

OVERVIEW

DEPT.

OF

LAW

1/10/01

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION CENTRAL OFFICE

January 18, 2001

Representative Norman Rokeberg
State Capitol, Room 118
Juneau, AK 99801-1182

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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JAN 23 2001

Dear Chairman Rokeberg:

During the Department of Law's overview on Wednesday, January 10, 2001, committee members asked questions about when juveniles are tried as adults. I gave a general explanation and offered to provide copies of the relevant statutes. Those statutes are attached. Below is a brief description of each statutory provision.

AS 47.12.010 sets forth the goals and purposes of the juvenile justice system.

AS 47.12.020 says that most proceedings relating to minors under 18 are governed by the provisions of Title 47.

AS 47.12.030 is what is generally called the "juvenile waiver" provision. It requires minors 16 years of age or older to be treated as adults if they are charged with the following offenses: a crime against the person that is an unclassified or class A felony (i.e., murder in the first and second degree, manslaughter, sexual assault and sexual abuse of a minor in the first degree, kidnapping, assault in the first degree); arson in the first degree (a class A felony); or, a class B felony against the person if the minor is alleged to have used a deadly weapon and the minor has a prior adjudication involving the use of a deadly weapon in the commission of the prior crime.

In addition, minors are treated as adults for the following less serious offenses: violations of traffic regulations; possession of tobacco; possession, control, and consumption of alcohol; violations of fish and game regulations;

violations of statutes relating to parks and recreational facilities; some municipal curfew ordinances; and court-ordered license revocations under AS 28.15.185.

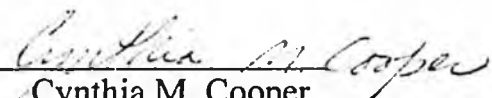
AS 47.12.065 allows for dual sentencing if the minor is 16 years of age or older and the offense is sexual abuse of a minor in the second degree, or the minor is charged with a felony crime against the person and the minor has a prior adjudication for a felony crime against the person.

AS 47.12.100 allows the state seek discretionary waiver of any juvenile into adult court. The judge must find probable cause for believing the minor committed the alleged crime and that the minor is not amenable to treatment in the juvenile system before the minor reaches 20 years of age.

If you have any questions, please do not hesitate to contact me in Juneau at 465-3428, or in Anchorage at 269-6379. You may also contact Dean Guaneli at 465-3428.

Sincerely,

BRUCE M BOTELHO
ATTORNEY GENERAL

By: 
Cynthia M. Cooper
Deputy Attorney General

CMC:nkl

cc: Committee Members:
Rep. Scott Ogan
Rep. Ethan Berkowitz
Rep. John Coghill, Jr.
Rep. Janette James
Rep. Al Kookesh
Rep. Kevin Meyer

AS 47.12.010. Goal and purposes of chapter

(a) The goal of this chapter is to promote a balanced juvenile justice system in the state to protect the community, impose accountability for violations of law, and equip juvenile offenders with the skills needed to live responsibly and productively.

(b) The purposes of this chapter are to

(1) respond to a juvenile offender's needs in a manner that is consistent with

(A) prevention of repeated criminal behavior;

(B) restoration of the community and victim;

(C) protection of the public; and

(D) development of the juvenile into a productive citizen;

(2) protect citizens from juvenile crime;

(3) hold each juvenile offender directly accountable for the offender's conduct;

(4) provide swift and consistent consequences for crimes committed by juveniles;

(5) make the juvenile justice system more open, accessible, and accountable to the public;

(6) require parental or guardian participation in the juvenile justice process;

(7) create an expectation that parents will be held responsible for the conduct and needs of their children;

(8) ensure that victims, witnesses, parents, foster parents, guardians, juvenile offenders, and all other interested parties are treated with dignity, respect, courtesy, and sensitivity throughout all legal proceedings;

(9) provide due process through which juvenile offenders, victims, parents, and guardians are assured fair legal proceedings during which constitutional and other legal rights are recognized and enforced;

(10) divert juveniles from the formal juvenile justice process through early intervention as warranted when consistent with the protection of the public;

(11) provide an early, individualized assessment and action plan for each juvenile offender in order to prevent further criminal behavior through the development of appropriate skills in the juvenile offender so that the juvenile is more capable of living productively and responsibly in the community;

(12) ensure that victims and witnesses of crimes committed by juveniles are afforded the same rights as victims and witnesses of crimes committed by adults;

(13) encourage and provide opportunities for local communities and groups to play an active role in the juvenile justice process in ways that are culturally relevant; and

(14) review and evaluate regularly and independently the effectiveness of programs and services under this chapter.

AS 47.12.020. Jurisdiction

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 minor is alleged to be or may be determined by a court to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state.

AS 47.12.030. Provisions inapplicable

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

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

(2) of arson in the first degree; or

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

(b) When a minor is accused of violating a statute specified in this subsection, other than a statute the violation of which is a felony, this chapter and the Alaska Delinquency Rules do not apply and the minor accused of the offense shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult; if a minor is charged, prosecuted, and sentenced for an offense under this subsection, the minor's parent, guardian, or legal custodian shall be present at all proceedings; the provisions of this subsection apply when a minor is accused of violating

(1) a traffic statute or regulation, or a traffic ordinance or regulation of a municipality;

(2) AS 11.76.105, relating to the possession of tobacco by a person under 19 years of age;

(3) a fish and game statute or regulation under AS 16;

(4) a parks and recreational facilities statute or regulation under AS 41.21;

(5) AS 04.16.050, relating to possession, control, or consumption of alcohol; and

(6) a municipal curfew ordinance, whether adopted under AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for the violation of a municipal curfew ordinance, the court shall allow a defendant the option of performing community work; the value of the community work, which may not be lower than the amount of the fine, shall be determined under AS 12.55.055(c); in this paragraph, "community work" includes the work described in AS 12.55.055(b) or work that, on the recommendation of the municipal or borough assembly, city council, or traditional village council of the defendant's place of residence, would benefit persons within the municipality or village who are elderly or disabled.

(c) The provisions of AS 47.12.010- 47.12.260 and the Alaska Delinquency Rules do not apply to driver's license proceedings under AS 28.15.185; the court shall impose 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.

AS 47.12.065. Dual sentencing provisions

(a) The department or the entity selected by it may refer to the appropriate district attorney the circumstances involving a minor who is subject to the provisions of this section because the minor is alleged to have violated a criminal law of the state. The department or the entity selected by it may make the referral if the minor was 16 years of age or older at the time of the offense, and the offense is

(1) a felony that is a crime against a person and the minor has previously been adjudicated a delinquent under the laws of this state or substantially similar laws of another jurisdiction for a felony offense that is a crime against a person; or

(2) sexual abuse of a minor in the second degree.

(b) If a referral is made under (a) of this section, the district attorney may elect to seek imposition of a dual sentence in the case to further the goal and purposes of this chapter as set out in AS 47.12.010. If the district attorney seeks imposition of a dual sentence, the district attorney shall present the case to the grand jury for indictment. If the grand jury returns an indictment, the district attorney shall file with the court under AS 47.12.040(a) a petition seeking the minor's adjudication as a delinquent.

(c) If the district attorney decides not to seek imposition of a dual sentence under (b) of this section or if the grand jury does not return an indictment, the case shall proceed under the remaining provisions of this chapter.

AS 47.12.100. 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) 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 department for treating the minor.

(c) For purposes of making a determination under this section,

(1) the standard of proof is by a preponderance of the evidence; and

(2) the burden of proof that a minor is not amenable to treatment under this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking to have the court declare a minor a delinquent is based on the minor's alleged commission of an offense that is an unclassified felony or class A felony and that is a crime against a person, the minor

(A) is rebuttably presumed not to be amenable to treatment under this chapter; and

(B) has the burden of proof of showing that the minor is amenable to treatment under this chapter.

MEMORANDUM


State of Alaska

Department of Law

To: Representative Norman Rokeberg
Chair, House Judiciary Committee

DATE: January 9, 2001

TELEPHONE NO.: (907) 465-2133

FROM: Bruce M. Botelho 
Attorney General

SUBJECT: Materials for January 10
Hearing

Attached please find organizational charts for the Department of Law as well as a chart outlining the role of the trial prosecutor in criminal cases. These materials are for the use of committee members in preparing for the Department of Law overview scheduled in your committee on Wednesday, January 10th.

I look forward to talking to you and the other members of the committee about the Department of Law and its work.

BMB:kh

ATTORNEY GENERAL

Juneau

CIVIL DIVISION

Deputy Attorney General

Juneau

Transportation

Anchorage, Fairbanks, Juneau

- construction/operations of public facilities, including ferries, airports, highways, harbors, buildings, and communications facilities

Human Services

Anchorage, Bethel, Fairbanks, Juneau

- child abuse and neglect
- juvenile delinquency prosecutions
- public assistance programs
- social and health services legal issues
- education issues; labor issues

Environmental Law

Anchorage, Fairbanks, Juneau

- environmental enforcement/defense including contaminated sites cleanup and restoration
- water and air quality
- Exxon Valdez cost recovery; Trustee Council

Oil, Gas and Mining

Anchorage, Juneau

- oil and gas tax and royalty claims
- oil and gas lease sale challenges
- pipeline tariff cases
- gas commercialization issues
- resource development (NorthStar, Alpine)

Commercial

Anchorage, Juneau

- banking, securities, investments, gaming, corporations, and insurance
- student loan program
- collection/enforcement of state taxes
- public housing; alcoholic beverage control

Special Litigation

Anchorage, Fairbanks, Juneau

- tort claims and admiralty/personal injury cases against state
- workers' compensation cases where state is employer

Collections and Support

Anchorage, Fairbanks, Juneau

- collection of debts, fines and judgments owed the state
- child support enforcement litigation

Governmental Affairs

Anchorage, Juneau

- public finance/budget legal issues
- employment/labor law; employee benefits
- elections; campaign finance
- procurement; Medicaid rate
- state/local government relations

Legislation/Regulations

Juneau

- preparation of governor's legislation
- review and analysis of all legislation before the governor takes action
- review of all regulations

Fair Business Practices

Anchorage

- public utility/oil and gas pipeline regulation
- occupational licensing
- postsecondary education

Natural Resources

Anchorage, Fairbanks, Juneau

- land management issues
- fish and game management and enforcement
- mental health lands issues
- Commercial Fisheries Entry Commission
- coastal zone management

Consumer Protection

Anchorage

- consumer protection
- antitrust law enforcement

Statehood Defense

Anchorage, Juneau

- submerged lands and navigability
- Native sovereignty
- RS2477 and access cases
- ANILCA challenges
- salmon treaty; ESA

ATTORNEY GENERAL
Juneau

CRIMINAL DIVISION
Deputy Attorney General
Anchorage

**Criminal Justice Litigation
and Legal Services**
Juneau

- Corrections legal services
- Public Safety legal services
- criminal justice legislation
- DMV appeals
- Violence Against Women Act
paralegal coordinator
volunteer coordinator

**Special Prosecutions
and Appeals**
Anchorage

- appeals
- white collar crime
- environmental crimes
- special fish and game violations
- Medicaid provider fraud
- welfare fraud
- child support prosecutions

First Judicial District

Juneau DA

Sitka DA

Ketchikan DA

Second Judicial District

Barrow DA
Supervised by Fairbanks

Nome DA

Kotzebue DA

Third Judicial District

Anchorage DA
- Narcotics Unit

Dillingham DA

Kenai DA

Kodiak DA

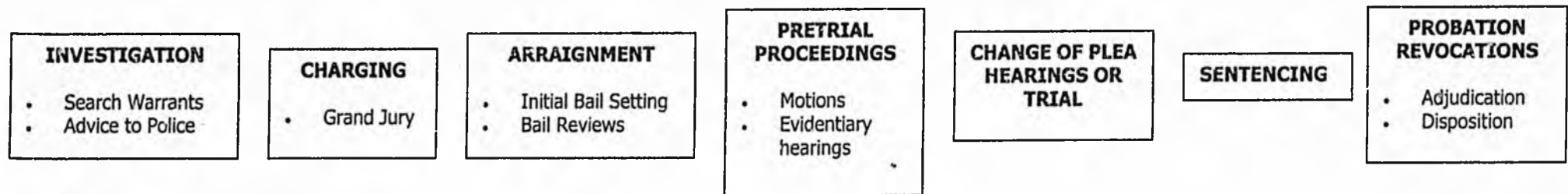
Palmer DA

Fourth Judicial District

Fairbanks DA

Bethel DA

The Trial Prosecutor's Role in Criminal Cases



Appeals

#1

- Direct appeal of conviction and/or sentencing to Court of Appeals
- Discretionary review by Supreme Court

#2

- Application for post-conviction relief in Trial Court
- Appeal to Court of Appeals
- Discretionary review by Supreme Court

#3

- Petition for writ of habeas corpus in Federal District Court
- Appeal to 9th Circuit Court of Appeals

Discretionary review by USSC possible in all 3 Appeals