developed, refined and continuously monitored by a commission which should: (a) be comprised of a representative group of juvenile justice policy-makers and practitioners, as well as citizen participants; (b) have the authority to develop and promulgate policy statements which will guide decision-makers in sentencing serious, chronic or violent juvenile offenders; and (c) have a staff of researchers and analysts sufficiently funded and authorized to conduct assessments of the impact of the guidelines on a continuing basis, and to work with the commission to draft revisions as needed. There should be a commitment on the part of the legislative and executive branches to provide the range of resources necessary to implement these guidelines.

The recommendation adopted does not specify by or under what authority (legislatively-authorized or otherwise) such guidelines would be developed. Such structure is intended to be left to the individual states.

IV TRANSFER TO THE ADULT CRIMINAL COURT

Offenders Unamenable to Juvenile Treatment Should Be Transferred

The juvenile court and juvenile justice system are in the best position to respond effectively to the problem of serious juvenile crime, however, there are juveniles for whom the resources and processes available to the juvenile court will serve neither to rehabilitate the juvenile, nor to provide a suitable sanction for the offense, nor to adequately protect the public. Such juveniles should be tried and, if convicted, sentenced in the adult criminal court.

Transfer of juveniles to the adult criminal courts — also termed "waiver," "certification," "reference," and "remand" — should be based upon the inability of the juvenile justice system to protect the public. The inability may be because juvenile court jurisdiction (which is based on the child's age) will run out too soon. It may be because the juvenile court does not have a disposition which is commensurate with the seriousness of the offense. It may be because the juvenile court does not have access to a secure facility. The number of children transferred to the criminal courts can be reduced by extending the age when juvenile court jurisdiction expires and by providing the juvenile courts with a greater range of resources, including secure facilities.

The Juvenile Court Should Make the Transfer Decision

The decision to waive a juvenile from the juvenile court to the adult criminal court should be made by the judge of the juvenile court under guidelines developed to protect the constitutional rights of the juvenile and the safety of the public.

The decision to transfer is made in most states by the juvenile court after a full due process hearing where the public's rights and the juvenile's rights are carefully protected and with assurance that the juvenile was probably involved in the offense before the right to juvenile proceedings is lost. In some states, however, the decision is made without a hearing by the prosecutor, who may be under political pressures. In some states, transfer is based simply on offense, regardless of whether the juvenile court has the facility to better protect the public. In some states, serious charges are filed in the adult court which then decides whether to transfer the child to the juvenile court. It should be recognized that juvenile courts and their professional staff are most experienced in analyzing juveniles, that they are best acquainted with what they can and cannot do and that they have demonstrated ability to provide fair and knowledgeable transfer proceedings.

To provide not only consistency in transfer decisions, but also to insure that they are made with full knowledge of the resources and facilities available to both the juvenile and criminal courts, guidelines should be prepared by a coordinated effort of the two courts, based on local resources, facilities and circumstances.

A New Transfer Decision Should Be Required for Subsequent Offenses

For subsequent charges, previously transferred juveniles should be subject to juvenile court jurisdiction and its decision as to whether to transfer again.

Children should not be denied future access to juvenile court jurisdiction solely on the grounds of prior transfer which resulted in acquittal. Also, automatic transfer fails to recognize that prior adult procedures may have effectively reduced such juveniles' threat to the public safety.

from Juvenile & Family Court Journal
Summer 1984

V CONFIDENTIALITY

Open Hearings

Fact finding hearings involving juveniles charged with criminal law violations and hearings for transfer to an adult criminal court should generally be open to the public while dispositional hearings should generally be closed. In a given case the court should exercise discretion to open or close the hearing to the public.

Our tradition of open government was the primary rationale advanced in support of this recommendation. Promotion of the state's interest in rehabilitation of juveniles and protection of innocent family members from adverse publicity were other issues considered. However, when a child is involved in a serious crime, the public, the victims and the police have a right to know how the juvenile court manages the trial where guilt or innocence is determined unless, in a rare case, the publicity will demonstrably cause more harm than good. Public safety overrides the reasons for confidentiality. Except in a rare case, however, public safety does not require the public to be present at the disposition hearing where all of the intimate details of the family will be discussed in order to determine the best means of helping the child and protecting the public.

Police Should Be Informed of Court Actions in Their Cases

Juvenile courts should provide a law enforcement agency with the legal charge and disposition of juveniles referred by such agency for criminal law violations.

It is important for reasons of efficiency and the administration of justice, as well as fairness to individuals who may have their cases acquitted or dismissed, that police be provided with accurate court information. Law enforcement agencies should have such information so they can maintain accurate records in cases where the individual becomes involved in subsequent criminal law violations, either as a juvenile or an adult.

Juvenile Records Should Be Provided to Adult Courts When Sentencing

Once a person has been convicted of a crime in the adult criminal court, the legal record of any findings of guilt of charges of a criminal law violation in juvenile court should be made available to the adult criminal court upon its request.

When an adult has been convicted of a crime, the criminal court judge, for sentencing purposes, needs to know if the individual has a prior record in the juvenile court equivalent to a finding of guilt on a criminal law violation.

Legal Records of Juveniles Should Be Open to Those Who Need to Know

Legal records of juveniles adjudicated for criminal law violations should be open to the child, the parents, the child's attorney, the guardian ad litem, the prosecutor and, at the discretion of the judge, to any other person having a legitimate interest. "Legal" records would not include social histories, medical and psychological reports, educational records or a transcript of the dispositional hearings.

Tradititionally, hearings and records of juvenile courts have been deemed confidential and have been unavailable, often even to the parents and the press, in order to protect children from the punishment of publicity. For children abused and neglected by their parents, for children being adopted, for immature children involved in petty offenses, the justification for confidentiality is sound. For children who can be rehabilitated without danger to the public, the

reasoning is sound particularly where publicity will ..fere with the rehabilitation. Where publicity will bring shame and abuse to brothers and sisters, grandparents and relatives without adding any useful information to the public or any better provision for its safety, confidentiality is merciful. When public safety is involved, those responsible for protecting the public must have access to the legal records of any juvenile charges and juvenile court dispositions, but even in these cases they have no need for access to the social records which contain the activities, marital problems, likes and dislikes, psychological evaluations or intelligence quotients of the various members of the child's family. The police need to know which children have violated the law and what the court has done with them; they do not need to know the family's problems.

The Effects of Expunging Juvenile Records Should Be Researched

A study should be authorized to review the practice of sealing and expunging juvenile records to determine the impact on the administration of juvenile and criminal justice.

The effects of the variations in statutes and practices from state to state in expunging, sealing and destroying records upon the administration of justice, is largely unknown, as is the extent to which it is a benefit or detriment to the juveniles.

VI TREATMENT CONSIDERATIONS

Programs in the Community Should Provide Adequate Public Protection

Community-based programs for serious, chronic or violent juvenile offenders should provide protection for the public and staff. Such security can best be achieved through limiting numbers of juvenile offenders, adequate staffing and program content.

Issues of safety and security as they apply to the physical welfare of the community-at-large, program staff and the offender are important. Clearly, concerns for community protection, client control and supervision and program security are important to any discussion of community-based correctional programs for this difficult offender population. Contrary to the usual perception that proper levels of security can only be maintained in secure institutional settings, community-based programs are, in fact, able to exert intensive control and supervision and capable of transmitting to offenders a very clear sense that serious consequences follow from both criminal transgression and continued inappropriate social behavior. Rather than relying upon mechanical and physical constraints to maintain the required level of security, these programs utilize social, psychological and behavioral methods to achieve that goal. Security is accomplished through intensive use of staff numerous enough to work closely with offenders. Control is facilitated by keeping offenders busy at all times. In nonresidential programs, supervision requires intensive tracking of clients while they are away from the program facility.

Programs Should Provide Assistance to Strengthen Families

No social policy or prevention program concerning delinquency should be adopted before careful attention is paid to the consequences of such a policy or program on families.

Perhaps the greatest influence the court can have in its interventions is to be sensitive to the family causes of delinquency. But the general educative function of the court — the ability to influence other community institutions — is formidable. One duty of the juvenile court is to inform the community of the implications of weak families on the serious delinquency problem. Because of its special knowledge and interest in the problem, the juvenile court should be a leader in the fight to improve knowledge of effective parenting and to seek ways to deliver this knowledge to the community.

Programs Should Provide Progress Reports and Family Involvement

Strategies which should be incorporated into a treatment plan for serious, chronic or violent juveniles include:

a. Frequent progress reports advising the juvenile of standing, achievements, deficiencies and expectations.

b. Involvement of the family with an analysis of the family's problems and assistance with these.

c. Academic education and social, vocational and employability training and assistance.

All states should implement a "monitoring process" in order to assure residential placements provide the services called for under law and to assure the safety and rights of the public and the juveniles. The concept and process of accomplishing each of the above strategies should be clearly defined within each jurisdiction.

Re-Entry into the Community Should Be Phased

Juvenile delinquents will eventually be returned to the community without court controls. Thus, reintegration into the community

should be supervised with intensive and adequate aftercare. When secure care is necessary, attention should be directed toward the gradual re-entry of youths into the community through a staging process utilizing half-way houses, group homes, day treatment and other appropriate aftercare programs.

Far too often serious juvenile offenders are returned to the community "cold turkey," straight from secure placement without adequate resources and efforts for gradual reintegration into community living. Evaluation data suggests that failure to assist youths in this reintegration process often cause those gains made in residential placement to "wash out" upon the youth's return to the community. Serious offenders should move from secure care through a "staging process" with different levels of residential and community involvement prior to termination of aftercare.

Methods of Treating Serious Offenders Should Be Further Researched

Research and evaluation on the treatment of serious, chronic or violent juvenile offenders should be continued with emphasis on rehabilitation, accountability and public safety.

The only way significant improvements in treatment can occur is by implementing and systematically evaluating innovative programs. Following the lead of recent research efforts funded by the Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice, future studies should: develop programs which link theory and practice; utilize experimental models whenever possible; and examine what variations in treatment work best with which types of youth and in what settings.

VII SPECIFIC PROGRAMS

Secure Facilities Should Be Provided for High-Risk Juveniles

For that group of high-risk delinquents who cannot be treated outside a closed setting, it is preferable to use small, secure treatment units.

It is crucial that the court's disposition for the chronically violent be in secure placement which will allow time to conduct extensive diagnostic evaluations, and allow behavior to be stabilized and brought under control. High-risk offenders can best be treated and supervised in facilities housing only a small number. Larger, secure facilities have a tendency to display mass handling techniques with a level of impersonality and necessary regimentation. They display a greater reliance on mechanical forms of security. They promote "underground" and informal subcultures. They possess little discharge planning. They lack adequate after-care services. They create impersonal, dehumanizing environments and possibilities for physical abuse and violence by other juveniles or staff.

Substance Abuse Programs Should Be Provided for Juveniles

Substance abuse treatment should be made a part of the dispositional plan for those serious, chronic or violent juvenile offenders whose criminal conduct is determined to be related to substance abuse. Juvenile and family courts must exercise leadership in the development of local community policies and programs to prevent and treat drug, alcohol and other substance abuse by juveniles.

Research literature strongly suggests a close connection between substance and alcohol abuse and serious delinquency. Although the precise mechanisms are unclear, the juvenile court sees the relationship with a frightening regularity. There is a pressing need for the judiciary to make these facts widely known and to actively work with other community leaders to seek ways to prevent and treat such abuse. There is need for statutory authority whereby the courts can require serious, chronic or violent juvenile offenders whose criminal conduct is clearly related to drug or alcohol abuse to submit to treatment. Too often in the past, the court has been able only to refer these offenders on a voluntary basis. Mandatory treatment for alcohol and substance abuse is necessary, with a concerted effort to coordinate both the judiciary and treatment providers to ensure appropriate services.

Mental Treatment Facilities Should Be Designed for Juveniles

Separate and secure facilities should be provided for serious, chronic or violent juveniles who are mentally ill or emotionally disturbed.

One of the most glaring deficiencies in the juvenile justice system is providing the care and treatment of serious, chronic or violent juvenile offenders who have been evaluated and diagnosed as being in need of mental health services. All such youth should receive appropriate care and services as the responsibility of the mental health system, which must be provided with necessary resources. These services should be made available to the juvenile correctional system by both private service providers and government community mental health services. Most of the serious, chronic or violent juvenile offenders requiring in-patient care need mental health services beyond the capabilities of juvenile correc-

tion departments. Also, the level of security needed is beyond that currently provided by children's mental health facilities.

All Programs Should Be Studied for Adverse Impact on Families

Existing policies and prevention programs should be researched to determine which of them have adverse consequences for families.

Society is rapidly moving away from the traditional family structure in which children are reared in two-parent homes and in which the mother does not work outside the home. Other forces are causing equally important changes in the family. The dramatically rising proportion of children who are born to unmarried women causes major changes in the supervision and role models given children. These social shifts imply dramatic changes in the supervision and socialization of children. We do not fully understand the implications of these changes for serious delinquency, let alone how to affect them, or whether it would be desireable to affect them. There is need for careful research into the consequences of these changes in the family for delinquency. We need to be better informed of the potential consequences of our policy choices — particularly when one might be increased delinquency.

VIII STATUS OF THE COURT

Courts for Children Should Have the Stature of General Trial Courts

Courts exercising jurisdiction in juvenile and family matters should be equivalent in rank and stature to courts of general jurisdiction.

The juvenile and family courts have huge daily responsibilities protecting the public, intervening in family disputes, rehabilitating juveniles and setting an example in the community. These courts should have the stature among the judiciary and the public if they are to acquire adequate resources and mechanisms to support their immense responsibilities. The undeniable importance of the work of the juvenile and family courts should be reflected in their rank, stature and available resources.

Judges Should Have Long-Term Assignment to This Complex Court

Judges should be selected on the basis of their professed interest in juvenile and family matters with an assignment for a substantial number of years to insure adequate training, adequate experience and adequate control of the court.

The work of these courts must be better understood for society to afford it the status inherent in its responsibilities of intervening in the lives of children and their families.

To be effective, a judge requires special education and experience over a substantial number of years, thus assignment to these responsibilities should be based upon proposed interest in, ability for and commitment to the special responsibilities involved.

Judges Should Lead in Developing Community Resources for Children

Juvenile and family court judges must act as advocates and catalysts in the development and allocation of resources.

Judges should actively seek opportunities to explain the goals, plans and problems of the court. They should develop a close and continuing relationship with schools, law enforcement agencies and business and labor organizations in the community. They should develop court-citizen committees to advise the court. They should seek out and utilize community resources to develop citizen-court volunteer programs appropriate to the needs of youth under their jurisdiction.

Research Should Have the Participation of Judges

Juvenile and family court judges must have an active role in the development of relevant research involving the juvenile justice system and should advise on an individual basis concerning conclusions drawn and applicability.

Research is necessary, but the practical experience and knowledge of judges who will be expected to use the product is necessary if the research is to be useful

IX RESOURCES

On-Going Training Should Be Provided for the Professional Staff

Staff are the most important resource of the court; therefore, activities which promote professional development of court and juvenile justice system personnel are critical to maintaining quality programs and services and should be supported.

The staff of a juvenile court and its attendant services are the key to successful program implementation. Professional development activities which improve the quality of staff are of great importance. Judges can and should be instrumental in insuring adequate staff development regardless of whether staff report directly to the court or to an administrative agency.

Courts Should Have a Broad Range of Dispositional Resources

Probation is an essential resource of juvenile justice. Juvenile courts should act to strengthen the probation function through implementation of case classification procedures, restitution, constructive sanctions, service brokerage and other probation innovations.

Probation is the primary service around which all other juvenile justice interventions are built, but it is too often taken for granted and too seldom reviewed for possible improvements. In some courts it has operated in a manner unchanged over the past thirty years, even though research has demonstrated program innovations which can modify and improve the effectiveness and efficiency of probation services.

Judges Should Ensure the Efficient Use of Existing Resources

Resources to deal with serious crime in our nation's largest cities have never been available in adequate supply to ensure an effective and efficient response. While advocating for additional necessary resources, the juvenile court should also ensure that existing resources derive maximum utility from current levels of financial support.

Juvenile courts must examine their current practices in order to better justify and substantiate the need for additional resources. While necessary resources have never been available in the past, courts could do a better job of using those resources which currently exist. The court should secure additional funds to better accomplish its goals and assure that existing funds are being most effectively utilized.

Technical Assistance Should Be Provided for Court Operation

The juvenile court and juvenile justice system are in need of assistance to implement their resources in an efficient and effective manner. Technical assistance to the juvenile justice system should be available from federal, state and local governments and from private sector sources. It should address current operating problems of the juvenile justice system and should be based upon the needs determined by that system.

Technical assistance which addresses the operating concerns of the court could be extremely valuable in maximizing existing levels of resources. As such, a relatively small expenditure made to provide technical assistance could result in substantial savings. In order for such assistance to be valuable, however, it should be based on the perceived needs of the local court, rather than on the desire of the provider. Past technical assistance efforts have had limited utility because they have not heeded this point.

Training in Juvenile and Family Law Should Be Provided

Appropriate curricula should be further developed, implemented and continued in the National Council of Juvenile and Family Court Judges, the nation's schools of law and other disciplines for career development of judges and other juvenile justice practitioners.

The training programs of the National Council, currently reaching several thousand judges, lawyers, probation officers, court administrators and treatment staff in both the Reno headquarters and in most of the fifty states, should be expanded and participants provided with sophisticated research, professional textbooks and awarded degree credits.

1983-84
METROPOLITAN JUDGES COMMITTEE

Judge Nicholas A. Cipriani*
Philadelphia, Pennsylvania
Chairman

Judge Edith L. Miller*
New York, New York
Vice-Chairman and Lead Judge

LEAD JUDGES

Judge John F. Corrigan*
Cleveland, Ohio

Judge David E. Grossmann*
Cincinnati, Ohio

Judge Arthur N. Hamilton*
Chicago, Illinois

Judge John Farr Larson*
Salt Lake City, Utah

Judge H. Randolph Moore, Jr.
Los Angeles, California

Judge George O. Petersen*
St. Paul, Minnesota

COMMITTEE MEMBERS

Judge Y. Gladys Barsamian*
Detroit, Michigan

Judge William R. Beasley*
Tulsa, Oklahoma

Judge Terrence A. Carroll*
Seattle, Washington

Judge Frances M. Cocchia
Newark, New Jersey

Judge Edward P. Gallogly*
Providence, Rhode Island

Judge Jack E. Gant
Kansas City, Missouri

Judge William E. Gladstone*
Miami, Florida

Judge Daniel "Mike" Hanlon*
San Francisco, California

Judge Stephen B. Herrell*
Portland, Oregon

Judge Gladys Kessler
Washington, D.C.

Judge Floyd McBride*
St. Louis, Missouri

Judge Judith McConnell
San Diego, California

Judge Veronica Morgan-Price*
Houston, Texas

Judge Salvadore T. Mulé
New Orleans, Louisiana

Judge Allen Oleisky
Minneapolis, Minnesota

Judge Craig Penfold
Dallas, Texas

Judge Francis G. Poitrast
Boston, Massachusetts

Judge Romae T. Powell*
Atlanta, Georgia

Judge Tom Rickhoff
San Antonio, Texas

Judge C. Kimball Rose
Phoenix, Arizona

Judge Patrick T. Sheedy
Milwaukee, Wisconsin

Judge Kenneth A. Turner*
Memphis, Tennessee

Judge Betty M. Vitousek*
Honolulu, Hawaii

Judge Orrelle R. Weeks*
Denver, Colorado

Judge Alfred J. Weiner
New City, New York

Judge R. Stanton Wettick, Jr.
Pittsburgh, Pennsylvania

EX-OFFICIO

Judge B. Thomas Leahy*
1983-84 President, NCJFCJ
Somerville, New Jersey

Louis W. McHardy
Executive Director
Dean, National College
of Juvenile Justice

*Participated in a 3-day Policy Issue Review in Phoenix, Arizona, November 17-20, 1983 and/or December 8-10, 1983.

LEAD CONSULTANTS

Troy Armstrong, Ph.D.*
American Justice Institute
Sacramento, California

Richard J. Gable, Ph.D.*
Director, Basic & Applied Research
National Center for Juvenile Justice
Pittsburgh, Pennsylvania

Michael Gottfredson, Ph.D.*
Department of Criminal Justice
Claremont Graduate School
Claremont, California

Hunter Hurst, Director*
National Center for Juvenile Justice
Pittsburgh, Pennsylvania

John L. Hutzler*
Director, Legal Research
National Center for Juvenile Justice
Pittsburgh, Pennsylvania

Teri K. Martin, Ph.D.*
Chicago, Illinois

Howard N. Snyder, Ph.D.
Director, Systems and Information Research
National Center for Juvenile Justice
Pittsburgh, Pennsylvania

ADDITIONAL CONSULTANTS

Robert Coates, Ph.D.
Associate Professor
University of Chicago
Chicago, Illinois

Eliot Hartstone, Ph.D.*
U.R.S.A. Institute
San Francisco, California

Jack Sarmanian, M.S.W.
Adult/Adolescent Counseling, Inc.
Malden, Massachusetts

CRITIC ADVISORS

Bill Anderson*
Executive Director
Texas Juvenile Probation Commission
Austin, Texas

Carl J. Beyeler*
Director of Court Services
Juvenile & Domestic Relations District Court
Arlington, Virginia

Dean Don M. Gottfredson, Ph.D.*
School of Criminal Justice, Rutgers
Newark, New Jersey

Peter Greenwood, Ph.D.*
Rand Corporation
Santa Monica, California

Justice Charles E. Springer*
Supreme Court of Nevada
Carson City, Nevada

Charles Whitebread*
University of Southern California Law School
Los Angeles, California

Robert L. Woodson, President*
National Center for Neighborhood Enterprise
Washington, D.C.

Bruce Fisher*
U.R.S.A. Institute
San Francisco, California

Alaire Betz Reiffel*
American Bar Association
Section of Criminal Justice
Washington, D.C.

EDITOR

Judge Lindsay G. Arthur*
Minneapolis, Minnesota
Senior Judicial Scholar
National College of Juvenile Justice

STAFF

Arne Schoeller*
Associate Director for
Planning and Development
Committee Staff Liaison

Jerry Laughlin*
Senior Curriculum Attorney

Cheri Inman*
Administrative Assistant

*Participated in a 3-day Policy Issue Review in Phoenix, Arizona, November 17-20, 1983 and/or December 8-10, 1983.

1983-84
OFFICERS

Judge B. Thomas Leahy
President
Somerville, New Jersey

Judge John P. Steketee
President Elect
Grand Rapids, Michigan

Judge Aaron Cohn
Imd. Past President
Columbus, Georgia

Judge Forest E. Eastman
Vice President
Waterloo, Iowa

Judge John M. Yeaman
Vice President
Platte City, Missouri

Judge Marshall P. Young
Vice President
Rapid City, South Dakota

Judge Romae T. Powell
Treasurer
Atlanta, Georgia

Judge W. Donald Reader
Secretary
Canton, Ohio

Louis W. McHardy
Executive Director
Dean, National College of Juvenile Justice
Reno, Nevada

1983-84
BOARD OF TRUSTEES

Judge R. Gerald Barr
Port Huron, Michigan

Judge Frederica S. Brenneman
Glastonbury, Connecticut

Judge Robert T. Cattle, Jr.
Seward, Nebraska

Judge Nicholas A. Cipriani
Philadelphia, Pennsylvania

Judge Andy H. Devine
Toledo, Ohio

Judge Ninian M. Edwards
Clayton, Missouri

Judge James M. Farris
Beaumont, Texas

Judge Edward P. Gallogly
Providence, Rhode Island

Judge Jerry L. Mershon
Manhattan, Kansas

Judge Edith L. Miller
New York, New York

Judge H. Randolph Moore, Jr.
Los Angeles, California

Judge Salvadore T. Mulé
New Orleans, Louisiana

Judge Gerald E. Radcliffe
Chillicothe, Ohio

Justice Charles E. Springer
Carson City, Nevada

Judge ohn H. Thomas
Chesterfield, Virginia

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

For additional copies please send this order blank *with your payment* to:

National Council of Juvenile and Family Court Judges
Planning and Development Office
University of Nevada-Reno
P.O. Box 8970
Reno, Nevada 89507

Phone: (702) 784-4859

Prices: Single copy $3.00 each; 2-10 copies $2.75 each; 11-25 copies $2.50 each; 26-50 copies $2.25 each; 51-100 copies $2.00 each; over 100, price on request.

* * * * *

Please enter my membership as follows:

☐ **REGULAR COUNCIL MEMBERSHIP**
(Judges, Ref., Comm., Masters) $62.00

☐ **ASSOCIATE COUNCIL MEMBERSHIP**
Includes Journal, Digest and Newsletter $52.00

☐ **NATIONAL JUVENILE COURT SERVICES ASSOCIATION** additional dues
(Affiliate organization for Court Services Personnel) ..... $ 5.00

For additional membership information, contact:
NCJFCJ, P.O. Box 8970, Reno, Nevada 89507, Phone (702) 784-6012.

Please enter my subscription as follows:

☐ **DIGEST AND JOURNAL** $84.00

☐ **DIGEST ONLY** $60.00

☐ **JOURNAL ONLY** $24.00

(Please type or print clearly)

Name _____ Position _____

Agency _____

Address _____

City _____ State _____ Zip _____

Phone (Office) (_____) _____

National Council of Juvenile and Family Court Judges: Serving Judges, Youth and the Community

The National Council of Juvenile and Family Court Judges has been dedicated, since its founding in 1937, to improving the nation's diverse and complex juvenile justice system. The Council understands that an effective juvenile justice system must rely on highly skilled juvenile and family court judges, and has directed an extensive effort toward improving the operation and effectiveness of juvenile and family courts through highly developed, practical and applicable programs and training. Since 1969 the Council, through its Training Division, the National College of Juvenile Justice, has reached more than 53,500 juvenile justice professionals with an average of 40 training sessions a year — a record unparalleled by any judicial training organization in the United States.

The Council recognizes the serious impact that many unresolved issues are having upon the juvenile justice system and the public's perceptions of the problem as they affect, through legislation and public opinion, the juvenile court.

Serving as a catalyst for progressive change, the Council uses techniques which emphasize implementing proven new procedures and programs. Focus on meaningful and practical change and constant improvement is the key to the Council's impact on the system.

The Council maintains that juvenile justice personnel, and especially the nation's juvenile and family court judges, are best equipped to implement new concepts and other proposed improvements. The most effective method of bringing about practical and necessary changes within the juvenile justice system is through that system, and particularly through the judges themselves. Continuing, quality education is a keystone in producing this change.

The Council facilities, located at the University of Nevada, Reno, include modern classrooms and a law library. The Council uses its own housing facility to provide economical lodging and meals for both faculty and participants. These facilities offer an attractive environment for judges to explore practical solutions toward the betterment of juvenile justice. The Council, with its National Center for Juvenile Justice in Pittsburgh, maintains a staff of more than 50.

JUVENILE JUSTICE IN ALASKA

a report to

THE HONORABLE BILL SHEFFIELD

GOVERNOR

STATE OF ALASKA

from the

DIVISION OF FAMILY & YOUTH SERVICES

March 19, 1985

John R. Pugh
Commissioner
Department of Health & Social Services

Michael L. Price
Director
Division of Family & Youth Services

Executive Summary

Despite widespread and persistent beliefs, juvenile crime in Alaska is neither increasing nor becoming more violent. The best measures show that while adult crime has increased at the same rate as the Alaska's population, juvenile crime has declined both in total numbers and rate and is only one-fourth of total crime in the state. Only 2% of Alaska's juvenile crime is violent crime. This is 1/10 of serious, violent crime in the state and only 1/2 of 1% of total Alaska crime.

Because juveniles commit generally less serious crimes and have a greater potential for rehabilitation than adult offenders, Alaska's juvenile justice system operates differently from the criminal justice system. The vast majority of young offenders are first time and less serious offenders who can be successfully diverted from the formal juvenile justice system. Court action is reserved for repeat offenders and those who have committed serious offenses. Most are adequately controlled and rehabilitated in community settings. A small number require the control and structure of secure detention and treatment facilities.

Programs for juvenile offenders were separated from adult correction programs and transferred to the Division of Family and Youth Services four years ago. Since then juvenile delinquency has received greater attention and services provided to protect the public and rehabilitate young offenders have increased dramactically. The number of youth under probation supervision is up 45% and the average populations of juvenile detention and secure treatment facilities have increased by 58% and 30% respectively. With greater focus, remedial increases in service, and earlier intervention fewer youth are "slipping between the cracks." Serious or repeat offenders are identified and dealt with sooner reducing multiple offenses. In short, increases and improvements in service seem to have been a primary factor in reducing juvenile crime in Alaska.

Despite essential growth, detention facilities average 40% above capacity and there are waiting lists for entry into secure treatment programs. Even planned expansion will not meet projected needs for these services. Overburdened programs quickly become ineffective and continued reductions in juvenile crime cannot be expected in the face of a growing population and overburdened programs.

The response cannot be to simply build more and larger facilities. This simplistic approach focuses massive resources on a single aspect of juvenile delinquency and has been discredited by its failure elsewhere. Its virtually limitless costs alone preclude adoption of this approach. Instead the Department of Health and Social Services has developed a balanced strategy essential in a time of decreasing resources and increasing population. The strategy emphasizes regionalization and increases in prevention, early intervention and communitybased services accompanied by modest increases in secure detention and treatment capacity. Other management initiatives to implement this strategy are development of a systematic method of case management and implementation of a comprehensive management information system (SYSMIS).

A systematic method of case management will provide a framework for effectively allocating resources on individual client and overall program levels, and for short and long range planning. A comprehensive information system is essential to provide information needed for monitoring and evaluating services and programs, and for decision making.

This strategy will help limit the need for growth in costly institutions, make community-based services available on a broader basis throughout the state and insure that limited resources are used most effectively to protect the public and rehabilitate young offenders.

DESCRIPTIVE ANALYSIS OF JUVENILE CRIME IN ALASKA

Certain misperceptions about juveniles and crime are widely accepted by the public and many policy makers and have influenced public policy relating to juvenile justice. These misperceptions are enforced periodically by sensational news reports and the entertainment media. It is important to consider these persistent perceptions in light of available facts if significant policy decisions are to be made wisely.

Incidence of Juvenile Crime

The most widely accepted belief about juvenile crime is that it is widespread and increasing - that there is a juvenile crime wave far out of proportion with the number of juveniles and beyond the level of adult crime. Available facts, however, do not support this belief.

Conservative estimates of population growth indicate that the population of youth in Alaska (those 0 - 18 years of age) increased by approximately 15% from 1979 to 1983. As Chart I indicates this represents an increase of 19,000 juveniles from 134,000 to 153,000. The adult population is believed to have grown at about the same rate and to be slightly more than twice the size as the juvenile population - approximately 320,000 persons.

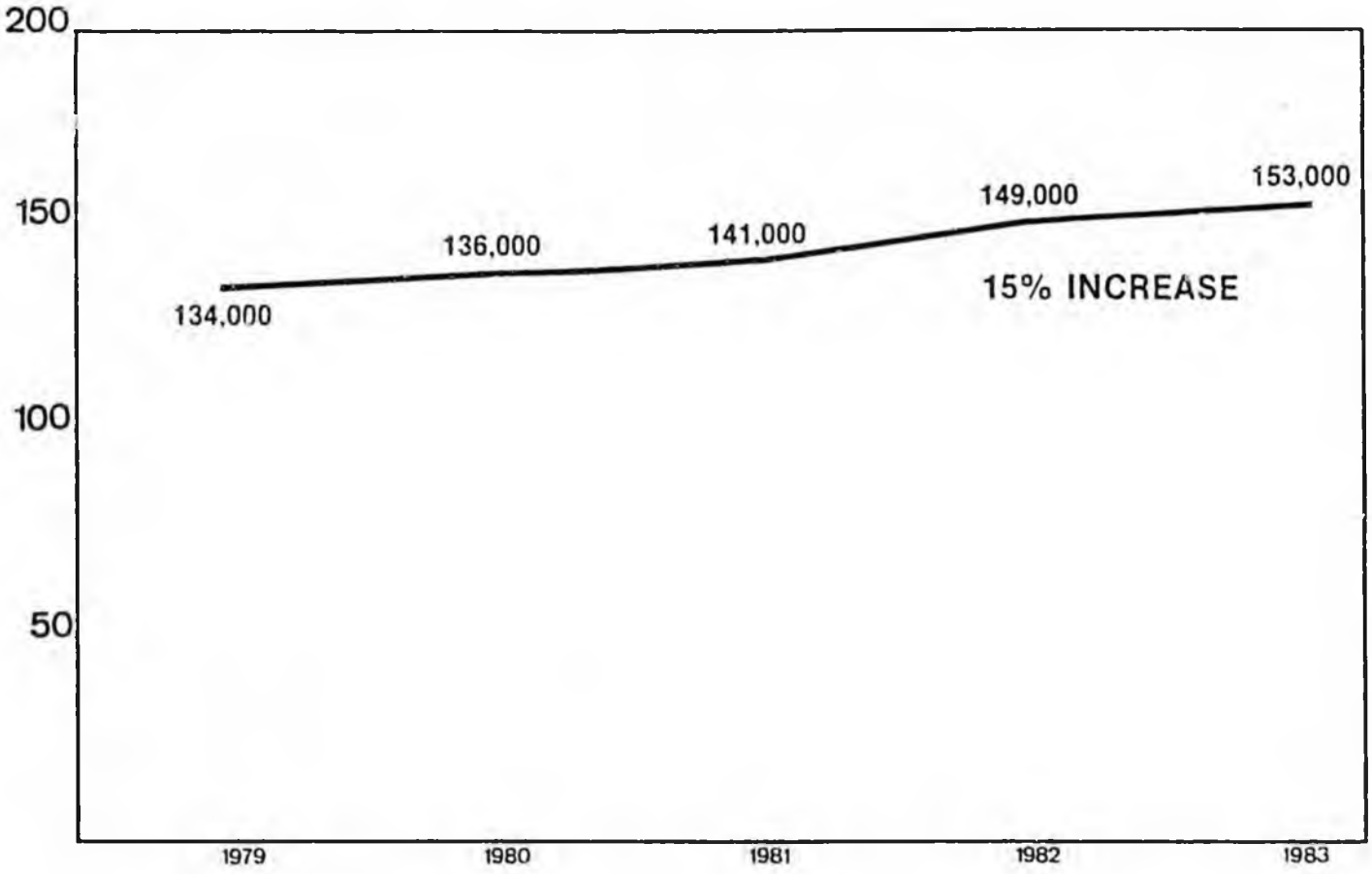
Despite the significant population increase juvenile crime as measured by arrests declined slightly. Chart 2 shows that juvenile arrests have remained relatively stable between 1979 and 1983, declining slightly - about 6%. In contrast adult arrests have shown a marked increase after 1980 and an overall increase during the five year period of about 13%. Juveniles arrests have declined despite population growth while increases in arrests of adults have essentially paralleled population growth.

Chart 3 illustrates another important measure of crime, the rate of arrest. The rate of juvenile arrests (arrests per 1000 persons) was relatively stable until 1982 when it declined sharply. This decline continued in 1983 resulting in an overall decline of 24% during the period 1979 - 1983. This decline follows a national trend of decreasing juvenile arrest rates. However, Alaska's juvenile arrest rate, 32.24 per 1000, is less than one half the most recently calculated national rate. (1) In contrast Alaska's adult arrest rate does not show a similar trend although the 1983 level was slightly (8%) below the 1979 high of 46.56 arrests per 1000 persons.

In summary, juvenile arrests in Alaska are declining despite significant population increases and the rate of juvenile arrest has declined substantially. Alaska's juvenile arrest rate is far below the national juvenile rate and 25% lower than Alaska's adult arrest rate.

(1) Report to the Nation on Crime and Justice: The Data, U.S. Department of Justice, Bureau of Justice Statistics, 1983.

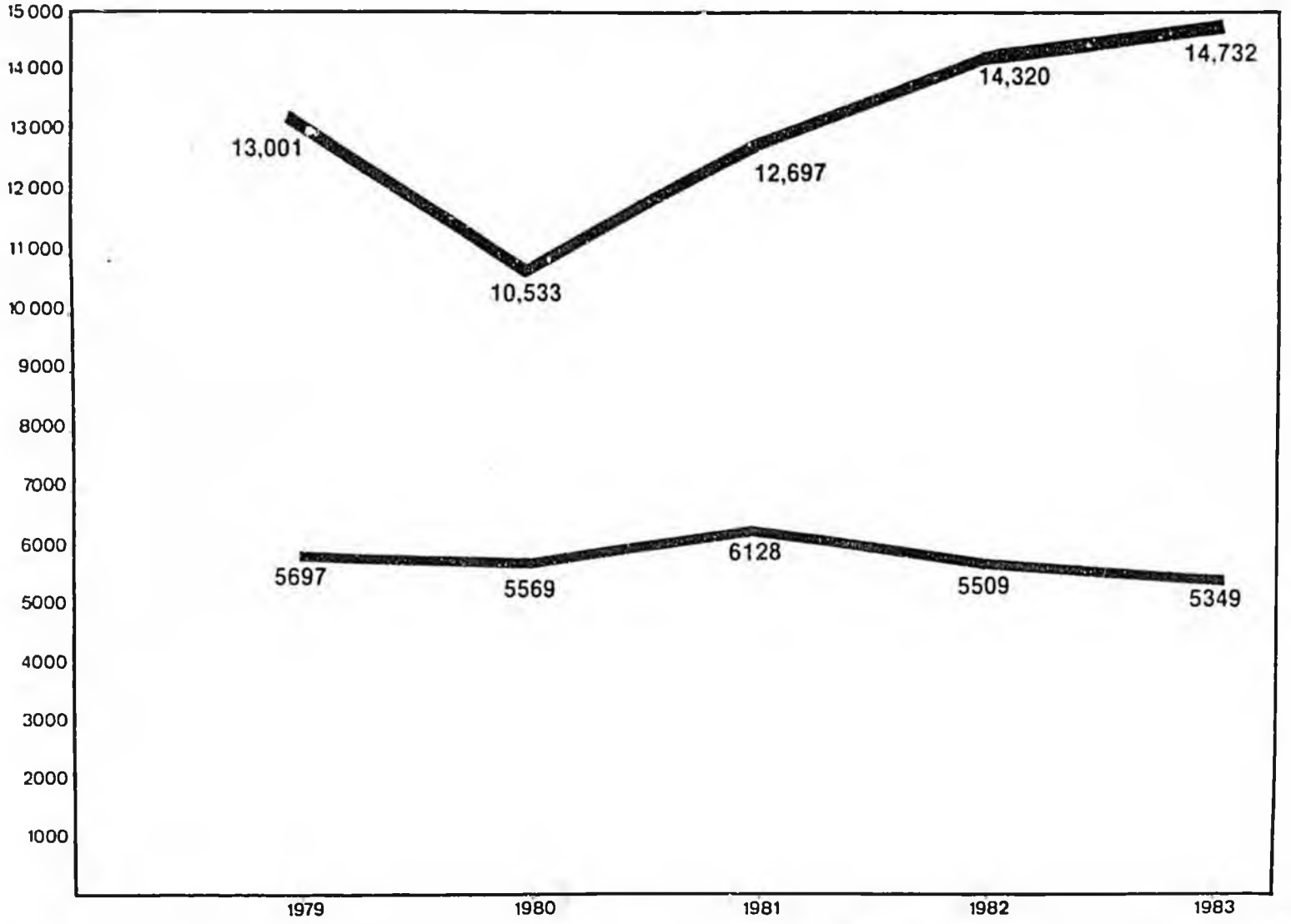
ALASKA YOUTH POPULATION
(0 to 18 Years)



Source Data *Alaska Population Overview — 1981*,
Alaska Department of Labor
U S Bureau of Census, 1980

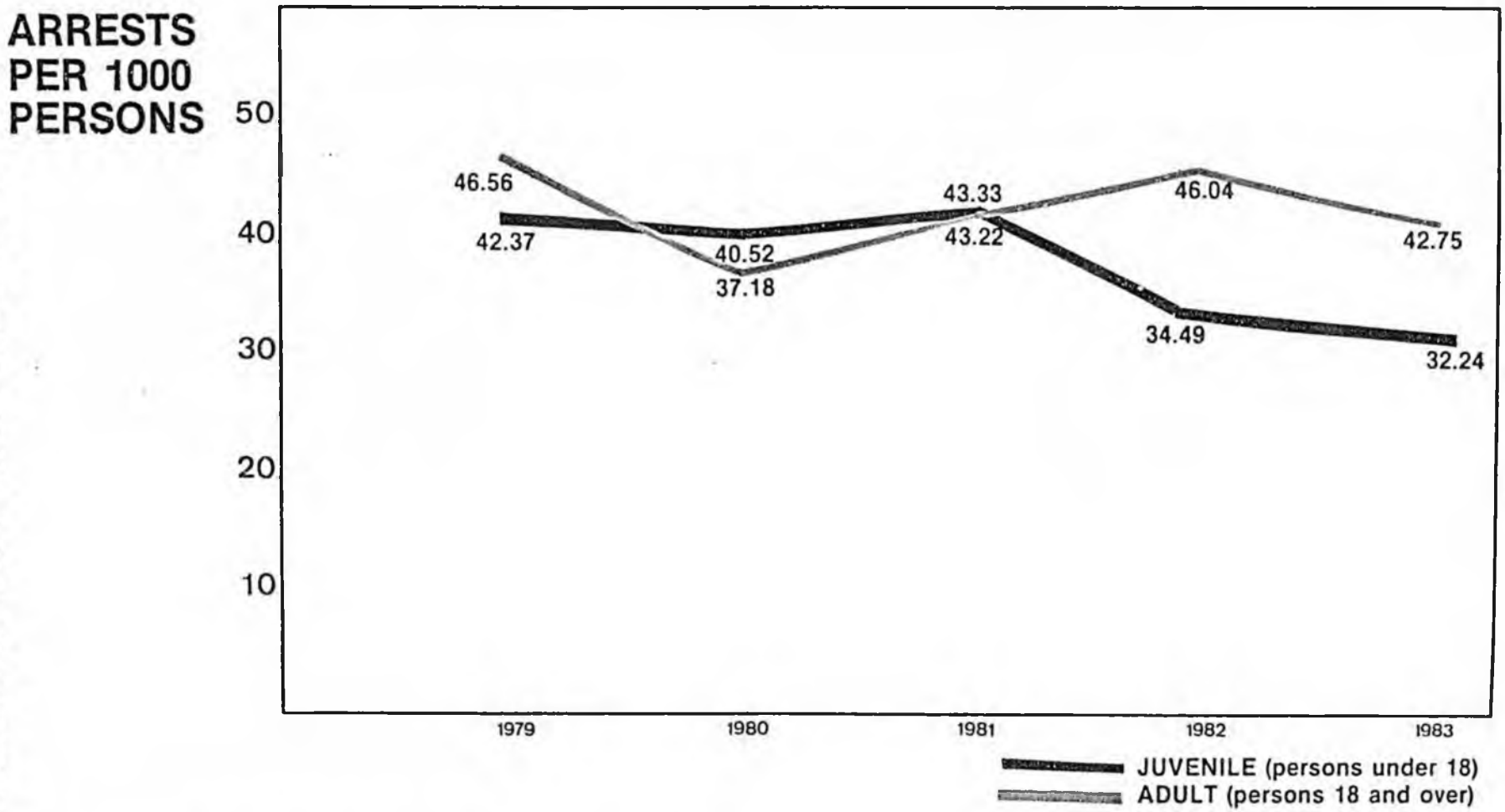
CHART 1

ARRESTS IN ALASKA



Source: *Crime in Alaska* 1979-1983. Department of Law
Department of Public Safety

ALASKA ARREST RATES



Data Sources: Arrest data, *Crime in Alaska — 1983*, Alaska Department of Public Safety
Alaska Population Overview — 1982, Alaska Department of Labor

CHART 3

Profile of Juvenile Crime

Another popularly accepted belief about juvenile crime is that it is characterized by a high level of violence - that juveniles commit a disproportionate number of violent crimes and that juvenile crimes often involve gratuitous violence.

Insight into the nature of juvenile crime in Alaska can be gained from studying the types and proportions of crimes for which juveniles are arrested and comparing these with adult arrests. Chart 4 depicts this information for 1983. Data for 1983 is shown since it is the most recent data available and because the pattern of arrests is essentially the same for the entire five year period.

Most importantly the data shows that arrests for serious violent crimes (homocide, rape, robbery, aggravated assault) are only a tiny proportion (2%) of juvenile arrests and only a small (10%) proportion of the total arrests for these crimes.

The data shows that juvenile crime in Alaska is primarily property crime (thefts, from shoplifting to burglary) which account for about one-half (49%) of all juvenile arrests. The other main categories of juvenile crime are liquor law violations such as minor consuming (21%), and status offenses such as runaway and curfew violations (8%). The smallest number and percentage of juvenile arrests (116 or 2% of total) is for serious violent crimes, - homocide, rape, robbery and aggravated assault. Other crimes against persons, such as misdemeanor assaults, account for only 3% of juvenile arrests.

A comparison of juvenile and adult arrests shows that arrests for violent crimes and crimes against people comprise a significantly greater proportion of adult arrests and that adult arrests for violent crimes are ten times greater than the number of juvenile arrests.

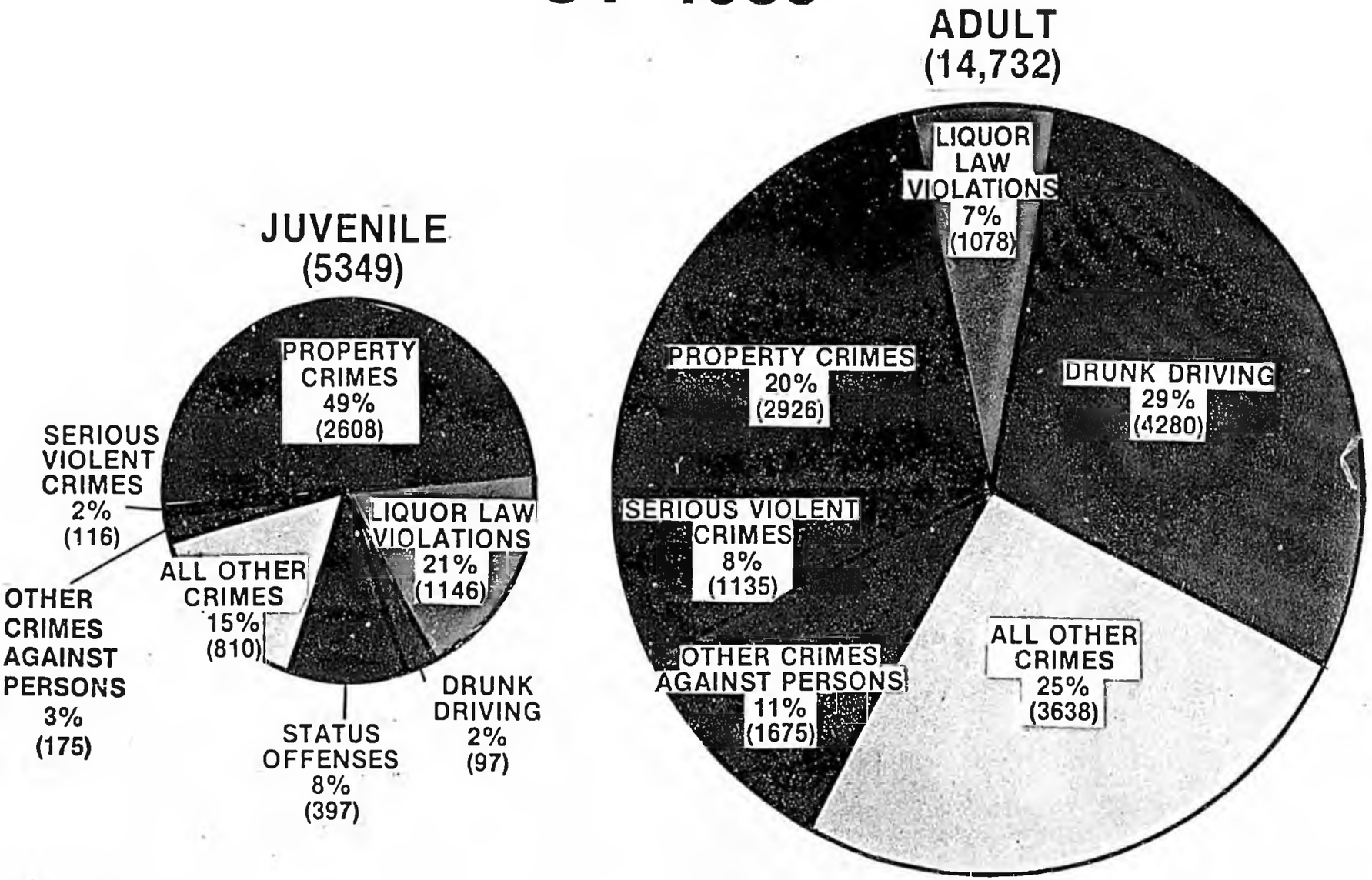
Interpretation

Although juvenile crime at any level is a serious social concern, national studies indicate that the magnitude of the problem is exaggerated in public perception. Studies and data also show that the public perception of a drastic and disproportionate increase in violent and serious crime by juveniles is erroneous. In fact, the National Crime Survey showed that during a recent five year period both the number and rate of personal victimizations by juveniles decreased while victimizations committed by adults increased. The same study showed that personal victimizations committed by juveniles were less serious in terms of weapons use, rate of injury, and financial loss, than similar crimes committed by adults. (2)

A study by Dr. Marvin Wolfgang of the University of Pennsylvania, which tracked all juveniles born in Philadelphia in 1958 is equally important in understanding violent juvenile crime. The Wolfgang study found that a small number of

(2) Analysis of National Crime Victimization Survey Data To Study Serious Delinquent Behavior, U.S. Department of Justice, Criminal Justice Research Center, M.J. Hindelang and M.J. McDermott, 1981.

PROFILE OF ARRESTS
CY 1983



Data Source: Crime in Alaska — 1983
Alaska Department of Public Safety

CHART 4

repeat offenders commits a disproportionate number, perhaps the majority, of violent crimes committed by juveniles. This study concluded that there is a need to be selective in identifying and dealing differently with that small number of juveniles while reacting in a far less severe manner to the majority of young offenders.

While there have been no such comprehensive studies specific to Alaska a comparison of Alaska and national data indicates that the findings of national studies probably hold true here. (3)

- Alaskan juveniles comprise 32.5% of the state population while nationally juveniles make up 27.5% of the population.
- Juvenile arrests comprise 26.6% of total arrests in Alaska compared to 19.8% nationally. This difference is approximately equal to the difference in the proportions of juveniles to the total population.
- Only 2% of juvenile arrests in Alaska are for serious, violent crimes (murder, rape, robbery, aggravated assault) compared to 4.2% nationally.
- Juvenile arrests for serious violent crimes in Alaska are 10% of the total number of arrests for these crimes compared to 18.5% nationally.
- The proportion of juvenile arrests for violent crimes in Alaska has remained at the 10% level since 1979.
- Nearly half (49%) of Alaska's juvenile arrests are for property crimes compared to 42% nationally. Two thirds of these arrests in Alaska are for thefts.
- Status offenses (curfew, runaway, liquor law violations) account for nearly one third (29%) of Alaska juvenile arrests compared to 18% nationally.

In general terms then, Alaska's juvenile crime patterns parallel national trends, with some important differences. While total juvenile crime and rate of juvenile crime are declining both nationally and in Alaska, these declines are accompanied nationally by a decline in the juvenile population while Alaska's juvenile population is increasing.

Perhaps the most important difference is in the level of violent crime. Violent crime by juveniles in Alaska is a much smaller proportion of both total juvenile crime and total violent crime than is the case nationally (about half the national proportions), and a minute proportion (one-half of 1%) of all crime in the state. Juvenile property crime is a higher proportion of total property crime in Alaska than is true nationally (47% vs 37%) and is the most prevalent type of juvenile crime. Juvenile crime in Alaska is largely (80%) property crime, liquor law violations, and status offenses. Juvenile crime is only about one-fourth (26.6%) of the total crime problem in the State compared to 20% nationally. The difference in these proportions is almost precisely the

(3) SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1983, U.S. Department of Justice, Bureau of Justice Statistics.

same as the difference in the proportion of juveniles to the total state versus national population - 5%.

JUVENILE JUSTICE SYSTEM IN ALASKA

Juvenile justice systems were established nationwide and in Alaska in recognition of significant differences in the characteristics and rehabilitative potential of adult and juvenile offenders and differences in the general types and seriousness of offenses committed by the two groups. The vast majority of juvenile crime is far less serious than adult crime and the likelihood of changing behavior of children is greater than the likelihood of rehabilitating adult offenders. In recognition of these differences the juvenile justice system has developed with a greater reliance on informal resolution, diversion, and intervention than is true in the adult criminal justice system. The emphasis of the juvenile system has been to employ the least intensive and least expensive interventions necessary to achieve the equally weighted goals of protection of the public and rehabilitation of the juvenile offender.

The juvenile justice system may be seen then as a screening process through which the less volatile and more readily rehabilitated youth are separated from those who present a danger to themselves and others. Assessments of the risk juvenile offenders present and of their rehabilitative needs are inherent in key decisions in the juvenile justice system and are of prime importance in the distillation process. The effectiveness of a juvenile justice system may be measured by its ability to accurately assess risk and need and provide services which successfully address each. The essence of evolution in juvenile justice is improvement in methods of assessing risk and need and providing more effective services.

System Flow

Chart 5 illustrates in simplified form the flow of the juvenile justice system. The chart emphasizes key decision points and actions in the screening process. Because complete statistical information is not routinely collected, the chart illustrates estimated client flow during calendar year 1982 based on a sampling study by Wasserman and McNabb (4) (commissioned by the Division of Family and Youth Services).

Key decision points and actions illustrated are:

1. Decision to arrest - This is a decision of law enforcement based on evidence of a crime. The data shows that only about 3% of the total juvenile population is arrested even if multiple arrests are not considered.

2. Decision to detain or release to parent - Detention of juveniles on arrest is a decision made by police officers based on the officer's assessment of danger to the youth or others. As chart 5 illustrates, a substantial number of juvenile arrests (nearly half) result in secure detention. This occurs despite the fact that the vast majority of juvenile arrests are for

(4) Youth Services Research and Evaluation Report, P.Z. Wasserman and S.L. McNabb, 1983.

status or property offenses and most of those youths detained are eventually dealt with informally. It is clear that the rate of detention is unjustified by the types of offenses being committed and the level of danger presented by the youth. Certainly the national detention rate is far below the nearly 50% level found in Alaska. This high rate of detention has a significant impact on the population of juvenile detention facilities and locally operated municipal jails. It also causes a variety of problems including overcrowding in juvenile detention facilities, inefficient use of adult facilities, and detention of juveniles in adult facilities without statutorily required sight and sound separation from adults.

3. Decision to release from detention, dismiss, divert through informal action or initiate formal action - In general this is a decision of the DFYS intake officer, often in consultation with legal counsel. This decision is based on an assessment of (a) the offense, (b) the youth and the youth's past behavior, and (c) the likelihood that public protection and rehabilitation of the child can occur through informal action (e.g., restitution, community service, counseling, etc.) or that formal court action will be necessary to achieve these goals. Chart 5 shows and Chart 6 more graphically illustrates that the vast majority of juvenile offenders (first offenders and those who have committed less serious offenses) are diverted from the system and informal supervision is employed. Chart 6 indicates that an estimated 74% of juvenile offenders were diverted from the formal juvenile justice system in 1982. Eight percent required a higher level of intervention through informal probation supervision for a short period of time, up to six months. A very small number (1%) of cases where dismissed as unfounded or lacking sufficient evidence.

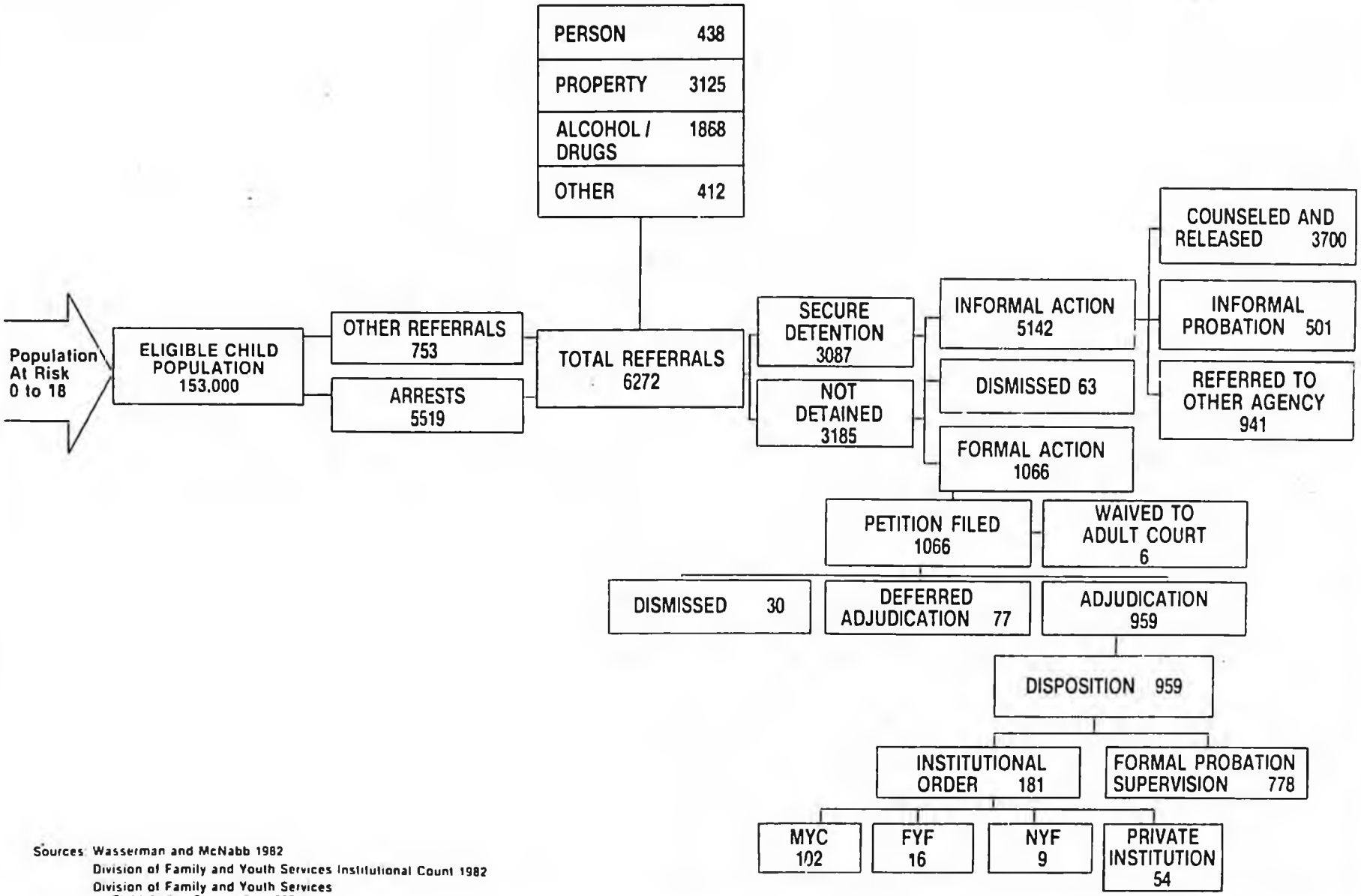
4. Formal action - Filing of formal delinquency petitions is the responsibility of the intake officer but may also be initiated by prosecutors. In a very small number of cases - those few juveniles who have committed offenses so serious and whose rehabilitative potential is so small that they can not be appropriately dealt with in the juvenile justice system - waiver of juvenile jurisdiction may be sought.

   Formal petitions were filed in 17% or nearly 1,100 cases in 1982. The majority (90%) resulted in delinquency adjudications. Approximately 3% were dismissed before trial or were found insufficient to prove delinquency. Adjudication was deferred in about 7% of cases, generally conditioned upon satisfactory behavior under probation supervision. Waiver to adult jurisdiction occurred in 6 cases.

5. Disposition - After a finding of delinquency the court determines, within statutory guidelines, the general plan to be implemented to both protect the public and to rehabilitate the young offender. Chart 6 shows that the majority (72%) of formal actions resulted in formal probation supervision in the community. Approximately 181 cases (67%) resulted in orders requiring placement of youths in secure rehabilitative treatment facilities or structured private residential care facilities. The number of youth institutionalized is roughly one and one half times the number of

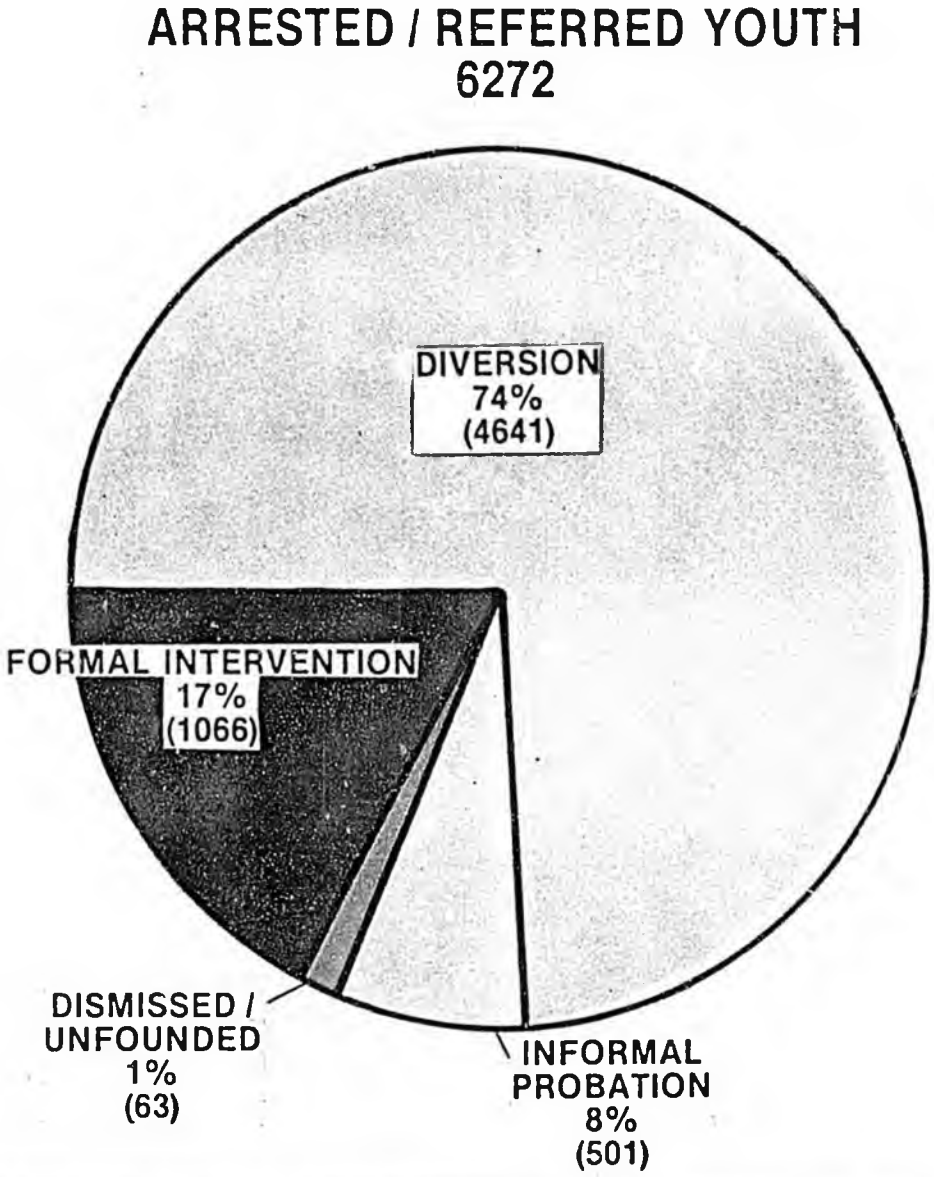
juveniles arrested for serious or violent crimes (181 institutionalizations versus 116 violent crime arrests) indicating that the most severe sanction and expensive treatment is reserved for those youth who present a danger to the community.

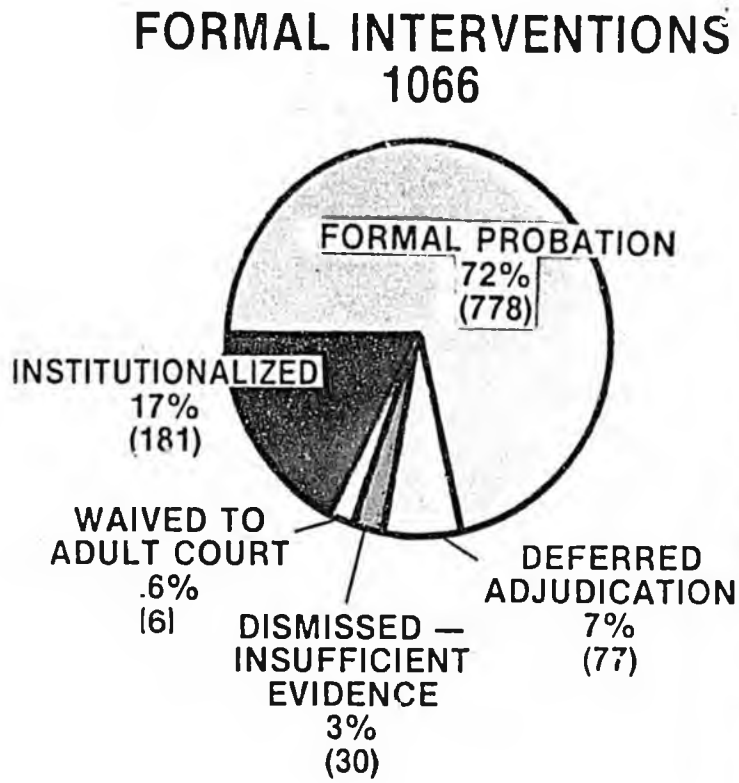
JUVENILE JUSTICE SYSTEM
CLIENT FLOW CY 1982



Sources: Wasserman and McNabb 1982
Division of Family and Youth Services Institutional Count 1982
Division of Family and Youth Services
Field Action Summaries 1982

INTERVENTIONS EMPLOYED 1982





Data Source: Wasserman and McNabb. 1983

DHSS RESPONSE TO JUVENILE CRIME

Perspective

Before December, 1980 responsibility for providing rehabilitation programs for juvenile offenders was assigned to the Division of Corrections within the Department of Health and Social Services. These programs were provided largely as an adjunct to adult correctional programs. In all areas of the state except Anchorage and Fairbanks probation officers were assigned both adult and juvenile cases. Only one facility existed for the detention and secure treatment of juveniles (McLaughlin Youth Center). Because of this structure juvenile programs were largely subordinated to adult programs. Responsibility for providing juvenile rehabilitation programs was transferred to the Division of Family and Youth Services in December, 1980; an action based on recommendations from several studies which indicated that increased efficiency and effectiveness could be expected from such a change. In December, 1984 full responsibility for performing the juvenile intake function for the superior court was administratively transferred to the Department of Health and Social Services. Previously this function had been split between the Alaska Court System and the Department of Health and Social Services. Court system employees performed the juvenile intake function in Anchorage, Fairbanks, Kenai and Palmer and DHSS juvenile probation officers performed the function in all other areas of the state.

Growth in Demand for DHSS Services : Probation, Detention, Secure Treatment

Charts 7, 8 and 9 illustrate the significant increases in the demand for DHSS services to protect the community and to rehabilitate juvenile offenders.

Probation: Chart 7 illustrates the average number of youth under probation supervision from 1981 through 1984. Youth under formal, court ordered supervision comprise 90% of these cases while youth under informal supervision as a diversion from formal justice system account for 10%. As is illustrated there was a 45% increase in the average number of youth under probation supervision during the four year period, rising from 867 in 1981 to 1260 in 1984.

Detention: Chart 8 illustrates the growth in the average number of youth detained in juvenile detention facilities since 1978. It also projects future growth and compares this with the actual and planned capacity of juvenile detention facilities.

Between 1978 and 1984 there was a 58% increase in the average daily population of juvenile detention facilities. The average daily census was approximately 18% above actual capacity in 1978 and, despite growth in the capacity of juvenile detention facilities, presently exceeds actual capacity by approximately 40%. Juvenile detention facilities in Anchorage and Fairbanks are dangerously overcrowded at the present time and if the historical growth rate holds true to 1987 even the planned 30% increase in juvenile detention facility capacity will not meet the need and the detention facilities will continue to be seriously overcrowded.

GROWTH IN PROBATION SERVICES

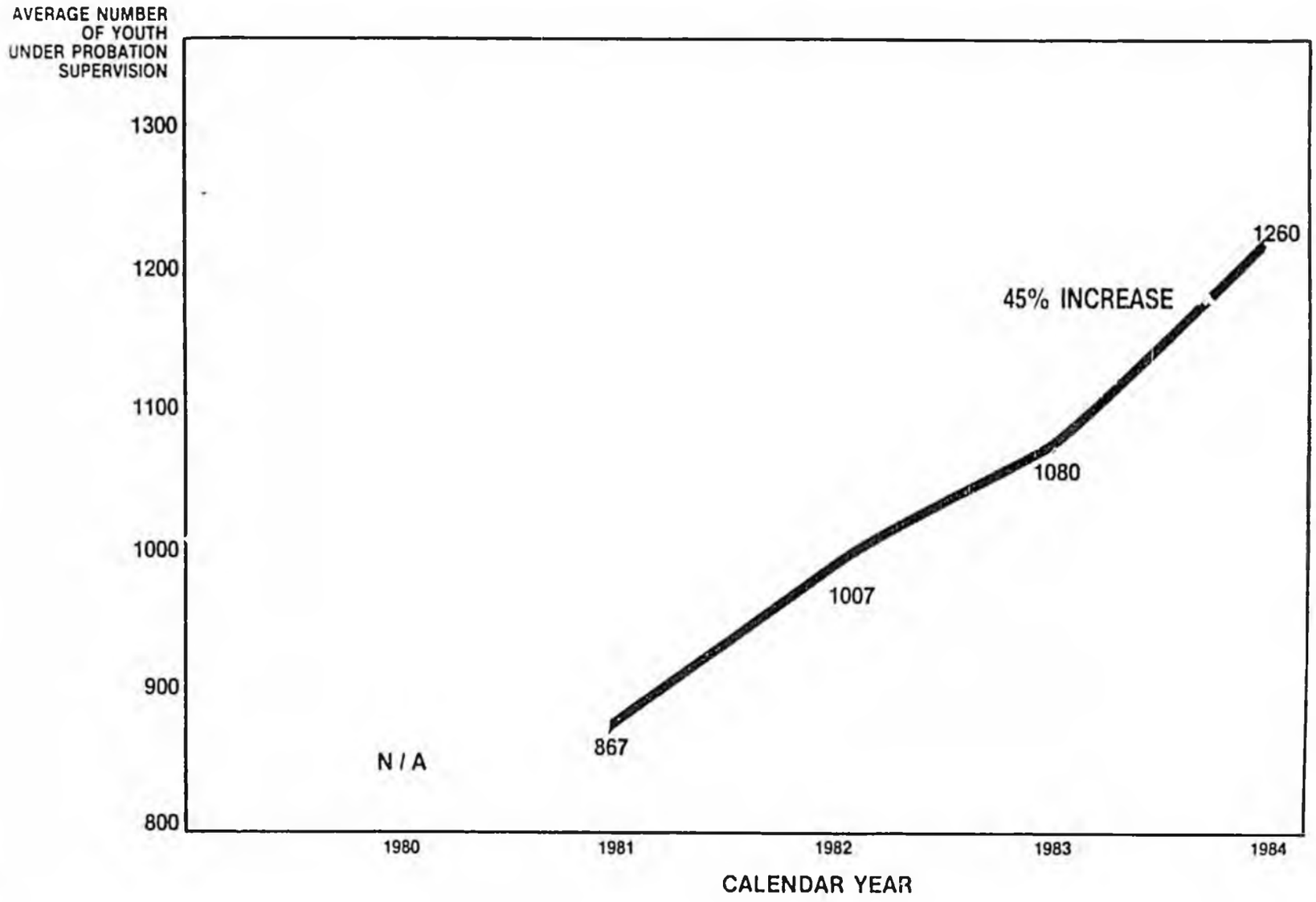
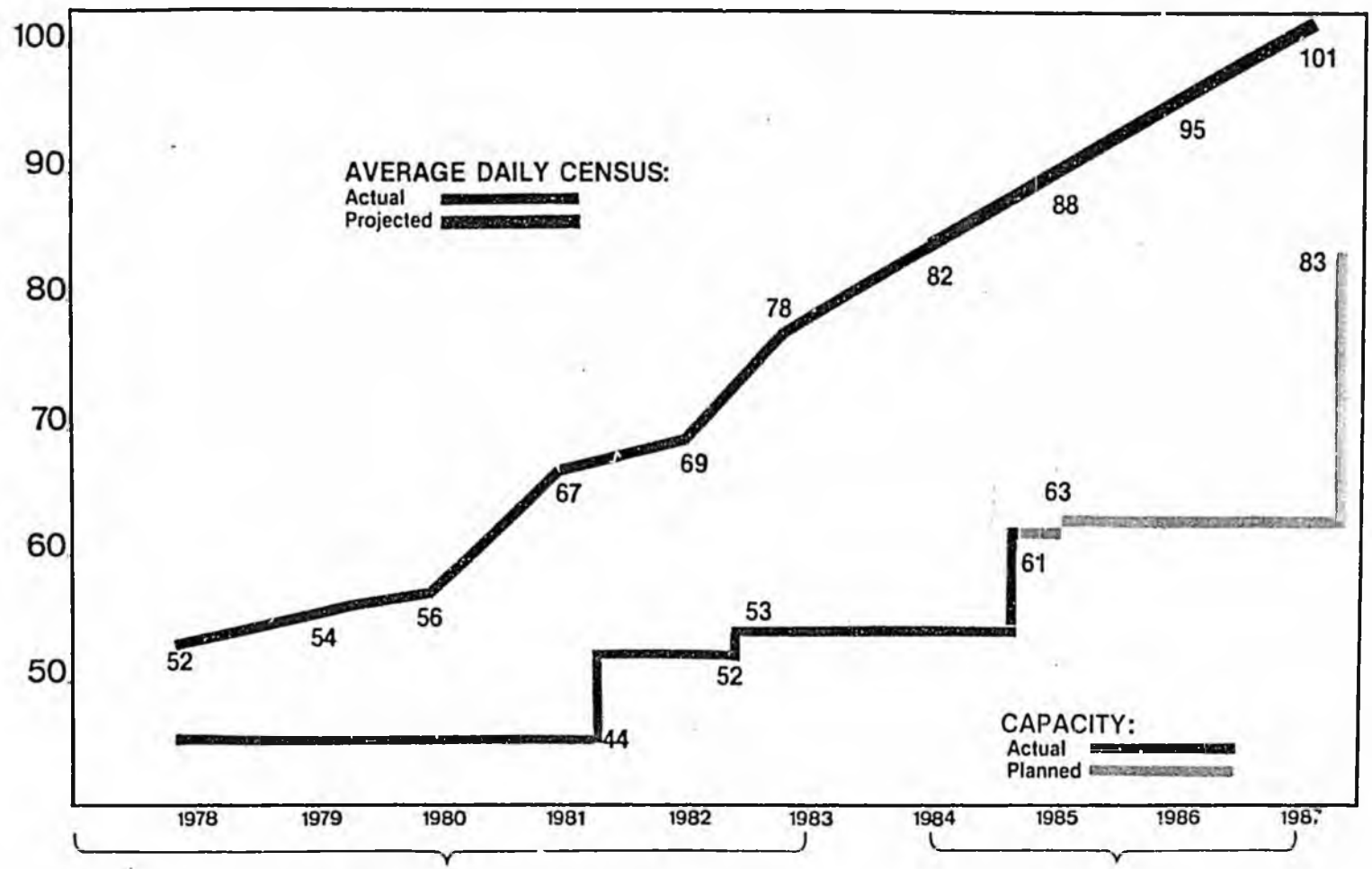


CHART 7

GROWTH IN DETENTION

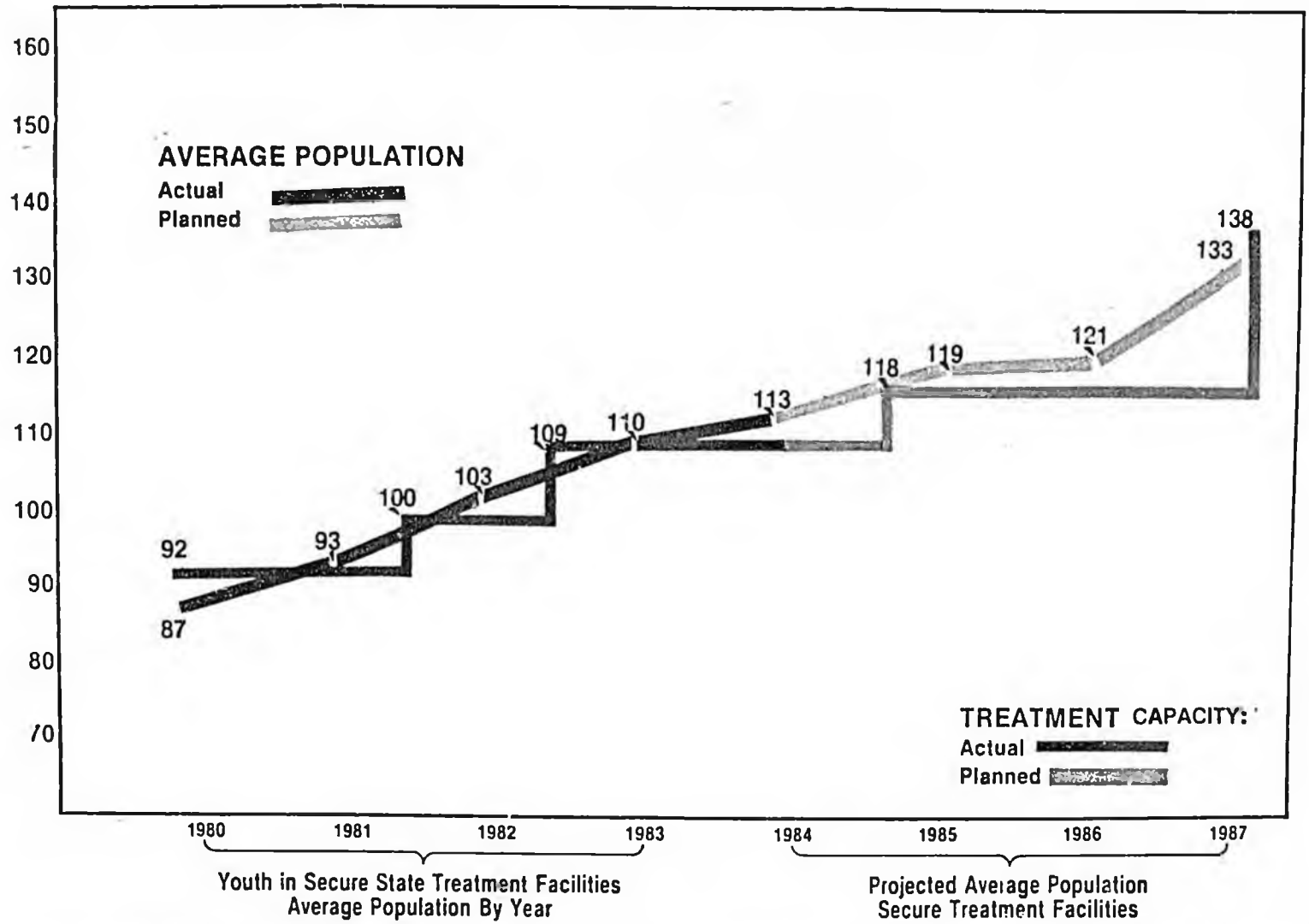


Detention of Youth in State Facilities
Average Population By Year

Projected Average Yearly Population
Detention Facilities

CHART 8

GROWTH IN SECURE TREATMENT



These figures do not include youth detained in municipally operated jail facilities around the state and do not, then, represent the full extent of the juvenile detention problem.

The significant growth in the population of juvenile detention facilities seems contradictory to what might be expected given the decrease in the number of juveniles being arrested. Obviously part of this increase may be explained by an increase in the detention capacity since an increase in the capacity, if filled, will lead to a higher daily population rate. However, the demand is far greater than increases in capacity. Possible explanations for this seeming contradiction are:

1. an over-utilization of detention upon arrest;

2. lack of immediate (24 hour) intake and diversion services result in the unnecessary detention of youth who do not truly present a danger to themselves or to the community (This was found to be true by a grand jury in the Fairbanks area and led to recommendations that DFYS assume greater intake authority in order to correct the problem.);

3. lack of sufficient secure treatment capacity which results in a backlog of adjudicated youth being held in detention pending placement in a secure treatment program.

Secure Treatment: Chart 9 illustrates the growth in secure treatment for juvenile offenders. The chart shows that the actual number of youth being treated in secure facilities is essentially the same as the capacity of those facilities. Projections show that this will continue to be true in the future. This does not provide a complete picture of the need for secure treatment because the population in secure treatment is administratively held at the rated capacity. Population is limited to maintain the effectiveness of the rehabilitation programs and preclude the development of a dangerous circumstance due to overcrowding. The number of youth in treatment at any given time is controlled through several important mechanisms:

1. an admission policy which requires the release of a youth who has completed the treatment program before admitting another youth;

2. decreases in the length of treatment which allows treatment of a greater number of youth without increases in facility capacity;

3. utilizing secure detention as an interim placement for youth who require secure treatment pending an opening in a secure treatment program;

4. placement of a strictly limited number of youth in secure facilities outside the state.

Analysis

The dramatic growth in numbers of youth receiving probation, detention and secure treatment services seems unwarranted by the level and nature of juvenile

crime in Alaska. The number and rate of juvenile arrests shows a decrease and the seriousness of offenses committed by juveniles is relatively stable, yet there is an increasing number of juveniles under probation supervision, in detention, and in secure treatment. These seemingly contradictory sets of facts may be complementary instead. The following hypotheses may help explain some of the apparent anomalies in the data.

1. When rehabilitative services for juvenile offenders were part of an adult corrections agency, services for juveniles were subordinated to efforts to deal with adult criminals and many youths were allowed to "slip between the cracks" resulting in multiple offenses and arrests of the same youths before intervention occurred.

2. Reorganization of rehabilitative services for juvenile offenders within a child and family-focused agency resulted in increased attention to juvenile offenders and increased service levels.

3. Intervention in matters of juvenile delinquency is occurring earlier and higher levels of services are being provided.

4. Increased services and earlier intervention result in earlier identification of repeat offenders and greater use of the formal juvenile justice system to deal with these youth.

5. Earlier intervention, earlier identification of repeat or serious offenders, and higher service levels result in reductions in repeat offenses and arrests, and a lower overall rate of arrest.

YOUTH SERVICES OUTLOOK : ISSUES AND STRATEGIES

The juvenile system has evolved rapidly since separation of juvenile rehabilitation programs from the adult correctional system four years ago. This evolution has included long delayed growth, increased sophistication, and change in emphasis. However a number of critical issues and problems remain and these must be addressed immediately or in the near future. The choices made in addressing these issues and problems will determine the structure of correctional services for youth and the allocation of resources within that structure for many years.

In general terms the broad problem being faced is that of protecting the public through rehabilitation and control of young offenders when the population of youth is increasing and resources are limited. Decisions made will determine whether Alaska develops a highly centralized approach relying heavily on long term institutional placements or adopts a regionalized approach relying more on prevention, early intervention, and community based treatment.

Issues

Specific system problems to be addressed include:

1. a need for detention and secure treatment of juveniles which exceeds present capacities and will exceed planned expanded capacities;

2. a growing need for detention and secure treatment outside the major urban areas.

3. a need for alternative services and approaches in order to limit growth in expensive detention and secure treatment;

4. an increased need for probation and other community-based services.

5. a need for systematic prioritization of services based on risk and need of youth and available resources; and

6. a need for information on juvenile offenders sufficient to allow analysis of trends, evaluation of program effectiveness, short term plan adjustments, and long term planning.

DFYS Strategy

The Division of Family and Youth Services has developed a balanced strategy for achieving its mandate to protect the public and rehabilitate juvenile offenders, while addressing current system problems. This strategy focuses on reducing deficits in certain critical services, limiting future need for expansion in institutional services, and containing costs through increased program efficiency and effectiveness. The strategy has five major initiatives which are:

1. Increasing secure detention and treatment capacity;

2. Increasing emphasis on prevention, early intervention, and community based services;

3. Regionalization of services;

4. Development of systematic case management system;

5. Development of a comprehensive management information system.

Initiative Number 1 : Increase in Detention and Secure Treatment

Chart 10 illustrates detention and secure treatment capacity of state operated juvenile facilities as they presently exist and as planned through FY 86. With additions planned through FY 86, detention capacity will increase by 46%, treatment capacity will increase 41%, and capacity for closed treatment (treatment for the most difficult and dangerous of juvenile offenders) will increase by 100%. The total capital cost of these increases will be approximately $9.9 million. Additional operating costs are estimated at approximately $4.2 million per year.

Even with these unavoidable additions to detention and treatment capacity, projections show that the demand for these services will meet or exceed the expanded capacity (charts 8 and 9). And, while development of increased detention and treatment capacities are necessary, charts 10 and 11 illustrate that these are expensive services. As chart 11 shows the true expense cannot be measured simply in terms of the initial capital costs. Construction costs of a 20 bed facility (a 20 bed facility is the minimum size for cost efficiency) comprise only 10% of the total life cycle cost of the facility. Operating costs of a facility account for 90% of total costs. Thus, even if all other factors were disregarded, costs alone would require that use of detention and secure treatment be highly selective.

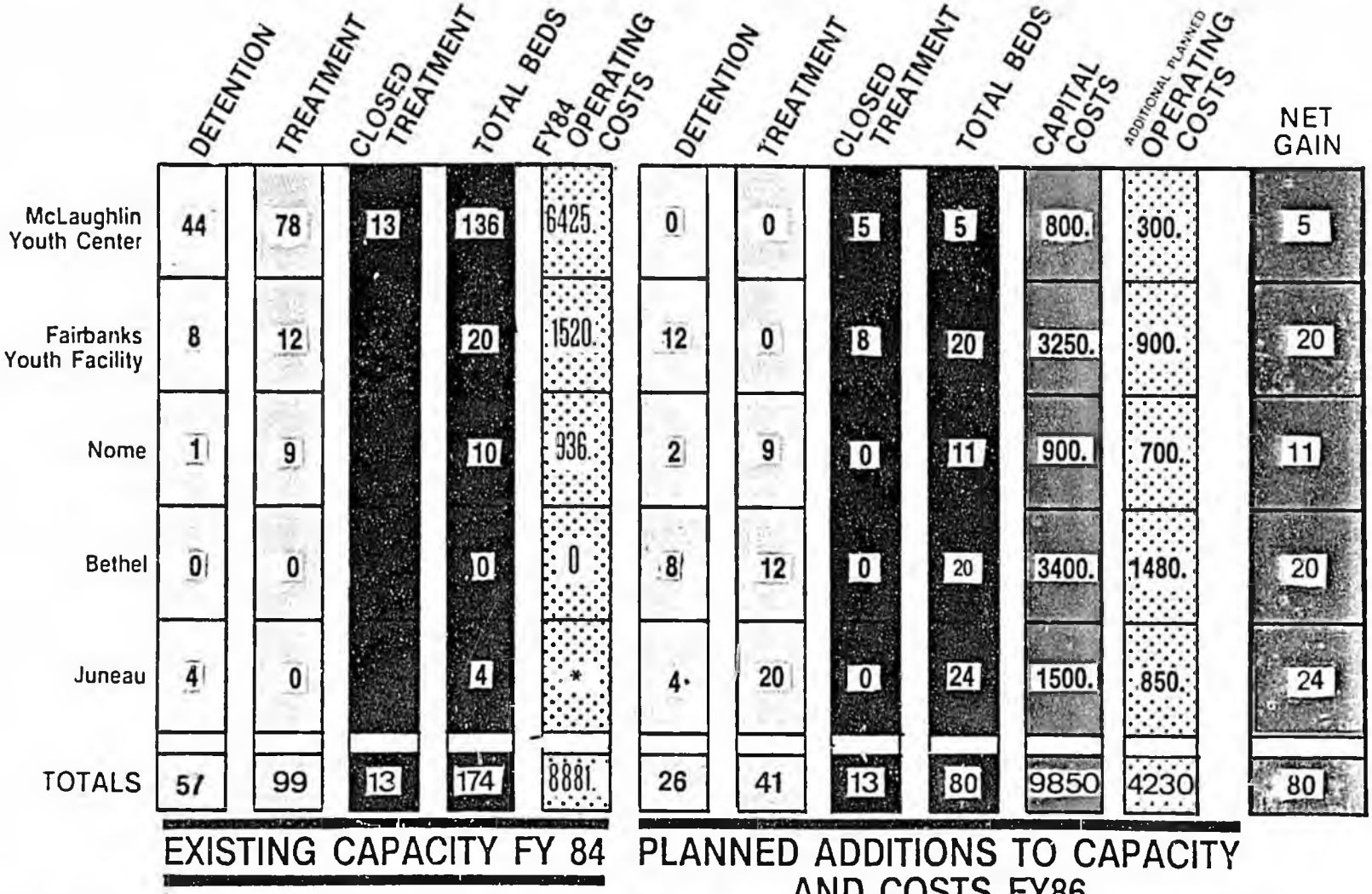
Initiative Number 2 : Increased Emphasis on Community Based Services

To avoid unending increases in detention and secure treatment DFYS proposes to increase community-based rehabilitative efforts for juvenile offenders. These services include prevention and diversion services as well as probation supervision and alternatives such as foster care.

An initial step in increasing emphasis on community-based services, assumption of statewide control over the juvenile court intake function, was achieved on December 3, 1984. Implementation of uniform statewide policies for juvenile intake and the availability of intake officers on a 24 hour basis in state operated detention facilities will allow better and quicker screening to reduce unnecessary detention of youth who do not pose a danger to the public. It will also allow earlier and more effective intervention and diversion services following the initial arrest of juveniles. Funding of prevention and diversion programs through grants is an important part of increasing reliance on community-based services. A model program providing community service as a diversion alternative has recently been expanded to include restitution collection and to serve the most populated areas in the state.

DIVISION OF FAMILY AND YOUTH SERVICES

Secure Youth Facilities



Sources: Division of Family and Youth Services, Capital Budget, FY85
Department of Health and Social Services, Capital Plan, FY85
Division of Family and Youth Services, Budget FY84

*Information not comparable operated as facility for both adult prisoners and juveniles in FY84

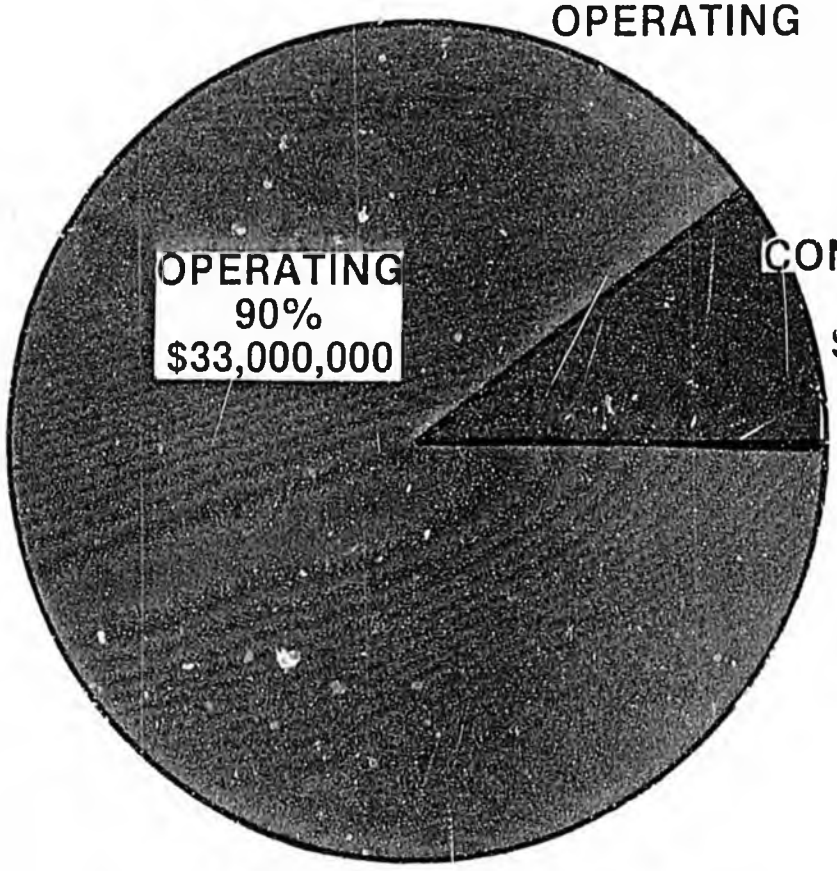
TYPICAL YOUTH FACILITY COSTS
20 Beds

CONSTRUCTION

Cost per bed	170,000
Cost per facility	3,400,000

ANNUAL OPERATING

Staff cost	1,160,000
Food cost	72,000
Maintenance	60,000
Utilities	43,900
TOTAL ANNUAL OPERATING	1,335,900



Life Cycle Cost Comparison
20 Year Life Expectancy

Source: Division of Family and Youth Services
Fiscal Year Budget 1985

CHART 11

Initiative Number 3 : Regionalization

DFYS' regionalization strategy is illustrated in Chart 12. As the chart shows, this is a significant departure from the centralized approach of the past. This configuration will improve secure detention and treatment services in several ways. Since intake and diversion services will be available from the regional facilities unnecessary detention of many youth will be eliminated and earlier intervention and diversion will occur. The need to transport youths from outlying areas to a centralized facility in Anchorage or Fairbanks will be reduced thereby reducing the time youths spend in detention and treatment. In addition greater reliance on existing community and family resources will occur in all aspects of intervention, diversion and treatment, increasing their effectiveness.

The regional approach will more efficiently utilize resources since it will allow better and earlier screening and intervention. Reductions in length of time necessary for rehabilitation of juvenile offenders will allow more youth to be rehabilitated without an otherwise necessary expansion of facilities.

Regionalization of services will, then, expand the types of services available in outlying areas, better utilize community and family resources in rehabilitation efforts, provide earlier and more effective intervention and diversion, allow a greater number of treatment strategies to be used, reduce the time necessary for detention and treatment of youth, and allow a larger number of youth to be served without continuing institutional expansion.

Initiative Number 4 : Case Management

To ensure that agency resources are used most effectively DFYS is developing a formal, systematic method of case management. This will give DFYS an objective, reliable method of assessing the risks presented by delinquent youth and their rehabilitative needs. It will also establish workload and performance standards, uniform methods of case planning, and mechanisms for monitoring and evaluation for individual cases.

On both an individual case and program level development of a formal method of case management will provide a systematic planning process. This process will provide a framework for analyzing problems, developing objectives, identifying resources to be used in achieving objectives, and achieving accountability through monitoring and evaluating effectiveness and performance. A critical part of a case management system is the collection of information about clients and programs essential in providing a basis for decisions on all levels. Without a sufficient capability for collection and analysis of needed information a case management system cannot function effectively.

Initiative Number 5 : Management Information System (MIS)

Development of a comprehensive management information system is essential to DFYS' overall strategy since it will enable the agency to routinely collect information necessary for numerous case and management functions.

A comprehensive MIS will provide detailed information for program evaluation and accountability, and for a variety of decisions from the individual client level to the administrative and legislative policy level.

The Department has been mandated to require and collect statistics on juvenile offenses and offenders, but has not had the capability to do so. With the assumption of responsibility for the juvenile court intake function DFYS now has the ability to develop a system of tracking juvenile offenders from the time of their referral to the intake officer through all processes of the juvenile justice system. This is extremely important since it can provide previously unavailable information for analysis of statewide trends. Major policy decisions and day to day program operations require such information and the evaluations such information makes possible. With completion of this initiative, the Department will be able to carry out this mandate and meet information needs on a general level.

Conclusion

Significant progress has been made in recent years to address the problem of juvenile crime in Alaska. Separation of services for juvenile offenders from programs for adult criminals has focused greater attention on juveniles and resulted in dramatic increases and improvements in services. This has been a primary cause for decreases in both total numbers and rate of measurable juvenile crimes. Earlier intervention and increased service means fewer youth become repeat offenders and serious offenders are identified and dealt with sooner.

However, Alaska's population continues to increase and programs for juvenile offenders are now overburdened. This has occurred at a time when revenues have begun to decline and resources are increasingly limited. Without effective use of available resources and some resource increases program effectiveness will decline and increases in juvenile crime will almost certainly occur.

The strategy devised by DFYS to protect the public and rehabilitate young offenders is designed to direct resources to the most cost effective services and contain the need for additional resources. The strategy includes several management initiatives. Some are designed primarily to address specific problems presently being faced. Others will increase accountability and effectiveness of existing services. Development of a systematic method for identifying future problems and needs, evaluating programs and services, and allocating resources most effectively as circumstances change will be a primary focus in these initiatives.

The need for resources will undoubtedly increase as the state's population increases. However, DFYS' management initiatives are predicated on limiting the need for additional resources through informed planning and decision making and by concentrating on the most effective and least expensive services. Immediate needs will require increased resources for institutional services. But regionalization will insure the most effective use of these and future resources.

Through these initiatives and emphases DFYS hopes to avoid the failures of other states in focusing on a single aspect of juvenile crime - the end of the service continuum, institutions and secure treatment. Instead DFYS hopes to focus resources on prevention, diversion, early intervention, and community - based services. These approaches effectively protect the public and rehabilitate the vast majority of young offenders without the massive resource requirements of institutions.

Trial Courts

State of Alaska

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501

November 20, 1984

CHILDREN'S INTAKE OFFICE
Jay L. Warner
Micheale Giesler
Sandra Bonacker

Senator Pat Rodey
801 W. Fireweed, Suite 102
Anchorage, Alaska 99503

Dear Senator Rodey:

Thank you very much for your letter of November 2, 1984 regarding the Alaska Juvenile Code. I agree with you that changes are necessary to cope with present problems in the juvenile system in the State of Alaska. I feel that all juvenile intake should be handled by the District Attorney's office in a similar fashion to adult matters. I believe intake as it exists today could provide supervision for the juvenile cases which the District Attorney decides to divert. Our criminal laws are so complex and juvenile crime is becoming so serious and so sophisticated that I believe the State of Alaska is at a disadvantage when lay people, such as myself, act as prosecutors when juveniles are represented by private attorneys or the Public Defender. I also feel juvenile jurisdiction should be lowered to age sixteen for all Unclassified and Class A felonies. I further feel that there should be two types of juvenile court jurisdictions for delinquent minors. One would be what I would call MINOR DELINQUENCY, which would include all misdemeanor type offenses and would allow the State supervision and custody for up to one year. The other type, MAJOR DELINQUENCY, would include all felony type offenses and would allow for State supervision for any undetermined period of time, not to exceed the nineteenth birthday. I believe this would allow the State to work with juvenile offenders on a more acceptable basis because the offense would determine the length of supervision.

I hope this information will be of some value to you in the coming session. If you have any questions, please feel free to contact me.

Yours truly,

Jay L. Warner

Jay L. Warner, Intake Officer

JLW:jm

Back Up - Hess Fiscal Note 3-12-86

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Unit Leader	1	17/A	S			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	34,740	
Benefits	11,332	
Premium Pay		
Other		
Total Personal Services		46,072.00
Travel		275.00
Contractual		3,816.00
Commodities		4,010.00
Equipment		
Other		
Total Cost		54,173.00

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	54,173.00
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position is necessary to provide operational services to a pre-adult unit for teen-agers who have committed unclassified felonies. The pre-adult unit is a maximum security unit requiring three complete shifts to operate it.

Request For New Position

Agency: Health and Social Services
BRU: Youth Services
Component: McLaughlin Youth Center

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk-Typist III	1	8/B	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	20,136.00	
Benefits	8,211.00	
Premium Pay	1,549.00	
Other		
Total Personal Services		29,896.00
Travel		-0-
Contractual		3,816.00
Commodities		4,010.00
Equipment		
Other		
Total Cost		37,722.00

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	37,722.00
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position is necessary to provide operational services to a pre-adult unit for teen-agers who have committed unclassified felonies. The pre-adult unit is a maximum security unit requiring three complete shifts to operate it.

Request For New Position

Agency: Health and Social Services

BRU: Youth Services

Component: McLaughlin Youth Center

Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Maintenance Worker II	1	54C	I			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	35,373.00	
Benefits	11,855.00	
Premium Pay	794.00	
Other		
Total Personal Services		48,022.00
Travel		
Contractual		3,816.00
Commodities		4,010.00
Equipment		
Other		
Total Cost		55,848.00

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	55,848.00
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position is necessary to provide operational services to a pre-adult unit for teen-agers who have committed unclassified felonies. The pre-adult unit is a maximum security unit requiring three complete shifts to operate it.

Request For New Position

Agency: Health and Social Services
BRU: Youth Services
Component: McLaughlin Youth Center

Page 1 of 1
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Cook II	1	57/C	L			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	29,698.00	
Benefits	10,857.00	
Premium Pay	2,295.00	
Other		
Total Personal Services		42,850.00
Travel		
Contractual		3,815.00
Commodities		4,010.00
Equipment		
Other		
Total Cost		50,675.00

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	50,675.00
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___-___-___-___-___

Justification

This position is necessary to provide operational services to a pre-adult unit for teen-agers who have committed unclassified felonies. The pre-adult unit is a maximum security unit requiring three complete shifts to operate it.

Request For New Position

Agency: Health and Social Services

BRU: Youth Services

Component: McLaughlin Youth Center

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Youth Counselor III	3	15/A	G			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	90,648.00	
Benefits	30,750.00	
Premium Pay	21,729.00	
Other		
Total Personal Services		143,127.00
Travel		825.00
Contractual		11,448.00
Commodities		12,030.00
Equipment		
Other		
Total Cost		167,430.00

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	167,430.00
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

These positions are necessary to provide operational services to a pre-adult unit for teen-agers who have committed unclassified felonies. The pre-adult unit is a maximum security unit requiring three complete shifts to operate it.

Request For New Position

Agency: Health and Social Services

BRU: Youth Services

Component: McLaughlin Youth Center

Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Youth Counselor II	12	13/B	G			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	327,456.00	
Benefits	131,664.00	
Premium Pay	71,400.00	
Other		
Total Personal Services		530,520.00
Travel		3,300.00
Contractual		45,789.00
Commodities		48,130.00
Equipment		
Other		
Total Cost		627,739.00

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Fund	1004	627,739.00
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

These positions are necessary to provide operational services to a pre-adult unit for teen-agers who have committed unclassified felonies. The pre-adult unit is a maximum security unit requiring three complete shifts to operate it.

Request For New Position

Agency: Health and Social Services
BRU: Youth Services
Component: McLaughlin Youth Center

Revised Date

FY 87

from "Family Weekly", The Anchorage Times (SB 264) 4/21/85

PEER POWER

To help keep "bad" kids out of trouble, teen courts are springing up around the country. Here's how they can work.

By Janet Weiner

Fifteen-year-old Ronald, an amiable high school student, was arrested by police and charged with theft of bicycle equipment totaling $8. When his mother saw him at the Odessa, Texas, police station, handcuffed, with tears in his eyes, she too began to cry.

He was released in his mother's custody. "I was so scared," said the boy. "I thought she was going to *kill* me. But when we got in the car she said, 'Ronald, I had such hopes for you. I trusted you.' I guess I let her down."

Shoplifting is not unusual among adolescents, according to juvenile crime experts. For Ronald, it was his first offense. The motivation was obviously deprivation and need; he never thought of the consequences.

His parents, always mobile, were now divorced, and he was often shuttled between them. Being new to his neighborhood, he had difficulty making friends, got in with the wrong crowd, and drifted into trouble. "I would have done anything to become part of the group," said Ronald.

When it was time for Ronald to face the court, he was apprehensive. He told the state's attorney, "I needed the [bike] parts, and I didn't have the money to pay for them." The jury, led by the bailiff, filed out to decide his sentence.

A familiar scene? Yes. . . and no. The lawyers, judge and jury Ronald had to face were teenagers, and most of the participants — now jurors, attorneys, bailiffs, clerks — had themselves once been defendants. The Odessa teen court program is designed to help young first-time offenders such as Ronald, who might be developing a pattern of criminal behavior that can be stopped early by promoting a healthy attitude about oneself as well as the law. And teen courts are springing up all over the country. They exist in such places as Denver; Seattle; Portland, Ore.; Scranton and Erie, Penn.; Richardson and Grand Prairie, Texas; Oswego, Oneida, Tarrytown, Ithaca and Newburgh, N.Y. A television movie on the subject will air this Tuesday.

The jury is still out as to whether teen courts are a fad or an important judicial innovation. As Hunter Hurst, executive director of the National Center for Juvenile Justice in Pittsburgh, pointed out, "I don't think their performance has been well measured." But, he added, "without question," their efficiency lies in the fact that they enable young people to have better understanding of, and more respect for, the law.

"We ought to be encouraging innovation [such as youth court programs], but as we encourage it, we need to have enough healthy skepticism to document it," added Hurst. "Implement them and measure them, and make me wrong, because the answers to juvenile delinquency are so few that I certainly wouldn't want to rule this one out before the fact."

Janet Weiner, who lives in Houston, Texas, is a frequent contributor to FAMILY WEEKLY.

A panel of jurors is sworn in at the Odessa, Texas, teen court. More than 1,000 cases have been heard in the Odessa program, and second offenses have been rare.

Max Faulkner

The Odessa teen court has been in existence for a little over a year, and more than 1,000 cases have been heard. Thus far, no teenager found guilty of a misdemeanor and fewer than 15 percent of traffic offenders have been in further trouble. This speaks well for the project when the national average of second-time youthful offenders is now over 50 percent.

Judge Ken G. Spencer, 73, is a veteran jurist and one of two adults involved in the Odessa teen court. He believes the program is invaluable because "the kids learn something about their own rights, and they respect the legal system." Natalie Rothstein is the teen court coordinator. She runs the show, counsels teenagers in trouble, and attempts to channel their negative energy into something constructive. "Before teen court, many kids fell through the cracks in the legal system," she said. "The court dockets were loaded, and less serious offenses were put on a back burner. The youngster got a slap on the wrist and was sent home to sin no more." But in the teen court program, each youngster is quickly tried by his peers and is expected to complete obligations to society.

Teen court deals only with first offenders and handles a wide range of cases, including traffic violations, shoplifting, runaways, criminal trespass, theft, driving while intoxicated, and possession of drugs and alcohol. Youngsters between ages 10 and 16 must plead guilty (not-guilty pleas and felonies are dealt with at municipal court), and they are accompanied to court by their parents. Teenagers tried on drug- and alcohol-related charges are assigned to a chemical abuse education and prevention class. Parents attend a workshop on behavior modification techniques.

Sentences entail jury duty and community service. Offenders work for institutions such as the Red Cross, hospitals, nursing homes, and libraries, or for the victim to pay damages. Jury members assign the number of hours of service. Upon fulfillment of the sentence, charges are dismissed, and the offender's record is clean. Every defendant must later function as a juror. "This forces them on the justice side of the criminal justice system," Rothstein pointed out. "They're not going to be involved in law-breaking behavior, because they're getting positive reinforcement for positive kinds of behavior."

The maximum hours a defendant may serve is 30. When Ronald was sentenced to 18 hours, he chose to work at the animal shelter. He said he feels good about the program and about himself. "Now I have friends that I work with and friends through the program. And they like me for *me*. This all made me realize something about myself," he mused. "I'm OK."

The youths who find themselves before the court come from all sorts of families. "They're just ordinary mainline kids," says Rothstein. "They experience a feeling of not belonging. But when they get involved in teen court, they start to shine."

Andy Reeves once felt isolated from her peers. "They were snobs. Maybe they thought I was snobby, too, but they didn't really know me. I was never asked to go to a party, or a movie, or anyplace," she said. "Maybe they felt that if they could make me feel not as important as them, it would make them feel more important."

But that was a year ago, before she became involved in the teen court program. Andy volunteered for the program and went through training to be a juror. She has alternated between being bailiff and juror, and is now an integral part of the system. Emblazoned on her blouse in bold letters are the words: ANDY. TEEN COURT BAILIFF. Everything has changed for her. "Now I have a place to be. I'm somebody now. I have a bunch of friends, and we go out and have a real good time. I'm more confident about everything, and I'm more positive about myself."

Andy said the teen court works "because kids their own age [as attorneys and jurors] understand their problems better than adults do. Sometimes the kids on the jury can be tough. I think adults [jurors] would kind of ease off of them [defendants] just because they are kids. At teen court they get the sentences they deserve."

Enthusiasm among teens for the program runs high. Debra Bingham, the "attorney" who defended Ronald, believes that "people are taking their sentences more seriously, since it comes from people their own age who know where they're coming from." Said one volunteer juror who considers the court a learning experience: "I see the mistakes other kids make. I won't make those same mistakes."

Parents seem grateful for the program. One enthusiastic parent whose daughter, 15, was arrested while joyriding with three other friends and charged with being a minor in possession of alcohol explained: "It's excellent the way they [the attorneys] asked her if she realized the bad effects alcohol had on her body and questioned her about the kind of reprimand she got at home. Oh, I grounded her. But I know she still drinks. Maybe these people can set my daughter's thinking right. I can't."

Does a teen court offer hope to other cities' struggles with juvenile delinquency? In fact, Odessa has been bombarded with inquiries from cities across the country and around the world. "With the right people, the right philosophy, almost any city can replicate this program," Rothstein said. "But if you don't have the kids to implement the program, you don't have a program."

Added Judge Spencer: "Usually, kids are talked to, talked at, talked about, but never talked with, and they're not part of the system. The biggest lesson I've learned is that you don't crush someone that you're trying to preserve and improve." FW

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HESS 11-20-85 7:30pm

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

POUCH H-05
JUNEAU, ALASKA 99811
PHONE: (907) 465-3170

September 20, 1985

The Honorable Max Gruenberg
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Gruenberg:

Pursuant to a recent request from Nancy Bennett of your staff, we prepared information reflected below on youths over whom juvenile court jurisdiction has been waived.

Definitive data on the subject of waiver are difficult to obtain since such data is not routinely collected by any of the involved agencies. And, unfortunately, much of the information used in discussion of this subject is generalization based on limited personal experience in one or two cases, or unverifiable anecdotal information. The information presented below may not represent a complete profile of juvenile waivers in Alaska due to data and research limitations discussed in later paragraphs. However, it does represent the best available verified information, and as such presents a reliable profile of what is probably the majority of waiver cases during the period.

According to the best information available, 23 youths were waived from juvenile jurisdiction and subsequently convicted of a crime in the adult criminal justice system in the years 1981 through 1984. The following is a breakdown of these cases by type of crime and number of youths convicted.

Murder 1st Degree	7	Distribution of Drugs (Degree Unknown)	1
Murder 2nd Degree	1		
Sexual Assault 1st Degree	2	Escape 3rd Degree	1
Sexual Assault 2nd Degree	2	Theft 2nd Degree	1
Manslaughter	1	Criminal Mischief 2nd Degree	1
Burglary 1st Degree	1	Possession of Marijuana	1
Burglary 2nd Degree	3	Minor Consuming	1

A breakdown of the ages of these youth at the time they committed the offense leading to their waiver and conviction is as follows: age 17 - 11, age 16 - 3, age 15 - 2, and unknown - 7.

Because of the need for objective data on this subject, probation officers employed by the Division of Family and Youth Services were asked several years ago to check their intake files, research court records, and confer with District Attorneys in each of the four judicial districts to try to determine the numbers

of waivers attempted over a three year period. That effort resulted in a conclusion that during the years 1979 through 1981, fourteen waivers had been attempted. Of that number, twelve were granted by the court.

That information was subsequently challenged by some individuals on the basis that it did not coincide with their perceptions or personal experiences in one or two instances. An effort was made to refine the data by cross checking the names of waived youth with Department of Corrections inmate population records. However, even this was not entirely satisfactory because records were not structured in a way that could supply or verify all needed information. For example, information was not obtainable on waived but unconvicted or unsentenced youth, nor on youth who had been waived but had served their full sentence. Additionally, only youth who had been waived recently could be identified without a review of individual files as age (under 18 years vs. 18 or older) was the only characteristic which could be used to differentiate between those prisoners convicted after waiver and all other prisoners. Consequently, those who had been waived and convicted, but who had reached age 18 could not be identified as having been the subject of a waiver. Unsuccessful waiver attempts were not reflected in Corrections' records, nor were those successful waivers which were under appeal, or which were not followed by criminal convictions. Also some rather stringent time constraints were imposed, as the information was needed for a legislative committee hearing. Although exhaustive research has not been possible, information obtained in this way generally confirmed that supplied by probation officers.

Since that initial effort, we have been able to devote only limited time to researching this issue. That time has been directed at obtaining and confirming information on youth waived from juvenile jurisdiction and subsequently prosecuted and convicted of offenses in the adult criminal justice system. The information presented above does not then represent all waiver attempts during the period. It also does not include all waivers which were granted since waiver does not necessarily result in a conviction in the adult system.

I hope this information will be useful despite its limitations.

Sincerely,

Michael L. Price

Michael L. Price
Director

RW:ar

WORK DRAFT WORK DRAFT WORK DRAFT

Hein
4/2/86

Original sponsor: DeVries

IN THE SENATE CS SB 264(HESS) BY THE JUDICIARY COMMITTEE

~~CS FOR SPONSOR SUBSTITUTE FOR~~ SENATE BILL NO. 86 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the waiver of children's court jurisdiction, and to the detention, fingerprinting, and sentencing of minors; and amending Rule 24 of the Alaska Rules of Children's Procedure."

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

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

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

(1) order that the defendant be confined in an institution designated by the Department of Health and Social Services for offenders under 18 years of age; and

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

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

(j) A person convicted of a first felony offense after waiver of children's court jurisdiction under AS 47.10.060 is not subject to the mandatory minimum and presumptive sentences required for first offenders.

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

Sec. 47.10.060. WAIVER OF JURISDICTION. (a) The court shall

order a case closed, and a minor may be prosecuted as an adult, if the court finds at a hearing on a petition

(1) that the minor was 16 years of age or older at the time of the offense and that there is probable cause to believe that the minor has violated AS 11.41.100, 11.41.110, 11.41.300, 11.41.410, or 11.41.434; or

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

(b) In determining whether a minor is amenable to treatment under this chapter, the court shall consider

(1) the seriousness of the offense;

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

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

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

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

(6) the age, maturity, educational background, and degree of criminal sophistication of the minor;

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

(8) whether children's court jurisdiction over the minor can be retained long enough to allow for effective treatment or rehabilitation; and

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

(c) The court shall determine the weight to be given to each of the factors listed in (b) of this section and shall issue a written decision. A finding that a minor is not amenable to treatment under this chapter may be based on any one or a combination of the factors.

(d) A minor ordered held pending trial or sentencing as an adult under (a) of this section shall be confined in an institution designated by the Department of Health and Social Services for offenders under 18 years of age.

* Sec. 4. AS 47.10 is amended by adding a new section to read:

Sec. 47.10.125. FINGERPRINTING OF MINORS. (a) A law enforcement agency or the Department of Health and Social Services may fingerprint a minor only

(1) in accordance with a search warrant;

(2) if children's court jurisdiction over the minor has been waived under AS 47.10.060(a) and the minor is being prosecuted as an adult;

(3) if the minor is adjudicated a delinquent for the commission of an offense that would constitute a felony if committed by an adult;

(4) with the consent of the minor and a parent or legal guardian of the minor, both of whom shall have been advised that the fingerprints may not be taken without their consent; or

(5) by order of the court.

(b) Fingerprints of a minor shall be kept separate from those of adults, shall be kept within the state rather than at a federal central depository, and shall be made available on request only to the following:

(1) a public agency for use in the investigation and prosecution of criminal offenses for which the fingerprinted minor is a suspect;

(2) the minor or the minor's attorney.

(c) Fingerprints of a minor taken under this section shall be destroyed by the authority charged with their maintenance

(1) if the minor is adjudicated for the offense regarding which the minor's fingerprints were taken and is found not to be within the jurisdiction of the court for the offense; or

(2) if the minor is not adjudicated for the offense regarding which the minor's fingerprints were taken within two years of the date the fingerprints were taken.

* Sec. 5. AS 47.10.130 is amended to read:

Sec. 47.10.130. DETENTION. A [NO] minor under 18 years of age who is detained pending hearing may not be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view prisoners 18 years of age or older except those incarcerated under AS 47.10.100 [ADULT PRISONERS CONVICTED OF, UNDER ARREST FOR, OR CHARGED WITH A CRIME]. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately.

* Sec. 6. AS 47.10.190 is amended to read:

Sec. 47.10.190. CONDITIONS GOVERNING DETENTION. When the court commits a minor to the custody of the department, the department shall arrange to place the minor [JUVEN LE] in a detention home, facility or another suitable place that [WHICH] the department designates for that purpose. A minor [JUVENILE] detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from prisoners 18 years of age or older

except those incarcerated under AS 47.10.100 [ADULTS].

* Sec. 7. Rule 24, Alaska Rules of Children's Procedure, is amended to read:

No child shall be [FINGERPRINTED OR] photographed while in custody except with the consent of the children's court upon good cause shown. Such cause exists where the child is in custody for a serious offense against persons or property or where identification of the child appears necessary for the safety of the child or others.

* Sec. 8. Section 7 amends Rule 24 of the Alaska Rules of Children's Procedure by deleting the reference to fingerprints.

* Sec. 9. Rule 24, Alaska Rules of Children's Procedure, is amended by adding a new subsection to read:

(b) A child may not be fingerprinted while in custody except in accordance with AS 47.10.125.

* Sec. 10. Section 9 amends Rule 24 of the Alaska Rules of Children's Procedure by incorporating the statutory requirements for obtaining fingerprints from a child in custody.

Sandra
Hein
12/2/85

Original sponsors: Rodey, Faiks, Abood, et al

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR SENATE BILL NO. 264 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to detention and unlawful conduct of minors; and amending Rule 24 of the Alaska Rules of Children's Procedure."

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

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

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

(1) order that the defendant be confined in an institution designated by the Department of Health and Social Services for offenders under 18 years of age; and

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

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

(j) A person convicted of a first felony offense after waiver of children's court jurisdiction under AS 47.10.060 is not subject to the mandatory minimum and presumptive sentences required for first offenders.

* Sec. 3. AS 34.50.020(a) is amended to read:

(a) A person, municipal corporation, association, village, school district or religious or charitable organization, incorporated

or unincorporated, may recover damages in a civil action in an amount not to exceed $5,000 [$2,000] and court costs [,] from [EITHER PARENT OR] both parents jointly or the legal guardian or person having the legal custody of an unemancipated minor under the age of 18 years [,] who maliciously or wilfully destroys real or personal property belonging to the person, municipal corporation, association, village, school district or religious or charitable organization.

* Sec. 4. AS 34.50.020 is amended by adding new subsections to read:

(c) For the purposes of this section a minor is considered emancipated, and a parent or legal guardian or person having legal custody is not liable for property damage caused by the minor, if the court determines that

(1) the disabilities of minority have been removed under AS 09.55.590;

(2) the minor is a resident of the state, is 16 years of age or older, is living separate and apart from the minor's parents or legal guardian or the person having legal custody, and is capable of self-support and of managing personal financial affairs; or

(3) the minor is living separate and apart from the minor's parents or legal guardian or the person having legal custody and engages in conduct that results in a judgment under AS 47.10.080(a) that the minor is a delinquent minor and that also is the basis for a civil action for damages to property under this section.

(d) If the court determines that a minor is emancipated under (c) of this section, the minor may be sued as an adult in a civil action for injuries caused by the minor.

* Sec. 5. AS 47.10.020(a) is amended to read:

(a) Whenever a person informs the court of the facts which bring a minor within this chapter, the court shall appoint a competent

person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken. Upon the receipt of the report, the court may informally adjust or dispose of the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts. Where the court informally adjusts or disposes of the matter, the minor may not be detained or taken into the custody of the court, and the matter shall be closed by the court upon adjustment or disposition. Upon request of the victim or the victim's parent or guardian, the court shall disclose to the victim of the minor or to the victim's parent or guardian the manner in which it informally adjusted or disposed of the matter.

* Sec. 6. AS 47.10.060 is repealed and reenacted to read:

Sec. 47.10.060. WAIVER OF JURISDICTION. (a) The juvenile court shall order a case closed, and a minor may be prosecuted as an adult, if the court finds at a hearing on a petition directed to prosecutor's office. Can't force someone to prosecute! Decided by judge - no distinction juvenile vs. adult.

(1) that the minor was 16 years of age or older at the time of the offense and that there is probable cause (low standard) to believe that the minor has violated AS 11.41.100 (murder 1st UF), 11.41.110 (murder 2nd UF), 11.41.300 (kidnap UF), 11.41.410 (sex assault 1st UF), or 11.41.434 (sex abuse minor 1st UF); or unclassified felonies

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

(b) In determining whether a minor is amenable to treatment under children's court proceedings, the court shall consider current statute "may"

(1) the seriousness of the offense;

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

gives court direction

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

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

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

(6) the age, maturity, educational background, and degree of criminal sophistication of the minor;

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

(8) whether children's court jurisdiction over the minor can be retained long enough to allow for effective treatment or rehabilitation; and

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

(c) The court shall determine the weight to be given to each of the factors listed in (b) of this section and shall issue a written decision. A finding that a minor is not amenable to treatment under children's court proceedings may be based on any one or a combination of the factors. If the court waives children's court jurisdiction over a minor, the court shall order the children's court proceeding closed and the minor, if prosecuted, shall be prosecuted as an adult.

(d) A minor ordered held pending trial or sentencing as an adult under (a) of this section shall be confined in an institution designed by the Department of Health and Social Services for offenders under 18 years of age.

(e) For purposes of this section, a minor is "not amenable to

Seems to contradict (b), even though subjective.

Grouzek current standard preponderance of evidence → this is a lower standard

treatment" if it is highly probable that the minor cannot be rehabilitated by treatment under this chapter before children's court jurisdiction over the minor expires.

* Sec. 7. AS 47.10.080(a) is amended to read:

(a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent or a child in need of aid. The court shall disclose the results of the hearing in accordance with AS 47.10.020(a).

* Sec. 8. AS 47.10.090 is amended by adding a new subsection to read:

(d) The provisions of this section prohibiting 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).

* Sec. 9. AS 47.10 is amended by adding a new section to read:

Sec. 47.10.125. FINGERPRINTING OF MINORS. (a) A law enforcement agency or the Department of Health and Social Services may fingerprint a minor only

(1) in accordance with a search warrant;

(2) when the minor is being prosecuted as an adult under AS 47.10.060(a);

(3) when the minor is adjudicated a delinquent for the commission of an offense that if committed by an adult would constitute a felony;

(4) upon consent of both the minor and a parent or legal guardian of the minor, who shall have been advised that the fingerprints may not be taken without their consent; or

(5) by order of the court.

(b) Fingerprints of a minor shall be kept separate from those of

adults, shall be kept within the state rather than at a federal central depository, and shall be made available on request only to the following:

(1) a public agency for use in the investigation and prosecution of criminal offenses for which the fingerprinted minor is a suspect;

(2) the minor or the minor's attorney if the minor has been named in a juvenile court or adult court proceeding.

(c) Fingerprints of a minor taken under this section shall be destroyed by the authority charged with their maintenance

(1) if the minor is adjudicated for the offense regarding which the minor's fingerprints were taken and is found not to be within the jurisdiction of the court for the offense; or

(2) if the minor is not adjudicated for the offense regarding which the minor's fingerprints were taken within two years of the date the fingerprints were taken.

* Sec. 10. AS 47.10.130 is amended to read:

Sec. 47.10.130. DETENTION. A [NO] minor under 18 years of age who is detained pending hearing may not be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view prisoners 18 years of age or older except those incarcerated under AS 47.10.100 [ADULT PRISONERS CONVICTED OF, UNDER ARREST FOR, OR CHARGED WITH A CRIME]. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately.

sentenced under juvenile system but in till age 19

* Sec. 11. AS 47.10.140(d) is amended to read:

(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in

detention or released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case. The court shall disclose the results of the hearing in accordance with AS 47.10.-020(a).

* Sec. 12. AS 47.10.190 is amended to read:

Sec. 47.10.190. CONDITIONS GOVERNING DETENTION. When the court commits a minor to the custody of the department, the department shall arrange to place the minor [JUVENILE] in a detention home, facility or another suitable place that [WHICH] the department designates for that purpose. A minor [JUVENILE] detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from prisoners 18 years of age or older except those incarcerated under AS 47.10.100 [ADULTS].

* Sec. 13. Rule 24, Alaska Rules of Children's Procedure, is amended to read:

No child shall be [FINGERPRINTED OR] photographed while in custody except with the consent of the children's court upon good cause shown. Such cause exists where the child is in custody for a serious offense against persons or property or where identification of the child appears necessary for the safety of the child or others.

* Sec. 14. Section 13 amends Rule 24 of the Alaska Rules of Children's Procedure by deleting the reference to fingerprints.

* Sec. 15. Rule 24, Alaska Rules of Children's Procedure, is amended by adding a new subsection to read:

(b) A child may not be fingerprinted while in custody except in accordance with AS 47.10.125.

* Sec. 16. Section 15 amends Rule 24 of the Alaska Rules of Children's Procedure by incorporating the statutory requirements for obtaining

fingerprints from a child in custody.

NEW SB 264

OCT 16 1985

VICTIMS
3100 Mt. View Dr.
Anchorage, Alaska 99501

October 10, 1985

Dear Supporters,

Alaskans through negligence are subtley losing their rights. Since my parent's death I have been made aware of the injustices that are happening through small interest groups that are pushing through laws that are not for "we the people". My goal is to keep abreast of these issues and keep you informed. When an issue needs the masses of people to respond, I trust you will be there. WE can make a difference in our world!

There will be a public teleconference hearing on House Bill 205, Wednesday November 20, 1985. The hearing will be held in the second floor conference room of the Anchorage Legislative Information Office, 1024 W. 6th Ave. from 1:00 p.m. to 6:00 p.m. and from 7:30 p.m. to 10:00 p.m. Juneau, Fairbanks, Sitka and Ketchikan will also be having teleconferences at their respective Legislative Information Office. This bill is a weak bill waivering juveniles who commit murder to adult court at the age of 16 or 17. But if we turn out in masses it will confirm the point that "we the people" are tired of the leniency of laws regarding juveniles who are committing over 50% of the crimes. You may obtain a copy of this bill at the L.I.O. in your town. If your town does not have a teleconference hearing set up you may request one from your legislator.

I am enclosing a petition which briefly states some points that "we the people" need in a bill to help rehabilitate juveniles before they commit heinous crimes. Point 2B of the petition, refers to keeping the youth actively busy doing physical labor. Idle time gives these kids time to plan and plot and come out a better criminal, whereas hard work teaches self-respect and uses up excess energy.

Please get your petitions signed and to your legislator by December 15th. Make as many copies of this petition as you need. Send duplicate copies to me shortly after you take the originals to your legislator for my files.

When the law is written we will obtain a copy and then let our collective voices be heard at public hearings. By all of us working together we CAN CHANGE OUR WORLD!

Sincerely yours,

Janice Lienhart

Janice (Faccio) Lienhart
Enclosures

PETITION FOR BETTER JUVENILE LAWS

1. All persons 16 years or over charged with an offense designated as a felony (rape, murder, felony assault) shall be prosecuted as an adult.
2. All minors under 16 commiting a non-felony offense shall: A. Pay a fine commensurate with the offense and /or do public service if they are a first offenders.
B. Be institutionalized and compelled to do physical work, if they are a second offenders.
3. All juveniles under 16 contained for a felony should be re-evaluated at 18.

NAME ADDRESS PHONE

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

P O BOX V
STATE CAPITOL
JUNEAU ALASKA 99811
(907) 465-3834
(907) 465-3762

Senate Committee on
Health, Education and Social Services

April 16, 1986

SECTIONAL ANALYSIS

Proposed CSSB 264 (HESS) Relating to the waiver of children's court jurisdiction, and to the fingerprinting and sentencing of minors.

Section 1 Provides that when a minor is sentenced as an adult, the minor must be confined in a juvenile correctional facility until age 18.

Section 2 Exempts juveniles sentenced as adults from mandatory minimum and presumptive sentencing.

Section 3 Provides that a minor be tried in adult court if the minor is 16 or 17 years old and has committed an unclassified felony, or if the minor is not amenable to treatment and is delinquent. Criteria to be considered by the court in determining amenability are specified. Pending trial, minors must be housed in juvenile facilities.

Section 4 Allows a law enforcement agency or the Department of Health and Social Services to fingerprint a minor prosecuted as an adult and in other specific circumstances. Fingerprints of minors would be kept separate from those of adults, kept within the state rather than at a federal central depository, made available only to public agencies for investigation purposes or to the minor or the minor's attorney, and destroyed when the minor is no longer under court jurisdiction.

Section 5 Clarifies that minors detained in jails must have quarters separate from adults, but that persons tried in juvenile court who stay in the system until age 19 can be housed with minors.

Section 6 Clarification per Section 5.

Sections 7-8 Amends Rule 24 of the Alaska Rules of Children's Procedure, which prohibits fingerprinting of children unless directed by the court, to eliminate this restriction.

Sections 9-10 Amends Children's Rule 24 by adding a section that provides that a child may not be fingerprinted while in custody except in accordance with Section 4.

Alaska State Legislature

P O BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3752

Senate Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, April 17, 1986

DATE: April 16, 1986

On Thursday, April 17, 1986 from 1:30-3:30 p.m. in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following legislation:

Proposed CSSB 264(HESS) Relating to the waiver of children's court jurisdiction, and to the fingerprinting and sentencing of minors. (Draft CS prepared at the sponsor's request)

Under current statute, persons under the age of 18 are tried in juvenile court unless the court finds (at a hearing on petition) that there is probable cause that the minor is delinquent and that the minor is not amenable to treatment. Under CSSB 264, the case would automatically be waived to adult court if the minor is 16 or 17 years old and there is probable cause that the minor committed an unclassified felony (murder, kidnapping, sexual assault, sexual abuse of a minor). Other cases could be waived based on the consideration of specific criteria regarding amenability to treatment.

Waived minors would be exempt from presumptive sentencing laws, could be fingerprinted, and would be housed in juvenile facilities pending trial and once sentenced. There is no provision for waiver back to the juvenile system.

SB 264 was heard by the HESS Committee on February 18, 1986. Minutes of that meeting are attached.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: Proposed CS SB 264
Title: An Act relating to unlawful conduct of minors.

Sponsor: _____
Requestor: _____
Date of Request: 3/12/86

FISCAL DETAIL

Agency Affected: Health & Social Services
BRU: Youth Services

Components: McLaughlin Youth Center

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES			840.5	840.5	840.5	840.5
TRAVEL			4.4	4.4	4.4	4.4
CONTRACTUAL			72.5	72.5	72.5	72.5
SUPPLIES			76.2	76.2	76.2	76.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS			42.8	42.8	42.8	42.8
MISCELLANEOUS						
TOTAL OPERATING		-0-	1,036.4	1,036.4	1,036.4	1,036.4
CAPITAL		2,216.2				
REVENUE		-0-				

FUNDING : (Thousands of Dollars)

GENERAL FUND		2,216.2	1,036.4	1,036.4	1,036.4	1,036.4
FEDERAL FUNDS						
OTHER						
TOTAL		2,216.2	1,036.4	1,036.4	1,036.4	1,036.4

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by: Michael L. Price, Director
Division: Family and Youth Services
Phone: 465-3170
Date: 3/12/86

Approved by Commissioner: John R. Pugh
Agency: Department of Health and Social Services
Date: 4/5/86

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 264

Based on analysis of arrest data, waiver data, and sentencing information, this fiscal note assumes 14 youth waived annually who would be sentenced to serve a period of incarceration in DHSS facilities, and for whom additional facility capacity would be required.

Assumptions

1. Analysis of arrest data yields an expected frequency of 12 arrests annually of 16 and 17 year old youth for offenses subject to presumptive waiver under CS SB 264.

2. CS SB 264 would also amend the judicial waiver mechanism establishing a less stringent test for judicial waiver. Based on analysis of 1981-85 waiver data and 77-82 arrest data, and a presumed increase in efforts of prosecutors to achieve waiver of serious offenders, it is assumed that waiver would be attempted in 1 in 10 arrests of 16 and 17 year old youth charged with a class A felony (or an unclassified felony not subject to presumptive waiver). This yields an expected seven additional waiver attempts annually and, presuming a continuation of at least the historic 75% success rate under the existing judicial waiver mechanisms, four additional waivers annually.

3. Based on analysis of past waiver attempts and a less stringent test for judicial waiver, it is assumed that waiver would be attempted in 1 in 50 cases of 12-15 year olds accused of class A or unclassified felony offenses. Analysis of arrest and waiver data indicates an expected frequency of two such waiver attempts annually. Assuming 50% success in waiving these youth because of lower age, one additional waiver annually would be predicted.

4. An 80% conviction rate is assumed because of the historically higher conviction rate for juveniles, and the high conviction rate for most serious crimes. The following expected frequencies of waived and subsequently convicted youth is predicted.

   Sentences are predicted on the basis of exemption of waived youth from mandatory minimum and presumptive sentences under CS SB 264 using range of sentences which may be imposed and actual sentences of previously waived youth as a guide.

Age	Offense	#	Estimated Sentence	Time in DHSS Facility
17	Murder	1	50 years	1 year
16	Murder	1	30 years	2 years
17	Sexual Assault 1° w/a firearm or injury	2	1- 5 years 1- 4 years	1 year 1 year
16	Sexual Assault 1° w/a firearm or injury	1	4 years	2 years

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 264

17	Sexual Assault 1° w/o firearm or injury	2	1- 4 years 1- 3 years	1 year 1 year
16	Sexual Assault 1° w/o firearm or injury	1	3 years	3 years
16	Sexual Abuse of a Minor	1	Probation	0 years
17	Misconduct Involving a Controlled Substance 1°	1	1- 2 years	1 year
17	Manslaughter	1	2 years	2 years
17	Robbery w/firearm	1	Probation	0 years
16	Robbery w/firearm	1	3 years	3 years
16	Aggravated Assault	1	2 years	2 years
12-15	Unclassified or Class A Felony	1	5 years	5 years
				27 person/yrs.

Note: This does not include waiver of chronically delinquent youth for less serious offenses (e.g. burglary, theft, criminal mischief, etc.). Information indicates that such youth comprised 30% of youth waived during period 1981-85. However, sentencing data is insufficient to predict sentences for youth waived for these lesser offenses.

Program Summary

Pre-adults waived to the adult system cannot be colocated with other juveniles for two reasons. First, pre-adults who have longer sentences pose a greater security risk; the physical design and arrangement of a maximum security unit must meet the needs of a higher risk population than existing youth facilities are designed to accommodate. Secondly, this population is less motivated to participate in treatment. The average length of stay for a resident currently in a state treatment program is 10 months; pre-adults waived to the adult system will have sentences of several years. Hence, completely different programs are required to respond to this group.

FY 87 Capital Project - One 25 bed detention unit would be built at McLaughlin Youth Center, utilizing the core facilities (gym, kitchen and core services). This unit would be similar to existing housing units at McLaughlin Youth Center. This unit would require some relocation/remodeling of existing site and building and would be located near the current McLaughlin Youth Center detention circulation spine. It is estimated that it would be 7,776 square feet at a cost per square foot of $285 for a total cost of $2,216.2.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 264

FY 88 The operation of the pre-adult unit would consist of the following staff and costs. Since this is a maximum security unit, three shifts are required. Since this facility is a maximum security unit, a maintenance worker is required to maintain the security systems. An additional cook is necessary because of the requirement of 20% more meals in McLaughlin Youth Center because of the pre-adult unit.

Personal Services

one Unit Leader	$46,072
one Clerk-Typist III	29,896
one Maint. Worker II	48,022
one Cook II	42,850
three Youth Counselor III's	143,127
twelve Youth Counselor II's	530,520
	$840,487

Travel

Field Travel - Transportation of staff to pre-adults rural homes:

$435 x 10 pre-adults = $4,350

Assumption 15 pre-adults would come from Anchorage area.

Contractual

Professional Services:		
Dental Care	$452 x 20 pre-adults	$ 9,040
Medical/Psych.	$396 x 20 pre-adults	7,920
		$ 16,960
Communication:		
$420 per staff x 19 staff		$ 7,980
Advertising, Printing & Binding:		$ 2,000
Public Utilities:		
$13,983 month x .20% (1/5 size of MYC) x 12 months =		$ 33,559
Other Expenditures & Services:		
Laundry Services	$31,205 x .20% =	$ 6,241
Risk Management	$28,591 x .20% =	5,718
		$ 11,959
Interagency transfer, Dept. of Admin., Risk Management non-add $5,718		$ 72,458

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 264

Supplies

Office Supplies: $20,300 x 20% =	$ 4,060
Agricultural Supplies: $5,700 x 20% =	$ 1,140
Household & Institutional Supplies: $318,100 x 20% =	$ 63,620
Professional & Scientific Supplies: $3,600 x 20% =	$ 720
Other Operating Supplies: $8,600 x 20% =	$ 1,720
Repair & Maintenance Supplies: $24,600 x 20% =	$ 4,920
	$ 76,180

Grants

Travel costs for pre-adults to and from facility: $32,487 x 20% =	$ 6,497
Gratuities for pre-adults: @ $1.25 x 10 hrs/mo x 20 residents x 12 =	$ 3,000
Commissary items: $.45 day x 20 residents x 365 days =	$ 3,285
Clothing purchases for pre-release items: $17,021 x 20% =	$ 3,404
Hospital and psychiatric care: $132,966 x 20% =	$ 26,593
	$ 42,779

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 264
Title: "An Act Relating to Unlawful Conduct of Minors"
Sponsor: Rodev
Requestor:
Date of Request:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		70.8	75.0	79.5	84.3	89.4
200 TRAVEL		5.0	5.3	5.6	5.9	6.3
300 CONTRACTUAL		8.0	8.5	9.0	9.5	10.1
400 SUPPLIES		3.0	3.2	3.4	3.6	3.8
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	88.3	92.0	97.5	103.3	109.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		88.3	92.0	97.5	103.3	109.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Dana Fabe, Public Defender Phone: 279-7541
Division: Public Defender Agency Date: 4/18/85

Approved by Commissioner: Lisa Rudd Date: 4/26/85
Agency: Department of Administration

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

Rev. 7/1/84

FISCAL NOTE ANALYSIS

SB 264
April 18, 1985

This bill provides that persons 16 or 17 years of age who are charged with unclassified or Class A felonies may be automatically prosecuted in adult court upon petition of the District Attorney. Within a ten-day period, the juvenile defendant may petition the court to be returned to juvenile jurisdiction. The juvenile would then have the burden of proof to show that he should not be prosecuted as an adult.

The result of this legislation will be to increase the number of persons age 16 or 17 who are charged and prosecuted as adults for serious felonies. Unclassified and Class A felonies are the most serious cases that this agency handles, including Murder, Manslaughter, Kidnapping, Sexual Assault, Robbery, Aggravated Assault and others. Transferring these cases into the more adversarial adult justice system will require a great deal of additional attorney time. This is particularly true given the fact that under this bill, mandatory presumptive sentences will apparently apply to these juvenile offenders, making the probability of a full blown trial quite high. When these cases are dealt with in juvenile court, they rarely proceed to trial. Since the additional trials of these most serious types of felonies will require a great deal of additional attorney time, and convictions of these serious offenses will inevitably result in appeals, requiring still more attorney time, one full-time Assistant Public Defender will be needed in Anchorage if this bill is enacted.

FISCAL ANALYSIS

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

1st Year (FY86)

Personal Services		70.8
Travel		5.0
Contractual		
Communications	2.0	
Experts	6.0	8.0
Commodities		
Office Supplies	1.0	
Law Library	2.0	3.0
Equipment (One Time)		1.5
Total		88.3

1.	POSITION TITLE: Attorney IV			RANGE/STEP: 24A	BARG. UNIT: PX	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PET	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $4663/mo	55,956	
6.	Benefits	9,499	
7.	Supplemental Benefits	2,580	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES 01		70,765
10.	Travel 02		5,000
11.	Contractual 03		8,000
12.	Commodities 04		3,000
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		88,265

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

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

REQUEST FOR NEW POSITION

01-1136 (7/82)-13

AGENCY: Department of Administration

PROGRAM: Due Process

BRU: Public Defender Agency

COMPONENT: Third Judicial District

Revised Date

FY 86

Mile

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

MAR 1 0 1986

Revision Date: 2/28/86

REQUEST

Bill/Resolution No.: SB 264
Title: "An act relating to unlawful conduct of minors"

Sponsor: Rodey
Requestor: Judiciary
Date of Request:

FISCAL DETAIL

Agency Affected: Department of Administrat
BRU: Public Defender Agency

Components: Third Judicial District

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		99.8	103.8	108.0	112.3	116.8
TRAVEL		5.0	5.2	5.4	5.6	5.8
CONTRACTUAL		10.0	10.4	5.4	5.6	5.8
SUPPLIES		2.5	2.6	2.7	2.8	2.9
EQUIPMENT		6.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	123.3	122.0	121.5	126.3	131.3
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	123.3	122.0	121.5	126.3	131.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME	-0-	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

(See Attached)

Prepared by: Dana Fabe, Public Defender — Phone: 279-7541
Division: Public Defender Agency — Date: 2/28/86

Approved by Commissioner: Eleanor Andrews — Date: 3/6/86
Agency: Department of Administration

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

10/25/85

Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
February 28, 1986

This bill provides that persons 16 or 17 years of age who are charged with unclassified felonies may be automatically prosecuted in adult court upon petition of the District Attorney.

The result of this legislation will be to increase the number of persons age 16 or 17 who are charged and prosecuted as adults for serious felonies. Unclassified felonies are the most serious cases that this agency handles, including Murder, Kidnapping and Sexual Assault cases. Transferring these cases into the more adversarial adult justice system will require a great deal of additional attorney time. When these cases are dealt with in juvenile court, they rarely proceed to trial, while unclassified adult felonies proceed to trial at the highest rate of ary cases in our office. Since the additional trials of these most serious types of felonies will require a great deal of additional attorney time, and convictions of these serious offenses will inevitably result in appeals requiring still more attorney time, one full-time Assistant Public Defender will be needed in Anchorage if this bill is enacted.

Fiscal Analysis

Personal Services:	Attorney IV	72.4	
	Clerk-Typist III	27.4	
			99.8
Travel:	Expert witnesses and investigation		5.0
Contractual:	Expert witnesses, space, etc.		10.0
Supplies:	Office, law library, etc.		2.5
Equipment:	(one time) Furniture, office machines, etc.		6.0
	Total		123.3

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp
Clerk/Typist III	1	8A	GG			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12.0		Anchorage	8	

Type of Expenditure	1	2	Amount 3
Salary	1631 x 12	19,572	
Benefits		7,804	
Premium Pay			
Other			
Total Personal Services			27,376
Travel			-0-
Contractual			-0-
Commodities			1,000
Equipment			4,500
Other			
Total Cost			32,876

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	32,876
	I-A Receipts	1005	
	Program Receipts	1038	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

The enactment of the juvenile waiver bill will result in additional unclassified felonies for this agency. A clerk typist III is requested for Anchorage to provide necessary support services.

Request For New Position

Agency: Department of Administration
BRU: Public Defender Agency
Component: Third Judicial District

Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp
Attorney IV	1	24A	PX			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12.0		Anchorage	8			

Type of Expenditure		Amount
1	2	3
Salary 4687 x 12	56,244	
Benefits	16,109	
Premium Pay		
Other		
Total Personal Services		72,353
Travel		5,000
Contractual		8,000
Commodities		1,500
Equipment		1,500
Other		
Total Cost		87,853

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	87,853
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

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

Request For New Position

Agency Department of Administration
BRU Public Defender Agency
Component Third Judicial District

FY 87

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

P. O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3762

Superseded

Senate Committee on Health, Education and Social Services

February 14, 1986

SECTIONAL ANALYSIS

CSSB 264 (HESS) Relating to detention and unlawful conduct of minors.

Section 1 Provides that when a minor is sentenced as an adult, the minor must be confined in a juvenile correctional facility until age 18.

Section 2 Exempts juveniles sentenced as adults from mandatory minimum and presumptive sentencing.

Section 3 Increases from $2000 to $5000 the amount of civil damages a person, municipal corporation, association, village, school district, or religious or charitable organization may recover for willful destruction of property by a juvenile.

Section 4 Provides that an emancipated minor may be sued civilly as if the minor were an adult.

Section 5 Provides that when a court informally disposes of a juvenile matter it shall disclose to the victim, upon request, the manner in which it disposed of the matter.

Section 6 Provides that a minor be tried in adult court if the minor is 16 or 17 years old and committed an unclassified felony, or the minor is not amenable to treatment and is delinquent. Criteria to be considered by the court in determining amenability are specified. Pending trial, minors must be housed in juvenile facilities.

Section 7 Provides that after disposition of a juvenile case the court must disclose the results to the victim in accordance with Section 5.

Section 8 Permits disclosure of information to a victim or a victim's parents under certain conditions.

Section 9 Allows a law enforcement agency or the Department of Health and Social Services to fingerprint a minor prosecuted as an adult and in other specific circumstances.

Fingerprints of minors would be kept separate from those of adults, kept within the state rather than at a federal central depository, made available only to public agencies for investigation purposes or to the minor or the minor's attorney, and destroyed when the minor is no longer under court jurisdiction.

Section 10 Clarifies that minors detained in jails must have quarters separate from adults, but that persons tried in juvenile court who stay in the system until age 19 can be housed with minors.

Section 11 Requires the court to disclose the results of a juvenile probable cause hearing to the victim in accordance with Section 5.

Section 12 Clarification per Section 10.

Sections 13-14 Rule 24 of the Alaska Rules of Children's Procedure which prohibits fingerprinting of children unless directed by the court is amended to eliminate this restriction.

Sections 15-16 Children's Rule 24 is amended by adding a new section that provides that a child may not be fingerprinted while in custody except in accordance with Section 9.

file SB 264

FEB 20 [illegible]

Patrick M. Rodey
Senator

Alaska State Legislature

Senate

1024 W. 6th Avenue, Suite 308
Anchorage, Alaska 99501
(907) 276-6731

During Session:
Pouch V
Juneau, Alaska 99811
(907) 465-3717

February 20, 1986

Senator Bettye Fahrenkamp, Chair
Senate HESS Committee
Pouch V
Juneau, Alaska 99811

Re: SB 264 - An Act relating to juvenile waiver.

Dear Senator Fahrenkamp:

I would appreciate your consideration in rescheduling SB 264, an act relating to juvenile waiver, for a hearing before the Senate Committee on Health, Education and Social Services as soon as possible. I'm sorry for the confusion at the Tuesday hearing, and appologize for any inconvenience it may have caused to the Committee.

If the Committee desires any further information, or has any questions with respect to the bill, please contact Suzanne LaPierre of my staff. (465-3717)

Very truly yours,

Pat

Patrick M. Rodey

Cant controversy, no one in favor
fiscal note?

Alaska State Legislature

P. O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3762

Senate

Senate Committee on Health, Education and Social Services

MEMORANDUM

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, February 18, 1986

DATE: February 14, 1986

On Tuesday, February 18, from 1:30-3:30 pm in the Beltz Room the Senate Committee on Health, Education and Social Services will hear:

Proposed CSSB 264 (HESS) Relating to detention and unlawful conduct of minors. (Draft CS prepared at the sponsor's request)

Under current statute, persons under the age of 18 are tried in juvenile court unless the court finds (at a hearing on petition) that there is probable cause that the minor is delinquent and that the minor is not amenable to treatment. Under CSSB 264, the case would automatically be waived to adult court if the minor is 16 or 17 years old and there is probable cause that the minor committed an unclassified felony (murder, kidnapping, sexual assault, sexual abuse of a minor). Other cases could be waived based on the consideration of specific criteria regarding amenability to treatment.

Waived minors would be exempt from presumptive sentencing laws, could be fingerprinted, and would be housed in juvenile facilities pending trial and once sentenced. There is no provision for waiver back to the juvenile system. SB 264 also addresses the emancipation of minors for purposes of civil suits and the disclosure of information regarding juvenile matters.

SB 264 was heard by the HESS Committee last session. Minutes of that meeting are attached.