HB
336

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 10, 1994 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/24/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 336

HOUSE BILL NO. 336 MINORS COMMITTING CRIMES W/ GUNS & KNIVES

"An Act relating to violations of laws by juveniles."

RECOMMENDATIONS: be replaced with CS HB 336 (HESS)
[ ] the same title
[x] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[x] individual recommendations
[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[x] fiscal impact H+SS
[x] zero fiscal note Public Safety, Law (3)

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) ______
[ ] zero fiscal note(s) ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
[signature]	✓	[signature]		✓	
[signature]	✓	[signature]			X
[signature]	✓	[signature]		✓	
		[signature]	✓		
		[signature]		✓	

[signature]
CHAIRMAN'S SIGNATURE

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

DATE: 2/24/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
ALASKA NATIVE HEALTH BOARD
* HB 320: PUBLIC SCHOOL HEALTH & SAFETY EDUCATION
* HB 336: MINORS COMMITTING CRIMES W/ GUNS AND KNIVES
(* INDICATES FIRST PUBLIC MEETING)

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Deborah Erickson	DHSS/Div. of Public Health	P.O. Box 110610 Juneau, AK 99811	99811		465-3090	(Y)	N	HB 320
Joseph Dexter	NSHC/ANHB	Box 966 Nome	99762		443 3311	(Y)	N	ANHB Priorities
Anne Walker	ANHB	1345 Rudakof Circle Ste 206 Anc 99508			337-0028	(Y)	N	ANHB Prior. HB 320
Andy Jimmie	ANHB	" "				Y	N	HB 332
Robert J. Clark	ANHB	" "				Y	N	
Lanneá Lee		P.O. Box 9822 SMC Ketchikan AK 99901		(MESSAGE) 247-2410		(Y)	N	HB 326
Etta Larsen		P.O. Box 207 King Cove AK 99612	99612	497-2263		(Y)	N	320
Pete De Soye	ALHIV	174 S. Franklin #208 Juneau	99801	4635688		(Y)	N	HB 320
Michael Pierre	ALHIV	Same as above	99801	4635688		(Y)	N	HB 320
Bryce	ALHIV					(Y)	N	
Danielle Kuaana	ALHIV	same as above	99801			(Y)	N	HB 320

Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION AND SOCIAL SERVICES

DATE:

PLACE: Capitol Room 106

SUBJECT OF MEETING:

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Alysia Campbell ✓	ALHIV	174 S Franklin #208 Juneau	99801	4635688		(Y)	N	HB 320
Ziff THROWELL ✓	"	"	"	"		(Y)	N	HB 320
LORRI WILSON ✓	"	"	"	"		(Y)	N	HB 320
ALEXIS ROBERTS PEERED ALHIV ✓	"	"	"	"		(Y)	N	HB 320
JANELLE BILLINGSLEA PEERED ALHIV ✓	"	"	"	"		(Y)	N	HB 320
MIKE COLE PEER ED ALHIV ✓	"	"	"	"		(Y)	N	HB320
VINCE BARRY Helen Mothkins ✓	DOE		99802			Y	N	
Kathy Faris	AK Nurses Assoc.	701 E Bogard Wasilla, AK 99654		376-5341		(Y)	N	HB 320
Marvin S. Faris	MAT-SU School Dist	Palmer High School Palmer, AK	99645	376-3182		(Y)	N	HB 320
						Y	N	
						Y	N	

Page 2 of 2

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    TCN: 40380     DATE & TIME: 02/24/94 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           LEGISLATIVE                BUNDE
CONTACT:       LYNNE SMITH       TEL#: (907)465-6825
CHAIRING SITE: JUNEAU            CAPITOL          CAP106

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED          5 MINUTE LIMIT
TCN REQUESTED ON 02/24/94 AND HAS  6 UPDATES

**** AGENDA ****
    1  HB 320 PUBLIC SCHOOL HEALTH AND SAFETY EDUCATION
    2  HB 336 MINORS COMMITTING CRIMES W/ GUNS & KNIVES

**** PARTICIPATING LIOS ****
    ANC ANCHORAGE          716 W 4TH, #200                 LOCATION STAFF
    BET BETHEL             301 WILLOW ST.                  LOCATION STAFF
    FBX FAIRBANKS          119 N CUSHMAN ST                LOCATION STAFF
  * JNU JUNEAU             CAPITOL           CAP106        LOCATION STAFF
    KOD KODIAK             112 MILL BAY RD.                LOCATION STAFF
    MAT MATSU              165 E PARKS HWY.                LOCATION STAFF
    SIT SITKA              210 LAKE STREET                 LOCATION STAFF

PARTICIPANTS IN:ANCHORAGE         ANC
  1         PATRICK      O'BRIEN          APD            UNABL HB 336
            4501 S. BRAGAW           ANCHORAGE       AK 99507 (907)786-8664
  2         DELISA       CULPEPPER        MOA/DHSS       TSFY. HB 320
            PO BOX 196650            ANCHORAGE       AK 99519 (907)343-6960
  3         HELEN        MEHRKENS         AK DEPT ED     TSFY. HB 320
            801 W 10TH ST            JUNEAU          AK 99801 (907)465-8730

PARTICIPANTS IN:FAIRBANKS         FBX
  1 MS.     CHERYL       KILGORE                         TSFY. HB 320
            1919 LATHROP ST. #23     FAIRBANKS       AK 99701 (907)451-2940
  2 MS.     DESHARA      DEKERLEGAND                     OBSV. HB 320
            P.O. BOX 750205____UAF   FAIRBANKS       AK 99775 (907)474-6666

PARTICIPANTS IN:JUNEAU            JNU
  1 REP     CYNTHIA      TOOHEY                          TSFY. ALL ITEMS
                                                     AK       (907)000-0000
  2 REP     CON          BUNDE                           TSFY. ALL ITEMS
                                                     AK       (907)000-0000
  3 REP     AL           VEZEY                           TSFY. ALL ITEMS
                                                     AK       (907)000-0000
  4 REP     PETE         KOTT                            TSFY. ALL ITEMS
                                                     AK       (907)000-0000
  5 REP     HARLEY       OLBERG                          TSFY. ALL ITEMS
```

			AK	(907)000-0000
6	REP IRENE	NICHOLIA		TSFY. ALL ITEMS
			AK	(907)000-0000
7	REP TOM	BRICE		TSFY. ALL ITEMS
			AK	(907)000-0000
8	TO	OBSERVE		OBSV. ALL ITEMS
9	TO	OBSERVE		OBSV. ALL ITEMS
10	TO	OBSERVE		OBSV. ALL ITEMS

TCN: 40380 DATE & TIME: 02/24/94 15:30 TO 17:00 STATUS:7 STATS. IN

PARTICIPANTS IN:JUNEAU JNU

11	TO	OBSERVE	OBSV. ALL ITEMS
12	TO	OBSERVE	OBSV. ALL ITEMS
13	TO	OBSERVE	OBSV. ALL ITEMS
14	TO	OBSERVE	OBSV. ALL ITEMS
15	TO	OBSERVE	OBSV. ALL ITEMS
16	TO	OBSERVE	OBSV. ALL ITEMS
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27	TO	OBSERVE	OBSV. ALL ITEMS
28	TO	OBSERVE	OBSV. ALL ITEMS
29	TO	OBSERVE	OBSV. ALL ITEMS
30	TO	OBSERVE	OBSV. ALL ITEMS
31	TO	OBSERVE	OBSV. AL ITEMS
32	TO	OBSERVE	OBSV. ALL ITEMS
33	TO	OBSERVE	OBSV. ALL ITEMS
34	TO	OBSERVE	OBSV. ALL ITEMS
35	TO	OBSERVE	OBSV. ALL ITEMS
36	TO	OBSERVE	OBSV. ALL ITEMS
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48	TO	OBSERVE	OBSV. ALL ITEMS
49	TO	OBSERVE	OBSV. ALL ITEMS
50	TO	OBSERVE	OBSV. ALL ITEMS
51	TO	OBSERVE	OBSV. ALL ITEMS
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53	TO	OBSERVE	OBSV. ALL ITEMS
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57	TO	OBSERVE	OBSV. ALL ITEMS
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61	TO	OBSERVE	OBSV. ALL ITEMS
62	TO	OBSERVE	OBSV. ALL ITEMS
63	TO	OBSERVE	OBSV. ALL ITEMS

LTN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 03
03/02/94 19:43:09
TCN. 40380 DATE & TIME: 02/24/94 15:30 TO 17:00 STATUS:7 STATS. IN

PARTICIPANTS IN:JUNEAU JNU

64	TO	OBSERVE	OBSV. ALL ITEMS
65	TO	OBSERVE	OBSV. ALL ITEMS
66	TO	OBSERVE	OBSV. ALL ITEMS
67	TO	TESTIFY	TSFY. ALL ITEMS
68	TO	TESTIFY	TSFY. ALL ITEMS
69	TO	TESTIFY	TSFY. ALL ITEMS
70	TO	TESTIFY	TSFY. ALL ITEMS
71	TO	TESTIFY	TSFY. ALL ITEMS
72	TO	TESTIFY	TSFY. ALL ITEMS
73	TO	TESTIFY	TSFY. ALL ITEMS
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76	TO	TESTIFY	TSFY. ALL ITEMS
77	TO	TESTIFY	TSFY. ALL ITEMS
78	TO	TESTIFY	TSFY. ALL ITEMS
79	TO	TESTIFY	TSFY. ALL ITEMS
80	TO	TESTIFY	TSFY. ALL ITEMS
81	TO	TESTIFY	TSFY. ALL ITEMS
82	TO	TESTIFY	TSFY. ALL ITEMS
83	TO	TESTIFY	TSFY. ALL ITEMS
84	TO	TESTIFY	TSFY. ALL ITEMS

PARTICIPANTS IN:KODIAK KOD

1 MR CHRIS HELMS YOUTH TASK FORCE OBSV. HB 336
1610 SELIEF LANE KODIAK AK (907)486-7053
2 MS PAT FOX YOUTH TASK FORCE OBSV. HB 336
1610 SELIEF LANE KODIAK AK (907)486-7053

PARTICIPANTS IN:SITKA SIT

1 CAROLYN MCARTHUR OBSV. HB 320
118 DARRIN DR. SITKA AK 99835 (907)747-5112
2 SUSAN KANEN OBSV. HB 320
431 VERSTOVIA AVE. SITKA AK 99835 (907)747-8251

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

DATE: 2-25-94

Please accept the enclosed original(s) of written testimony for the House Health Ed & SS teleconference hearing that was scheduled on 2-24-94.

A copy of this testimony was transmitted to your committee via fax on 2-24-94.

Thank you,

Kodiak, X10 - Tina

Alaska State Legislature

Please enter into the record my testimony to the HOUSE H.E.S.S.
committee name

committee on HB 336, dated 2/24/94.
bill/subject

I Represent the youth Task Force, a Sub-committee
of the Kodiak High School Parent advisory Committee
I am a registered voter. Our committee would
like to Voice our support of House Bill 336
because it reinforces our communitees zero-
tolerance of for violence. Because of the transite
nature of our town, it is important that violentent
youth be known to our School administrators.
We are concerned about these issues as they
affect the Safety of our school-aged youth.

Signed: [signature]
Testifier

Youth Task Force
Representing (Optional)

1610 Selief Lane Kodiak, AK 99615
Address

486-7053
Phone No.

9/86 Legislative Information Office

Alaska State Legislature

Please enter into the record my testimony to the House H.E.S.S.
committee name

committee on H.B. 336, dated Feb. 24, 1994.
bill/subject

I am a member of the Youth Task Force a sub-committee of the Kodiak High School Parent Advisory Committee. I am a registered voter. Our committee would like to voice its support of Bill 336, because it reinforces our communities zero tolerance for violence.

Signed: Pat Fry
Testifier

Youth Task Force
Representing (Optional)

1610 Selief Ln. Kodiak, Ak 99615
Address

486-7053
Phone No.

9/86 Legislative Information Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: HB336

Revision Date:

Dept. Affected: Public Safety

Title: "An act relating to violations of laws by juveniles."

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Rep. Bunde

Requestor: H. HES

COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 FUND SOURCE:						

FUNDING: (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 94) impact: $

POSITIONS:

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact anticipated.

Prepared By: Francis C. Allan
Phone: (907) 269-5691

Division: Alaska State Troopers
Date: 02/24/94

Approved by Commissioner: [signature]
Date: 02/24/94

Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 336(HES)

Revision Date: ____________
Title: "An act relating to violations of laws by juveniles."
Sponsor: Rep. Bunde
Requestor: H. HES

Dept. Affected: Public Safety
BRU: Motor Vehicles
Component: ____________
COMPONENT SERIAL NO. 500

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 FUND SOURCE:						

FUNDING: (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

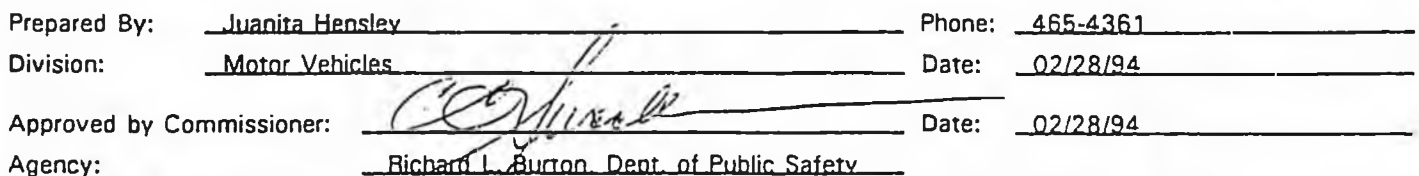
Estimate of current year (FY 94) impact: $ ____________

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact anticipated.

Prepared By: Juanita Hensley Phone: 465-4361
Division: Motor Vehicles Date: 02/28/94



Approved by Commissioner: ____________ Date: 02/28/94
Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB336 (HES)

Revision Date: 03/01/94
Title: Relating to Disclosure of Information About Minors
Sponsor: Representative(s) Bunde & Olberg
Requestor: House Jud

Dept. Affected: Health and Social Services
BRU: Purchased Services, Family & Youth Svc
Component: Residential Child Care, Foster Care, DFYS SCRO, NRO, SERO, Central Off
COMPONENT SERIAL NO. 0252,253,254,255,258,259

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts	(4,617.3)*	(4,617.3)	(4,617.3)	(4,617.3)	(4,617.3)	(4,617.3)
1003 GF Match	(4,617.3)*	(4,617.3)	(4,617.3)	(4,617.3)	(4,617.3)	(4,617.3)
1004 GF	9,234.6 *	9,234.6	9,234.6	9,234.6	9,234.6	9,234.6
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

*Revising 47.10.090 making some juvenile records public in Sec. 10 will place the state out of compliance with federal regulations concerning Title IVE of the Social Security Act [42 U. S. C. 671](a)(8). The state would lose $4617.3 in Federal receipts in reimbursement for payments made for residential care, foster care, and subsidized adoptions as well as administrative costs. In addition to the $4617.3 previously required in general fund match, another $4617.3 would still be required from the general fund.

Prepared by: Deborah R. Wing, Director — Phone: 465-3191
Division: Division of Family & Youth Services — Date: 03/01/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S. — Date: 3-1-94
Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 336 (HES)

Revision Date: February 28, 1994
Title: "An Act relating to disclosure of information about minors."
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

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

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: February 28, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: February 28, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 336 (HES)

ANALYSIS CONTINUATION:

The HES Committee Substitute for HB 336 totally revises the bill, including the title, to drop any reference to waiving juveniles 13 years of age and older to adult crime if they commit an offense and used or threatened to use a firearm or knife in the commission of the offense. Instead, the committee substitute would amend AS 47.10.090, which provides for the confidentiality of juvenile records, to provide that the AS 47.10.090 limitations of disclosures of information do not apply to a minor 13 years of age and older who commits an offense and possessed a firearm or knife at the time the offense was committed, and who used or threatened to use the firearm or knife during the commission of the offense.

The Department of Law would not usually be involved in the disclosure process and, consequently, there should not be a fiscal note for the department. We hasten to add, however, that there could be a significant and substantial fiscal impact for the Division of Family and Youth Services (DFYS) in the Department of Health and Social Services. Up to $4,000,000 annually in federal funds received by DFYS could be jeopardized if the bill is adopted. That is because Sec. 471.(a)(8) of the Social Security Act appears to prohibit the disclosure of juvenile information on the categorical basis required by the bill. We have attached a copy of Sec. 471, and suggest that DFYS be contacted for its comments.

SEC. 471. [42 U.S.C. 671] (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 472 and for adoption assistance in accordance with section 473;

(2) provides that the State agency responsible for administering the program authorized by part B of this title shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under title XX of this Act, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this title (including activities under part F)[184] or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need,[185] (D) any audit or similar activity conducted in connec-

[184] P.L. 100-485, §202(c)(1), struck out "C, or D of this title" and substituted "or D of this title (including activities under part F)". For the effective date, see Vol. II, P.L. 100-485, §204(a) and (b)(1).

[185] P.L. 101-508, §5054(b)(2)(A), struck out "and".

tion with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect[186]; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will—

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;[187]

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years;

[186] P.L. 101-508, §5053(b)(2)(B), added ", and" and subparagraph (E), applicable to benefits for months beginning on or after May 1, 1991.

[187] P.L. 101-508, §5054(b)(1), amended paragraph (9) in its entirety, applicable to benefits for months beginning on or after May 1, 1991. Until then, paragraph (9) read as follows:

"(9) provides that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this title is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;".

FEB 25 '94 03:03PM P.2

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date: February 14, 1994
Title: "An Act relating to violations of laws by juveniles."
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

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

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: February 14, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General [signed: Richard I. Pegues /FOR/]
Agency: Department of Law
Date: February 14, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

ANALYSIS CONTINUATION:

This bill amends AS 47.10.010 to provide that a minor who is at least 13 years of age at the time of an offense is committed and is arraigned shall be charged, prosecuted, and sentenced in the superior court in the same manner as adult if, at any time during the commission of the offense, the minor has possession of a firearm or a knife and used or threatened to use the firearm or knife during the commission of the offense. In effect, the bill would automatically waive juveniles 13 years of age and older to adult court if they use or threaten to use a firearm or knife in the commission of an offense. This would include both felonies and misdemeanors.

The bill does not include any provision to return a juvenile to the juvenile justice system in the event the required element of the use or threatened use of a firearm or knife is not upheld at trial. The bill also does not contain any provision that would allow a juvenile to attempt to prove amenability to treatment in the juvenile justice system. Consequently, waiver to adult court would be absolute

Current information from the Division of Family and Youth Services indicates that the incidence of crimes involving weapons and juveniles in this age group is about 60 per quarter, or 240 weapons crimes per year. However, these statistics do not indicate what weapons were used. For instance, vehicles, boots, tools and other implements are considered weapons for assaults that result in serious injury or death. Furthermore, it appears that many of the recorded lower level weapon misconduct charges involving juveniles are for possession of a firearm without the permission of a parent or guardian, or misuse of firearms. Nearly half of the weapons-related charges in the DYFS incidence survey include charges of this nature. We therefore believe that the number of new offenses that will be referred to prosecutors if these juveniles are automatically waived to adult court will be less than 120 offenses per year.

When spread between various locations, this caseload is not sufficient to warrant fiscal note costs. In the face of the already growing criminal caseload, we are concerned with the cumulative effect of changes in the criminal law that add to that caseload. Taken alone they do not indicate an impact. But, taken together with other changes, they add new burdens to the state's already overburdened prosecution staff. We do note, however, that there could be a fiscal impact for the Department of Corrections.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Title: An Act Relating to Violations of Laws By Ju
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS

Dept. Affected: Health and Social Services
BRU: Family & Youth Services
Component: McLaughlin Youth Center
COMPONENT SERIAL NO. 0264

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed and threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*
Division: Division of Family & Youth Services
Phone: 465-3191
Date: 01/24/94

Approved by Commissioner: *Margaret R. Lowe* Margaret R. Lowe, M. Ed., Ed. S.
Agency: Department of Health & Social Services
Date: 1-25-94

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DH&SS - FAMILY & YOUTH SERVICES - 5 ZERO FISCAL NOTES (0264-0268)

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Title: An Act Relating to Violations of Laws By Juveniles
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS

Dept. Affected: Health and Social Services
BRU: Family & Youth Services
Component: Fairbanks Youth Facility
COMPONENT SERIAL NO. 0265

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed and threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*
Division: Division of Family & Youth Services
Phone: 465-3191
Date: 01/24/94

Approved by Commissioner: *Margaret R. Lowe* Margaret R. Lowe, M. Ed., Ed.S.
Agency: Department of Health & Social Services
Date: 1-25-94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:		Dept. Affected:	Health and Social Services
Title:	An Act Relating To Violations of Laws By Juveniles	BRU:	Family & Youth Services
		Component:	Nome Youth Facility
Sponsor:	Representative(s) Bunde & Olbers		
Requestor:	House HFSS	COMPONENT SERIAL NO.	0266

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed and threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director Deborah R. Wing
Phone: 465-3191
Division: Division of Family & Youth Services
Date: 01/24/94

Margaret R. Lowe
Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed. S.
Date: 1-25-94
Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Title: An Act Relating To Violations of Laws By Juveniles
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS

Dept. Affected: Health and Social Services
BRU: Family & Youth Services
Component: Johnson Youth Center
COMPONENT SERIAL NO. 0267

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed & threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*
Division: Division of Family & Youth Services
Phone: 465-3191
Date: 01/24/94

Margaret R. Lowe
Approved by Commissioner: Margaret R. Lowe, M. Ed., Ed.S.
Agency: Department of Health & Social Services
Date: *1-25-94*

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Title: An Act Relating to Violations of Laws By Juveniles
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS

Dept. Affected: Health and Social Services
BRU: Family & Youth Services
Component: Bethel Youth Facility
COMPONENT SERIAL NO. 0268

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY36	FY97	FY98	FY99	FY00
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 EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY95	FY36	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY95	FY36	FY97	FY98	FY99	FY00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed & threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*
Division: Division of Family & Youth Services
Phone: 465-3191
Date: 01/24/94

Approved by Commissioner: *Margaret R. Lowe* Margaret R. Lowe, M. Ed., Ed. S.
Agency: Department of Health & Social Services
Date: *1-25-94*

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REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

House of Representatives

DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

SPONSOR STATEMENT

HB 336
"An Act relating to violations of laws by juveniles."

This state is experiencing a rise in juvenile crime. Many crimes are committed by youngsters not more than 13 years old who have armed themselves with knives and guns. The escalation of juvenile crime is not acceptable. Those juveniles who wish to violate the law must also take full responsibility for their actions and pay the consequences.

This proposed legislation would have minors ages 13 and older tried as adults if they commit a crime using a gun or a knife. To date, the privacy of a juvenile is protected when a crime is committed. The records of the case are not made public. By bringing a juvenile to adult court all records become public. Juveniles would no longer be able to hide a criminal history.

Juveniles committing adult crimes with adult weapons should be just as accountable as adults that commit crimes with weapons. HB 336 would create this accountability. I urge your favorable consideration for HB 336.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

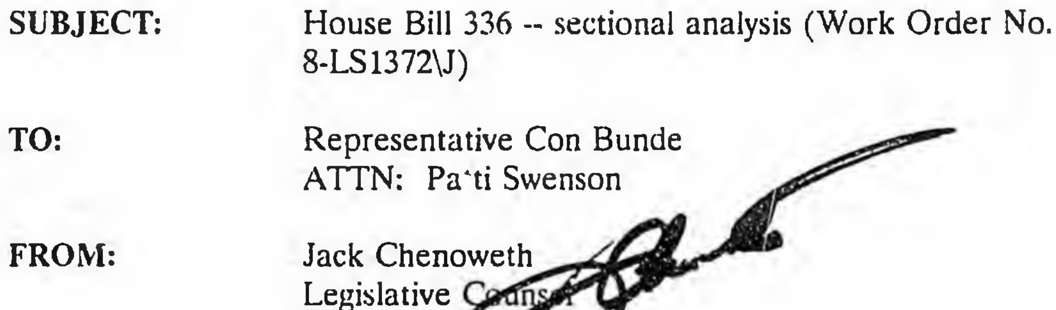
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

M E M O R A N D U M — January 10, 1994

SUBJECT: House Bill 336 -- sectional analysis (Work Order No. 8-LS1372\J)

TO: Representative Con Bunde
ATTN: Patti Swenson

FROM: Jack Chenoweth
Legislative Counsel



The measure proposes to amend the manner of handling minors 13 years of age or older who commit an offense while in possession of a firearm or knife.

Bill section 1: The bill section proposes to add a new subsection, AS 47.10.010(e), to the statute enumerating the jurisdiction of the court over certain minors who commit offenses and as to whom a petition seeking adjudication of the minor as a delinq[illegible] co[illegible] be filed. The change proposed by this bill section is direct toward mino[illegible] years of age at the time of commission of the offense who, in the comm[illegible]e offense possessed a firearm or knife and used or threatened to use the firearm or knife during the commission of the offense. As to those minors, the statutory provisions applicable to filing petition seeking adjudications of delinquency would be inapplicable. Instead, the minor would be charged, prosecuted, and sentenced as an adult. The procedure would be applicable to the offense as to which the minor was arraigned and to any additional offenses joinable to it under applicable court rule.

Bill section 2: This uncodified section specifies that the change in bill section 1 is applicable to offenses that are committed by minors who are to be prosecuted as adults if the offense was committed after the bill's effective date.

JBC:gc
94-010.glc

SECTIONAL ANALYSIS

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

P.O. BOX 110630
JUNEAU, ALASKA 99811-0630
PHONE: (907) 465-3170

December 16, 1993

The Honorable Con Bunde
Alaska State Legislator
716 W. 4th. Suite 340
Anchorage, Alaska 99501-2133

Dear Representative Bunde:

Ms. Zantek, from your Anchorage office, requested information on statewide juvenile referrals to DFYS. Our research analyst has compiled information on the frequency of weapons and weapons related referrals to DFYS. Enclosed are a set of graphics, a data table and the list of referral offense types that are identified as weapons or weapons related. It is important to note that the alleged offense types chosen are inferred to be crimes committed with a weapon, but may not truly involve the use of a weapon in all cases. Also, weapons is a broadly defined term that can include a variety of devices and/or objects that were involved in the commission of a crime.

The information provided represents an alleged offense and does not describe the outcome of the juvenile intake process. These referrals are the initial charges which can then be changed based on the examination of the available evidence.

The data extracted from the division's information system, PROBER®, covers January 1991 through September 1993 and is presented in calendar quarters. The age of the juvenile is calculated as a function of the referral date and only juveniles 13 or older at referral are included. The frequency counts and statistics include the occurrence of multiple referrals on a juvenile. There were a total of 640 referrals on 593 individuals in this study.

Quarterly data provides a better measure of trend, and with the addition of a simple regression line, the existence of a trend can be illustrated. Also included is an illustration of all referrals during this time period as a comparison between weapons and weapons related referrals versus all referrals. Please see attached graphs.

As mentioned above, there were 640 referrals to DFYS for weapons and weapons related type offenses. This group of referral types grew at an average quarterly rate of approximately 3% over this time period. Referrals for all types grew at an average quarterly rate of approximately 2%. The average age juveniles referred for weapons and weapons related offenses is 15.5 and remains consistent across quarters. There does not appear to be any change in the

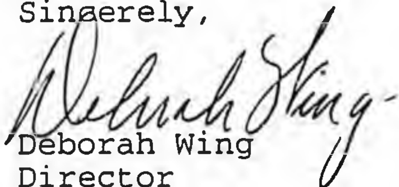
ethnicity mix nor the male to female ratio across the quarters studied. Demographics for the 640 referrals are described below.

AGE	Total	640	
	13	49	8%
	14	119	19%
	15	136	21%
	16	153	24%
	17	178	28%
	18+	5	1%
ETHNICITY	Total	640	
	AK Nat/Am I	121	19%
	Afro/Am	68	11%
	Caucasian	384	60%
	Hispanic	12	2%
	Asian	10	2%
	Other	19	3%
	Unknown	26	4%
GENDER	Total	640	
	Male	572	89%
	Female	68	11%

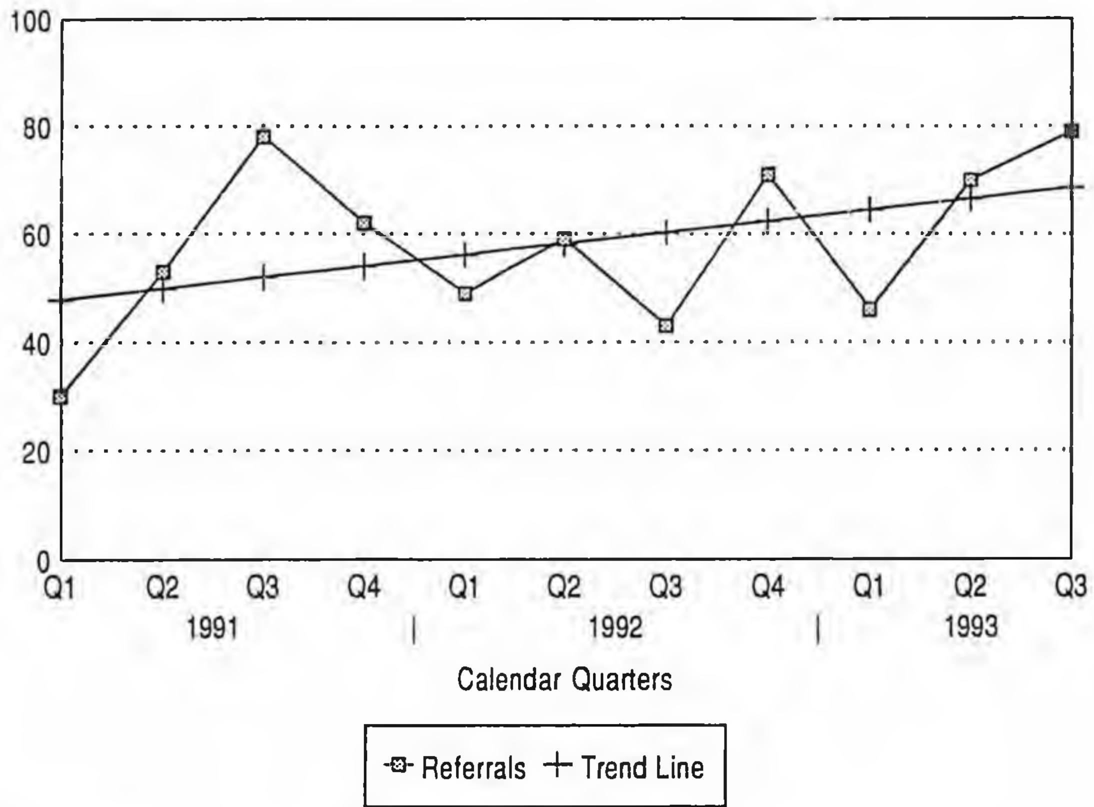
Note that although a slight increase has occurred in weapons and weapons related referrals compared to all referral types, the increase appears to be consistent with the growth in the juvenile population. It is possible to conclude, from this data, that the same percentage of juveniles are committing crimes and with an increasing juvenile population at about 5% per year, overall referrals to DFYS are increasing proportionally.

Please let me know if you need clarification or additional information.

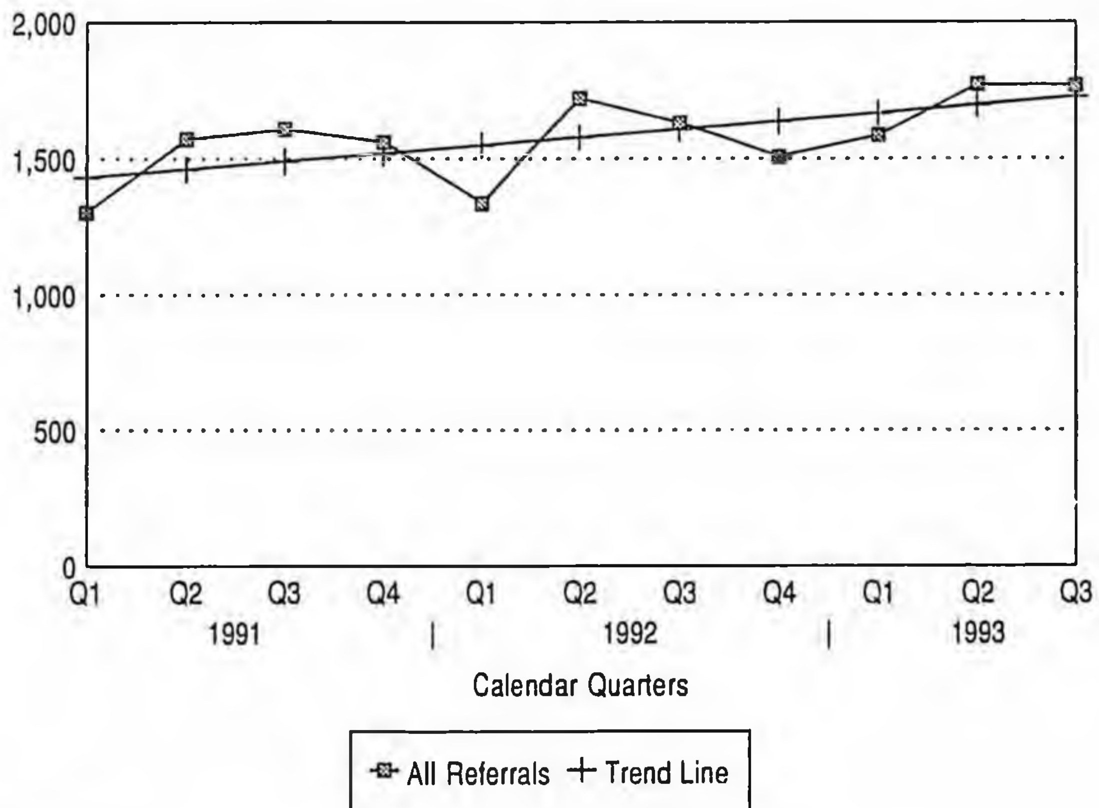
Sincerely,



Deborah Wing
Director



DFYS/December 1993



DFYS/December 1993

WEAPONS AND WEAPONS RELATED REFERRALS BY QUARTER
(Referrals to Youth Services)

STATEWIDE FREQUENCY BY REFERRAL TYPE

	Calendar Quarter											
	Q1CY91	Q2CY91	Q3CY91	Q4CY91	Q1CY92	Q2CY92	Q3CY92	Q4CY92	Q1CY93	Q2CY93	Q3CY93	Totals
Offense												
Assault 1st	0	4	0	4	3	8	1	1	1	4	3	29
Assault 2nd	6	1	4	4	6	10	2	7	3	18	6	67
Manslaughter	0	0	1	0	0	0	0	0	0	0	0	1
Murder 1st	1	1	1	3	4	1	0	0	0	1	3	15
Murder 2nd	0	0	1	0	0	0	1	0	0	1	0	3
Negligent Homicide	0	0	0	0	0	0	0	2	0	0	1	3
Reckless Endangermnt	2	7	19	8	9	0	10	17	7	3	14	96
Robbery 1st	2	5	3	7	2	4	8	0	3	4	5	43
Misconduc Weapon 1st	5	4	4	6	2	2	0	3	2	0	0	28
Misconduc Weapon 2nd	0	2	7	5	1	3	2	7	2	3	5	37
Misconduc Weapon 3rd	14	29	37	25	22	31	19	34	28	36	42	317
Posses Explos/A Misd	0	0	1	0	0	0	0	0	0	0	0	1
Totals	30	53	78	62	49	59	43	71	46	70	79	640

NOTE: Results Include Multiple Referrals on an Individual
Data Source: PROBER

Weapons and Weapons Related Referrals

Referal Types Included

Code	Offense Description
A01	Assault 1st
A02	Assault 2nd
A70	Manslaughter
A71	Murder 1st
A72	Murder 2nd
A73	Negligent Homicide
A74	Reckless Endangermnt
A80	Robbery 1st
E01	Furnish Explosives
E10	Misconduc Weapon 1st
E11	Misconduc Weapon 2nd
E12	Misconduc Weapon 3rd
E20	Posse Explos/Murder
E21	Poss Explos A Fel
E22	Posses Explos/B Fel
E23	Posses Explos/C Fel
E24	Posses Explos/A Misd

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
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January 11, 1994

The Honorable Con Bunde
Alaska State Legislature
State Capitol, Room 112
Juneau, AK 99801-1182

Dear Representative Bunde:

As you review your copy of the 1992 Report on Crime in Alaska, I am sure that you too will be alarmed at the increased crimes of violence that are occurring in our state.

What is even more alarming are the numbers of young people involved in committing serious criminal offenses. Of those arrested, youths 18 years and under accounted for:

- 16% of murders;
- 16% of rapes;
- 29% of robberies;
- 16% of aggravated assaults; and
- 43% of larceny arrests.

Serious consideration must be given to passing a juvenile waiver statute and removing some of the restrictions which do nothing more than make it easy for young criminals to beat the system by being treated as misunderstood victims instead of the criminals many of them really are.

Boot camp legislation and a young offenders facility is badly needed to augment and give additional space to DFYS and those agencies who must deal with juveniles who need commitment. McLaughlin Youth Center is totally inadequate to serve today's needs.

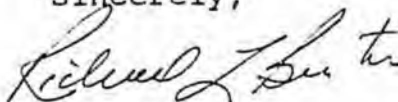
The state is long overdue for at least one, if not more, additional correctional facilities, especially in areas other than the main population centers. There is a serious need for regional minimum-to-medium security facilities in the North Slope Borough, the Alaska Peninsula, and in Kodiak.

I hope we can stop talking about crime this year and really do something about it before it is too late.

BACKUP INFORMATION

I look forward to working with you, please call for any assistance we may be able to give during the upcoming year.

Sincerely,



Richard L. Burton
Commissioner

Enclosure

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

House of Representatives

DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

Cabbie shot by 13-year-old

WEST PALM BEACH, Fla. — A 13-year-old girl shot a cab driver to death to avoid paying a $6 fare, police said. The sixth-grader was dry-eyed during questioning Monday in the slaying of 39-year-old Yves Quettant, who was shot in the back of the head, police said. "No tears. Just cold. We're talking about coldblooded, premeditated murder committed by a 13-year-old girl who shows no remorse," Sgt. John English said. "It's frightening." Quettant was slain after picking up the girl and two of her friends at a mall Saturday night. The girl's mother said her daughter hadn't mentioned the shooting. "She acted like a 40-year-old, like nothing happened," the mother said. "There was nothing, not one tear. She didn't care at all."

Daily News wire services

An act relating to weapons and firearms; authorizing a law enforcement agency to release the name and address of a minor who has been adjudicated guilty of an offense involving possession or use of a firearm; amending s. 790.17, F.S.; prohibiting certain transfer to a minor of a weapon, or electric weapon or device; prohibiting sale or transfer to a minor of a firearm and providing that a violation constitutes a third-degree felony; amending s. 790.175, F.S.; redefining the term "minor"; requiring that the purchaser of a firearm be informed that it is unlawful to store or leave a firearm within access of a minor or to knowingly sell or transfer a firearm to a minor or a person of unsound mind; amending s. 790.18, F.S.; prohibiting an arms dealer from selling or transferring a firearm or certain other weapons to a minor; increasing the penalty for a violation from a misdemeanor to a felony; amending s. 790.22, F.S.; prohibiting a minor from possessing a firearm; providing certain exceptions; prohibiting adults responsible for a minor from knowingly and willfully permitting the minor to unlawfully possess a firearm; providing penalties for a violation by an adult; authorizing the court to require that a parent participate in classes on parenting education; authorizing community service hours in certain circumstances and

requiring the establishment of circuit community service programs; providing penalties for a violation by a minor; requiring that a minor charged with certain offenses involving the use or possession of a firearm be detained in secure detention unless the state attorney authorizes the minor's release; providing for a hearing within a specified period; providing circumstances under which the court may order that the minor continue to be held in secure detention; requiring the Department of Health and Rehabilitative Services to collect certain data and submit it to the Division of Economic and Demographic Research; requiring the court to order a minimum mandatory period of secure detention in addition to other punishments provided by law if the minor is found to have committed certain offenses involving the use or possession of a firearm and is not committed to a residential commitment program of the Department of Health and Rehabilitative Services; providing for mandatory revocation or suspension of the driving privilege if a minor is found to have committed certain offenses involving the use or possession of a firearm; providing for enhanced penalties; providing for the seizure and disposal of a firearm used or possessed unlawfully by a minor; providing that such provisions are supplemental to certain other criminal sanctions; providing for the secure detention of a minor charged with a

violation of certain provisions of ch. 790, F.S., pending a court hearing; amending s. 790.23, F.S.; prohibiting felons, and juveniles found to have committed a delinquent act that would be a felony if committed by an adult, from using or possessing a firearm under certain conditions; providing exceptions; providing penalties; amending s. 790.25, F.S.; limiting authorization for possession in private conveyance to persons over 18; directing the Department of Health and Rehabilitative Services to prepare and disseminate public service announcements; requiring the state attorney to request adult prosecution of minors in certain circumstances; providing appropriations; providing effective dates.

WHEREAS, the love affair between juveniles and firearms has reached an all-time high here in Florida, and

WHEREAS, the courts, the Legislature, and law enforcement cannot be the sole solution to stem our rising juvenile crime statistics, and

WHEREAS, it is the will of the Legislature and all Floridians that parental involvement, accountability, and responsibility become the key to solving our existing broken juvenile criminal justice system, and

WHEREAS, it is the will of Floridians all across this great state of ours that juveniles who violate laws pertaining to the illegal use of firearms be dealt with in a swift and certain and severe manner, and

CODING: Words stricken are deletions; words <u>underlined</u> are additions.

ENROLLED
1993 Legislature CS/CS/HB 91-C 2nd Engrossed

WHEREAS, it is time for the Governor, the President of the Senate, and the Speaker of the House of Representatives, along with the Republican leaders of the Senate and House of Representatives, to seek relief from our counterparts in the United States Congress by cutting the federally mandated ties that bind us from curing our juvenile crime problems here at home, as said laws prevent us from using stricter, harsher, and more certain penalties in detaining Florida's juveniles, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. <u>A law enforcement agency may release for publication the name and address of a child who has been convicted of any offense involving possession or use of a firearm.</u>

Section 2. Section 790.17, Florida Statutes, is amended to read:

790.17 Furnishing weapons to minors under 18 years of age <u>or persons of unsound mind and furnishing firearms to minors under 18 years of age prohibited</u>;-etc.--

<u>(1) A person who</u> Whoever sells, hires, barters, lends, <u>transfers,</u> or gives;any minor under 18 years of age any pistol, dirk, electric weapon or device, or other arm-or weapon, other than an ordinary pocketknife, without permission of the <u>minor's</u> parent <u>or guardian</u> of-such-minor;-or-the-person having-charge-of-such-minor, or sells, hires, barters, lends, <u>transfers,</u> or gives to any person of unsound mind an electric weapon or device or any dangerous weapon, other than an ordinary pocketknife, <u>commits</u> is-guilty-of a misdemeanor of

CODING: Words stricken are deletions; words <u>underlined</u> are additions.

the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) A person may not knowingly or willfully sell or transfer a firearm to a minor under 18 years of age, except that a person may transfer ownership of a firearm to a minor with permission of the parent or guardian. A person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The parent or guardian must maintain possession of the firearm except pursuant to s. 790.22.

Section 3. Section 790.175, Florida Statutes, is amended to read:

790.175 Transfer or sale of firearms; required warnings; penalties.--

(1) Upon the retail commercial sale or retail transfer of any firearm, the seller or transferor shall deliver a written warning to the purchaser or transferee, which warning states, in block letters not less than 1/4 inch in height:

"IT IS UNLAWFUL, AND PUNISHABLE BY IMPRISONMENT AND FINE, FOR ANY ADULT TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(2) Any retail or wholesale store, shop, or sales outlet which sells firearms must conspicuously post at each

purchase counter the following warning in block letters not less than 1 inch in height:

"IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(3) Any person or business knowingly violating a requirement to provide warning under this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4)--As-used-in-this-act;-the-term-"minor"-means-any person-under-the-age-of-16.

Section 4. Section 790.18, Florida Statutes, is amended to read:

790.18 Sale or transfer of Selling arms to minors by dealers.--It is unlawful for any dealer in arms to sell or transfer to a minor minors any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, slungshot, or electric weapon or device. A; and-every person who violates violating this section commits shall-be-guilty-of a felony misdemeanor of the second first degree, punishable as provided in s. 775.082, or s. 775.083, or 775.084.

Section 5. Section 790.22, Florida Statutes, is amended to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices;-or-firearms by minor child under

16; limitation; possession of firearms by minor under 18 prohibited; penalties.--

(1) The use for any purpose whatsoever of BB guns, air or gas-operated guns, or electric weapons or devices, or ~~firearms as defined in s. 790.001~~ by any minor child under the age of 16 years is prohibited unless such use is under the supervision and in the presence of an adult who is acting with the consent of the minor's parent.

(2) Any adult responsible for the welfare of any child under the age of 16 years who knowingly permits such child to use or have in his possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the provisions of subsection (1) of this section commits ~~is guilty~~ of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his home, unless:

(a) The minor is engaged in a lawful hunting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult.

(b) The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by adult who is acting with the consent of the minor's parent or guardian.

(c) The firearm is unloaded and is being transported by the minor directly to or from an event authorized in paragraph (a) or paragraph (b).

(4)(a) Any parent or guardian of a minor, or other adult responsible for the welfare of a minor, who knowingly and willfully permits the minor to possess a firearm in violation of subsection (3) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any natural parent or adoptive parent, whether custodial or noncustodial, or any legal guardian or legal custodian of a minor, if that minor possesses a firearm in violation of subsection (3) may, if the court finds it appropriate, be required to participate in classes on parenting education which are approved by the Department of Health and Rehabilitative Services, upon the first conviction of the minor. Upon any subsequent conviction of the minor, the court may, if the court finds it appropriate, require the parent to attend further parent education classes or render community service hours together with the child.

(c) At any time after this act becomes law, but no later than July 1, 1994, the district juvenile justice boards or county juvenile justice councils or the Department of Health and Rehabilitative Services shall establish appropriate community service programs to be available to circuit courts in implementing this subsection. The boards or councils or department shall propose the implementation of a community service program in each circuit, and may submit a circuit plan, to be implemented upon approval of the court, at any time after this act becomes law.

(d) For the purposes of this section, community service may be provided on public property as well as on private property with the expressed permission of the property owner. Any community service provided on private property is

limited to such things as removal of graffiti and restoration of vandalized property.

(5)(a) A minor who violates subsection (3) commits a misdemeanor of the first degree, and, in addition to any other penalty provided by law, shall be required to perform 100 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense, the minor shall be required to perform not less than 100 nor more than 250 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

(6) Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer and disposed of in accordance with s. 790.08(1)-(6).

(7) The provisions of this section are supplemental to all other provisions of law relating to the possession, use, or exhibition of a firearm.

(8) Notwithstanding s. 39.042 or s. 39.044(1), if a minor under 18 years of age is charged with an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. Effective April 15, 1994, at the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 39.044(5), if the court finds that the minor meets the criteria specified in s.

39.044(2), or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or the community. The Department of Health and Rehabilitative Services shall prepare a form for all minors charged under this subsection that states the period of detention and the relevant demographic information, including, but not limited to, the sex, age, and race of the minor, whether or not the minor was represented by private counsel or a public defender, the current offense, and the minor's complete prior record, including any pending cases. The form shall be provided to the judge to be considered when determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department. The Department of Health and Rehabilitative Services must send the form, including a copy of any order, without client identifying information, to the Division of Economic and Demographic Research of the Joint Legislative Management Committee.

(9) Notwithstanding s. 39.043, if the minor is found to have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Health and Rehabilitative Services, in

addition to any other punishment provided by law, the court shall order:

(a) For a first offense, that the minor serve a mandatory period of detention of 5 days in a secure detention facility and perform 100 hours of community service.

(b) For a second or subsequent offense, that the minor serve a mandatory period of detention of 10 days in a secure detention facility and perform not less than 100 nor more than 250 hours of community service.

The minor shall receive credit for time served before adjudication.

(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9)(a) or paragraph (9)(b):

(a) For a first offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving

privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

Section 6. Section 790.23, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 790.23, F.S., for present text.)

790.23 Felons and delinquents; possession of firearms or electric weapons or devices unlawful.--

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(a) Convicted of a felony or found to have committed a delinquent act that would be a felony if committed by an adult in the courts of this state;

(b) Convicted of or found to have committed a crime against the United States which is designated as a felony;

(c) Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year; or

(d) Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding 1 year.

(2) This section shall not apply to a person convicted of a felony whose civil rights and firearm authority have been restored, or to a person found to have committed a delinquent act that would be a felony if committed by an adult with respect to which the jurisdiction of the court pursuant to chapter 39 has expired.

(3) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Subsection (5) of section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely

encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012.

Section 8. Effective July 1, 1994, if the child was 14 or more years of age at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm, the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons for not making such request, and the court, upon the state attorney's request, shall issue the order to so transfer and certify the child or provide written reasons for nonissuance.

Section 9. The Department of Health and Rehabilitative Services shall prepare public service announcements for dissemination to parents throughout the state, of the provisions of this act.

Section 10. There is hereby appropriated a lump sum of $2,197,810 from the General Revenue Fund and 94 additional full-time positions are authorized for the Juvenile Justice Program in the Department of Health and Rehabilitative

Services. This shall be used for operational funding for the secure detention, case management for community service, and commitment programs for delinquent youth. Further, $4,600,000 is hereby transferred from current surplus funds in the General Revenue Fund previously appropriated for AFDC, to be used for additional commitment resources for the Juvenile Justice Program in the Department of Health and Rehabilitative Services.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect January 1, 1994.

Chapter 10. Delinquent Minors and Children in Need of Aid.

Article
1. Children's Proceedings (§§ 47.10.010 — 47.10.142)
2. Juvenile Institutions (§§ 47.10.150 — 47.10.220)
3. Care of Children (§§ 47.10.230 — 47.10.260)
4. Programs for Runaway Minors (§§ 47.10.300 — 47.10.390)
5. Citizens' Review Panel for Permanency Planning (§§ 47.10.400 — 47.10.490)
6. General Provisions (§§ 47.10.970, 47.10.990)

NOTES TO DECISIONS

Cited in Flores v. Flores, 598 P.2d 893 (Alaska 1979).

Article 1. Children's Proceedings.

Section
10. Jurisdiction
20. Investigation and petition
30. Summons and custody of minor
40. Release of minor
50. Appointment of guardian ad litem or attorney
60. Waiver of jurisdiction
70. Hearings
72. Access to hearing by victim
75. Young adult advisory panels
80. Judgments and orders
81. Predisposition hearing reports
82. Best interests of child and other considerations
83. Review of orders, requests for extensions
84. Legal custody, guardianship, and residual parental rights and responsibilities
85. Medical treatment by religious means
90. Records
95. Arrest of a minor
97. Fingerprinting of minors
100. Retention of jurisdiction over minor
110. Appointment of guardian or custodian
120. Support of minor
130. Detention
140. Temporary detention and detention hearing
141. Runaway and missing minors
142. Emergency custody and temporary placement hearing

Cross references. — For court rules governing children's proceedings, see Alaska Rules of Court, Child in Need of Aid Rules (CINA Rules) and Delinquency Rules.

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

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

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

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian, or rela-

AS 47.10

tive caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 25.23.180(c) or AS 47.10.080 or voluntarily relinquished;

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

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

(D) the child having been, or being in imminent and substantial danger of being, sexually abused either by the child's parent, guardian, or custodian, or as a result of conditions created by the child's parent, guardian, or custodian, or by the failure of the parent, guardian, or custodian adequately to supervise the child;

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

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

(b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, AS 11.76.105 relating to the possession of tobacco by a minor, a fish and game statute or regulation under AS 16, or a parks and recreational facilities statute or regulation under AS 41.21, excepting a statute the violation of which is a felony, the procedure prescribed in AS 47.10.020 — 47.10.090 may not be followed, except that a parent, guardian, or legal custodian shall be present at all proceedings. The minor accused of an offense specified in this subsection shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(c) In a controversy concerning custody of a minor, the court may appoint a guardian of the person and property of a minor and may order support from either or both parents. Custody of a minor may be given to the department, and payment of support money to the department may be ordered.

(d) The provisions of AS 47.10.020 — 47.10.085 do not apply to driver's license proceedings under AS 28.15.185. The court shall im-

pose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings. (§ 4 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 64 SLA 1969; am § 6 ch 104 SLA 1971; am §§ 7, 8 ch 63 SLA 1977; am § 1 ch 104 SLA 1982; am § 5 ch 39 SLA 1985; am § 17 ch 50 SLA 1987; am § 6 ch 125 SLA 1988; am § 3 ch 130 SLA 1988; am § 6 ch 125 SLA 1990)

Effect of amendments. — The 1987 amendment inserted "AS 25.23.180(c) or" in (a)(2)(A)(iii) and made punctuation changes throughout the section.

The first 1988 amendment, in subsection (b), substituted "an offense specified in this subsection" for "a traffic offense, a fish and game statute or regulation violation under AS 16 or parks and recreational facilities violation under AS 41.21" in the second sentence and, in the first sentence, inserted "AS 11.76.105 relating to the purchase of tobacco by a minor" and made a series of minor punctuation changes.

The second 1988 amendment, effective September 1, 1988, added subsection (d).

The 1990 amendment substituted "possession" for "purchase" in subsection (b).

NOTES TO DECISIONS

Constitutionality. — The statutory scheme of this chapter is not so vague as to deprive parents of their procedural due process rights. R.C. v. State, Dep't of Health & Social Servs., 760 P.2d 501 (Alaska 1988).

Applicability of 1977 amendment. — All cases pending at the time of the enactment of the new children's statute by the 1977 acts are entitled to hearing under the new, rather than the old, standards. In re J.M., 573 P.2d 1376 (Alaska 1978).

In order to provide guidance to the superior court for the administration of juvenile justice, children adjudged dependent under the standards of former subsection (a)(5) of this section prior to its repeal in 1977 are entitled, on request, to a dispositional hearing under the standards of the newly-enacted subsection (a)(2)(C) of this section. In re J.M., 573 P.2d 1376 (Alaska 1978).

Children adjudged dependent under former (a)(5) of this section are entitled on request to an adjudicative hearing under the standards of subsection (a)(2)(C). In re C.L.T., 597 P.2d 518 (Alaska 1979).

Rehabilitation, rather than punishment, is the express purpose of juvenile jurisdiction. Mere confinement without treatment does not contribute to the goal of rehabilitation; such confinement constitutes cruel and unusual punishment. Rust v. State, 582 P.2d 134 (Alaska 1978).

Principal precept behind children's court concept is that a person under 18 years of age does not have mature judgment and may not fully realize the consequences of his acts, and that therefore he should not generally have to bear the stigma of a criminal conviction for the rest of his life. In re P.H., 504 P.2d 837 (Alaska 1972).

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under this section as it existed prior to its 1977 amendment. In re C.L.T., 597 P.2d 518 (Alaska 1979).

The phrase "under 18 years of age" refers to the age of the accused person at the time of the alleged offense. In re P.H., 504 P.2d 837 (Alaska 1972).

Jurisdiction dependent upon age of offender at time of act. — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, 576 P.2d 1352 (Alaska 1978).

Child is exempt from criminal prosecution until children's court waives jurisdiction. — From the moment a child commits an offense he is exempt from criminal prosecution until the children's court properly waives its jurisdiction. In re P.H., 504 P.2d 837 (Alaska 1972).

Deferring action against child until 18th birthday would frustrate purpose of juvenile courts. — To allow officials charged with the execution of the law to prosecute a child offender as a criminal

merely by deferring action until the child's 18th birthday would frustrate the purpose of juvenile courts. In re P.H., 504 P.2d 837 (Alaska 1972).

Serious constitutional issues would arise if the nature of the proceedings against a child offender were to depend on the arbitrary decision of law-enforcement officials. In re P.H., 504 P.2d 837 (Alaska 1972).

When person over or under certain age. — With respect to penal statutes, whether a person is over or under a certain age depends upon whether he has reached that particular anniversary of his birthday or not. State v. Linn, 363 P.2d 361 (Alaska 1961).

"Delinquent" status depends not upon a criminal conviction but upon proof that the juvenile committed acts which would have been criminal if committed by an adult. Rust v. State, 582 P.2d 134 (Alaska 1978).

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, 576 P.2d 1352 (Alaska 1978).

Former AS 17.12.110(d)(4) not in conflict. — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than $1000, was not in conflict with paragraph (a)(1) of this section and AS 47.10.080(b)(1). M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

State may interfere with certain conduct of children in need of aid. — Conduct of children alleged to be in need of supervision [see now children alleged to be in need of aid], such as running away from home and foster home placement, may constitutionally be interfered with by the state. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Interests to be protected by legislation regarding children in need of aid. — See L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Means chosen by the state to protect children are closely and substantially related to an appropriate government interest. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

The purpose of the supervision or treatment contemplated by the creation of the child in need of supervision [see now child in need of aid], and its predecessor noncriminal delinquency was reintegration of the child into her family and resumption of parental custody including parental control. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under subsection (a)(2)(C) determines that a child is in need of aid. In re D.C., 596 P.2d 22 (Alaska 1979).

A minor who has been adjudged a child in need of supervision [now child in need of aid] cannot be institutionalized under the Children's Code. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been declared a child in need of supervision [see now child in need of aid], who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Requisites to determination of delinquency. — Before a juvenile can be determined delinquent in a proceeding which could result in commitment to an institution, thus curtailing his freedom, certain requisites must be met. First, written notice of the charges must be given to the juvenile and his parents sufficiently in advance of the proceedings to allow preparation to meet the charges. Second, the child and his parents must be apprised of the right to counsel, including appointed counsel in case of indigency. Third, the child may exercise his privilege against self-incrimination. Lastly, absent a valid confession, the determination of delinquency cannot be sustained in the absence of sworn testimony, which is subject to cross-examination. E.J. v. State, 471 P.2d 367 (Alaska 1970).

Minor properly declared delinquent. — Where the lower court determined that a minor would not abide by any orders it entered regarding her supervision under former subsection (j) of AS 47.10.080, this behavior constituted willful criminal contempt of the court's authority; were she an adult, her actions

would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subject to those sanctions available for the correction of a delinquent minor's behavior. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Where the parents' interests are hostile to the child's, the parents may not select the child's attorney. Wagstaff v. Superior Court, 535 P.2d 1220 (Alaska 1975).

Then the child may retain the attorney of his choice or, in the alternative, ask the court to appoint an attorney for him. Wagstaff v. Superior Court, 535 P.2d 1220 (Alaska 1975).

And court must respect choice. — If the child has retained counsel, the court must respect the child's choice. Wagstaff v. Superior Court, 535 P.2d 1220 (Alaska 1975).

The required standard of proof has been increased from "a preponderance of the evidence" to "beyond a reasonable doubt" in the adjudicatory stages of at least those delinquency proceedings in which a child is charged with an act that would be a crime if committed by an adult. E.J. v. State, 471 P.2d 367 (Alaska 1970).

Privilege against self-incrimination. — See E.L.L. v. State, 572 P.2d 786 (Alaska 1977) (decided prior to the 1977 amendment to this section).

Violation of former law relating to purchase of intoxicating liquors by minors. — See Purdy v. United States, 16 Alaska 173, 146 F. Supp. 762 (D. Alaska 1956).

Prosecution for joyriding. — Subsection (b) of this section and former AS 28.35.010(d) demonstrated a clear legislative intent to exclude from the coverage and requirements of the juvenile code those cases involving alleged misdemeanor violations of Alaska's "joyriding" statute by persons under 18 years of age. State v. G.L.P., 590 P.2d 65 (Alaska 1979).

One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.R., 590 P.2d 65 (Alaska 1979).

Termination of parental rights due to abandonment. — In proceeding to terminate parental rights, although trial judge orally stated that he considered involuntary incarceration to constitute abandonment, where written findings of fact, submitted by state and signed by court, referred to parent's voluntary absence from October of 1980 to June of 1981 as the relevant conscious disregard of parental obligations, there was no reversible error. Nada A. v. State, 660 P.2d 436 (Alaska 1983).

Parental presence at all court proceedings is a prerequisite to conviction of a minor for a traffic offense, including driving while intoxicated. Aiken v. State, 730 P.2d 821 (Alaska Ct. App. 1987).

"Judicial proceeding related to a report made under this chapter". — The phrase "judicial proceeding related to a report made under this chapter" in AS 47.17.060 only refers to child protection proceedings under AS 47.10.010. State v. Wetherhorn, 683 P.2d 269 (Alaska Ct. App. 1984).

There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. Cooper v. State, 638 P.2d 174 (Alaska 1981).

Appeal after serving sentence. — If there remain collateral legal disabilities apart from the sentence, an appeal is not mooted even though the sentence has been served. E.J. v. State, 471 P.2d 367 (Alaska 1970).

Applied in In re S.D., 549 P.2d 1190 (Alaska 1976); K.T.E. v. State, 689 P.2d 472 (Alaska 1984); D.A.W. v. State, 699 P.2d 340 (Alaska 1985); A.H. v. State, 779 P.2d 1229 (Alaska 1989).

Quoted in In re P.N., 533 P.2d 13 (Alaska 1975); R.D.S.M. v. Intake Officer, 565 P.2d 855 (Alaska 1977); N.P.A. v. State, 604 P.2d 599 (Alaska 1979); E.A. v. State, 623 P.2d 1210 (Alaska 1981).

Stated in D.R.C. v. State, 646 P.2d 252 (Alaska Ct. App. 1982); D.E.D. v. State, 704 P.2d 774 (Alaska 1985); In re A.S., 740 P.2d 432 (Alaska 1987).

Cited in Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979); P.S. v. State, 655 P.2d 1319 (Alaska Ct. App. 1982); State v. R.H., 683 P.2d 269 (Alaska Ct. App. 1984); Brower v. State, 683 P.2d 290 (Alaska Ct. App. 1984); In re J.R.S., 690 P.2d 10 (Alaska 1984); In re J.R.B., 715 P.2d 1170 (Alaska 1986); Native Village of Nenana v. State, Dep't of Health & Social Servs., 722 P.2d 219 (Alaska 1986); In re S.C.Y., 736 P.2d 353 (Alaska 1987);

E.J.S. v. State, Dep't of Health & Social Servs., 754 P.2d 749 (Alaska 1988).

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 14-27; 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 16-33.

43 C.J.S., Infants, §§ 6, 7, 19, 31 et seq.

Another court's jurisdiction over a child as affected by assumption of jurisdiction by juvenile court. 11 ALR 147; 78 ALR 317; 146 ALR 1153.

Vagrancy of minors, 14 ALR 1507.

Constitutionality of statute which, for reformatory purposes, deprives parent of custody or control of child, 60 ALR 1342.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 ALR 657.

Marriage as affecting jurisdiction of juvenile court over delinquents or dependents, 14 ALR2d 336.

Homicide by juvenile as within jurisdiction of juvenile court, 48 ALR2d 662.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court, 89 ALR2d 506.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense. 66 ALR4th 985.

Sec. 47.10.020. Investigation and petition. (a) Whenever a person informs the court of the facts that bring a minor within this chapter, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken. Upon the receipt of the report, the court may informally adjust or dispose of the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts. Where the court informally adjusts or disposes of the matter, the minor may not be detained or taken into the custody of the court, and the matter shall be closed by the court upon adjustment or disposition.

(b) The petition and all subsequent pleadings shall be styled as follows: "In the matter of . . . ., a minor under 18 years of age." The petition may be executed upon the petitioner's information and belief, and must be verified. It must include the following information:

(1) the name, address and occupation of the petitioner, together with the petitioner's relationship to the minor, and the petitioner's interest in the matter;

(2) the name, age and address of the minor;

(3) a brief statement of the facts that bring the minor within this chapter;

(4) the names and addresses of the minor's parents;

(5) the name and address of the minor's guardian, or of the person having control or custody of the minor.

(c) If the petitioner does not know a fact required in this section, the petitioner shall so state in the petition. (§ 5 art I ch 145 SLA 1957)

NOTES TO DECISIONS

Distinctions between this section and AS 25.24.310. — See Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); Gerlach v. State, 699 P.2d 358 (Alaska Ct. App. 1985).

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 14-17, 20, 22 et seq.; 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 13-33.

43 C.J.S., Infants, §§ 6, 7, 19, 31 et seq.

Sec. 47.10.030. Summons and custody of minor. (a) After a petition is filed and after further investigation that the court directs, if the person having custody or control of the minor has not appeared voluntarily, the court shall issue a summons that

(1) recites briefly the substance of the petition;

(2) clearly states that at the hearing it is possible that parental rights and responsibilities may be terminated forever and that the minor may at the hearing be committed to the department for possible adoption; and

(3) directs the person having custody or control of the minor to appear personally in court with the minor at the place and at the time set forth in the summons.

(b) In all cases under this chapter the minor, each parent of the minor and the guardian of the minor shall be given notice adequate to give actual notice of the proceedings and the possibility of termination of parental rights and responsibilities, taking into account education and language differences that are known or reasonably ascertainable by the petitioner or the department. The notice of the hearing must contain all names by which the minor has been identified. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court by order directs. Proof of the giving of the notice shall be filed with the court before the petition is heard. The court may also subpoena the parent of the minor, or any other person whose testimony may be necessary at the hearing. A subpoena or other process may be served by a person authorized by law to make the service, and where personal service cannot be made, the court may direct that service of process be in a manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court directs.

(c) If the minor is in such condition or surroundings that the minor's welfare requires the immediate assumption of custody by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall at once take the minor into custody and make the temporary placement of the minor that the court directs. (§ 6 art I ch 145 SLA 1957; am § 1 ch 110 SLA 1960; am § 6 ch 104 SLA 1971; am § 9 ch 63 SLA 1977)

NOTES TO DECISIONS

Editor's notes. — RLR v. State, 487 P.2d 27 (Alaska 1971) and Doe v. State, 487 P.2d 47 (Alaska 1971), cited below, were decided prior to the 1977 amendment to this section, which rewrote subsection (b).

The child and his parents must receive notice which would be deemed adequate in a civil or criminal proceeding. These requirements suggest that Alaska civil and criminal rules should be looked to for techniques of service on children. RLR v. State, 487 P.2d 27 (Alaska 1971).

Personal service upon the child is required. Doe v. State, 487 P.2d 47 (Alaska 1971).

Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded. RLR v. State, 487 P.2d 27 (Alaska 1971); Doe v. State, 487 P.2d 47 (Alaska 1971).

And it must set forth the alleged misconduct with particularity. RLR v. State, 487 P.2d 27 (Alaska 1971).

One day's notice was insufficient to afford a reasonable time to prepare. Doe v. State, 487 P.2d 47 (Alaska 1971).

Waiving defects in process. — While some authorities hold that infants, even when represented by counsel, cannot waive defects in process and consent to jurisdiction over the person, such a rule unreasonably restricts the strategic choices open to a child represented by counsel. A no-waiver rule could be used as a delaying tactic by an unprepared prosecutor when process was not entirely correct. A child represented by competent counsel is about as fit as an adult to waive this sort of objection, which is usually beyond the ken of adult laymen as well as children. RLR v. State, 487 P.2d 27 (Alaska 1971).

Defect in process was waived by child's failure to raise it below. RLR v. State, 487 P.2d 27 (Alaska 1971).

Order terminating parental rights vacated because of inadequate notice. — Order terminating parental rights was vacated where the state, by merely publishing notice of the parental rights termination proceeding, failed to comply with the notice requirements of the Indian Child Welfare Act, 25 U.S.C. 1912(a), and subsections (a) and (b) of this section and the record did not establish actual notice so as to render that error harmless. In re L.A.M., 727 P.2d 1057 (Alaska 1986).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Collateral references. — Notice to parent, and hearing, before commitment of delinquent, dependent, or neglected children, 76 ALR 247.

Right to and appointment of counsel in juvenile court proceedings, 60 ALR2d 691.

Right of juvenile court defendant to be represented during court proceedings by parent, 11 ALR4th 719.

Sec. 47.10.040. Release of minor. A minor who is taken into custody may, in the discretion of the court and upon the written promise of the parent, guardian, or custodian to bring the minor before the court at a time specified by the court, be released to the care and custody of the parent, guardian, or custodian. The minor, if not released, shall be detained as provided by AS 47.10.140. The court may determine whether the father or mother or another person shall have the custody and control of the minor for the duration of the proceedings. If the minor is of sufficient age and intelligence to state desires, the court shall give consideration to the minor's desires. (§ 7 art I ch 145 SLA 1957; am § 10 ch 63 SLA 1977)

NOTES TO DECISIONS

A child has the right to remain free pending an adjudication that the child is delinquent, dependent, or in need of supervision [now delinquent or in need of aid], where the facts supporting the petition involve an act which, if committed by an adult, would be a crime, and where the court has been given reasonable assurance that the child will appear at future court proceedings. If the facts produced at the inquiry show that the child cannot return or remain at home, every effort must be made to place the child in a situation where his freedom will not be curtailed. Only if there is clearly no alternative available may the child be committed to a detention facility and deprived of his freedom. Doe v. State, 487 P.2d 47 (Alaska 1971).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Sec. 47.10.050. Appointment of guardian ad litem or attorney. (a) Whenever in the course of proceedings instituted under this chapter it appears to the court that the welfare of a minor will be promoted by the appointment of an attorney to represent the minor or an attorney or other person to serve as guardian ad litem, the court may make the appointment. Appointment of a guardian ad litem or attorney shall be made under the terms of AS 25.24.310.

(b) In all proceedings initiated under a petition for delinquency, a minor shall have the right to be represented by counsel and if indigent have counsel appointed by the court. The court shall appoint counsel in such cases unless it makes a finding on the record that the minor has made a voluntary, knowing, and intelligent waiver of the right to counsel and a parent or guardian with whom the child resides or resided before the filing of the petition concurs with the waiver. In cases in which it has been alleged that the minor has committed an act that would be a felony if committed by an adult, waiver of counsel may not be accepted unless the court is satisfied that the minor has consulted with an attorney before the waiver of counsel. (§ 8 art I ch 145 SLA 1957; am § 5 ch 167 SLA 1975; am §§ 11, 12 ch 63 SLA 1977)

Cross references. — For appointment of counsel, see CINA Rule 12 and Delinquency Rule 16; for guardians ad litem, see CINA Rule 11 and Delinquency Rule 15.

NOTES TO DECISIONS

Under Rule of Children's Procedure 12(c)(3), the presence of the guardian ad litem is required at a child hearing. In re C.L.T., 597 P.2d 518 (Alaska 1979).

Failure to conduct hearing in presence of child's counsel and guardian ad litem held harmless error. — See In re C.L.T., 597 P.2d 518 (Alaska 1979).

Cited in RLR v. State, 487 P.2d 27 (Alaska 1971); Cooper v. State, 638 P.2d 174 (Alaska 1981); M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Collateral references. — 39 Am. Jur. 2d, Guardian and Ward, § 17; 42 Am. Jur. 2d, Infants, § 173 et seq.

39 C.J.S., Guardian and Ward, §§ 20-29; 43 C.J.S., Infants, §§ 52, 54, 201, 222 et seq.

Recognition of foreign guardian as next friend or guardian ad litem. 94 ALR2d 211.

Who is minor's next of kin for guardianship purposes. 63 ALR3d 813.

Validity and efficacy of minor's waiver of right to counsel — modern cases. 25 ALR4th 1072.

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

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

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

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

Cross references. — For court rule covering waiver proceedings, see Delinquency Rule 20.

NOTES TO DECISIONS

I. General Consideration.
II. Amenability to Treatment.
III. Procedural Matters.

I. GENERAL CONSIDERATION.

Non-criminal treatment of child offenders is to be rule. — The statutory framework for dealing with child offenders contemplates that non-criminal treatment is to be the rule and adult criminal disposition the exception. In re P.H., 504 P.2d 837 (Alaska 1972).

Section provides means to determine amenability to treatment available for child offenders. — The waiver procedure set out in this section and in Rule of Children's Procedure 3 provides the means by which the children's court judge determines, prior to adjudicating the delinquency petition, that an accused child is not a suitable subject for the treatment available for child offenders. In re P.H., 504 P.2d 837 (Alaska 1972).

The court's authority to impose a penal sentence on a juvenile was limited under the strict procedures of subsections (a) and (d) and Children's Rule 3. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Findings necessary to justify waiver. — To justify waiver, the children's court judge must find, on sufficient evidence, that probable cause is established at the hearing for believing that the child committed the act with which he was charged in the petition and which if committed by an adult would constitute a crime and the child is not amenable to the treatment provided under this article. In re P.H., 504 P.2d 837 (Alaska 1972).

As a prerequisite to criminal prosecution, the children's court must find not only that the child is properly accused but also that he would not be receptive to the rehabilitative programs available to the court. In re P.H., 504 P.2d 837 (Alaska 1972).

The inability to predicate a lan for a defendant during the short time remaining before his 19th birthday coupled with the obvious need of treatment as disclosed by the record may be sufficient to justify a waiver to adult jurisdiction. In re P.H., 504 P.2d 837 (Alaska 1972).

The court may close out the case as a juvenile matter only upon finding cause to believe that the minor is delinquent and that the minor is not amenable to treatment. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

A court must find that there is probable cause to believe that the minor is delinquent and that the minor is not amenable to treatment before jurisdiction may be waived. In re J.H.B., 578 P.2d 146 (Alaska 1978).

There is no conflict between subsection (d) and AS 47.10.080(b)(1). In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The inconsistency between subsection (d) of this section and 47.10.080(b)(1) that existed prior to the 1977 amendments to these sections has been eliminated in that subsection (d) now provides that the determinative age is 20 and AS 47.10.080(b)(1) provides that the maximum limitation of confinement of minors is to the age of 20. In re F.S., 586 P.2d 607 (Alaska 1978).

Prosecution for joyriding. — One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.R., 590 P.2d 65 (Alaska 1979).

In proceedings under this section, even if a child's best chance for rehabilitation would be in a juvenile institution, waiver must be ordered when the evidence shows a likelihood that the child cannot be rehabilitated before reaching 20 years of age. D.E.P. v. State, 727 P.2d 800 (Alaska Ct. App. 1986).

Basis for finding amenability to treatment. — This section does not authorize a finding of amenability to treatment on the basis that rehabilitation will probably not occur if the minor is prosecuted as an adult. State v. J.D.S., 723 P.2d 1278 (Alaska 1986).

Applied in State v. Jensen, 650 P.2d 422 (Alaska Ct. App. 1982).

Quoted in Henson v. State, 576 P.2d 1352 (Alaska Ct. App. 1978); W.M.F. v. Johnstone, 711 P.2d 1187 (Alaska Ct. App. 1986).

Cited in [illegible] (Alaska Ct. App. 1977); State v. R.H., 683 P.2d 269 (Alaska Ct. App. 1984); Brower

v. State, 683 P.2d 290 (Alaska Ct. App. 1984); Shewey v. State, 739 P.2d 196 (Alaska Ct. App. 1987).

II. AMENABILITY TO TREATMENT.

Factors to be considered in judging seriousness of alleged offense. — In judging the seriousness of the alleged offense, the children's court judge may consider not only the type of crime charged but also the circumstances surrounding its commission, the factors leading to delinquency, history of delinquency, and facilities available for rehabilitation. In re P.H., 504 P.2d 837 (Alaska 1972).

Subsection (d) is clear on its face that age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The 1977 amendments of this section and 47.10.080 show that it is the legislature's intent that age 20 is the age to be used in determining the amenability issue. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Binding advance consent to treatment. — In order to give effect of the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The portion of the opinion in In re F.S., 586 P.2d 607 (Alaska 1978), that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The amenability decision rests in the sound discretion of the children's court judge. In re P.H., 504 P.2d 837 (Alaska 1972).

But the latitude afforded him is not unbounded. The proper exercise of that discretion must be predicated not only upon procedural regularity sufficient to satisfy the basic requirements of due process but also on a full inquiry into the amenability issue. In re P.H., 504 P.2d 837 (Alaska 1972).

The trial court was required to make an evidentiary record and make written findings of fact, as required by Children's Rule 3(h), as to each of these four factors enunciated in subsection (d). In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

These findings must be supported by substantial evidence. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Substantial evidence must be presented before jurisdiction may be waived. D.H. v. State, 561 P.2d 294 (Alaska 1977).

Based on these findings, the trial court, within its sound discretion, must make a decision as to the minor's amenability to treatment. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Factors to be considered in determining amenability. — Subsection (d) of this section suggests four factors which may be considered by the court when inquiring into the amenability issue: (1) the seriousness of the offense; (2) the delinquency of the minor; (3) the probable cause of the delinquent behavior; and (4) the facilities available for the treating of the minor. J.W.H. v. State, 583 P.2d 227 (Alaska 1978).

All four factors listed in subsection (d) need not be resolved against the child to justify waiver. Nor is there value in requiring the children's court to make an arithmetic calculation as to the weight to be given each factor. In re P.H., 504 P.2d 837 (Alaska 1972).

But there must be a thorough examination of the child, his background and alternative strategies of rehabilitation short of adult criminal treatment. Lacking such an examination, the children's court has no evidentiary basis for the decision. In re P.H., 504 P.2d 837 (Alaska 1972); D.H. v. State, 561 P.2d 294 (Alaska 1977).

Though the standards for determining amenability to treatment through the children's court lack explicit definition, it is clear from the statute that the court in most cases must go beyond the circumstances surrounding the alleged delinquent acts and the age of the child. In re P.H., 504 P.2d 837 (Alaska 1972).

Even though the children's court may have independent [illegible] determining children's treatment programs and facili-

ties, it is necessary to make the existence and evaluation of such programs a part of the waiver proceedings to enable proper review by the supreme court. In re P.H., 504 P.2d 837 (Alaska 1972).

At a waiver hearing there must be a thorough examination of (1) the probable cause for believing that the child committed the act with which he was charged and (2) the amenability of the child to juvenile treatment. R.J.C. v. State, 520 P.2d 806 (Alaska 1974).

In the absence of such an examination there is no evidentiary basis for a waiver decision. R.J.C. v. State, 520 P.2d 806 (Alaska 1974); J.W.H. v. State, 583 P.2d 227 (Alaska 1978).

III. PROCEDURAL MATTERS.

The record must disclose the existence and evaluation of the available children's treatment programs in all future cases in order to establish the validity of the hearing. R.J.C. v. State, 520 P.2d 806 (Alaska 1974).

Waiver decision without testimony of psychologist or psychiatrist. — A waiver of juvenile jurisdiction decision can be made without the testimony of a psychologist or psychiatrist, since such testimony is germane to at most two of the four factors set out in subsection (d) of this section, and not all four of those facts need be determined adversely to the youth to warrant waiver of juvenile jurisdiction. In re J.R., 616 P.2d 865 (Alaska 1980).

Compulsory psychiatric evaluation constituting error. — Compelling a juvenile to submit to a psychiatric evaluation for the purpose of determining his amenability to treatment as a child was reversible error, where admission of the psychiatric evidence against him at the waiver hearing helped to pave the way for the state to prosecute him for murder as an adult, thereby exposing him to potential punishment far more severe than could otherwise have been visited upon him. R.H. v. State, 777 P.2d 204 (Alaska Ct. App. 1989).

The constitutional prerequisites for a valid waiver of juvenile court treatment are reflected in Rule of Children's Procedure 3 which guarantees the child a hearing before the children's court judge after adequate notice thereof, counsel at the hearing who has had access to records and reports relevant to issues before the court, and a statement of reasons accompanying the waiver order. In re P.H., 504 P.2d 837 (Alaska 1972).

Compliance with Rule of Children's Procedure 3(h) was essential to insure that the waiver hearing was not a "mere ritual" and to provide a meaningful basis for review. R.J.C. v. State, 520 P.2d 806 (Alaska 1974).

The waiver hearing is a critically important stage in criminal proceedings against a child. In re P.H., 504 P.2d 837 (Alaska 1972).

At stake at a child's waiver hearing is the statutory promise of special rehabilitative treatment in lieu of the harsher sanction of criminal conviction. Because the consequences of waiver are great, the hearing must measure up to the essentials of due process and fair treatment. In re P.H., 504 P.2d 837 (Alaska 1972).

The investigation at a waiver hearing cannot be a mere ritual. In re P.H., 504 P.2d 837 (Alaska 1972).

There must be a hearing which measures up to the essential of due process and fair treatment. R.J.C. v. State, 520 P.2d 806 (Alaska 1974); J.W.H. v. State, 583 P.2d 227 (Alaska 1978).

The right of confrontation applies to children's proceedings in which the child is charged with misconduct for which he may be incarcerated. In re P.H., 504 P.2d 837 (Alaska 1972).

Waiver without hearing is denial of due process. — To waive children's court jurisdiction without a hearing or opportunity for adversary presentation is a denial of fair process. In re P.H., 504 P.2d 837 (Alaska 1972).

As is waiver without substantial evidence of unamenability to treatment. — To waive children's court jurisdiction without substantial evidence having been presented that the child is unamenable to juvenile rehabilitation programs is denial of fair process. In re P.H., 504 P.2d 837 (Alaska 1972).

There must be a thorough examination made in determining probable cause and amenability to treatment. Without such an examination, there is no evidentiary basis for a waiver decision. W.M.F. v. State, 723 P.2d 1298 (Alaska Ct. App. 1986).

A minor may move to waive children's court jurisdiction pursuant to subsection (a). M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

A minor under the age of 18 cannot "elect" to be tried as an adult. M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Whe[illegible] no waiver hearing has been

conducted, the court has no authority to sentence a delinquent child as an adult. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Before treating a juvenile as an adult, the court must first conduct a waiver hearing. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Option available to prosecution absent waiver. — A proceeding in children's court, which is limited to the dispositions set forth in AS 47.10.080(b), is the only option available to the prosecution absent waiver under subsection (a) of this section, and the standards established in subsection (a) are sufficiently clear to prevent arbitrary enforcement. M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

But hearing is not criminal in nature. — A waiver hearing is not criminal in nature and is dispositional, rather than adjudicatory. N.P.A. v. State, 604 P.2d 599 (Alaska 1979).

And right to attend may be waived. — Although a minor had a constitutional right to attend her waiver hearing, she waived that right when she voluntarily failed to appear at the hearing by refusing to waive extradition from another state. N.P.A. v. State, 604 P.2d 599 (Alaska 1979).

The proper standard of proof as to the amenability of a minor to treatment is the "preponderance of the evidence" standard. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980); M.K. v. State, 744 P.2d 1178 (Alaska Ct. App. 1987).

Use of the "preponderance of the evidence" standard as the standard of proof in a waiver hearing to show nonamenability of a juvenile to treatment is not violative of due process. W.M.F. v. State, 723 P.2d 1298 (Alaska Ct. App. 1986).

The state bears the burden of establishing unamenability by a preponderance of the evidence. P.K.M. v. State, 780 P.2d 395 (Alaska Ct. App. 1989).

Probable cause determination cannot be based on hearsay testimony. — The probable cause determination of a court at a waiver hearing concerning juveniles cannot be based upon hearsay testimony. In re P.H., 504 P.2d 837 (Alaska 1972).

Exclusion of testimony held proper. — Although proffered testimony was relevant to the amenability issue, the superior court did not abuse its discretion in excluding it because its prejudicial impact outweighed its probative value. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Insufficient evidence. — Where the court had little information concerning the probable cause of the minor's delinquent behavior, it was aware only of the nature of the offenses, of the fact that the minor was apparently not in need of funds, and of his statement that he regarded the commission of the crimes as a game, this information was insufficient to satisfy the requirements of this subsection. D.H. v. State, 561 P.2d 294 (Alaska 1977).

Waiver hearing did not comply with the standards set forth in this section and Rule of Children's Procedure 3. R.J.C. v. State, 520 P.2d 806 (Alaska 1974).

Trial court's conclusion that minor was amenable to treatment was abuse of discretion. — See In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Minor unamenable to treatment. — The court did not abuse its discretion in determining that a juvenile offender who had committed three murders while stealing money from her victims was not amenable to treatment by age 20. W.M.F. v. State, 723 P.2d 1298 (Alaska Ct. App. 1986).

After taking into account the seriousness of the offense, defendant's current age, and the inconclusive psychiatric and psychological testimony, the trial court's decision that defendant was unamenable to treatment was sustained. M.K. v. State, 744 P.2d 1178 (Alaska Ct. App. 1987).

Waiver of juvenile jurisdiction over an 18 1/2 year old individual was not an abuse of discretion, where he had committed several property offenses which would be felonies if committed by an adult, and the evidence supported the conclusion that he was not amenable to treatment. D.R.D. v. State, 767 P.2d 207 (Alaska Ct. App. 1989).

Finding of unamenability to treatment not error. — Superior court did not abuse its discretion in finding that defendant was not amenable to treatment as a minor. C.G.C. v. State, 702 P.2d 648 (Alaska Ct. App. 1985).

Continuance denied. — The trial court did not err in failing to grant defendant a nine- to 12-month continuance to permit further psychiatric and psychologi-

cal treatment in order to test his amenability to juvenile treatment. M.K. v. State. 744 P.2d 1178 (Alaska Ct. App. 1987).

Sec. 47.10.070. Hearings. The court may conduct the hearing in an informal manner in the courtroom or in chambers. A hearing may be held before a young adult advisory panel in ac[illegible]rdance with AS 47.10.075. The court shall give notice of the hearing to the department and it may send a representative to the hearing. The court shall also transmit a copy of the petition to the department. The representative of the department may also be heard at the hearing. The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing, if their attendance is compatible with the best interests of the minor. Nothing in this section may be applied in such a way as to deny a child's rights to a public trial and to a trial by jury. (§ 10(1) art I ch 145 SLA 1957; am § 1 ch 49 SLA 1966; am § 53 ch 71 SLA 1972)

NOTES TO DECISIONS

Constitutionality. — See In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), discussing due process requirements in juvenile delinquency proceedings.

Constitutional requirements apply to children. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

Hence, states must afford juveniles due process of law in delinquency proceedings that might result in the child's incarceration, and accordingly juveniles must be afforded the right to be represented by counsel, must be given proper and timely notice, must be given the right of confrontation and cross-examination of witnesses, and afforded the pri[illegible]ge against self-incrimination. Doe v. [illegible]ate, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

While the U.S. Supreme Court has not held that children must be afforded due process rights in the pre-adjudication stages of the juvenile process, the Alaska supreme court believes that due process safeguards are necessary not only at the adjudicative hearing, but at any stage which may result in deprivation of the child's liberty. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

The extension to children of fundamental constitutional rights does not mean a total subsitution of the adult criminal model for the present children's court system. Doe v. State, 487 P.2d 47 (Alaska 1971).

The problems of pre-adjudication treatment of juveniles are unique to the juvenile process; hence, what is held with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Due process standards must be observed at a detention inquiry since it may result in the deprivation of the child's liberty. Due process requires at the very least that detention orders be based on competent, sworn testimony, that the child have the right to be represented by counsel at the detention inquiry, and that the detention order state with particularity the facts supporting it. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Incarceration, when applied to children, is a taking of liberty under the 14th amendment, regardless of benevolent-sounding labels. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The due process [illegible]ause of the 14th amendment applies when a child is charged with misconduct for which he may be incarcerated in an institution, regardless of the labels of the adjudication and institution, so the child is entitled to notice of charges, counsel, confrontation

and cross-examination, and the privilege against self-incrimination. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The right to grand jury indictment is not so fundamental that due process is offended by alternate methods for instituting children's proceedings where the child is charged with having violated a criminal statute. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Children who are charged with acts which would be chargeable only by grand jury indictment, if committed by an adult, need not be indicted by a grand jury. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Children are constitutionally entitled to jury trial in the adjudicative stage of a delinquency proceeding. However, due to the uniqueness of some facets of the procedures governing children's court proceedings and the potential damage which may accrue to the child by a public trial, the child should first consult with his counsel and his parents or guardian when appropriate, and then affirmatively assert the right to a trial by jury before it is finally granted. RLR v. State, 487 P.2d 27 (Alaska 1971). But see McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), in which it was held that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement (decided prior to 1972 amendment).

Whenever a child in a delinquency proceeding is charged with acts which would be a crime, subject to incarceration if committed by an adult, Alaska Const., art. I, § 11, guarantees him the right to jury trial. To the extent In re White, 445 P.2d 813 (Alaska 1968) [subsequently overruled, In re G.K., 497 P.2d 914 (Alaska 1972)] is inconsistent with this opinion, it is overruled. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The purposes of the right to jury trial, such as protection against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge, apply as much in children's cases as in adults' cases. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

If the child waives jury trial, the state may not require it, but jury trial shall be provided only on demand. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The Hammonds test of waiver [Hammonds v. State, 442 P.2d 39 (Alaska 1968)], applies to infants as well as adults. The consequences of application will differ for infants, because some decisions can be "knowingly and intelligently" made only by persons of fuller knowledge and maturity. An infant not advised by an attorney could make few knowledgeable and intelligent decisions about whether to waive rights in judicial proceedings. On the other hand, in areas where an adult ordinarily delegates to his attorney decision-making authority, as in deciding whether to object to introduction of evidence, the competence of the attorney rather than of the client generally determines whether waivers satisfy the Hammonds criteria. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

The right to counsel extends to children charged with delinquency. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

A juvenile must be afforded the right to be represented by counsel at the delinquency proceeding, and a denial of that right violates due process. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

Right to reasonable time to prepare for trial. — It is unquestionable that the right to the assistance of counsel of necessity includes the concomitant right to have a reasonable time in which to prepare for trial. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

While an adult defendant in a criminal case must be brought to trial within a reasonable time, due process requires that he may not be brought to trial too soon. He must be given a reasonable time to consult with his counsel and to prepare his defense. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

This section provides for the exclusion of the public from children's hearings. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

But such provision involves only persons whose presence is not desired by child. — The area of discretion in the rule, where the court may refuse to open the hearing, involves persons whose presence is not desired by the child. RLR v. State, 487 P.2d 27 (Alaska 19[illegible] [illegible] prior to 1972 amendment).

It is an abuse of discretion for the court to refuse admittance to individuals whose

presence is favored by the child, except in special circumstances such as the unavailability of a courtroom sufficiently large to hold all the individuals whose presence is sought. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

If the child or his guardian ad litem wants the press, friends, or others to be free to attend, then the hearing must be open to them. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

As children are guaranteed the right to a public trial by the Alaska Constitution. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

Due process requires that children have the right to a public trial by jury where they are charged with acts which would be a crime if committed by an adult. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

The fundamental constitutional right of public trial by jury must be afforded children in delinquency adjudication proceedings, in spite of the possible interference with the benevolent motives of the children's court system which have, in the past, justified denial of those rights. Doe v. State, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

The reasons for the constitutional guarantees of public trial apply as much to juvenile delinquency proceedings as to adult criminal proceedings. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

Delinquency must be proved beyond a reasonable doubt under the due process clause of the 14th amendment. RLR v. State, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

"Compatible". — In the absence of contrary authority, it is appropriate to accord the word "compatible" its usual meaning. W.M.F. v. Johnstone, 711 P.2d 1187 (Alaska Ct. App. 1986).

Cited in In re P.N., 533 P.2d 13 (Alaska 1975); M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Collateral references. — Power of juvenile court to require testimony by children. 151 ALR 1229.

Applicability of rules of evidence in juvenile delinquency proceedings. 43 ALR2d 1128.

Degree of proof in juvenile delinquency proceedings. 43 ALR2d 1138.

Sec. 47.10.072. Access to hearing by victim. (a) If a crime was committed by a minor who is scheduled for a hearing under AS 47.10.070, the victim may request from the court permission to attend the hearing. If the victim requests, the department shall provide technical assistance to the victim in preparing a written submission to the court requesting access to the hearing. The department shall make reasonable efforts to inform victims of the availablilty of this assistance.

(b) If more than one person who qualifies as a victim under AS 12.55.185 makes a request, the commissioner of health and social services shall designate one person for purposes of receiving the notice and exercising the rights granted by this section.

(c) In this section, "victim" has the meaning given in AS 12.55.185. (§ 24 ch 59 SLA 1989)

Sec. 47.10.075. Young adult advisory panels. (a) Unless the minor objects, the court may select a young adult advisory panel to hear the case and advise the court of a recommended judgment and order. The court may consider any of the panel recommendations in making its judgment and order in the case.

(b) The principal of each high school shall submit annually to the court a list of the students enrolled in grades 10, 11 and 12. The court shall determine the method of selecting the members of each panel.

(c) A student shall be excused from attending school while serving as a panel member. A student may not serve more than once each year on a panel.

(d) A student shall be excused from service as a panel member if the student submits a written request to the court indicating the reason for not wishing to serve. (§ 2 ch 49 SLA 1966)

Legislative history reports. — For report on ch. 49, SLA 1966, see 1966 House Journal, p. 52.

Sec. 47.10.080. Judgments and orders. (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent or a child in need of aid.

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.10.200;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the department and placed on probation, to be supervised by the department, and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(4) order the minor to make suitable restitution in lieu of or in addition to the court's order under (1), (2) or (3) of this subsection.

(5) order the minor committed to the department for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed.

(c) If the court finds that the minor is a child in need of aid, it shall

(1) order the minor committed to the department for placement in an appropriate setting for a period of time not to exceed two years or in any event past the date the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; the department may transfer the minor, in the minor's best interests, from one placement setting to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer;

(2) order the minor released to the minor's parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and

treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor, but the court may dispense with the department's supervision if the court finds that the adult to whom the minor is released will adequately care for the minor without supervision; the department's supervision may not exceed two years or in any event extend past the date the minor reaches age 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(3) by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the parental conduct is likely to continue to exist if there is no termination of parental rights, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, and the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child.

(d) An order issued under (c)(3) of this section authorizes the commissioner of health and social services or a designee or the guardian of the person of the child to consent to the adoption of the child.

(e) If the court finds that the minor is not delinquent or a child in need of aid, it shall immediately order the minor released from the department's custody and returned to the minor's parents, guardian, or custodian, and dismiss the case.

(f) A minor found to be delinquent or a child in need of aid is a ward of the state while committed to the department or the department has the power to supervise the minor's actions. The court shall review an order made under (b) or (c)(1) or (2) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. If annual review under this subsection would arise within 90 days of the hearing required under (*l*) of this section, the court may postpone review under this subsection until the time set for the hearing. The department, the minor, the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel

shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

(g) No adjudication under this chapter upon the status of a child may operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court, nor does the commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state.

(h) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings that result in the release of the minor.

(i) A minor, the minor's parents or guardian acting on the minor's behalf, or the department may appeal a judgment or order, or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter.

(j) *[Repealed, § 29 ch 63 SLA 1977.]*

(k) In making its order under (c) of this section, the court shall consider the fact, if it is a fact, that the minor was being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

(*l*) Within 18 months after the date a child is initially taken into custody by the department under AS 47.10.142(c) or committed to the custody of the department under (b)(3), (c)(1), or (c)(3) of this section, or 47.10.230(c), the court shall hold a hearing to review the placement and services provided and to determine the future status of the minor. The court shall make appropriate written findings, including findings related to the following;

(1) whether the child should be returned to the parent;

(2) whether the child should remain in out-of-home care for a specified period;

(3) whether the child should remain in out-of-home care on a permanent or long-term basis because of special needs or circumstances;

(4) whether the child should be placed for adoption or legal guardianship.

(m) Within 60 days after the date a child is removed from the child's home by the department, the department shall notify the appropriate local citizen out-of-home care review panel established under AS 47.10.420.

(n) Within 60 days after a court orders a child committed to the department under (c) of this section and at a review under (f) or (l) of

this section, the department shall inform the parties about the local citizen out-of-home care review panel established under AS 47.10.420. (§ 10(2) art I ch 145 SLA 1957; am § 2 ch 110 SLA 1960; am § 2 ch 118 SLA 1962; am § 1 ch 40 SLA 1967; am §§ 1-4 ch 27 SLA 1970; am §§ 12-15 ch 245 SLA 1970; am § 6 ch 104 SLA 1971; am §§ 6, 7 ch 1 SLA 1972; am §§ 1, 2 ch 125 SLA 1974; am §§ 14-18, 29 ch 63 SLA 1977; am § 6 ch 86 SLA 1979; am §§ 4, 5 ch 117 SLA 1990)

Effect of amendments. — The 1990 amendment, effective July 1, 1990, added the third sentence in subsection (f) and added subsections (l)-(n).

NOTES TO DECISIONS

I. General Consideration.
II. Delinquent Minor.
III. Child in Need of Aid.

I. GENERAL CONSIDERATION.

Each category of children mandates differences regarding content of dispositional orders. — Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children for purposes of administering Alaska children's laws. Of controlling significance is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Least restrictive alternative approach. — Under the "least restrictive alternative" approach, the court must consider and reject less restrictive alternatives prior to the imposition of more restrictive alternatives. The state has the burden of proving that less restrictive alternatives are inappropriate by a preponderance of the evidence. In re J.H., 758 P.2d 1287 (Alaska Ct. App. 1988).

To determine the least restrictive alternative in a given case, the court must consider, among other things, the seriousness of the offense, the degree of the child's culpability, the totality of the underlying circumstances in the case, and the child's prior record. In re J.H., 758 P.2d 1287 (Alaska Ct. App. 1988).

Superior court erred in concluding that institutionalization was the "least restrictive alternative," where there was no substantial evidence to warrant a conclusion that the child's treatment needs could not be successfully addressed by residential treatment. In re J.H., 758 P.2d 1287 (Alaska Ct. App. 1988).

The only instance under Alaska children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state, or any of its political subdivisions, and in turn has been adjudged a delinquent minor. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

The legislature has authorized institutionalization only where the child is found to be a delinquent minor. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Findings insufficient to sustain order institutionalizing juvenile. — See R.P. v. State, 718 P.2d 168 (Alaska Ct. App. 1986).

Review of placement decision. — The superior court has the authority to review the decision of the department to determine if the placement is in the best interest of the minor, but in reviewing a decision of the department, the superior court may not substitute its judgment for the judgment of the department; since the legislature has committed the decision of placement to the department's discretion, the question for the court is whether the agency abused its discretion. State, Dep't of Health & Social Servs. v. A.C., 682 P.2d 1131 (Alaska Ct. App. 1984).

Jurisdiction dependent upon age of offender at time of act. — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, 576 P.2d 1352 (Alaska 1978).

Option available to prosecution absent waiver under AS 47.10.060(a). — A proceeding in children's court, which is limited to the dispositions set forth in AS

47.10.080(b), is the only option available to the prosecution absent waiver under AS 47.10.060(a), and the standards established in that section are sufficiently clear to prevent arbitrary enforcement. M.O W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, 576 P.2d 1352 (Alaska 1978).

Section is maximum sentencing statute. — Statutes requiring release upon a specified birthday are, in effect, maximum sentencing statutes. Davenport v. McGinnis, 522 P.2d 1140 (Alaska 1974).

Sentence reduction to 19 years of age not retroactive. — There was nothing in the amendatory legislation to this section that indicated an intention that the sentence reduction should operate retrospectively. Davenport v. McGinnis, 522 P.2d 1140 (Alaska 1974).

There is no conflict between subsection (b)(1) and AS 47.10.060(d). In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Effect of denying petition for extension of custody. — Where defendant proposed to return child in state custody to her natural mother and sought extension of state custody to accomplish this gradually, a native village council argued that denial of department's petition for an extension of custody would not require the superior court then to return the child to her mother, but rather that under subsection (e) the court could release the child to the child's parents under the tribal court adoption order; however, it was held that the superior court correctly concurred in the state's position that, absent an extension, the child must be returned to her natural mother. In re A.S., 740 P.2d 432 (Alaska 1987).

Parental right to custody and control is not absolute. — While a parent has a right to the care, custody and control of his or her children, this right is not absolute, and "courts have become increasingly aware of the rights of children." The Alaska legislature has struck a balance between these potentially competing rights by requiring the state to prove its allegations by clear and convincing evidence in parental rights termination cases. Once this burden of proof has been met, however, the statute mandates a termination. In re D.C., 596 P.2d 22 (Alaska 1979).

Section not in conflict with Indian Child Welfare Act. — The application of the clear and convincing standard to the findings that a child is in need of aid as a result of parental conduct and that the parental conduct is likely to continue does not conflict with section 1912(f) (25 U.S.C. § 1912(f)) of the Indian Child Welfare Act (ICWA). Section 1912(f) looks to likely future harm to the child, requiring only a finding beyond a reasonable doubt of likely harm to the child with continued custody by the parent or Indian custodian. In contrast, this section is concerned with the present condition of the child and the likely future conduct of the parent and requires a finding by clear and convincing evidence that the child is in need of aid as a result of parental conduct and that the parental conduct that placed the child in need of aid is likely to continue. The Alaska statute requires findings additional to that required by the ICWA, thus providing a level of protection to the parental rights beyond that provided by the ICWA, and is not preempted by the ICWA. In re J.R.B., 715 P.2d 1170 (Alaska 1986).

Peremptory challenge procedure inapplicable to juvenile proceedings. — While juvenile proceedings have some of the characteristics of both civil and criminal actions, they are basically different from both, and the words "civil or criminal" as used in AS 22.20.022 must be strictly construed. The trial judge was correct in holding that peremptory challenge procedure applied only to civil and criminal actions and not to juvenile proceedings. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Nor to justify dispensing with constitutional safeguards. — The benevolent social theory supposedly underlying children's court acts does not furnish justification for dispensing with constitutional safeguards. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

The right of confrontation is paramount to the state's policy of protecting a juvenile offender. Davis v. State,

415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

But state's interest in secrecy of juvenile adjudications need not always fall before confrontation right. — See Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Prosecution witness impeachable by cross-examination for bias from probationary status as juvenile delinquent. — The confrontation clause requires that a defendant in a criminal case be allowed to impeach the credibility of a prosecution witness by cross-examination directed at possible bias deriving from the witness's probationary status as juvenile delinquent although such an impeachment would conflict with a state's asserted interest in preserving the confidentiality of juvenile adjudications of delinquency. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Whatever temporary embarrassment might result to a prosecution witness or his family by disclosure of his juvenile record — if the prosecution insisted on using him to make its case — is outweighed by petitioner's right to probe into the influence of possible bias on the testimony of a crucial identification witness. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The state cannot, consistent with right of confrontation, require the defendant to bear the full burden of vindicating the state's interest in the secrecy of juvenile criminal records. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The United States supreme court has held that the constitutional right of confrontation required that defense counsel be allowed to investigate the potential bias of a crucial prosecution witness, even where that potential bias arose out of a juvenile adjudication and its resultant probationary status. Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

The United States supreme court concluded that Alaska's interest in protecting the anonymity of the juvenile offender was outweighed by the more critical need to afford a criminal defendant reasonable inquiry into the motives of prosecution witnesses. Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Conflict between section and decision in Davis v. Alaska is superficial. — The conflict between this section and the supreme court's decision in Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is only superficial. Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Since disclosure required because of probationary status, not juvenile adjudication. — The constitutional requirement of disclosure in the facts in Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is created not by the juvenile adjudication itself but by the probationary status of the juvenile at the time of Davis' trial, with its potential for motivating false testimony. Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Where the witness was not on juvenile probation, it cannot be seriously argued that the fact of previous juvenile convictions, standing alone, provided any inference of potential bias. Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

State adjudications directed solely at credibility do not conflict with confrontation right. — Juvenile adjudications which are stale by Alaska's standards and directed solely at general credibility rather than bias are generally not sufficiently probative to create a genuine conflict with the defendant's right of confrontation. Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Where the attempted impeachment was of general credibility by proof of prior "convictions," the probative value of this type of evidence is considerably less than that which suggests false or distorted testimony because of bias, and the need to confront a witness with such evidence is correspondingly less. Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

As a general rule, the trial courts could properly refuse evidence of stale convictions or juvenile adjudications where these were offered for the purpose of discrediting the witness generally rather than to show some specific potential for bias or prejudice toward the defendant. Thomas v. State, 522 P.2d 528 (Alaska 1974).

Privilege against self-incrimination. — When a person under the age of 18 years violated former AS 47.10.010(a)(1), he could be adjudged a "delinquent minor," one possible consequence of which adjudication was commitment to a juvenile facility until the age of 19 [now 20]. Moreover, if there was probable cause to believe the minor was delinquent and the court found that he was not amenable to treatment as a juvenile, he could be prosecuted as if he were an adult. Thus, there was always some danger of incarceration, or other criminal sanctions, when a child committed an act which would have been a crime if committed by an adult. Under such circumstances a child had a privilege against self-incrimination. E.L.L. v. State, 572 P.2d 786 (Alaska 1977).

Subsection (g) provides in part that a juvenile offender may not be considered a criminal by reason of the adjudication, nor may the adjudication be afterward deemed a conviction. Gonzales v. State, 521 P.2d 512 (Alaska), cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

A judge cannot consider a juvenile offense as a criminal conviction for the purpose of prescribing a mandatory sentence. Berfield v. State, 458 P.2d 1008 (Alaska 1969).

The judge's consideration of factors relating to accused's life, characteristics, background and behavior prior to reaching the age of 18 years did not mean that he considered accused a criminal or that he was using the juvenile offenses as criminal convictions in determining the sentence to impose. Berfield v. State, 458 P.2d 1008 (Alaska 1969).

Consideration of the juvenile record is proper by the court imposing a sentence upon an adult offender. Penn v. State, 588 P.2d 288 (Alaska 1978).

Use of the juvenile history of the offender in sentencing proceedings does not amount to the use of those proceedings as evidence against the offender within the proscription of such a statute as this section. Penn v. State, 588 P.2d 288 (Alaska 1978).

When sentence determined. — The sentence which may be imposed upon a convicted adult is determined as of the time of the final judgment of conviction, or as of the time of commission of the offense. These rules have been applied to juvenile sentencing. Davenport v. McGinnis, 522 P.2d 1140 (Alaska 1974).

Restitution. — Superior court could properly require minor to pay restitution for jewelry which was taken during a burglary which he admitted and for which the court adjudicated him a delinquent, where he did not contest the fact that his participation in the burglary made him legally accountable as an accomplice of the theft of the jewelry. J.M. v. State, 786 P.2d 923 (Alaska Ct. App. 1990).

Review of custody orders. — The new children's law, as a result of the 1977 acts, provides for review of custody orders annually or more often if good cause is shown. In re J.M., 573 P.2d 1376 (Alaska 1978).

Standard of review. — The factual findings supporting the trial court's determination that a minor is a child in need of aid will not be overturned on review unless clearly erroneous. A.H. v. State, 779 P.2d 1229 (Alaska 1989).

Appeal of detention order. — Under this section and Children's Rule 29(a), a minor who is detained may appeal his detention order. A.M. v. State, 653 P.2d 346 (Alaska Ct. App. 1982).

Appellants are authorized to bring juvenile bail appeals under App. R. 207 to ensure that juvenile detention hearings are not insulated from review. A.M. v. State, 653 P.2d 346 (Alaska Ct. App. 1982).

Superior court did not exceed its jurisdiction in requiring the Department of Health and Social Services to designate a parenting class and urinalysis center for the child's father, and in ordering the department to encourage contacts between the child and her mother, where the department was merely ordered to implement its chosen programs and was not required to make any particular placement or post-disposition treatment decision. In re A.B., 791 P.2d 615 (Alaska 1990).

Appeal from detention order dismissed as untimely. — See A.M. v. State, 653 P.2d 346 (Alaska Ct. App. 1982).

Appellate jurisdiction. — AS 22.05.010 places final appellate jurisdiction in all cases in the supreme court. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Applied in L.A.M. v. State, 547 P.2d 827 (Alaska 1976); Adams v. Ross, 551 P.2d 948 (Alaska 1976); D.H. v. State, 561 P.2d 294 (Alaska 1977); R.N. v. State, 770 P.2d 301 (Alaska Ct. App. 1989); P.R.J. v. State, 787 P.2d 123 (Alaska Ct. App. 1990).

Quoted in Davis v. State, 499 P.2d 1025 (Alaska 1972).

Stated in In re G.K., 497 P.2d 914 (Alaska 1972).

Cited in Elliason v. State, 511 P.2d 1066 (Alaska 1973); D.L.J. v. W.D.R., 635 P.2d 834 (Alaska 1981); S.O. v. W.S., 643 P.2d 997 (Alaska 1982); In re J.R.S., 690 P.2d 10 (Alaska 1984); Coney v. State, 699 P.2d 899 (Alaska Ct. App. 1985); In re S.C.Y., 736 P.2d 353 (Alaska 1987).

II. DELINQUENT MINOR.

Standards for use in choosing alternatives under subsection (b). — See R.P. v. State, 718 P.2d 168 (Alaska Ct. App. 1986).

Where a delinquent child was sentenced for a fixed time period and ordered to an adult institution, this amounted to a penal sentence as opposed to the juvenile disposition required under subsection (b)(1). B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Court cannot place child in particular institution. — Under this section as amended, the court no longer has discretion to order the delinquent child placed in a particular institution. The court only has authority to commit the child to the department, which then places the child. B.A.M. v. State, 528 P.2d 437 (Alaska 1974); A.A. v. State, 538 P.2d 1004 (Alaska 1975).

Authority to order placement of delinquent child. — In enacting paragraph (b)(3), the legislature intended for the department, not the court, to make the decisions concerning placement of the minor. State, Dep't of Health & Social Servs. v. A.C., 682 P.2d 1131 (Alaska Ct. App. 1984).

Paragraph (b)(3) of this section provides the court authority to order the delinquent minor placed on probation to the Department of Health and Social Services; it is then up to the department to determine whether the minor should be placed with his parents or in another setting. State, Dep't of Health & Social Servs. v. A.C., 682 P.2d 1131 (Alaska Ct. App. 1984).

Where a delinquent child was under the age of 18 at the time the acts of delinquency were committed, he is considered a minor for the purposes of adjudication and disposition. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The inconsistency between AS 47.10.060(d) and subsection (b)(1) of this section that existed prior to the 1977 amendments to these sections has been eliminated in that AS 47.10.060 (d) now provides that the determinative age is 20 and subsection (b)(1) provides that the maximum limitation of confinement of minors is 20. In re F.S., 586 P.2d 607 (Alaska 1978), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

Binding advance consent to treatment. — In order to give effect to the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. State v. F.L.A., 608 P.2d 12 (Alaska 1980).

A minor may bindingly consent to an additional period of supervision as provided by subsection (b)(1) of this section. In determining the effect to be given to such consent, the court should consider the age and maturity of the juvenile and whether he has the advice of counsel. To protect a minor from making a decision adverse to his own interests, a guardian ad litem may be appointed. State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The portion of the opinion in In re F.S., 586 P.2d 607 (Alaska 1978), that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. State v. F.L.A., 608 P.2d 12 (Alaska 1980).

While it is true, as indicated in In re F.S., 586 P.2d 607 (Alaska 1978), that the statute contemplates that the determination of the additional period of treatment be made after the initial hearing, such an intent does not mandate that an advance consent to treatment given by the minor may not be regarded as binding. State v. F.L.A., 608 P.2d 12 (Alaska 1980), overruled on other grounds, State v. F.L.A., 608 P.2d 12 (Alaska 1980).

The court must choose between commitment to the Department of Health and Social Services and probation, and may not delegate the choice to the Department of Health and Social Services. This is a correct textual analysis,

especially in light of the provision in subsection (b)(1) for subsequent court order for probation following placement or detention. The legislature has clearly indicated its intent to place this choice in the hands of the court. RLR v. State, 487 P.2d 27 (Alaska 1971).

Court-ordered probation. — Probation cannot be deemed court-ordered under subsection (b) of this section unless it is directly ordered. It cannot be "triggered" by a decision of the department that the juvenile has successfully completed a rehabilitation program, even if the court judgment states that institutionalization will end upon such successful completion. L.C. v. State, 625 P.2d 839 (Alaska 1981).

The hearing judge erred by placing a delinquent child on probation until his 20th birthday. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Petition necessary to extend probation beyond 19th birthday. — The superior court was without authority to extend probation beyond the delinquent child's 19th birthday without a petition from the department to extend the probationary period for an additional year. B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

III. CHILD IN NEED OF AID.

A minor who has been adjudged a child in need of supervision [see now child in need of aid] cannot be institutionalized under the Children's Code. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Where a runaway child is found to be a child in need of supervision [see now child in need of aid], not a delinquent minor, no legal basis exists for his incarceration. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Power of court under subsection (c). — Under subsection (c) of this section, the court is empowered to order the minor committed to the Department of Health and Social Services or order the minor released to his parents, guardian, or some other suitable person. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been declared a child in need of supervision [see now child in need of aid], who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under AS 47.10.010 as it existed prior to its 1977 amendment. In re C.L.T., 597 P.2d 518 (Alaska 1979).

"Best interests" standard. — Given that both subparagraph (c)(1)(A) and subsection (f) contain the "best interests" standard, it's reasonable to assume that the legislature intended the standard to have the same meaning with respect to each type of continuation of custody, namely a .080(c)(1)(A) extension beyond the term of the original order and a .080(f) "extension" beyond the first year of the order until its expiration. In re A.S., 740 P.2d 432 (Alaska 1987).

The "continuing conditions of need" requirement for continued custody found in AS 47.10.083 should be viewed as an additional requirement beyond "best interests," not as the equivalent thereof. In re A.S., 740 P.2d 432 (Alaska 1987).

"Best interests" as used in AS 47.10.080(c)(1)(A) does not constitute a requirement that the state demonstrate the continuing existence of AS 47.01.010(a)(2) conditions of need in order to obtain an extension of custody. Thus, the state may require an extension of custody in order to implement a plan for reuniting the family without causing emotional trauma to the child by virtue of a sudden change of circumstances. In re A.S., 740 P.2d 432 (Alaska 1987).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under AS 47.10.010(a)(2)(C) determines that a child is in need of aid. In re D.C., 596 P.2d 22 (Alaska 1979).

Statutory provisions governing judgments and orders terminating parental rights have been changed. In order to terminate parental rights, the court must now find that the child is in need of aid under AS 47.10.010(a)(2) as the result of parental conduct proved by clear and convincing evidence and that the parental conduct is likely to continue to exist if there is no termination of parental rights, proved again by clear and convincing evidence. AS 47.10.080(c)(3). In re C.L.T., 597 P.2d 518 (Alaska 1979).

In order to terminate parental rights

under this section, the court must find by clear and convincing evidence (1) that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct, and (2) that the parental conduct is likely to continue. E.A. v. State, 623 P.2d 1210 (Alaska 1981).

Under former AS 47.10.010(a)(5) and subsection (a) and former subsection (c)(3)(D) of this section, in order to terminate parental rights, the superior court was required to find (1) that the child was a "dependent minor" and (2) that the parent had demonstrated by her conduct, proved by clear and convincing proof, that she was unfit to continue to exercise her parental rights and responsibilities. In re C.L.T., 597 P.2d 518 (Alaska 1979).

Authority to direct placement of minor. — Once a court declares a minor a child in need of aid and commits the minor to the Department of Health and Social Services under subsection (c)(1), the department has the authority to direct the placement of the minor. The court can review the department's decision to see if it constitutes an abuse of discretion, but it cannot make a specific placement order once legal custody has been granted to the department. In re B.L.J., 717 P.2d 376 (Alaska 1986).

The Department of Health and Social Services is not required to file an additional petition for adjudication in order to change the physical placement of minors in its legal custody. In re B.L.J., 717 P.2d 376 (Alaska 1986).

Parent's impulsive personality disorder not ground for termination of rights. — Where after finding that child was in need of aid, trial judge found that the parent "is likely to continue to demonstrate a conscious disregard of the obligation owed by a parent to a child even after her release from incarceration because she suffers from an impulsive personality disorder," such finding was insufficient to satisfy requirement of clear and convincing evidence that conduct leading to determination that child is in need of aid is likely since an impulsive personality disorder itself is not conduct and thus, not a ground for termination. Nada A. v. State, 660 P.2d 436 (Alaska 1983).

Findings. — A finding that the parental conduct is likely to continue must be made expressly on the record prior to ordering the termination of parental rights. E.A. v. State, 623 P.2d 1210 (Alaska 1981).

A rehabilitation program is not a common practice in the trial courts absent approval by a representative of the state. In re E.J. (T.), 557 P.2d 1128 (Alaska 1976).

Abandonment. — For cases construing former language in subsection (c) providing for termination of parental rights and responsibilities when the child had been abandoned, see D.M. v. State, 515 P.2d 1234 (Alaska 1973); In re B.J., 530 P.2d 747 (Alaska 1975); In re E.J. (T.), 557 P.2d 1128 (Alaska 1976).

Termination of father's parental rights was affirmed, where he had not made reasonable efforts to locate and communicate with his daughter and, at the time of the termination hearing, was incarcerated for assaulting his girlfriend. E.J.S. v. State, Dep't of Health & Social Servs., 754 P.2d 749 (Alaska 1988).

Superior court's decision to terminate mother's parental rights on the basis of her abandonment of her child was supported by substantial evidence. — See D.E.D. v. State, 704 P.2d 774 (Alaska 1985).

Court authority to set conditions on parent for placement of child in parental home. — Court possessed authority to require parent to complete alcohol abuse program and maintain sobriety as a precondition to placement of the child in the parental home by the department under (c)(1) of this section. D.A.W. v. State, 699 P.2d 340 (Alaska 1985).

Trial court did not abuse discretion in failing to consider possibility of setting up plan for reestablishing family relationship between father and son. — See In re E.J. (T.), 557 P.2d 1128 (Alaska 1976).

Role of trial court in proceeding involving termination of parental rights. — See In re E.J. (T.), 557 P.2d 1128 (Alaska 1976).

Applicability of burden of proof. — A burden of proof is not applicable to a dispositive hearing other than when termination of parental rights is involved. In re S.D., 549 P.2d 1190 (Alaska 1976). See also In re C.L.T., 597 P.2d 518 (Alaska 1979).

Determination of the standard to be applied by the court at the dispositive phase of a child hearing was not tantamount to establishing a burden of proof requirement. Such a requirement had been set forth in former subsection (c)(3)(D) [see now subsection (c)(3)]. No such requirement had been set forth in situations such as where termination of parental rights

was not involved. In re S.D., 549 P.2d 1190 (Alaska 1976).

Standard of proof held constitutional. — Allowing parental rights to be terminated based on a standard of proof less stringent than "beyond a reasonable doubt" does not violate the due process clause of the United States Constitution or the Alaska Constitution. In re C.L.T., 597 P.2d 518 (Alaska 1979).

Since in proceedings brought to terminate parental rights, the parent is neither charged with criminal behavior nor subject to incarceration as a direct consequence of the proceeding, there is nothing in the federal constitution that compels adoption of the proof beyond a reasonable doubt standard in termination proceedings. In re C.L.T., 597 P.2d 518 (Alaska 1979).

Clear and convincing proof is a more demanding standard than a mere preponderance of the evidence and is adequate to protect the parent's substantial interest in his or her child custody rights. This evidentiary standard balances the competing interests involved in a proceeding brought to terminate parental rights, one of which is the right of a child to an adequate home. In re C.L.T., 597 P.2d 518 (Alaska 1979).

The due process clause did not require a standard of proof greater than clear and convincing evidence when the state sought to terminate parental rights because of unfitness under former subsection (c)(3)(D). In re C.L.T., 597 P.2d 518 (Alaska 1979).

Standard of proof under former subsection (c)(3)(D) calling for "clear and convincing" evidence of the natural mother's unfitness for the care and custody of the child was held proper. In re K.S., 543 P.2d 1191 (Alaska 1975).

Protection provided by Indian Child Welfare Act. — The Indian Child Welfare Act, 25 U.S.C. §§ 1901 — 1963, enacted in 1978, provides a higher standard of protection to the rights of parents in termination proceedings involving Indians and Native Alaskans than that provided in this section. E.A. v. State, 623 P.2d 1210 (Alaska 1981).

Orders terminating parental rights met statutory and rule of court requirements regarding findings of fact. — See In re C.L.T., 597 P.2d 518 (Alaska 1979).

Review of orders terminating parental rights. — Orders made under subsection (c)(3) of this section are not entitled to automatic review, inasmuch as subsection (f) of this section specifies which orders are entitled to this review and orders under subsection (c)(3) of this section are not included within the list. Rita T. v. State, 623 P.2d 344 (Alaska 1981).

All orders made pursuant to this section, including orders under subsection (c)(3) of this section, are to be reviewed upon application of an interested party if the party establishes good cause for the review, and if the child is still a ward of the court. Rita T. v. State, 623 P.2d 344 (Alaska 1981).

As long as a child remains the ward of the court, under subsection (f) of this section his or her natural parents are entitled to a review of the order terminating their parental rights upon a showing of good cause for the hearing. Rita T. v. State, 623 P.2d 344 (Alaska 1981).

Good cause could be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rehabilitated themselves so that they can provide proper guidance and care for the child. Rita T. v. State, 623 P.2d 344 (Alaska 1981).

Where, when a mother applied for a hearing before the superior court, she indicated that as a result of a 14-month rehabilitation program she had overcome the problems that had led to the termination of her parental rights and also indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing a warm and loving home for the child, this was a sufficient showing of good cause to entitle her to a review of the order terminating her parental rights if the child had not yet been adopted. Rita T. v. State, 623 P.2d 344 (Alaska 1981).

Burden of proof under subsection (c)(3). — Although subsection (c)(3) does not place the burden of proving by clear and convincing evidence that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct and that the parental conduct is likely to continue on either party, the Supreme Court of Alaska has assigned the burden of proof to the Department of Health and Social Services, Division of Family and Youth Services. K.T.E. v. State, 689 P.2d 472 (Alaska 1984).

For reference to apparent conflict between subsection (c)(1) as it read prior to 1977 amendment and Chil-

dren's Rule 22(f), see footnote 30 in In re S.D., 549 P.2d 1190 (Alaska 1976).

Collateral references. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights. 80 ALR3d 1141.

Validity and application of statute allowing endangered child to be temporarily removed from parental custody. 38 ALR4th 756.

Sec. 47.10.081. Predisposition hearing reports. (a) Before the disposition hearing of a delinquent minor the department shall submit a predisposition report with a recommended plan of treatment to aid the court in its selection of a disposition, and any further information that the court may request.

(b) Before the disposition hearing of a child in need of aid the department shall submit a predisposition report to aid the court in its selection of a disposition. This report must include, but is not limited to, the following:

(1) a statement of changes in the child's or parent's behavior, which will aid the court in determining that supervision of the family or placement is no longer necessary;

(2) if removal from the home is recommended, a description of the reasons the child cannot be protected or rehabilitated adequately in the home, including a description of any previous efforts to work with the parents and the child in the home and the parents' attitude toward placement of the child;

(3) a description of the potential harm to the child that may result from removal from the home and any efforts that can be made to minimize such harm; and

(4) any further information that the court may request.

(c) The court shall inform the child, the child's parents and the attorneys representing the parties and the guardian ad litem that the predisposition report will be available to them not less than 10 days before the disposition hearing.

(d) For purposes of this section "parents" means the natural or adoptive parents, and any legal guardian, relative, or other adult person with whom the child has resided and who has acted as a parent in providing for the child for a continuous period of time before this action. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Applied in Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Sec. 47.10.082. Best interests of child and other considerations. In making its dispositional order under AS 47.10.080(b) the court shall consider the best interests of the child and the public. In making its dispositional order under AS 47.10.080(c) the court shall consider the best interests of the child. In either case the court shall consider also the ability of the state to take custody and to care for the child to protect the child's best interests under AS 47.10.010 — 47.10.142. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Showing required to justify termination of parental rights. — While best interests of the child become relevant at some point, there first must be a showing of parental conduct sufficient to justify termination. Nada A. v. State, 660 P.2d 436 (Alaska 1983).

Applied in D.A.W. v. State, 699 P.2d 340 (Alaska 1985).

Cited in Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979); M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); K.T.E. v. State, 689 P.2d 472 (Alaska 1984).

Sec. 47.10.083. Review of orders, requests for extensions. In a review under AS 47.10.080(f) and in a hearing related to a request for extended commitment or extended supervision under AS 47.10.080(c)(1) or (2), the court shall, in addition to the requirements of those provisions and the requirements of court rules, determine whether a child continues to be a child in need of aid at the time of the review or hearing. The court may not continue or extend state custody or supervision of the child unless the court finds that the child continues to be a child in need of aid except that, if the child is no longer a child in need of aid, the court may establish a specific timetable for gradual reunification of the family and termination of state custody or supervision if the court makes a finding that immediate reunification would be detrimental to the child. (§ 26 ch 63 SLA 1977; am § 3 ch 29 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote this section.

Legislative history reports. — For legislative letter of intent in connection with the enactment of this section by § 3, ch. 29, SLA 1990 (SCS CSHB 175(Jud)), see 1990 Senate Journal 3431.

NOTES TO DECISIONS

The "continuing conditions of need" requirement for continued custody found in this section should be viewed as an additional requirement beyond "best interests" for extension of custody under AS 47.10.080(c)(1)(A), not as the equivalent thereof. In re A.S., 740 P.2d 432 (Alaska 1987).

Applied in A.H. v. State, 779 P.2d 1229 (Alaska 1989).

Cited in M.O.W. v. State 645 P.2d 1229 (Alaska Ct. App. 1982); In re A.B., 791 P.2d 615 (Alaska 1990).

Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities. (a) When a child is committed under AS 47.10.080(b)(1) or (c)(1) to the department or released under AS 47.10.080(b)(2) or (3) or (c)(2) to the child's parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person the responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When parental rights have been terminated, or there are no living parents and no guardian has been appointed, the responsibilities of legal custody include those in (b) and (c) of this section The department or person having legal custody of the child may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter a person in charge of a placement setting is an agent of the department.

(b) When a guardian is appointed for the child, the court shall specify in its order the rights and responsibilities of the guardian. The guardian may be removed only by court order. The rights and responsibilities may include, but are not limited to, having the right and responsibility of reasonable visitation, consenting to marriage, consenting to military enlistment, consenting to major medical treatment, obtaining representation for the child in legal actions, and making decisions of legal or financial significance concerning the child.

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

The phrase "reasonable visitation" in subsection (c) does not imply an absolute right to visitation; this section should be read in conjunction with the rest of the chapter to allow parental visits to be barred when the visits are not in the best interests of the child. K.T.E. v. State, 689 P.2d 472 (Alaska 1984).

The following procedures should be followed when visitation rights are denied prior to the termination of parental rights: first, the Department of Health and Social Services, Division of Family and Youth Services should have primary authority to set visitation based on the best interests of the child, since the division is in the best position to make this decision in the first instance; and secondly, either the guardian ad litem or the parents should be entitled to request an expedited evidentiary hearing of a denial of visitation, which would consist of an independent determination by the superior court that clear and convincing evidence showed that the child's best interests were served by disallowing parental visitations. K.T.E. v. State, 689 P.2d 472 (Alaska 1984).

Effect of being foster parents on husband-wife evidentiary privilege. — A foster child is a child of the foster parents for purposes of applying the exception to the husband-wife privilege set forth in Alaska Evidence Rule 505(a)(2)(D)(i); one foster parent cannot rely on the husband-wife privilege to refuse to testify against the other concerning evidence relating to an assault on the foster child. Daniels v. State, 681 P.2d 341 (Alaska Ct. App. 1984).

De facto termination of natural parent's visitation rights. — Where the Department of Health and Social Services decided to allow minor children, who had been adjudicated as children in need of aid, to move from Alaska to Alabama with their foster care family, the state's action constituted a de facto termination of a natural parent's visitation rights; the natural father was unemployed and virtually penniless, the state would not provide airfare so that the father could visit his children on a regular basis, and the father would be limited to phone "visits" because of his lack of funds. D.H. v. State, 723 P.2d 1274 (Alaska 1986).

Department's decision to place children in a foster home in Anchorage did not constitute a de facto termination of their mother's parental rights of visitation, notwithstanding the mother's contention that she did not have the financial means to travel from her home in Juneau to Anchorage. A.H. v. State, 779 P.2d 1229 (Alaska 1989).

Standard of review of state action constituting de facto termination of natural parent's right of reasonable visitation. — The appropriate standard of review for state decisions which essentially terminate a natural parent's right of reasonable visitation under subsection (c) is an independent determination of whether the state has proved by clear and convincing evidence that termination of parental visitation is in the child's best interest. D.H. v. State, 723 P.2d 1274 (Alaska 1986).

Applied in In re B.L.J., 717 P.2d 376 (Alaska 1986).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); In re A.B., 791 P.2d 615 (Alaska 1990).

Sec. 47.10.085. Medical treatment by religious means. In a case in which the minor's status as a child in need of aid is sought to be based on the need for medical care, the court may, upon consideration of the health of the minor and the fact, if it is a fact, that the minor is being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination, dismiss the proceedings and thereby close the matter. This may be done, in the interests of justice and religious freedom, on the court's own motion or upon the application of a party to the proceedings, at any stage of the proceedings after information is given to the court under AS 47.10.020(a). (§ 8 ch 1 SLA 1972; am § 19 ch 63 SLA 1977)

Cross references. — For a related provision, see AS 47.17.020(d).

NOTES TO DECISIONS

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

Sec. 47.10.090. Records. (a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared by an employee of the court or by a federal, state or city agency in the discharge of the employee's or agency's official duty, including driver's license action under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with making a preliminary investigation for the information of the court. The court shall forward a record of adjudication of a violation of an offense listed in AS 28.15.185(a) to the Department of Public Safety, if the court imposes a license revocation under AS 28.15.185. Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all driver's license proceedings under AS 28.15.185, criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

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

(c) A person who violates a provision of this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500 or by imprisonment for not more than one year, or by both. (§ 10(3)(4) art I ch 145 SLA 1957; am § 1 ch 124 SLA 1972; am § 1 ch

90 SLA 1975; am § 20 ch 63 SLA 1977; am § 4 ch 130 SLA 1988; am § 56 ch 50 SLA 1989)

Effect of amendments. — The 1988 amendment, effective September 1, 1988, in subsection (a), inserted "including traffic offenses and driver's license action under AS 28.15.185" in the third sentence and "driver's license proceedings under AS 28.15.185" in the next-to-last sentence and inserted the fifth sentence.

The 1989 amendment, effective May 27, 1989, deleted "traffic offenses and" following "including" in the third sentence in subsection (a).

NOTES TO DECISIONS

Purpose for enacting subsection (a). — Reading this section together with other sections of the laws relating to children's proceedings leads one to believe that subsection (a) was enacted principally for the purpose of protecting the child against the possible adverse effects an unauthorized revelation of his social record would have. In re P.N., 533 P.2d 13 (Alaska 1975).

There is no indication that subsection (a) was intended to authorize the granting of testimonial use immunity to parents. In re P.N., 533 P.2d 13 (Alaska 1975).

The supreme court could not say with certainty that this section would be construed to forbid the use, in a subsequent criminal action against a parent, of testimony that the parent gave at a children's proceeding. In re P.N., 533 P.2d 13 (Alaska 1975).

Confidentiality policy. — The policy of confidentiality in Child in Need of Aid proceedings is not absolute. The court has discretion to disclose records in CINA proceedings under subsection (a). Clifton v. State, 758 P.2d 1279 (Alaska Ct. App. 1988).

Superior court's records release order did not violate state or federal rights of privacy, where the order was intended to facilitate an expeditious and comprehensively monitored reunion of the child and her father, and the order's scope was limited to agencies directly involved in providing resources to the parties in the case. In re A.B., 791 P.2d 615 (Alaska 1990).

Quoted in Sledge v. State, 763 P.2d 1364 (Alaska Ct. App. 1988).

Stated in RLR v. State, 487 P.2d 27 (Alaska 1971).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); State v. R.H., 683 P.2d 269 (Alaska Ct. App. 1984).

Sec. 47.10.095. Arrest of a minor. The arrest of a minor other than for a traffic offense is not considered an arrest for any purpose except for the purpose of the disposition of a proceeding arising out of that arrest. (§ 2 ch 124 SLA 1972)

Sec. 47.10.097. Fingerprinting of minors. (a) Except as provided in (b) of this section, a minor in the custody of the department or of a law enforcement agency may not be fingerprinted for reference to or entry into the Alaska automated fingerprint system without a court order upon good cause shown.

(b) A law enforcement officer may fingerprint a minor who is 16 years of age or older for reference to or entry into the Alaska automated fingerprint system without a court order when the minor is convicted of, or adjudicated a delinquent for, an offense that is a felony.

(c) Fingerprint records under this section are not subject to AS 47.10.090. (§ 3 ch 121 SLA 1988)

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

House of Representatives

DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

SPONSOR STATEMENT

HB 336
"An Act relating to violations of laws by juveniles."

This state is experiencing a rise in juvenile crime. Many crimes are committed by youngsters not more than 13 years old who have armed themselves with knives and guns. The escalation of juvenile crime is not acceptable. Those juveniles who wish to violate the law must also take full responsibility for their actions and pay the consequences.

This proposed legislation would have minors ages 13 and older tried as adults if they commit a crime using a gun or a knife. To date, the privacy of a juvenile is protected when a crime is committed. The records of the case are not made public. By bringing a juvenile to adult court all records become public. Juveniles would no longer be able to hide a criminal history.

Juveniles committing adult crimes with adult weapons should be just as accountable as adults that commit crimes with weapons. HB 336 would create this accountability. I urge your favorable consideration for HB 336.

SPONSOR STATEMENT

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

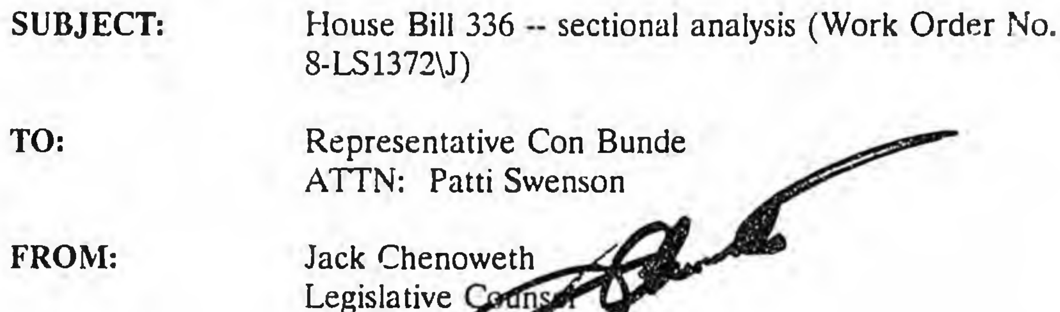
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

M E M O R A N D U M — January 10, 1994

SUBJECT: House Bill 336 -- sectional analysis (Work Order No. 8-LS1372\J)

TO: Representative Con Bunde
ATTN: Patti Swenson

FROM: Jack Chenoweth
Legislative Counsel



The measure proposes to amend the manner of handling minors 13 years of age or older who commit an offense while in possession of a firearm or knife.

Bill section 1: The bill section proposes to add a new subsection, AS 47.10.010(e), to the statute enumerating the jurisdiction of the court over certain minors who commit offenses and as to whom a petition seeking adjudication of the minor as a delinquent could be filed. The change proposed by this bill section is direct toward minors at least 13 years of age at the time of commission of the offense who, in the commission of the offense possessed a firearm or knife and used or threatened to use the firearm or knife during the commission of the offense. As to those minors, the statutory provisions applicable to filing petition seeking adjudications of delinquency would be inapplicable. Instead, the minor would be charged, prosecuted, and sentenced as an adult. The procedure would be applicable to the offense as to which the minor was arraigned and to any additional offenses joinable to it under applicable court rule.

Bill section 2: This uncodified section specifies that the change in bill section 1 is applicable to offenses that are committed by minors who are to be prosecuted as adults if the offense was committed after the bill's effective date.

JBC:gc
94-010.glc

SECTIONAL ANALYSIS

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

P.O. BOX 110630
JUNEAU, ALASKA 99811-0630
PHONE: (907) 465-3170

December 16, 1993

The Honorable Con Bunde
Alaska State Legislator
716 W. 4th. Suite 340
Anchorage, Alaska 99501-2133

Dear Representative Bunde:

Ms. Zantek, from your Anchorage office, requested information on statewide juvenile referrals to DFYS. Our research analyst has compiled information on the frequency of weapons and weapons related referrals to DFYS. Enclosed are a set of graphics, a data table and the list of referral offense types that are identified as weapons or weapons related. It is important to note that the alleged offense types chosen are inferred to be crimes committed with a weapon, but may not truly involve the use of a weapon in all cases. Also, weapons is a broadly defined t rm that can include a variety of devices and/or objects that w e involved in the commission of a crime.

The information provided represents an alleged offense and does not describe the outcome of the juvenile intake process. These referrals are the initial charges which can then be changed based on the examination of the available evidence.

The data extracted from the division's information system, PROBER[R], covers January 1991 through September 1993 and is presented in calendar quarters. The age of the juvenile is calculated as a function of the referral date and only juveniles 13 or older at referral are included. The frequency counts and statistics include the occurrence of multiple referrals on a juvenile. There were a total of 640 referrals on 593 individuals in this study.

Quarterly data provides a better measure of trend, and with the addition of a simple regression line, the existence of a trend can be illustrated. Also included is an illustration of all referrals during this time period as a comparison between weapons and weapons related referrals versus all referrals. Please see attached graphs.

As mentioned above, there were 640 referrals to DFYS for weapons and weapons related type offenses. This group of referral types grew at an average quarterly rate of approximately 3% over this time period. Referrals for all types grew at an average quarterly rate of approximately 2%. The average age juveniles referred for weapons and weapons related offenses is 15.5 and remains consistent across quarters. There does not appear to be any change in the

WEAPONS & WEAPONS RELATED REFERRALS TO DFYS

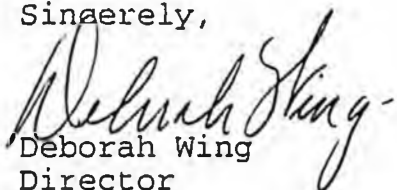
ethnicity mix nor the male to female ratio across the quarters studied. Demographics for the 640 referrals are described below.

AGE	Total	640	
	13	49	8%
	14	119	19%
	15	136	21%
	16	153	24%
	17	178	28%
	18+	5	1%
ETHNICITY	Total	640	
	AK Nat/Am I	121	19%
	Afro/Am	68	11%
	Caucasian	384	60%
	Hispanic	12	2%
	Asian	10	2%
	Other	19	3%
	Unknown	26	4%
GENDER	Total	640	
	Male	572	89%
	Female	68	11%

Note that although a slight increase has occurred in weapons and weapons related referrals compared to all referral types, the increase appears to be consistent with the growth in the juvenile population. It is possible to conclude, from this data, that the same percentage of juveniles are committing crimes and with an increasing juvenile population at about 5% per year, overall referrals to DFYS are increasing proportionally.

Please let me know if you need clarification or additional information.

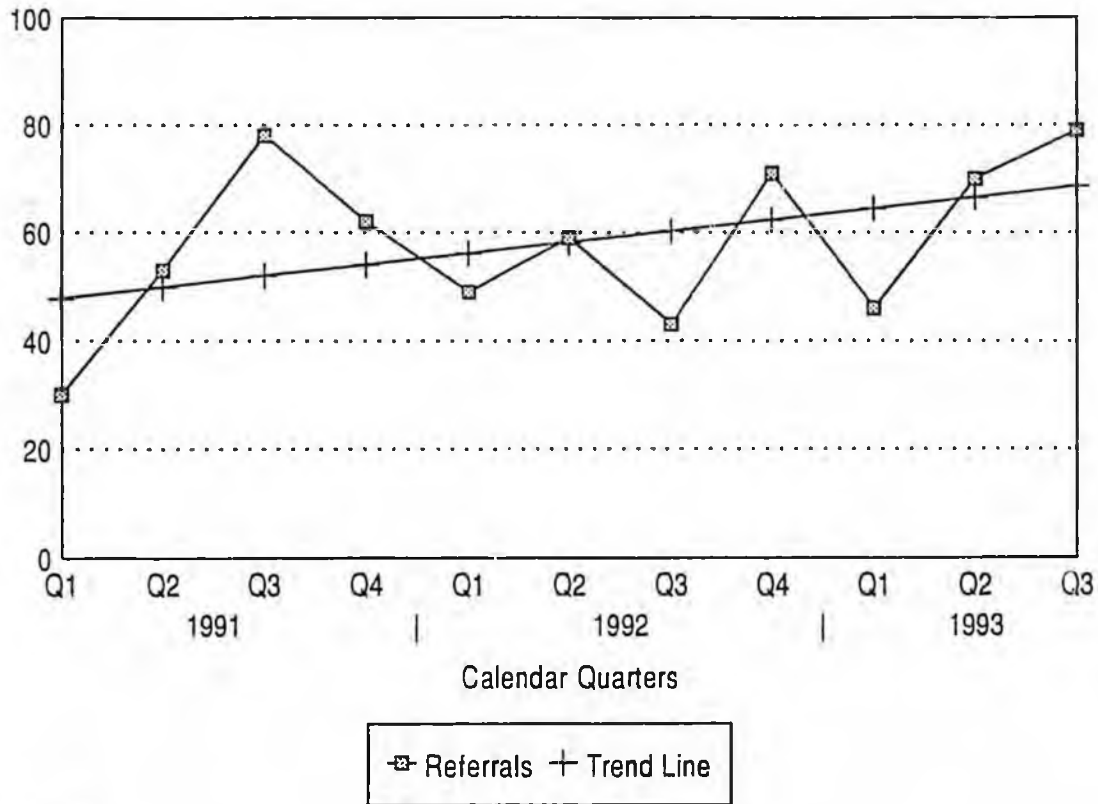
Sincerely,



Deborah Wing
Director

WEAP . & WEAPONS RELATED REF RALS

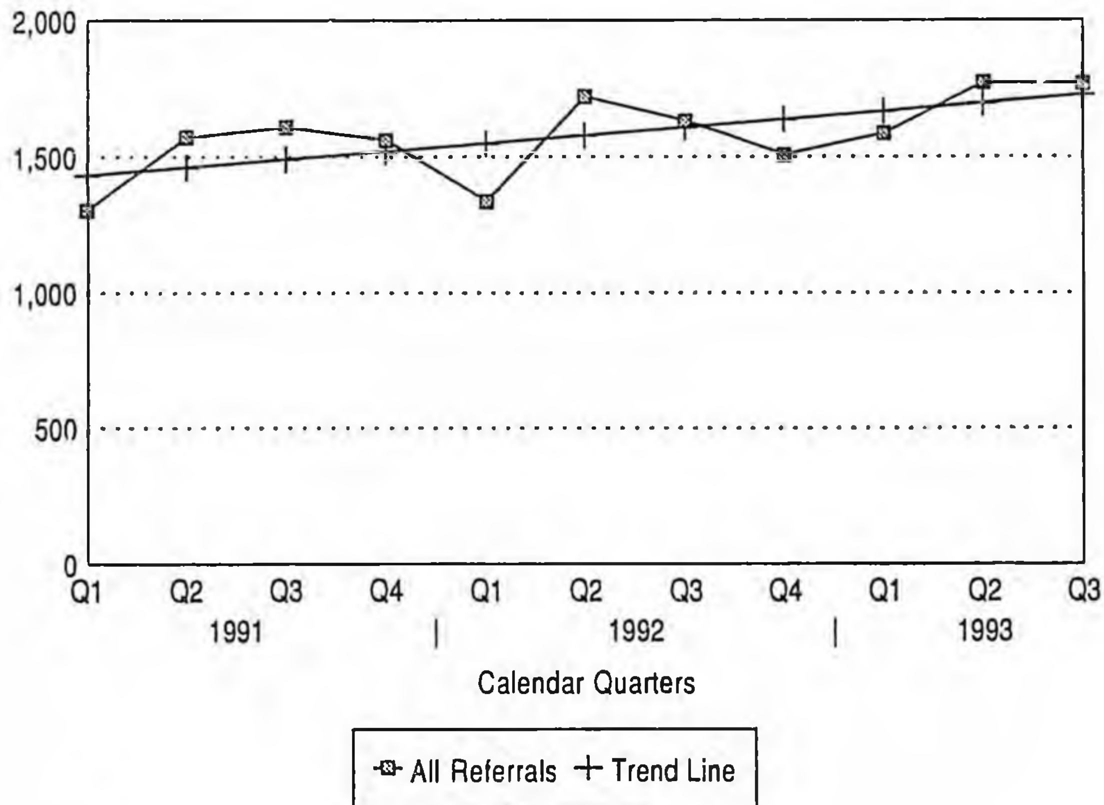
Statewide Frequency by Quarter



DFYS/December 1993

ALL REFERRALS REFERRED TO DFYS

Statewide Frequency by Quarter



DFYS/December 1993

WEAPONS AND WEAPONS RELATED REFERRALS BY QUARTER
(Referrals to Youth Services)

STATEWIDE FREQUENCY BY REFERRAL TYPE

	Calendar Quarter											
	Q1CY91	Q2CY91	Q3CY91	Q4CY91	Q1CY92	Q2CY92	Q3CY92	Q4CY92	Q1CY93	Q2CY93	Q3CY93	Totals
Offense												
Assault 1st	0	4	0	4	3	8	1	1	1	4	3	29
Assault 2nd	6	1	4	4	6	10	2	7	3	18	6	67
Manslaughter	0	0	1	0	0	0	0	0	0	0	0	1
Murder 1st	1	1	1	3	4	1	0	0	0	1	3	15
Murder 2nd	0	0	1	0	0	0	1	0	0	1	0	3
Negligent Homicide	0	0	0	0	0	0	0	2	0	0	1	3
Reckless Endangermnt	2	7	19	8	9	0	10	17	7	3	14	96
Robbery 1st	3	5	3	7	2	4	8	0	3	4	5	43
Misconduc Weapon 1st	5	4	4	6	2	2	0	3	2	0	0	28
Misconduc Weapon 2nd	0	2	7	5	1	3	2	7	2	3	5	37
Misconduc Weapon 3rd	14	29	37	25	22	31	19	34	28	36	42	317
Posses Explos/A Misd	0	0	1	0	0	0	0	0	0	0	0	1
Totals	30	53	78	62	49	59	43	71	46	70	79	640

NOTE Results Include Multiple Referrals on an Individual
Data Source: PROBER

Weapons and Weapons Related Referrals

Referal Types Included

Code	Offense Description
A01	Assault 1st
A02	Assault 2nd
A70	Manslaughter
A71	Murder 1st
A72	Murder 2nd
A73	Negligent Homicide
A74	Reckless Endangermnt
A80	Robbery 1st
E01	Furnish Explosives
E10	Misconduc Weapon 1st
E11	Misconduc Weapon 2nd
E12	Misconduc Weapon 3rd
E20	Posse Explos/Murder
E21	Poss Explos A Fel
E22	Posses Explos/B Fel
E23	Posses Explos/C Fel
E24	Posses Explos/A Misd

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

January 11, 1994

The Honorable Con Bunde
Alaska State Legislature
State Capitol, Room 112
Juneau, AK 99801-1182

Dear Representative Bunde:

As you review your copy of the 1992 Report on Crime in Alaska, I am sure that you too will be alarmed at the increased crimes of violence that are occurring in our state.

What is even more alarming are the numbers of young people involved in committing serious criminal offenses. Of those arrested, youths 18 years and under accounted for:

16% of murders;
16% of rapes;
29% of robberies;
16% of aggravated assaults; and
43% of larceny arrests.

Serious consideration must be given to passing a juvenile waiver statute and removing some of the restrictions which do nothing more than make it easy for young criminals to beat the system by being treated as misunderstood victims instead of the criminals many of them really are.

Boot camp legislation and a young offenders facility is badly needed to augment and give additional space to DFYS and those agencies who must deal with juveniles who need commitment. McLaughlin Youth Center is totally inadequate to serve today's needs.

The state is long overdue for at least one, if not more, additional correctional facilities, especially in areas other than the main population centers. There is a serious need for regional minimum-to-medium security facilities in the North Slope Borough, the Alaska Peninsula, and in Kodiak.

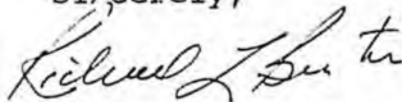
I hope we can stop talking about crime this year and really do something about it before it is too late.

12-L2LH

BACKUP INFORMATION

I look forward to working with you, please call for any assistance we may be able to give during the upcoming year.

Sincerely,



Richard L. Burton
Commissioner

Enclosure

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

House of Representatives

DURING SESSION
STATE CAPITOL
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Cabbie shot by 13-year-old

WEST PALM BEACH, Fla. — A 13-year-old girl shot a cab driver to death to avoid paying a $6 fare, police said. The sixth-grader was dry-eyed during questioning Monday in the slaying of 39-year-old Yves Quettant, who was shot in the back of the head, police said. "No tears. Just cold. We're talking about coldblooded, premeditated murder committed by a 13-year-old girl who shows no remorse," Sgt. John English said. "It's frightening." Quettant was slain after picking up the girl and two of her friends at a mall Saturday night. The girl's mother said her daughter hadn't mentioned the shooting. "She acted like a 40-year-old, like nothing happened," the mother said. "There was nothing, not one tear. She didn't care at all."

Daily News wire services

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2 An act relating to weapons and firearms;
3 authorizing a law enforcement agency to release
4 the name and address of a minor who has been
5 adjudicated guilty of an offense involving
6 possession or use of a firearm; amending s.
7 790.17, F.S.; prohibiting certain transfer to a
8 minor of a weapon, or electric weapon or
9 device; prohibiting sale or transfer to a minor
10 of a firearm and providing that a violation
11 constitutes a third-degree felony; amending s.
12 790.175, F.S.; redefining the term "minor";
13 requiring that the purchaser of a firearm be
14 informed that it is unlawful to store or leave
15 a firearm within access of a minor or to
16 knowingly sell or transfer a firearm to a minor
17 or a person of unsound mind; amending s.
18 790.18, F.S.; prohibiting an arms dealer from
19 selling or transferring a firearm or certain
20 other weapons to a minor; increasing the
21 penalty for a violation from a misdemeanor to a
22 felony; amending s. 790.22, F.S.; prohibiting a
23 minor from possessing a firearm; providing
24 certain exceptions; prohibiting adults
25 responsible for a minor from knowingly and
26 willfully permitting the minor to unlawfully
27 possess a firearm; providing penalties for a
28 violation by an adult; authorizing the court to
29 require that a parent participate in classes on
30 parenting education; authorizing community
31 service hours in certain circumstances and

1 requiring the establishment of circuit
2 community service programs; providing penalties
3 for a violation by a minor; requiring that a
4 minor charged with certain offenses involving
5 the use or possession of a firearm be detained
6 in secure detention unless the state attorney
7 authorizes the minor's release; providing for a
8 hearing within a specified period; providing
9 circumstances under which the court may order
10 that the minor continue to be held in secure
11 detention; requiring the Department of Health
12 and Rehabilitative Services to collect certain
13 data and submit it to the Division of Economic
14 and Demographic Research; requiring the court
15 to order a minimum mandatory period of secure
16 detention in addition to other punishments
17 provided by law if the minor is found to have
18 committed certain offenses involving the use or
19 possession of a firearm and is not committed to
20 a residential commitment program of the
21 Department of Health and Rehabilitative
22 Services; providing for mandatory revocation or
23 suspension of the driving privilege if a minor
24 is found to have committed certain offenses
25 involving the use or possession of a firearm;
26 providing for enhanced penalties; providing for
27 the seizure and disposal of a firearm used or
28 possessed unlawfully by a minor; providing that
29 such provisions are supplemental to certain
30 other criminal sanctions; providing for the
31 secure detention of a minor charged with a

violation of certain provisions of ch. 790, F.S., pending a court hearing; amending s. 790.23, F.S.; prohibiting felons, and juveniles found to have committed a delinquent act that would be a felony if committed by an adult, from using or possessing a firearm under certain conditions; providing exceptions; providing penalties; amending s. 790.25, F.S.; limiting authorization for possession in private conveyance to persons over 18; directing the Department of Health and Rehabilitative Services to prepare and disseminate public service announcements; requiring the state attorney to request adult prosecution of minors in certain circumstances; providing appropriations; providing effective dates.

WHEREAS, the love affair between juveniles and firearms has reached an all-time high here in Florida, and

WHEREAS, the courts, the Legislature, and law enforcement cannot be the sole solution to stem our rising juvenile crime statistics, and

WHEREAS, it is the will of the Legislature and all Floridians that parental involvement, accountability, and responsibility become the key to solving our existing broken juvenile criminal justice system, and

WHEREAS, it is the will of Floridians all across this great state of ours that juveniles who violate laws pertaining to the illegal use of firearms be dealt with in a swift and certain and severe manner, and

WHEREAS, it is time for the Governor, the President of the Senate, and the Speaker of the House of Representatives, along with the Republican leaders of the Senate and House of Representatives, to seek relief from our counterparts in the United States Congress by cutting the federally mandated ties that bind us from curing our juvenile crime problems here at home, as said laws prevent us from using stricter, harsher, and more certain penalties in detaining Florida's juveniles, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. A law enforcement agency may release for publication the name and address of a child who has been convicted of any offense involving possession or use of a firearm.

Section 2. Section 790.17, Florida Statutes, is amended to read:

790.17 Furnishing weapons to minors under 18 years of age or persons of unsound mind and furnishing firearms to minors under 18 years of age prohibited;-etc.--

(1) A person who Whoever sells, hires, barters, lends, transfers, or gives to any minor under 18 years of age any pistol; dirk, electric weapon or device, or other arm-or weapon, other than an ordinary pocketknife, without permission of the minor's parent or guardian of-such-minor;-or-the-person having-charge-of-such-minor, or sells, hires, barters, lends, transfers, or gives to any person of unsound mind an electric weapon or device or any dangerous weapon, other than an ordinary pocketknife, commits is-guilty-of a misdemeanor of

the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) A person may not knowingly or willfully sell or transfer a firearm to a minor under 18 years of age, except that a person may transfer ownership of a firearm to a minor with permission of the parent or guardian. A person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The parent or guardian must maintain possession of the firearm except pursuant to s. 790.22.

Section 3. Section 790.175, Florida Statutes, is amended to read:

790.175 Transfer or sale of firearms; required warnings; penalties.--

(1) Upon the retail commercial sale or retail transfer of any firearm, the seller or transferor shall deliver a written warning to the purchaser or transferee, which warning states, in block letters not less than 1/4 inch in height:

"IT IS UNLAWFUL, AND PUNISHABLE BY IMPRISONMENT AND FINE, FOR ANY ADULT TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(2) Any retail or wholesale store, shop, or sales outlet which sells firearms must conspicuously post at each

purchase counter the following warning in block letters not less than 1 inch in height:

"IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(3) Any person or business knowingly violating a requirement to provide warning under this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(4) As used in this act, the term "minor" means any person under the age of 16.~~

Section 4. Section 790.18, Florida Statutes, is amended to read:

790.18 Sale or transfer of Selling arms to minors by dealers.--It is unlawful for any dealer in arms to sell or transfer to a minor minors any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, slungshot, or electric weapon or device. A~~;~~ ~~and every~~ person who violates violating this section commits ~~shall be guilty of~~ a felony misdemeanor of the second first degree, punishable as provided in s. 775.082, or s. 775.083, or 775.084.

Section 5. Section 790.22, Florida Statutes, is amended to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices~~; or firearms~~ by minor child under

16; limitation; possession of firearms by minor under 18 prohibited; penalties.--

(1) The use for any purpose whatsoever of BB guns, air or gas-operated guns, or electric weapons or devices, or ~~firearms as defined in s. 790.001~~ by any minor child under the age of 16 years is prohibited unless such use is under the supervision and in the presence of an adult who is acting with the consent of the minor's parent.

(2) Any adult responsible for the welfare of any child under the age of 16 years who knowingly permits such child to use or have in his possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the provisions of subsection (1) of this section commits ~~is guilty~~ of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his home, unless:

(a) The minor is engaged in a lawful hunting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult.

(b) The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by adult who is acting with the consent of the minor's parent or guardian.

(c) The firearm is unloaded and is being transported by the minor directly to or from an event authorized in paragraph (a) or paragraph (b).

CODING: Words stricken are deletions; words underlined are additions.

(4)(a) Any parent or guardian of a minor, or other adult responsible for the welfare of a minor, who knowingly and willfully permits the minor to possess a firearm in violation of subsection (3) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any natural parent or adoptive parent, whether custodial or noncustodial, or any legal guardian or legal custodian of a minor, if that minor possesses a firearm in violation of subsection (3) may, if the court finds it appropriate, be required to participate in classes on parenting education which are approved by the Department of Health and Rehabilitative Services, upon the first conviction of the minor. Upon any subsequent conviction of the minor, the court may, if the court finds it appropriate, require the parent to attend further parent education classes or render community service hours together with the child.

(c) At any time after this act becomes law, but no later than July 1, 1994, the district juvenile justice boards or county juvenile justice councils or the Department of Health and Rehabilitative Services shall establish appropriate community service programs to be available to circuit courts in implementing this subsection. The boards or councils or department shall propose the implementation of a community service program in each circuit, and may submit a circuit plan, to be implemented upon approval of the court, at any time after this act becomes law.

(d) For the purposes of this section, community service may be provided on public property as well as on private property with the expressed permission of the property owner. Any community service provided on private property is

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limited to such things as removal of graffitti and restoration of vandalized property.

(5)(a) A minor who violates subsection (3) commits a misdemeanor of the first degree, and, in addition to any other penalty provided by law, shall be required to perform 100 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense, the minor shall be required to perform not less than 100 nor more than 250 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

(6) Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer and disposed of in accordance with s. 790.08(1)-(6).

(7) The provisions of this section are supplemental to all other provisions of law relating to the possession, use, or exhibition of a firearm.

(8) Notwithstanding s. 39.042 or s. 39.044(1), if a minor under 18 years of age is charged with an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. Effective April 15, 1994, at the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 39.044(5), if the court finds that the minor meets the criteria specified in s.

39.044(2), or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or the community. The Department of Health and Rehabilitative Services shall prepare a form for all minors charged under this subsection that states the period of detention and the relevant demographic information, including, but not limited to, the sex, age, and race of the minor, whether or not the minor was represented by private counsel or a public defender, the current offense, and the minor's complete prior record, including any pending cases. The form shall be provided to the judge to be considered when determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department. The Department of Health and Rehabilitative Services must send the form, including a copy of any order, without client identifying information, to the Division of Economic and Demographic Research of the Joint Legislative Management Committee.

(9) Notwithstanding s. 39.043, if the minor is found to have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Health and Rehabilitative Services, in

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addition to any other punishment provided by law, the court shall order:

(a) For a first offense, that the minor serve a mandatory period of detention of 5 days in a secure detention facility and perform 100 hours of community service.

(b) For a second or subsequent offense, that the minor serve a mandatory period of detention of 10 days in a secure detention facility and perform not less than 100 nor more than 250 hours of community service.

The minor shall receive credit for time served before adjudication.

(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9)(a) or paragraph (9)(b):

(a) For a first offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving

privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

Section 6. Section 790.23, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 790.23, F.S., for present text.)

790.23 Felons and delinquents; possession of firearms or electric weapons or devices unlawful.--

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(a) Convicted of a felony or found to have committed a delinquent act that would be a felony if committed by an adult in the courts of this state;

(b) Convicted of or found to have committed a crime against the United States which is designated as a felony;

(c) Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year; or

(d) Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding 1 year.

(2) This section shall not apply to a person convicted of a felony whose civil rights and firearm authority have been restored, or to a person found to have committed a delinquent act that would be a felony if committed by an adult with respect to which the jurisdiction of the court pursuant to chapter 39 has expired.

(3) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Subsection (5) of section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely

encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012.

Section 8. Effective July 1, 1994, if the child was 14 or more years of age at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm, the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons for not making such request, and the court, upon the state attorney's request, shall issue the order to so transfer and certify the child or provide written reasons for nonissuance.

Section 9. The Department of Health and Rehabilitative Services shall prepare public service announcements for dissemination to parents throughout the state, of the provisions of this act.

Section 10. There is hereby appropriated a lump sum of $2,197,810 from the General Revenue Fund and 94 additional full-time positions are authorized for the Juvenile Justice Program in the Department of Health and Rehabilitative

Services. This shall be used for operational funding for the secure detention, case management for community service, and commitment programs for delinquent youth. Further, $4,600,000 is hereby transferred from current surplus funds in the General Revenue Fund previously appropriated for AFDC, to be used for additional commitment resources for the Juvenile Justice Program in the Department of Health and Rehabilitative Services.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect January 1, 1994.