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# Alaska State Legislature



## House of Representatives House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

### LETTER OF INTENT

It is the intent of the House Judiciary Committee, in its adoption of HCS for CS for SB 54 (JUD), to alter the jurisdiction of the criminal courts over juvenile offenders charged with murder and to require the juvenile offender for whom waiver to criminal court has been sought for other offenses to prove that he or she is amenable to treatment in the juvenile justice system.

The House Judiciary Committee, in its adoption of HCS CSSB 54 (JUD), intends to alter the substantive legal rights of juvenile offenders. In the judgement of the committee, the scope of a court's jurisdiction and the allocation of burdens of proof in legal actions are matters of substantive law, not matters of procedure.

It is the judgement of the committee that, once the screening authorities have decided that a juvenile offender is not amenable to treatment in the juvenile court system and have filed a petition seeking waiver of the juvenile into the adult criminal court system, it is the offender himself who is in the best position to show that he would be treatable in the juvenile court system. The juvenile offender and his attorney are the ones who know the most about the offender's family and educational experiences, and are in the best position to present information relating to the issue of treatability to the court.

For example, under the Alaska Court of Appeals' decision in R.H. v. State, 777 P. 2d 204 (Alaska App. 1989), the state may not compel a juvenile offender to submit to a psychiatric evaluation for the purpose of determining his amenability to treatment in the juvenile court system. In its decision, the court acknowledged that "in some situations, the lack of information concerning the psychiatric condition of the accused child will undoubtedly make the state's burden more difficult to meet." 777 P. 2d at 211. In the view of the committee, to place the burden of proof upon the party who has the greatest access to the facts relevant to the issue of treatability is a sound public policy choice.

*Brian S. Porter*

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Brian Porter, Chairman

CSSB 54 (FIN) - Juvenile Crime - Logical Summary

I. Automatic Trial of Juveniles as Adults for Certain Felony Offenses

Under current law (AS 47.10), state prosecutors are permitted to petition for a "waiver of jurisdiction" to close a juvenile offender's case in juvenile court and prosecute him as an adult if the offense is deemed serious enough.

SB 54 proposes significant changes in this system by mandating that certain juveniles be automatically tried as adults under certain conditions. These changes are principally present in Section 4, with an additional provision found in Section 7.

A. Section 4 mandates that juvenile offenders from 16 to 18 years of age be tried as adults when charged with the following crimes:

1. an unclassified or class A felony; or
2. a felony class "crime against a person" and the minor has been either (a) previously adjudicated as a delinquent or (b) convicted as an adult, for a felony class "crime against a person" in Alaska or any other jurisdiction.

B. Section 4 mandates that juvenile offenders from 14 to 16 years of age be tried as adults when charged with the following crimes:

1. murder, attempted murder, or solicitation to commit murder; or
2. an unclassified or class A felony and the minor has been either (a) previously adjudicated as a delinquent or (b) convicted as an adult, for a felony class "crime against a person" in Alaska or any other jurisdiction; or
3. a felony class "crime against a person" and the minor has been either (a) previously adjudicated as a delinquent or (b) convicted as an adult, for a felony class "crime against a person" in Alaska or any other jurisdiction.

The distinction between 2 and 3 above is that not all unclassified or class A felonies are also "crimes against a person".

The "Definitions" appendix (attached) lists the crimes that constitute unclassified and class A felonies. It also lists those crimes which constitute a "crime against a person" as defined under AS 33.30.901.

C. Section 4 also provides that the juvenile will be tried as an adult for all "properly joined" crimes committed in connection with the unclassified or class A felony for which they are principally charged. (This practice is allowed under Criminal Rule 8(a).)

- D. Under the conditions outlined in A and B above, the juvenile must be prosecuted as an adult. The court is given no option in this decision. However, if the minor is charged as an adult based on his previous adjudication or conviction for another crime, the minor may appeal their waiver on two grounds.
1. that he is "amenable to treatment" before age 20. In this instance, the minor bears the burden of proving his amenability "by a preponderance of the evidence".
  2. that he was not, in fact, previously adjudicated delinquent or convicted of the necessary crime. In this instance, the state bears the burden of proving "by a preponderance of the evidence" that the minor was, in fact, adjudicated delinquent or convicted of a qualifying crime. A sworn statement be furnished to prove the juvenile's previous prosecution in another jurisdiction.
- E. Section 4 establishes that the state is entirely free to employ the currently existing procedures for closing a juvenile's case in order to prosecute him as an adult for lesser offenses.
- F. Section 7 provides that if a minor is not convicted of the felony charge that required he be tried as an adult, but is only convicted for lesser offenses, then the convictions will be treated as juvenile adjudications. However, within five days of his conviction as a juvenile delinquent, the state has the right to file a petition for a waiver to convict the minor as an adult for these lesser offenses.

## II. Detention and Incarceration

Current law is vague and contradictory about the pre-trial detention and later incarceration of minors convicted as adults. Most often, minors convicted as adults are placed in the custody of the Department of Corrections. On occasion, however, judges order that minors convicted as adults remain in the custody of the Department of Health and Social Services (Division of Family and Youth Services). Either way, minors are required to be kept separate from adults.

SB 54 eliminates this ambiguity by mandating that minors either charged or convicted as adults be placed in the custody of the Department of Corrections. Both DOC and DHSS agree that this is the best policy for logistical reasons and also the best policy to allow for the rehabilitation of the bulk of juvenile offenders in DHSS custody.

- A. Section 2 amends the definition of "prisoner" within the custody of the Department of Corrections to include a juvenile charged, prosecuted, or convicted as an adult.
- B. Section 10 amends current law concerning the detention of minors to state that a juvenile held in jail under the custody of the DOC need not be "held in custody in a room or other place apart and separate from adults."

### III. Records

- A. Section 4 amends public records statute 09.25.120, which lists juvenile records as confidential, to provide that juvenile records are not confidential if otherwise provided for in law.
- B. Section 5 provides that the court may not seal the records of a criminal proceeding involving a minor if
  1. the minor has not yet fulfilled the orders of the court connected with their adjudication or conviction; or if
  2. the minor was convicted as an adult under AS 47.10.010 (e), created by SB 54, for (a) an unclassified or class A felony and properly joined crimes, or (b) for a second felony class crime against a person; or if
  3. the minor was adjudicated delinquent or convicted as an adult for a felony class crime against a person and had been previously adjudicated delinquent or convicted as an adult for a felony class crime against a person.
- C. Section 8 states that the records of criminal proceedings against a minor are public records if the minor was adjudicated delinquent or convicted as an adult for a crime committed when he was 16 years of age or older. Section 12, concerning applicability, makes it clear that this provision is not retroactive.
- D. Section 9 allows the victim(s) of a property crime or crime against a person committed by a minor to inspect the official record of the minor related to that crime in order to use the information in support of a civil action against the minor, his parent(s), or legal guardian(s).

#### IV. Restitution

Courts are not currently required to force juveniles to pay restitution for property offenses or, for crimes against a person. It is also virtually impossible to sue a juvenile in civil court for damages resulting from his crimes because his criminal record is kept confidential. SB 54 makes considerable changes in both of these areas.

- A. Section 9, as mentioned previously, allows victims of juvenile crime to access the juvenile's criminal record in order to obtain information for a civil suit against the minor, his parent(s), or legal guardian(s).

There is no current statutory limit on the liability of the juvenile offender. This has never been an issue in the past because it was practically impossible to sue a juvenile offender for damages resulting from criminal activity and because juveniles usually have negligible personal assets.

- B. Section 6 requires that the court order a minor to pay restitution to the benefit of the victim if the minor's offense is the basis of a delinquency adjudication.
- C. Section 3 allows for the entirety of a juvenile offender's permanent fund dividend, as well as the dividends of his parent(s) or legal guardian(s), to be attached to pay restitution or civil damages resulting from the juvenile's criminal activity which caused personal injury or harmed real or personal property.
- D. Section 5, as previously mentioned, forbids sealing a juvenile offender's criminal record for an offense if restitution ordered by the court for that offense has not yet been paid.

Senate Bill 54 - Juvenile Crime - Definitions

- 1) Unclassified felonies include:
  - first and second degree murder
  - first degree attempted murder
  - first degree sexual assault
  - first degree sexual abuse of a minor
  - first degree misconduct involving a controlled substance
  - kidnapping
  
- 2) Class A felonies include:
  - attempted commission or solicitation to perform an unclassified felony other than first degree murder
  - attempted performance or solicitation to perform a crime defined outside AS 11 that carries an indefinite or life term
  - manslaughter
  - kidnapping (when certain affirmative defenses are employed)
  - first degree assault
  - first degree robbery
  - first degree arson
  - first degree escape
  - first degree misconduct involving weapons
  - criminal possession of explosives to commit murder or kidnapping
  - second degree misconduct involving a controlled substance
  - promoting prostitution in the first degree involving a person under 16 years of age
  - (outside the criminal code) violation of the Credit Union Act when certain officers receive deposits while the credit union is insolvent
  
- 3) The term "crime against a person" is defined under AS 33.30.901. This statute states that "crimes against a person" consist of the crimes listed in AS 11.41. The felony class crimes defined in AS 11.41 for which a minor can be charged (e.g. not possible for minor to commit incest as presently defined) include:
  - first and second degree murder
  - manslaughter
  - criminally negligent homicide
  - first, second, and third degree assault
  - kidnapping
  - first, second, and third degree sexual assault
  - first, second, and third degree sexual abuse of a minor
  - unlawful exploitation of a minor
  - first, second, and third degree robbery
  - extortion
  - coercion

POSITION PAPER

CSSB 54 (FIN)

JUVENILE WAIVER

For An Act Entitled: "An Act relating to violations of laws by juveniles; and providing for an effective date."

Background

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

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

Analysis/Program Impact

Under present Alaska law the method of applying the waiver standard is a judicial proceeding. All evidence bearing on the waiver decision is considered by the Court. Waiver decisions made by judges require a threshold finding of probable cause, that the accused juvenile offender committed the alleged offense. The probable cause standard is guided

by statutorily established criteria, and is subject to judicial review.

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

CSSB 54(FIN) proposes an automatic waiver method for some minors 14 years of age and older, by specifying the initial charge. This is a significant departure from a court determined waiver.

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

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

CSSB 54(FIN) would permit the automatic waiver and the adult prosecution of a minor 16 years of age and older when;

the minor is charged with an unclassified or class A felony; or

the minor is charged with a crime against a person that is a felony other than an unclassified or class A felony, and the minor has a previous adjudication(s) as a delinquent or conviction (s) as an adult for a felony crime against a person in Alaska or elsewhere.

CSSB 54(FIN) would also permit the automatic waiver and the

adult prosecution of a minor 14 - 15 years of age when;

the minor is charged with murder, attempted murder, solicitation to commit murder; or

the minor is charged with an unclassified or class A felony and has a previous delinquent adjudication for any felony offense in Alaska or elsewhere; or

the minor is charged with any felony and has previously been convicted as an adult of any felony offense in Alaska or elsewhere.

A minor could attempt to reverse the waiver process by a petition to the Court for the charges to be heard in the juvenile court rather than adult court. The minor would have the burden of proof to show by a preponderance of evidence that he/she is amenable to treatment by age 20 and the state would have the burden of proof to show by a preponderance of the evidence that any previous adjudications or convictions are in fact true.

If a minor prosecuted in adult court is not convicted as charged under the provisions of this bill, but is convicted of a lesser charge to which automatic waiver does not apply, the minor would be sentenced as a juvenile. The state could however, petition the Court to waive a minor under the current waiver provisions of AS 47.10.060. For such a second waiver attempt the state would have the burden of proving the minor's non-amenability to treatment by age 19.

The Department estimates a high of 36 offenders per year could be waived under this bill based on an analysis of FY 1992 youth offender statistics. The following analysis of youth offender trends for each category specified in the bill is provided.

#### DHSS Youth Offender Statistics

Category (1) (A)      FY 1991 - 12 of the 36 cases referred were formally charged with an unclassified or class A felony.

FY 1992 - 28 of the 60 cases referred were formally charged with an unclassified or class A felony.

FY 1993 - (7/1/92 - 12/31/92) 11 of the 27 cases referred were formally

charged with an unclassified or class A felony.

Total for (1)(A) crimes is 51 for 30 months of referrals.

Category (1)(B)

FY 1991 - 0 of the 2 cases referred were formally charged with an felony crime against a person and had a previous adjudication.

FY 1992 - 0 of the 2 cases referred were formally charged with an felony crime against a person and had a previous adjudication.

FY 1993 - (7/1/92 - 12/31/92) 1 of 1 case referred was formally charged with a felony crime against a person and had a previous adjudication.

Total (1)(B) crimes is 1 for 30 months of referrals.

Category (2)(A)

FY 1991 - There were 0 cases referred in this category.

FY 1992 - 6 of the 6 cases referred were formally charged with murder.

FY 1993 - (7/1/92 - 12/31/92) There were 0 cases referred in this category.

Total (2)(A) crimes is 6 for 30 months of referrals.

Category (2)(B)

FY 1991 - There were 0 cases referred and formally charged with a unclassified or class A felony and had a previous felony adjudication.

FY 1992 - 2 of the 13 cases referred were formally charged with an unclassified or class A felony and had a previous felony adjudication.

FY 1993 - (7/1/92 - 12/31/92) of 0 cases referred and formally charged with an unclassified or class A felony and had a previous felony adjudication.

Total (2)(B) crimes is 2 for 30 months of referrals.

Category (2).(C)

FY 1991 - There were 0 cases referred and formally charged with a felony and had a previous conviction as an adult for a felony.

FY 1992 - There were 0 cases referred and formally charged with a felony and had a previous conviction as an adult for a felony.

FY 1993 - (7/1/92 - 12/31/92)  
There were 0 cases referred and formally charged with a felony and had a previous conviction as an adult for a felony.

Total (2)(C) crimes is 0 for 30 months of referrals.

	FY 1991	FY 1992	FY 1993
Total Referrals	36	81	28
Total Adjudicated	12	36	12
Total Waived Back	24	45	16

Data Source DFYS PROBER

The number of offenders that could potentially be waived back into the juvenile system is the difference between the referral cases and the adjudicated cases.

This legislation would not significantly reduce the number of offenders referred to DHSS juvenile intake officers and subsequently confined in DHSS youth facilities. During the past three fiscal years the department has been averaging 6,704 youth corrections referrals per year statewide of which 36 would have possibly qualified in FY 1992 for waiver under this bill.

## JUVENILE RECORDS

This bill would lift the seal of confidentiality for records of minors charged under the automatic waiver provisions of the bill. The department would stop short of releasing all information about a minor's family to prevent the public humiliation that could be brought upon young siblings and other family members that were not party to the offense.

### DEPARTMENTS POSITION

The department cannot support automatic waiver for accused juvenile offenders under 16 years old. These offenders often can be successfully treated in the juvenile justice system or waived into adult court under Alaska's existing waiver law. The waiver of juvenile jurisdiction is a most difficult decision in which society has competing interests. In cases where the offender is under 16 years of age, a balancing of the goals of public protection, and society's interest in protecting and rehabilitating youthful offenders must be weighed.

The department cannot support the provisions of this bill that place waived offenders back into the juvenile justice system if they are convicted of a lesser charge for which automatic waiver does not apply, or are granted juvenile status as a result of petitioning on amenability to treatment.

These offenders can present serious management and behavior problems if they are brought back into a juvenile facility. DHSS youth facilities do not have the staffing or physical plant to segregate these offenders that in time could represent a significant number.

The department does not support the lifting of confidentiality for juvenile records if the minor's family, especially siblings, are to suffer public humiliation as a result of the information that is made public. Juvenile records under the jurisdiction of the court and the department may include extensive family social history, placement history, and medical information about the minor and members of the minor's family. The release of such records should require some form of guaranteed protection by the court.

The department does support the automatic waiver for juvenile offenders 16 years and older who are charged with the crimes of murder, attempted murder and solicitation to commit murder.

Recommended: Deborah R. Wing Date: 3/4/93

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

Approved: Theodore A. Mala Date: 3 March 1993

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

8-LS0384Y ✓  
Chenoweth  
4/16/93

HOUSE CS FOR CS FOR SENATE BILL NO. 54(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS HALFORD, Phillips, Leman, Taylor, Miller  
REPRESENTATIVES Porter, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to violations of laws by juveniles, to the remedies for offenses  
2 and activities committed by juveniles and to records of those offenses, and to  
3 incarceration of juveniles who have been charged, prosecuted, or convicted as  
4 adults; and providing for an effective date."

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

6 \* Section 1. AS 09.25.120 is amended to read:

7 Sec. 09.25.120. PUBLIC RECORDS; EXCEPTIONS; CERTIFIED COPIES.  
8 Every person has a right to inspect a public record in the state, including public  
9 records in recorders' offices except (1) records of vital statistics and adoption  
10 proceedings which shall be treated in the manner required by AS 18.50; (2) records  
11 pertaining to juveniles, unless the record is, by law, a public record; (3) medical and  
12 related public health records; (4) records required to be kept confidential by a federal  
13 law or regulation or by state law; (5) to the extent the records are required to be kept  
14 confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g

1 in order to secure or retain federal assistance; (6) records or information compiled for  
2 law enforcement purposes, but only to the extent that the production of the law  
3 enforcement records or information (A) could reasonably be expected to interfere with  
4 enforcement proceedings, (B) would deprive a person of a right to a fair trial or an  
5 impartial adjudication, (C) could reasonably be expected to constitute an unwarranted  
6 invasion of the personal privacy of a suspect, defendant, victim, or witness, (D) could  
7 reasonably be expected to disclose the identity of a confidential source, (E) would  
8 disclose confidential techniques and procedures for law enforcement investigations or  
9 prosecutions, (F) would disclose guidelines for law enforcement investigations or  
10 prosecutions if the disclosure could reasonably be expected to risk circumvention of  
11 the law, or (G) could reasonably be expected to endanger the life or physical safety  
12 of an individual. Every public officer having the custody of records not included in the  
13 exceptions shall permit the inspection, and give on demand and on payment of the fees  
14 under AS 09.25.110 - 09.25.115 a certified copy of the record, and the copy shall in  
15 all cases be evidence of the original. Recordors shall permit memoranda, transcripts,  
16 and copies of the public records in their offices to be made by photography or  
17 otherwise for the purpose of examining titles to real estate described in the public  
18 records, making abstracts of title or guaranteeing or insuring the titles of the real  
19 estate, or building and maintaining title and abstract plants; and shall furnish proper  
20 and reasonable facilities to persons having lawful occasion for access to the public  
21 records for those purposes, subject to reasonable rules and regulations, in conformity  
22 to the direction of the court, as are necessary for the protection of the records and to  
23 prevent interference with the regular discharge of the duties of the recordors and their  
24 employees.

25 \* Sec. 2. AS 33.30.901(11) is amended to read:

26 (11) "prisoner"

27 (A) means a person [, OTHER THAN A JUVENILE,] held  
28 under authority of state law in official detention as defined in AS 11.81.900(b);

29 (B) includes a juvenile committed to the custody of the  
30 commissioner when the juvenile has been charged, prosecuted, or convicted  
31 as an adult;

1 \* Sec. 3. AS 43.23.065(b) is amended to read:

2 (b) An exemption is not available under this section for permanent fund  
3 dividends taken to satisfy

4 (1) child support obligations required by court order or decision of the  
5 child support enforcement agency under AS 25.27.140 - 25.27.220;

6 (2) court ordered restitution under AS 12.55.045 - 12.55.051, [OR]  
7 12.55.100, or AS 47.10.080(b)(4);

8 (3) claims on defaulted scholarship loans under AS 43.23.067;

9 (4) court ordered fines;

10 (5) writs of execution under AS 09.35 of a judgment that is entered

11 (A) against a minor in a civil action to recover damages;  
12 recovery under this subparagraph is limited to \$2,000 and court costs, and  
13 may be obtained only when the judgment is based upon

14 (i) an act of the minor that is defined as a crime  
15 against a person under AS 33.30.901, that injured the plaintiff, and  
16 for which the minor was adjudicated a delinquent or convicted as  
17 an adult; or

18 (ii) the minor's intentional or knowing injury of real  
19 or personal property of the plaintiff;

20 (B) under AS 34.50.020 against the parent, parents, legal  
21 guardian, or person having the legal custody of an unemancipated minor;

22 (6) a debt owed by an eligible individual to an agency of the state,  
23 unless the debt is contested and an appeal is pending, or the time limit for filing an  
24 appeal has not expired.

25 \* Sec. 4. AS 47.10.010 is amended by adding a new subsection to read:

26 ( When a minor who is at least 16 years of age is arraigned on a charge of  
27 murder in the first degree ~~under AS 47.10.010~~, attempted murder in the first degree  
28 ~~under AS 47.10.010~~, or murder in the second degree ~~under AS 47.10.010~~,  
29 AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules do not apply to the  
30 offense for which the minor is arraigned or to any additional offenses joinable to it  
31 under the applicable rules of court governing criminal procedure. The minor shall be

1 charged, prosecuted, and sentenced in the superior court in the same manner as an  
2 adult.

3 \* Sec. 5. AS 47.10.020(a) is amended to read:

4 (a) Whenever circumstances subject [A PERSON INFORMS THE COURT  
5 OF THE FACTS THAT BRING] a minor to the jurisdiction of AS 47.10.010 -  
6 47.10.142 [WITHIN THIS CHAPTER], the court shall

7 (1) provide, under procedures adopted by court rule, that, for a  
8 minor who is alleged to be a delinquent minor under AS 47.10.010(a), a state  
9 agency shall make a preliminary inquiry to determine if any action is appropriate  
10 and may take appropriate action to adjust or dispose of the matter without a  
11 court hearing; if, under this paragraph,

12 (A) the state agency makes a preliminary inquiry and takes  
13 appropriate action to adjust or dispose of the matter without a court  
14 hearing, the minor may not be detained or taken into custody and, subject  
15 to (d) of this section, the matter shall be closed by the agency if the minor  
16 successfully completes all that is required of the minor by the agency in  
17 the adjustment or disposition;

18 (B) the agency concludes that the matter may not be  
19 adjusted or disposed of without a court hearing, the agency may file a  
20 petition under (2) of this subsection setting out the facts; or

21 (2) appoint a competent person or agency to make a preliminary inquiry  
22 and report for the information of the court to determine whether the interests of the  
23 public or of the minor require that further action be taken; if, under this paragraph,  
24 the court appoints a person or agency to make a preliminary inquiry and to  
25 report to it, then upon [. UPON] the receipt of the report, the court may informally  
26 adjust or dispose of the matter without a hearing, or it may authorize the person having  
27 knowledge of the facts of the case to file with the court a petition setting out the facts;  
28 if [. WHERE] the court informally adjusts or disposes of the matter, the minor may  
29 not be detained or taken into the custody of the court, and the matter shall be closed  
30 by the court upon adjustment or disposition.

31 \* Sec. 6. AS 47.10.020 is amended by adding a new subsection to read:

1 (d) The provisions of this subsection apply to a minor who is alleged to be a  
2 delinquent minor under AS 47.10.010(a)(1) and for whom an agency has, under  
3 applicable court rule, made a preliminary inquiry before taking appropriate action as  
4 authorized by (a)(1) of this section. Following the preliminary inquiry, unless the  
5 agency determines that the matter should be dismissed, the agency may take informal  
6 action to adjust or dispose of the matter. When the agency decides that an informal  
7 adjustment or disposition of a matter should be made, that informal adjustment or  
8 disposition may not be made without the agreement or consent of the minor and the  
9 minor's parents or guardians to the terms and conditions of the adjustment or  
10 disposition. An informal action to adjust or dispose of a matter is not successfully  
11 completed unless, among other factors that the agency considers, as to the victim of  
12 the act of the minor that is the basis of the delinquency allegation, the minor pays  
13 restitution in the amount set by the agency or agrees as a term or condition set by the  
14 agency to pay the restitution.

15 \* Sec. 7. AS 47.10.060(a) is amended to read:

16 (a) When a petition has been filed under AS 47.10.020, the minor has the  
17 burden of proving, by a preponderance of the evidence, that the minor is  
18 amenable to treatment under this chapter. If the court finds at the [A] hearing on  
19 the [A] petition that there is probable cause for believing that the [A] minor is  
20 delinquent and finds that the minor is not amenable to treatment under this chapter, the  
21 court [IT] shall order the case closed. After a case is closed under this subsection, the  
22 minor may be prosecuted as an adult.

23 \* Sec. 8. AS 47.10.060(e) is amended to read:

24 (e) A person who has been tried as an adult under this section, or the  
25 department on the person's behalf, may petition the superior court to seal the records  
26 of all criminal proceedings, except traffic offenses, initiated against the person, and all  
27 punishments assessed against the person, while the person was a minor. A petition  
28 under this subsection may not be filed until five years after the completion of the  
29 sentence imposed for the offense for which the person was tried as an adult. If the  
30 superior court finds that the punishment assessed against the person has had its  
31 intended rehabilitative effect and further finds that the person has fulfilled all

1 orders of the court entered under AS 47.10.080(b), the superior court shall order the  
2 record of proceedings and the record of punishments sealed. Sealing the records  
3 restores civil rights removed because of a conviction. A person may not use these  
4 sealed records for any purpose except that the court may order their use for good cause  
5 shown or may order their use by an officer of the court in making a presentencing  
6 report for the court. The court may not, under this subsection, seal records of a  
7 criminal proceeding

8 (1) initiated against a person if the court finds that the person has  
9 not complied with a court order made under AS 47.10.080(b); or

10 (2) commenced under AS 47.10.010(e) unless the minor has been  
11 acquitted of all offenses with which the minor was charged or unless the most  
12 serious offense of which the minor was convicted was not murder in the first  
13 degree, attempted murder in the first degree, or murder in the second degree.

14 \* Sec. 9. AS 47.10.080(b) is amended to read:

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

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

28 (2) order the minor placed on probation, to be supervised by the  
29 department, and released to the minor's parents, guardian, or a suitable person; if the  
30 court orders the minor placed on probation, it may specify the terms and conditions  
31 of probation; the probation may be for a period of time, not to exceed two years and

1 in no event extend past the day the minor becomes 19, except that the department may  
2 petition for and the court may grant in a hearing

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

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

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

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

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

27 (4) order the minor to make suitable restitution in lieu of or in addition  
28 to the court's order under (1), (2), or (3) of this subsection; the court may not refuse  
29 to make an order of restitution under this paragraph to the benefit of the victim  
30 of the act of the minor that is the basis of the delinquency adjudication;

31 (5) order the minor committed to the department for placement in an

1 adventure based education program established under AS 47.21.020 with conditions  
2 the court considers appropriate concerning release upon satisfactory completion of the  
3 program or commitment under (1) of this subsection if the program is not satisfactorily  
4 completed; or

5 (6) in addition to an order under (1) - (5) of this subsection, if the  
6 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or  
7 11.71.040(a)(4), order the minor to perform 50 hours of community service; for  
8 purposes of this paragraph, "community service" includes work

9 (A) on a project identified in AS 33.30.901; or

10 (B) that, on the recommendation of the city council or  
11 traditional village council, would benefit persons within the city or village who  
12 are elderly or disabled.

13 \* Sec. 10. AS 47.10.090 is repealed and reenacted to read:

14 Sec. 47.10.090. RECORDS. (a) The court shall make and keep records of all  
15 cases brought before it.

16 (b) The following records pertaining to a minor who was 16 years of age or  
17 older at the time of the alleged offense and who was convicted or adjudicated a  
18 delinquent for the commission of that offense are public records:

19 (1) a petition filed under AS 47.10.020 seeking to have the court  
20 declare the minor a delinquent;

21 (2) a petition filed under AS 47.10.080 seeking to have the court  
22 revoke the minor's probation;

23 (3) a petition filed under AS 47.10.010 - 47.10.142 that, under  
24 AS 47.10.060, requests the court to find that a minor is not amenable to treatment  
25 under this chapter and that results in closure of a case under AS 47.10.060(a); and

26 (4) a court judgment or order entered under AS 47.10.010 - 47.10.142  
27 that disposes of a petition identified in (1) - (3) of this subsection.

28 (c) Except for a record that, under (b) of this subsection, is a public record,

29 (1) the court's official records under this chapter may be inspected only  
30 with the court's permission and only by persons having a legitimate interest in them;

31 (2) all information and social records pertaining to a minor and

1 prepared by an employee of the court or by a federal, state or city agency in the  
2 discharge of the employee's or agency's official duty, including driver's license action  
3 under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to  
4 anyone without the court's permission.

5 (d) Notwithstanding (c)(2) of this section, a state or city law-enforcement  
6 agency

7 (1) shall disclose information regarding a case that is needed by the  
8 person or agency charged with making a preliminary investigation for the information  
9 of the court; and

10 (2) may disclose to school officials information regarding a case that  
11 is needed by the school officials to protect the safety and well-being of school students  
12 and staff.

13 (e) The court shall forward a record of adjudication of a violation of an  
14 offense listed in AS 28.15.185(a) to the Department of Public Safety if the court  
15 imposes a license revocation under AS 28.15.185.

16 (f) Within 30 days of the date of a minor's 18th birthday or, if the court  
17 retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the  
18 date on which the court relinquishes jurisdiction over the minor, the court shall order  
19 sealed all the court's official records, information and social records pertaining to that  
20 minor, as well as records of all driver's license proceedings under AS 28.15.185,  
21 criminal proceedings against the minor, and punishments assessed against the minor.  
22 A person may not use these sealed records for any purpose except that the court may  
23 order their use for good cause shown or may order their use by an officer of the court  
24 in making a presentencing report for the court. The provisions of this subsection  
25 relating to the sealing of records do not apply to

26 (1) records that, under (b) of this subsection, are made public records;  
27 and

28 (2) records of traffic offenses.

29 (g) The name or picture of a minor under the jurisdiction of the court may not  
30 be made public in connection with the minor's status as a delinquent child or a child  
31 in need of aid unless authorized by order of the court. However, notwithstanding the

1 limitation imposed by this subsection, the name of a minor who is found for the  
2 second time to have violated a law that if committed by an adult would be a felony  
3 shall be made public unless the court, for good cause shown, in certain individual  
4 cases, enters an order prohibiting the disclosure.

5 (h) A person who violates a provision of this section is guilty of a  
6 misdemeanor, and upon conviction is punishable by a fine of not more than \$500 or  
7 by imprisonment for not more than one year, or by both.

8 (i) In (c)(1) of this section, a person with a legitimate interest in the inspection  
9 of an official record maintained by the court includes a victim who suffered damage  
10 as the result of physical injury by an offense that is a crime against a person  
11 committed by a minor or as a result of the knowing or intentional injury of the  
12 victim's real or personal property by an offense committed by a minor. If the victim  
13 knows the identity of the minor, identifies the minor to the court, and certifies that the  
14 information is being sought to support a civil action against the minor or against the  
15 minor's parents or guardians under AS 34.50.020, the court shall allow the victim to  
16 inspect and may not refuse permission for the victim to use the following records and  
17 information in connection with the civil action:

18 (1) a petition filed under AS 47.10.020 seeking to have the court  
19 declare the minor a delinquent;

20 (2) a petition filed under AS 47.10.080 seeking to have the court  
21 revoke the minor's probation;

22 (3) a petition filed under AS 47.10.010 - 47.10.142 that, under  
23 AS 47.10.060, requests the court to find that a minor is not amenable to treatment  
24 under this chapter and that results in closure of a case under AS 47.10.060(a); and

25 (4) a court judgment or order entered under AS 47.10.010 - 47.10.142  
26 that disposes of a petition identified in (1) - (3) of this subsection.

27 \* **Sec. 11.** AS 47.10.190 is amended to read:

28 **Sec. 47.10.190. [CONDITIONS GOVERNING] DETENTION OF MINORS.**

29 (a) When the court commits a minor to the custody of the department, the department  
30 shall arrange to place the juvenile in a detention home, facility, or another suitable  
31 place that the department designates for that purpose.

1           **(b)** A juvenile detained in a jail or similar institution at the request of the  
2 department shall be held in custody in a room or other place apart and separate from  
3 adults. **The provisions of this subsection do not apply to a juvenile held in a jail**  
4 **when committed to the custody of the commissioner of corrections under**  
5 **AS 33.30.**

6 \* Sec. 12. AS 47.10.990 is amended by adding a new paragraph to read:

7           (10) "crime against a person" has the meaning given in AS 33.30.901.

8 \* Sec. 13. APPLICABILITY. This Act applies

9           (1) to civil actions accruing on or after the effective date of this Act; and

10           (2) to offenses committed on or after the effective date of this Act.

11 \* Sec. 14. This Act takes effect September 1, 1993.



## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HCS CSSB 54 (Iud)

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to violations of laws by juveniles, to the remedies . . ." BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 Sponsor: Halford  
 Requestor: House Judiciary COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

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

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE FUND SOURCE:</b>	0	0	0	0	0	0
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**FUNDING:**

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

**POSITIONS**

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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684  
 Division: Office of Public Advocacy Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Userra *NBU* Date: 4/20/93  
 Agency: Department of Administration

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# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HCS CSSB 54 (JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: An Act Relating to violations of law BRU: Public Defender Agency  
by Juveniles... Component: Public Defender Agency  
 Sponsor: Sen. Halford  
 Requestor: House Judiciary Comm. COMPONENT SERIAL NO. 43

**Expenditures/Revenues:**

(Thousands of Dollars)

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

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

REVENUE FUND SOURCE:						
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**FUNDING:**

(Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ None

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

Prepared by: BH Cayle A. Horvatski, Comm. Aide  
 Division: House Judiciary Comm.  
 Approved by Commissioner: Brian D. Porter  
 Agency: Chairman, House Judiciary Comm.

Phone: 465-6841  
 Date: 4-19-93  
 Date: 4-19-93

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# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HCS CSSB 54 (JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act Relating to Violations of Law BRU: Statewide Programs  
by Juveniles... Component: Statewide Programs  
 Sponsor: Sen. Halford  
 Requestor: House Judiciary Comm. COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

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

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

REVENUE FUND SOURCE						
---------------------	--	--	--	--	--	--

**FUNDING:**

(Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ None

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

Prepared by: Gayle A. Horetski, Committee Aide  
 Division: House Judiciary Committee  
 Approved by Commissioner: Brian S. Porter  
 Agency: Chairman, House Judiciary Committee

Phone: 465-6841  
 Date: 4-19-93  
 Date: 4-19-93

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
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By: Sen. Taylor

SENATE  
LETTER OF INTENT

CSSB 54(FIN)

It is the intent of the Senate that Sections 1, 5, and 8 of this Act are not intended to modify court rules regarding access to presentence reports, discovery in criminal cases, or any other court rules designed to limit the dissemination of information to protect individual privacy, a person's right to a fair trial or other constitutional rights.

Adopted: 3/2/93

# Alaska State Legislature



**DRAFT**

House of Representatives  
House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

## LETTER OF INTENT

It is the intent of the House Judiciary Committee, in its adoption of HCS for CS for SB 54 (JUD), to alter the jurisdiction of the criminal courts over juvenile offenders charged with murder and to require the juvenile offender for whom waiver to criminal court has been sought for other offenses to prove that he or she is amenable to treatment in the juvenile justice system.

The House Judiciary Committee, in its adoption of HCS CSSB 54 (JUD), intends to alter the substantive legal rights of juvenile offenders. In the judgement of the committee, the scope of a court's jurisdiction and the allocation of burdens of proof in legal actions are matters of substantive law, not matters of procedure.

It is the judgement of the committee that, once the screening authorities have decided that a juvenile offender is not amenable to treatment in the juvenile court system and have filed a petition seeking waiver of the juvenile into the adult criminal court system, it is the offender himself who is in the best position to show that he would be treatable in the juvenile court system. The juvenile offender and his attorney are the ones who know the most about the offender's family and educational experiences, and are in the best position to present information relating to the issue of treatability to the court.

For example, under the Alaska Court of Appeals' decision in R.H. v. State, 777 P. 2d 204 (Alaska App. 1989), the state may not compel a juvenile offender to submit to a psychiatric evaluation for the purpose of determining his amenability to treatment in the juvenile court system. In its decision, the court acknowledged that "in some situations, the lack of information concerning the psychiatric condition of the accused child will undoubtedly make the state's burden more difficult to meet." 777 P. 2d at 211. In the view of the committee, to place the burden of proof upon the party who has the greatest access to the facts relevant to the issue of treatability is a sound public policy choice.

---

Brian Porter, Chairman

04/16/93  
15:35:50

J. LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:30533 SCHEDULED FOR:04/16/93 15:15 TO 17:00  
PUBLIC HEARING HOUSE JUDICIARY

LTN1150  
BY:ANC  
FOR:ANC

LOCATION: ANCHORAGE

SB 54  
SB 54  
SB 54  
SB 54

GLENN  
HOWARD  
JAY  
SHARON

FLOTHE  
BURGER  
PAGE  
BLEEK

STATE TROOPERS  
STATE TROOPERS

*Testify*  
OBSERVE  
OBSERVE  
TESTIFY  
OBSERVE

Rep. Brian Porter, Chairman

# House Judiciary Committee

Date: April 16, 1993  
Place: Capitol Room 120

SB 54 Juvenile Waiver  
HB 222 Use of Rented Property/Law Violations  
HB 188 Forfeiture of Property  
HB 195 Authorizing Youth Courts  
HB 187 Interception of Private Communications

Subject of Meeting: HB 132 Extend Resource  
Extraction Permit/Lease

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
Mary A. A. ORSACE	ALASKA MINERS ASSN	240 MAIN ST, STE 500	99801		586-3340	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 132
Margot Kouth	Law - CDCO	Box 110300	99811		465-3428	<input checked="" type="radio"/> Y <input type="radio"/> N	SB 54
Randall Hines	DHSS	Box 110630	99811		465-3187	<input checked="" type="radio"/> Y <input type="radio"/> N	SB 54 & HB 195
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	

REF

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE NORDLUND

TO: DRAFT HCS CSSB 54(JUD)

Page 3, line 25:

Delete "a new subsection"

Insert "new subsections"

Page 4, following line 2:

Insert a new subsection to read:

"(f) If, under (e) of this section, the minor is to be prosecuted as an adult, the minor may, within 10 days of the date that the minor is arraigned, file a petition with the court seeking to have the charges heard under the procedure prescribed in AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules. The petition under this subsection must allege that the minor is amenable to treatment under this chapter before the minor's 20th birthday. At a hearing on a petition under this subsection, the minor bears the burden of proving by a preponderance of the evidence that the minor is amenable to treatment under this chapter before reaching 20 years of age. In ruling on the petition, the court shall consider the factors set out in AS 47.10.060(d)."

Page 6, line 11:

Delete "or"

Insert " , "

Page 6, line 13, after "second degree":

Insert ", or unless, after commencement of the criminal proceeding under AS 47.10.010(e), the charges were heard and disposed of under AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules in response to a petition filed under AS 47.10.010(f)"

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March 26, 1993

The Honorable Brian Porter  
Chairman, Judiciary Committee  
The House of Representatives  
State Capitol, Juneau, AK 99801-1182

Dear Representative Porter:

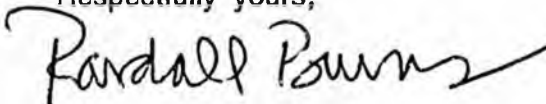
I am writing on behalf of the Alaska Civil Liberties Union (AkCLU), an affiliate of the American Civil Liberties Union (ACLU), to express our opposition to SB 54. This bill provides for an *automatic* "waiver" of juveniles 16 years and over from the juvenile system into the adult criminal justice system when they are charged with unclassified or Class A felony offenses.

Over the years the AkCLU and other youth advocacy organizations have argued against bills that assert an automatic waiver. As you know, the State of Alaska already has a system in place for the waiver of juveniles from Children's to Superior Court. The present system functions effectively and, despite criticisms, we have heard no persuasive arguments to the contrary.

Given that we presently have an effective system, we can see no **fiscal justification** for enacting legislation that will cost the state more money to administer while further reducing the already tentative civil liberties of our juvenile population.

Bottom line: automatic waiver to adult court will necessitate strong constitutional protections for those juveniles being waived to adult court, protections necessitating much more expensive -- primarily state funded -- defense and prosecutorial costs. Given that present agency budgets already account for the funding of juvenile waivers under the current system, why attempt to fix something that clearly is not broke by replacing it with much more expensive procedures that trample on the rights of Alaska's children?

Respectfully yours,



Randall P. Burns  
Executive Director

Rep. Brian Porter, Chairman

# House Judiciary Committee

**Date:** March 26, 1993  
**Place:** Capitol Room 120

**Subject of Meeting:** HB 160 Liability of Design Professionals; SB 54 Offenses by Juveniles

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
Rosemary Matt	A.D.O. T. + P.F.	MS 2500			465-6960	Y <input checked="" type="radio"/> N	HB 192
Donna Schultz	DHSS / DFYS	P.O. Box 110630 / 99811-0630			465-2112	Y <input checked="" type="radio"/> N	Will answer questions SB 54
Jim Galea	DHSS / DFYS	PO Box 110630 -			465-3208	Y <input checked="" type="radio"/> N	Will answer questions SB 54
Deborah Wing	DHSS / DFYS	" "			465-3191	Y <input checked="" type="radio"/> N	Available to AS. Quest.
✓ Shanon Marklin	AK Art. Design	215 5th St # 8	99801		586-7518	Y <input checked="" type="radio"/> N	HB 160
✓ Russ Winner	AK Action Trust	900 W 5th Ave Ste 700, Anch.	99501		277-9522	<input checked="" type="radio"/> Y N	HB 160
✓ Charles E. Cole	Attorney General	Box K JUNEAU			3600	<input checked="" type="radio"/> Y N	SB 54
✓ DEAN GUANEZI	Dept. of LAW	Box KC JUNEAU				<input checked="" type="radio"/> Y N	SB 54
✓ Ritch Ritter	AK Prof. Design <sup>Comm</sup>				586-1371	<input checked="" type="radio"/> Y N	SB HB 160
LIZ DODD	ACLU	100 Parks St.	99801		463-2601	Y <input checked="" type="radio"/> N	SB 54
						Y N	
						Y N	

By: Sen. Taylor

SENATE  
**LETTER OF INTENT**

CSSB 54(FIN)

It is the intent of the Senate that Sections 1, 5, and 8 of this Act are not intended to modify court rules regarding access to presentence reports, discovery in criminal cases, or any other court rules designed to limit the dissemination of information to protect individual privacy, a person's right to a fair trial or other constitutional rights.

Adopted: 3/2/93



ALASKA STATE LEGISLATURE  
Senator Rick Halford  
*President of the Senate*

While in Session:  
State Capitol  
Juneau, AK 99801-1182  
907-465-4958

While in Interim:  
P.O. Box 670190  
Chugiak, AK 99567  
907-694-4958

MEMORANDUM

TO: Representative Brian Porter, Chairman  
House Judiciary Committee

FROM: Senator Rick Halford

A handwritten signature in cursive script that reads "Rick".

DATE: March 25, 1993

SUBJECT: CSSB 54 (FIN), "An Act relating to violations of laws by juveniles, to the remedies for offenses and activities committed by juveniles and to records of those offenses, and to incarceration of juveniles who have been charged, prosecuted, or convicted as adults; and providing for an effective date."

---

Recent years have witnessed an alarming increase in the frequency and violence of juvenile crime. Although this problem is strongly influenced by numerous factors beyond direct government control, public confidence in the justice system's treatment of juvenile crime has substantially eroded in the face of two general perceptions. First, the system is overly concerned with the rights of juvenile offenders and not concerned enough with protecting the rights of actual and potential victims of juvenile crime. Second, given the escalation of juvenile crime, the current system seems to fail to provide the convincing threat of punishment necessary to deter juvenile delinquents from evolving into hardened criminals.

Senate Bill 54 will require that juveniles sixteen years of age and older be prosecuted and sentenced as adults when charged with the most serious kinds of crimes - class A and unclassified felonies - or when charged with a felony class crime against a person if they have previously been adjudicated delinquent or convicted as an adult for a felony class crime against a person. Under certain exceptional circumstances, SB 54 also provides that minors fourteen years of age or older at the time of the alleged offense will be charged and prosecuted as adults.

Furthermore, Senate Bill 54 defines in statute the terms of detention and incarceration for juveniles who are charged and tried as adults by providing that they be delivered directly into the custody of the Department of Corrections. The criminal records of juveniles will not be sealed for crimes

for which they are adjudicated delinquent or convicted as an adult and that were committed when the juvenile was sixteen years of age or older.

Senate Bill 54 also provides for new restitution measures designed to deter juvenile crime and arrest the normal pattern of juvenile criminal development at a less serious stage. At present, courts are not required to order juveniles to pay restitution for either violent crimes or property crimes. Because the names of juvenile delinquents are kept confidential, it is also virtually impossible to sue them for damages resulting from criminal activity. SB 54 will require courts to order juveniles to pay suitable damages for their crimes, permit victims access to the criminal records of juveniles who have injured them or damaged their property in order to pursue civil suits, and allow the permanent fund dividends of delinquents and their parent(s) or legal guardian(s) to be attached for payment of restitution or civil damages.

Thank you for your consideration of this legislation.

**SB 54**

The question being: "Shall CS FOR SENATE BILL NO. 54(FIN) be returned to second reading for the purpose of a specific amendment, that being Amendment No. 6?" The roll was taken with the following result:

**SB 54****CSSB 54(FIN)**

Return to second reading - AM 6

**YEAS: 9 NAYS: 10 EXCUSED: 1 ABSENT: 0**

Yeas: Adams, Donley, Duncan, Ellis, Kerttula, Lincoln, Little, Phillips, Zharoff

Nays: Frank, Halford, Jacko, Kelly, Leman, Miller, Pearce, Rieger, Sharp, Taylor

Excused: Salo

and so, the motion failed.

Senator Taylor offered the following Letter of Intent:

Letter of Intent  
for  
CSSB 54 (FIN)

It is the intent of the Senate that Sections 1, 5, and 8 of this Act are not intended to modify court rules regarding access to presentence reports, discovery in criminal cases, or any other court rules designed to limit the dissemination of information to protect individual privacy, a person's right to a fair trial or other constitutional rights.

**SB 54**

Senator Taylor moved and asked unanimous consent that the Letter of Intent be adopted. Senator Adams objected, then withdrew his objection. There being no further objection, the Senate Letter of Intent was adopted.

The question being: "Shall CS FOR SENATE BILL NO. 54(FIN) "An Act relating to violations of laws by juveniles, to the remedies for offenses and activities committed by juveniles and to records of those offenses, and to incarceration of juveniles who have been charged, prosecuted, or convicted as adults; and providing for an effective date" pass the Senate?" The roll was taken with the following result:

**CSSB 54(FIN)**

Third Reading - Final Passage

**YEAS: 12 NAYS: 7 EXCUSED: 1 ABSENT: 0**

Yeas: Donley, Frank, Halford, Jacko, Kelly, Leman, Miller, Pearce, Phillips, Rieger, Sharp, Taylor

Nays: Adams, Duncan, Ellis, Kerttula, Lincoln, Little, Zharoff

Excused: Salo

and so, CS FOR SENATE BILL NO. 54(FIN) passed the Senate with a Senate Letter of Intent.

Senator Taylor moved the effective date clause.

The question being: "Shall the effective date clause be adopted?" The roll was taken with the following result:

**CSSB 54(FIN)**

Effective Date

**BILL NO:** CSSB 54

**DATE:** February 17, 1993

**TITLE:** "An Act relating to violations of laws by juveniles. . ."

**CONTACT:** C.E. Swackhammer  
Deputy Commissioner  
465-4322

Section 1 amends AS 12.55.045 Restitution, paragraph (a), by adding a defendant who is a minor to those individuals the court may order to make restitution to a victim.

Section 2 amends AS 33.30.901 Definitions, paragraph (11), to include a juvenile committed to the custody of the commissioner when the juvenile has been convicted as an adult.

Section 3 amends AS 34.50.020 Liability for the Destruction of Property by Minors, paragraph (a), to increase the civil damages from \$2,000.00 to \$5,000.00 against an unemancipated minor or who maliciously injures property belonging to a person, municipal corporation, association, village, school district, or religious or charitable organization.

Section 4 amends AS 43.23.065 Exemptions to Permanent Fund Dividends, paragraph (b), which permits the seizure of minor's permanent fund dividend check up to the value of \$5,000.00 if the minor is convicted of an act against a person which caused injury or minor's malicious or willful injury of real or personal property and also allows seizure of permanent fund dividend check of the parent, legal guardian, or person having legal custody of an unemancipated minor.

Section 5 adds a new subsection AS 47.10-010 which allow a minor 16 years of age or older to be tried as an adult if the minor committed an unclassified or class A felony or a crime against a person that is classified as a felony and the minor has previously adjudicated as delinquent or convicted as an adult as a result of an offense against a person classified as a felony and paragraph (G) of this section provides for the minor to be sentenced as an adult if convicted of the above listed crimes.

Section 6 amends AS 47.10.060 Waiver of Jurisdiction, which provides that the court may not seal the records of a criminal proceeding under AS 47.10.010(e)-(g)

Section 7 amends AD 47.10.080 Judgements and Orders, paragraph (b), by stating that the court may not refuse to make an order of restitution if the findings of delinquency is based on the offense which knowingly or intentionally injures real or personal property.

Section 8 adds a new section AS 47.10.080 provides if a minor was first prosecuted as an adult but convicted of an offense which was not included in the AS 47.10-010(e) if the minor should be treated as a minor.


Section 9 amends AS 47.10-090 Records, by adding a new subsection which provides for records access to a victim of a crime against the persons real or personal property by a minor adjudicated delinquent.

Section 10 amends AS 47.10.190 Conditions Covering Detention, by adding that a minor does not need to be jailed apart from adults when the juvenile was convicted as an adult.

Section 11 amends AS 47.10.990 Definitions, by adding a definition of crime "Crime against a person" as having the meaning given by AS 33.30.901 (section 2, above).

Section 12 amends rule 21(b) Alaska Delinquency Rules, to provide for a jury of 12 persons if the juvenile request trial if the act the juvenile is accused of is punishable as a felony and for a trial jury of 6 if none of the acts the juvenile accused of is a felony under AS 11.

This legislation will increase the amount of investigative time only to the extent of requiring grand jury appearance by the investigating officer(s). It will not impact the thoroughness of the criminal investigation of a serious crime.



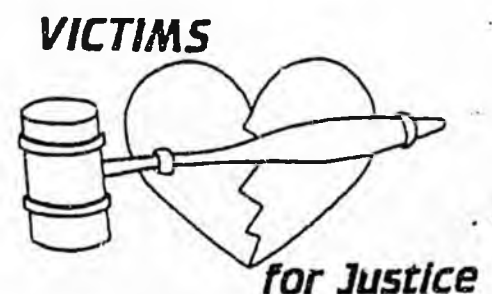
Richard L. Burton  
Commissioner

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**POSITION STATEMENT  
FROM THE COALITION OF  
THE ALASKA PEACE OFFICER'S ASSOCIATION  
and MOTHERS AGAINST DRUNK DRIVERS**

before the  
19th Alaska Legislature  
March 1993



## ISSUES RELATING TO THE JUVENILE JUSTICE SYSTEM

The following are suggested changes to the current statute/rules relating to Juvenile Criminal laws/procedures.

1. **JUVENILE WAIVER (SB 54)** - People ages 16 and 17 charged with an Unclassified or Class A Felony (these are violent crimes against people) should be treated as adults and prosecuted in adult court.

2. **CONFIDENTIALITY** - There is an assumption that confidentiality in criminal matters relating to juveniles will prevent recidivism. The basis for this assumption is questionable. As a result of confidentiality, there is no public awareness of the crime or the criminal. Reaffirmation of societal norms is minimized. The victim as well as the entire community needs to have an ability to voice their outrage and condemnation. There should be non-confidential sentencings to allow public scrutiny into the juvenile criminal justice system. We propose a change to allow a juvenile's first criminal charge be handled in a confidential manner. After the first conviction, all other criminal proceedings should be handled publicly.

3. **TWELVE PERSON JURIES** - In adult court, those charged with misdemeanors are entitled to a six person jury; felony defendants get twelve person juries. The Delinquency Rules of Court allow all juveniles charged with any crime, misdemeanor, or felony, to be tried by a twelve person jury. With the constraints on the court system and the attorneys for both the prosecution and defense, this puts an undue burden on the system. Juveniles charged with misdemeanors should get six person juries like adults.

4. **JUVENILE SENTENCING** - Under Title 12 of the Alaska Statutes, Courts may only use an adult's juvenile criminal history as an aggravator. The court should be required to review any juvenile criminal records. We recommend in cases where an adult with one prior juvenile adjudication on a felony charge is being sentenced on a felony in adult court, the judge should consider the juvenile record as an aggravator for a subsequent adult felony conviction. If the

adult has more than one juvenile felony adjudication, the court should be required to use presumptive sentencing. If presumptive sentencing does not apply to the particular offense, the court should consider the juvenile record as an aggravator to the possible sentence.

Further, there should be statutory guidelines for the sentencing of the juvenile offender similar to the Chaney Criteria for adult sentencing. The juvenile's probability of rehabilitation should be evaluated, but it should not be the overriding consideration. The judge should also be required to base his sentence upon the need to isolate the offender, to fashion a sentence based upon community condemnation of the offender and deterrence of other juveniles who are likely to know or learn about the case.

5. **RESTITUTION** - The principle crimes committed by juveniles are property offenses, in particular, burglaries, thefts, and auto theft. The punishments for these crimes should be more severe. Presently, there is no reason for the offender to stop offending. As a matter of policy, courts do not order juveniles to pay more than \$2000 in restitution. The principle of restitution is to make a victim whole within the possible means of the offender.

Further, restitution orders by the court are presently not enforceable after the juvenile reaches 19 years of age. If a juvenile makes only token payments until his or her 19th birthday, the court loses jurisdiction and the balance of the restitution owed can not be compelled. The juvenile's debt to the victim should survive his 19th birthday and the court should retain the authority to force restitution.

6. **INSTITUTIONALIZATION** - The Court of Appeals in R.P. v State (718 P2nd 168) held that institutionalization of juveniles should be used only as a last resort, that juveniles should be placed in the least restrictive placement. Rehabilitation is an important goal, however it should not be at the expense of the protection of the community. These goals are not mutually exclusive. With more rehabilitative efforts within the institutional environment, these goals can compliment one another. The court should also be mindful of protection of the community and the other sentencing criteria mentioned above.

**ALASKA PEACE OFFICERS ASSOCIATION**

Anchorage Chapter  
P. O. Box 103824  
Anchorage, AK 99510  
Phone: \_\_\_\_\_

February 17, 1993

Senator Rick Halford  
State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Halford,

Alaska's current juvenile justice system has repeatedly demonstrated an inability to effectively deal with the violent and recidivist youthful offender. The time and energy of police-prosecutor resources designed under the current law to waive a juvenile into adult court has resulted in waiver of only a handful of these hardened juveniles even though violent crimes by Alaska's youth is on the increase. All too often when a particularly dangerous juvenile is waived into adult court the defendant then embarks upon a time consuming appeal as the state's case grows stale, witnesses memories fade, victims and their families grow cynical and police become involved in new cases.

Because SB 54 is tailored to address these shortcomings in the existing statutory fabric it is strongly supported by the Alaska Peace Officers Association.

Unlike House Bill 100, which would permit a juvenile who has been waived into adult court to appeal that finding--a flaw in the current law--SB 54 mandates *automatic* waiver for all 16 and 17 year old who commit Class A and unclassified felonies without the requirement that the state prove that the defendant is not amenable to treatment. This means there will be no court ruling to appeal, so precious resources can be focused on taking the defendant to trial on the merits of the offense shortly after the crime occurs.

Another major shortfall of HB 100 is that it is simply so complex a piece of legislation that it is unworkable by the officer on the street upon whose shoulders it will fall to enforce it. Will the officer who finds himself in the middle of a fast breaking investigation be able to ascertain the suspect's prior juvenile criminal history (which records are sealed)? Will he correctly elect to transport the suspect to the McLaughlin Youth Center or similar facility or to the police station for questioning? Will he be correct in his decision not to notify the suspect's parents? Do the Alaska Children's Rules apply?

SB 54 will eliminate all of these concerns for Alaska law enforcement officers who will need to know only one piece of information: What is the suspect's age?

In short, SB 54 will permit police to more effectively focus their limited resources on Alaska's most dangerous offender: the hardened chronic juvenile who commits a serious crime of violence.

Respectfully yours,



Linda Branchflower  
Chairman-Legislative Committee  
Alaska Peace Officers Association

# Alaska Association Chiefs of Police



February 25, 1993

Senator Rick Halford  
Alaska State Capitol  
Room 111  
Juneau, Alaska 99801-1182

Dear Senator Halford:

On behalf of the Alaska Association of Chiefs of Police I would like to offer our support for Senate Bill 54. While there are other bills that deal with the issue of Juvenile waivers, SB 54 is cleaner in its language, is easier to understand, may result in less litigation, and has added amendments that deal with juvenile property crime.

The manner in which the criminal justice deals with juvenile offenders may have been appropriate 20 years ago, but not today. Juveniles are involved in more than the "petty offenses" that drove the thinking behind our current approach to the juvenile offender. Juveniles today commit a significant percentage of the violent crimes in Alaska and are responsible for an increasing number of the full spectrum of felony crime.

We believe that Senate Bill 54 is an effective way to combat the growing area of juvenile crime. If we can be of any assistance in the passage of this bill please let me know.

Very truly yours,

A handwritten signature in cursive script, which appears to read "Ronald L. Otte", is written over the typed name.

Ronald L. Otte  
President

RLO/lp

# Senate's juvenile crime bill would balance scales

3.12.93

By PAUL JENKINS

The state Senate has sent to the House of Representatives a good piece of legislation we should strongly support, lest it get lost in a high shuffle.

The measure, SB54, would go a long way toward balancing the scales in dealing with juvenile criminals and actually shows the little dears that crime is not supposed to pay. It would make four basic changes to the law.

First, under current law, a prosecutor must petition a judge for permission to haul a youngster charged with a serious crime into Superior Court for trial as an adult.

This bill, initially put together by Sen. Rick Halford, R-



Jenkins

Chugiak, would change that by mandating that 14- to 18-year-olds be tried as adults under certain conditions: Those would include charges of unclassified or Class A felonies such as murder, kidnapping, rape and first-degree arson.

And Junior also automatically would go to court as an adult if he previously had been charged with a crime against a person, already had been determined to be delinquent or had been convicted as an adult of a felony crime against a per-

son here, or anywhere else.

Second, the measure would resolve the problem of what to do with Junior when he screws up and is convicted as an adult.

Now, a judge can remand him to the custody of Department of Health and Social Services — where he can be a wonderful role model for other juveniles being held for lesser offenses — or order him into prison, where he would be held in custody separate from adults.

The Senate bill would end that. If convicted as an adult, Junior would get to serve his time in jail as an adult, without being segregated because of his age.

Third, SB54 would end the charade of automatically sealing Junior's records. Under this measure, all records of criminal convictions — felonies and misdemeanors — from the age of 16 on would be there for all the world to see. So when Junior and his buddies get together to assault somebody, tear down Christmas decorations or engage in any other "mischief," they will get to carry their convictions with them.

And it would allow victims of property or personal crimes committed by a minor of any age to get a peek at the official record and use the information to sue the pants off Junior, his parents or legal guardians.

And, fourth, Junior would get to pay

for his sins.

Judges now are not required to order restitution for property crimes or crimes against people. And it's tough to sue young criminals for damages because the juvenile justice system keeps their records confidential so they will not be barred from medical school later.

The Senate bill requires that judges order restitution if Junior is adjudicated a delinquent, and allows victims to go after his Permanent Fund dividend and forbids sealing of his records if court-ordered restitution is not paid.

As it is now, when Junior turns 19, juvenile court judges have no jurisdiction to insist he pay what he owes to his victims.

The bill now is in the House Judiciary Committee.

You might want to give your legislators a nudge in the direction of passing this measure. The Legislative Information Office's nifty, free 60-word messages to lawmakers are a good way to start.

The good part about supporting legislation like this is that it will not make a bit of difference for the 99 percent of the kids out there who are good citizens.

The best part is that it will get the attention of that other 1 percent the very first time they stray over the line.

Paul Jenkins is an editor of The Anchorage Times.

# THE VOICE OF THE TIMES

## Some kids need more punishment than slap on hand

By PAUL JENKINS

Remember Alex Felker? He was the guy clubbed and beaten by five punks as he walked along Spenard Road just before Christmas. Guess what? Three of those same little darlings went on an even more violent spree just days later. This time, the bunch had a gun. This time they hurt someone else.

In the most recent episode, it's alleged they — and a few new buddies — rolled a drunk, tried to carjack a pizza delivery guy, stole a woman's car at gunpoint, shot at a cab driver and attacked and seriously injured a 15-year-old boy waiting in a car for his parents to come out of the Fred Meyer store on Northern Lights.

What else they were up to that night is anybody's guess. But what they did during those two nights could have happened to any of us unfortunate to be in the wrong place at the wrong time.

All these thugs are between 15 and 17 years old. At least two of them are known to juvenile authorities for past property crimes. They have fallen into the category of being the usual suspects when things like this happen. And you wonder why cops get a little cranky.

If there is a recent case that graphically shows why kids involved in violent crimes should automatically be charged and treated as adults, here it is.

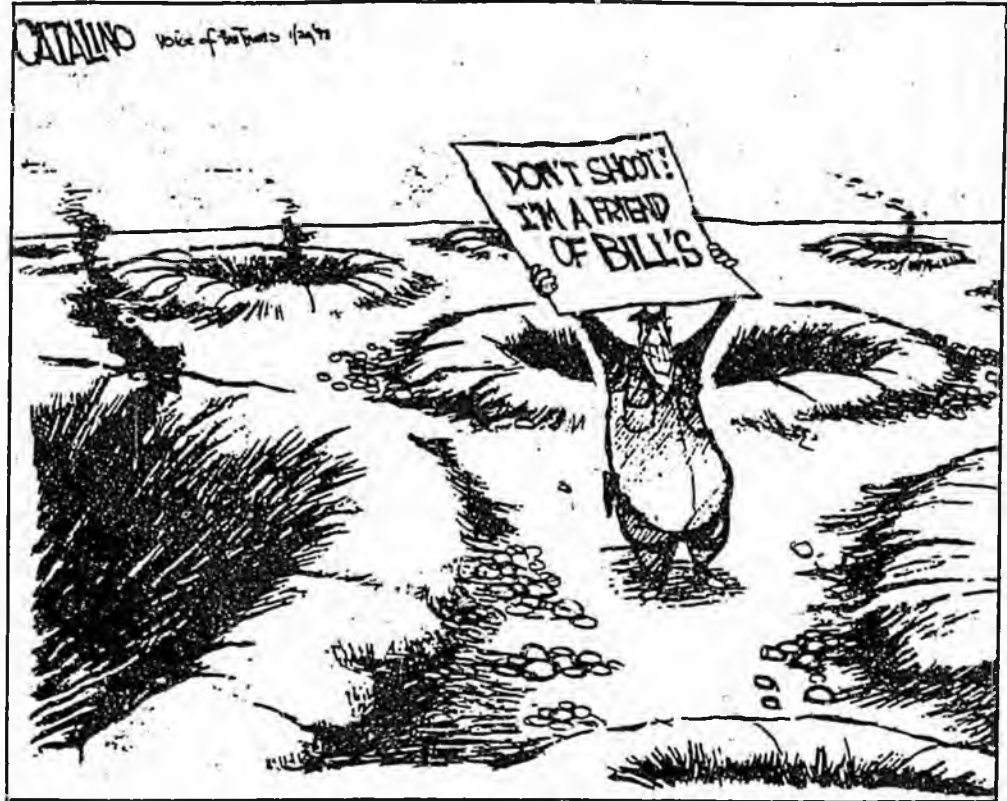
If the three clowns involved in beating Mr. Felker — and who were involved in the crime spree a few days later — had been charged as adults to begin with, they likely would not have been on the street to be involved in the second round of fun. And the knowledge that the law was coming down hard on them may have kept their buddies off the street as well.



Jenkins

As it is now, they have the protection of the juvenile justice system. We don't know who they are. For all we know, they're living next door. We likely won't know what happens to them. But in comparison to what they would have gotten in adult court, they'll just get their little hands slapped. All of this, of course, is designed to let the little dears grow up and become responsible adults without the onus of a criminal record.

That's great. Those same protections saved my butt when I was a punk kid and



went over the line. But then, my friends and I didn't try to shoot anybody or club them or hit them in the head with hockey sticks. We were stupid and insensitive, but we weren't violent.

And teen-agers have not changed. Kids, good kids who will grow up to be good citizens, do crazy, non-violent things. Get them together and the lowest-common-denominator thing goes to work. They become hormones with ears. But, hopefully, it passes. They should be allowed to grow up, get into college, get jobs and proceed with their lives when their brains actually begin to function.

But violent kids can grow up to be violent adults. If they have a career track leading to more and more violence, we should be trying to derail them now, before some poor soul has to deal with them in the middle of the night.

I think when you're 15, 16, 17 years old you should have a vague notion that hurting someone else is wrong, and when you step over the line, you should pay. About 99.5 percent of the kids know that. It's time to deal with those who haven't gotten the word.

This bunch has been lucky twice. They didn't kill anybody, despite their being armed and shooting a gun. Nobody killed them, despite this being a city where any

number of people could, and would love to, shoot back. That kind of luck is not going to hold forever.

It's well past time for a slap on the hand for these kids and others like them who haven't gotten the word that such behavior is wrong.

The Alaska Peace Officers Association is drafting legislation that would be a big step in the right direction.

Among other things, it would:

- Prosecute 16- and 17-year-olds as adults when they are charged with committing a felonious violent crime against a person.

- Retain confidentiality for juveniles charged with misdemeanors for the first crime only. One freebie for dummies like me. After that, it's tell-all and show-all.

- Change the law to make judges consider juvenile records as aggravating circumstances when sentencing a person as an adult.

- Ensure that juvenile court-ordered restitution continues after an offender's 19th birthday. Now, when junior hits 19, such orders cannot be enforced.

It's a start. It's a darned good start.

One thing is certain. Something needs to be done — soon. The system as it stands now is just not working.

Paul Jenkins is an editor of The Anchorage Times.

# Revamp juvenile system or give up our streets

by PAUL JENKINS

Alex Felker thinks kids may be changing, getting more malevolent, more violent. He bases that on recent experience with a pack of punks in Spenard who gave him 6 stitches around his right eye, a busted lip, a painful lump on the back of his head, a cut on his forehead and too many bruises and scratches to count.

His offense? He says he had left his job on the North Slope, stopped in Anchorage to buy Christmas gifts for his family in the bush and went for a walk to a nearby convenience store. He says he was minding his own business. That somehow offended the five juveniles hanging around a convenience store. They cursed him, screamed at him, chased him down in their Subaru Brat.

They did that even after he crossed the road to avoid a confrontation; even after he made it clear he wanted no problems.

They punched and kicked and clubbed the 37-year-old, unemployed emergency medical technician bloody. They beat him to the ground right beside Spenard Road, with traffic whizzing by a few feet away. At least one of them wielded a large flashlight or club in the attack.

If a cab driver had not stopped, Alex Felker might well have gone home in a coffin to his wife and four children at Crooked Creek — a small village in Southwest Alaska on the Kuskokwim River.



Jenkins

"They were really whaling on him," says the cab driver; who asked not to be identified. "He was out on the ground. They really did it to him. He was just covered with blood."

The cab driver says when he saw what was happening and stopped, he inadvertently blocked the assailants' vehicle. Felker and the driver got the Subaru's license tag number, and Felker says he reached into the vehicle and grabbed its keys before his assailants could speed away — getting bashed again on the head and knocked senseless in the process.

"Then the punks did what punks do. They ran away."

"They said, 'We'll get you, too,' as they fled, the cab driver says. "I just can't understand it. Why in the middle of Spenard Road? It was very public."

Felker says he doesn't know why either. "It looked like they were a rowdy bunch,



and they were just looking for someone," he says. "I happened to be that person."

Felker now faces what he estimates will be a \$600 hospital and ambulance bill. He has no medical insurance. He has no job.

But Felker, who says he wouldn't raise his kids in Anchorage on a bet, is lucky. The cab driver is lucky. And most of all, the kids — stupid, invulnerable and sadly mean — are lucky.

They are lucky Mr. Felker was not killed. They are lucky they were not hurt or killed.

And they are lucky we have a juvenile justice system that will protect their identities and never acknowledge that violent kids are as dangerous as violent adults. They are lucky it's a system built on the premise that kids can be rehabilitated, and that it is a system geared to the notion that juveniles cannot commit real crimes.

Make no mistake: what happened to Felker was a crime. His attackers were coldly cruel and violent and malicious, and while they may end up paying some restitution, they never will have to pay the full price for what they did.

As of early this week, only one had been charged with assault. But it's likely, authorities say, the rest also will be charged. That may be all we'll ever know about the case, the system being the way it is.

You have to wonder what makes some kids do things like this, why they go well beyond the bounds of normal teen-age yahoism. You have to wonder why they think almost beating someone to death is acceptable.

We can blame it on television and Hollywood. We can blame it on broken homes or rotten parents or poor nutrition or poor pot-poty training. We can blame it on drugs, alco-

hol, abuse — almost anything. All these things most certainly could play a role. We can find any number of reasons why junior, in his pointed little noggin, finds it necessary to nearly kill someone for fun.

But all that doesn't explain the millions of teen-agers who are good citizens despite those adversities, and more.

Nope, it's time to lay the blame where it belongs. Squarely in junior's lap. He does it because he thinks he'll get away with it, and it's that simple.

\* Junior needs to know, and learn to believe, that violence is unacceptable, that it will not be tolerated, that it will be met with swift, sure justice. Those few need to know early on there is no room in school or on our streets for violent punks. We must make that known without losing sight of the fact that most teen-agers who screw up only need a firm nudge and time to get them back on the right track.

\* With the Legislature about to convene in Juneau, we should start letting our lawmakers know we are dissatisfied, that it's time to change the juvenile system to identify and punish those with violent tendencies.

This time, when five punks thought it would be OK to nearly kill someone, their prey was a guy lucky enough to survive, but it could have been any one of us, or our loved ones. A flat tire, an overheated engine or any other car problem — or just going for a walk — could have put any of us on that street, at that time, in those circumstances. We might not have been so lucky.

We can either start working to fix the system, or give up our streets and neighborhoods to punks.

Paul Jenkins is an editor of The Anchorage Times.

WED 12/30/92

# THE VOICE OF THE TIMES

## 'Just being kids' no excuse for criminal activity

By PAUL JENKINS

A harmless prank?

Destroying Nativity scenes, stealing street signs and construction barricades is a prank? Ripping up the hard work of people who just wanted to have Christmas decorations on their property is a lousy, harmless prank?

No, it's not.

At the very least it's malicious mischief and theft. It's stupid, wrong and disgraceful.

Day after gut-wrenching day, on the front pages of newspapers across this nation, there are the children — starving, dying children in faraway places, children who have to stand in line to fight for food, children in rags, children with little or no hope.

And we silently thank God they are not our children.

Then, we pick up the newspaper here and there's a picture of a man standing in the rubble of what was a Christmas light display in his yard wrecked by a bunch of self-indulgent high school jerks with apparently nothing better to do.

And we wonder. Why? Why do our children do these things? They aren't starving, they aren't in rags, they don't have to fight for food. Why do they do these things?

The answer is simple.

We let them. We refuse to fall on them like a wall when they get out of line.

We coddle them, buy them cars, have no idea where they are in the middle of a school night and fail to ask questions. We don't convince them stealing is wrong, that destroying someone else's property is unacceptable.

We walk by snot-nosed kids puffing on cigarettes without telling them to put them out. We don't challenge them when they screw up. Why? Because most of us are afraid. The last thing most adults want is to get into an altercation with some young punk. After all, the law always is on their side.

We have a justice system set up to protect them, we have newspapers that will not print their names, we do everything we can to tell them that as long as they're kids, they can do what they damned well want. The punishment will be light. Nobody will know. Mom and dad won't be inconvenienced. And when it's all over, we'll just



erase that nasty old record.

And we dismiss property damage and stealing as a prank. We say, "Oh, kids will be kids," and forget about it. We say this despite the fact that a child already has been killed during one of these "pranks" and a man likely will go to prison for protecting his property. We say this despite the grim possibility another child could be killed.

But what happened early Wednesday should be the last straw. These yahoos dishonored themselves, their families, their school and their classmates. They should now be taught that in the real world, where'll they'll be in a few years if they live long enough, there is a price to pay for this kind of nonsense.

It's time to make an example. Let's start with this bunch. We should be telling them — and their parents — the party's over, that we're really getting sick of kids running wild in this town.

Each child involved in the festivities early Wednesday should be charged to the full extent of the law. Those convicted should be required to return the items they stole, repair any damage done and work off any that cannot be fixed, no matter how long it takes. And they should have to do it this winter to get a taste of the hard, cold work that went into what they destroyed. They should not be allowed to pay cash for any of this, and mom and dad should not be allowed to help.

And then the children — and their parents — should be required to work at a community service job, side by side, for a period of time to get a feeling for how others live and how hard it can be.

They should be required to apologize to their victims — in person and in writing — and apologize to the kids in their school with the sense not to have taken part, the kids they embarrassed with their stupidity.

Then, we need to look at a new set of laws that actually make children — and their parents — understand there actually is a price.

Maybe a law that actually makes parents responsible would go a long way toward getting that done. If a kid gets into trouble, parents ought to get into trouble, too. If a kid is charged with a crime, mom and dad ought to feel the heat. A "failure to supervise a child" statute could do the trick. Something tells me that if mom and dad thought they might have to pay the criminal court freight for their child's actions, junior likely would be home, or somebody would know where he was going, and with whom.

Maybe we ought to think about revoking or suspending the drivers' licenses of youngsters who break the law. It is, after all, supposed to be a privilege. It would be hard for these bozos to take part in many "pranks" afoot.

We also could drop some of the protection many of them think goes with being a kid. The names of children involved in serious crimes should not be a secret. We have a right to know who they are, and their parents, too. And kids probably should be charged automatically as adults for any felony.

We should not let this episode pass as just another "prank." We should use it to straighten out an ever-growing mess, or as a line in the sand.

And maybe someday we won't have to wonder about our kids.

*Paul Jenkins is an editor of The Anchorage Times.*



Jenkins

### New Telephone numbers at The Anchorage Times

As of Monday, telephone numbers at The Anchorage Times will be as follows:

Dennis Fradley	274-3952
Paul Jenkins	274-3954
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(b) An agreement executed by the commissioner under (a) of this section must provide that

(1) the state has the right to detain or confine a prisoner held under authority of law in the correctional facility;

(2) the administrator of the correctional facility agrees to implement an order, concerning a prisoner, issued by a court of the state;

(3) the administrator of the correctional facility shall comply with the law, and regulations adopted by the commissioner, relating to the custody, care, and discipline of a prisoner detained or confined in the correctional facility; and

(4) the commissioner may inspect the correctional facility at any time to determine the conditions under which a prisoner is detained or confined.

(c) The agreement executed by the commissioner under (a) of this section may require the administrator of the correctional facility to comply with requirements that the commissioner considers necessary for the protection of the public or for the quality of care and programs for prisoners required by this chapter and regulations adopted by the commissioner. (§ 6 ch 88 SLA 1986)

## Article 2. Commitments, Programs, and Furloughs.

Section	Section
51. Commitment to commissioner	furlough or correctional restitution
61. Commissioner to designate facility	center placement involving employ-
71. Responsibility for prisoners pending	ment
commitment	141. Effect of violation of furlough condi-
81. Transportation of prisoners	tions or failure to return
91. Designation of programs	151. Correctional restitution centers
101. Furloughs	161. Eligibility to serve time in a correc-
111. Prerelease furloughs	tional restitution center
121. Short-duration furloughs	171. Community advisory committees
131. Prerelease or short-duration fur-	181. Confinement to the center

*Sec. 33.30.050. [Repealed, § 12 ch 88 SLA 1986.]*

**Sec. 33.30.051. Commitment to commissioner.** A person convicted of an offense against the state shall be committed to the custody of the commissioner for the term of imprisonment that the court directs. (§ 6 ch 88 SLA 1986)

### NOTES TO DECISIONS

Authority to designate specific facility for incarceration. — See notes under same catchline under AS 33.30.061, Notes to Decisions.

*Sec. 33.30.280. Credit for labor while imprisoned. [Repealed, § 6 ch 53 SLA 1982.]*

**Sec. 33.30.281. Crime against sentenced prisoner.** A person who commits a crime against a sentenced prisoner is punishable as if the prisoner was not sentenced and incarcerated. (§ 6 ch 88 SLA 1986)

*Secs. 33.30.282 — 33.30.290. [Repealed, § 12 ch 88 SLA 1986.]*

**Sec. 33.30.291. Treaties.** If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of prisoners sentenced to serve a term of incarceration to the country where they are citizens or nationals, the commissioner may, on behalf of the state and subject to the terms of the treaty, consent to the transfer or exchange of prisoners and take any other action necessary to initiate the participation of the state in the treaty. (§ 6 ch 88 SLA 1986)

*Secs. 33.30.300 — 33.30.900. [Repealed, § 12 ch 88 SLA 1986.]*

**Sec. 33.30.901. Definitions.** In this chapter, unless the context requires otherwise,

- (1) "center" means a correctional restitution center;
- (2) "commissioner" means the commissioner of the Department of Corrections;
- (3) "community service" means work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public services, lands, forests, parks, roads, highways, facilities, or education; community service may not confer a private benefit on a person except as may be incidental to the public benefit;
- (4) "correctional facility" or "facility" means a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners; a "state correctional facility" means a correctional facility owned or run by the state;
- (5) "court" means the supreme court, the court of appeals, the superior court, the district or magistrate court, or a justice or judge of a court;
- (6) "crime against a person" means a crime as set out in AS 11.41, except custodial interference under AS 11.41.320 and 11.41.330; or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime as set out in AS 11.41, except custodial interference under AS 11.41.320 and 11.41.330;
- (7) "department" means the Department of Corrections;

(8) "furlough" means an authorized leave of absence from actual confinement for a designated purpose and period of time;

(9) "health care provider" means

(A) a physician's assistant or nurse practitioner licensed to practice in the state and working under the direct supervision of a licensed physician or psychiatrist; or

(B) a mental health professional as defined in AS 47.30.915;

(10) "municipality" means a municipality authorized by law to establish a correctional facility;

(11) "prisoner" means a person, other than a juvenile, held under authority of state law in official detention as defined in AS 11.81.900(b);

(12) "temporary commitment" means detention of a person for any period under authority of state law, but does not include confinement upon conviction and judgment of a court of this state;

(13) "victim" has the meaning given in AS 12.55.185. (§ 6 ch 88 SLA 1986)

## Chapter 32. Correctional Industries.

### Section

- 10. Purpose of chapter
- 15. Powers and duties of the commissioner of corrections
- 17. "Free venture" correctional industries
- 20. Correctional industries fund
- 30. Marketing of correctional industries products
- 40. Rights of correctional industries workers

### Section

- 50. Wages of correctional industries workers; forfeiture
- 60. Limitation on attachment, etc., of wages
- 70. Correctional Industries Commission
- 80. Powers and duties of the Correctional Industries Commission
- 90. Cooperation with state agencies

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Chapter repealed effective July 1, 1987. — Section 7, ch. 53, SLA 1982, repeals this chapter effective July 1, 1987.

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**Sec. 33.32.010. Purpose of chapter [Repealed effective July 1, 1987].** It is the purpose of this chapter to:

(1) develop and operate agricultural, industrial, and service enterprises employing prisoners under the jurisdiction of the commissioner of corrections;

(2) provide realistic work experience for prisoners under conditions as much like those that prevail in private industry as possible, consistent with proper penal administration, and to direct their efforts toward financial responsibility, acquiring or improving effective work habits and occupational skills, and increasing the probability of opportunities for employment after release; and

**Sec. 34.50.010. Action for injury to the inheritance.** A person seized of an estate in remainder or reversion may maintain a civil action for an injury done to the inheritance, notwithstanding an intervening estate for life or years. (§ 22-1-5 ACLA 1949)

**Collateral references.** — 51 Am. Jur. 31 C.J.S., Estates, §§ 85, 107, 111.  
2d, Life Tenants and Remaindermen,  
§§ 2, 3, 22, 98.

**Sec. 34.50.020. Liability for destruction of property by minors.** (a) A person, municipal corporation, association, village, school district, or religious or charitable organization, incorporated or unincorporated, may recover damages in a civil action in an amount not to exceed \$2,000 and court costs, from either parent or both parents or the legal guardian or person having the legal custody of an unemancipated minor under the age of 18 years, who maliciously or wilfully destroys real or personal property belonging to the person, municipal corporation, association, village, school district, or religious or charitable organization.

(b) A state agency or its agents, including a person working in or responsible for the operation of a foster, receiving, or detention home, or children's institution, is not liable for the acts of unemancipated minors in its charge or custody. (§ 1 ch 98 SLA 1957; am § 1 ch 107 SLA 1967)

**Collateral references.** — 59 Am. Jur. Parents' liability for injury or damage  
2d, Parent and Child, § 123. intentionally inflicted by minor child. 54  
67A C.J.S., Parent and Child, §§ 123, ALR3d 974  
163.

## Chapter 55. Uniform Land Sales Practices Act.

### Section

- 04. Administration
- 06. Fraudulent and prohibited practices
- 08. Prohibitions on dispositions of interests in subdivisions
- 10. Application for registration
- 12. Public offering statement
- 14. Inquiry and examination
- 16. Notice of filing and registration
- 18. Annual report
- 20. General powers and duties
- 22. Investigations and proceedings

### Section

- 24. Cease and desist orders
- 26. Revocation
- 28. Penalties
- 30. Civil remedy
- 32. Jurisdiction
- 34. Interstate rendition
- 36. Service of process
- 38. Uniformity of interpretation
- 42. Exemptions
- 44. Definitions
- 40. Short title

(8) adopt regulations that establish procedures for an individual to apply to have a dividend warrant reissued if it is returned to the department as undeliverable or it is not paid within two years of the date of its issuance; however, the department may not establish a time limit within which an application to have a warrant reissued must be filed. (§ 1 ch 102 SLA 1982; am § 2 ch 55 SLA 1983; am § 3 ch 43 SLA 1984; am § 3 ch 54 SLA 1988; am § 5 ch 68 SLA 1990; am § 14 ch 4 SLA 1992)

**Effect of amendments.** — The 1992 amendment, effective January 1, 1993, rewrote paragraph (2) and added paragraph (8).

**Effective date of amendment.** — The

amendment to (2) of this section, and the addition of (8) of this section, made by § 14, ch. 4, SLA 1992, are effective January 1, 1993. For the statute as it read before that date, see the main pamphlet.

**Sec. 43.23.065. Exemption of and levy on permanent fund dividends.** (a) Except as provided in (b) of this section, 45 percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. No other exemption applies to a dividend. Notwithstanding other laws, a writ of execution upon a dividend that has not been delivered to the debtor may be served on the commissioner by certified mail, return receipt requested. Upon receipt of a writ by certified mail, return receipt requested, the commissioner shall deliver that portion of the dividend executed upon to the court along with the case name and number.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

(1) child support obligations required by court order or decision of the child support enforcement agency under AS 25.27.140 — 25.27.220;

(2) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100;

(3) claims on defaulted scholarship loans under AS 43.23.067;

(4) court ordered fines;

(5) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend whether payments are sought through legal actions for the collection of debts or through assignments from the debtor.

(d) An assignment of or levy, execution, garnishment, attachment, or other remedy for the collection of debt applied to a dividend for a year may not be accepted by the department before April 1 of that

same year. AS 09.38.080(c) and 09.38.085 do not apply to a levy on a permanent fund dividend. The department shall include the case number with a dividend or portion of a dividend transmitted to the court in response to a writ of execution or other court order. At the time payment is made to the court, the department shall send to the individual at the address provided in the individual's dividend application and to the court that issued the writ or order a notice that contains

- (1) notification that all or part of the individual's dividend has been seized under a writ of execution or court order;
- (2) the name and address of the court that issued the writ or order;
- (3) the case number for which the writ or order was issued;
- (4) the amount seized under the writ or order; and
- (5) notification that the individual has 30 days from the date the notice is mailed in which to file with the court an objection to the seizure if a mistake has been made. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 1 ch 57 SLA 1985; am § 67 ch 138 SLA 1986; am § 3 ch 26 SLA 1989; am § 3 ch 193 SLA 1990; am §§ 3, 4 ch 52 SLA 1992)

**Effect of amendments.** — The 1992 amendment, effective June 11, 1992 added the last three sentences in subsection (a); in subsection (b), added paragraphs (3) and (4), redesignated former paragraph (3) as paragraph (5), and made

stylistic changes; added "whether payments are sought through legal actions for the collection of debts or through assignments from the debtor" to subsection (c); and added subsection (d).

**Sec. 43.23.067. Claims of defaulted scholarship loans.** (a) AS 09.38 does not apply to permanent fund dividends taken under AS 14.43.120(i). Notwithstanding AS 09.35, execution on a claim under AS 14.43.120(i) is accomplished by delivering a certified claim to the department containing the following information:

- (1) the name and social security number of the individual whose dividend is being claimed;
- (2) the amount the individual owes on the scholarship loan; and
- (3) a statement that
  - (A) the debt has not been contested, or, if contested, that the issue has been resolved in favor of the Alaska Commission on Postsecondary Education; and
  - (B) if the debt has been contested and resolved in favor of the Alaska Commission on Postsecondary Education, no appeal is pending, the time limit for filing an appeal has expired, or the appeal has been resolved in favor of the commission.

(b) The Alaska Commission on Postsecondary Education shall notify the individual of a claim under (a) of this section. The notice shall be sent to the address provided in the individual's permanent fund dividend application and must provide the following information:

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

### Article

1. Children's Proceedings (§§ 47.10.010 — 47.10.142)
2. Juvenile Institutions (§§ 47.10.160 — 47.10.220)
3. Care of Children (§§ 47.10.230 — 47.10.260)
4. Programs for Runaway Minors (§§ 47.10.300 — 47.10.390)
6. 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 re-

#### Section

- sidual 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-

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-

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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

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.

*Sec. 47.10.072. Access to hearing by victim. [Repealed, § 23 ch 57 SLA 1991.]*

**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 reason-

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able 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;

(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; or

(6) in addition to an order under (1) — (5) of this subsection, if the delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or 11.71.040(a)(4), order the minor to perform 50 hours of community service; for purposes of this paragraph, "community service" includes work

(A) on a project identified in AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled.

(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 (d) 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 (l) or (i) 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.

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 a 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

§ 47.10.095 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.10.097

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 28.16.185" 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)

(§ 3 art II ch 145 SLA 1957; am § 1 ch 152 SLA 1959; am § 6 ch 104 SLA 1971; am § 25 ch 63 SLA 1977)

Collateral references. — 60 Am Jur.  
2d, Penal and Correctional Institutions,  
§ 1 et seq.

**Sec. 47.10.160. Duties of department.** (a) The department shall  
(1) accept all minors committed to the custody of the department and all minors who are involved in a written agreement under AS 47.10.230(c), and provide for the welfare, control, care, custody, and placement of these minors in accordance with this chapter;

(2) require and collect statistics on juvenile offenses and offenders in the state;

(3) conduct studies and prepare findings and recommendations on the need, number, type, construction, maintenance, and operating costs of juvenile homes, facilities, and the other institutions, and adopt and submit a plan for construction of the homes, facilities, and institutions when needed, together with a plan for financing the construction programs;

(4) examine, where possible, all facilities, institutions, and places of juvenile detention in the state and inquire into their methods and the management of juveniles in them.

(b) For the purpose of collecting statistics, the department shall establish and require state and local agencies that operate a jail or other detention facility to use a standardized form to keep a record and report the admission of a minor. The record shall be limited to the name of the minor admitted, the minor's date of birth, the specific offense for which the minor was admitted, the date and time admitted, the date and time released, the sex of the minor, the ethnic origin of the minor, and other information required by federal law. Except for the notation of the date and time of the minor's release, the record shall be prepared at the time of the minor's admission. Unless otherwise provided by law, information and records obtained under this subsection are confidential and are not public records. They may be disclosed only for the purpose of compiling statistics and in a manner that does not reveal the identity of the minor. (§ 5 art II ch 145 SLA 1957; am § 4 ch 110 SLA 1967; am § 4 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 169 SLA 1990)

Effect of amendments. — The 1990 amendment added subsection (b).

§ 47.10.170 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.10.190

**Sec. 47.10.170. Power of cities to maintain and operate home or facility.** (a) A city having a population of 1700 or more, according to the latest decennial census, or found by the department to have a present population of 1700 or more may maintain and operate a juvenile detention home or facility.

(b) The city may receive grants-in-aid from the state for costs of operation of the homes or facilities. (§ 5 art II ch 145 SLA 1957)

**Sec. 47.10.180. Operation of homes and facilities.** (a) The department shall adopt standards and regulations for the operation of juvenile detention homes and juvenile detention facilities in the state.

(b) The department may enter into contracts with cities and other governmental agencies for the detention of juveniles before and after commitment by juvenile authorities. A contract may not be made for longer than one year. (§ 8 art II ch 145 SLA 1957; am § 3 ch 97 SLA 1960; am § 6 ch 104 SLA 1971)

**Sec. 47.10.190. Conditions governing detention.** When the court commits a minor to the custody of the department, the department shall arrange to place the juvenile in a detention home, facility or another suitable place that the department designates for that purpose. A juvenile detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from adults. (§ 9 art II ch 145 SLA 1957)

NOTES TO DECISIONS

This section prescribes conditions of confinement after the court has lawfully determined that a child should be confined in an institution. *In re A Minor Child*, 490 P.2d 658 (Alaska 1971).

"Juvenile" used interchangeably with "minor". — The term "juvenile" is not defined, but throughout this section is used interchangeably with "minor." *Davenport v. McGinnis*, 522 P.2d 1140 (Alaska 1974).

The apparent intent of the legislature was the two terms "minor" and "juvenile" and to be construed identically. *Davenport v. McGinnis*, 522 P.2d 1140 (Alaska 1974).

Thus, instruction that "juvenile" defined identically to minor is correct. — Since, for the purposes of this section, a minor is a person under 18 years of age, an instruction that "juvenile" is identically defined is correct. *Davenport v. McGinnis*, 522 P.2d 1140 (Alaska 1974).

Department need not incarcerate over-18-year olds apart from adults. — The department is not limited in its options pertaining to the selection of a suitable facility for those over 18 years of age by the requirement of incarceration apart from adult offenders. *Davenport v. McGinnis*, 522 P.2d 1140 (Alaska 1974).

Problems when juvenile reaches 18 years before incarceration. — Difficult problems are presented when one who has committed an offense while under 18 years of age is ordered incarcerated at a later age. Great care must be exercised by the Department of Health and Social Services to provide for custody in an appropriate institution geared to the dual constitutional dictates of reformation of the juvenile and protection of the public. *Davenport v. McGinnis*, 522 P.2d 1140 (Alaska 1974).

Quoted in *B.A.M. v. State*, 528 P.2d 437 (Alaska 1974).

**Sec. 47.10.230. Powers and duties of department over care of child.** (a) Subject to (e) and (f) of this section, the department shall arrange for the care of every child committed to its custody by placing the child in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

(b) The department may pay the costs of maintenance that are necessary to assure adequate care of the child, and may accept funds from the federal government that are granted to assist in carrying out the purposes of this chapter, or that are paid under contract entered into with a federal department or agency. A child under the care of the department may not be placed in a family home or institution that does not maintain adequate standards of care.

(c) The department may receive, care for, and make appropriate placement of minors accepted for care for a period of up to six months on the basis of an individual voluntary written agreement between the minor's parent, legal guardian, or other person having legal custody and the department. The agreement must include provisions for payment of fees under AS 44.29.022 to the department for the minor's care and treatment. The agreement entered into may not prohibit a minor's parent, legal guardian, or other person who had legal custody from regaining care of the minor at any time.

(d) In addition to money paid for the maintenance of foster children under (b) of this section, the department

(1) shall pay the costs of caring for physically or mentally handicapped foster children, including the additional costs of medical care, habilitative and rehabilitative treatment, services and equipment, special clothing, and the indirect costs of medical care, including child care and transportation expenses;

(2) may pay for respite care; in this paragraph "respite care" means child care for the purpose of providing

(A) temporary relief from the stresses of caring for a foster child who has a physical or mental disability or a physical or mental impairment; in this subparagraph

(i) "physical or mental disability" has the meaning given in AS 18.80.300(12)(A), (B), and (D); and

(ii) "physical or mental impairment" has the meaning given in AS 18.80.300; and

(B) protection for the child when the foster parent is

(i) away from the home because of an emergency and other care is not available for the child; or

(ii) on vacation and the child, because of age or infirmity, cannot be placed in any other type of temporary care facility; and

(3) may pay a subsidized guardianship payment under AS 25.23.210 when a foster child's foster parents or other persons approved by the department become court-appointed legal guardians of the child.

(e) A child may not be placed in a foster home or in the care of an agency or institution providing care for children if a blood relative exists who requests custody of the child. However, the department may retain custody of the child and provide for its placement in the same manner as for other children if it makes a determination, supported by clear and convincing evidence, that the custody of the child by the blood relative will result in physical or emotional damage. In making that determination, poverty, including inadequate or crowded housing, on the part of the blood relative, is not considered prima facie evidence that physical or emotional damage to the child will occur. This determination may be appealed to the superior court to hear the matter de novo.

(f) If a blood relative of the child specified under (e) of this section exists and agrees that the child should be placed elsewhere, before placement elsewhere the department shall fully communicate the nature of the placement proceedings to the relative. Communication under this subsection shall be made in the relative's native language, if necessary. Nothing in this subsection or in (e) of this section applies to child placement for adoptive purposes.

(g) The department may enter into agreements with Alaska Native villages or Native organizations under 25 U.S.C. 1919 (Indian Child Welfare Act of 1978) respecting the care and custody of Native children and jurisdiction of Native child custody proceedings. (§ 1 art III ch 145 SLA 1957; am § 5 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 76 SLA 1976; am §§ 36, 37 ch 126 SLA 1977; am § 132 ch 6 SLA 1984; am § 1 ch 127 SLA 1986; am § 90 ch 138 SLA 1986; am § 1 ch 48 SLA 1988; am § 6 ch 204 SLA 1990)

**Cross references.** — For legislative intent in enacting (e) and (f) of this section, see § 35, ch. 126, SLA 1977 in the Temporary and Special Acts. For duties of custody review panels in connection with custody decisions made under (c) of this section, see AS 47.10.440.

**Effect of amendments.** — The first 1986 amendment added subsection (g).

The second 1986 amendment in subsection (c), substituted "must include provisions for payment of fees under AS 44.29.022" for "may include provisions for payment, in whole or in part" in the second sentence and substituted "may not prohibit" for "shall not operate to prohibit" in the third sentence.

The 1988 amendment, in subsection (d),

divided the formerly undivided language into an introductory paragraph and paragraphs (1) and (2). The amendment also substituted "and transportation expenses; and" for "transportation expenses, and" in paragraph (d)(1); and, in paragraph (d)(2), divided the formerly undivided language into an introductory paragraph and subparagraph (B), rewrote the introductory paragraph, inserted item (A), divided the formerly undivided language in subparagraph (B) into an introductory paragraph and items (i) and (ii), deleted "not to exceed 12 hours in any 30-day period; it also means child care for a period not to exceed seven days in a year for the purpose of providing emergency" at the beginning of the introductory paragraph of subpara-

§ 47.10.270 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.10.990

*Sec. 47.10.270. [Renumbered as AS 47.10.970.]*

*Sec. 47.10.290. [Renumbered as AS 47.10.990.]*

**Article 5. Citizens' Review Panel for Permanency Planning.**

**Section**

**410. Duties of the state panel**

**Sec. 47.10.410. Duties of the state panel.** The state panel shall

(1) by regulation adopt policies and procedures to carry out its duties and to govern the performance of the duties of the local panels established under AS 47.10.420;

(2) ensure that local panel members receive the minimum level of training necessary to effectively carry out their duties;

(3) coordinate and review the activities of the local panels and make recommendations to the governor on appointments to the local panels;

(4) report annually to the legislature by the 10th day of each regular session, concerning the activities of the state and local panels during the previous fiscal year; the report must include the number of cases reviewed by each local panel, a description of the characteristics of the children whose cases were reviewed by the panels, the number of children reunited with their families, the number of children placed in other permanent homes, and recommendations and justifications for program improvement, including recommendations relating to state agencies and to the panel review system; the report may contain other information on the experience of the local panels. (§ 2 ch 117 SLA 1990)

**Editor's notes.** — This section is set out above to correct a minor error in the main pamphlet.

**Article 6. General Provisions.**

**Section**

**990. Definitions**

**Sec. 47.10.990. Definitions.** In this chapter, unless the context otherwise requires,

(1) "care" or "caring" under AS 47.10.010(a)(2)(A), 47.10.120(a) and 47.10.230(c), means to provide for the physical, emotional, mental, and social needs of the child;

(2) "child in need of aid", means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(2);

(3) "court" means the superior court of the state;

(4) "delinquent minor" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(1);

(5) "department" means the Department of Health and Social Services;

(6) "juvenile detention facility" means separate quarters within a city jail used for the detention of delinquent minors;

(7) "juvenile detention home" or "detention home" is a separate establishment, exclusively devoted to the detention of minors on a short-term basis and not a part of an adult jail;

(8) "minor" is a person under 18 years of age;

(9) "victim" has the meaning given in AS 12.55.185. (§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970; am §§ 27 — 28 ch 63 SLA 1977; am §§ 91, 92 ch 138 SLA 1986; am § 18 ch 57 SLA 1991)

**Effect of amendments.** — The 1991 amendment, effective September 15, 1991, added paragraph (9).

## Chapter 17. Child Protection.

### Section 290. Definitions

#### Sec. 47.17.020. Persons required to report.

#### NOTES TO DECISIONS

**Minister-certified counselor's report not violating privilege.** — Nontestimonial report of sexual abuse given to authorities by a minister-certified counselor did not amount to a violation of the psychotherapist-patient or communications-with-clergy privileges. *Walstad v. State*, 818 P.2d 695 (Alaska Ct. App. 1991).

#### Sec. 47.17.290. Definitions. In this chapter

(1) "child" means a person under 18 years of age;

(2) "child abuse or neglect" means the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child's health or welfare is harmed or threatened thereby; in this paragraph, "mental injury" means an injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child's ability to function;

(3) "child care provider" means an adult individual, including a foster parent or an employee of an organization, who provides care and supervision to a child for compensation or reimbursement;

(4) "criminal negligence" has the meaning given in AS 11.81.900;

## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSSB54 (FIN)

Revision Date: March 4, 1993 Dept. Affected: Health and Social Services  
 Title: "An act relating to violations of laws by Juveniles and providing for an effective date" BRU: Youth Facility Services  
 Component: MYC, FYF, BYF, NYF & JYC  
 Sponsor: Senator R. Halfofd  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0264,0265,0266,0267 &0268

**Expenditures/Revenues:**

(Thousands of Dollars)

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

CAPITAL						
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REVENUE FUND SOURCE						
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**FUNDING:**

(Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

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

See attached for Fiscal Note Analysis

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*  
 Division: Department of Health & Social Services

Phone: 465-3191  
 Date: 03/04/93

Approved by Commissioner: Theodore A. Mala, MD, MPH *Theodore A. Mala*  
 Agency: Department of Health & Social Services

Date: 3/5/93

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ANALYSIS (cont.):

FISCAL NOTE ANALYSIS – CSSB 54 (FIN)

The department estimates a range of 12–36 juvenile cases per year that could be referred, charged and convicted for crimes under CSSB 54 (FIN). The department bases this estimate on trend analysis of juvenile offender statistics for FY91, FY92 and the first 6 months of FY93. This analysis illustrates an unusually high number of referrals in FY92 for crimes specified under the bill.

The FY92 total increase in referrals is accompanied by a corresponding increase in the referrals for murder/manslaughter (15 cases).

If the previous 10 year average is computed the referrals for murder/manslaughter was 4.4. The department has not determined the reasons for the increase in murder/manslaughter referrals as this anomaly is the subject of further research. If the 15 murder/manslaughter cases are removed from the FY92 statistics the total cases would more closely approximate the trends of previous years. The department has no reason to believe that the increase is indicative of a continuing trend.

The department will not realize a cost saving if juvenile offenders under CSSB 54 (FIN) are removed from the department's jurisdiction. This is true based on two trends that are presently occurring in the juvenile offender population.

1) Currently the juvenile offender referral rate indicates a slightly increasing trend over the past 10 years and this trend is expected to continue. 2) The number of people in the age group of 10–17 years of age is also increasing and has been projected by demographers to continue to grow as much as 25% between 1990 and 1995.

The department concludes that the number of all types of juvenile offenders will increase in the immediate future and that the number of offenders effected under this bill is not significant to realize a cost savings.

#12  
E  
F

No. 12

FISCAL NOT

Bill Version: SSB 54 (FIN)

(S) Publish Date: 2-26-93

REQUEST:

Revision Date: 2/25/93  
Title: An Act relating to violations of laws for juveniles...

Affected Agency: Administration  
BRU: Off. of Pub. Advoc.

Sponsor: Sen. Halford  
Requestor: Senate Finance

Components: Off. of Pub. Advoc.  
Component Serial No.: 43

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	22.5	23.2	23.9	24.6	25.4	26.1
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	22.5	23.2	23.9	24.6	25.4	26.1

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	22.5	23.2	23.9	24.6	25.4	26.1
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	22.5	23.2	23.9	24.6	25.4	26.1

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

See attached page 2.

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_  
Division: \_\_\_\_\_ Phone: \_\_\_\_\_

Approved By: Deanne Colchier Deanne Colchier  
Agency: Senate Finance Date: 2/26/93

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSSB 54 (Fin)  
Page 2 of 2

Analysis Continued:

Fiscal Note for Dept. of Administration, Office of Public Advocacy.

The Office of Public Advocacy's estimate of 15 cases per year seems unjustified, given the relationship between OPA and PDA case loads. However, it is possible that certain defendants will choose to alter their defense strategies relative to other defendants in response to the more serious penalties they would automatically face under SB 54. We will estimate that increased number increased number to be three per year at \$7,500.00 each.

FISCAL NO :

Bill Version: CSSB 54 (FIN)

(S) Publish Date: 2-26-93

REQUEST:

Revision Date: 2/25/93  
Title: "An Act relating to violations of laws for juveniles..."

Affected Agency: Administration  
BRU: Pub.Defender Agcy

Sponsor: Sen. Halford  
Requestor: Senate Finance

Component: Pub.Defender Agcy  
Component Serial No. 1631

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	2.5	2.6	2.7	2.8	2.9	3.0
Contractual	2.5	2.6	2.7	2.8	2.9	3.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>6.0</b>	<b>6.2</b>	<b>6.4</b>	<b>6.6</b>	<b>6.8</b>	<b>7.0</b>

<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>REVENUE</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	6.0	6.2	6.4	6.6	6.8	7.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>6.0</b>	<b>6.2</b>	<b>6.4</b>	<b>6.6</b>	<b>6.8</b>	<b>7.0</b>

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

See Attached

Prepared By:  
Division:

Date:  
Phone:

Approved By:  
Agency:

Steve Deacon  
Senate Finance Co. Chair

Date: 2/26/93

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSSB 54 (Fin)  
Page 2 of 2

Analysis Continued:

Fiscal Note for Dept. of Administration, Public Defender Agency

It is important to note that SB 54 does not define any new crimes and therefore will not create new criminal cases. SB 54 merely changes the procedure in which these cases are handled.

The Department of Law will control by its charging practices the number of cases to which the PDA will need to respond. Furthermore, the Department of Law has submitted a zero fiscal note. It would seem the resources required to prosecute and defend should be somewhat similar.

The Department of Law estimates it will pursue approximately 25 cases per year under the automatic waiver conditions created by SB 54. Those cases would represent only 5% of the Public Defender Agency's current juvenile workload. Therefore, the Public Defender agency's request for a \$130.5 increase in personal services plus consequent travel, equipment, office space, and supplies is unjustified.

The procedural changes provided for in SB 54 may require slightly more travel, reliance on experts, and supplies in the following amounts:

- |                                      |   |       |
|--------------------------------------|---|-------|
| a) Travel (Professional and Experts) | = | \$2.5 |
| b) Contractual (Expert Witnesses)    | = | \$2.5 |
| c) Supplies                          | = | \$1.0 |

F I S C A L N O T

Bill Version: CSSB 54 (FIN)

(S) Publish Date: 2-26-93

REQUEST:

Revision Date: 2/25/93  
Title: "An Act relating to violations of laws for juveniles..."

Affected Agency: Alaska Court Sys  
BRU: Trial Courts

Sponsor: Sen. Halford  
Requestor: Senate Finance

Component:  
Component Serial No. 768

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	24.5	24.5	24.5	24.5	24.5	24.5
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	24.5	24.5	24.5	24.5	24.5	24.5
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Reduction of \$15.4 from original submission. Allowed \$24.5 in juror's time due to est'd increase of 10 trials. Parttime judge not allowed.

Prepared By: \_\_\_\_\_

Date: \_\_\_\_\_

Division: \_\_\_\_\_

Phone: \_\_\_\_\_

Approved By: \_\_\_\_\_

Agency: \_\_\_\_\_

Date: 2/26/93

# FISCAL NOTE

No. 9

Bill Version: CSSB 54 (Fwd)

(S) Publish Date: 2-24-93

**STATE OF ALASKA  
1993 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: "An Act relating to violations of laws by juveniles...." BRU: Statewide Programs  
 Sponsor: Sen. Halford Component: Statewide Programs  
 Requestor: Senate Finance COMPONENT SERIAL NO. \_\_\_\_\_

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

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.8	262.8	481.8	700.8	919.8	1138.
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>10.8</b>	<b>262.8</b>	<b>481.8</b>	<b>700.8</b>	<b>919.8</b>	<b>1138.</b>

<b>CAPITAL</b>						
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<b>REVENUE FUND SOURCE:</b>						
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**FUNDING:** (Thousands of Dollars)

FUNDING	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts						
1003 GF Match						
1004 GF	10.8	262.8	481.8	700.8	919.8	1138.
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>10.8</b>	<b>262.8</b>	<b>481.8</b>	<b>700.8</b>	<b>919.8</b>	<b>1138</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

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

See attached fiscal analysis

Changes in CSSB 54 (Fin)  
 reflect NO FISCAL CHANGE from the original  
 fiscal note. This fiscal note is appropriate.  
2-24-93 date RL Comte Aide (initial)

Prepared by: Dana LaTour, Special Assistant  
 Division: Office of the Commissioner  
 Approved by Commissioner: Lloyd G. Rupp  
 Agency: Department of Corrections

Phone: 465-3376  
 Date: 2-23-93  
 Date: 2-23-93

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Fiscal Note Analysis

CSSB 54

Page 2

Using statistics received from the Division of Family and Youth Services, the Department of Corrections estimates that approximately 19 juveniles per year will be formally charged for crimes that would qualify for waiver under CSSB 54. The department estimates that 15 would be found guilty, and 4 would probably plea to a lesser charge. Assuming that five juveniles are waived to adult jurisdiction under present law, this change would result in 10 additional juvenile offenders added to the system each year.

The mandatory minimum sentence for Murder 1 is 20 years. The presumptive sentences for a Class A felony is seven years. The department is estimating an average sentence length for offenses considered under CSSB 54 to be thirty years. Subtracting one-third of the sentence for statutory good time results in average sentence served of 20 years.

The formula used in calculating the fiscal impact of this bill follows:

FY 94	2 minors convicted by 3rd quarter of year x 3 months x \$60/day = \$10,800
FY 95	10 minors + 2 from FY94 x 365 days x \$60 day = \$262,800
FY 96	10 minors + 12 (FY 94,95) x 365 x \$60 day = \$481,800
FY 97	10 minors + 22 (FY 94-96) x 365 x \$60 day = \$700,800
FY 98	10 minors + 32 (FY 94-97) x 365 x \$60 day = \$919,800
FY 99	10 minors + 42 (FY 94-98) x 365 x \$60 day = \$1,138,000

Because populations within correctional facilities are already exceeding emergency caps, it is assumed that other offenders will be transferred to CRC placements in order to make room for the offenders addressed in this legislation.

The estimated costs are based on CRC beds since it is not possible to predict when the increases in incarceration would actually require adding new prison beds to the system. Cost of placement in a correctional center is approximately \$100 a day.

FISCAL NOTE

No. 7

Bill Version: CSB 54 (Jud)

(S) Publish Date: 2-24-93

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Revision Date: February 23, 1993

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

Sponsor: Senator Halford

Requestor: Senator Halford

Department Affected: Department of Law

BRU: Prosecution

Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

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

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

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

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

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

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Changes in CSB 54 (Fin) have no fiscal impact. This fiscal note is appropriate.  
2-26-93 date KA Comte Aide (initial)

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: February 23, 1993

Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Date: February 23, 1993

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## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSSB 54 (JUD)

### ANALYSIS (Continued):

The revisions in the Senate Judiciary Committee Substitute for SB 54 would automatically waive 14 and 15 year olds to "adult" court who are charged with first or second degree murder, or who are charged with an attempt or solicitation to commit first or second degree murder. Under the bill, 14 and 15 year olds would also be automatically waived who are charged with a felony in any degree and who have previously been convicted as an adult of any felony. We note that this last provision, waiving 14 and 15 year olds with a prior felony conviction in any degree, appears to treat this age group more severely than 16 or 17 year olds who, when they are charged with a felony crime against a person, other than an unclassified or class A felony, can be waived only with a prior conviction or adjudication for a felony crime against a person. The bill and earlier versions would already waive minors who are 16 years of age or older who are charged with an unclassified or class A felony, or who are charged with a crime against a person that is a felony other than an unclassified or class A felony, and the minor has previously been adjudicated as a delinquent or convicted as an adult for a felony crime against a person.

The committee substitute restores the existing amount that may be recovered in a civil action to \$2,000, as compared to the \$5,000 limit included in the 2/15/92 Work Draft version of the bill.

The committee substitute also requires that in a petition by a minor to have the charges removed from "adult" court, and adjudicated in a juvenile proceeding under AS 47.10.020 - 47.10.090, the minor bears the burden of proving by a preponderance of the evidence that he or she is amenable to treatment as a juvenile before reaching 20 years of age.

As we have commented previously, adoption of this bill could increase our felony caseload by an average of 25 to 30 new cases each year. However, the amount of the increase, which may vary widely from year to year, does not warrant fiscal note costs at any particular location. Consequently, this zero fiscal note has been submitted. We do caution, however, that recent demographic studies indicate that the population for the ages 10 years to 17 years may grow by over 25 percent in the next few years. This factor may cause a caseload increase in the future that would require additional prosecution resources. In that event, we would either have to receive more resources or decline to prosecute a substantial number of minors in "adult" court.

**FISCAL NOTE**

No. 60

**STATE OF ALASKA  
1993 LEGISLATIVE SESSION**

Bill Version: CSSB 54 (JUD)

(S) Publish Date: 2-24-93

Revision Date: 02/23/93  
 Title: "An act relating to violations of laws by  
 Juveniles and providing for an effective date"  
 Sponsor: Senator R. Halford  
 Requestor: \_\_\_\_\_

Dept. Affected: Health and Social Services  
 BRU: Youth Facility & Family & Youth Svcs  
 Component: MYC, FYF, BYF, NYF & JYC  
SCRO, NRO & SERO  
 COMPONENT SERIAL NO. 0264-0268,0254,0255&0258

**Expenditures/Revenues:**

(Thousands of Dollars)

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

<b>CAPITAL</b>						
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<b>REVENUE FUND SOURCE</b>						
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**FUNDING:**

(Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Changes in CSSB 54 (FIN) have no fiscal impact. This fiscal note is appropriate.

Estimate of current year (FY93) impact: 0.0

2-26-93 date kh Comte Aide(initial)

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

The department estimates that a high of 34 juveniles per year could be referred, charged and convicted for crimes that would qualify for presumptive waiver under CSSB54.

The department bases this estimate on juvenile offender statistics for FY91, FY92 and the first 6 months of FY93. The department also assumes the petitions to waive the juvenile back to juvenile court will not be successful to any great degree.

Prepared by: Deborah R. Wing, Director  
 Division: Department of Health & Social Services

Phone: 465-3191  
 Date: 02/23/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: 2/25/93

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**ANALYSIS (cont.):**

The department recognizes that FY92 experienced unusually high referrals for the charge of murder/manslaughter (15 cases). This becomes clear by the fact that over the preceding 10 years an average of 4.4 cases were referred for murder/manslaughter. The department has no reason to believe that the FY92 cases represent a continuing trend as the FY93 referrals to date is 0.

The reduction in cases that could result if this bill becomes law is very low when compared to the overall youth corrections caseload. During the past three fiscal years the department has been averaging 6,704 referrals statewide of which the estimated 34 per year represent only 0.5% of the total referrals.

(SEE ATTACHED charge type listing for further detail.)

CSSB 54  
Fiscal Note Attachment

DHSS Youth Offender Statistics

- Category (1) (A)      FY 1991 - 12 of the 32 cases referred were formally charged with an unclassified or class A felony.
- FY 1992 - 28 of the 60 cases referred were formally charged with an unclassified or class A felony.
- FY 1993 - (7/1/92 thru 12/31/92) 11 of the 27 cases referred were formally charged with an unclassified or class A felony.
- Total for (1) (A) crimes is 51 for 30 months of referrals.
- Category (1) (B)      FY 1991 - 0 of the 2 cases referred were formally charged with an felony crime against a person and had a previous adjudication.
- FY 1992 - 0 of the 2 cases referred were formally charged with an felony crime against a person and had a previous adjudication.
- FY 1993 - (7/1/92 thru 12/31/92) 1 of 1 case referred was formally charged with a felony crime against a person and had a previous adjudication.
- Total (1) (B) crimes is 1 for 30 months of referrals.
- Category (2) (A)      FY 1991 - There were 0 cases referred in this category.
- FY 1992 - 6 of the 6 cases referred were formally charged with murder.
- FY 1993 - (7/1/92 thru 12/31/92) There were 0 cases referred in this category.
- Total (2) (A) crimes is 6 for 30 months of referrals.
- Category (2) (B)      FY 1991 - There were 0 cases referred and formally charged with a

unclassified or class A felony and had a previous felony adjudication.

FY 1992 - 2 of the 13 cases referred were formally charged with an unclassified or class A felony and had a previous felony adjudication.

FY 1993 - (7/1/92 thru 12/31/92) of 0 cases referred and formally charged with an unclassified or class A felony and had a previous felony adjudication.

Total (2) (B) crimes is 2 for 30 months of referrals.

Category (2) (C)

FY 1991 - There were 0 cases referred and formally charged with a felony and had a previous conviction as an adult for a felony.

FY 1992 - There were 0 cases referred and formally charged with a felony and had a previous conviction as an adult for a felony.

FY 1993 - (7/1/92 thru 12/31/92) There were 0 cases referred and formally charged with a felony and had a previous conviction as an adult for a felony.

Total (2) (C) crimes is 0 for 30 months of referrals.

Data source DFYS PROBER

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 2

Bill Version: SB 54

(S) Publish Date: 2-19-93

Revision 2/15/93 Dept. Affected: Public Safety

Title: "An Act relating to violations of laws BRU: Alaska State Troopers

by juveniles..." Component: Detachments

Sponsor: Senator Halford

Requestor: Senate Judiciary COMPONENT SERIAL NO. 799

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>REVENUE FUND SOURCE:</b>						

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

Estimate of current year (FY 93) impact: \$ \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

No significant fiscal impact upon the Alaska State Troopers is anticipated

Changes in CS54 (Fin) have no fiscal impact. This fiscal note is appropriate.

2-26-93 kl  
date Comte Aide (initial)

Prepared By: Francis C. Allan Phone: 269-5691

Division: Alaska State Troopers Date: 2/15/93

Approved by Commissioner: [Signature] Date: 2/17/93

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

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