

ALASKA LEGISLATURE

1613

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

9727 Wren Lane
Eagle River, AK. 99577

Constituent

September 26, 1995

Representative Pete Kott
State Capitol
Juneau, AK. 99801-1182

Dear Representative Kott:

You frequently send newsletters asking for my views on a variety of topics, and today I have some input for you. I have worked for the U.S. Public Health Service for the past 24 years, 16 of which have been in Alaska. I have a Bachelors and a Masters degree in Public Health. I recently completed a research project that might be of interest to you. The research project evaluated a marine safety training program that is conducted by the Alaska Marine Safety Education Association (AMSEA). This research paper will be published in the national peer review journal, Public Health Reports, in the November/December issue in 1995. The paper was also selected as one of 300 out of 900 papers for oral presentation at the World Injury Control Conference in Melbourne, Australia in February 1996.

The bottom line according to my research is that the AMSEA program is very effective in preventing deaths among the fishermen who took the course. The distressing point is that AMSEA relies entirely on short term grants for their funding. We need to support this effective program with recurring funding from the State. The funding could and should come from excess revenues of the Fishermen's Fund. This money originally came from the fishermen and AMSEA directly benefits the fishermen.

I realize there are obstacles to overcome in order to be able to use this excess funding but please see if it can be accomplished.

Thank you for your time and interest. If I can answer any questions, please call.

Ron Perkins

Ron Perkins, MPH
Tel. 273-0102



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MAR 11 1997

March 6, 1997

And:.....

A

File
HB 13

Representative Ben Grussendorf
Alaska State Legislature
State Capital (MS 3100)
Juneau, AK 99801-1182

Dear Representative Grussendorf,

I am writing to seek your support of HB 13 "An Act relating to marine safety training and education programs." This bill is being sponsored by Rep. Al Austerman.

Experiential marine safety training for fishermen has been shown to be effective in lowering the drowning rate for that group. We are convinced that, with the support provided by HB13, the same results will one day be shown for recreational and subsistence boaters.

Even though Alaska does not have a Safe Boating Act, we are very fortunate to have a statewide marine safety training organization known as the Alaska Marine Safety Education Association (AMSEA) that could realize immediate benefit from HB13. AMSEA stresses experiential education and uses Alaska-specific curricula. Furthermore, they provide technical and equipment support for a state-wide network of AMSEA-certified Marine Safety Instructors.

AMSEA has been instrumental in getting our organization to recognize the public health impact of drowning in Alaska. Without exception, each member of our staff that has completed AMSEA training agrees that it was more than just a class -- it effectively changes a person's boating behavior for life !

HB13 is a reasonable and responsible effort to reduce the drowning rate for the people of this state. I will be following the progress of HB13 and I hope to see evidence of your support. Thank you for your consideration of this issue.

Sincerely,

David E. Robbins, Director
SEARHC Office of Environmental Health

cc: Representative Austerman ✓

DRAFT

**POLICIES AND PROCEDURES APPLICABLE
TO THE TREASURY DIVISION,
DEPARTMENT OF REVENUE,
STATE OF ALASKA**

•••••

General Investment Fund - General Fund Group (cont.)						
Sub-fund Description	Fund Account Number	Liability Account Number	Legal Reference	Interest Code *	DOR Report Required	1/21/97 Invested Funds \$
Due to Mental Health Income	34042	21467	AS 37.14.011	1	-	1,849,883
Second Injury Fund **	11117	21494	AS 23.30.040	3	-	813,936
Alaska Surplus Property Fund	11112	21484	AS 44.71.030	3	-	355,236
Assistive Technology Loan Guarantee Fund	11154	21522	AS 23.15.125	1	-	274,711
Due to Mental Health Corpus	34041	21466	AS 37.14.011	1	-	241,905
Real Estate Surety Fund	11121	21499	AS 08.88.450	3	-	234,519
Oil and Hazardous Substance Response Mitigation Account	11153	21518	AS 46.08.025 AS 43.55.231	1	-	162,702
Donated Commodity Handling Fee	11120	21498	USC 7CFR. PT250	3	-	157,737
Electrical Service Extension Fund	11151	21517	AS 42.45.200	3	-	113,257
Art in Public Places Fund	11124	21469	AS 44.27.060	3	-	107,469
Randolph Sheppard Small Business Enterprise Revolving Loan Fund **	11118	21495	AS 23.15.130	3	-	96,181
State Small Business Enterprise Fund	11116	21492	AS 23.15.130	3	-	88,496
FICA Administration Fund	11110	21480	AS 39.30.050	3	-	60,717
Alaska Historical Commission Receipts Account	11111	21482	AS 41.35.380	3	-	44,170
Fuel Emergency Fund	11125	21464	AS 44.19.052	3	-	22,573
Fund for the Improvement of School Performance	11145	21509	AS 14.03.125	3	-	21,749
Federal Highway Administration - Airspace Leases Fund	11126	21463	§156 Surface Trans Reloc. Assistance Act c. '987	3	-	18,785

* Interest Code
 1 = Income computed monthly and credited to that subfund.
 2 = Income is only calculated. If the Legislature appropriates the income to the subfund, the income is credited to the subfund; otherwise it is credited to the general fund.
 3 = Income is credited to the general fund.

** The Department of Law believes these funds should be classified as Special Revenue Funds.

Sec. 16.05.480. Commercial fishing license.

(a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is \$30 for residents, and \$90 for nonresidents. Except for those which are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

(b) A person applying for a resident commercial license under this section shall provide the proof of residence that the department requires by regulation.

(c) [Repealed, sec. 12 ch 123 SLA 1978].

History -

(sec. 6 art III ch 94 SLA 1959; am sec. 19 ch 131 SLA 1960; am sec. 1 ch 93 SLA 1966; am sec. 2 ch 42 SLA 1968; am sec. 8 ch 105 SLA 1977; am sec. 1, 2, 12 ch 123 SLA 1978; am sec. 1 ch 79 SLA 1982)

Editors Notes -

→ Sixty percent of the fees collected under this section is deposited in the fishermen's fund, AS 23.35.060. For opinions of the Attorney General regarding constitutional limits on altering the amount of a license fee upon which a dedicated fund is based, see annotations following art. IX, sec. 7 in the Alaska Constitution pamphlet.

AG Opinions -

Discrimination against aliens and nonresidents in issuance of fishing licenses. See 1959 Op. Att'y Gen. No. 15.

Employees of shore-based floating canneries are not required to have a commercial fishing license, but employees of floating canneries are required to have a commercial fishing license. February 22, 1984 Op. Att'y Gen.

Decisions -

Constitutionality of fee differential. - The issue of the constitutionality of the fee differential for resident and nonresident licenses does not implicate the Commerce Clause of the United States Constitution. *Carlson v. State*, Sup. Ct. Op. No. 4356 (File No. S-6590), P.2d (1996).

The constitutionality of the fee differential for resident and nonresident licenses under the Privileges and Immunities Clause of the United States Constitution turns on whether there is a sufficient relationship between the higher fees charged nonresidents and the state's interest in imposing on nonresidents their share of the costs for managing the state's commercial fisheries; the disparate fees charged to nonresidents are not unconstitutional if the differential does not exceed the contribution made by residents, because the differential will be justified as imposing on nonresidents their share of the costs of commercial fisheries. *Carlson v. State*, Sup. Ct. Op. No. 4356 (File No. S-6590), P.2d (1996).

Constitutionality of former provisions. - See *Anderson v. Mullaney*, 13 Alaska 332, 191 F.2d 123 (9th Cir. 1951), *aff'd*, 342 U.S. 415, 72 S. Ct. 428, 96 L. Ed. 458 (1952).

Failure to consider native's inability to speak English. - Where the failure of the Commercial Fisheries Entry Commission to consider a non-English speaking Alaska native's dependence on others had the potential to result in unjust discrimination, the case was remanded to the commission for explicit determination as to whether the factual circumstances relating to the native's application for crewing points warranted granting an exception in her case to the

commission's licensure requirement. *Arkanakyak v. State, Com. Fisheries Entry Comm'n*, 759 P.2d 513 (Alaska 1988).

States have a right to exact a higher license fee from nonresidents than from residents - for the privilege of hunting game within its borders. *Anderson v. Smith*, 71 F.2d 493 (9th Cir. 1934).

Principle upon which such right is based. - This right to discriminate is based upon the principle that the state owns the wild fish and game within its borders and therefore has a right to determine the conditions upon which persons may reduce the same to possession and ownership. *Anderson v. Smith*, 71 F.2d 493 (9th Cir. 1934).

Discrimination between resident and nonresident fishermen in prescribing license fees. - See *Anderson v. Smith*, 8 Alaska 470 (9th Cir. 1934), *aff'd*, 71 F.2d 493 (9th Cir. 1934).

Applied in *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1255 (Alaska 1980).

Sec. 23.35.060. Creation and administration of fishermen's fund.

There is created a fund, designated as the "fishermen's fund." The Department of Revenue is the custodian of the fund and the Department of Labor shall administer it. The fund shall be composed of 60 per cent of the money derived by the state from all commercial fishermen's licenses and money appropriated to carry out the purpose of this chapter.

History -

(sec. 4 ch 100 SLA 1951; am sec. 1 ch 99 SLA 1955; am sec. 16 ch 105 SLA 1977; am sec. 11 ch 123 SLA 1978)

Sec. 37.05.146. Definition of program receipts and non-general fund program receipts.

In AS 37.05.142 - 37.05.146 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other state money received by a state agency in connection with the performance of its functions; all program receipts except the following are general fund program receipts:

- (1) federal receipts;
- (2) University of Alaska receipts (AS 14.40.491);
- (3) individual, foundation, or corporation gifts, grants, or bequests that by their terms are restricted to a specific purpose;
- (4) receipts of the following funds:
 - (A) highway working capital fund (AS 44.68.210);
 - (B) correctional industries fund (AS 33.32.020);
 - (C) loan funds;
 - (D) international airport revenue fund (AS 37.15.430);
 - (E) funds managed by the Alaska Housing Finance Corporation (AS 18.56.020), the Alaska Railroad Corporation (AS 42.40.010), the Municipal Bond Bank Authority (AS 44.85.020), the Alaska Aerospace Development Corporation (AS 14.40.821), or the Alaska Industrial Development and Export Authority (AS 44.88.020);
 - (F) fish and game fund (AS 16.05.100);
 - (G) school fund (AS 43.50.140);
 - (H) training and building fund (AS 23.20.130);
 - (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and former AS 39.37);
 - (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

- (K) public school fund (AS 37.14.110);
(L) second injury fund (AS 23.30.040);
(M) fishermen's fund (AS 23.35.060); ←
(N) FICA administration fund (AS 39.30.050);
(O) receipts of the employee benefits program established under AS
39.30.150 - 39.30.180;
(P) receipts of the deferred compensation program established under AS
39.45;
(Q) clean air protection fund (AS 46.14.260);
(R) receipts of the group insurance programs established under AS
39.30.090;
(S) mental health trust fund (AS 37.14.031);
(5) receipts of or from the trust established by AS 37.14.400 - 37.14.450, except
reimbursements described in AS 37.14.410.

History -

(sec. 1 ch 36 SLA 1990; am sec. 8 ch 14 SLA 1991; am sec. 5 ch 66 SLA 1991; am sec. 8 ch 88 SLA 1991; am sec. 11 ch 31 SLA 1992; am sec. 3 ch 1 FSSLA 1992; am sec. 115 ch 4 FSSLA 1992; am sec. 64 ch 63 SLA 1993; am sec. 10 ch 74 SLA 1993)

Revisors Notes -

Subparagraph (4)(Q) was enacted as (R); relettered in 1993.

Amendment Notes -

The first 1991 amendment, effective January 1, 1992, in subparagraph (4)(E), deleted "the medical indemnity corporation of Alaska (AS 21.88.020)" preceding "the Alaska Railroad Corporation."

The second 1991 amendment, effective December 16, 1994, added subparagraph (4)(S).

The third 1991 amendment, effective July 2, 1991, inserted "the Alaska Aerospace Development Corporation (AS 14.40.821)" in subparagraph (4)(E).

The first 1992 amendment, effective July 1, 1993, added subparagraphs (4)(O) and (4)(P) and made a related stylistic change.

The second 1992 amendment, effective June 19, 1992, added paragraph (5).

The third 1992 amendment, effective July 1, 1992, deleted a reference to the Alaska State Housing Authority in subparagraph (4)(E).

The first 1993 amendment, effective January 1, 1993, added subparagraph (4)(R).

The second 1993 amendment, effective June 26, 1993, added subparagraph (4)(Q).

Effective Date Notes -

Under sec. 58(a), ch. 66, SLA 1991, as amended by sec. 37, ch. 5, FSSLA 1994 and sec. 2, ch. 1, SSSLA 1994, this section, as set out above, took effect December 16, 1994.

Editors Notes -

Section 87, ch. 63, SLA 1993 provides "[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill."

Decisions -

Building renovation funds not program receipts. - Funds placed in escrow for the renovation of a building that was the subject of a lease-purchase agreement between the Department of Natural Resources and Alaska Court System did not constitute unrestricted "program receipts" for deposit in the state treasury and did not violate Alaska Const., art. IX, sec. 13. Carr-Gottstein Properties v. State, 899 P.2d 136 (Alaska 1995).

Cited in *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Dear Peddock
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415 49701

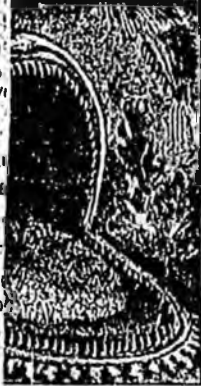
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Peg Barry was right

By Brad Matsen
Pacific Editor

In the summer of 1985, Peggy and Robert Barry lost their son Peter, a fisherman on the F/V Western Sea out of Kodiak. Like so many others who walk the docks looking for a berth, he wasn't beginning a career on the grounds, just enjoying a summer's work and adventure that might pay a few bucks. In the fall of that year, he planned to return to his junior year of college and then the rest of his life.

The news of the Western Sea's sinking and Peter's death rolled by us in the fishing press as a sad but brief news item, as do so many others. News of a fisherman lost at sea was as common as sunrise to most of us. That year alone, 49 others had died just on the grounds of the Northwest coast and Alaska; 102 had died nationwide.

Nobody goes to sea expecting never to return, and in those days, we somehow were able to ignore the grim statistical realities of our business. Commercial fishing is the most dangerous occupation in America, a truth most of us really just ignored to get on with the work. To be sure, most skippers and their crews were not cavalier about going to sea, but no systematic training, gear regs or constant awareness of the danger were available to add an extra measure of security. Weather, of course, was and is the big killer. For hundreds of years before 1985, though, safety was more of an instinctive afterthought than the energetic preoccupation it is now.

The investigation into the sinking of the Western Sea revealed a deplorable absence of safety gear and training. Peter Barry, it turns out, would have had a much better chance for survival if the volume on safety awareness had been turned up just a few notches.

Peggy Barry demanded reform. At first, when she testified at a well-publicized congressional hearing, many fishermen dismissed her pain and outrage as a reaction to business as usual. Fishing, some reasoned, was dangerous and not a place for some college kid who would make the mistake of climbing aboard a dangerous boat. And besides, she was proposing more government regulation for the fleets, rules that would cost everybody a bundle and bring Coast Guard inspections down on us trip after trip. Worse, a lot of people in the fishing community figured no amount of gear or training was really going to make that much of a difference.

But Peggy Barry was right. She and hundreds of others formed a grassroots revolution that, in 10 years, has dramatically increased our chances for survival on the grounds. Though not without the controversy that always surrounds increased regulation of fiercely independent people, Barry has saved lives. In 1994, only 75 sons and daughters died on the fishing grounds; in 1995, only 68. Thanks Peggy.

Section 9.7 - DEDICATED FUNDS.

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Cross References -

For an exception to the prohibition against dedicated funds, see Sec. 15 of this article which establishes the permanent fund.

Amendment Notes -

The amendment effective February 21, 1977 (9th Legislature's SCS CSSSHJR 39 (Res) am S (1976)) inserted "as provided in section 15 of this article or" in the first sentence.

AG Opinions -

Among the reasons such a prohibition, as is found in this section, was recommended are the following: (1) flexibility of budgeting; (2) financial control; and (3) lack of relationship between the tax and purpose. 1959 Op. Att'y Gen. No. 7.

Delegates to the constitutional convention were desirous of eliminating dedications so that the legislature would have the greatest flexibility in allocating tax revenues on a basis of need. 1959 Op. Att'y Gen. No. 7.

A dedication encompasses (1) proceeds or part of the proceeds of a tax or license (2) set aside at a certain rate (3) for a particular purpose. 1959 Op. Att'y Gen. No. 7.

As a matter of compromise, a grandfather clause was included in this section to permit all dedications existing on the date of ratification of the constitution (April 24, 1956) to continue. 1959 Op. Att'y Gen. No. 7.

The intent of the drafters of the state constitution was to permit the continuance of existing dedications at the then existing rates until the legislature saw fit to exercise the only power retained in relation to them: That is, the power to repeal. 1959 Op. Att'y Gen. No. 7.

This section had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes, and (2) to prevent the creation of new special funds separate from the general fund. May 2, 1975 Op. Att'y Gen.

This section of the state constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues. May 2, 1975, Op. Att'y Gen.

The dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever, is limited by the state constitution to those existing when the constitution was ratified or required for participation in federal programs. May 2, 1975 Op. Att'y Gen.

The real concern at the constitutional convention was about earmarked funds, not taxes or licenses, but funds. May 2, 1975 Op. Att'y Gen.

Dedication of the revenues from the lease or sale of state natural resources offends the state constitutional prohibition against dedicated funds. May 2, 1975 Op. Att'y Gen.

The practice of appropriating to a separate fund an amount to be ascertained by reference

to receipts from a specified source does not violate the dedication prohibition of the constitution. November 30, 1982 Op. Att'y Gen.

Language of this section prohibiting dedication of proceeds of any state tax or license must be read as embodying certain implied exceptions, specifically, pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. November 30, 1982 Op. Att'y Gen.

There is no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund. November 30, 1982 Op. Att'y Gen.

For discussion of issues involved in question of whether dedication prohibition applies to interest or other income earned by money appropriated to revolving funds and other funds and accounts, see November 30, 1982 Op. Att'y Gen.

If the moneys in the general fund must be applied in a particular way and the amount to be applied is determined by a set formula, rather than by each legislature's judgment, the intent of this section has been thwarted. The legislature's hands are tied as effectively as in the case where the proceeds of a particular tax are dedicated. 1969 Op. Att'y Gen. No. 5, overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

As to constitutionality of requiring a portion of the general fund to be allocated to local governments each year in accordance with a fixed formula, see 1969 Op. Att'y Gen. No. 5, overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

The prohibition of this section is against new dedications, i.e., those dedications of revenues which did not exist on April 24, 1956, the date of the constitution's ratification. June 2, 1978 Op. Att'y Gen.

Existing dedications may be continued but may not be revised upward or downward by means of altering the tax, the rate of dedication or the purpose for which the dedication will be used. 1959 Op. Att'y Gen., No. 9; 1959 Op. Att'y Gen. No. 7; 1959 Op. Att'y Gen. No. 14.

No action of the legislature is permissible which would (1) tend to increase or decrease the percentage of the total tax and license proceeds which are dedicated, or (2) which would tend to increase or decrease the amount of proceeds which are dedicated. 1959 Op. Att'y Gen. No. 7; 1959 Op. Att'y Gen. No. 14.

Reducing a dedication makes it different from that which existed, i.e., and existing dedication is not continued when it is reduced any more than it is when it is increased. June 2, 1978 Op. Att'y Gen.

Any attempted alteration short of repeal is a nullity. 1959 Op. Att'y Gen., No. 7.

Legislation developed to eliminate the double fee paid by commercial fishermen who are also holders of limited entry permits, which in effect, exempted permit holders from license fees and provided for payment into the fishermen's fund from moneys collected for permit fees of an amount equal to the amount which would have been paid into the fund from collections for commercial fishing licenses offends this section since it did not continue an existing dedication. June 2, 1978, Op. Att'y Gen.

The 1957 amendment to AS 43.40.010, which reduced the tax on motor fuel used in commercial fishing crafts for purposes of commercial fishing from five cents to two cents per gallon, effected no change in the dedication inasmuch as the reduction in the tax is coupled with an exemption from the refund of three cents per gallon formerly allowed to users of fuel in

commercial fishing craft for commercial purposes. Nothing has been done which increases or decreases the dedication. 1959 Op. Att'y Gen. No. 14.

When the tax is lowered the entire dedication falls and all tax proceeds are covered into the general fund. This result is compelled by a realization that the lowering of the tax irretrievably lowers the dedication because insufficient revenues are available to maintain the present rate of the dedication. Since the only power retained by the legislature with respect to a dedication (other than administrative alterations in the management of the dedication) is the power of repeal, such irretrievable action is tantamount to a repeal of the dedication. 1959 Op. Att'y Gen., No. 14.

When the legislature raises the tax, the excess tax simply goes into the general fund. 1959 Op. Att'y Gen. No. 14.

A dedication is not repealed in its entirety by the partial elimination of its source but rather that it is reduced to provide for a dedication solely from all that is left of the source. June 2, 1978 Op. Att'y Gen.

The prohibition against dedications should be read in conjunction with Alaska Const., art. XI, Sec. 7, which deals with restrictions on the initiative and referendum. Therein it is stated that the initiative and referendum shall not be used to create or apply to dedications of "revenue." 1959 Op. Att'y Gen., No. 7.

Pre-existing dedications of revenue established by statute to satisfy trust obligations imposed by federal law are excluded from the reach of Alaska Const., art. IX, Sec. 17. That section applies to proceeds net of dedications otherwise permitted under this section, which permits dedications that are required for participation in a federal program. 1993 Op. Att'y Gen. No. 1.

Any attempted dedication of funds after April 26, 1956, which was not absolutely required for participation in federal programs, had to be covered into the general fund, any statute notwithstanding. 1959 Op. Att'y Gen. No. 7, issued prior to the 1977 amendment of this section.

Although fourth class cities may now be incorporated cities within the intent of AS 43.70.080, they would not be entitled to any refunds under such section, since if this were the case, the effect of ch. 79, SLA 1959 would be to make a new dedication of a state tax or license for a special purpose. Any such dedication would be invalid under the provisions of this section. 1960 Op. Att'y Gen., No. 5.

Any repeal or repeal and re-enactment of a dedication during the 1957 session takes the dedication from under the protection of the grandfather clause, and a re-enactment either in 1957 or later is a nullity unless the dedication is required by the federal government for participation in federal programs. 1959 Op. Att'y Gen., No. 7, issued prior to the 1977 amendment of this section.

Employees' retirement system and emoluments of office for all commissioners, heads of state agencies and the members of the judiciary and legislature are authorized by the Alaska Constitution and are implied exceptions to the prohibition of this section. 1969 Op. Att'y Gen., No. 5 overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

The Violent Crimes Compensation Board is authorized by statute to recover, receive, and collect receipts; however, under the Alaska Constitution, all receipts must revert to the general fund. September 25, 1980 Op. Att'y Gen.

The provisions of AS 16.43.310 and 16.43.320, which authorize the Commercial Fisheries Entry Commission to establish and administer a buy-back program, offend the state constitutional prohibition against dedicated funds. May 23, 1985 Op. Att'y Gen.

Decisions -

This clause prohibiting dedicated funds seeks to - preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992).

Assessments authorized by former AS 16.10.530 were "proceeds of a state tax or license." - Since the constitution prohibits the dedication of any source of revenue, including both "taxes" and "special assessments," the assessments authorized by former AS 16.10.530 were "proceeds of a state tax or license," within the meaning of this section, whether or not the salmon assessments fit the definition of "special assessments." *State v. Alex*, 646 P.2d 203 (Alaska 1982).

Coastal protection fund held invalid. - As provided for in ch. 266, SLA 1976, the coastal protection fund in former AS 30.25, which regulated the transfer of crude oil, refined petroleum products, or by-products of oil terminal facilities, was a dedication of the proceeds of a tax or license and invalid under this section. *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska 1978).

Risk charges for each classification of certificate issued under former AS 30.25, which were deposited in the coastal protection fund, were the proceeds of a license or tax within the meaning of this section, which prohibits the dedication of any state tax or license to any special purpose with certain exceptions. *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska 1978).

Attorney general could not save provisions of former AS 30.25 from unconstitutionality under this section by directing promulgation of regulations inconsistent with statute. - See *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska 1978).

Deposit of Alaska Power Authority revenues into state general fund. - Net proceeds from the Alaska Power Authority's operations in excess of actual debt payments are deposited into the state general fund, the Authority receiving money for maintenance and operation of its facilities from legislative appropriations. *M-K Eng'g Co. v. Alaska Power Auth.*, 662 F. Supp. 303 (D. Alaska 1986).

Based upon this article, funds left over from Alaska Power Authority projects are lapsed into the state's general fund for later reappropriation. *M-K Eng'g Co. v. Alaska Power Auth.*, 662 F. Supp. 303 (D. Alaska 1986).

Cited in *State v. Anthony*, 810 P.2d 155 (Alaska 1991).

FISCAL NOTE

NO. 3

Bill Version: CSHB 13(FIN)

(H) Publish Date: 3/6/97

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

Not Adopted

Title: Marine Safety Training & E

Dept. Affected: Revenue

BRU: Revenue Operations

Sponsor: Rep. Alan Austerman

Components: Treasury

Requestor: _____

Serial # 121

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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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	0.0	0.0	0.0	0.0	0.0	0.0
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
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 analysis

Prepared by: House Finance Committee

Date: 3/5/97

Approved by: _____

Mark Hanley
Co-Chair Mark Hanley

Phone: 465-4797

Gene Therriault
Co-Chair Gene Therriault

Phone: _____

HB

16

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 7, 1997

FURTHER REFERRALS:

Date of Committee Action: 3/12/98

The FINANCE Committee considered:

HB 16

HOUSE BILL NO. 16

JUVENILE DELINQUENCY PROCEDURES

"An Act relating to delinquent minors, to the taking of action based on the alleged criminal misconduct of certain minors, to the services to be provided to the victims of criminal misconduct of minors, and to agency records involving minors alleged to be delinquent based on their criminal misconduct; and amending Rule 19 and repealing Rules 6, 7, 11(a), 12(a), and 21(f), Alaska Delinquency Rules."

recommends it be replaced with the following committee substitute CSHB 16 (FIN) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) (2) Admin, DOC, Delaw fiscal note(s) _____
AK COURT Sys, HFC

zero fiscal note(s) DHSS zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault	X			
<i>Mark Hanley</i>	Hanley	X			
<i>Edson Mulder</i>	Mulder	X			
<i>Terry Martin</i>	Martin	X			
<i>Vic Kohring</i>	Kohring	X			
<i>John Davies</i>	J. Davies			X	
<i>Ben Grussendorf</i>	Grussendorf			X	
<i>Edward Moses</i>	Moses			X	
<i>John Davis</i>	J. Davis			X	
<i>Kelly</i>	Kelly				
<i>Bob Foster</i>	Foster	X			

CHAIR'S SIGNATURE *Gene Theriault* *Mark Hanley*
 Theriault Hanley

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16 (FIN)

Revision Date: 03/09/98
 Title: relating to institutions for juveniles; efd
 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)

FUND SOURCE	FY99	FY00	FY01	FY02	FY03	FY04
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:

POSITIONS	FY99	FY00	FY01	FY02	FY03	FY04
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 actively being pursued. Enrollment of these facilities is not dependent upon the provisions of the bill and, thus, any increased expenditures required by their enrollment is also not dependent upon

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

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

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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 f. TC 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.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16 (FIN)

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

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						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

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

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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

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16 (FIN)

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 98	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
 Agency: Alaska Court System
 Approved by: Stephanie J. Cole, Administrative Director
 Agency: Alaska Court System

Phone: 264-8265
 Date: 03/17/98
 Date: 03/17/98

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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

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16 (FIN)

Revision Date:	Dept. Affected: <u>Department of Law</u>
Title: <u>. . delinquent minors, to the taking of action based</u>	BRU: <u>Criminal Division/Civil Division</u>
<u>on the alleged criminal misconduct of certain minors . . .</u>	Component: <u>1st-4th Jud District/OSPA</u>
Sponsor: <u>Representative Kelly</u>	<u>Human Services</u> #2198/99/
Requester: <u>House Finance Committee</u>	COMPONENT SERIAL NO. <u>2261/79/01/03/08</u>

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

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

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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

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16 (FIN)

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						
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CHANGE IN REVENUES ()						
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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 Bover
 Agency: Department of Administration

Date: 3/20/98

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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

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16(JUD)

**needs new analysis*

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	41.8	41.8	41.8	41.8	41.8	41.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	23.4	23.4	23.4	23.4	23.4	23.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.6					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	86.8	81.2	81.2	81.2	81.2	81.2

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	86.8	81.2	81.2	81.2	81.2	81.2
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.) This bill fundamentally alters the manner in which serious cases involving thirteen, fourteen, and fifteen year old children will be processed by the justice system. This new dual sentencing scheme will impose adult sentences that are automatically triggered by several commonly violated probation conditions. The severity of the sanctions and the complexity of the procedures will require extensive attorney and expert witness resources.

Such cases will require significantly more resources than an adult felony case since they involve not only grand jury review, pre-trial motions, trial and post conviction work, but also representation at complex probation revocation hearings. The law provides no incentive whatsoever to plead guilty as charged and many strong reasons to try such cases. In short, most cases will go to trial and, because of the high incidence of recidivism among untreated juveniles, most cases will result in probation revocation proceedings.

OPA estimates that it would receive about one third of the appointments in such cases and would therefore require the services of an experienced half-time attorney. The position would require extensive travel to other Alaska communities where such cases arise, and would need the services of expert witnesses in the revocation proceedings that trigger adult prison sentences for children.

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

Phone: 269-3500
Date: _____

Approved by Commissioner: Mark Boyer *Mark Boyer*
Agency: Administration

Date: 2/25/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16 (FIN)

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

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 Licensng Specialist I. This individual would provide consultation to the regulation contractor and community services providers. In addillon, 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 Theriault
 Rep. Gene Theriault, Co-Chair House Finance Committee

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

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16 (FIN)

Revision Date: 3/23/98 at 10:00 a.m.
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: 3/23/98

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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

BILL NO. CSHB 16 (FIN)

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
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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 Bover
 Agency: Administration

Date: 3/23/98

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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

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 16(JUD)

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	41.8	41.8	41.8	41.8	41.8	41.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	23.4	23.4	23.4	23.4	23.4	23.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.6					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	86.8	81.2	81.2	81.2	81.2	81.2

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	86.8	81.2	81.2	81.2	81.2	81.2
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.) This bill fundamentally alters the manner in which serious cases involving thirteen, fourteen, and fifteen year old children will be processed by the justice system. This new dual sentencing scheme will impose adult sentences that are automatically triggered by several commonly violated probation conditions. The severity of the sanctions and the complexity of the procedures will require extensive attorney and expert witness resources.

Such cases will require significantly more resources than an adult felony case since they involve not only grand jury review, pre-trial motions, trial and post conviction work, but also representation at complex probation revocation hearings. The law provides no incentive whatsoever to plead guilty as charged and many strong reasons to try such cases. In short, most cases will go to trial and, because of the high incidence of recidivism among untreated juveniles, most cases will result in probation revocation proceedings.

OPA estimates that it would receive about one third of the appointments in such cases and would therefore require the services of an experienced half-time attorney. The position would require extensive travel to other Alaska communities where such cases arise, and would need the services of expert witnesses in the revocation proceedings that trigger adult prison sentences for children.

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

Phone: 269-3500
 Date: _____

Approved by Commissioner: Mark Boyer *Alison M. Elger*
 Agency: Administration

Date: 2/25/98

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Adopted
2/27/98

0-LS0121V.2
Glover
2/27/98

AMENDMENT

1 A

A

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLY

TO: CSHB 16(), Draft Version "Z"

- 1 Page 14, line 31, to page 15, line 1:
- 2 Delete "under AS 47.12.160(e)."

- 3 Page 15, line 1, following "order":
- 4 Insert "under AS 47.12.160(e)"

- 5 Page 19, line 22:
- 6 Delete "information regarding a case involving a minor."

.0-LS0121VZ

Glover

2/25/98

Adopt
2/27/98 P

CS FOR HOUSE BILL NO. 16()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE KELLY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to delinquent minors, to the taking of action based on the
 2 alleged criminal misconduct of certain minors, to the services to be provided to
 3 the victims of criminal misconduct of minors, and to agency records involving
 4 minors alleged to be delinquent based on their criminal misconduct; providing for
 5 the dual sentencing of minors who commit certain felony offenses; relating to
 6 violations of municipal ordinances by minors and to civil penalties for violation
 7 of municipal ordinances by minors; amending the Interstate Compact on Juveniles
 8 to which the state is a party; allowing use of hearsay evidence at temporary
 9 detention hearings in juvenile delinquency proceedings; and amending Rules 3,
 10 10(c), 21, and 27 and repealing Rules 6 and 7, Alaska Delinquency Rules; and
 11 providing for an effective date."

12 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

1 * **Section 1.** AS 29.10.200 is amended by adding a new paragraph to read:

2 (54) AS 29.25.070(e) (notices of certain civil actions).

3 * **Sec. 2.** AS 29.25.070(b) is amended to read:

4 (b) The municipality or an aggrieved person may institute a civil action against
5 a person, including a minor as provided in AS 29.25.072, who violates an ordinance.
6 In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000
7 may be imposed for each violation. An action to enjoin a violation may be brought
8 notwithstanding the availability of any other remedy. On application for injunctive
9 relief and a finding of a violation or a threatened violation, the superior court shall
10 grant the injunction. Each day that a violation of an ordinance continues constitutes
11 a separate violation.

12 * **Sec. 3.** AS 29.25.070 is amended by adding new subsections to read:

13 (e) The municipality shall provide written notice to the commissioner of health
14 and social services or to the commissioner's designee of the commencement of a civil
15 enforcement action for the violation of an ordinance under (b) of this section against
16 a minor. Unless the commissioner and the municipality have negotiated an agreement
17 making other arrangements for the municipality to provide the notice required by this
18 subsection, the municipality shall provide the notice by mailing a copy of the citation
19 or other document setting out the notice of the commencement of the civil enforcement
20 action. This subsection applies to home rule and general law municipalities.

21 (f) In this section, "minor" means a person under 18 years of age.

22 * **Sec. 4.** AS 29.25 is amended by adding a new section to read:

23 **Sec. 29.25.072. Civil penalties for violation of municipal ordinances by**
24 **minors.** (a) Except as otherwise provided in this section, the enforcement under
25 AS 29.25.070(b) of a civil penalty against a minor for violation of a municipal
26 ordinance shall be heard in the district court in the same manner as for similar
27 allegations brought against an adult, except that the minor's parent, guardian, or legal
28 custodian shall be present at all proceedings unless the court excuses the parent,
29 guardian, or legal custodian from attendance for good cause.

30 (b) If provision is made by ordinance for use of a hearing officer to decide
31 enforcement of a civil penalty under AS 29.25.070(b), allegations against a minor for

1 a civil penalty under a municipal ordinance may be assigned to a hearing officer for
2 the municipality for decision.

3 (c) An action for a civil penalty filed against a minor under this section does
4 not give rise to the right to a trial by jury or to counsel appointed at public expense.

5 * Sec. 5. AS 33.30.901(12) is amended to read:

6 (12) "prisoner"

7 (A) means a person held under authority of state law in official
8 detention as defined in AS 11.81.900(b);

9 (B) includes a minor [JUVENILE] committed to the custody
10 of the commissioner when,

11 (i) under AS 47.12.030, 47.12.065, or 47.12.100, the
12 minor [JUVENILE] has been charged, prosecuted, or convicted as an
13 adult; or

14 (ii) under AS 47.12.160(e), the minor has been
15 ordered transferred to the custody of the commissioner;

16 * Sec. 6. AS 44.23 is amended by adding a new section to read:

17 **Sec. 44.23.070. Victim/witness assistance program.** If the Department of
18 Law maintains a victim/witness assistance program, subject to sufficient appropriations
19 for the purpose, the services of that program shall be extended to victims of criminal
20 offenses committed by persons under 18 years of age so that victims of these offenses
21 may exercise the rights provided to them by law.

22 * Sec. 7. AS 47.12.010 is repealed and reenacted to read:

23 **Sec. 47.12.010. Goal and purposes of chapter.** (a) The goal of this chapter
24 is to promote a balanced juvenile justice system in the state to protect the community,
25 impose accountability for violations of law, and equip juvenile offenders with the skills
26 needed to live responsibly and productively.

27 (b) The purposes of this chapter are to

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

30 (A) prevention of repeated criminal behavior;

31 (B) restoration of the community and victim;

- 1 (C) protection of the public; and
- 2 (D) development of the juvenile into a productive citizen;
- 3 (2) protect citizens from juvenile crime;
- 4 (3) hold each juvenile offender directly accountable for the offender's
- 5 conduct;
- 6 (4) provide swift and consistent consequences for crimes committed by
- 7 juveniles;
- 8 (5) make the juvenile justice system more open, accessible, and
- 9 accountable to the public;
- 10 (6) require parental or guardian participation in the juvenile justice
- 11 process;
- 12 (7) create an expectation that parents will be held responsible for the
- 13 conduct and needs of their children;
- 14 (8) ensure that victims, witnesses, parents, guardians, juvenile offenders,
- 15 and all other interested parties are treated with dignity, respect, courtesy, and
- 16 sensitivity throughout all legal proceedings;
- 17 (9) provide due process through which juvenile offenders, victims,
- 18 parents, and guardians are assured fair legal proceedings during which constitutional
- 19 and other legal rights are recognized and enforced;
- 20 (10) divert juveniles from the formal juvenile justice process through
- 21 early intervention as warranted when consistent with the protection of the public;
- 22 (11) provide an early, individualized assessment and action plan for
- 23 each juvenile offender in order to prevent further criminal behavior through the
- 24 development of appropriate skills in the juvenile offender so that the juvenile is more
- 25 capable of living productively and responsibly in the community;
- 26 (12) ensure that victims and witnesses of crimes committed by juveniles
- 27 are afforded the same rights as victims and witnesses of crimes committed by adults;
- 28 (13) encourage and provide opportunities for local communities and
- 29 groups to play an active role in the juvenile justice process in ways that are culturally
- 30 relevant; and
- 31 (14) review and evaluate regularly and independently the effectiveness

1 of programs and services under this chapter.

2 * Sec. 8. AS 47.12.040(a) is amended to read:

3 (a) Whenever circumstances subject a minor to the jurisdiction of this chapter,
4 the court shall

5 (1) provide, under procedures adopted by court rule and in
6 conformance with this section, that, for a minor who is alleged to be a delinquent
7 minor under AS 47.12.020, the department or an entity selected by it [A STATE
8 AGENCY] shall make a preliminary inquiry to determine if any action is appropriate
9 and may take appropriate action to adjust the matter without a court hearing; the
10 department or an entity selected by it may arrange to interview the minor, the
11 minor's parents or guardian, and any other person having relevant information;
12 at or before the interview, the minor and the minor's parents or guardian, if
13 present, must be advised that any statement may be used against the minor and
14 of the following rights of the minor: to have a parent or guardian present at the
15 interview; to remain silent; to have retained or appointed counsel at all stages of
16 the proceedings, including the initial interview; if a petition is filed, to have an
17 adjudication hearing before a judge or jury with compulsory process to compel
18 the attendance of witnesses; and the opportunity to confront and cross-examine
19 witnesses; if, under this paragraph,

20 (A) the department or an entity selected by it [STATE
21 AGENCY] makes a preliminary inquiry and takes appropriate action to adjust
22 the matter without a court hearing, the minor may not be detained or taken into
23 custody as a condition of the adjustment and, subject to AS 47.12.060, the
24 matter shall be closed by the department or an entity selected by it
25 [AGENCY] if the minor successfully completes all that is required of the minor
26 by the department or an entity selected by it [AGENCY] in the adjustment;
27 in a municipality or municipalities in which a youth court has been established
28 under AS 47.12.400, adjustment of the matter under this paragraph may include
29 referral to the youth court;

30 (B) the department or an entity selected by it [AGENCY]
31 concludes that the matter may not be adjusted without a court hearing, the

1 department [AGENCY] may file a petition under (2) of this subsection setting
2 out the facts; or

3 (2) appoint a competent person or agency to make a preliminary inquiry
4 and report for the information of the court to determine whether the interests of the
5 public or of the minor require that further action be taken; if, under this paragraph, the
6 court appoints a person or agency to make a preliminary inquiry and to report to it,
7 then upon the receipt of the report, the court may informally adjust the matter without
8 a hearing, or it may authorize the person having knowledge of the facts of the case to
9 file with the court a petition setting out the facts; if the court informally adjusts the
10 matter, the minor may not be detained or taken into the custody of the court as a
11 condition of the adjustment, and the matter shall be closed by the court upon
12 adjustment.

13 * Sec. 9. AS 47.12.060 is amended to read:

14 **Sec. 47.12.060. Informal action [BY DEPARTMENT] to adjust matter.**

15 (a) The provisions of this section apply to a minor who is alleged to be a delinquent
16 minor under AS 47.12.020 and for whom the department or an entity selected by
17 it [AN AGENCY] has, under applicable court rule, made a preliminary inquiry
18 [BEFORE TAKING APPROPRIATE ACTION] as authorized by AS 47.12.040(a)(1)
19 [AS 47.12.040(a)]. Following the preliminary inquiry,

20 (1) [UNLESS] the department or the entity selected by it may
21 dismiss the matter with or without prejudice; or

22 (2) [AGENCY DETERMINES THAT THE MATTER SHOULD BE
23 DISMISSED,] the department or the entity selected by it [AGENCY] may take
24 informal action to adjust the matter.

25 (b) When the department or the entity selected by it [AGENCY] decides to
26 make [THAT] an informal adjustment of a matter under (a)(2) of this section
27 [SHOULD BE MADE], that informal adjustment may not be made without the
28 agreement or consent of the minor and the minor's parents or guardian
29 [GUARDIANS] to the terms and conditions of the adjustment. An informal action to
30 adjust a matter is not successfully completed unless, among other factors that the
31 department or the entity selected by it [AGENCY] considers, as to the victim of the

1 act of the minor that is the basis of the delinquency allegation, the minor pays
2 restitution in the amount set by the department or the entity selected by it
3 [AGENCY] or agrees as a term or condition set by the department or the entity
4 selected by it [AGENCY] to pay the restitution.

5 * Sec. 10. AS 47.12 is amended by adding a new section to read:

6 **Sec. 47.12.065. Dual sentencing provisions.** (a) The department or the entity
7 selected by it shall refer to the appropriate district attorney the circumstances involving
8 a minor who is subject to the provisions of this section because the minor is alleged
9 to have violated a criminal law of the state. The department or the entity selected by
10 it shall make the referral if the minor was

11 (1) at least 13 years of age but had not reached 16 years of age at the
12 time of the offense, and the offense is

13 (A) an unclassified felony or a class A felony for which
14 AS 47.12.030(a) would have made this chapter and the Alaska Delinquency
15 Rules inapplicable if the minor had been at least 16 years of age at the time of
16 the offense; or

17 (B) sexual assault in the second degree under
18 AS 11.41.420(a)(3); or

19 (2) 16 years of age or older at the time of the offense, and the offense
20 is

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

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

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

1 delinquent.

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

5 * Sec. 11. AS 47.12.110(a) is amended to read:

6 (a) The court shall conduct a hearing on the petition. The court shall give
7 notice of the hearing to the department, and the department shall send a representative
8 to the hearing. The representative of the department may also be heard at the hearing.
9 The public shall be excluded from the hearing, but the court, in its discretion, may
10 permit individuals to attend a hearing [,] if their attendance is compatible with the best
11 interests of the minor. Nothing in this section may be applied in such a way as to
12 deny a minor's rights to confront adverse witnesses, to a public trial, and to a trial
13 by jury.

14 * Sec. 12. AS 47.12.110(b) is amended to read:

15 (b) Notwithstanding (a) of this section or an order prohibiting or limiting
16 the public made under (e) of this section, the victim of an offense that a minor is
17 alleged to have committed, or the designee of the victim, has a right to be present at
18 all hearings or proceedings held under this section at which the minor has a right to
19 be present. If the minor is found to have committed the offense, the victim may at the
20 disposition hearing give sworn testimony or make an unsworn oral presentation
21 concerning the offense and its effect on the victim. If there are numerous victims of
22 a minor's offense, the court may limit the number of victims who may give sworn
23 testimony or make an unsworn oral presentation, but the court may not limit the right
24 of a victim to attend a hearing even if the victim is likely to be a witness in a hearing
25 concerning the minor's alleged offense.

26 * Sec. 13. AS 47.12.110 is amended by adding a new subsection to read:

27 (e) Notwithstanding (a) of this section, a court proceeding shall be open to the
28 public, except as prohibited or limited by order of the court, when the district attorney
29 has elected to seek imposition of a dual sentence and a petition has been filed under
30 AS 47.12.065, or when a minor agrees as part of a plea agreement to be subject to
31 dual sentencing.

1 * **Sec. 14.** AS 47.12.120(b) is amended to read:

2 (b) If the minor is not subject to (i) of this section and the court finds that
3 the minor is delinquent, it shall

4 (1) order the minor committed to the department for a period of time
5 not to exceed two years or in any event extend past the day the minor becomes 19
6 years of age, except that the department may petition for and the court may grant in
7 a hearing (A) two-year extensions of commitment that do not extend beyond the
8 minor's [CHILD'S] 19th birthday if the extension is in the best interests of the minor
9 and the public; and (B) an additional one-year period of supervision past age 19 if
10 continued supervision is in the best interests of the person and the person consents to
11 it; the department shall place the minor in the juvenile facility that the department
12 considers appropriate and that may include a juvenile correctional school, juvenile
13 work camp, treatment facility, detention home, or detention facility; the minor may be
14 released from placement or detention and placed on probation on order of the court
15 and may also be released by the department, in its discretion, under AS 47.12.260;

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

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

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

28 (3) order the minor committed to the department and placed on
29 probation, to be supervised by the department [,] and released to the minor's parents,
30 guardian, other suitable person, or suitable nondetention setting such as with a relative
31 or in a foster home or residential [A FAMILY HOME, GROUP CARE FACILITY,

1 OR] child care facility, whichever the department considers appropriate to implement
2 the treatment plan of the predisposition report; if the court orders the minor placed on
3 probation, it may specify the terms and conditions of probation; the department may
4 transfer the minor, in the minor's best interests, from one of the probationary
5 placement settings listed in this paragraph to another, and the minor, the minor's
6 parents or guardian, and the minor's attorney are entitled to reasonable notice of the
7 transfer; the probation may be for a period of time [,] not to exceed two years and in
8 no event extend past the day the minor becomes 19 years of age, except that the
9 department may petition for and the court may grant in a hearing

10 (A) two-year extensions of commitment that do not extend
11 beyond the minor's [CHILD'S] 19th birthday if the extension is in the best
12 interests of the minor and the public; and

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

16 (4) order the minor and the minor's parent to make suitable restitution
17 in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection;
18 under this paragraph,

19 (A) except as provided in (B) of this paragraph, the court may
20 not refuse to make an order of restitution to benefit the victim of the act of the
21 minor that is the basis of the delinquency adjudication; and

22 (B) the court may not order payment of restitution by the parent
23 of a minor who is a runaway or missing minor for an act of the minor that was
24 committed by the minor after the parent has made a report to a law
25 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
26 away or is missing; for purposes of this subparagraph, "runaway or missing
27 minor" means a minor who a parent reasonably believes is absent from the
28 minor's residence for the purpose of evading the parent or who is otherwise
29 missing from the minor's usual place of abode without the consent of the
30 parent;

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;

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
7 AS 11.71.030(a)(3) OR 11.71.040(a)(4),] order the minor to perform [50 HOURS OF]
8 community service; for purposes of this paragraph, "community service" includes work

9 (A) defined as community service under 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; or

13 (7) in addition to an order under (1) - (6) of this subsection, order the
14 minor's parent or guardian to comply with orders made under AS 47.12.155, including
15 participation in treatment under AS 47.12.155(b)(1).

16 * Sec. 15. AS 47.12.120(d) is amended to read:

17 (d) A minor found to be delinquent is a ward of the state while committed to
18 the department or while the department has the power to supervise the minor's actions.
19 The court shall review an order made under (b) of this section annually, and may
20 review the order more frequently to determine if continued placement, probation, or
21 supervision, as it is being provided, is in the best interest of the minor and the public.
22 [IF ANNUAL REVIEW UNDER THIS SUBSECTION WOULD ARISE WITHIN 90
23 DAYS OF THE HEARING REQUIRED UNDER (g) OF THIS SECTION, THE
24 COURT MAY POSTPONE REVIEW UNDER THIS SUBSECTION UNTIL THE
25 TIME SET FOR THE HEARING.] The department, the minor, the minor's parents,
26 guardian, or custodian are entitled, when good cause is shown, to a review on
27 application. If the application is granted, the court shall afford these parties and their
28 counsel reasonable notice in advance of the review and hold a hearing where these
29 parties and their counsel shall be afforded an opportunity to be heard. The minor shall
30 be afforded the opportunity to be present at the review.

31 * Sec. 16. AS 47.12.120 is amended by adding new subsections to read:

1 (i) When, under (a) of this section, the court enters judgment finding that a
2 minor is delinquent, the court may order the minor temporarily detained pending entry
3 of its dispositional order if the court finds that detention is necessary

4 (1) to protect the minor or the community; or

5 (2) to ensure the minor's appearance at a subsequent court hearing.

6 (j) If, in a case in which a district attorney has elected to seek imposition of
7 a dual sentence under AS 47.12.065, the court finds that the minor is delinquent for
8 committing an offense in the circumstances set out in AS 47.12.065, or if the minor
9 agrees as part of a plea agreement to be subject to dual sentencing, the court shall

10 (1) enter one or more orders under (b) of this section; and

11 (2) pronounce a sentence for the offense in accordance with the
12 provisions of AS 12.55; however, the sentence pronounced under this paragraph must
13 include some period of imprisonment that is not suspended by the court.

14 * Sec. 17. AS 47.12.140 is amended to read:

15 **Sec. 47.12.140. Court dispositional order.** In making its dispositional order
16 under AS 47.12.120(b)(1) - (3) and (5) and (j), the court shall

17 (1) consider both the best interests of the minor and the interests of the
18 public, and, in doing so, the court shall take into account

19 (A) the seriousness of the minor's delinquent act [,] and the
20 attitude of the minor and the minor's parents toward that act;

21 (B) the minor's culpability as indicated by the circumstances of
22 the particular case;

23 (C) the age of the minor;

24 (D) the minor's prior criminal or juvenile record [,] and the
25 success or failure of any previous orders, dispositions, or placements imposed
26 on the minor;

27 (E) the effect of the dispositional order to be imposed in
28 deterring the minor [CHILD] from committing other delinquent acts;

29 (F) the need to commit the minor to the department's custody
30 or to detain the minor in an institution or other suitable place in order to
31 prevent further harm to the public;

1 (G) the interest of the public in securing the minor's
2 rehabilitation; and

3 (H) the ability of the state to take custody of and to care for the
4 minor; and

5 (2) order the least restrictive alternative disposition for the minor; for
6 purposes of this paragraph, the "least restrictive alternative disposition" means that
7 disposition that is no more restrictive than is, in the judgment of the court, most
8 conducive to the minor's rehabilitation taking into consideration the interests of the
9 public.

10 * Sec. 18. AS 47.12.160 is amended by adding new subsections to read:

11 (d) The department may petition the court for imposition of sentence
12 pronounced under AS 47.12.120(j)(2) if the offender is still subject to the jurisdiction
13 of the court and if the offender, after pronouncement of sentence under
14 AS 47.12.120(j)(2),

15 (1) commits a subsequent felony offense;

16 (2) commits a subsequent offense against a person that is a
17 misdemeanor and involves injury to a person or the use of a deadly weapon;

18 (3) fails to comply with the terms of a restitution order;

19 (4) fails to engage in or satisfactorily complete a rehabilitation program
20 ordered by a court or required by a facility or juvenile probation officer; or

21 (5) escapes from a juvenile correctional facility.

22 (e) If a petition is filed under (d) of this section and if the court finds by a
23 preponderance of the evidence that the minor has committed a subsequent felony
24 offense that is a crime against a person or is the crime of arson, the court shall impose
25 the adult sentence previously pronounced under AS 47.12.120(j) and transfer custody
26 of the minor to the Department of Corrections. If the court finds by a preponderance
27 of the evidence that any of the other circumstances set out in (d)(1) - (5) of this
28 section exist, the court shall impose the adult sentence previously pronounced and
29 transfer custody of the minor to the Department of Corrections unless the minor proves
30 by preponderance of the evidence that mitigating circumstances exist that justify a
31 continuance in the stay of the adult sentence and the minor is amenable to further

1 treatment under this chapter. The court shall make written findings to support its
2 order.

3 * Sec. 19. AS 47.12.180(a) is amended to read:

4 (a) Except as provided by AS 47.12.160(d) and (e) and AS 47.12.170, an
5 adjudication under this chapter upon the status of a minor

6 (1) may not operate to impose any of the civil disabilities ordinarily
7 imposed by conviction upon a criminal charge;

8 (2) does not operate to permit a minor afterward to be considered a
9 criminal by the adjudication; and

10 (3) does not operate to permit the adjudication to be afterward
11 considered [DEEMED] a conviction, nor may a minor be charged with or convicted
12 of a crime in a court [,] except as provided in this chapter.

13 * Sec. 20. AS 47.12.210(b) is amended to read:

14 (b) Except as provided by AS 47.12.310(b)(1). fingerprint [FINGERPRINT]
15 records taken under this section are not subject to AS 47.12.310.

16 * Sec. 21. AS 47.12.240(c) is amended to read:

17 (c) Notwithstanding (a) of this section, a minor may be incarcerated in a
18 correctional facility

19 (1) if the minor is the subject of a petition filed with the court under
20 this chapter seeking adjudication of the minor as a delinquent minor or if the minor
21 is in official detention pending the filing of that petition; however, detention in a
22 correctional facility under this paragraph may not exceed the lesser of

23 (A) six hours; or

24 (B) the time necessary to arrange the minor's transportation to
25 a juvenile detention home or comparable facility for the detention of minors;

26 (2) if, in response to a petition of delinquency filed under this chapter,
27 the court has entered an order closing the case under AS 47.12.100(a), allowing the
28 minor to be prosecuted as an adult; [OR]

29 (3) if the incarceration constitutes a protective custody detention of the
30 minor that is authorized by AS 47.37.170(b); or

31 (4) if the minor is at least 16 years of age and under

1 **AS 47.12.160(e), the court has entered an order imposing an adult sentence and**
2 **transferring custody of the minor to the Department of Corrections.**

3 * **Sec. 22.** AS 47.12 is amended by adding a new section to read:

4 **Sec. 47.12.245. Arrest.** (a) A peace officer may

5 (1) arrest a minor

6 (A) for the commission of an act that subjects the minor to the
7 provisions of this chapter under the same circumstances and in the same
8 manner as would apply to the arrest of an adult for violation of a criminal law
9 of the state or a municipality of the state;

10 (B) if the peace officer reasonably believes the minor is a
11 fugitive from justice;

12 (C) if the peace officer has probable cause to believe that the
13 minor has violated a condition of the minor's release or probation; or

14 (D) if the peace officer reasonably believes that the minor has
15 been adjudicated a delinquent and has escaped from an institution or absconded
16 from probation, parole, or the jurisdiction of a court;

17 (2) continue the lawful arrest of a minor that is made by a citizen.

18 (b) A probation officer may arrest a minor if the probation officer has probable
19 cause to believe that the minor has violated conditions of the minor's release or
20 probation.

21 * **Sec. 23.** AS 47.12.250(a) is amended to read:

22 (a) A peace officer **or a probation officer who has arrested or a peace**
23 **officer who has continued the arrest of** [MAY ARREST] a minor **under**
24 **AS 47.12.245** [WHO VIOLATES A LAW OR ORDINANCE IN THE PEACE
25 OFFICER'S PRESENCE, OR WHOM THE PEACE OFFICER REASONABLY
26 BELIEVES IS A FUGITIVE FROM JUSTICE. A PEACE OFFICER MAY
27 CONTINUE A LAWFUL ARREST MADE BY A CITIZEN. THE PEACE
28 OFFICER] may

29 **(1)** have the minor detained in a juvenile detention facility if in the
30 opinion of the peace officer making or continuing the arrest it is necessary to do so
31 to protect the minor or the community; **however, the department may direct that a**

1 minor who was arrested or whose arrest was continued be released from detention
2 before the hearing required by (c) of this section;

3 (2) before taking the minor to a juvenile detention facility, release
4 the minor to the minor's parents or guardian if detention is not necessary to

5 (A) protect the minor or the community; or

6 (B) ensure the minor's attendance at subsequent court
7 hearings.

8 * Sec. 24. AS 47.12.250(c) is amended to read:

9 (c) The court shall immediately, and in no event more than 48 hours later, hold
10 a hearing at which the minor and the minor's parents or guardian if they can be found
11 shall be present. The court shall determine whether probable cause exists for believing
12 the minor to be delinquent. The court shall inform the minor of the reasons alleged
13 to constitute probable cause and the reasons alleged to authorize the minor's detention.
14 The minor is entitled to counsel [AND TO CONFRONTATION OF ADVERSE
15 WITNESSES].

16 * Sec. 25. AS 47.12.300(c) is amended to read:

17 (c) Except when disclosure of the name of a minor is authorized or required
18 by this chapter and except as provided in (g) of this section, the name or picture of
19 a minor under the jurisdiction of the court may not be made public in connection with
20 the minor's status as a delinquent unless authorized by order of the court.

21 * Sec. 26. AS 47.12.300(d) is amended to read:

22 (d) Except as provided in (f) of this section, within [WITHIN] 30 days of
23 the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past
24 the minor's 18th birthday, within 30 days of the date on which the court releases
25 jurisdiction over the minor, the court shall order all the court's official records
26 pertaining to that minor in a proceeding under this chapter sealed, as well as records
27 of all driver's license proceedings under AS 28.15.185, criminal proceedings against
28 the minor, and punishments assessed against the minor. A person may not use these
29 sealed records for any purpose except that the court may order their use for good cause
30 shown or may order their use by an officer of the court in making a presentencing
31 report for the court. The provisions of this subsection relating to the sealing of records

1 do not apply to records of traffic offenses.

2 * Sec. 27. AS 47.12.300(e) is amended to read:

3 (e) The court's official records prepared under this chapter and not made
4 public under this section are confidential and may be inspected only with the
5 court's permission and only by persons having a legitimate interest in them. A person
6 with a legitimate interest in the inspection of a confidential [AN OFFICIAL] record
7 maintained by the court includes a victim who suffered physical injury or whose real
8 or personal property was damaged as a result of an offense that was the basis of an
9 adjudication or modification of disposition. If the victim knows the identity of the
10 minor, identifies the minor or the offense to the court, and certifies that the
11 information is being sought to consider or support a civil action against the minor or
12 against the minor's parents or guardian [GUARDIANS] under AS 34.50.020, the court
13 shall, subject to AS 12.61.110 and 12.61.140, allow the victim to inspect and use the
14 following records and information in connection with the civil action:

15 (1) a petition filed under AS 47.12.040(a) seeking to have the court
16 declare the minor a delinquent;

17 (2) a petition filed under AS 47.12.120 seeking to have the court
18 modify or revoke the minor's probation;

19 (3) a petition filed under AS 47.12.100 requesting the court to find that
20 a minor is not amenable to treatment under this chapter and that results in closure of
21 a case under AS 47.12.100(~~g~~), and

22 (4) a court judgment or order entered under this chapter that disposes
23 of a petition identified in (1) - (3) of this subsection.

24 * Sec. 28. AS 47.12.300(f) is amended to read:

25 (f) A person who has been tried as an adult under AS 47.12.100(a) or a
26 person whose records have been made public under (g) of this section, or the
27 department on the person's behalf, may petition the superior court to seal the records
28 of all criminal proceedings, except traffic offenses, initiated against the person, and all
29 punishments assessed against the person, while the person was a minor. A petition
30 under this subsection may not be filed until five years after the completion of the
31 sentence imposed for the offense for which the person was tried as an adult or five

1 years after a disposition was entered for an offense for which the records were
2 made public under (g) of this section. If the superior court finds that its order has
3 had its intended rehabilitative effect and further finds that the person has fulfilled all
4 orders of the court entered under AS 47.12.120, the superior court shall order the
5 record of proceedings and the record of punishments sealed. Sealing the records
6 restores civil rights removed because of a conviction. A person may not use these
7 sealed records for any purpose except that the court may order their use for good cause
8 shown or may order their use by an officer of the court in making a presentencing
9 report for the court. The court may not, under this subsection, seal records of a
10 criminal proceeding

11 (1) initiated against a person if the court finds that the person has not
12 complied with a court order made under AS 47.12.120; or

13 (2) commenced under AS 47.12.030(a) unless the minor has been
14 acquitted of all offenses with which the minor was charged or unless the most serious
15 offense of which the minor was convicted was not an offense specified in
16 AS 47.12.030(a).

17 * Sec. 29. AS 47.12.300 is amended by adding new subsections to read:

18 (g) When a district attorney has elected to seek imposition of a dual sentence
19 and a petition has been filed under AS 47.12.065, or when a minor agrees as part of
20 a plea agreement to be subject to dual sentencing, all court records shall be open to
21 the public except for predisposition reports, psychiatric and psychological reports, and
22 other documents that the court orders to be kept confidential because the release of the
23 documents could be harmful to the minor or could violate the constitutional rights of
24 the victim or other persons.

25 (h) A person who discloses confidential information in violation of this section
26 is guilty of a class B misdemeanor.

27 * Sec. 30. AS 47.12.310(b) is amended to read:

28 (b) A state or municipal agency or employee

29 (1) shall disclose information regarding a case to a federal, state,
30 or municipal law enforcement agency for a specific investigation being conducted
31 by that agency; and

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1 (2) may disclose information regarding a case to

2 (A) [(1)] a guardian ad litem appointed by the court or to a
3 citizen review board or local review panel for permanency planning authorized
4 by AS 47.14.200 - 47.14.220;

5 (B) [(2)] a person or an agency requested to provide
6 consultation or services for a minor who is subject to the jurisdiction of the
7 court under this chapter;

8 (C) [(3)] school officials as may be necessary to protect the
9 safety of the minor who is the subject of the case and the safety of school
10 students and staff or to enable the school to provide appropriate counseling and
11 supportive services to meet the needs of a minor about whom information is
12 disclosed;

13 (D) [(4)] a governmental agency as may be necessary to obtain
14 that agency's assistance for the department in its investigation or to obtain
15 physical custody of a minor;

16 (E) [(5)] a federal, state, or municipal law enforcement agency
17 as may be necessary [FOR A SPECIFIC INVESTIGATION BEING
18 CONDUCTED BY THAT AGENCY OR] for disclosures by that agency to
19 protect the public safety; and

20 (F) [(6)] a victim or to the victim's insurance company as
21 may be necessary to inform the victim or the insurance company about the
22 arrest of the minor. Information regarding a case involving the minor,
23 including the minor's name and the names of the minor's parents, copies
24 of reports, or the disposition or resolution of a case involving a minor.

25 * Sec. 31. AS 47.12.310(g) is amended to read:

26 (g) The department and affected law enforcement agencies shall work with
27 school districts and private schools to develop procedures for the disclosure of
28 information to school officials under (b)(2)(C) [(b)(3)] and (c)(3) of this section. The
29 procedures must provide a method for informing the principal or the principal's
30 designee of the school the student attends as soon as it is reasonably practicable.

31 * Sec. 32. AS 47.12.320(a) is amended to read:

1 (a) Notwithstanding AS 47.12.300 and 47.12.310,

2 (1) a parent or legal guardian of a minor subject to a proceeding under
3 this chapter may disclose confidential or privileged information about the minor,
4 including information that has been lawfully obtained from agency or court files, to
5 the governor, the lieutenant governor, a legislator, the ombudsman appointed under
6 AS 24.55, the attorney general, and the commissioners of health and social services,
7 administration, or public safety, or an employee of these persons, for review or use in
8 their official capacities;

9 (2) the department may disclose confidential or privileged
10 information about the minor and make available for inspection documents about
11 the minor to the state officials or employees identified in (1) of this subsection for
12 review or use in their official capacities; and

13 (3) a [A] person to whom disclosure is made under (1) or (2) of this
14 subsection [SECTION] may not disclose confidential or privileged information about
15 the minor to a person not authorized to receive it.

16 * Sec. 33. AS 47.12.320(b) is amended to read:

17 (b) The disclosure right under (a)(1) [(a)] of this section is in addition to, and
18 not in derogation of, the rights of a parent or legal guardian of a minor.

19 * Sec. 34. AS 47.12 is amended by adding a new section to read:

20 **Sec. 47.12.988. Implementation of provisions by an entity selected by**
21 **department.** In this chapter, when authority exercised by the department may also be
22 exercised by an entity selected by the department, the entity that the department may
23 select in order to exercise authority is limited to

24 (1) a municipality; or

25 (2) a corporation.

26 * Sec. 35. AS 47.15.010 is amended by adding a new article to read:

27 ARTICLE XVII

28 RENDITION

29 (a) This article shall provide additional remedies and shall be binding only
30 between those party states which specifically execute it.

31 (b) All provisions and procedures of articles V and VI of the Interstate

1 Compact on Juveniles shall be construed to apply to any juvenile charged with being
2 a delinquent by reason of a violation of any criminal law. Any juvenile charged with
3 being a delinquent by reason of violating any criminal law shall be returned to the
4 requesting state upon a requisition to the state where the juvenile may be found. A
5 petition in such a case shall be filed in a court of competent jurisdiction in the
6 requesting state where the violation of criminal law is alleged to have been committed.
7 The petition may be filed regardless of whether the juvenile has left the state before
8 or after filing of the petition. The requisition described in article V of the compact
9 shall be forwarded by the judge of the court in which the petition has been filed.

10 * Sec. 36. Rule 10(c), Alaska Delinquency Rules, is amended to read:

11 (c) **Temporary Detention Hearing.** Hearsay that [WHICH] is not otherwise
12 admissible under the Evidence Rules may be admitted under the standard stated in
13 paragraph (b) of this rule [IS NOT ADMISSIBLE TO PROVE PROBABLE
14 CAUSE] at a temporary detention hearing. [HOWEVER, OTHERWISE
15 INADMISSIBLE HEARSAY MAY BE ADMITTED UNDER THE STANDARD
16 STATED IN PARAGRAPH (b) OF THIS RULE ON THE ISSUE OF WHETHER
17 THE MINOR SHOULD BE REMOVED FROM THE HOME OR DETAINED.]

18 * Sec. 37. Rules 6 and 7, Alaska Delinquency Rules, are repealed.

19 * Sec. 38. AS 47.12.110(c) and 47.12.120(g) are repealed.

20 * Sec. 39. AS 47.12.110(e), added by sec. 13 of this Act, has the effect of changing
21 Rules 3 and 21, Alaska Delinquency Rules, by reversing the presumption that the public shall
22 be excluded from hearings involving minors.

23 * Sec. 40. The provisions of AS 47.12.300(g), added by sec. 29 of this Act, have the effect
24 of changing Rule 27, Alaska Delinquency Rules, by making court records for certain juvenile
25 proceedings public documents in specified circumstances.

26 * Sec. 41. **APPLICABILITY OF SECTIONS 1 - 34 and 36.** Sections 1 - 34 and 36 of this
27 Act apply to all offenses committed on or after the effective date of this Act.

28 * Sec. 42. **SCOPE AND APPLICABILITY OF SECTION 35.** The juvenile rendition
29 amendment to the Interstate Compact on Juveniles is hereby enacted into law by sec. 35 of
30 this Act and entered into by this state with all other states legally joining therein in the form
31 substantially as set out in sec. 35 of this Act. Section 35 of this Act applies to offenses

- 1 committed before, on, or after the effective date of this Act.
- 2 * Sec. 43. This Act takes effect July 1, 1998.

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No (obj)
adopted 3/12/98

AMENDMENT

New
#1

OFFERED IN THE HOUSE

TO: CSHB 16(), Draft Version "Z"

1 Page 1, line 7, following "minors;":

2 Insert "relating to semi-secure residential child care facilities and secure
3 residential psychiatric treatment centers; relating to programs and shelters for
4 runaways; relating to placement of children in need of aid and delinquent minors in
5 secure residential psychiatric treatment centers;"

6 Page 3, following line 21:

7 Insert new bill sections to read:

8 "* Sec. 7. AS 47.10 is amended by adding a new section to read:

9 **Sec. 47.10.087. Placement in secure residential psychiatric treatment**
10 **centers.** (a) The court may authorize the department to place a child who is in the
11 custody of the department under AS 47.10.080(c)(1) or (3) or 47.10.142 in a secure
12 residential psychiatric treatment center if the court finds, based on the testimony of
13 a mental health professional, that

14 (1) the child is gravely disabled or is suffering from mental illness and,
15 as a result, is likely to cause serious harm to the child or to another person;

16 (2) there is no reasonably available, appropriate, and less restrictive
17 alternative for the child's treatment or that less restrictive alternatives have been tried
18 and have failed; and

19 (3) there is reason to believe that the child's mental condition could
20 be improved by the course of treatment or would deteriorate if untreated.

21 (b) A court shall review a placement made under this section at least once
22 every 90 days. The court may authorize the department to continue the placement of
23 the child in a secure residential psychiatric treatment center if the court finds, based
24 on the testimony of a mental health professional, that the conditions or symptoms that

1 resulted in the initial order have not ameliorated to such an extent that the child's
2 needs can be met in a less restrictive setting and that the child's mental condition
3 could be improved by the course of treatment or would deteriorate if untreated.

4 (c) The department shall transfer a child from a secure residential psychiatric
5 treatment center to another appropriate placement if the mental health professional
6 responsible for the child's treatment determines that the child would no longer benefit
7 from the course of treatment or that the child's treatment needs could be met in a less
8 restrictive setting. The department shall notify the child, the child's parents or
9 guardian, and the child's guardian ad litem of a determination and transfer made under
10 this subsection.

11 * **Sec. 8.** AS 47.10.300 is amended to read:

12 **Sec. 47.10.300. Powers and duties of the department.** The department shall

13 (1) review, inspect, and approve or disapprove for licensing proposed
14 or established programs for runaway minors to ensure the health and safety of minors
15 in the program;

16 (2) maintain a register of licensed programs for runaway minors;

17 (3) award nonprofit corporations grants for the establishment or
18 operation of licensed programs for runaway minors;

19 (4) [REPEALED

20 (5)] adopt regulations for the administration of AS 47.10.300 -
21 47.10.390, including regulations providing for the coordination of services to be
22 provided by licensed programs for runaway minors and by the department.

23 * **Sec. 9.** AS 47.10.310(b) is amended to read:

24 (b) The department may license a program for runaway minors under
25 AS 47.10.300 - 47.10.390 only if the program

26 (1) is operated by a corporation [ORGANIZED UNDER AS 10.20] or
27 a municipality; and

28 (2) meets the requirements of (c) of this section.

29 * **Sec. 10.** AS 47.10.392 is amended to read:

30 **Sec. 47.10.392. Certificate required.** A private residence may not be held
31 out publicly as a shelter for runaway minors unless the residence

32 (1) is designated a shelter for runaways by a [NONPROFIT]

1 corporation that is licensed to make the designation under AS 47.35.085; and

2 (2) has a valid permit from the department signifying that designation.

3 * **Sec. 11.** AS 47.10.398(a) is amended to read:

4 (a) A person in a shelter for runaways, or in a home for which an application
5 to be designated a shelter for runaways is being considered by a [NONPROFIT]
6 corporation licensed for that purpose by the department, that is operated in a manner
7 that is consistent with AS 47.10.392 - 47.10.399 and regulations adopted under those
8 sections is not criminally liable under AS 11.51.130(a)(4).

9 * **Sec. 12.** AS 47.10.398(b) is amended to read:

10 (b) Except as provided in (c) of this section, the provider of a shelter for
11 runaways, or of a home for which an application to be designated a shelter for
12 runaways is being considered by a [NONPROFIT] corporation approved for that
13 purpose by the department, that is operated in a manner that is consistent with
14 AS 47.10.392 - 47.10.399 and regulations adopted under those sections [,] and the
15 members of the provider's household, other than a runaway minor, are not liable for
16 civil damages as a result of an act or omission

17 (1) in admitting or refusing to admit a runaway minor to the shelter
18 or home; or

19 (2) by a runaway minor who is sheltered in the shelter or home.

20 * **Sec. 13.** AS 47.10.399(2) is amended to read:

21 (2) "shelter for runaways" or "shelter for runaway minors" means a
22 private residence whose legal occupant agrees to shelter, with or without
23 compensation, a runaway minor accepted into the residence by the legal occupant and
24 that

25 (A) is not simultaneously licensed under AS 47.10.310 as a
26 program for runaway minors;

27 (B) has been designated a shelter for runaways by a
28 [NONPROFIT] corporation licensed for that purpose under AS 47.35.085; and

29 (C) has a permit issued by the department under AS 47.35.085.

30 * **Sec. 14.** AS 47.10.990 is amended by adding new paragraphs to read:

31 (8) "gravely disabled" has the meaning given in AS 47.30.915;

32 (9) "mental health professional" has the meaning given in

1 AS 47.30.915;

2 (10) "mental illness" has the meaning given in AS 47.30.915;

3 (11) "secure residential psychiatric treatment center" has the meaning
4 given in AS 47.35.900."

5 Renumber the following bill sections accordingly.

6 Page 16, following line 15:

7 Insert a new bill section to read:

8 **"* Sec. 33.** AS 47.12 is amended by adding a new section to read:

9 **Sec. 47.12.255. Placement in secure residential psychiatric treatment**
10 **centers.** (a) The court may authorize the department to place a minor who is in the
11 custody of the department under AS 47.12.120(b)(1) or (3) or 47.12.140 in a secure
12 residential psychiatric treatment center if the court finds, based on the testimony of
13 a mental health professional, that

14 (1) the minor is gravely disabled or is suffering from mental illness
15 and, as a result, is likely to cause serious harm to the minor or to another person;

16 (2) there is no reasonably available, appropriate, and less restrictive
17 alternative for the minor's treatment or that less restrictive alternatives have been tried
18 and have failed; and

19 (3) there is reason to believe that the minor's mental condition could
20 be improved by the course of treatment or would deteriorate if untreated.

21 (b) A court shall review a placement made under this section at least once
22 every 90 days. The court may authorize the department to continue the placement of
23 the minor in a secure residential psychiatric treatment center if the court finds, based
24 on the testimony of a mental health professional, that the conditions or symptoms that
25 resulted in the initial order have not ameliorated to such an extent that the minor's
26 needs can be met in a less restrictive setting and that the minor's mental condition
27 could be improved by the course of treatment or would deteriorate if untreated.

28 (c) The department shall transfer a minor from a secure residential psychiatric
29 treatment center to another appropriate placement if the mental health professional
30 responsible for the minor's treatment determines that the minor would no longer

1 benefit from the course of treatment or that the minor's treatment needs could be met
 2 in a less restrictive setting. The department shall notify the minor, the minor's parents
 3 or guardian, and the minor's guardian ad litem of a determination and transfer made
 4 under this subsection."

5 Renumber the following bill sections accordingly;

6 Page 20, following line 25:

7 Insert a new bill section to read:

8 **** Sec. 44.** AS 47.12.990 is amended by adding new paragraphs to read:

9 (13) "gravely disabled" has the meaning given in AS 47.30.915;

10 (14) "mental health professional" has the meaning given in
 11 AS 47.30.915;

12 (15) "mental illness" has the meaning given in AS 47.30.915;

13 (16) "secure residential psychiatric treatment center" has the meaning
 14 given in AS 47.35.900."

15 Renumber the following bill sections accordingly.

16 Page 21, following line 9:

17 Insert new bill sections to read:

18 **** Sec. 46.** AS 47.35.010(a) is amended to read:

19 (a) The department may

20 (1) license and supervise foster homes, child care facilities, residential
 21 child care facilities, **semi-secure residential child care facilities, secure residential**
 22 **psychiatric treatment centers**, child placement agencies, and maternity homes;

23 (2) investigate applicants, licensees, and persons that the department
 24 reasonably believes are operating a facility without a license in violation of this
 25 chapter;

26 (3) adopt regulations to implement the provisions of this chapter,
 27 including regulations establishing licensure and renewal procedures, standards, and
 28 fees; establishing requirements for operation of facilities or agencies licensed under

1 this chapter; and distinguishing between types of child care facilities;

2 (4) enter into agreements with private entities, municipalities, or
3 individuals to investigate and make recommendations to the department for the
4 licensing and supervision of foster homes, child care facilities, residential child care
5 facilities, semi-secure residential child care facilities, secure residential psychiatric
6 treatment centers, child placement agencies, and maternity homes under procedures
7 and standards of operation established by the department.

8 * **Sec. 47.** AS 47.35.015(c) is amended to read:

9 (c) A person may not operate a residential child care facility, semi-secure
10 residential child care facility, or secure residential psychiatric treatment center
11 without a license issued under this chapter unless that facility is

12 (1) a juvenile facility operated by the state under AS 47.14.010;

13 (2) a medical facility licensed by the department under AS 18.20;

14 (3) a recreational camp providing recreational experiences of no more
15 than one month's duration for a child; or

16 (4) exempt from licensure for a reason set out in (b)(6) or (7) of this
17 section.

18 * **Sec. 48.** AS 47.35.017(a) is amended to read:

19 (a) Application for a license to operate a foster home, child care facility,
20 residential child care facility, semi-secure residential child care facility, secure
21 residential psychiatric treatment center, child placement agency, or maternity home
22 [,] shall be made to the department on a form provided by the department [,] and shall
23 be accompanied by any applicable fees established by the department under
24 AS 47.35.010(a)(3).

25 * **Sec. 49.** AS 47.35.085 is amended to read:

26 **Sec. 47.35.085. Shelters for runaway minors.** (a) The department shall
27 adopt regulations under which a [NONPROFIT] corporation may apply for a license
28 to designate and supervise shelters for runaway minors.

29 (b) The department shall also adopt regulations setting health and safety
30 standards for shelters for runaways. The regulations adopted under this subsection
31 must

32 (1) involve less regulation than is required for programs for runaways

1 licensed under AS 47.10.310 and foster homes licensed under this chapter;

2 (2) provide that private agencies approved by the department may
3 recruit, evaluate, and monitor the shelters for runaways under procedures established
4 by the department; and

5 (3) require that a [NONPROFIT] corporation licensed under (a) of this
6 section inspect the shelters for runaways, perform criminal background checks of its
7 residents, keep records, and meet other requirements only to the extent that they are
8 necessary to reduce the risk to the health and safety of a runaway minor in the shelter.

9 (c) If a [NONPROFIT] corporation licensed under (a) of this section certifies
10 to the department that a home meets the standards set under (b) of this section, the
11 department shall issue the home a permit authorizing it to be a shelter for runaway
12 minors. The permit may not be transferred to a different home or owner.

13 (d) Upon notice from a [NONPROFIT] corporation licensed under (a) of this
14 section that a shelter for runaways is not in compliance with AS 47.10.392 -
15 47.10.399 or the regulations of the department adopted under (b) of this section, the
16 department may revoke a permit issued under this subsection or modify it to
17 provisional status. The department shall give written notice of revocation or
18 modification under this subsection at least 30 days before the effective date of the
19 action. However, if the health or well-being of a child is in jeopardy, the revocation
20 or modification action is effective immediately upon the issuance of written notice by
21 the department.

22 * **Sec. 50.** AS 47.35.900 is amended by adding new paragraphs to read:

23 (20) "secure residential psychiatric treatment center" means a lockable,
24 physician-directed residential child care facility;

25 (21) "semi-secure" has the meaning given in AS 47.10.141;

26 (22) "semi-secure residential child care facility" means a residential
27 child care facility that is wholly or partially semi-secure."

28 Renumber the following bill sections accordingly.

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

- 1 Page 21, line 20
- 2 Page 21, line 23
- 3 Page 21, line 26
- 4 Page 21, line 28
- 5 Page 21, line 29
- 6 Page 21, line 31

adopted N/D

3/12/98

0-LS0121VZ.6

Glover

3/9/98

AMENDMENT

New # 3

DAVIES

OFFERED IN THE HOUSE

TO: CSMB 16(), Draft Version "Z"

- 1 Page 7, line 7:
- 2 Delete "shall"
- 3 Insert "may"

- 4 Page 7, line 10:
- 5 Delete "shall"
- 6 Insert "may"

- 7 Page 7, lines 11 - 18:
- 8 Delete all material.

- 9 Page 7, line 19:
- 10 Delete "(2)"

- 11 Page 7, line 21:
- 12 Delete "(A)"
- 13 Insert "(1)"

- 14 Page 7, line 25:
- 15 Delete "(B)"
- 16 Insert "(2)"

3/6/98

0-LS0121VZ.4

Glover

2/27/98

adopted 3/12/98

Nb/obj

~~DP~~ (4)

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLY

TO: CSHB 16(), Draft Version "Z"

- 1 Page 5, line 5:
- 2 Delete "provide, under procedure adopted by court rule and"
- 3 Insert "require"

- 4 Page 5, line 6, following "section":
- 5 Insert "[PROVIDE, UNDER PROCEDURE ADOPTED BY COURT RULE]"

- 6 Page 6, line 17:
- 7 Delete ", under applicable court rule,"
- 8 Insert "[, UNDER APPLICABLE COURT RULE,]"

- 9 Page 6, line 18:
- 10 Delete "authorized"
- 11 Insert "required [AUTHORIZED]"

AMENDMENT 2 E

OFFERED IN THE HOUSE

BY DAVIES

TO: CS HBCS 16 () (Z version)

Conceptual amendment:

- 1) Delete "or the entity selected by it" wherever it appears in the bill.
- 2) Draft new section allowing the department to delegate its authority to another entity as set forth in AS 47.12.988.

3/6/98

0-LS0121 2.8
Glover
3/6/98

Replaced 3/11/98

AMENDMENT (1)

OFFERED IN THE HOUSE

TO: CSHB 16(JUD)

1 Page 1, line 7, following "minors;":

2 Insert "relating to semi-secure residential child care facilities and secure
3 residential psychiatric treatment centers; relating to programs and shelters for
4 runaways; relating to placement of children in need of aid and delinquent minors in
5 secure residential psychiatric treatment centers;"

6 Page 3, following line 19:

7 Insert a new bill section to read:

8 "* Sec. 7. AS 47.10 is amended by adding a new section to read:

9 **Sec. 47.10.087. Placement in secure residential psychiatric treatment**
10 **centers.** (a) The court may authorize the department to place a child who is in the
11 custody of the department under AS 47.10.080(c)(1) or (3) or 47.10.142 in a secure
12 residential psychiatric treatment center if the court finds, based on the testimony of
13 a mental health professional, that

14 (1) the child is gravely disabled or is suffering from mental illness and,
15 as a result, is likely to cause serious harm to the child or to another person;

16 (2) there is no reasonably available, appropriate, and less restrictive
17 alternative for the child's treatment or that less restrictive alternatives have been tried
18 and have failed; and

19 (3) there is reason to believe that the child's mental condition could
20 be improved by the course of treatment or would deteriorate if untreated.

21 (b) A court shall review a placement made under this section at least once
22 every 90 days. The court may authorize the department to continue the placement of
23 the child in a secure residential psychiatric treatment center if the court finds, based
24 on the testimony of a mental health professional, that the conditions or symptoms that

1 resulted in the initial order have not ameliorated to such an extent that the child's
2 needs can be met in a less restrictive setting and that the child's mental condition
3 could be improved by the course of treatment or would deteriorate if untreated.

4 (c) The department shall transfer a child from a secure residential psychiatric
5 treatment center to another appropriate placement if the mental health professional
6 responsible for the child's treatment determines that the child would no longer benefit
7 from the course of treatment or that the child's treatment needs could be met in a less
8 restrictive setting. The department shall notify the child, the child's parents or
9 guardian, and the child's guardian ad litem of a determination and transfer made under
10 this subsection."

11 Renumber the following bill sections accordingly.

12 Page 4, following line 7:

13 Insert new bill sections to read:

14 ** Sec. 10. AS 47.10.310(b) is amended to read:

15 (b) The department may license a program for runaway minors under
16 AS 47.10.300 - 47.10.390 only if the program

17 (1) is operated by a corporation [ORGANIZED UNDER AS 10.20] or
18 a municipality; and

19 (2) meets the requirements of (c) of this section.

20 * Sec. 11. AS 47.10.392 is amended to read:

21 **Sec. 47.10.392. Certificate required.** A private residence may not be held
22 out publicly as a shelter for runaway minors unless the residence

23 (1) is designated a shelter for runaways by a [NONPROFIT]
24 corporation that is licensed to make the designation under AS 47.35.085; and

25 (2) has a valid permit from the department signifying that designation.

26 * Sec. 12. AS 47.10.398(a) is amended to read:

27 (a) A person in a shelter for runaways, or in a home for which an application
28 to be designated a shelter for runaways is being considered by a [NONPROFIT]
29 corporation licensed for that purpose by the department, that is operated in a manner
30 that is consistent with AS 47.10.392 - 47.10.399 and regulations adopted under those

1 sections is not criminally liable under AS 11.51.130(a)(4).

2 * Sec. 13. AS 47.10.398(b) is amended to read:

3 (b) Except as provided in (c) of this section, the provider of a shelter for
4 runaways, or of a home for which an application to be designated a shelter for
5 runaways is being considered by a [NONPROFIT] corporation approved for that
6 purpose by the department, that is operated in a manner that is consistent with
7 AS 47.10.392 - 47.10.399 and regulations adopted under those sections [,] and the
8 members of the provider's household, other than a runaway minor, are not liable for
9 civil damages as a result of an act or omission

10 (1) in admitting or refusing to admit a runaway minor to the shelter
11 or home; or

12 (2) by a runaway minor who is sheltered in the shelter or home.

13 * Sec. 14. AS 47.10.399(2) is amended to read:

14 (2) "shelter for runaways" or "shelter for runaway minors" means a
15 private residence whose legal occupant agrees to shelter, with or without
16 compensation, a runaway minor accepted into the residence by the legal occupant and
17 that

18 (A) is not simultaneously licensed under AS 47.10.310 as a
19 program for runaway minors;

20 (B) has been designated a shelter for runaways by a
21 [NONPROFIT] corporation licensed for that purpose under AS 47.35.085; and

22 (C) has a permit issued by the department under AS 47.35.085.

23 * Sec. 15. AS 47.10.990 is amended by adding new paragraphs to read:

24 (8) "gravely disabled" has the meaning given in AS 47.30.915;

25 (9) "mental health professional" has the meaning given in
26 AS 47.30.915;

27 (10) "mental illness" has the meaning given in AS 47.30.915;

28 (11) "secure residential psychiatric treatment center" has the meaning
29 given in AS 47.35.900."

30 Renumber the following bill sections accordingly.

1 Page 16, following line 2:

2 Insert a new bill section to read:

3 **"* Sec. 32.** AS 47.12 is amended by adding a new section to read:

4 **Sec. 47.12.255. Placement in secure residential psychiatric treatment**
5 **centers.** (a) The court may authorize the department to place a minor who is in the
6 custody of the department under AS 47.12.120(b)(1) or (3) or 47.12.140 in a secure
7 residential psychiatric treatment center if the court finds, based on the testimony of
8 a mental health professional, that

9 (1) the minor is gravely disabled or is suffering from mental illness
10 and, as a result, is likely to cause serious harm to the minor or to another person;

11 (2) there is no reasonably available, appropriate, and less restrictive
12 alternative for the minor's treatment or that less restrictive alternatives have been tried
13 and have failed; and

14 (3) there is reason to believe that the minor's mental condition could
15 be improved by the course of treatment or would deteriorate if untreated.

16 (b) A court shall review a placement made under this section at least once
17 every 90 days. The court may authorize the department to continue the placement of
18 the minor in a secure residential psychiatric treatment center if the court finds, based
19 on the testimony of a mental health professional, that the conditions or symptoms that
20 resulted in the initial order have not ameliorated to such an extent that the minor's
21 needs can be met in a less restrictive setting and that the minor's mental condition
22 could be improved by the course of treatment or would deteriorate if untreated.

23 (c) The department shall transfer a minor from a secure residential psychiatric
24 treatment center to another appropriate placement if the mental health professional
25 responsible for the minor's treatment determines that the minor would no longer
26 benefit from the course of treatment or that the minor's treatment needs could be met
27 in a less restrictive setting. The department shall notify the minor, the minor's parents
28 or guardian, and the minor's guardian ad litem of a determination and transfer made
29 under this subsection."

30 Renumber the following bill sections accordingly.

1 Page 20, following line 7:

2 Insert a new bill section to read:

3 **** Sec. 43.** AS 47.12.990 is amended by adding new paragraphs to read:

4 (13) "gravely disabled" has the meaning given in AS 47.30.915;

5 (14) "mental health professional" has the meaning given in
6 AS 47.30.915;

7 (15) "mental illness" has the meaning given in AS 47.30.915;

8 (16) "secure residential psychiatric treatment center" has the meaning
9 given in AS 47.35.900."

10 Renumber the following bill sections accordingly.

11 Page 20, following line 22:

12 Insert new bill sections to read:

13 **** Sec. 45.** AS 47.35.010(a) is amended to read:

14 (a) The department may

15 (1) license and supervise foster homes, child care facilities, residential
16 child care facilities, **semi-secure residential child care facilities, secure residential**
17 **psychiatric treatment centers**, child placement agencies, and maternity homes;

18 (2) investigate applicants, licensees, and persons that the department
19 reasonably believes are operating a facility without a license in violation of this
20 chapter;

21 (3) adopt regulations to implement the provisions of this chapter,
22 including regulations establishing licensure and renewal procedures, standards, and
23 fees; establishing requirements for operation of facilities or agencies licensed under
24 this chapter; and distinguishing between types of child care facilities;

25 (4) enter into agreements with private entities, municipalities, or
26 individuals to investigate and make recommendations to the department for the
27 licensing and supervision of foster homes, child care facilities, residential child care
28 facilities, **semi-secure residential child care facilities, secure residential psychiatric**
29 **treatment centers**, child placement agencies, and maternity homes under procedures
30 and standards of operation established by the department.

1 * **Sec. 46.** AS 47.35.015(c) is amended to read:

2 (c) A person may not operate a residential child care facility, semi-secure
3 residential child care facility, or secure residential psychiatric treatment center

4 without a license issued under this chapter unless that facility is

5 (1) a juvenile facility operated by the state under AS 47.14.010;

6 (2) a medical facility licensed by the department under AS 18.20;

7 (3) a recreational camp providing recreational experiences of no more
8 than one month's duration for a child; or

9 (4) exempt from licensure for a reason set out in (b)(6) or (7) of this
10 section.

11 * **Sec. 47.** AS 47.35.017(a) is amended to read:

12 (a) Application for a license to operate a foster home, child care facility,
13 residential child care facility, semi-secure residential child care facility, secure
14 residential psychiatric treatment center, child placement agency, or maternity home
15 [,] shall be made to the department on a form provided by the department [,] and shall
16 be accompanied by any applicable fees established by the department under
17 AS 47.35.010(a)(3).

18 * **Sec. 48.** AS 47.35.085 is amended to read:

19 **Sec. 47.35.085. Shelters for runaway minors.** (a) The department shall
20 adopt regulations under which a [NONPROFIT] corporation may apply for a license
21 to designate and supervise shelters for runaway minors.

22 (b) The department shall also adopt regulations setting health and safety
23 standards for shelters for runaways. The regulations adopted under this subsection
24 must

25 (1) involve less regulation than is required for programs for runaways
26 licensed under AS 47.10.310 and foster homes licensed under this chapter;

27 (2) provide that private agencies approved by the department may
28 recruit, evaluate, and monitor the shelters for runaways under procedures established
29 by the department; and

30 (3) require that a [NONPROFIT] corporation licensed under (a) of this
31 section inspect the shelters for runaways, perform criminal background checks of its
32 residents, keep records, and meet other requirements only to the extent that they are

1 necessary to reduce the risk to the health and safety of a runaway minor in the shelter.

2 (c) If a [NONPROFIT] corporation licensed under (a) of this section certifies
3 to the department that a home meets the standards set under (b) of this section, the
4 department shall issue the home a permit authorizing it to be a shelter for runaway
5 minors. The permit may not be transferred to a different home or owner.

6 (d) Upon notice from a [NONPROFIT] corporation licensed under (a) of this
7 section that a shelter for runaways is not in compliance with AS 47.10.392 -
8 47.10.399 or the regulations of the department adopted under (b) of this section, the
9 department may revoke a permit issued under this subsection or modify it to
10 provisional status. The department shall give written notice of revocation or
11 modification under this subsection at least 30 days before the effective date of the
12 action. However, if the health or well-being of a child is in jeopardy, the revocation
13 or modification action is effective immediately upon the issuance of written notice by
14 the department.

15 * **Sec. 49.** AS 47.35.900 is amended by adding new paragraphs to read:

16 (20) "secure residential psychiatric treatment center" means a lockable,
17 physician-directed residential child care facility;

18 (21) "semi-secure" has the meaning given in AS 47.10.141;

19 (22) "semi-secure residential child care facility" means a residential
20 child care facility that is wholly or partially semi-secure."

21 Renumber the following bill sections accordingly.

22 Page 21, line 7:

23 Delete "1997"

24 Insert "1998"

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

27 Page 20, line 23

28 Page 20, line 26

- 1 Page 20, line 31
- 2 Page 21, line 2
- 3 Page 21, line 3
- 4 Page 21, line 5

3/16/98

AMENDMENT (21)

NOT OFFERED 3/11/98

OFFERED IN THE HOUSE

BY DAVIES

TO: CS HBCS 16 () (Z version)

Page 1, line 1:

Delete through line 5

Insert "An Act relating to"

Page 1, line 8, following "party;"

Delete through line 10

Insert "and"

Page 3, following line 4

Delete through page 20, line 25

Page 21, following line 9

Delete through line 27

3/6/98

AMENDMENT (3)

replaced 3/11/98

OFFERED IN THE HOUSE

BY DAVIES

TO: CS HBCS 16 () (Z version)

Page 7, line 7:

Delete "shall"

Insert "may"

Page 7:

Delete lines 11 - 18

ALASKA PUBLIC DEFENDER AGENCY

900 West Fifth Avenue, Suite 200 · Anchorage, AK 99501 · (907) 264-4400 · fax (907) 269-5476

March 10, 1998

Representative Gene Therriault
Representative Mark Hanley
Co-Chairs, House Finance Committee

RE: HB 16

Dear Representatives Therriault and Hanley:

The Public Defender Agency has been asked to provide fiscal information for proposed amendments to the current committee substitute. The following projections are necessarily rough given the lack of an actual CS, but where I have had to make assumptions or proceed without complete information it will be noted. I hope you find this information useful.

AMENDMENT 1: (0-LS0121/R.8) As I understand it, this amendment seeks to create a new civil commitment process for children who are currently in the system as either children in need of aid or delinquent minors. It also seeks to add to the types of institutions that could be considered "secure residential psychiatric treatment centers" and "runaway shelters" by changing the definitions and allowing for-profit corporations to be so designated.

From the testimony provided at the March 6 (H) Finance Committee meeting, it appears that over 30 children a year are currently referred to secure psychiatric treatment Outside. Given the significant costs it seems reasonable to assume that an even greater number would be referred if such facilities were available in-state, including children currently institutionalized at McLaughlin Youth Center. 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 \$54.2. 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 the process. Perhaps a simpler route would be to amend the current AS 47.30 sections to include private psychiatric hospitals for the admission of minors. That way the existing process could be used to place these children without first requiring a CINA or delinquency disposition.

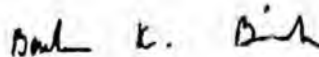
AMENDMENT 2: As I understand this amendment, it eliminates the dual sentencing scheme and leaves only the ability of a municipality or assigned person to file a civil action against a minor who violates an ordinance. Because civil penalties alone do not implicate the right to counsel, the Agency anticipates its fiscal note for this amendment if adopted to be zero.

AMENDMENT 3: As I understand this amendment, it allows the department to refer a child to the district attorney's office for implementation of the dual sentencing scheme rather than requiring such a referral. It also limits the scheme to 16 and 17 year olds for felony crimes against persons if there is a prior adjudication or conviction for a felony crime against a person or if the charge is sexual abuse of a minor in the second degree. As I understand it, the Division of Family and Youth Services believes this would apply to approximately 8 children a year. Because of this reduction in numbers the Agency anticipates its fiscal note for this amendment to be zero.

AMENDMENT 4: As I understand these technical amendments they would not change our current fiscal note.

Thank you for inviting my input. I look forward to further work with this committee on HB 16.

Sincerely,



Barbara K. Brink
Public Defender

BKB:sh

Alaska State Legislature

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House District 31

House Of Representatives

February 26, 1998

Memorandum

To: Representative Gene Therriault, Co-chair
House Finance Committee

From: Representative Pete Kelly

Re: Changes from HB 16(JUD)/R to HB 16\Z

House Bill 16 v. Z includes conforming adjustments as a result of the passage of HB 6. Old sections 7, 8, 13, and portions of Section 14 were deleted from version R.

Following considerable review over the interim, language has been added allowing "hearsay evidence" to be used in preliminary court hearings. This language allows police officers to testify to all of the facts they have gathered, not just those facts they personally observed. The practical result of this change will be to reduce the burden placed on victims. Victims will not have their efforts to participate derailed by endless requests for extensions. Victims will be able to focus their efforts at attending the actual trial. See: New sections 11, 24, & 36\Z.

HB 16 has been further modified with technical language changes requested by the administration. Over the interim:

- a) Procedures were added to define the initial investigation's interview process (Section 8\Z).
- b) The list of crimes for which a District Attorney may seek Dual sentencing was made more specific in sexual assault category, limiting it to penetrative assaults under AS 11.41.420(a)(3). (Section 12\Z)
- c) Several CINA only provisions were discovered following two years of experience with the new AS 47.12 Delinquency code created in HB 387 during the 19th Legislature. These were repealed (AS 47.12.120(g), see: Sect 38\Z) or deleted, see: section 15\Z.
- d) Clarified, in Section 21\Z, only minors 16 and older are transferred to adult jail (Department of Corrections).

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House District 31

House Of Representatives

Sponsor Statement

House Bill 16

House Bill 16 is a product of the Governor's Conference on Juvenile Justice, offering several solutions to the problems facing Alaska's juvenile justice system.

The bill: 1) allows municipalities to seek civil court remedy for juveniles who violate municipal ordinances; 2) provides for dual sentencing of serious juvenile offenders; 3) allows the department of Health and Social Services to draw upon the available resources of local communities or other entities who desire to get involved in juvenile crime issues; and 4) provides for the extradition of minors between states.

HB 16 also provides additional insight into the workings of our juvenile justice system. I have added portions of the existing Alaska Court Delinquency Rules to the statutes in an effort to give police, DFYS and the Courts a single set of instructions to follow when dealing with juveniles.