

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

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

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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

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

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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 Knuth
Margot O. Knuth
Assistant Attorney General

MOK:mm-033

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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MEMBER
RULES COMMITTEE
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MEMORANDUM

TO: All Members
HESS Committee

FROM: Representative Dave Donley 

RE: HB 100/~~101~~ - 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 Merrell, 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



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 Ruda	P.O. Box 871864	Wasilla	99687

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

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
(907) 561-7629 (FAX) 562-4376

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CHAIRMAN
JUDICIARY COMMITTEE
VICE CHAIRMAN
REGULATION REVIEW COMMITTEE
MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

MEMORANDUM

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

FROM: Representative Dave Donley *DD*

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



(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

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

April 4, 1991

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

Re: Position of the Executive Branch on CSHB 101 (HES)
(Criminal Charges Brought Against Minors)

Dear Representative Donley:

Members of the Departments of Law, Corrections, Public Safety, and Health & Social Services, met yesterday to discuss HB 101. All departments support the concepts addressed by this bill because they make important reforms in the juvenile justice system. We believe, however, that the following amendments should be made to the bill:

First, we suggest that the offense of solicitation to commit murder be added to the offenses of murder in the first degree and attempted murder in the first degree as grounds for shifting the burden of proof on the issue of amenability to treatment to the minor. Unfortunately, minors do commit this offense and it should be addressed.

Second, we recommend that proposed AS 47.10.010(e)(3)(A) be removed from the bill. This is the subsection relating to juveniles "twice adjudicated as a delinquent in this or another jurisdiction as a result of violating a criminal law that would have been a felony under the laws of this state if committed by an adult." We note that the additional number of minors likely to be waived under this subsection would have a significant financial impact on the department of corrections.

Third, we recommend that section 2 be revised to clarify what happens when a minor who was treated as adult under AS 47.10.010(e)-(g) is convicted of a lesser offense than that with which they were originally charged. A minor who was charged with murder in the first degree and who tried and failed to establish amenability to treatment before reaching the age of 20 should continue to be treated as an adult offender even if only convicted of murder in the second degree. On the other hand, a minor who did

The Honorable Dave Donley

April 4, 1991

Page 2

not petition the court for treatment under the delinquency laws when first charged and who is ultimately convicted of a lesser felony offense should be given the opportunity to establish amenability to treatment as a juvenile before being sentenced. Finally, we believe that a minor who is ultimately convicted of only a misdemeanor offense should be treated as a juvenile, rather than as an adult offender.

Fourth, we suggest that the procedures for psychological evaluations made in proposed AS 47.10.010(j) be extended to waiver hearings held under AS 47.10.060. We believe that this type of provision was contemplated by the court in R.H. v. State, 777 P.2d 204, 211 (Alaska App. 1989).

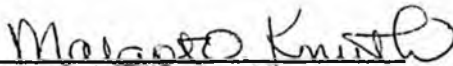
Attached, please find a copy of our proposed amendments to the bill. We appreciate this opportunity for comment.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

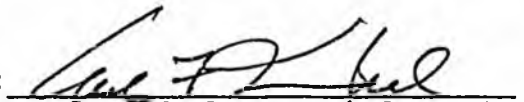
LLOYD HAMES,
COMMISSIONER

By:



Margot O. Knuth
Assistant Attorney General

By:



Carl Nickel, Special Ass't
Department of Corrections



RICHARD L. BURTON,
COMMISSIONER
DEP'T OF PUBLIC SAFETY



THEODORE A. MALA, MD, MPH,
COMMISSIONER
DEP'T HEALTH & SOC. SERVS.

MOK:mm-036

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 463-3991
Fax: (907) 463-3351

May 6, 1991

DRAFT

TO: Representative Dave Donley
FROM: Maureen Weeks ^{MW}
Legislative Analyst
RE: Juvenile Waivers under HB101
Research Request 91.168(A)

You asked how many juveniles who were charged with unclassified or Class A felonies in Alaska in 1990 would be tried as adult offenders under HB 101 if they could not prove they should be treated as minors.¹

Computer data from the Division of Family and Youth Services, Alaska Department of Health and Social Services, for 1990 shows a total of 1,374 felony cases, of which 46 are for unclassified or Class A felonies.² Six of these fall under the conditions of HB 101.

The six pertinent cases include:

- two first-degree murder charges,
- one second-degree murder charge,
- one first-degree robbery with a prior adjudication for second-degree criminal mischief,
- one first-degree arson with a prior adjudication for first-degree arson, and
- one first-degree sexual assault with prior adjudications for first-degree burglary.

I hope this answers your question. If I can be of further help, please call me.

¹Under HB 101, any juvenile charged with murder or with an unclassified or class A felony who had previously been adjudicated as a delinquent (for an offense which would be a felony if it were committed by an adult) would be tried as an adult, unless the juvenile could prove that he or she would respond sufficiently to treatment to be prosecuted as a minor.

²Dan Ashby, Division of Family and Youth Services, draft memorandum, April 29, 1991; and DFYS Youth Corrections Annual Data for CY 1990, March 3, 1991.

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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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



Alaska State Legislature



House of Representatives House Judiciary Committee

CHAIRMAN DAVE DONLEY

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

JUDICIARY LETTER OF INTENT

CSHB 101 (Judiciary)

It is the intent of the legislature that the Department of Corrections, to the maximum extent possible, take steps to protect juveniles that are in its custody under the provisions of CSHB 101 (Judiciary) and under current law. The legislature further intends that the Department of Corrections consider creating a special unit for sentenced juvenile felons, staffed by officers trained in dealing with adolescent behavior.


Chairman Dave Donley

May 6, 1991
Date

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It is the intent of the legislature that the Department of Corrections, to the maximum extent possible, take steps to protect juveniles that are in its custody, ~~both~~ under the provisions of CSHB 101 (Judiciary) and under current law. The legislature further intends that the Department of Corrections consider creating a special unit for sentenced juvenile felons, staffed by officers trained in dealing with adolescent behavior.

M.
PP

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

POSTION PAPER / DEPARTMENT OF PUBLIC SAFETY

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

DOPS Position Paper

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. Mala, MD, MPH
Commissioner

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

P.O. Box 'T', Juneau, AK 99801-2000 (907) 466-2070

Carl Nisbel, 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 Nisbel
Commissioner

DATE:

3-21-91

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 101(HES)

(H) Publish Date: 3/26/91

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
GENERAL FUND	5,767.0	1,334.2	1,334.2	1,334.2	1,334.2	1,334.2
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
FULL-TIME	0	18	18	18	18	18
PART-TIME	0	1	1	1	1	1
TEMPORARY	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
 Legislative Sponsor
 Requestor

OMB
 Impacted Agency(ies)

COMMITTEE COPY

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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FISCAL NOTE

No. 2

Bill Version: CSHB 101(HES)

(H) Publish Date: 3/26/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Corrections

Title: "An Act relating to criminal charges brought against minors..."

BRU: _____

Component: _____

Sponsor: Rep. Donley

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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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 *Tom Sutton* Phone: 465-3376

Division: Administrative Services Date: 03-21-91

Approved by Commissioner: _____

Agency: Department of Corrections Date: 03-21-91

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

STATE OF ALASKA
1991 LEGISLATIVE SESSION

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

		8	9
		9	3

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						
---------	--	--	--	--	--	--

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: Richard I. Pegues / FOL
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).

COMMITTEE COPY
FN ⊕ D.C.L.

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.

HOUSE COMMITTEE REPORT

3-26-91

Judiciary
Finance

Date Referred: February 4, 1991

FURTHER REFERRALS:

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) _____

(2) zero fiscal note D.O.C. + D.O.L.

zero fiscal note(s) _____

SIGNING DO PASS: (Lincoln)

SIGNING OTHER RECOMMENDATIONS:

Lincoln	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>[Signature]</i> (CARNER)	<i>Cheri Davis</i>		X	
<i>J. G. Gonzales</i> (GONZALES)				
<i>Mark Hambley</i> (HAMBLEY)				

[Signature] Lincoln
CO-Chairman's Signature

Executive Branch
Proposed Amendment to CSHB 101(HES)
April 3, 1991

Page 1, line 7, following "attempted,"

insert: "or solicited"

Page 1, lines 13-14, and page 2, lines 1-2,

delete: (A) twice adjudicated as a delinquent in
this or another jurisdiction as a result of
violating a criminal law that would have been
a felony under the laws of this state if
committed by an adult; or

(B)

Page 2, lines 13-14, following "(e)(2),"

delete: or (3)

Page 3, lines 9-19, rewrite Sec. 2 as follows:

* Sec. 2. AS 47.10.080 is amended by adding new
subsections to read:

(o) If a minor is charged and prosecuted as an
adult under AS 47.10.010(e) - (g) and the most
serious offense for which the minor was convicted
is a misdemeanor, the minor shall be treated as
though the charges had been heard under this
chapter, and the court shall order disposition of

the charges of which the minor is convicted under the provisions of (b) of this section.

(p) If a minor is charged and prosecuted as an adult under AS 47.10.010(e) - (g) and the most serious offense for which the minor is convicted is a felony with which the minor could not be charged under AS 47.10.010(e) and the minor did not file a petition under AS 47.10.010(h)(1), the minor may within 10 days of the date that the minor is convicted file a petition for disposition of the charges under (b) of this section. The petition shall allege that the minor is amenable to treatment under this chapter before the minor's 20th birthday. A hearing on the petition shall be governed by the provisions of AS 47.10.010(i)-(j).

Page 3, lines 20-21, renumber Sec. 3 as Sec. 4 and add a new Sec. 3 to read as follow:

* Sec. 3. AS 47.10.060 is amended by renumbering subsection (e) as subsection (f) and adding a new subsection (e) to read:

(e) At a hearing on a petition under 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.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 101(HES)
(H) Publish Date: 3/26/91

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
		9	3

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						
---------	--	--	--	--	--	--

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: Richard I. Pegues /FOIC/
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).

COMMITTEE COPY.
FN 0 D.O.L.

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

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							9	3	

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						
---------	--	--	--	--	--	--

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: Richard I. Pegues / R/I/C
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. CSHB101

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	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						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

The zero fiscal note assumes that waived minors will be housed in secure facilities operated by the Department of Corrections

Prepared by: Michael L. Price, Director *[Signature]*
 Division: Division of Family and Youth Services

Phone: 465-3170
 Date: _____

Approved by Commissioner: Theodore A. Mala, MD, MPH *[Signature]* Date: _____
 Agency: Department of Health and Social Services *[Signature]*

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: _____
Title: "An act relating to criminal charges brought against minors."
Sponsor: Rep. Donley
Requestor: Sponsor

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact _____

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date: 02/07/91

Approved by Commissioner: *[Signature]* Richard Burton
Agency: Department of Public Safety Date: 2/14/91

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. CSHB 101 (HES)

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to criminal charges BRU: Trial Courts
 brought against minors Components: _____
 Sponsor: Donley
 Requestor: Judiciary COMPONENT SERIAL NO.

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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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Division: Alaska Court System Date: 04/03/91

Approved by: Arthur H. Snowden, II, Administrative Director Date: 04/03/91
 Agency: Alaska Court System

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 101 (JUD)

Revision Date: 5/1/91 Department Affected: Administration

Title: Prosecution of Juvenile Felons BRU: Public Defender Agency

Component: Third Judicial District

Sponsor: Rep. Donley

Requestor: (H) Judiciary

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	54.6	56.6	58.8	61.0	63.3	65.6
TRAVEL	5.0	5.2	5.4	5.6	5.8	6.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	2.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	77.6	77.8	80.2	82.6	85.1	87.6

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	77.6	77.8	80.2	82.6	85.1	87.6
FEDERAL FUNDS						
OTHER						
TOTAL	77.6	77.8	80.2	82.6	85.1	87.6

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

(See attached.)

Prepared By: John B. Salemi, Director Phone: 279-7541

Division: Public Defender Agency Date: 5/1/91

Approved by Commissioner: Millett Keller

Agency: Department of Administration Date: 5/1/91

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 101

Under the current juvenile delinquency laws the prosecuting authorities of this state have full discretion with respect to deciding which juvenile offenders should be transferred out of the juvenile courts and into adult court for prosecution. Traditionally there has been little if any quarrel as to how this judgment has been exercised. There is a general perception that the juvenile authorities and state prosecutors petition for waiver in those cases where it is appropriate. Furthermore the courts have been more than willing to accede to the request for waiver. In other words, currently the state of Alaska has a juvenile waiver law which works well.

The changes proposed by CSHB 101 will remove some of the discretion of the state prosecuting authority in that some juvenile offenders will automatically be transferred to adult court unless said offender petitions the court for treatment as a juvenile delinquent and subsequently proves up his/her amenability to treatment. Under current law no child is automatically waived into adult court. Additionally, when waiver is requested the state has the modest burden (as opposed to the child) of establishing by preponderance of the evidence that the minor is not amenable to treatment.

While there is some suggestion that less than ten children would be affected statewide by this change in the law (in other words, ten additional kids will be waived into adult court) this writer is very skeptical of those estimates. The changes proposed not only automatically set in motion waiver for children accused of murder, attempted murder and/or solicited murder, but also for any charged unclassified or Class A felony where the minor has previously been adjudicated as a delinquent in this or another jurisdiction for felony level conduct. There will be more than ten cases in Anchorage alone that will trigger this waiver provision if the new law is enacted.

What will be the result of changing this law? Besides violating the "if it ain't broke don't fix it" principle, the change will create more litigation in juvenile court and thus create some congestion in the juvenile court system, delay the conclusion of court proceedings, and cost the state money. Furthermore it will take away discretion from prosecuting authorities who traditionally have exercised extremely good judgment with respect to this waiver issue.

The increase in litigation will occur mainly because this bill sets up the equivalent of a presumptive waiver law for kids who have previously been adjudicated delinquents for felony level conduct. In the current system most kids plead guilty or no contest (in the juvenile system it is called an "admission") once formally charged in the delinquency courts. This 'fessing up is seen as theraputic and rehabilitative. It is often encouraged by their lawyers because it is consistent with achieving a positive and good result at the disposition phase of the proceeding. Under the proposed bill both juveniles and defense lawyers will take a very different approach. Lawyers will have to advise juveniles that if they admit to felony level conduct they may be setting themselves up to be automatically prosecuted in adult court if they commit a subsequent serious felony as a juvenile. With the stakes for a first felony offense in

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 101

juvenile court changing this dramatically defense lawyers will be ethically bound to discuss the down side of entering an admission.

Currently very few trials are held in juvenile court. The number of trials in situations where a juvenile is being processed in juvenile court for felony level conduct will dramatically increase. This will entail additional investigative resources and attorney time, not to mention court time. Because the juvenile system at this point in time encourages pleas (admissions) the Public Defender Agency has been able to process these cases with minimal commitment of resources. That will all change.

Under the present system a juvenile in a typical case can be in treatment within 30 days of the filing of a petition for adjudication as a delinquent. But if cases must be contested in juvenile court, or start out in adult court, as many more would under the new proposal, lengthy procedures will precede any disposition. Parties will litigate pre-trial and trial issues in the courts as is deemed appropriate. Delays will necessarily occur. The current system makes far more sense, is less expensive and expedites the processing of juvenile cases.

It should be noted that additional litigation and the consequent delay is not good for victims either, who have to live with more trials, greater uncertainty and the inevitable postponements of court proceedings.

Considering the fiscal impact on the Public Defender Agency it appears that one attorney with felony level experience will be required as well as the commitment of a half-time investigator. This attorney and half-time investigator will likely be sited in the Anchorage office but will be called on to handle waiver petitions in Anchorage, Fairbanks and certain Bush areas. It is the understanding of this writer that other affected agencies have submitted zero fiscal notes. It is believed that such a position is unrealistic, at least as to the Public Defender Agency. As previously mentioned, this agency has very little resources devoted to juvenile delinquency cases. In Anchorage for example juvenile delinquency matters are handled by the family court lawyers, who spend most of their time processing Child in Need of Aid cases. Waiver cases, when they do occur, are often absorbed by the Anchorage appellate section. The family law section is already "maxed out" due in large part to the burgeoning C.I.N.A. caseload. Even though the family court system has reported increases in C.I.N.A. cases as high as 40% over the last two fiscal years, the Public Defender Agency has consistently been turned down when it has asked for additional resources. In summary, the impact of CSHB 101 on the family law lawyers will mandate additional resources for that section. See below:

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB101(JUD)

BUDGET ANALYSIS

Personal Services		
Attorney III (1/2)	35.6	
Paralegal I	19.0	
		54.6
Travel		
Professional and Experts		5.0
Contractual		
Expert Witnesses	10.0	
Office Space	3.5	
Utilities	2.5	
		15.0
Supplies		1.0
Equipment		
Office (one time only)		<u>2.0</u>
	TOTAL	77.6

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 101(JUD)

Revision Date: _____ Department Affected: ADMINISTRATION
 Title: PROSECUTION OF JUVENILE FELONS BRU: PUBLIC DEFENDER AGENCY
 Component: _____

Sponsor: REP. DAVE DONLEY
 Requestor: House Judiciary Committee **COMPONENT SERIAL NO.**

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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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared By: Chairman Dave Donley *Dave Donley* Phone: 465-4990

Division: House Judiciary Committee Date: 5/6/91

Approved by Commissioner: Chairman Dave Donley *Dave Donley*

Agency: House Judiciary Committee Date: 5/6/91

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

Continuation of Fiscal Note Analysis
For Bill No. CS HB 101 (Jud)

The Department of Law, the Department of Health and Social Services, and the Legislative Research Agency have all analyzed data available for 1990, and agree that in 1990 no more than six (6) minors would have been affected by CS HB 101 (Jud). The minors in these cases were appointed a public defender who represented them during the juvenile proceedings. Given the small number of cases affected by CSHB 101 (Jud), and given that the affected cases are already being handled by the Public Defender Agency, there will not be a fiscal impact on the Public Defender Agency.

The Alaska Court System and all other executive branch agencies impacted by CSHB 101 (Jud) have submitted zero fiscal notes.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 101(jud)

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

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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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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 *Tom Sutton* Phone: (907) 465-3376
 Division: Administrative Services Date: 04/04/91
 Approved by Commissioner: *[Signature]*
 Agency: Department of Corrections Date: 04/04/91

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

FISCAL NOTE

No. 2
 Bill Version: CSHB 101(HES)
 (H) Publish Date: 3/26/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

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

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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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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: _____
 Agency: Department of Corrections Date: 03-21-91

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

HOUSE COMMITTEE REPORT

5/9/91

(7)
Date Referred: March 26, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 5-6-91

The JUDICIARY 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 CSHB 101 (Jud) 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: House Judiciary letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact

fiscal note(s) _____

(5) zero fiscal note ^{H. Jud. Cmte} for Admin/Corrections, Hess
Pub. Safety, Courts

zero fiscal note(s) LAW 3/26/91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Perry Martin</u> Martin	<input checked="" type="checkbox"/>	<u>Bob Gruzberg</u> Gruzberg			<input checked="" type="checkbox"/>
<u>David Parnell</u> Parnell	<input checked="" type="checkbox"/>				
Mike Miller	<input checked="" type="checkbox"/>				
<u>Mike Miller</u> Miller	<input checked="" type="checkbox"/>				
<u>Mark Hanley</u> Hanley	<input checked="" type="checkbox"/>				

Mark Hanley
CHAIRMAN'S SIGNATURE

II. *DID THE COURT ERR IN HOLDING THAT FRANCIS HAS A BIVENS REMEDY FOR DAMAGES AGAINST THE STATE?*

[2] The trial court held that the state was liable for damage pursuant to *Bivens*. The trial court concluded that

because Francis has been denied a fundamental right guaranteed every citizen by the privileges and immunities clause of the United States Constitution, he has a remedy against the state for damages he has suffered. Under the Supremacy Clause, Article IV of the United States Constitution, this court is bound by the provisions of the United States Constitution; any laws of the state to the contrary notwithstanding.

The state makes three arguments. First, the state argues that it is not a proper defendant in a *Bivens* action. Next, it argues that a *Bivens* action should not extend to violations of the privileges and immunities clause of the United States Constitution. Finally, the state argues that special factors in this case counsel hesitation in the creation of a *Bivens* remedy.

In *Vest v. Schafer*, 757 P.2d 588 (Alaska 1988), this court examined the law surrounding *Bivens*-type damage remedies in depth.

We hold that a *Bivens*-type action, brought in state court against the state, cannot be allowed to stand when it is grounded on a claim that the legislature enacted a law later found to violate the equal protection clause of the Fourteenth Amendment of the Constitution.

Id. at 598. This court did not decide whether other unconstitutional behavior by the state can ever give rise to a federal *Bivens*-type action against the state in a state court. *Id.* at n. 36.

This case, like *Vest*, asks this court to hold the state liable for damages for unconstitutional legislation. Unlike *Vest*, however, the legislation violated the privileges and immunities clause of the Constitution,

2. We are aware of no *Bivens*-type case at the Supreme Court level involving a violation of the privileges and immunities clause.

rather than the equal protection clause. In *Vest* this court analyzed the appropriateness of awarding *Bivens* damages against the state. We noted that:

When a court finds a statute unconstitutional, the traditional remedy is declaratory or injunctive relief. Professor Davis stated: "Neither the United States nor any state has ever been liable for damages because its legislative body has enacted legislation that is later held unconstitutional."

Id. at 594 (quoting K. Davis, *Administrative Law Treatise* § 25.00-4, at 400 (Supp. 1982)).

Although the *Vest* case involved a statute which violated the fourteenth amendment rather than the privileges and immunities clause, the primary focus of *Vest* was on the general appropriateness of *Bivens* remedies against the state.²

For the reasons expressed in *Vest* we hold that the state may not be held liable for damages arising from the passage of unconstitutional legislation.³ Therefore, the decision of the trial court concerning the damage remedy is reversed.

AFFIRMED in part and REVERSED in part.



R.H., A Minor, Appellant,

v.

STATE of Alaska, Appellee.

No. 942.

Court of Appeals of Alaska.

July 7, 1989.

Hearing was held to determine whether juvenile should be tried as adult for

3. Because there is no damage remedy, injunctive relief may be regarded as particularly appropriate in cases of this nature.

murder. The Superior Court, Fourth Judicial District, Fairbanks, Jay Hodges, J., waived children's court jurisdiction, and juvenile appealed. The Court of Appeals, Bryner, C.J., held that juvenile's privilege against self-incrimination was violated by court order compelling him to submit to psychiatric evaluation in order to determine his mental ability to treatment as minor.

Vacated and remanded.

1. Infants \S 205

Court-ordered psychiatric evaluations of juvenile, for purpose of determining his mental ability to treatment, did not violate his right to counsel in that his counsel was permitted to accompany him and consult with him throughout course of evaluations. U.S.C.A. Const.Amend. 6; Const. Art. 1, \S 11.

2. Criminal Law \S 393(1)

Juvenile's privilege against self-incrimination was violated by court order compelling him to submit to psychiatric evaluation in order to determine his mental ability to treatment as minor, though court adopted safeguards to assure that no directly inculpatory statements would be divulged to prosecution or court, where juvenile had not affirmatively raised any issue pertaining to his psychological condition, and State was allowed to rely on evaluation at waiver hearing to establish future dangerousness. U.S.C.A. Const.Amend. 5; Const. Art. 1, \S 9.

3. Criminal Law \S 393(1)

Infants \S 253

Trial court's erroneous reliance, at juvenile waiver hearing, on psychiatric evidence obtained in violation of juvenile's right against self-incrimination necessitated reversal, notwithstanding existence of other evidence which independently may have justified waiver of children's court jurisdiction over juvenile; challenged evidence was given considerable prominence at hearing, and reviewing court could not say that it did not have appreciable effect on trial court's ultimate decision to waive jurisdiction. U.S.C.A. Const.Amend. 5; Const. Art. 1, \S 9.

Nelson Traverso, Asst. Public Advocate, Fairbanks, and Brant McGee, Public Advocate, Anchorage, for appellant.

Cynthia M. Hora, Asst. Atty. Gen., Office of Sp. Prosecutions and Appeals, Anchorage, and Douglas B. Baily, Atty. Gen., Juneau, for appellee.

OPINION

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

BRYNER, Chief Judge.

R.H. appeals from an order entered by Superior Court Judge Jay Hodges waiving children's court jurisdiction and directing that R.H. be tried by the superior court as an adult for murder in the first degree, robbery in the first degree, and other related charges. R.H. contends that the court violated his privilege against self-incrimination and his right to counsel by compelling him to submit to a psychiatric evaluation in order to determine his amenability to treatment as a minor. R.H. additionally contends that the court erred in finding him unamenable to treatment and in failing to find that the state proceeded in bad faith in supervising him on juvenile probation. We find that the court erred in compelling R.H. to submit to a psychiatric evaluation.

The facts are undisputed. On the night of March 31, 1988, R.H. and another minor, P.K.M., burglarized a Fairbanks office and stole a pistol, the owner's manual to the pistol, some ammunition, and an extra clip. By reading the owner's manual, R.H. and P.K.M. learned how to operate the gun. They then decided to rob a taxicab driver in order to obtain money for drugs; the boys made plans to kill the driver of the cab.

In the early morning hours of April 1, R.H. and P.K.M. flagged down a cab driven by Dale Baurick and asked to be taken to McGrath road in Fairbanks. Baurick drove the boys there and stopped the cab. R.H., who was seated behind Baurick, fired four shots into Baurick's back. As R.H. fired the shots, Baurick threw a wad of money into the back seat.

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and REVERSED in



Appellant,

a, Appellee.

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mage remedy, injunction as particularly appropriate nature.

After firing the shots, R.H. searched Baurick's pockets, taking a knife from one of them. R.H. then pulled Baurick out of the cab onto the road. Baurick apparently moaned. P.K.M. told R.H. to shoot Baurick, to make sure that he died. R.H. fired another shot into Baurick's head as Baurick lay on the road. R.H. and P.K.M. left the scene, driving Baurick's cab.

Alaska State Troopers investigating the case interviewed R.H. two days later, on April 3, 1988. R.H. gave a videotaped statement confessing to the murder and to the prior burglary in which he stole the murder weapon. The state thereafter petitioned for waiver of children's court jurisdiction over R.H., charging him with murder in the first degree, robbery in the first degree, and other offenses stemming from the burglary and shooting of March 31 and April 1.

R.H. was born on May 22, 1971. At the time of the offenses in this case, he was less than two months away from his seventeenth birthday. R.H.'s parents were divorced in 1979. R.H. first became involved in delinquent behavior in 1977, when he was charged with destroying mail from mailboxes. In 1983, at age twelve, R.H. was charged with harassment and disorderly conduct. The following year, he was involved in a shoplifting.

The 1983 and 1984 offenses apparently occurred when R.H. was living with his mother. In 1985, while living with his father in Delaware, R.H. was charged with possession of marijuana. Later in 1985, after turning fourteen, R.H. was charged with robbery and conspiracy. In early 1986, while awaiting disposition on the robbery charge, R.H. was charged with consuming alcohol, criminal trespass, and criminal misrepresentation. In an apparent effort to avoid Delaware delinquency proceedings, R.H.'s father sent R.H. to live with relatives in California.

Within a short time, in April of 1986, R.H. robbed a woman in California. R.H.'s father evidently misled California authorities, telling them that, for the most part, R.H. had never been in trouble with the law. R.H. was eventually released on pro-

bation on condition that he not return to California without being accompanied by a parent.

From California, R.H. was sent to live with his mother in North Pole, Alaska. In March of 1987, while fifteen years old, R.H., in the company of two adults, broke into Moose Creek Lodge and stole alcohol, food, money, and stereo equipment. At sixteen years of age, in August of 1987, R.H. was stopped while driving a stolen pickup truck. An Intoximeter test indicated a breath alcohol level of .08.

The state filed a delinquency petition charging R.H. with burglary, theft, criminal mischief, and consumption of alcohol. On December 4, 1987, R.H. admitted the allegations of the petition. The superior court released him to the custody of his mother pending a disposition hearing. Six days later, R.H. was arrested for shoplifting. Upon arrest, he appeared to have been drinking; a pipe containing marijuana residue was found on his person.

A disposition hearing was held in superior court in Fairbanks on January 12, 1988. R.H. was placed on probation, on condition that he remain in the custody of his mother, participate in a substance abuse counseling program, and refrain from consuming alcohol or controlled substances.

On March 30, 1988, R.H.'s mother reported to R.H.'s juvenile probation officer that R.H. had stolen \$4,000 worth of coins from her boyfriend and had sold them. Less than two days later, R.H. engaged in the fatal shooting of Dale Baurick.

Following R.H.'s arrest for the shooting, the state filed a petition for waiver of children's court jurisdiction, pursuant to AS 47.10.060(a). In support of its petition, the state requested a psychiatric evaluation of R.H., arguing that expert testimony concerning R.H.'s psychological condition would be relevant in determining his amenability to treatment. R.H. opposed the state's motion, arguing that a court order requiring him to submit to a psychiatric evaluation would violate his privilege against self-incrimination. R.H. pointed out that he had not affirmatively raised

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any issue pertaining to his psychological condition.

After hearing argument on the state's motion, Superior Court Judge Jay Hodges ordered R.H. to submit to psychiatric evaluation and substance abuse screening. In ordering the examinations, Judge Hodges took elaborate precautions to safeguard R.H.'s privilege against self-incrimination and his right to counsel. The judge directed that R.H.'s attorney have the right to be present with R.H. during the examinations. Additionally, Judge Hodges ordered that R.H.'s examiners be precluded from discussing their findings with the state, and he directed that their written reports be submitted to the court under seal for an initial screening by R.H.'s counsel. R.H.'s counsel was to be given an opportunity to raise self-incrimination objections to any specific information in the reports dealing with the facts of the case. Defense objections were to be ruled upon by a judge other than the judge presiding over the waiver hearings. By this process, a "sanitized" report was to be generated for disclosure to the court and the state for use in the waiver proceedings. No further use of the report, beyond the waiver stage, was to be allowed.

While preserving his original objections, R.H. submitted to the court-ordered examination; he was evaluated by a psychologist and two psychiatrists. All three examiners prepared written reports, which were eventually presented to the court and to the state in sanitized form.

A waiver hearing was subsequently held to determine R.H.'s amenability to treatment, pursuant to AS 47.10.060(a) and (d), which provide:

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.

....

(d) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching twenty 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.

R.H.'s waiver hearing was conducted in two stages. The initial stage focused on whether, under AS 47.10.060(a), there was probable cause to believe that R.H. had committed the delinquent acts alleged. At this hearing, R.H. conceded that the state had probable cause to establish that he had committed the alleged misconduct. R.H. likewise conceded the seriousness of the offenses, a factor specified in AS 47.10.060(d) as bearing on the issue of amenability to treatment.

The second stage of the waiver proceedings focused on the remaining aspects of R.H.'s amenability to treatment under AS 47.10.060(d). R.H. did not dispute his history of delinquency. To establish the probable cause for R.H.'s delinquent behavior and the adequacy of existing facilities to provide treatment to R.H., the state presented, *inter alia*, testimony from the three experts who had examined R.H. pursuant to the court's order. The upshot of the expert testimony was that R.H. suffered from a serious conduct disorder, that he exhibited traits commonly associated with adults suffering from antisocial personalities, that there were no facilities capable of providing him with treatment, and that he was not amenable to rehabilitation as a child.

Upon conclusion of the waiver hearings, Judge Hodges issued a written order waiving jurisdiction over R.H.'s case. The order found probable cause to believe that R.H. had committed the alleged offenses. With respect to the seriousness of the offenses, Judge Hodges found that first-de-

gree murder was the most serious of crimes and that R.H.'s offense qualified among the most serious of first-degree murders. Judge Hodges additionally found that R.H.'s history of delinquency was extensive and would in itself have supported the conclusion that R.H. was not amenable to treatment as a child. Concerning the probable cause for R.H.'s delinquent behavior, the judge found that R.H.'s delinquent problems apparently grew out of his dysfunctional home life and his addiction to drugs; the judge also found that R.H. had become self-indulgent and narcissistic and had developed the characteristics of an antisocial personality. Finally, Judge Hodges found that there was no available juvenile facility capable of addressing R.H.'s psychological or substance abuse problems. Based on these findings, Judge Hodges concluded that R.H. was not amenable to treatment by his twentieth birthday and directed that he be tried as an adult.

[1] On appeal, the primary contention raised by R.H. is that the superior court erred in compelling him to submit to psychiatric evaluations. R.H. claims that the court-ordered evaluations infringed his right to be free from compelled self-incrimination, as guaranteed by the fifth amendment to the United States Constitution and article 1, section 9, of the Alaska Constitution.¹

In response to R.H.'s claim, the state argues that the superior court took adequate steps to protect R.H.'s privilege against self-incrimination. The state maintains that the fact that the court restricted the use of the evaluations to the determination of R.H.'s amenability to treatment and precluded their use in subsequent phases of his case satisfied the requirements of the constitution.

In our view, the propriety of the superior court's order compelling R.H. to submit to psychiatric evaluation hinges upon the validity of either of two alternative ratio-

1. R.H. separately argues that the court-ordered psychiatric evaluations deprived him of his constitutional right to counsel, as provided for in the sixth amendment to the United States Constitution and article 1, section 11, of the Alaska Constitution. To the extent that this argument

nales—one apparently adopted by the trial court, and the other espoused by the state on appeal. The first is Judge Hodges' tacit assumption that the privilege against self-incrimination covers only directly inculpatory statements and that, consequently, R.H.'s rights could therefore be protected by adopting safeguards to assure that no directly inculpatory statements would be divulged to the prosecution or to the court at any stage of the proceedings. The second is the state's belief that the privilege simply does not attach in a juvenile waiver proceeding to the determination of amenability to treatment. The state contends that the issue of amenability to treatment does not entail the adjudication of guilt but involves only a selection of the forum in which R.H.'s case will be handled. Thus, according to the state, R.H.'s fifth amendment rights would have been adequately protected by providing R.H. with immunity against disclosure of his statements at any stage of proceeding after the waiver hearing. In the state's view, the precautions that the court took to prevent disclosure of directly incriminating statements at the waiver hearing stage were simply unnecessary.

We conclude, however, that reliance on either or both of these rationales is foreclosed by the United States Supreme Court's decision in *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981). In that case, the defendant, Smith, was charged with murder. The trial court issued a *sua sponte* order directing that Smith be examined by a psychiatrist in order to determine his competency to stand trial. Pursuant to the order, a psychiatrist visited Smith in jail and conducted a brief examination. Smith was not informed of his right to remain silent, and his attorney was not notified of the examination.

Smith was found to be competent and was eventually tried and convicted by a jury. At his sentencing hearing, the prose-

is not derived from R.H.'s self-incrimination claim, it is without merit; the superior court expressly ordered that R.H.'s counsel be permitted to accompany R.H. and to consult with him throughout the course of the psychiatric evaluations.

cution was allowed to call the psychiatrist Smith prior to trial, the psychiatrist testified that Smith was : and he predicted t to present a dang lying on this tes mended the death

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cution was allowed, over defense objection, to call the psychiatrist who had examined Smith prior to trial. Based on his examination, the psychiatrist expressed the view that Smith was an antisocial personality, and he predicted that Smith would continue to present a danger to the community. Relying on this testimony, the jury recommended the death sentence in Smith's case.

The Supreme Court held that, because Smith had not been advised of his right to remain silent before being subjected to the court-ordered psychiatric examination, use of the expert testimony during Smith's sentencing hearing was impermissible. Although the court emphasized that no constitutional problem would have been raised had the court-ordered psychiatric evaluation been used solely for the purpose of determining Smith's competency to proceed prior to trial, the court concluded that reliance on the evidence in the penalty phase of Smith's case resulted in a violation of his fifth amendment privilege against self-incrimination.

In reaching this conclusion, the Supreme Court made it clear that the fifth amendment privilege is not confined to directly inculpatory statements or to any particular type of proceeding.

The Fifth Amendment ... commands that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." The essence of this basic constitutional principle is "the requirement that the State which proposes to convict *and punish* an individual produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips."

The Court has held that "the availability of the [Fifth Amendment] privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites." In this case, the ultimate penalty of death was a potential consequence of what [Smith] told the examining psychiatrist. Just as the Fifth Amendment prevents a criminal defendant from being

made "the deluded instrument of his own conviction," it protects him as well from being made the "deluded instrument" of his own execution.

We can discern no basis to distinguish between the guilt and penalty phases of [Smith's] capital murder trial so far as the protection of the Fifth Amendment privilege is concerned. . . . Any effort by the state to compel [Smith] to testify against his will at the sentencing hearing clearly would contravene the Fifth Amendment. Yet the State's attempt to establish [Smith's] future dangerousness by relying on the unwarned statements he made to [the examining psychiatrist] similarly infringes Fifth Amendment values.

Estelle v. Smith, 451 U.S. at 462-63, 101 S.Ct. at 1872-73 (citations and footnotes omitted).

[2] In the present case, as in *Estelle v. Smith*, the prosecution was allowed to use a court-ordered psychiatric evaluation against the accused by relying on the evaluation to establish future dangerousness. The only significant distinction between the two cases is that Smith's statements to his examiner were used to influence the outcome of his sentencing hearing; R.H.'s statements to his examiner were used to influence the result of his waiver hearing.

The state contends that this distinction is crucial. Emphasizing *Estelle v. Smith's* conclusion that no fifth amendment violation occurs when a court-compelled psychiatric evaluation is used for the limited purpose of determining an accused's competency for trial, the state likens the determination of amenability to treatment in a juvenile waiver proceeding to the determination of competency in a criminal case:

Like the issue of competency to stand trial, the issue of a minor's unamenability to treatment does not go to the issue of guilt. Rather, the probable success or failure of juvenile treatment in the years remaining before the minor turns twenty is an issue which affects only the forum where the issue of guilt will be adjudicated.

We find the state's argument unpersuasive, for there are vast and fundamental differences between competency proceedings and juvenile waiver hearings. In holding that court-ordered psychiatric examinations are permissible for purposes of determining competency to proceed, the Court in *Estelle v. Smith* characterized such examinations as being conducted for "limited, neutral purposes." 451 U.S. at 465, 101 S.Ct. at 1874. The Court distinguished the use of examinations for such purposes from their use in an "adversary system," by persons who are not "acting solely in [the] interest" of the accused. 451 U.S. at 467, 101 S.Ct. at 1875.

In contrast to competency proceedings, juvenile waiver hearings are hardly "neutral proceedings." Rather, they are fully adversary proceedings in which the burden of establishing a child's probable unamenable to treatment is formally allocated to the state. Similarly, a psychiatrist conducting an examination at the request of the state for use in such cases is hardly a person "acting solely in the interest" of the child. To the contrary, the psychiatrist is directly involved in furthering the interests of the child's formal adversary.

Nor can juvenile waiver proceedings realistically be said to affect "only the forum where the issue of guilt will be adjudicated." A juvenile waiver proceeding is the only available avenue by which the state may seek to prosecute a child as an adult. Consequently, the stakes involved in such proceedings are high:

The result of a fitness hearing is not a final adjudication of guilt; but the certification of a juvenile offender to an adult court has been accurately characterized as "the worst punishment the juvenile system is empowered to inflict."

2. In support of its argument, the state has cited *Matter of Appeal in Pima County, Juvenile Action*, 139 Ariz. 446, 679 P.2d 92 (App.1984). There, a child was ordered to undergo psychiatric evaluation for the purpose of determining amenability to treatment in a children's waiver proceeding. On advice of counsel, the child declined to be examined, and his refusal was subsequently considered by the trial court in deciding to waive children's court jurisdiction. The Arizona Court of Appeals reversed, finding *Estelle v. Smith* to be applicable. The court

Ramona R. v. Superior Court, 37 Cal.3d 802, 210 Cal.Rptr. 204, 693 P.2d 789, 795 (1985) (citation omitted).

In *W.M.F. v. State*, 723 P.2d 1298, 1300 (Alaska App.1986), we recognized that the accused child's interest in the outcome of a juvenile waiver proceeding is important, because the waiver hearing can mean the difference between a limited period of confinement and a lengthy term of imprisonment. For example, if R.H. were prosecuted as a child, he would face approximately three years of confinement in the relatively benign and treatment-oriented setting of a juvenile detention facility. If prosecuted as an adult and convicted of first-degree murder, he would face a maximum term of ninety-nine years in a penitentiary, and a mandatory minimum sentence of twenty years' imprisonment.

Just as the psychiatric evaluation in *Estelle v. Smith* enabled the prosecution to incriminate Smith by using his own statements to his disadvantage at sentencing, the court-compelled evaluations in the present case enabled the state to incriminate R.H. Admission of the psychiatric evidence against R.H. at the waiver hearing helped to pave the way for the state to prosecute R.H. as an adult, thereby exposing him to potential punishment far more severe than could otherwise have been visited upon him. The state's reliance at the waiver hearing on the court-compelled evaluations was "plainly adverse" to R.H. *Estelle v. Smith*, 451 U.S. at 465, 101 S.Ct. at 1874. In a very real sense, R.H. was made the "deluded instrument" of his own criminal prosecution. 451 U.S. at 462, 101 S.Ct. at 1873; *Culombe v. Connecticut*, 367 U.S. 568, 581, 81 S.Ct. 1860, 1867, 6 L.Ed.2d 1037 (1961).²

concluded that the trial court's failure to make it clear in advance that the psychiatric evidence would not be used in any subsequent prosecution or sentencing hearing resulted in a violation of the fifth amendment. The court went on to express the view that, had provision been made for immunity from use at trial or sentencing, the use of the court-ordered evaluation at the waiver hearing would have been proper. This issue, however, was not directly presented on appeal and does not appear to have been

The state's prohibition against evaluations would be a violation of the superior court's decision on the treatment. A violation, however, was not found in *United States v. Smith*, 451 U.S. 1877-78.

The argument that the context of the hearing in *Estelle v. Smith* is different from the Supreme Court's decision in *Smith* is unpersuasive. The availability of psychiatric evidence in a waiver proceeding is not a violation of the Fifth Amendment. 723 P.2d 294, 299 n. 1. *See also* *Smith*, 451 U.S. 1877-78; that an examination against the will of the defendant held that expert testimony is a precondition of the Alaska Supreme Court's recognition that any psychiatric evidence of proving that a child is not amenable to treatment. *See*, 865, 867 (Alaska App.1986). It appears to be good public policy to protect against such evidence. As noted in the Supreme Court's decision in *Smith*:

Indeed, some of the reasons why the state is as to whether a child should not commit violence are "fundamentally different" and that psychiatric qualifications are

argued in the Arizona Supreme Court's decision expressly authorizing psychiatric evaluations in *W.M.F. v. State*, 723 P.2d 1298, 1300. The state's decision did not violate the rule. In reaching its decision, the court apparently tacitly acknowledged that a child's competency to proceed could be likened to a child's competency to proceed. In these circumstances, the Arizona Supreme Court's decision in *Pima County* does not appear to be persuasive.

The state expresses concern that a prohibition against court-compelled psychiatric evaluations would adversely impact the superior court's ability to reach an informed decision on the issue of amenability to treatment. A virtually identical argument, however, was squarely rejected by the United States Supreme Court in *Estelle v. Smith*, 451 U.S. at 472-73, 101 S.Ct. at 1877-78.

The argument is no more persuasive in the context of the present case than it was in *Estelle v. Smith*. Although the Alaska Supreme Court has noted the possible desirability of psychiatric examinations in waiver proceedings, see *D.H. v. State*, 561 P.2d 294, 299 n. 12 (Alaska 1977), modified on other grounds, *Matter of F.S.*, 586 P.2d 607 (Alaska 1978), it has never suggested that an examination may be conducted against the wishes of a child, nor has it held that expert testimony is a necessary precondition of waiver. To the contrary, the Alaska Supreme Court has expressly recognized that the state need not present any psychiatric evidence to meet its burden of proving that a child needs psychiatric treatment. See, e.g., *J.R. v. State*, 586 P.2d 865, 867 (Alaska 1980). Moreover, there appears to be good reason for caution to protect against excessive reliance on such evidence. As noted by the United States Supreme Court in *Estelle v. Smith*:

Indeed, some in the psychiatric community are of the view that clinical predictions as to whether a person would or would not commit violent acts in the future are "fundamentally of very low reliability" and that psychiatrists possess no special qualifications for making such forecasts.

argued in the Arizona case. Arizona court rules expressly authorized court-ordered psychiatric evaluations in waiver proceedings. See *Pima County*, 679 P.2d at 93. It appears that the court of appeals was concerned with emphasizing that its decision did not affect the validity of the rule. In reaching its conclusion, the court apparently tacitly assumed that a waiver proceeding could be likened to a hearing on the issue of competency to proceed. The court made no effort to explain or justify its conclusion. Given these circumstances, although the decision in *Pima County* does support the state's argument in the present case, we do not find that decision persuasive.

Estelle v. Smith, 451 U.S. at 472, 101 S.Ct. at 1878 (citations omitted).

As we have already observed, a juvenile waiver hearing is not a neutral and benevolent process designed for the protection of children. Instead, children are presumptively protected against criminal prosecution. Juvenile waiver has been established as the adversary process through which the state may override that presumption. The legislature has placed the burden of proof squarely on the state. By filing a petition seeking waiver, the state formally alleges that it can meet its statutory burden and that it has the proof to support its claims. In some situations, the lack of information concerning the psychiatric condition of the accused child will undoubtedly make the state's burden more difficult to meet. Nevertheless, the state's interest in lightening its burden can hardly be viewed as justification for subverting the established burden of proof or for infringing the basic and constitutionally protected privilege against self-incrimination. Accordingly, we conclude that the superior court erred in compelling R.H. to submit to a psychiatric evaluation for the purpose of determining his amenability to treatment as a child.

We emphasize, however, that the same conclusion would not be warranted had R.H. sought to present psychiatric evidence in his own behalf at the waiver hearing or had he otherwise affirmatively placed his mental condition in issue. It is well established that, under those circumstances, the superior court could have properly found that R.H. waived his fifth amendment privilege, and that the state was entitled to an

The state has also cited *Ramona R. v. Superior Court*, 210 Cal.Rptr. 204, 693 P.2d 789, to support its argument. *Ramona R.*, however, is inapposite. In that case, the California Supreme Court held only that use immunity was both necessary and sufficient to protect the fifth amendment interests of a child who desired to present psychiatric evidence in her own behalf at a waiver hearing but who was reluctant to undergo an evaluation because of possible use of the evaluation in subsequent criminal proceedings. Nothing in *Ramona R.* establishes the adequacy of use immunity in the context of an involuntary psychiatric evaluation.

independent psychiatric evaluation for its own use. See, e.g., *Estells v. Smith*, 451 U.S. at 465-66, 101 S.Ct. at 1874-75; *Schade v. State*, 512 P.2d 907 (Alaska 1973). See also *United States v. Halbert*, 712 F.2d 988, 389-90 (9th Cir.1983); *State v. Nuss*, 52 Wash.App. 795, 763 P.2d 1249, 1251-53 (1988). In the present case, it is sufficient to note that R.H. did not obtain a psychiatric evaluation for his own use in the waiver proceedings, and he disavowed any intent to affirmatively place his own mental condition in issue.

[3] We must next consider whether the superior court's erroneous reliance on the challenged psychiatric evidence amounted to harmless error. The state argues that any error is rendered harmless because waiver would clearly have been appropriate in view of the seriousness of R.H.'s offense and in view of R.H.'s extensive history of delinquency. There is considerable merit to the state's argument.

In its written findings, the superior court expressly indicated that waiver of children's court jurisdiction over R.H. was justified without reference to the disputed psychiatric evidence. After considering the factual circumstances surrounding R.H.'s delinquent behavior and R.H.'s extensive record of delinquency, Judge Hodges concluded: "Based on [R.H.'s] prior criminal history of delinquency alone the court can find that he should be waived." The superior court's conclusion finds strong support in the record.

The state presented evidence establishing probable cause to believe that R.H. committed a first-degree murder by repeatedly shooting an innocent victim at point blank range. The killing was planned and appears to have been motivated only by R.H.'s desire to obtain money for drugs. As stated by the superior court: "The murder was either a result of extreme unexplained and unprovoked violence or was deliberate and premeditated."

In addition to the seriousness of R.H.'s crime, the superior court properly considered that R.H. was only two months away from his seventeenth birthday at the time of the offense; consequently, only

three years of treatment could be provided for R.H. in the juvenile system. In conjunction with R.H.'s age and the seriousness of his crime, the court also properly considered his lengthy history of delinquent behavior and the fact that he was on juvenile probation when he committed the current offense. Finally, the court properly took note of R.H.'s lengthy history of substance abuse.

The evidence relating to the circumstances surrounding the offense and to R.H.'s history of delinquent behavior would certainly be sufficient, standing alone, to support the superior court's decision to waive children's court jurisdiction. In fact, this evidence may be far more compelling than the predictions expressed by the expert witnesses. As we have noted in prior cases, an offender's past conduct can be a more reliable indicator of future behavior than psychological prognostication. See, e.g., *Skrepich v. State*, 740 P.2d 950, 954 (Alaska App.1987); *Maal v. State*, 670 P.2d 708, 711-12 (Alaska App.1983).

This court has consistently upheld superior court orders waiving juvenile jurisdiction in cases of murder involving extreme and unprovoked violence. In such cases, even when a child's amenability to treatment has been supported by strong psychiatric evidence, we have been reluctant to reverse a trial court's determination that waiver is appropriate. See, e.g., *W.M.F. v. State*, 723 P.2d 1298, 1304-05 (Alaska App.1986) (affirming waiver of jurisdiction over a fifteen-year-old girl); *C.G.C. v. State*, 702 P.2d 648 (Alaska App.1985) (affirming waiver of jurisdiction over a fourteen-year-old boy whose amenability to treatment was supported by the testimony of a psychiatrist at the waiver hearing). In one case of extreme, unprovoked violence, the Alaska Supreme Court has actually reversed a trial court order declining to waive jurisdiction, despite the presence of abundant psychiatric testimony indicating that the child was capable of being rehabilitated. See *Matter of F.S.*, 586 P.2d 607, 613-15 (Alaska 1978), *overruled on other grounds*, *State v. F.L.A.*, 608 P.2d 12 (Alaska 1980). These cases indicate that,

apart from the money, the evidence is sufficient to justify the waiver order.

Nevertheless, evidence was presented by the state in support of its significant part of its findings and conclusions. It is possible for us to submit the evidence and its effect on the court's decision to waive jurisdiction to be reconsidered in light of the evidence that was presented and disregarded in the psychiatric testimony. In light of the considerations presented, it is in the best interest of justice to reverse the superior court's error and by remand for reconsideration.

Upon remand, we allow the parties to present their cases, it is possible that the evidence and may result in a reevaluation of the evidence that resulted in the evidence stemming from the psychiatric evaluation.

The superior court's decision is VACATED.

3. R.H. has raised a question that requires only brief discussion. First, R.H. argues that the superior court's discretion in failing to grant a waiver of treatment and in predicting his amenability to treatment is child. It is certain that a period of preliminary hearing would result in a definitive conclusion as to whether a waiver could be achieved. The decision on a waiver petition is a matter of procedure for waiver of jurisdiction clearly and roughly contemplated by the superior court's waiver petition. The evidence then available to the court involves an element of delay in waiver.

apart from the disputed psychiatric testimony, the evidence in this case was fully sufficient to justify the superior court's waiver order.

Nevertheless, the challenged psychiatric evidence was given considerable prominence by the parties below and played a significant part in the superior court's written findings and conclusions. It is impossible for us to say that the erroneously admitted evidence did not have an appreciable effect on the court's ultimate decision to waive jurisdiction. Moreover, it would be a relatively simple task for the superior court to reconsider its original decision based on the evidence that was properly presented, and disregarding the improperly admitted psychiatric testimony and reports. These considerations persuade us that the interest of justice will be best served by rejecting the state's invitation to find harmless error and by remanding this case for reconsideration.

Upon remand, although the court should allow the parties an opportunity to argue their cases, it need not receive new evidence and may base its decision upon a reevaluation of the previously presented evidence that remains after deletion of the evidence stemming from R.H.'s psychiatric evaluation.

The superior court's order waiving jurisdiction is VACATED, and this case is RE-

3. R.H. has raised two additional issues that require only brief consideration.

First, R.H. argues that the court abused its discretion in failing to allow an extended period of treatment and observation in order to assist in predicting his amenability to treatment as a child. It is certainly true that a substantial period of preliminary treatment and observation would result in a more accurate prediction of amenability in many waiver cases. Indeed, a definitive conclusion on the issue of amenability could be achieved by routinely postponing the decision on waiver until the accused child's twentieth birthday. However, the established procedure for waiver of children's court jurisdiction clearly contemplates a hearing that is roughly contemporaneous with the filing of the waiver petition and that is based on the best evidence then available. The prediction of a child's amenability to treatment inevitably involves an element of uncertainty. Yet protracted delays in waiver proceedings would be injuri-

MANDED for reconsideration in conformity with this opinion.³



Michael Alan WENTZ, Appellant,

v.

STATE of Alaska, Appellee.

No. A-2593.

Court of Appeals of Alaska.

July 14, 1989.

Defendant pleaded no contest to charge of assault in the first degree, and was sentenced by the Superior Court, Third Judicial District, Anchorage, Karl S. Johnstone, J., and he appealed. The Court of Appeals, Bryner, C.J., held that unsuspended term of 12 years to serve was excessive, and sentence should be reduced to 15 years with five years suspended.

Reversed and remanded.

1. Criminal Law §986.2(1)

Finding that, because of her heart condition and deafness, defendant's wife was

ous to the interests of the state and the child alike. *W.M.F. v. State*, 723 P.2d at 1302. Absent unusual, case-specific circumstances precluding a meaningful determination of amenability to treatment, the superior court is under no obligation to order—and an accused child has no right to receive—a protracted period of prehearing treatment and observation. *Id.* We find no error in the superior court's failure to postpone the waiver decision in the present case.

R.H.'s remaining claim is that the state failed to provide him with adequate supervision or rehabilitation while he was on probation prior to committing the current offenses. R.H. maintains that the state should in effect be estopped from prosecuting him as an adult because it acted in bad faith in failing to supervise him. R.H. cites no authority for this proposition. Even assuming that R.H.'s factual assertions are well founded, we find no legal merit to his estoppel argument.

Dige

More rights for victims

On Oct. 5, 1989, the lives of both my family and myself drastically and irreparably changed. That was the day my father, my brother-in-law and I found my murdered brother's body in a closet in his south Anchorage home. Since that time, we have had one agonizing lesson after another regarding our judicial and legislative systems. The man (and I refuse to use the word "boy") who murdered my brother was a juvenile. He was 16 years old when he forced his way into my brother's house to steal his car keys. He ended up shooting Duane three times with a .357 Magnum.

Current laws say that the prosecution (the DA) must prove that a juvenile cannot be rehabilitated before his 20th birthday. If the DA cannot prove this, the offender is sent to McLaughlin Youth Center until he turns 20, at which time he is released. In our case, the DA won the case, and the murderer should have to stand trial as an adult. The public defenders, however, appealed this decision to the Court of Appeals by saying that when the young man confessed to police, his parents weren't there, so the confession should not be allowed as evidence. The Court of Appeals has not made a ruling yet on this motion.

Currently, there is legislation being introduced to the House of Representatives that would, among other things, put the burden of proof in juvenile crimes such as murder on the side of the defense. The accused criminals would automatically be tried as adults unless they could prove that they could be rehabilitated by age 20. This gives more rights to the victims of crimes, where they belong, and



less to the criminals.

Please send a Public Opinion Message (POM) to the legislators from your district and to the Health and Social Services committee. To send a POM, call the Legislative Information Office at 561-7007. Tell the committees that you support House Bills ~~103, 104, and 105~~. These bills all deal with victims' rights and work on giving more rights to the victims. Please call; you can make a difference.

— Ralph Samuels

HB 100
101
103

Advocate victims' rights

Dear Editor:

My life and the lives of my family members were drastically and irreparably changed on Oct. 5, 1989 — the day my father, my brother-in-law and I found my murdered brother's body in a closet in his South Anchorage home. Duane had been shot three times with a .357-caliber magnum.

Since that time, we have had one agonizing lesson after another on our judicial and legislative systems. The man — and I refuse to use the word "boy" — who is accused of murdering my brother was 16 years old at the time of the murder.

Current laws say the prosecution — the district attorney — must prove that a juvenile cannot be rehabilitated before his 20th birthday. If the district attorney cannot prove this, the offender is sent to McLaughlin Youth Center until he turns 20, at which time he is released. In our case, the district attorney won the case and the accused should have had to stand trial as an adult. The public defenders, however, appealed this decision to the Court of Appeals, saying that when the young man confessed to police his parents weren't there, so the confession should not be allowed as evidence. The Court of Appeals has not made a ruling yet on this motion.

Currently, there is legislation being introduced to the House of Representatives that would, among other things, put the burden of proof in juvenile crimes such as murder on the side of the defense. The criminals would automatically be tried as adults unless they could prove that they could be rehabilitated by age 20. This gives more rights to the victims of crimes, where they belong, and less to the criminals.

If anyone has ever said to a crime victim, "If there is anything I can do, just call" — I am calling. Please send a "public opinion message" to the legislators from your district and to the Health and Social Services Committee. To send a message, you need only call the Legislative Information Office at 561-7007 for further instructions. In the message, tell the committee that you support House Bills 100, 101 and 103. These bills all deal with victims' rights and work on giving more rights to the victims. Please call. You can make a difference.

Ralph Samuels
Anchorage



Two charged in Zastrow murder

Teens held in connection with student's disappearance

By ANNA FARNESKI
Staff Writer

The five-month mystery of the disappearance of West Valley High School student Cara Zastrow began to unravel today with the announcement of the arrest of two teen-agers on murder charges.

Alaska State Troopers arrested the two teen-agers late Thursday in connection with a case that has gripped the public's attention like few others in the community's history.

Eric Hughes, 19, and Sergio Colgan, 18, were booked at the Fairbanks Correctional Center on charges of first-degree murder,

kidnapping and sexual assault. Arraignment was set for 1:30 p.m. today.

Troopers scheduled a press conference for noon to make the announcement of the arrests.

Zastrow was last seen at the Bentley Mall on Oct. 13. After her disappearance, troopers worked on the assumption that the dark-haired teen-ager was abducted.

On Oct. 13, Zastrow spent the day running errands. The 16-year-old was last seen at the mall at 4:15 p.m. She was reported missing after she failed to show up at her boyfriend's house as promised and at her part-time job at the Pizza Hut

restaurant on Geist Road.

Two days after she disappeared, Zastrow's car, a black 1982 Mazda, was found on the banks of the Tanana River. The car windows had been shot out, and Zastrow's jackets, her wallet, cassette tapes and amplifier were missing.

A sign outside the Pizza Hut where Zastrow worked still reads "Cara We Love You." The restaurant staff said the message, which was put up the day after the West Valley junior disappeared, would remain up until Zastrow returned home.

In the first weeks following Zastrow's disappearance, trooper in-

vestigators were flooded with phone calls and tips about what happened to the teen-ager.

Zastrow's stepmother and neighbors made buttons and friends continued to post fliers throughout northern Alaska. Crimestoppers posted a \$10,000 reward.

The community responded to Zastrow's disappearance by raising the reward to \$50,000. Recently, her father traveled to Anchorage, where he spoke to advertise the reward.

Last week, a banner was strung on Noble Street asking people to remember Zastrow.

In January, two Fort Wainwright

soldiers and one of their wives were indicted on charges they destroyed evidence in the case. Larry Stevens, 18, Sherman R. Lewis, 18, and Michelle Lewis, 18, were indicted.

Stevens and Lewis were charged with second-degree criminal mischief for allegedly shooting out the windows of the car the day after Zastrow disappeared. All three were charged with tampering with physical evidence.

After the news of Zastrow's abduction, an 18-year-old girl reported that a man had tried to
(See ZASTROW, Page 6)



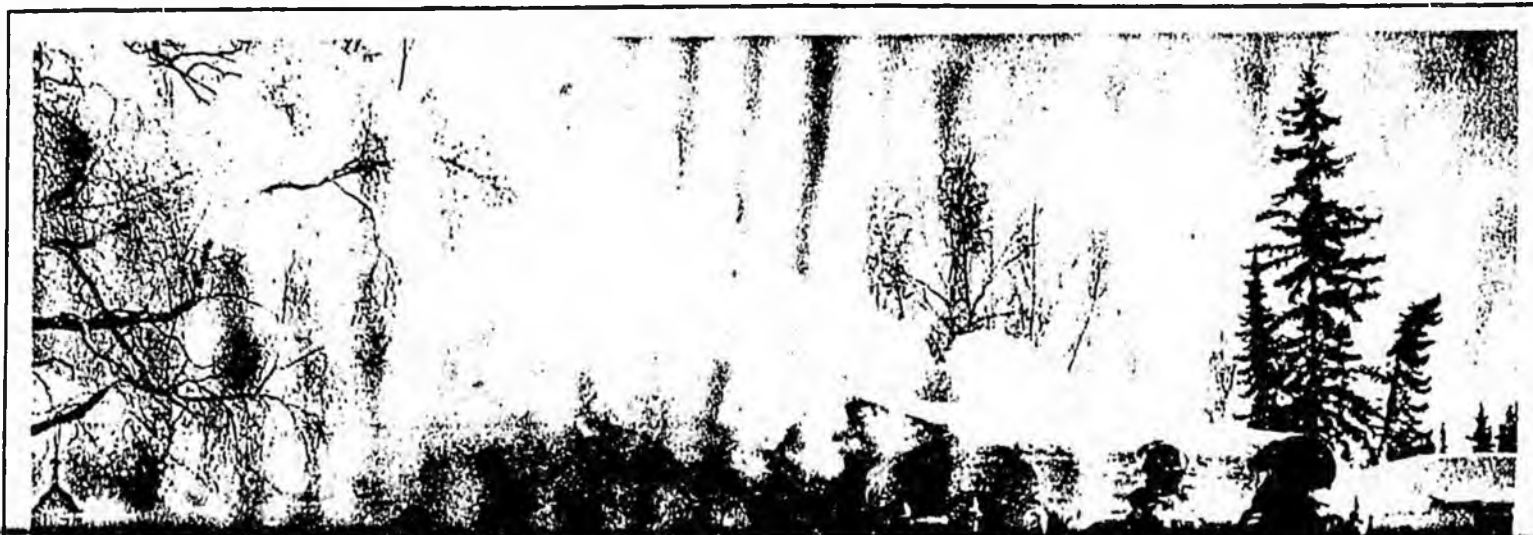
CARA ZASTROW

Committee asks assembly OK base tax break

By WILDA WHITAKER
Staff Writer

A committee of the borough assembly has recommended waiving taxes on an Eielson housing project for five years rather than lose the project altogether.

The assembly finance committee recommended the exemption by a 6-2 vote Thursday. The whole assembly will vote on the ordinance next



has passed its first

Legislature.
The House Transportation Committee on Thursday unanimously approved the measure, which would lower the limit from 0.10 percent to 0.08 percent.

Supporters say other states, including California, Oregon and Utah, have lowered alcohol-related traffic deaths by reducing the blood-alcohol limit.

House Bill 102 is sponsored by Rep. Dave Donley, D-Anchorage, who saw a similar measure die last year. This time around, Donley said, he knows of no opposition to the bill.

"It's just something that's basically overdue," Donley said. "It's phenomenal the amount of public support for it."

The measure is supported by the departments of Law and Public Safety, the National Transportation Safety Board and the U.S. Surgeon General.

arrests in Oregon declined steadily after an initial surge when the lower limit took effect.

The only debate during Thursday's hearing focused on the \$500,000 price tag that the Department of Public Safety placed on the bill. The departments of Law and Corrections said the bill would not raise their costs.

Gayle Horetski, Public Safety deputy commissioner, said the lower limit would require the department to increase its staff and training.

The Public Safety fiscal note proposes spending money to add four state troopers to start a new program in the Southcentral region. Horetski said the new troopers would be trained to spot and arrest drunken drivers.

"It would be a roving drunkbusters team," she said.

Rep. Jerry Mackie, D-Craig, said he supports the troopers' new program, but that it should not be pin-

in northwestern Alaska, said Rep. Richard Foster, D-Nome.

"I figure about half the people in my district wake up in the morning with a 0.08," Foster said.

Rep. Loren Leman, R-Anchorage, said his only problem with the measure is that it doesn't go far enough.

ZASTROW

(Continued from page 1)

abduct her in front of the mall Oct. 1.

The young woman struggled and escaped. The incident led troopers to believe that the incidents may have been related. Troopers released a composite sketch of the man, based on the young woman's description.

Three other attempted abductions occurred at the Bentley Mall last fall, and one was reported at Wedgewood Manor apartments on College Road.

When she disappeared Zastrow was wearing mustard-colored cotton slacks, a dark top with a black or navy-colored sweater or sweat-shirt, brown leather shoes and a gray/beige designer clutch handbag.

Cara Zastrow is survived by her father Tom, step-mother Julie, sister Michelle, step sister Megan, brother Zeb, and her mother.

Gov. Walter... cuts in state public schooling—especially the part about he wanted to build a railroad Yukon River and a port at Age's Fire Island.

So they fired off letters to J and they didn't mince words. "Wally Hickel is as dumb as spruce grouse," concluded...

"If Gov. Hickel wants to build a bridge to Fire Island, another, "he has the brains of a mosquito."

What followed was a free debate that is only now beginning to settle at the Aniak School after a resignation of the students' and run-ins between her, the principal and a state legislator the blunt comments.

The teacher, Natalie I... allowed students to write their letters in her language arts class before they would read them before they would. She said she decided she would stop her business interfering with the opinions of politicians.

The letters were mailed to the state representative, Gianna Lincoln, R-Rampart, with school stamps and envelopes.

EIELSON

(Continued from page 1)

federal government, but it's the private contractor's in housing built under section 8. The borough has not calculated the new project, but taxes for the 801 housing on Eielson are about \$326,000 a year.

According to Assessor Hank Hove, that's the most compelling reason to approve the waiver.

"Eighty-one housing is the way we can get there from here. In fact it is our goal to collect the empty taxes for the first five years, but whether we will collect taxes."

He was joined by Harlan Bonnie Williams, Walt Bob Coghill and John Davison for the waiver.



ACCA AND PROJECT TEACH

ANNOUNCE DEVELOPMENTAL SCREENINGS FOR INFANTS AND TODDLERS (Under 3 years of age)



Project TEACH is the Fairbanks early Intervention program for the Fairbanks area. Twice each year we offer community-wide developmental screenings for young children if parents have concerns or questions about their child's development. Areas of concern could include social-emotional, problem solving, communication, or motor skills.

- March 26th and 27th from 9:30 a.m. until 2:30 p.m. Children will be seen by appointment only



A United Way Agency

Project TEACH is located at 1020 Barnette St. in the grey and blue ACCA building. Call 456-4003 and ask to schedule an appointment for a developmental screening.

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Intersection of Peger Rd. and Parks Highway

— UP TO —

\$50,000 REWARD

Offered for information leading to the discovery of the whereabouts of



CARA ZASTROW

or the arrest and indictment
of her abductors.

Please contact:

Alaska State Troopers

452-2114

or **Crime Stoppers**

(907) 456-CLUE

Age: 16

Eyes: Brown

Hair: Brown

Weight: 115

Height: 5'2"

Cara was last seen by friends at Bentley Mall in Fairbanks on Oct. 13, 1990. Confidential calls are accepted on Crime Stoppers phone (907) 456-CLUE, or information can be given directly to Sgt. Jim McCann at Alaska State Troopers 452-2114. Information may also be mailed to Crime Stoppers Box 75073 Fairbanks, AK 99707.

Reward offered by Crime Stoppers Cara Zastrow Fund. Additional details and conditions on file and can be obtained from Crime Stoppers.

- Any Sale
- Any Clear

- That means you'll get clearance priced items
- It's the perfect time to name fashion apparel

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