

HB

101

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 19, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 101 (Criminal Charges Brought Against Minors)

Dear Representative Donley:

Thank you for the opportunity to review the work draft of proposed CS for HB 101, relating to criminal charges brought against minors. This draft resolves all of the concerns raised in our letter of February 26, 1991.

Once again, we support this bill and appreciate the opportunity to comment on it.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: _____

Margot O. Knuth
Margot O. Knuth

Assistant Attorney General

MOK:mm-033

BILL NO: HB 101

DATE: 3/22/91

TITLE: An Act relating to criminal charges brought against minors. . .

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY
POSITION PAPER

HB 101 would make it easier for the state to try a juvenile offender as an adult if he or she has committed a serious crime such as murder or attempted murder, or has previously been "adjudicated a delinquent" or "waived to adult court". The Department of Public Safety supports this bill, which will vastly improve the way the justice system in Alaska responds to serious crimes committed by persons under age 18. This is an area which has been in need of improvement for many years.



Richard L. Burton
Commissioner

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

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February 26, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 101 (Criminal Charges Brought Against Minors)

Dear Representative Donley:

By letter dated January 31, 1991, you have asked whether we believe there are any problems with the above-referenced bill and whether we support, oppose, or are disinterested in it. We expect that one or more constitutional challenges may be made to the laws amended by this bill, but we believe that the legislation is constitutional and we support it. We suggest a few minor revisions to clarify the bill.

Section 1 amends the statute setting out "authorized sentences" (AS 12.55.015) to specify that a minor who has been convicted as an adult "may" be committed to the custody of the Department of Health and Social Services until the minor's 18th birthday, at which time the minor shall be transferred to the custody of the Department of Corrections. We have no objection to this provision. It is unclear to us, however, whether this section is intended to preclude the court from committing a minor to the custody of the Department of Corrections. If it is, we suggest that the section be revised to say so explicitly. One possibility would be to amend the language to read as follows:

Add at page 1, line 7: not order the defendant committed to the custody of the Department of Corrections, but instead may

Section 2 amends AS 47.10.010 (jurisdiction in children's proceedings) in several respects. First, it adds subsection (e), which specifies that, unless ordered by the court under (h) below, the delinquency procedures set out in that chapter will not apply to minors age 14 and older who have been charged with the following crimes: murder or attempted murder in the first degree, an unclassified or class A felony if the minor has been previously adjudicated as a delinquent for felonious conduct, or any other

felony if the minor has been so adjudicated twice before or has been previously prosecuted as an adult for a felony.

Next, it adds subsection (f), which specifies that, unless otherwise ordered under (h) below, other charges against the minor that have been joined with the charges listed above also may not be handled under the delinquency proceedings. Instead, pursuant to new subsection (g), minors facing these charges are to be prosecuted and sentenced as adults in the superior court. We suggest the following minor editorial change in this section:

Add at page 2, line 13:

(f) If a minor is charged [UNDER] with an offense specified in (e) of this section

....

Subsection (h) authorizes a minor facing these charges to file a petition with the court seeking to have the charges heard as delinquency proceedings under AS 47.10 on the basis that the minor is amenable to treatment before age 20. This will trigger the appointment under subsection (i) of a psychiatrist or psychologist to examine the minor and determine his or her amenability to treatment. Under subsection (j), at the court's hearing on the issue, the minor will bear the burden of proving by a preponderance of the evidence that the minor is amenable to treatment.

Subsection (k) indicates that none of these provisions affect the ability of a party to seek waiver (for presumably other types of charges) under existing AS 47.10.080.

Section 3 of the bill amends AS 47.10.080 to provide that, if a minor is prosecuted under these new provisions, but is convicted only on charges that would not qualify for "automatic waiver," then the proceedings shall be converted into delinquency proceedings with a disposition order entered pursuant to AS 47.10.080(b). If, however, the minor was convicted of a felony, the state may petition the court to sentence the minor as an adult upon establishing that the minor is not amenable to treatment.

We expect that this legislation will be challenged on constitutional grounds. We note, however, that in W.M.F. v. State, 723 P.2d 1298 (Alaska App. 1986), the Alaska Court of Appeals acknowledged that a juvenile offender "has no constitutional right to be tried in a juvenile court.... Rather, it is a right granted by the state legislature, and the legislature may restrict or qualify the right as it desires, so long as no arbitrary or discriminatory classification is involved." 723 P.2d at 1300.

We believe that, inasmuch as the legislature could deny minors different treatment altogether, the courts should conclude

that it is constitutional for the legislature to shift the burden of proof to the minor on the issue of amenability to treatment in the circumstances set out in the bill. The classifications established by this legislation (minors who bear the burden of establishing amenability to treatment and minors who do not) do not appear to be arbitrary or discriminatory, but instead seem to reasonably reflect the difference in the seriousness of the offense committed by the minor or the fact that there have been prior, unsuccessful interventions under the minor system.

Another constitutional issue we anticipate being raised is whether the provision requiring an evaluation and report by a psychiatrist or psychologist (when the minor petitions for treatment under the delinquency statutes) violates the minor's "right to be free from compelled self-incrimination," as set out in R.H. v. State, 777 P.2d 204 (Alaska App. 1989). In R.H., the Alaska Court of Appeals held that a judge could not order a minor to submit to an psychological evaluation for purposes of determining the minor's amenability to treatment because it was tantamount to making the minor a witness against himself. 777 P.2d at 210.

The Alaska courts might apply this same analysis to proposed AS 11.47.010(i). They may well instead, however, recognize that the evaluation under subsection (i) helps the minor in carrying his or her burden of proof to avoid prosecution as an adult, rather than helping the prosecution with its case. See R.H. v. State, 777 P.2d at 211 ("the same conclusion would not be warranted had R.H. sought to present psychiatric evidence in his own behalf [U]nder those circumstances, the superior court could have properly found that R.H. waived his fifth amendment privilege"). This analysis would be further warranted if the psychiatric or psychological evaluation were made optional for the minor, rather than mandatory. This change in the bill could be achieved as follows:

At page 2, line 31:

(i) [UPON] After filing [OF] a petition under (h)(1) of this section, the minor may request the court [SHALL] to appoint a

While focusing on this section, we note that it provides for the appointment of "a qualified psychiatrist or a forensic psychologist certified by the American Board of Forensic Psychology" Communities such as Juneau and Fairbanks do not have any forensic psychologists, but do have psychologists who are experienced and trained in working with delinquent children and are familiar with the available treatment programs. The committee might consider amending the section to delete the reference to forensic psychologists as follows:

At page 3, lines 1 and 2:

qualified psychiatrist or [A FORENSIC] psychologist [CERTIFIED BY THE AMERICAN BOARD OF FORENSIC PSYCHOLOGY] to examine the minor and report to the court in writing on the minor's amenability

Another small change we suggest relates to proposed AS 47.10.010(e) and (f). We believe it would be helpful if this bill specifies that not only may the "procedure prescribed in AS 47.10.020 - 47.10.090" not be followed in the circumstances described in AS 47.10.010(e), but that the Alaska Delinquency Rules are also inapplicable in those circumstances. Doing this will acknowledge that the Delinquency Rules specify different procedures than the Criminal Rules and indicate that the "adult" rules are to be applied in these proceedings. The specific changes that we recommend are as follows:

Add at page 1, line 14:

AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules may not be followed when a minor is 14 years of age and older and

Add at page 2, line 14:

AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules may not be followed when a minor is 14 years of age and older and

We note for your general reference that some members of the defense bar are predicting that this bill will cause minors to contest delinquency proceedings with greater vigor and frequency because the consequences to them of being adjudicated a delinquent on a felony matter will be greater. If so, the resources that the state might save under this bill in prosecution efforts to waive minors to adult court may ultimately be expended in handling more delinquency adjudication proceedings. It is impossible, however, to make any certain predictions in this regard.

The Honorable Dave Donley

February 26, 1991

Page 5

Once again, we support this bill and appreciate the opportunity to comment it. If you have any further questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: _____

Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

MOK:mm-025

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 20, 1991

SUBJECT: Sectional analysis of CSHB 101

TO: Representative Dave Donley
Chair, House Judiciary Committee
Attn: Laurie Otto

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill provides that a minor under 18, but at least 14, must be tried as an adult if the minor is charged with 1) first degree murder or attempted first degree murder; 2) an unclassified or class A felony, and the minor has been previously adjudicated delinquent for felonious conduct; or 3) any felony, if the minor has been previously adjudicated delinquent twice for felonious conduct, or has been previously tried and convicted as an adult on a felony charge. The minor must also be tried as an adult on all related charges (e.g., a charge of burglary for breaking into a house to commit a rape).

Section 1 also allows the minor to petition the court to be tried under juvenile procedures, notwithstanding the charges against him or her. The minor bears the burden of persuading the court that juvenile proceedings would be appropriate, unless the minor contends that he or she cannot be properly tried as an adult (for instance, that he or she has not previously been adjudicated delinquent for felonious conduct). In that case the state bears the burden of proving that the minor has been previously adjudicated delinquent as the state alleges.

Sectional Analysis of CSHB 101

Representative Dave Donley

March 20, 1991

Page 2

Finally, section 1 provides that current law, allowing the state to seek prosecution as an adult of any minor for any offense, remains in effect. (Under current law, the state must show that the minor is not likely to be amenable to treatment before reaching age 20.)

Section 2 provides that a minor who is charged as an adult under section 1, but who is convicted only of a lesser offense that would not have given rise to an adult charge under that section, shall have his or her case disposed of under juvenile proceedings. However, the state may petition the court to sentence the minor as an adult, in which case the state must show that the minor would not be amenable to treatment before age 20.

Section 3 provides that sections 1 and 2 of this bill, if enacted, would apply only to offenses committed after the effective date of the enactment.

JBG:mi:pl

91-057.mai

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376


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MEMORANDUM

TO: All Members
HESS Committee

FROM: Representative Dave Donley 

RE: HB 100/~~XXXXXX~~ - Public Support

DATE: March 20, 1991

I have received a large number of public opinion messages in support of HB 100 and HB 101. Representative comments include:

"My three year old daughter was a victim of a violent crime. The perpetrator was a juvenile. We were not able to obtain, or have any input regarding the case. I would like to urge you to support HB 100 and HB 101." Michele Hailey, Anchorage

"I support HB 100, HB 101. As a 40 year resident of Alaska and with juvenile crimes on the increase, it is time that juveniles be held responsible for the crimes they commit against society. For juveniles to commit serious crimes such as murder, robbery and rape and not be held accountable for their crimes after age 20 is repulsive. The victims need more rights. Thanks." Jack Morrell, Anchorage

"Please vote for HB 100, 101. Government should provide three things: protection, education, and roads. Please protect us from teenage criminals." Michael Mitchell, Anchorage

"I do support HB 100, HB 101. I feel the victims should have more rights than the criminals. It is really sad when we don't." Linda Charles, Chugiak

"I am totally in support of HB 100, HB 101, as these bills are dealing with victims rights and at this point and time, victims today need all the help they can get." Marti Ressler, Eagle River

A list of all the people who sent POMs in support of HB 100 and HB 101 is attached.

DD:lc

JUNEAU OFFICE

(During Legislative Session January through May)

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



 700

Public Opinion Messages/Letters in Support of HB 100 and HB 101

Edith Sherwood	3419 W. 80th Avenue	Anchorage	99502
James Brodie	2211 Dahl Lane	Anchorage	99503
Carol Elkins	1353 Oxford Drive	Anchorage	99503
Philip Fear	4808 Kent Street	Anchorage	99503
Michele Hailey	4639 Kent Street	Anchorage	99503
James Hailey	4639 Kent Street	Anchorage	99503
Mark Manville	1321 Harding Way	Anchorage	99503
Michael Mitchell	6626 Foothill Drive	Anchorage	99504
Norma Ossenkop	2110 Banbury Circle	Anchorage	99504
Bufford Vopalensky	7221 Sitkin Circle	Anchorage	99504
Ruth Fenton	5442 Larkspur Circle	Anchorage	99507
John Lopetrone	1510 Thuja	Anchorage	99507
Dan O'Haire	3130 Lark Apt. E	Anchorage	99507
Edward Simpson	3130 E. 46th Avenue, #2	Anchorage	99507
Michael Webster	2380 Stonebridge Circle	Anchorage	99507
Donna Harper	4130 Peterkin, #4	Anchorage	99508
Mary Ellen Summers	P.O. Box 110423	Anchorage	99511
John Kimball	P.O. Box 111666	Anchorage	99511
Judith Lewis	P.O. Box 111375	Anchorage	99511
Henrietta Childs	12801 Brandon Street	Anchorage	99515
Jack Morrell	8628 Vernon Street	Anchorage	99515
Gladys Obermiller	1620 Helen	Anchorage	99515
Ralph Tolman	12901 Hace	Anchorage	99515
Linda West	1823 Bellevue Loop	Anchorage	99515
Karen Casmeyer	12841 Foster Road	Anchorage	99516
Effie McEwen	3401 E. 144th	Anchorage	99516
Joyce Seibert	4511 Trapline Circle	Anchorage	99516
Mike Miller	2907 W. 35th Avenue	Anchorage	99517
Jack Doyle	1320 E. 68th, Suite 112	Anchorage	99518
Helen Boehm	HC 78, Box 2890	Chugiak	99567
Ray Carloni	SR2, Box 4865	Chugiak	99567
Linda Charles	HC 78, Box 2275	Chugiak	99567
Theresa Cain	P.O. Box 771318	Eagle River	99577
Gary Pogany	P.O. Box 323	Eagle River	99577
Marti Ressler	P.O. Box 16431	Eagle River	99577
Gary Jacobson	P.O. Box 284	King Salmon	99613
Joyce Alto	P.O. Box 225	Naknek	99633
Thomas Sokolowski	P.O. Box 3367	Palmer	99645
Bob Cooksey	P.O. Box 875601	Wasilla	99687
James Plumley	Box 3208-M	Wasilla	99687
Lloyd Rudd	P.O. Box 871864	Wasilla	99687

Alaska Association Chiefs of Police



March 21, 1991

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Donley,

Alaska, like most states, has a juvenile justice system designed to keep juveniles apart from and treated differently than adults. The reasons for this are many, but certainly one the main considerations is that, because of their age, juveniles do not need to be treated as harshly as adults. In most cases, juveniles commit less serious crimes than adults and are easy to rehabilitate.

Unfortunately, there are some young people under the age of eighteen that have committed some very heinous crimes, that if committed by adults would result in years of incarceration simply as a measure to protect the public. There are also many cases where juveniles repeatedly demonstrate through repetitive criminal acts, that rehabilitation in the juvenile system is failing.

The Alaska Association of Chiefs of Police believes that the current laws as they pertain to the worst juvenile offenders are deficient. House Bill 101 would help correct some of those deficiencies and we urge its passage. We do not advocate the scrapping of our juvenile justice system. We do, however, ask that our laws recognize the hard fact that some juveniles commit crimes so repeatedly or brutally, that they should be held to a higher standard of accountability than they are under current law.

Sincerely,

A handwritten signature in cursive script, reading "Duane S. Udland".

Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507

Letters of Support

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
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LABOR AND COMMERCE COMMITTEE

M E M O R A N D U M

TO: Representative Georgianna Lincoln, Co-Chair
Representative Pat Carney, Co-Chair
Health, Education, and Social Services Committee

FROM: Representative Dave Donley *D*

RE: HB 101 - Prosecution of Juvenile Felons

DATE: March 21, 1991

Since HB 101 was introduced, I have been working with the administration to work out technical and practical problems with the bill. Attached is a proposed CS to HB 101 that resolves problems in the original version of the bill. A sponsor statement and sectional analysis for the CS are also attached. Finally, I have included two letters from the Department of Law; the first outlines the problems with the original version of the bill and the second indicates that the problems have been resolved in the CS.

The differences in the two versions of the bill are:

(1) Section 1 (page 1, lines 4 - 11) of HB 101 have been deleted from the proposed CSHB 101. The section has been deleted at the request of the administration for both practical and policy reasons. The practical reason for deleting the requirement for incarcerating minors who are prosecuted as adults in juvenile institutions is that the juvenile institutions are not set up administratively to handle parole, probation, and "good time" accounting, which are required for all persons prosecuted as adults. The policy reason for deleting this provision is that it is not conducive to the rehabilitation of minors who are treated within the juvenile justice system to house them with those who are treated as adults.

(2) For technical drafting reasons, the language "and the Alaska Delinquency Rules does not apply" was added on page 1, line 5 and page 2, line 5 of the proposed CS.



P.O. BOX

Summary of changes to CS

FAX) 463-5661 • mrc

(3) For technical drafting reasons, the phrase "as a result of violating a criminal law" was substituted for the phrase "for conduct" on page 1, line 10 and line 13 - 14 of the proposed CS.

(4) For technical drafting reasons, the phrase "with an offense specified in" was substituted for the word "under" on page 2, line 4 of the proposed CS.

(5) The text of HB 101 on page 2, line 31 and page 3, lines 1 - 10 has been deleted and replaced with the text that is set out on page 2, lines 22 - 31 and page 3, lines 1 - 6 of the proposed CS. The changes in this portion of the CS are (1) to allow all qualified psychologists to testify as expert witnesses on a minor's amenability to treatment as a juvenile (the original bill allowed only forensic psychologists to testify, however, many communities in Alaska do not have forensic psychologists); (2) the elimination of a potential constitutional problem that could have existed in requiring the court to select the psychiatrist or psychologist used by the minor; and (3) to clearly set out a time frame for submission of expert witness reports in order to ensure that hearings on a minor's amenability to treatment are handled in an orderly manner.

DD:lc

REPRESENTATIVE DAVE DONLEY



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SPONSOR STATEMENT

HB 101 reforms the juvenile justice system by making it easier to treat the very small minority of serious or habitual juvenile offenders as adults. In so doing, the legislation balances the needs of society to be protected from dangerous offenders against the importance of treating the vast majority of minors within the juvenile justice system.

Under current law, people under 18 are treated as juveniles. With only one exception, no matter what crime is committed or how many felony convictions the person has, a person under 18 who is convicted of a crime is released from all state supervision at age 20. The only exception is where the state can prove that the minor is not amenable to treatment as a juvenile.

Until late 1989, in deciding whether a minor was amenable to treatment, the courts relied heavily on the testimony of expert psychiatrists and psychologists. However, in R.H. V. State, 777 P.2d 204 (Alaska App. 1989), the court ruled that requiring minors to be examined by psychiatrists and psychologists to determine amenability to treatment is unconstitutional. Today courts are increasingly being asked to decide whether a minor is or is not amenable to treatment without the benefit of expert testimony.

The level of potential dangerousness presented by minors who commit first degree murders or with a record of committing felony offenses is extremely high. In these cases, the courts must have access to the greatest possible amount of information about the minor before making a decision to treat the minor as a juvenile or as an adult. The only way it is constitutionally possible for the courts to gain access to this type of information is to switch the burden of proving amenability to treatment from the state to the minor.

HB 101 requires a limited number of minors to prove that they are amenable to treatment as a juvenile before they can be kept within the juvenile justice system. Under HB 101, the burden of proof is shifted only when the minor is 14 years of age or older and (1) is charged with murder in the first degree or attempted murder in the first degree; (2) is charged with an unclassified or class A felony and has previously been adjudicated as a delinquent for a prior felony offense; or (3) is charged with any other felony and has previously been twice adjudicated as a delinquent for prior felony offenses.

DD:lc



P.O. BOX

SPONSOR STATEMENT

FAX) 463-5661



POSITION PAPER

HOUSE BILL 101

Background

In Alaska, as in most other states the age of criminal responsibility coincides with the age of majority (18 years of age). This recognizes the fundamental differences between children and adults and is expressed in numerous other laws limiting the rights, privileges, and responsibilities of children. Because the designated age of criminal responsibility is an arbitrary standard, legal mechanisms are necessary to identify and properly address the inevitable exceptions. Waiver of juvenile jurisdiction is the generally established mechanism for differentiating between the vast majority of youthful offenders and those few offenders whose behavior identify them more closely with adult criminals.

Waiver of juvenile Court jurisdiction occurs in Alaska through a formal Court process as a judicial determination. Alaska's law (AS 47.10.060) does not establish a minimum age for which a youth can be transferred to adult criminal jurisdiction. AS 47.10.060 allows the "waiver" of a youth of any age for any delinquent act. The Court must determine the youth to be "not amenable" to treatment as a juvenile. The state has the burden of proof. A youth is considered unamenable to treatment if the youth "probably cannot be rehabilitated under juvenile jurisdiction, before reaching 19 years of age. In determining amenability to treatment the Court may give consideration to four factors: (1) the seriousness of the alleged offense; (2) the youth's delinquent history; (3) the causation of the delinquent offense and (4) the availability of treatment facilities for the youth.

Analysis/Program Impact

The critical issues in structuring a waiver law are:

1. defining the standard(s) for consideration in determining waiver decisions; and
2. establishing a competent and unbiased method of applying waiver standard(s) to specific cases.

Under present Alaska law the method of applying the waiver standard is a judicial proceeding. All evidence bearing on the waiver decision is considered by the Court. Waiver decisions made by judges require a threshold finding of probable cause, that the accused juvenile offender committed the alleged offense. The probable cause standard is guided by statutorily established criteria (standards), and is subject to review (appeal).

The standards for making waiver decisions under a judicial process are legislatively determined and applied by the judiciary. Factors to be considered in determining which cases meet the standard for waiver are also legislatively established. A balance of society's interest in public protection, and rehabilitation is sought.

HB 101 proposes a presumptive waiver method for some minors 14 years of age and older, that removes the threshold finding of probable cause from consideration in the waiver process. Prosecutors could accomplish waiver simply by specifying the initial charge.

This bill would change the jurisdictional authority for child proceedings found in title 47 to enable the automatic prosecution of a minor in adult Court for certain offenses. The offense for which the minor is charged would be the primary determining factor. For some offenses, but not all, prior history of delinquency adjudication would also be a determining factor. This bill would secondarily amend criminal sentencing structures to allow the Court to sentence a waived juvenile to secure facilities operated by the Department of Health and Social Services.

For the most part youth who have been waived to adult jurisdiction under current statutes have committed exceptionally violent crimes such as murder. In most of these cases, Alaska's existing waiver law has functioned effectively and the court has issued an order of waiver. The law has been somewhat less effective for older youth nearing the age of 18 who have committed serious, but less sensational criminal acts; and for those youth who demonstrate a substantial repetitive pattern of delinquent acts.

In most waiver cases, the decision to waive has depended on the belief of psychologists and psychiatrists that a youth cannot be rehabilitated before juvenile jurisdiction expires. If these "expert" witnesses do not provide overwhelming testimony that a youth is not amenable to treatment, then the statutory framework presumes that jurisdiction will remain with the juvenile court. Recent case law is now denying the Court access to this expert testimony and the potential for the state to prevail in a waiver request has diminished.

In part, HB 101 attempts to;

... restore the availability of psychiatric and psychological evidence for use by the court; and

... increase the potential to waive habitual juvenile offenders.

These two goals are not inconsistent with the prevailing position of most Alaska juvenile justice practitioners. The strategy proposed in HB 101 would however, introduce new systematic problems as great as those it attempts to correct.

HB 101 would permit the presumptive waiver and the adult prosecution of a minor 14 years of age and older when;

the minor is charged with murder in the first degree attempted murder in the first degree; or

the minor is **charged** with an unclassified, or class A felony, with a previous adjudication for a felony offense in Alaska or elsewhere; or

the minor is **charged** with a felony of any degree and has either two previous adjudications for felony offenses in Alaska or elsewhere or has previously been waived and convicted of a felony offense.

A minor could petition the Court to have the charges heard under children's proceedings. In such "reverse waiver" proceedings the minor, not the state would have the burden of proof. The minor would have to show a preponderance of evidence of being amenable to treatment by age 20. The Court would appoint a qualified psychiatrist, or forensic psychologist to examine and evaluate the minor's ability to be rehabilitated. The Court would consider the same four factors as found in the existing waiver statute (AS 47.10.060) to determine amenability or to prosecute the minor as an adult. Adding a statutory requirement for appointment of a qualified psychiatrist or forensic psychologist would potentially overcome recent case law which now denies the court access to psychological and psychiatric reports at waiver hearings unless the minor consents to an examination.

A minor subject to the presumptive waiver provisions of HB101 would be denied the same protection for appointment of counsel as currently afforded minors under juvenile jurisdiction. The special provision for consultation and waiver of counsel contained in AS 47.10.050 would not be guaranteed to the minor. This would limit the minor's availability to rapidly obtain counsel and prepare a case for treatment as a juvenile.

If a minor prosecuted in adult court is not convicted as charged under the provisions of this bill, but is convicted of a lesser charge to which presumptive waiver does not apply, the minor would have to be sentenced as a juvenile. The state could however, petition the Court to waive a minor found guilty of a felony for the purpose of sentencing the minor as an adult. For such a second waiver attempt the state would have the burden of proving the minor's non-amenability to treatment by age 19.

The Court could order a minor who has been waived and convicted to be committed to a secure facility operated by DHSS. A minor committed to DHSS for placement in a secure facility, would remain in the custody of DHSS until the minor reached 18, and then the minor's custody would be transferred to the Department of Corrections.

This legislation would increase the number of older youth confined at DHSS facilities. These youth would be determinately sentenced as adult offenders. It is likely that they would have longer commitments to confinement than youth under juvenile jurisdiction. Longer confinements of one class of offenders would reduce the Department's capacity for treatment of other youthful offenders, unless additional beds were constructed.

If DHSS facilities house waived minors, it would be necessary to provide separate programing and quarters to maintain standards for safety and security. Special program considerations would be necessary because a waived minor would have little incentive to meet behavioral expectations. in the same manner as a youth under indeterminate juvenile disposition. This lack of behavioral incentives would be further compounded by the apparent absence of provisions for good time, or parole as is afforded to other adult offenders.

Enactment of this legislation would create the need for the construction and operation of a new security facility for the incarceration of waived minors. This facility would; 1) insure adequate bed space, 2) achieve the required separation of waived minors from other detained minors, and 3) provide the necessary level of secure custody.

Presumptive waiver laws such as HB 101 predicate the waiver decision on three factors only; (1) age at the time of the alleged offense and (2) the offense charged (3) the previous delinquent or criminal history of the minor. There would be no standard established for the decision which determines waiver. Instead waiver would be based on the prosecutor's prerogative to determine which cases would be charged and at what level. The standard becomes reduced to a discretion mechanism for which there is no review.

DEPARTMENTS POSITION

The department is opposed to HB NO.101 as it would remove the responsibility for making waiver decisions from the Court and place it with the Department of Law. Enactment would also require the construction and operation of a separate facility at considerable cost to the state.

A presumptive waiver attempts to mechanize a most difficult decision in which society has competing interests. There must be a balancing of the goals of public protection, and society's interest in protecting and rehabilitating youthful offenders.

The Department believes that a more reasonable way to correct deficiencies in the current waiver law would be to statutorily change the second of only two standards in AS 47.10.060 which the Court must use to determine waivers. The second standard, in addition to probable cause, is amenable to treatment. Factors such as seriousness of offense and prior delinquent history can only be considered as they relate to the amenability standard. They are not separate standards. Interests such as deterrence of others and reinforcing societal norms are not even included in the current statutory scheme. The Department believes a more balanced approach is necessary which includes, but is not restricted to, the standard of amenability to treatment.

Micheal L. Price 3/22/91

Micheal L. Price
Director

Theodore A. Malá for
Theodore A. Malá, MD, MPH
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. H.B. 101

Revision Date: _____ Department Affected: Corrections
 Title: "An Act relating to criminal charges brought against minors..." BRU: _____
 Sponsor: Rep. Donley Component: _____
 Requestor: _____ COMPONENT SERIAL NO.

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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)

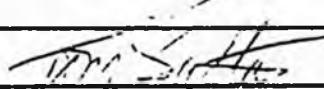
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director  Phone: 465-3376
 Division: Administrative Services Date: 03-21-91

Approved by Commissioner: _____ Date: 03-21-91
 Agency: Department of Corrections

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & impacted Agency(ies).

STATE OF ALASKA
Department of Corrections
LEGISLATIVE POSITION PAPER
Lloyd Hames, Commissioner

P.O. Box '7', Juneau, AK 99801-2000 (907) 466-8376

Carl Michel, Legislative Liaison

HOUSE BILL 101

"An act relating to criminal charges brought against minors.."

House Bill 101 basically states that under certain circumstances, juveniles charged as adults will be confined in a juvenile detention facility until the age of 18 years. This happens rarely and would impact the Department of Corrections positively, if passed, by limiting the custody of a juvenile until the age 18.

This bill may have a negative impact upon the Dept. of Health and Social Services if they do not currently have adequate facilities to house juveniles charged as adults.

The Department does not have a position on this legislation.

FISCAL NOTE:
ZERO
ATTACHED

APPROVED: _____

L. H. by Carl F. Michel
Commissioner

DATE: 3-21-91

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to criminal charges brought against minors..." BRU: Prosecution/Legal Services'
 Sponsor: Representative Donley Component: Prosecution/Criminal Justice Litigation
 Requestor: House Judiciary Legal Services/Operations
 COMPONENT SERIAL NO.

		8	9
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9 3

Expenditure/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 19, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 19, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 101

This bill provides the framework for a major departure from the way that the state adjudicates minors charged with serious criminal offenses.

Historically, the state has used the Children's Proceedings process provided in AS 47.10 to handle delinquent behavior unless the court found that the minor was not amendable to treatment as a juvenile. In such cases, the state has been required to petition the court for a waiver of jurisdiction so that the minor may be prosecuted as an adult in the superior court. In determining whether or not a minor is amendable to treatment, the court considers 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 for treating the minor.

While still retaining the waiver of jurisdiction provision, AS 47.10.060, HB 101 also provides that Children's Proceedings under AS 47.10.020 -47.10.090 may not be followed when a minor is fourteen years of age and older and is charged with the following crimes:

- (1) the offense of murder in the first degree or attempted murder in the first degree;
- (2) an unclassified or a class A felony, and the minor has been previously adjudicated as a delinquent for conduct that would have been a felony if committed by an adult;
- (3) a felony of any degree, and the minor has been previously twice adjudicated as a delinquent for conduct that would have been a felony if committed by an adult; or
- (4) previously prosecuted and convicted as an adult for a felony.

Consequently, a minor accused of the above listed offenses would be charged, prosecuted, and sentenced in the superior court in the same manner as an adult.

The bill does provide that if a minor is charged under these provisions, the minor may petition the court seeking to have the charges handled as a Children's Proceeding under AS 47.10.020 - 47.10.090. The effect of these changes is to shift the burden of proof from the prosecution to the defense in determining whether a minor charged with a serious crime should be tried in children's court or as an adult in superior court.

Finally, the bill amends AS 12.55.015 to provide that a minor under the age of 18 who has been convicted under the foregoing provisions, or following a waiver of juvenile jurisdiction under AS 47.10.060, may be committed to the custody of the Department of Health and Social Services until the minor's 18th birthday. A minor thus committed would be placed in a secure facility, could not be released except upon an order of the court, and would be transferred to the custody of the Department of Corrections when reaching 18 years of age.

Because of its effect, transferring the responsibility for bringing most waiver hearings from the prosecution to the defense, the bill will not have a fiscal impact on the Department of Law. The department currently handles about twelve waivers of jurisdiction under the existing statute.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: _____ Dept. Affected Health & Social Services
 Title: An Act relating to criminal charges brought BRU: Youth Services
against minors and providing that minors convicted... Component: To be established
 Sponsor: Representative Donley
 Requestor: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES		967.0	967.0	967.0	967.0	967.0
TRAVEL		14.2	14.2	14.2	14.2	14.2
CONTRACTUAL		145.5	145.5	145.5	145.5	145.5
SUPPLIES		137.5	137.5	137.5	137.5	137.5
EQUIPMENT		20.0	20.0	20.0	20.0	20.0
LAND & STRUCTURES						
GRANTS, CLAIMS		50.0	50.0	50.0	50.0	50.0
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,334.2	1,334.2	1,334.2	1,334.2	1,334.2
CAPITAL	5,767.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING:

(Thousands of Dollars)

GENERAL FUND	FY92	FY93	FY94	FY95	FY96	FY97
FEDERAL FUNDS						
OTHER						
TOTAL	5,767.0	1,334.2	1,334.2	1,334.2	1,334.2	1,334.2

POSITIONS:

FULL-TIME	FY92	FY93	FY94	FY95	FY96	FY97
PART-TIME						
TEMPORARY						
	0	18	18	18	18	18
	0	1	1	1	1	1
	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

Based upon an analysis of arrest data, wavier data, and sentencing information this fiscal note assumes that 10 youth will be waived and sentenced annually with an average length of stay of 2.5 years. Based on this funding DHSS would need to construct and operate a facility with a capacity for 25 waived youthful offenders.

Prepared by: Michael L. Price, Director *Michael L. Price*
 Division: Division of Family and Youth Services
 Approved by Commissioner: Theodore A. Mala, MD, MPH *for*
 Agency: Department of Health and Social Services

Phone: 465-3170
 Date: 3/22/91
 Date: 3/22/91

Distribution (by preparer):
 Legislative Finance OMB
 Legislative Sponsor Impacted Agency(ies)
 Requestor

ANALYSIS (cont.):

Assumptions

1. An analysis of arrest data indicates that 40 youth could be arrested annually for offenses subject to presumptive waiver under HB 101.
2. It is estimated that 60% will not request or prevail in attempts to be tried as juveniles.
3. Based on an analysis of conviction rates for juveniles, 80% of these arrested could be convicted under the presumptive waiver provisions of HB 101.
4. Based on an analysis of adult sentencing information 50% of offenders are convicted of the offense charged.
5. The average age of minors at arrest under presumptive waiver consideration would be 15.5 years.

Program Summary

Waived minors cannot be housed with other juvenile offenders for two reasons. First, waived minors who have long sentences pose a greater security risk. The physical design and arrangement of a secure facility must meet the needs of this higher risk population. Secondly, this population has no incentive to meet behavioral expectations in the same manner as other detained minors, thus dictating completely different programs for each group.

FY 92

Capital Project - One 25 bed separate secure detention facility would be built in Anchorage. The facility would house minors who were charged, pending "reverse waiver" trial sentenced under the presumptive waiver provisions of HB 101 and also those waived minors pursuant to AS 47.10.060. It is estimated that the facility would be 11,00 square feet at a cost of \$300.00 sq. ft. for a total cost of \$5,767,000.

FY 93

Facility operational costs for a separate secure facility located in Anchorage.

Personal Services \$811,00

- One Superintendent I
- One Unit Leader
- Three Youth Counselor III's
- Twelve Youth Counselor II's
- One Maintenance Worker II
- One Clerk-Typist IV
- One 1/2 time Nurse II

Personal Services include staff for 24 hour supervision of the offender population and 37.5 hour per week staffing of administration.

ANALYSIS (cont.):

Travel \$ 14,200

Travel includes costs for administrative travel, staff training and per diem.

Contractual \$145,000

Contractual costs include purchase of public utilities, laundry services, communications, and other professional services.

Supplies \$137,000

Supply costs include the purchase of office supplies, household/institutional supplies, repair/maintenance supplies and food.

Grants/Claims \$ 50,000

Grants/claims costs include travel at admissions and release for the minor and escort, commissary, clothing and medical care.

FISCAL NOTE
HB 101
(page 2 of 3)

Analysis:

Based upon an analysis of arrest data, wavier data, and sentencing information this fiscal note assumes that 10 youth will be waived and sentenced annually with an average length of stay of 2.5 years. Based on this finding DHSS would need to construct and operate a facility with a capacity for 25 waived youthful offenders.

Assumptions

1. An analysis of arrest data indicates that 40 youth could be arrested annually for offenses subject to presumptive waiver under HB 101.
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HOUSE COMMITTEE REPORT

(7)
Date Referred: February 4, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 3-25-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 101

HOUSE BILL NO. 101

PROSECUTION OF JUVENILE FELONS

"An Act relating to criminal charges brought against minors, and providing that minors convicted as adults may be confined in juvenile facilities."

RECOMMENDATIONS:

be replaced with CS HB 101 (HES) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact DHSS

fiscal note(s) _____

zero fiscal note D.O.C. + D.O.L.

zero fiscal note(s) _____

SIGNING DO PASS: (Lincoln)

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>[Signature]</i> (CARNEN)	<i>Cheri Davis</i>		X	
<i>J. G. Gonzalez</i> (GONZALES)				
<i>Mark Hamley</i> (HAMLEY)				

[Signature]
CO-Chairman's Signature



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

SUBJECT OF MEETING:
HB101 PROSECUTION OF JUVENILE FELONS

DATE: March 25, 1991

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
✓ Sherrie Gou	ALASKA WOMEN'S LOBBY	P.O. Box 22156 Juneau	99802		436744	<input checked="" type="radio"/>	<input type="radio"/>	HB101
CARL NICKEL	Dept of Correct.					<input type="radio"/>	<input type="radio"/>	
Michael Price	DFYS DHSS	Box H Juneau		(H?) 465-3191		<input type="radio"/>	<input type="radio"/>	
Randall Hines	DFYS			(H?) 465-2422		<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

CS FOR HOUSE BILL NO. 101 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DONLEY, Ulmer, Larson, Barnes, G.Phillips, Sharp, Martin, Leman, Zawacki, B.Davis, Baker, R.Phillips

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal charges brought against minors."

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

3 * Section 1. AS 47.10.010 is amended by adding new subsections to read:

4 (e) Unless ordered by the court under (h) - (k) of this section, the procedure prescribed
5 in AS 47.10.020 - 47.10.090 ~~and AS 47.10.010~~ when a minor is
6 14 years of age and older and is charged with

7 (1) the offense of murder in the first degree under AS 11.41.100 or attempted
8 murder in the first degree;

9 (2) an unclassified or a class A felony, and the minor has been previously
10 adjudicated as a delinquent in this or another jurisdiction ~~and~~
11 that would have been a felony under the laws of this state if committed by an adult;

12 (3) a felony of any degree, and the minor has been previously

13 (A) twice adjudicated as a delinquent in this or another jurisdiction ~~and~~

14 ~~and~~ that would have been a felony under the laws of this

1 state if committed by an adult; or

2 (B) prosecuted and convicted as an adult for a felony in this or another
3 jurisdiction.

4 (f) If a minor is charged ~~with an offense specified~~ in (e) of this section, the procedure
5 prescribed in AS 47.10.020 - 47.10.090 ~~and the Alaska Delinquency Rules does not apply~~ with
6 regard to all charges that are properly joined to the offense described in (e)(1), (2), or (3) of this
7 section, unless otherwise ordered by the court under (h) - (k) of this section.

8 (g) A minor accused of an offense specified in (e) or (f) of this section shall be charged,
9 prosecuted, and sentenced in the superior court in the same manner as an adult, unless otherwise
10 ordered by the court under (h) - (k) of this section. If a minor is accused of an offense specified
11 in (e)(2) or (3) of this section, the charging document shall be accompanied by an sworn
12 statement stating that the minor has been previously convicted as an adult for a felony or
13 adjudicated as a delinquent for conduct that would allow charges to be brought under (e)(2) or
14 (3) of this section.

15 (h) If a minor is charged as an adult under (e) or (f) of this section, the minor may file
16 with the court a petition seeking to have the charges heard under the procedure prescribed in
17 AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules. The minor shall file a petition
18 under this subsection within 10 days of the date that the minor is charged that alleges that

19 (1) the minor is amenable to treatment under this chapter before the minor's 20th
20 birthday; or

21 (2) the allegations in a sworn statement filed under (g) of this section are not true.

(i) At a hearing on a petition under (h)(1) of this section, the minor bears the burden of
proving by a preponderance of the evidence that the minor is amenable to treatment under this
chapter before reaching 20 years of age. In ruling on the petition, the court shall consider the
factors set out in AS 47.10.060(d).

(j) At a hearing on a petition under (h)(1) of this section, the minor may introduce as
evidence the testimony or the report of a qualified psychiatrist or psychologist on the minor's
amenability to treatment before reaching 20 years of age. Notice of intent to introduce this
evidence shall be given to the court by the minor at least 20 days before the hearing. If the
minor gives this notice and the state requests that the minor be examined by another psychiatrist
or psychologist, the court shall order that the minor be examined by a qualified psychiatrist or

psychologist selected by the state. A report by a psychiatrist or psychologist that either the minor or the state intends to introduce as evidence at the hearing shall be filed with the court and served on the opposing party at least 48 hours before the hearing.

(k) At a hearing on a petition under (h)(2) of this section, the state bears the burden of proving by a preponderance of the evidence that the allegations of a sworn statement under (g) of this section are true.

7 (l) Nothing in this section limits the right of a party to an action under this chapter to
8 seek waiver of jurisdiction under AS 47.10.060(a).

9 * **Sec. 2.** AS 47.10.080 is amended by adding a new subsection to read:

10 (o) A minor who is charged and prosecuted as an adult under AS 47.10.010(e) - (g) but
11 who is convicted only of offenses with which the minor could not be charged under
12 AS 47.10.010(e) shall be treated as though the charges had been heard under this chapter, and
13 the court shall order disposition of the charges of which the minor is convicted under the
14 provisions of (b) of this section. However, if any of the charges of which the minor is convicted
15 is a felony, the state may petition the court to sentence the minor as an adult. If the court finds
16 that the minor is not amenable to treatment under this chapter, as defined in AS 47.10.060(d),
17 the court may grant the petition. The court shall employ the same standards and consider the
18 same factors as it would in determining a petition for waiver of juvenile jurisdiction under
19 AS 47.10.060.

20 * **Sec. 3. APPLICABILITY.** This Act applies to offenses committed after the effective date of this

21 Act.