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# HOUSE COMMITTEE REPORT

(9)

Date Referred: March 1, 1993

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 3-16-93

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 189

HOUSE BILL NO. 189

SERIOUS CRIMES BY MINORS

"An Act relating to the charging, prosecuting, and sentencing of certain minors concerning offenses of murder in the first degree, attempted murder in the first degree, murder in the second degree, and certain other offenses; and providing for an effective date."

RECOMMENDATIONS: | ] the same title

be replaced with \_\_\_\_\_ | ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[x] 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 \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_ <sup>Admin</sup> 3/1/93

[ ] zero fiscal note \_\_\_\_\_

(6) [x] zero fiscal note(s) Public Safety, Law, H+SS, Corr

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	
<i>[Signature]</i>	✓	<i>[Signature]</i>		✓	
<i>[Signature]</i>	✓	<i>[Signature]</i>		✓	
<i>[Signature]</i>	✓	<i>[Signature]</i>		✓	

*[Signature]*

CHAIRMAN'S SIGNATURE

# FISCAL NOTE

No. 6  
 Bill Version: HB 189  
 (H) Publish Date: 3/1/93

STATE OF ALASKA  
 1993 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: " An Act relating to minors concerning offenses of murder and attempted murder..." BRU: Alaska State Troopers  
 Component: Criminal Investigations Bureau  
 Sponsor: Rules  
 Requestor: Governor COMPONENT SERIAL NO. 830

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE FUND SOURCE:</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

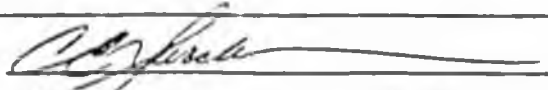
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**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 (FY 93) impact: \$ \_\_\_\_\_

**ANALYSIS: (Attach a separate page if necessary.)**  
 No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: 02/09/93  
 Approved by Commissioner:  Date: 2/10/93  
 Agency: Richard J. Burton, Dept. of Public Safety

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**COMMITTEE COPY**

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*A Fiscal Note - Public Safety*

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 5  
Bill Version: HB 189  
(H) Publish Date: 3/1/93

Revision Date: February 22, 1993  
Title: "...charging, prosecuting, and sentencing certain minors... murder in the first degree..."  
Sponsor: Rules Committee/Rep. of the Governor  
Requestor: Governor's Office/OMB

Department Affected: Department of Law  
BRU: Prosecution  
Component: All  
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division  
Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: February 22, 1993  
Date: February 22, 1993

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*Fiscal Note - Law*

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. 189

NO. 5

PG 2 of 2

ANALYSIS (Continued):

This bill amends AS 47.10 to provide that 16- and 17-year-olds accused of murder in the first degree, attempted murder in the first degree, or murder in the second degree are automatically prosecuted in "adult" court and, if convicted, are sentenced as an "adult."

Currently, juveniles are prosecuted in accordance with the Children's Proceedings process provided in AS 47.10, unless the court finds that the minor is not amendable to treatment as a juvenile. In such cases, the state is 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. A minor may be tried as an adult only if the court finds probable cause to believe that the minor is delinquent and that the minor is not amendable to treatment through the juvenile system. The court must base its findings on whether the minor "probably cannot be rehabilitated...before reaching 20 years of age."

Under existing law, it is often difficult for prosecutors to demonstrate to the court's satisfaction that the statutory requirements have been met, even though the minor is accused of murder in the first or second degree or attempted murder in the first degree. This showing is especially difficult to make for first offenders, who do not have a pattern of convictions and unsuccessful rehabilitation in the juvenile system to demonstrate to the court.

The Department of Law currently handles only a handful of waivers of jurisdiction involving serious offenses of this nature annually. Although there will be a small increase in the number of serious felonies handled by the state's District Attorney offices, the overall increase in the felony workload will be less than one percent. Consequently, there should not be a fiscal impact significant enough to warrant fiscal note funds.

FISCAL NOTE

Bill Version: HB 189  
 (H) Publish Date: 3/1/93

STATE OF ALASKA  
 1993 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: "An act relating to the charging, prosecuting, and sentencing of certain minors..." BRU: Youth Facilities Services  
 Component: MYC, FYF, NYF, JYC & BYF  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0264,0265,0266,0267&0268

**Expenditures/Revenues:** (Thousands of Dollars)

	FY94	FY95	FY96	FY97	FY98	FY99
<b>OPERATING</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE</b>						

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

**ANALYSIS:** (Attach a separate page if necessary)

If waived juvenile offenders under this bill are incarcerated by the Department of Corrections in adult facilities, there would be no fiscal or program impact for DHSS.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing* Phone: 465-3191  
 Division: Department of Health & Social Services Date: 02/09/93  
 Approved by Commissioner: Theodore A. Mala, MD, MPH *Theodore A. Mala* Date: 2/9/93  
 Agency: Department of Health & Social Services

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# FISCAL NOTE

No. 3  
 Bill Version: HB 189  
 (H) Publish Date: 3/1/93

STATE OF ALASKA  
 1993 LEGISLATIVE SESSION

Revision Date: February 8, 1993 Dept. Affected: Corrections  
 Title: Automatic waiver of serious juvenile offenders to adult court BRIL: Institutions  
 Component: Institutions  
 Sponsor: Governor  
 Requestor: Governor COMPONENT SERIAL NO. 1860

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary)  
 See Attached Analysis

Prepared by: Dana LaTour, Special Assistant Phone: 465-3376  
 Division: Commissioner's Office Date: 2-8-93  
 Approved by Commissioner: Lloyd G. Rupp Date: 2-8-93  
 Agency: Department of Corrections

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HB 189

NO. 3

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ANALYSIS OF FISCAL IMPACT

PROPOSED BILL RELATING TO AUTOMATIC WAIVER OF JUVENILES

This bill would increase the number of juvenile offenders who are waived into adult court, and subsequently sentenced to adult corrections. There will be some fiscal impact on the Department of Corrections, but with the information available at this time, it is not possible to project the extent of the impact. The Department of Law data shows that roughly 25 to 30 unclassified and class A felonies are committed by minors 16 years of age or older each year. If these were charged as adult crimes, it is not clear how many convictions would end up with these same levels of seriousness. Only those juveniles who were actually convicted and sentenced as unclassified or class A felons would come under the jurisdiction of DOC.

It is unlikely that the impact of this bill would be sufficient to cause the construction of additional facilities. The additional caseload of inmates would add to the current population, and would require funding for food, clothes, medical, education, and other programs. If this number ends up being substantial (over 5 or 10 per year), additional costs beyond budget would be incurred, especially given that the minimum sentence for these offenders would probably be 5 years.

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 2  
Bill Version: HB 189  
(H) Publish Date: 3/1/93

Revision Date: \_\_\_\_\_  
Title: 'An Act relating to automatic waiver of certain serious juvenile offenses to adult court.'  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
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 (FY93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender Phone: 279-7541  
Division: Public Defender Agency Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usery Date: 2/10/93  
Agency: Administration

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 1  
Bill Version: HB 189  
(H) Publish Date: 3/1/93

Revision Date: \_\_\_\_\_  
Title: 'An Act relating to the charging, prosecuting, and sentencing. . .'  
Sponsor: Governor  
Requestor: Rules Committee

Department Affected: Administration  
BRU: Office of Public Advocacy  
Component: Office of Public Advocacy  
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
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 (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate  
Division: Office of Public Advocacy

Phone: 274-1684  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usery  
Agency: Administration

Date: 3/10/93

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# Alaska State Legislature

## House of Representatives

COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

DATE: MARCH 16, 1993

PLACE: Capitol Room 106

### SUBJECT OF MEETING:

\*HB 189: SERIOUS CRIMES BY MINORS

HB 82: SCHOOL CONSTRUCTION & MAINTENANCE GRANTS

HB 83: APPROP: SCHOOL CONSTRUCTION, GRANT FUND

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Attorney General Cole	Law	P.O. Box 10600	99511		3600	<input checked="" type="radio"/>	<input type="radio"/>	HB 189
GERRIE GORE	AK Women's Lobby	P.O. Box 22156	99502		463-6744	<input checked="" type="radio"/>	<input type="radio"/>	HB 189
Nels Anderson	LKSD	Box 234 Dillingham	99576		6-3737	<input type="radio"/>	<input checked="" type="radio"/>	HB 82 HB 83
GARY BADER	DOE	801 W. 10th ST JUNEAU	99802		5-8650	<input checked="" type="radio"/>	<input type="radio"/>	HB 82 HB 83
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

LTN100-R01

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 02

03/22/93

09:43:03

TCN: 30393

DATE &amp; TIME: 03/16/93 15:30 TO 17:00

STATUS: 7 STATS. IN

## PARTICIPANTS IN: JUNEAU

JNU

9	STAFF	STAFF		OBSV. HB 82
			AK	(907)000-0000
10	STAFF	STAFF		OBSV. HB 82
			AK	(907)000-0000
11	STAFF	STAFF		OBSV. HB 82
			AK	(907)000-0000
12	STAFF	STAFF		OBSV. HB 82
			AK	(907)000-0000
13	2	TESTIFY		TSFY. HB 82
			AK	(907)000-0000
14	2	TESTIFY		TSFY. HB 82
			AK	(907)000-0000
15	2	TESTIFY		TSFY. HB 82
			AK	(907)000-0000
16	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
17	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
18	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
19	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
20	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
21	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
22	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
23	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
24	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000
25	2	OBSERVE		OBSV. HB 82
			AK	(907)000-0000

## PARTICIPANTS IN: KEN/SOL

SOL

1 MR.	DICK	SWARNER	(2) KPSCHOOL DIST.	TSFY. HB 82
	148 N BINKLEY ST	SOLDOTNA		AK 99669 (907)262-5846

## PARTICIPANTS IN: TOK LIO

TOK

1 MS.	CATHERINE	WILSON	AGSD	OBSV. HB 82
	P.O. BOX 226		TOK	AK 99780 (907)883-5151

## PARTICIPANTS IN: VALDEZ

VAL

1 MR.	GREG	WILLIAMS	KCHU	OBSV. ALL ITEMS
	P.O. BOX 467		VALDEZ	AK 99686 (907)835-4665
2 MR.	JOHN	TONGEN	VALDEZ SCHOOLS	OBSV. ALL ITEMS
	P.O. BOX 398		VALDEZ	AK 99686 (907)835-4924

LTN1100-R01  
03/22/93

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 01  
09:43:03

TCN: 30393

DATE & TIME: 03/16/93 15:30 TO 17:00 STATUS:7 STATS. IN

\*\*\*\* ORDER SUMMARY \*\*\*\*

SPONSOR: HHES HOUSE HEALTH, EDUCATION AND SOCIAL SERVI CHAIRS: TOOHEY  
PURPOSE: PUB PUBLIC HEARING BUNDE  
CONTACT: LYNNE TEL#: (907)465-6825  
CHAIRING SITE: JUNEAU CAPITOL CAP106

3/16/93

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 99 MINUTE LIMIT  
TCN REQUESTED ON 03/16/93 AND HAS 7 UPDATES

\*\*\*\* AGENDA \*\*\*\*

- 1 HB 82 SCHOOL CONSTRUCTION & MAINTENANCE GRANTS
- 2 HB 83 APPROP:SCHOOL CONSTRUCTION GRANT FUND

\*\*\*\* PARTICIPATING LIOS \*\*\*\*

ANC ANCHORAGE	3111 C STREET	LOCATION STAFF
BET BETHEL	301 WILLOW ST.	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP106	LOCATION STAFF
SOL KEN/SOL	34824 KALIFONSKY	LOCATION STAFF
TOK TOK LIO	MP 1314 AK. HWY	LOCATION STAFF
VAL VALDEZ	STATE BLDG. #13	LOCATION STAFF

\*\*\*\* VOLUNTEER & OFFNET SITES \*\*\*\*

FBX HEA HEALY TRI-VALLEY LIBR. JUDY ENGLEMAN (907)683-2507

PARTICIPANTS IN: ANCHORAGE

ANC

1 KATHI GILLESPIE AK PTA TSFY. HB 82  
2741 SEAFARER LOOP ANCHORAGE AK 99516 (907)345-5335

PARTICIPANTS IN: HEALY

FBX HEA

1 MS. JENASY JENSEN SCHOOL BOARD OBSV. HB 82  
HC1 BOX 3102 A HEALY AK 99743 (907)683-2327  
~~2 MS. THERESA HALL SCHOOL BOARD OBSV. HB 82  
BOX 373 HEALY AK 99743 (907)683-2796~~  
3 MR. JOHN NOVAK OBSV. HB 82  
BOX 280 HEALY AK 99743 (907)683-2278

PARTICIPANTS IN: JUNEAU

JNU

1 REP KOTT TSFY. HB 82  
AK (907)000-0000  
2 REP VEZEY TSFY. HB 82  
AK (907)000-0000  
3 REP G. DAVIS TSFY. HB 82  
AK (907)000-0000  
4 REP BUNDE TSFY. HB 82  
AK (907)000-0000  
5 REP TOOHEY TSFY. HB 82  
AK (907)000-0000  
6 REP OLBERG TSFY. HB 82  
AK (907)000-0000  
7 REP B. DAVIS TSFY. HB 82  
AK (907)000-0000  
8 REP BRICE TSFY. HB 82

## Juvenile Waiver

Any changes in the juvenile waiver system will have a significant impact on how the process functions. The experts in Health & Social Services are still unable to predict what the impact of the changes will be. Furthermore, the Department of Corrections is concerned by any proposal that requires adult facilities to be provided for significant numbers of juveniles. In the face of this uncertainty, we think that gradual changes make the most sense.

- *automatic waiver* means that you can tell enough simply from the charge to know that the minor should be treated as an adult. We believe that this is true in the Governor's bill, which establishes automatic waiver for 16 and 17 years old who are prosecuted for murder in the first degree or second degree. It isn't always true for other crimes, however, or for younger minors.
  - CSSB 54 (Fin) and HB 100 currently allow automatic waiver for much more than just murder offenses.
  - HB 100 currently requires automatic waiver for 15 year olds, as well; CSSB 54 (Fin) requires automatic waiver for 14 and 15 year olds
- The Department of Health and Social Services is very concerned about *bounce-backs* -- that is, taking back a minor who was waived and has been incarcerated with adults. It is difficult for the minor to go back and forth between the two systems and it is very difficult for other minors to be exposed to someone who has been treated as an adult. This issue does not arise in the Governor's bill, but comes up in CSSB 54 (Fin) and HB 100 in two different ways:
  - First, CSSB 54 (Fin) and HB 100 currently both allow the minor to petition the court for return to the juvenile system either in all cases (HB 100) or when the automatic waiver was based on a prior delinquency adjudication or adult conviction (CSSB 54 (Fin)).
  - Second, both CSSB 54 (Fin) and HB 100 bounce the minor back to the juvenile system if after waiver the juvenile is ultimately only convicted of a lesser, non waivable offense.

We agree that this type of "bounce back" provision is necessary in CSSB 54(Fin) and HB 100 to avoid equal protection problems -  
- a minor who is overcharged by the state should not be worse off than a minor who was charged properly at the outset.

We believe, however, that this type of bounce-back provision is not necessary in the Governor's bill because of the seriousness of the crimes (murder in the first or second degree) and because waiver occurs only after presentment to the grand jury.

Comparison of "Juvenile Waiver" Bills

March 1, 1993

	CSSB 54(FIN)	HB 100	HB 100 (draft CS)	SB 140/HB 189
<p>First degree murder Att. first degree murder Second degree murder</p>	<p>Ages 14-17: automatic trial as an adult</p>	<p>Ages 16-17: trial as an adult <i>unless</i> juvenile proves amenability to rehab. w/in juvenile system</p>	<p>Ages 16-17: automatic trial as an adult</p>	<p>Ages 16-17: automatic trial as an adult</p>
<p>All other unclassified and Class A felonies</p> <ul style="list-style-type: none"> <li>•Kidnapping or att. kidnapping</li> <li>•Rape (incl. "date rape") or att. rape</li> <li>•Sexual abuse of minor—first degree (penetration of child under 13 by 16 or 17-year-old) or att. sexual abuse</li> <li>•Sale of cocaine to minors or att. sale</li> <li>•Member of 6-person drug ring</li> <li>•Sale of heroin</li> <li>•Manslaughter (drunk driving death)</li> <li>•Armed robbery</li> <li>•Assault causing serious injury</li> <li>•Arson</li> </ul>	<p>Ages 16-17: automatic trial as an adult</p> <p>Ages 14-15: trial as an adult <i>if</i> previously delinquent for a felony against a person, <i>unless</i> the juvenile can prove amenability to rehabilitation within juvenile system</p>	<p>Ages 16-17: trial as an adult <i>if</i> previously a delinquent for a felony <i>unless</i> juvenile proves amenability to rehabilitation within juvenile system</p>	<p>Ages 16-17: automatic trial as an adult</p>	<p>Retain current law.</p> <p>Current law imposes a burden on the state to prove the juvenile is not amenable to rehabilitation within the juvenile system before 20th birthday.</p>
<p>All other felonies against a person</p> <ul style="list-style-type: none"> <li>•Assault with deadly weapon</li> <li>•Sexual assault (noncensual contact)</li> <li>•Sexual abuse of minor—second degree (penetration of 13-year-old by 16 y.o. penetration of 14-year-old by 17 y.o. or sexual contact with someone under 13 by a 16 or 17-year-old) or attempted penetration or contact</li> </ul>	<p>Ages 16-17 <i>if</i> previously delinquent for a felony against a person; or ages 14-15 <i>if</i> previously convicted as an adult for a felony against a person: trial as an adult <i>unless</i> the juvenile can prove amenability to rehab. within juvenile system</p>	<p>For all other felonies, trial as an adult for ages 16-17 <i>if</i> the juvenile has previously been convicted as an adult for a felony <i>unless</i> juvenile proves amenability to rehabilitation within juvenile system</p>	<p>Retain current law</p>	<p>Retain current law</p>
<p>Transfer back to the juvenile system if the defendant is convicted of a lesser offense</p>	<p>Yes</p>	<p>Yes, if misdemeanor. Yes for felonies <i>if</i> juvenile can prove amenability to rehab.</p>	<p>No</p>	<p>No</p>

POSITION PAPER

HB 189

For An Act Entitled: "An Act relating to the charging, and sentencing of certain minors concerning offenses of murder in the first degree, attempted murder in the first degree, murder in the second degree and certain other offenses; and providing for an effective date."

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 identifies 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

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, and is subject to judicial review.

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.

This balance becomes more difficult as the age of the offender approaches the age of majority (18 years of age). The department recognizes that the rehabilitative probability lessens as the offender increases in age due in part to the fact that older offenders cannot be held in the juvenile system past their 19th birthday. Exceptions to this rule would include an extension to the 20th birthday which can occur only with the consent of the minor.

HB 189 proposes adult prosecution for minors 16 years of age and older, who are arraigned on a charge of murder in the first degree, attempted murder in the first degree and murder in the second degree.

The department recognizes that these type of offenders could present a significant risk to the public if waiver under existing law fails or the offender cannot be rehabilitated before juvenile jurisdiction expires. HB 189 endeavors to prevent these offenders from continuing to endanger to the community by seeking conviction and sanction in adult court.

The Department estimates a high of 5 offenders per year could be prosecuted in adult court under this bill based on an analysis of FY 1992 youth offender statistics. The following youth offender statistics for crimes specified in the bill is provided.

DHSS Youth Offender Statistics			
	FY 1991	FY 1992	FY 1993
Total Referrals	2	6	1
Total Adjudicated	1	5	0

HB 189 would not significantly reduce the number of offenders referred to DHSS juvenile intake officers and subsequently confined in DHSS youth facilities. During the past three fiscal years the department has been averaging 6,704 youth corrections referrals per year statewide and of these referrals an average of 1,325 are admitted to a DHSS detention facility.

DEPARTMENTS POSITION

The department supports the automatic waiver for juvenile offenders 16 years and older who are charged with the crimes specified under this bill. HB 189 bridges a gap that can occur in cases where the offender cannot be successfully rehabilitated in the juvenile system and waiver has not been successful under AS 47.10.060.

The department believes that the capacity for reasoning at the age of 16 is sufficient to warrant prosecution in the adult court. This capacity carries with it the same responsibility for criminal conduct required of adult offenders.

The department assumes that juveniles charged under this bill would be incarcerated in facilities operated by the adult Department of Corrections. This assumption would be consistent with the current practice for juvenile offenders who are waived under AS 47.10.060. This practice does not violate sight and sound separation requirements for housing of juvenile and adult offenders under state and federal law. The department supports the continuation of this practice.

Recommended: Deborah R. Wing Date: 3/5/93

Deborah R. Wing, Director  
Division of Family and Youth Services

Approved: Theodore A. Mala Date: 3/5/93

Theodore A. Mala MD, MPH  
Commissioner  
Department of Health and Social Services