

HB

351

<TARGET><BILL>HB 351</BILL><SUBJECT>HB
351</SUBJECT><COMM>HHSS30</COMM></TARGET>



Representative Ivy Spohnholz

House Health & Social Services Committee Chair

*House District 16: College Gate, Russian Jack, Nunaka Valley, Reflection Lake & Wonder Park
Committee Member: Education, Energy, Military & Veterans Affairs, Legislative Budget & Audit*

Sponsor Statement

House Bill 351

HB 351 is a statutory cleanup bill which updates the terms used to describe the facilities operated by the Division of Juvenile Justice and provides updated definitions for those terms. Current statutes contain references to facilities which DJJ does not operate, and facilities that do not exist in the state of Alaska. The bill also makes a clear distinction between the role of juvenile probation officers and adult probation officers in places where the difference is unclear. HB 351 also requires staff of juvenile justice to be added to the list of mandatory reporters of child abuse and neglect. These updates are necessary to provide statutory clarity to ensure the Division can manage its facilities effectively throughout the state.

Currently, Alaska Statutes reference places like work camps and juvenile detention homes, which are not recognized or operating in the state of Alaska. HB 351 adds juvenile treatment facility, juvenile detention facility, and temporary secure juvenile holding area as facilities currently being operated by the division and provides clear definitions for each of these terms. Because references to these facilities occur in many places in statute, this bill also touches upon many sections of statute. These changes are necessary to provide the clearest regulation over facilities in existence and operated by the DJJ.

HB 351 also clarifies the role of juvenile and adult probation officers, first by distinguishing clearly between the two, and second by providing a clear definition for the term juvenile probation officer. These are meaningful changes to provide the best protection for juveniles in the custody of the Division of Juvenile Justice.

Lastly, HB 351 adds DJJ staff to the list of mandatory reporters. It is the Division's objective to engage in the rehabilitation of juvenile offenders. Adding DJJ staff to the list of mandatory reporters provides the best guarantee that when DJJ staff discover cases of child abuse and neglect, those cases are reported, investigated, and resolved for the best interest of the child.

While these technical language updates touch many sections of statute, these language changes do not significantly alter the authority of the Division over juveniles in its care. Rather, these updates protect juveniles by making it clear where juveniles can be placed and clearly defining the authority of DJJ, its staff, and facilities using current and relevant language.



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of
Health and Social Services**

DIVISION OF JUVENILE JUSTICE
Director's Office

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Juneau, Alaska 99811-0635
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March 5, 2018

Representative Ivy Spohnholz
State Capitol, Room 421
Juneau, AK 99801

Dear Representative Spohnholz,

The Department of Health and Social Services, Division of Juvenile Justice (DJJ) is pleased to provide this letter of support for House Bill 351. The bill updates the terms used to describe Division of Juvenile Justice staff and state operated facilities and includes DJJ staff in the list of mandatory reporters of child abuse and neglect. HB351 also makes minor corrections related to the revocation of juvenile driver's licenses and the public disclosure of juvenile delinquency information.

Correcting the outdated terms used to describe DJJ facilities and staff will greatly improve the understanding of legislators, law enforcement, and the public about when statutes apply to the adult versus juvenile justice systems and support the department's efforts to improve these services.

Adding DJJ to the list of mandatory reporters of child abuse and neglect recognizes that youth frequently disclose abuse to these staff, who in turn, make reports to the Office of Children's Services (OCS). DJJ staff make an average of 80 reports to OCS every year.

The Division of Juvenile Justice strongly supports House Bill 351.

Sincerely,

A handwritten signature in blue ink that reads "Tracy A. Dompeling".

Tracy Dompeling
Director

Cc: Valerie Nurr'araaluk Davidson, Commissioner
Karen Forrest, Deputy Commissioner for Family, Community & Integrated Services
Darwin Peterson, Legislative Director, Office of Governor Bill Walker

HB351- Response to House Health and Social Services Committee Questions (3-6-2018)

1. Clarification on the penalty for failure to submit a DNA sample (Section 8)

Under AS 11.56.760, violating an order to submit to DNA testing is a class C felony.

2. Clarification over the duty of the Department of Education to provide education services to youthful offenders in the custody of the adult corrections system. (Section 10)

Section 10 addresses the duty of the Department of Education to coordinate with the Department of Health and Social Services for the education of youth held in secure facilities operated by the Department of Health and Social Services. This statute does not include coordination with the Department of Corrections.

The Anchorage School District receives state and federal funding to operate the New Path School in the Anchorage Correctional Complex in coordination with the Department of Corrections.

3. Clarification of the authority of adult probation officers employed by the Department of Corrections over juveniles under the jurisdiction of the Division of Juvenile Justice. (Section 22)

Section 22 amends AS 47.12.245(b) to clarify that the authority to arrest a minor, who is under the jurisdiction of the Division of Juvenile Justice for violation of conditions of release, rests with juvenile probation officers, not adult probation officers. AS 47.12.245(a), which is not amended in HB351, describes the authority of peace officers to arrest minors for criminal offenses.

The authority of adult probation officers to arrest probationers under the jurisdiction of the Department of Corrections is found at AS 33.05.070.

4. Clarification over the powers of juvenile probation officers as described in the bill, specifically the "service of process." (Section 24)

Juvenile Probation Officers have the authority to provide service of a writ to youth, parents, and attorneys. These writs are most commonly used for emergency detention.

5. Clarification over whether the bill has an impact on the ability of Village Public Safety Officers (VPSOs) to detain adults or juveniles by hand-cuffing them to a secure object. (Definition of temporary secure juvenile holding area found in Section 29)

The Division of Juvenile Justice works with local law enforcement, including VPSOs, on how to properly detain juvenile offenders, including the requirement for sight and sound separation with adult offenders, pending transport to a DJJ detention facility. The methods of detention available to local law enforcement vary by community. In some communities and individual situations, handcuffing an offender to a secure object is the best available means of detaining the individual. Nothing in HB351 changes the ability of local law enforcement to choose this option.

6. Clarification over the ability of Tribal entities to operate and receive grants from the Department of Health and Social Services for the operation of juvenile detention and juvenile treatment facilities. (Section 34)

Section 34 does not preclude Tribal governments (governmental agencies) from receiving grants from or contracting with DHSS, or operating juvenile facilities under agreement with the Department of Health and Social Services. The Division of Juvenile Justice currently maintains several agreements with Tribal entities for the diversion of juvenile offenders out of the criminal justice system, into Tribal justice organizations. Future agreements on the detention of minor offenders could be complimentary to these efforts.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 351
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB351-DHSS-PS-3-1-18
Title: JUVENILES: JUSTICE,FACILITES,TREATMENT
Sponsor: SPOHNHOLZ
Requester: House HSS

Department: Department of Health and Social Services
Appropriation: Juvenile Justice
Allocation: Probation Services
OMB Component Number: 2134

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2019 | Included in | Out-Year Cost Estimates | | | | |
|-------------------------------|-------------------------|---------------------------|-------------------------|----------------|----------------|----------------|----------------|
| | Appropriation Requested | Governor's FY2019 Request | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 |
| OPERATING EXPENDITURES | FY 2019 | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants & Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

Change in Revenues

| | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? yes
If yes, by what date are the regulations to be adopted, amended or repealed? 05/01/19

Why this fiscal note differs from previous version/comments:

Not applicable; initial version.

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| Prepared By: | Tracy Dompeling, Director | Phone: | (907)451-2160 |
| Division: | Juvenile Justice | Date: | 02/27/2018 09:00 AM |
| Approved By: | Shawnda O'Brien, Asst. Commissioner | Date: | 03/01/18 |
| Agency: | Health and Social Services | | |

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. HB351

Analysis

This bill makes necessary updates to the terms used to describe the Division of Juvenile Justice facilities and staff. Correcting these terms will greatly improve understanding by legislators, departmental staff, the public, and others about when particular statutes apply to the adult versus the juvenile justice system. The bill improves the department's ability to develop regulations and policies based on the work of these staff and in these facilities. The bill also improves lawmakers' ability to introduce legislation that clearly includes juvenile justice staff and facilities.

The bill clarifies that DJJ facility staff and probation officers can hold *positions of authority* and serve as *legal guardians* of minors for the purposes of addressing crimes of sexual assault and sexual abuse of a minor.

The bill includes Division of Juvenile Justice staff among the persons who are required to report child abuse and neglect. Current mandatory reporters include practitioners of the healing arts, school teachers, officers of the Department of Corrections, and others. Juvenile justice staff are not included in this list even though youth frequently disclose abuse to these staff and staff, in turn, make reports to the Office of Children's Services (OCS).

If this legislation passes, the department will update regulations related to the administration of secure juvenile facilities found in 7 AAC 52.

This bill has no fiscal impact to the department.



Representative Ivy Spohnholz

House Health & Social Services Committee Chair

House District 16: College Gate, Russian Jack, Nunaka Valley, Reflection Lake & Wonder Park
 Committee Member: Education, Energy, Military & Veterans Affairs, Legislative Budget & Audit

House Bill 351

"An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; Relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to adjudication of minor delinquency and the deoxyribonucleic acid identification registration system; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

Sectional Analysis

| Section | Section Summary | Section Changes |
|-----------|---|---|
| Section 1 | AS 09.65.255(b): Deals with indemnity of civil liability for the actions of minors in state custody | <i>Adds foster home, definition reference for foster home, juvenile treatment facilities, juvenile detention facility, and treatment institution. Adds references for the definitions of juvenile treatment facility and treatment institutions</i> |
| Section 2 | AS 11.41.425(b)(1): Deals with sexual assault in the third degree | <i>Adds staff who work in juvenile detention facilities and juvenile treatment facilities to definition of sexual assault in the third degree</i> |
| Section 3 | AS 11.41.425(b)(2): Deals with sexual assault in the third degree | <i>Updates the definition of juvenile probation officer.</i> |
| Section 4 | AS 11.41.427(b)(2): Deals with sexual assault in the 4 th degree. | <i>Updates definition of juvenile probation officer</i> |
| Section 5 | AS 11.41.470(3): Deals with crimes by legal guardians | <i>Adds employees of juvenile treatment institutions and juvenile and adult probation officers to list of legal guardians</i> |

Session (January-April): State Capitol, Juneau, AK 99801 - Phone (907) 465-4049 - Toll-Free (866) 465-4940

Interim (May-December): 1500 W. Benson Blvd, Anchorage, AK 99503 - Phone (907) 269-0123

Email: Rep.Ivy.Spohnholz@akleg.gov www.repivyspohnholz.com

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| Section 6 | AS 11.41.470(5): Deals with crimes against persons committed by a person in a position of authority | <i>Adds correctional employee, juvenile facility staff, and staff members of juvenile treatment institutions as people in positions of authority</i> |
| Section 7 | AS 11.41.470: Deals with crimes against persons committed by a person in a position of authority | <i>Adds definitions for juvenile facility staff and treatment institutions</i> |
| Section 8 | AS 11.56.760(a): Deals with orders to submit to DNA testing | <i>Clarifies that those who have been "adjudicated delinquent" may have to submit DNA samples</i> |
| Section 9 | AS 11.61.123(e): Deals with Indecent Viewing or Photography | <i>Adds treatment institutions and juvenile treatment facilities to list of included facilities. Provides references to definitions of those terms</i> |
| Section 10 | AS 14.07.020(a): deals with providing public education services | <i>Includes juvenile detention facilities and juvenile treatment facilities as places where public education must be provided. Provides references to definitions of those terms</i> |
| Section 11 | AS 14.30.186(a): Deals with providing special education | <i>Includes treatment institutions, juvenile detention facilities, or juvenile treatment facilities as places where special education must be provided. Adds references to definitions for those terms</i> |
| Section 12 | AS 17.37.070(6): Deals with medical marijuana | <i>Includes juvenile treatment facilities as facilities operated by the state which are not required to provide medical marijuana</i> |
| Section 13 | AS 18.20.499(2): Deals with overtime for nurses | <i>Adds "juvenile" treatment facilities and treatment institutions to describe</i> |

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| | | <i>facilities operated by Division of Juvenile Justice</i> |
| Section 14 | AS 47.10.141(c): Deals with Runaways and Missing Minors | <i>Updates terms used to describe juvenile detention facilities operated by the Division of Juvenile Justice and inappropriate emergency placement for minors.</i> |
| Section 15 | AS 47.10.141(j): Deals with Runaways and Missing Minors | <i>Creates new definition for "temporary secure juvenile holding area" where delinquent minors may be kept while awaiting transportation to a juvenile detention facility or pending a court order in AS 47.10.990</i> |
| Section 16 | AS 47.10.990(20): Deals with Runaways and Missing Minors | <i>Updates the definition used to describe facilities operated by the Division of Juvenile justice for the temporary secure detention of minors.</i> |
| Section 17 | AS 47.12.025(c): Arrest procedure for juveniles | <i>Clarifies that the described duties apply to juvenile probation officers, not adult probation officer. Updates language used to describe juvenile facilities and other areas where delinquent minor may be held.</i> |
| Section 18 | AS 47.12.120(b): Deals with the placement of minors who have an adjudication order under AS 47.12.120(b)(1) | <i>Updates terms of facilities where minors can be placed</i> |
| Section 19 | AS 47.12.120: Deals with DNA submission for minors | <i>Adds a new subsection to clarify that minors 16 or older may be ordered to submit a DNA sample if adjudicated for certain crimes</i> |
| Section 20 | AS 47.12.240(a): Deals with placement of minors after court commits them and before they are convicted | <i>Makes conforming and clarifying amendments to the conditions under which a</i> |

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| | | <i>minor may be held in a facility housing adult prisoners and the language used to describe facilities operated by the Division of Juvenile Justice</i> |
| Section 21 | AS 47.12.240(b): Deals with temporary holding of minors while awaiting transport | <i>Updates language used to describe conditions under which a minor may be held in a facility housing adult prisoners and the language used to describe facilities operated by the Division of Juvenile Justice</i> |
| Section 22 | AS 47.12.245(b): Deals with parole officers arresting minors | <i>Clarifies that the authority to arrest a minor rests with juvenile, not adult, probation officers.</i> |
| Section 23 | AS 47.12.250(a): Deals with temporary detention/ detention hearings | <i>Clarifies that the authority to detain a minor rests with "juvenile," not adult, probations offices. Adds "temporary secure juvenile holding areas" to the list of approved placed to hold juveniles</i> |
| Section 24 | AS 47.12.270: Deals with juvenile probation officers | <i>Updates the title and duties of juvenile probation officers.</i> |
| Section 25 | AS 47.12.310(d): Deals with notifying victims of crimes | <i>Clarifies that the department has a duty to notify victims when a minor is released from any court ordered placement under AS 47.12.120(b)(1)</i> |
| Section 26 | AS 47.12.315(c): Public disclosure of information in department records relating to certain minors | <i>Corrects language authorizing the department to disclose confidential information related to the offense when a minor has received an adjudication, rather than the offense the</i> |

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| | | <i>minor "alleged to have committed."</i> |
| Section 27 | AS 47.12.990(7): Deals with definitions and institutions | <i>Amends the definition of juvenile detention facility</i> |
| Section 28 | AS 47.12.990(12): Deals with definitions and institutions | <i>Amends the definition of minor</i> |
| Section 29 | AS 47.12.990: Deals with definitions of institutions | <i>Creates new definitions for juvenile probation officer, juvenile treatment facility, residential child care facility, temporary secure juvenile holding area</i> |
| Section 30 | AS 47.14.010: Deals with the powers of DHSS over DJJ | <i>Updates language to describe juvenile facilities operated by the department</i> |
| Section 31 | As 47.14.020: Deals with the duties of the department related to the custody of minors | <i>Updates the language used to describe juvenile facilities operated by the department</i> |
| Section 32 | AS 47.14.040: Deals with the authority to maintain and operate facilities | <i>Updates the language used to describe places the department can operate juvenile facilities to reflect the diversity of Alaskan communities and entities, such as the need for airports that operate "temporary secure juvenile holding areas."</i> |
| Section 33 | AS 47.14.050(a): Deals with the operation of homes and facilities | <i>Repealed and reenacted to update the language used to describe juvenile facilities</i> |
| Section 34 | AS 47.14.050(b): Deals with the operation of homes and facilities | <i>Updates language to reflect the diversity of Alaska communities that may be authorized to operate juvenile detention facilities</i> |
| Section 35 | AS 47.14.990(7): Social Services and Institutions Definitions | <i>Updates the definition of juvenile detention facilities</i> |

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| Section 36 | AS 47.14.990(14): Deals with Social Services Institutions and Definitions | <i>Updates the definition of minor</i> |
| Section 37 | AS 47.14.990: Deals with Social Services Institutions and Definitions | <i>Adds new definitions for juvenile probation officer, juvenile treatment facility, and temporary secure juvenile holding area</i> |
| Section 38 | AS 47.14.020(a): Deals with mandatory reporting of child abuse and neglect | <i>Adds juvenile probation officer, office staff, and staff of juvenile facilities to the list of mandatory reporters</i> |
| Section 39 | AS 47.28.15.176: Repealers | <i>Repeals revocation of juvenile driver licenses for offenses involving a controlled substance that were handled informally by the division. Repeals definitions for the terms "juvenile detention home" and "juvenile work camp" and "treatment facility"</i> |
| Section 40 | AS 11.41.425(b)(1) Applicability section | <i>Applies to sections of the bill related to criminal offenses</i> |
| Section 41 | Authorizes the department to adopt regulations to implement the changes of the legislation | |
| Section 42 | Effective date for regulations. Immediately, allows DJJ to begin making changes | |

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 351

BY REPRESENTATIVE SPOHNHOLZ

- 1 Page 13, lines 6 - 7:
- 2 Delete "**the minor is not in sight or sound of adult prisoners, and**"