

HB

16

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address:
119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

April 20, 1998

House Of Representatives

Memorandum

To: Senator Robin Taylor, Chair
Senate Judiciary Committee

From: Representative Pete Kelly

Re: House Bill 16, dual sentencing, proposed senate Judiciary amendments.

The principle tool provided in HB 16 is the "Dual Sentencing" of juvenile offenders. Dual sentencing covers class "B" and "C" felonies. In contrast, waiving a minor to adult court occurs in class "A" and unclassified felonies. Under dual sentencing, a judge may give a minor both a juvenile sentence and an adult sentence. If the minor reoffends, or ignores the juvenile sentence, the judge may order him or her directly to the custody of adult corrections.

Dual sentencing is driven by the behavior of the minor. A new offense not only brings the minor back before the judge for a new trial it takes the minor to adult jail. Triggering adult jail time when with the minors subsequent behavior goes to the core of the "delinquency" concept. It makes it pretty clear that the minor in question is not willing to be rehabilitated. It is not "society's fault!!!

The proposed SJUD amendment will perform three tasks:

1) HB 16 provides an appropriate and timely vehicle to "fix" the recent court ruling blocking the release of the name of a minor when the minor was to be waived into adult court for killing a taxi cab driver in Anchorage. The existing waiver law allows the release of information upon "arraignment." The court found arraignment to be at the time of indictment by a grand jury, this amendment reestablishes that the release will be when formal charges are filed alleging the commission of a crime.

2) Adds "community groups" under contract or license to the definition of whom the department may include in the informal adjustments of youthful offenders. This is an added incentive for communities to provide consequences for lesser offenses.

3) Requested by Charter North Hospitals, Inc., links existing definitions in Title 47, and makes it clear that we are not reinventing the wheel.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 16(FIN)

1 Page 4, following line 22:

2 Insert a new subsection to read:

3 "(d) In this section, "likely to cause serious harm" has the meaning given in
4 AS 47.30.915;"

5 Page 4, line 29, following "corporations":

6 Insert "or municipalities"

7 Page 7, following line 28:

8 Insert a new bill section to read:

9 **** Sec. 16.** AS 47.12.030(a) is amended to read:

10 (a) When a minor who was at least 16 years of age at the time of the offense
11 is charged by complaint, information, or indictment with [ARRAIGNED ON A
12 CHARGE FOR] an offense specified in this subsection, this chapter and the Alaska
13 Delinquency Rules do not apply to the offense for which the minor is charged
14 [ARRAIGNED] or to any additional offenses joinable to it under the applicable rules
15 of court governing criminal procedure. The minor shall be charged, held, subject to
16 release on bail, prosecuted, [AND] sentenced, and incarcerated [IN THE
17 SUPERIOR COURT] in the same manner as an adult. If [UNLESS] the minor is
18 convicted of an [SOME] offense other than an offense specified in this subsection,
19 [IN WHICH EVENT] the minor may attempt to prove, by a preponderance of the
20 evidence, that the minor is amenable to treatment under this chapter. If the court
21 finds that the minor is amenable to treatment under this chapter, the minor shall be
22 treated as though the charges had been heard under this chapter, and the court shall
23 order disposition of the charges of which the minor is convicted under

1 AS 47.12.120(b). The provisions of this subsection apply when the minor is charged
 2 by complaint, information, or indictment with an offense [ARRAIGNED ON A
 3 CHARGE]

4 (1) that is an unclassified felony or a class A felony and the felony is
 5 a crime against a person;

6 (2) of arson in the first degree; or

7 (3) that is a class B felony and the felony is a crime against a person
 8 in which the minor is alleged to have used a deadly weapon in the commission of the
 9 offense and the minor was previously adjudicated as a delinquent or convicted as an
 10 adult, in this or another jurisdiction, as a result of an offense that involved use of a
 11 deadly weapon in the commission of a crime against a person or an offense in another
 12 jurisdiction having elements substantially identical to those of a crime against a
 13 person, and the previous offense was punishable as a felony; in this paragraph,
 14 "deadly weapon" has the meaning given in AS 11.81.900(b)."

15 Renumber the following bill sections accordingly.

16 Page 19, following line 29:

17 Insert a new subsection to read:

18 "(d) In this section, "likely to cause serious harm" has the meaning given in
 19 AS 47.30.915."

20 Page 24, line 7:

21 Delete "or"

22 Page 24, line 8, following "corporation":

23 Insert ";

24 (3) a Native village council that has waived immunity from suit for
 25 claims arising out of activities of the council related to exercise of the authority; the
 26 waiver is not effective unless approved by the Department of Law; or

27 (4) a person, other than a Native village council or other Native entity,
 28 that is determined by the department to represent the community in which the

1 authority may be exercised"

2 Renumber internal references to bill sections in accordance with this amendment. Below are
3 all internal bill section references in this bill:

4 Page 27, line 16

5 Page 27, line 19

6 Page 27, lines 22 - 23

7 Page 27, line 25

8 Page 27, line 26

9 Page 27, line 28

FISCAL NOTE

L.. Version: CSHB 16 (FIN)

(H) Publish Date: 3/23/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date: _____
Title: Relating to delinquent minors; services to victims and agency records...
Sponsor: Kelly
Requester: _____

Dept. Affected Health & Social Services
BRU Purchased Services
Component Residential Child Care
Component Serial No. 253

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	56.3	56.3	56.3	56.3	56.3	56.3
Travel						
Contractual	50.0	50.0	50.0	50.0	50.0	50.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	106.3	106.3	106.3	106.3	106.3	106.3

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES []						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts	15.8	15.8	15.8	15.8	15.8	15.8
1003 GF Match	15.8	15.8	15.8	15.8	15.8	15.8
1004 GF	74.7	74.7	74.7	74.7	74.7	74.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	106.3	106.3	106.3	106.3	106.3	106.3

Estimate of any current year (FY97) cost: _____

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

ANALYSIS:

(Attach a separate page if necessary)

Implementation of HB 16 would require a rewrite of the DFYS Residential, Payment and Licensing Regulations. A contract with a regulations attorney to complete this project, estimated at \$50.0, is anticipated.

The unique and complex nature of the semi-secure residential and secure residential psychiatric treatment centers require hiring a Community Care Licensing Specialist I. This individual would provide consultation to the regulation contractor and community services providers. In addition, this individual would process license applications and monitor program compliance with governing regulations. The estimated costs for this position is \$56.3.

Im

Prepared by Mark Hanley
Rep. Mark Hanley, Co-Chair House Finance Committee
Gene Hennault
Rep. Gene Hennault, Co-Chair House Finance Committee

Phone 465-4939
Phone 465-4797
Date 3/23/98

FISCAL NOTE

No: 14

Bill Version: CSHB 16 (FIN)

(H) Publish Date: 3/23/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date: 3/23/98 at 10:00 a.m.
Title: "An Act relating to delinquent minors..."

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

Sponsor: Representative Kelly
Requestor: (H) FIN

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	36.5	36.5	36.5	36.5	36.5	36.5
TRAVEL	1.8	1.8	1.8	1.8	1.8	1.8
CONTRACTUAL	8.5	8.5	8.5	8.5	8.5	8.5
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	6.5	.7	.7	.7	.7	.7
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	54.3	48.5	48.5	48.5	48.5	48.5

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	54.3	48.5	48.5	48.5	48.5	48.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	54.3	48.5	48.5	48.5	48.5	48.5

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: _____
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 3/23/98

DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

Rev 10/97

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 16(FIN)

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

Section 7 of this CS authorizes the court to place a child who is already in state's custody as a CINA or delinquent in a secure residential psychiatric treatment center if certain conditions are met. Those conditions are similar to the ones required to commit an adult: the child must be gravely disabled or suffering from mental illness and likely to cause serious harm to the child or another person. There has to be no less restrictive alternative available and reason to believe the child's mental condition could be improved by treatment or would deteriorate if untreated. The Department of Health and Social Services estimates 60 children a year would be petitioned into this involuntary commitment process. The amendment does not currently contain language explicitly guaranteeing the right to counsel but it is assumed it will be included as constitutionally required. It is further assumed that the Public Defender Agency would be appointed to represent these children in this process, at least in the instance where no legal conflict of interest existed. A part-time Attorney III with attendant support costs would be necessary to handle this influx of new proceedings with a FY 99 cost of \$54.3.

Note: The Public Defender Agency supports the CONCEPTUAL amendment. That is, we agree with the wisdom of having a secure psychiatric facility available for children in the State of Alaska and agree with expanding the eligible facilities. However, the amendment as drafted is woefully inadequate in terms of a fair process. It fails to provide the minimal protections built in to the current civil commitment process: explicit right to counsel; mandatory screening investigation; probable cause hearing before a judicial officer within 48 hours; mandatory evaluation by a mental health professional and a physician within 24 hours after arrival at a facility; 30-day commitment hearing held within 72 hours; written notification of rights; the right to communicate with a guardian or other adult; the right to present evidence and cross-examine witnesses; the right to be free from the effects of medication unless certain procedures are followed; and written notification of the allegations, the lack of any less restrictive alternative, the witnesses anticipated to be called and the facts and specific behavior alleged. At the 30-day hearing there are additional safeguards: the right to be present; to view and copy all petitions and reports; to have the hearing open or closed to the public as desired; to have the rules of evidence and civil procedure followed; to have an interpreter; to present evidence; to cross-examine witnesses; to remain silent; and to call experts. The state's case has to be proven by clear and convincing evidence, there is a right to appeal and if commitment is sought to extend past the 30 days, the respondent has the right to a jury trial. (AS 47.30.700-805). These safeguards must be built into this process. Additionally, the CS allows continued involuntary commitment upon a much lower standard. It is doubtful if this prolonged restraint will be found to be constitutional.

Section 18 of the CS revises the proposed dual sentencing provisions to apply only to 16 and 17 years olds accused of felony crimes against persons with previous adjudication of a felony crime against a person, or sexual abuse of a minor in the second degree. According to estimates by the Department of Health and Social Services, this could involve approximately 11 cases a year. Were these predictions to hold true, the Public Defender would not anticipate additional fiscal impact.

FISCAL NOTE

STATE OF ALASKA 1998 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: . delinquent minors, to the taking of action based BRU: Criminal Division/Civil Division
on the alleged criminal misconduct of certain minors . . . Component: 1st-4th Jud District/OSPA
 Sponsor: Representative Kelly Human Services #2198/99/
 Requester: House Finance Committee COMPONENT SERIAL NO. 220179/01/03/08

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	21.0	21.0	21.0	21.0	21.0	21.0
TRAVEL	0.1	0.1	0.1	0.1	0.1	0.1
CONTRACTUAL	3.4	3.4	3.4	3.4	3.4	3.4
SUPPLIES	0.3	0.3	0.3	0.3	0.3	0.3
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	24.8	24.8	24.8	24.8	24.8	24.8

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	24.8	24.8	24.8	24.8	24.8	24.8
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	24.8	24.8	24.8	24.8	24.8	24.8

Estimate of any current year (FY98) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill repeals and reenacts AS 47.12.010 (purposes of juvenile delinquency laws) to set out a new philosophy toward juvenile offenders, balancing the goal of reformation of a juvenile offender with protection of the public. Further, the bill authorizes local communities to handle minor juvenile offenses by allowing municipalities to assess civil penalties for juvenile offenses and by allowing the Department of Health and Social Services to delegate to community programs or review panels the authority to handle minor offenses. This bill also amends the delinquency adjudication statutes to authorize district attorneys to seek "dual sentencing" in certain serious juvenile criminal cases; i.e., the state asks the court to pronounce both a juvenile and an adult sentence for the offense, but the adult sentence would be imposed only if the minor commits a new offense or fails to abide by the ordered conditions of the juvenile sentence. Included in the bill is also a provision to enact the rendition amendment to the Interstate Compact on Juveniles that allows one state to take into custody and return to another state a juvenile who is alleged to have violated a criminal law in the second state but who has not been adjudicated a delinquent, and a provision to permit the Department of Health and Social Services to

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Attorney General's Office

Phone: 465-5370
 Date: 3/18/98

Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Date: 3/18/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

ANALYSIS CONTINUATION:

provide additional information to public officials, such as legislators, who are contacted by parents with concerns about children's proceedings. Without this amendment, the state is unable to explain to these officials why the action it has taken was necessary.

Passage of this legislation will have no fiscal impact on the Criminal Division. The House Finance Committee Substitute eliminates 13 -15 year olds from the dual sentencing provisions, and makes them optional for the remaining juveniles. The department estimates that approximately 10 cases per year, statewide, may require additional criminal proceedings under the proposed dual sentencing provisions. Although this represents an increase in the Criminal Division caseload, when this increase is spread between the division's several offices, fiscal note costs are not warranted.

This bill was also amended in House Finance to authorize courts to place certain children in need of aid, as well as delinquent children, in secure residential psychiatric treatment centers. It will be necessary for the Department of Law's Civil Division, Human Services attorneys to appear at these children's initial placement hearings, as well as at hearings every 90 days for the continuation of the placement. It is expected that the initial hearings will be contested and thus last three to four hours and that the continuation hearings will require one hour of an attorney's time. Finally, it is assumed that on average one continuation hearing will be necessary in each case.

The department anticipates there will be 60 children annually for whom secure treatment is sought through an initial hearing, requiring a total of 240 attorney hours (60 cases x 4 hours), and in 90 percent of the cases (54) a disposition for secure treatment will be granted. Of those 54 cases, the department assumes that half of these children will be moved to a less restrictive setting within 90 days, and half will require a hearing for placement continuation, requiring an additional 27 attorney hours (54 cases/2 x 1 hour). Using the Civil Division's FY98/99 standard attorney cost schedule of \$92.72/hour, the total cost of this provision will be \$24,756 (240 + 27 = 267 hours x \$92.72/hour).

Action by municipalities on minor juvenile offenses will have no fiscal impact on the department, either positive or negative. The types of cases that would be handled by municipal authorities under these amendments do not require the use of Department of Law staff under current law, so no savings would be achieved in the Civil Division from a reduced caseload.

FISCAL NOTE

No: 12

Bill Version: CSHB 16 (FIN)

(H) Publish Date: 3/23/98

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Delinquent Minors - Dual Sentencing BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Kelly
 Requestor: House Finance COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY 98) cost: \$ None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8265
 Agency: Alaska Court System Date: 03/17/98

Approved by: Stephanie J. Cole, Administrative Director Date: 03/17/98
 Agency: Alaska Court System

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
CSHB 16(FIN)

The court system does not anticipate a fiscal impact from the passage of CSHB 16(FIN). However, should the number of minors subject to the dual sentencing provisions of the bill increase, the court system may return to the legislature for additional funding.

Additionally, CSHB 16(FIN) allows the court to authorize the Department of Health and Social Services to place certain minors in a secure residential psychiatric treatment center. The court is to review that placement every 90 days. The court system does not currently foresee significant costs associated with the 90-day reviews because, according to the department, placements in secure facilities rarely exceed 90 days. Additionally, the department has historically only placed 5 or 6 minors a year into such facilities. However, should the number of such placements increase (due to the availability of in-state facilities), or should the length of placements increase to beyond 90 days, or should extra procedural steps be required prior to placement, the court system may return to the legislature for additional funding.

Finally, this note does not estimate the additional costs that will result from allowing municipalities to bring civil actions against minors for violations of municipal ordinances. It is not known how many municipalities will choose this option or how often they will utilize it. Should there be a significant impact, however, the court system may return to the legislature for additional funding.

FISCAL NOTE

No: 11

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill version: CSHB 16 (FIN)
(H) Publish Date: 3/23/98

Revision Date (Note if correction)	<u>3/16/98</u>	Dept. Affected	<u>Corrections</u>
Title	<u>An Act relating to delinquent minors, to the</u>	BRU	<u>Administration and Operations</u>
taking of action based on the alleged criminal misconduct...		Component	<u>ALL</u>
Sponsor	<u>Representative Kelly</u>		
Requester	<u>House Finance Committee</u>	Component Serial No.	<u>#0694</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous		109.5	219.1	327.8	401.7	365.2
TOTAL OPERATING	0.0	109.5	219.1	327.8	401.7	365.2

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF		109.5	219.1	327.8	401.7	365.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	109.5	219.1	327.8	401.7	365.2

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

See attached analysis.

Prepared by Bruce Richards
 Division Commissioner's Office
 Approved by Commissioner Margaret M. Pugh Margaret M. Pugh
 Agency Department of Corrections

Phone 465-3307
 Date 3/16/98
 Date 3/16/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. CSHB 16 (FIN)
PAGE 2 of 2
DATE 3/16/98

The major impact of this bill upon the Dept. of Corrections (DOC) is Section 18 where AS 47.12 is amended by adding a new section whereby delinquent minors age 16 and 17 may have dual juvenile and adult sentencing provisions imposed on them if the crime they are charged with committing is sexual abuse of a minor in the second degree or a felony that is a crime against a person and the minor has previously been adjudicated a delinquent for another felony offense that was a crime against a person.

DOC does not anticipate an impact during the first year of this legislation. A juvenile would have to unsuccessfully go through juvenile proceedings and a number of other alternative diversions before the adult dual sentencing provision would be imposed. Based on the statewide average daily cost of \$100.07 per day, the first year financial impact on the DOC would be \$109,576 (\$109.5), with three (3) new juveniles and \$109.5 added every year thereafter until FY 03. In that year, it is anticipated that one of the three juveniles who began serving an adult sentence in FY 00 will have finished the two-year presumptive sentence for a class C felony and be released. Similarly, the next year it is anticipated that one of the three juveniles for FY 01 will complete his or her sentence and be released. (It is assumed that the other two juveniles each year are serving four-year presumptive sentences for class B felonies).

FISCAL NOTE

No:10

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 16 (FIN)
(H) Publish Date: 3/23/98

Revision Date: _____
Title: "An Act relating to delinquent minors, to the taking action based on the alleged criminal misconduct of certain..."
Sponsor: Representative Kelly
Requestor: (H) FIN

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	36.9	36.9	36.9	36.9	36.9	36.9
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	11.0	11.0	11.0	11.0	11.0	11.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.6					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	54.5	48.9	48.9	48.9	48.9	48.9

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	54.5	48.9	48.9	48.9	48.9	48.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL						

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The new section seven of this committee substitute authorizes the court to place a child who is already in the state's custody as a child in need of aid or as a delinquent in a residential psychiatric treatment center under certain conditions. The Department of Health and Social Services estimates 60 children a year would be petitioned into this involuntary commitment process. The amendment contains no specific statutory guarantee of the right to counsel but there is little question that courts will require the state to provide counsel to these children. Further, the Public Defender Agency and the Office of Public Advocacy are the logical choices to provide such counsel.

The new section seven is curious in that it does not provide for the traditional, and seemingly essential, constitutional guarantees that are currently afforded to adult respondents in commitment proceedings. This fiscal note assumes that the current language will be amended to include those protections or that a court will, in order to hold the statute constitutional, enforce the guarantees afforded to adults.

(continued)

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

Phone: 269-3500
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Administration

Date: 3/23/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16 (FIN)

ANALYSIS: (continued)

The Office of Public Advocacy assumes that it will provide representation in at least half of the 60 complex proceedings now anticipated. Because of the location of current facilities, the agency further assumes that it will provide these services in Anchorage. Given the complexity of these proceedings, and the constitutional necessity of subsequent hearings, the agency anticipates it would require the part-time services of an Attorney III with attendant support costs for a total of \$81.9 in FY 99.

FISCAL NOTE

No: 9

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 16 (FIN)
(H) Publish Date: 3/23/98

Revision Date: _____
Title: "An Act relating to delinquent minors..."
Sponsor: Representative Kelly
Requestor: (H) FIN

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	36.5	36.5	36.5	36.5	36.5	36.5
TRAVEL	1.8	1.8	1.8	1.8	1.8	1.8
CONTRACTUAL	8.5	8.5	8.5	8.5	8.5	8.5
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	6.5	.7	.7	.7	.7	.7
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	54.3	48.5	48.5	48.5	48.5	48.5

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	54.3	48.5	48.5	48.5	48.5	48.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	54.3	48.5	48.5	48.5	48.5	48.5

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: _____
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 3/20/98

DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

COMMITTEE COPY Further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 16(FIN)

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

Section 7 of this CS authorizes the court to place a child who is already in state's custody as a CINA or delinquent in a secure residential psychiatric treatment center if certain conditions are met. Those conditions are similar to the ones required to commit an adult: the child must be gravely disabled or suffering from mental illness and likely to cause serious harm to the child or another person. There has to be no less restrictive alternative available and reason to believe the child's mental condition could be improved by treatment or would deteriorate if untreated. The Department of Health and Social Services estimates 60 children a year would be petitioned into this involuntary commitment process. The amendment does not currently contain language explicitly guaranteeing the right to counsel but it is assumed it will be included as constitutionally required. It is further assumed that the Public Defender Agency would be appointed to represent these children in this process, at least in the instance where no legal conflict of interest existed. A part-time Attorney III with attendant support costs would be necessary to handle this influx of new proceedings with a FY 99 cost of \$54.3. This would be an addition to the already existing fiscal note.

Note: The Public Defender Agency supports the CONCEPTUAL amendment. That is, we agree with the wisdom of having a secure psychiatric facility available for children in the State of Alaska and agree with expanding the eligible facilities. However, the amendment as drafted is woefully inadequate in terms of a fair process. It fails to provide the minimal protections built in to the current civil commitment process: explicit right to counsel; mandatory screening investigation; probable cause hearing before a judicial officer within 48 hours; mandatory evaluation by a mental health professional and a physician within 24 hours after arrival at a facility; 30-day commitment hearing held within 72 hours; written notification of rights; the right to communicate with a guardian or other adult; the right to present evidence and cross-examine witnesses; the right to be free from the effects of medication unless certain procedures are followed; and written notification of the allegations, the lack of any less restrictive alternative, the witnesses anticipated to be called and the facts and specific behavior alleged. At the 30-day hearing there are additional safeguards: the right to be present; to view and copy all petitions and reports; to have the hearing open or closed to the public as desired; to have the rules of evidence and civil procedure followed; to have an interpreter; to present evidence; to cross-examine witnesses; to remain silent; and to call experts. The state's case has to be proven by clear and convincing evidence, there is a right to appeal and if commitment is sought to extend past the 30 days, the respondent has the right to a jury trial. (AS 47.30.700-805). These safeguards must be built into this process. Additionally, the CS allows continued involuntary commitment upon a much lower standard. It is doubtful if this prolonged restraint will be found to be constitutional.

Section 18 of the CS revises the proposed dual sentencing provisions to apply only to 16 and 17 years olds accused of felony crimes against persons with previous adjudication of a felony crime against a person, or sexual abuse of a minor in the second degree. According to estimates by the Department of Health and Social Services, this could involve approximately 11 cases a year. Were these predictions to hold true, the Public Defender would not anticipate additional fiscal impact.

FISCAL NOTE

No: 8

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 16 (FIN)
(H) Publish Date: 3/23/98

Revision Date: 03/09/98
Title: relating to institutions for juveniles; cfd
Sponsor: Kelly
Requestor: House Finance

Dept. Affected: Health and Social Services
BRU: Medical Assistance
Component: Medicaid Facilities
COMPONENT SERIAL NO. 230
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

There does not appear to be a substantial Medicaid program impact associated with the provisions of CSHB 16 (FIN). This is because a Residential Psychiatric Treatment Center (RPTC) may already enroll as a Medicaid provider regardless of the provisions of the bill. A limited fiscal impact may result from the bill's provisions for "semi-secure" or "secure", but such impacts could arguably increase costs related to fire code requirements for secure facilities, or arguably decrease costs due to the availability of secure RPTC as an alternative to less appropriate placements in higher cost settings.

Medicaid enrolled RPTCs are already authorized to bill under Medicaid regulations. One in-state RPTC has been paid since 1993 and several out-of-state providers have been billing Medicaid for the past two years. A new in-state RPTC (30 beds) has submitted a request for Medicaid enrollment (a 2 to 3 week process), and enrollment of another new RPTC (10 beds) is also being pursued. Enrollment of these facilities is not dependent upon the provisions of the bill and, thus, any increased expenses required by their enrollment is also not dependent upon

Prepared by: Dave Williams *BT*
Division: Medical Assistance
Approved by Commissioner: Karen Pedigo, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3355
Date: 03/16/98
Date: 3/19/99

ANALYSIS (cont.):

any provision in the bill. Additional Medicaid funds may be necessary to cover the cost associated with an increased availability and use of in-state secure RPTC beds, but that increased need is not directly dependent upon the provisions of this bill.

Medicaid regulations (7 AAC 43.550 through 7 AAC 43.570) set out requirements for Medicaid recipient eligibility and admission, conditions for provider payment, establishment of a per diem rate for RPTC services, appeal of the Medicaid rate, and other provisions. Not all RPTCs that could be licensed under CSHB 16 (FIN) would necessarily qualify for Medicaid reimbursement since some Medicaid provider enrollment requirements are not requirements under the bill. (For example, Medicaid regulations require that an enrolled RPTC be accredited by the Joint Commission on Accreditation of Healthcare Organizations.)

Medicaid regulations (7 AAC 43.557) establish an initial RPTC rate that is the lesser of the
(1) per diem rate of \$255 for a single recipient; or
(2) per diem rate negotiated between a RPTC and the Division of Family and Youth Services; or
(3) lowest per diem rate charged to any other payor.

Regulations also provide for an increase or decrease of the \$255 per diem (7 AAC 43.557(b)), however, no enrolled program has submitted documentation under that provision for an adjustment. Presently, some out-of-state programs are paid less than the \$255 per diem, but no enrolled provider is paid more.