ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2456 HJ HB 509 - HB 560

2456

additional information invariably becomes available, or new benchmarks are used, or errors are discovered, etc. For purposes of computing the spending limit, the most current published estimate available should be used, and a mid-year adjustment in the spending limit should not be made even if revised indices are issued.

FY 84 Precedent

When the Sheffield Administration took office in December, 1982, former Governor Hammond's administration had prepared an executive budget for FY 84. This executive budget contained a spending limit calculation of $2.98 billion. The only written explanation of this number is a footnote on page 3 of the Executive Budget Book that states "...according to the spending limit, the FY 84 budget ceiling could exceed the FY 82 figure of $2.5 billion by the estimated rate of inflation and population growth. For FY 83 our estimate is 10%, hence the FY 83 base is $2,750.0. The $2.98 billion limit for FY 84 is estimated to be 8.4% over the FY 83 base level." Since there is no explanation of the assumptions or method used, I do not see why this Administration is bound by whatever those may have been, nor bound to $2.98 billion as a base for calculating the FY 85 limit. It seems to me that Governor Sheffield and the Legislature may adopt a method that best comports with the intent of the law and with logic, even if the method produces a different number from that used in FY 1984.

Appropriation Limit Options

From the foregoing discussion it should be clear that there are theoretically a large number of possible limit calculations. This section presents several options that suggest the range of possible outcomes. It also includes the recommended calculation, which is Option 4. In accord with our earlier recommendation regarding the period of adjustment to the base, all of the options shown here assume that the adjustment for population and inflation are made for three years rather than four. A fourth year of adjustments would add approximately $250 million to the numbers shown. The options are:

Option 1 = ADOL Population and Alaska CPI-U
Option 2 = ADOL Population and Government Services
Option 3 = BLS Population and Alaska CPI-U
Option 4 = BLS Population and Government Services
Option 5 = Census* Population and Alaska CPI-U
Option 6 = Census* Population and Government Services

*1970-1980 compound average

The appropriation limits that result from these options are:

FY	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
84	3.041	3.199	3.062	3.220	2.871	3.020
85	3.356	3.618	3.390	3.654	3.079	3.319
86	3.704	4.092	3.753	4.147	3.301	3.648
87	4.087	4.630	4.156	4.707	3.539	4.010
88	4.509	5.238	4.602	5.343	3.795	4.406

We have analyzed these spending limits in terms of maximum allowable appropriations and available revenue, and the results of that analysis are available. However, the focus of this memo has been the methodological issues surrounding the calculation of a limit.

GSH/mm

FOOTNOTES

1. This change can be expressed, and calculated, in three ways: as one-tenth the decennial change; as the continuous annual change; and as the compound annual change. The latter (3.126%) is the best measure for the purposes at hand.

   One-tenth the decennial change: $\left(\frac{419,700}{308,500} - 1\right) / 10 = 3.6045$

   Continuous annual change: $P_{1980} = P_{1970}E^{rt} = 3.0782$

   Annual compound change: $P_{1980} = (1+r)^{t}P_{1970} = 3.1260$

2. The change involved a measure of shelter from the cost of mortgages and the selling price of homes to the cost of rental units.

3. In Anchorage, the BLS began for the first time in 1983 to measure Anchorage costs. Prior to this, they simply used the costs of housing in west coast cities of a size similar to Anchorage. In describing the effect of the new measure, the Alaska Department of Labor has written:

   > From January to July of this year the Anchorage Consumer Price Index registered increases below historical levels. During the last five months, the index's over-the-year change did not exceed 1% and, in fact, fell in May. This decline in inflation is misleading because of methodology changes causing inconsistency between 1983 and 1982 data. Because of this the BLS has recommended that in the short term, users of the CPI use either 1) a 12 month annual average, or 2) the U.S. rate; or 3) compare 1983 data only. Looking at the Anchorage CPI this way the index has risen 3.2% from January through July. If the CPI continues this same trend it will increase between 5.0% and 6.0% for the 1983 average.

   (Alaska Economic Trends, Alaska Department of Labor, November, 1983, p. 13.)

Why was the change made? The Commissioner of the U.S. Department of Labor provides the following reasons. First, the former method combined investment and consumption effects upon price. The new approach is an attempt to measure only the changing cost of consumption. Second, the old method was based upon the assumption of a fixed rate mortgage. Recently, a variety of alternatives to a fixed rate mortgage have become

available. The former method did not take them into account. Third, the appearance of seller financing distorted the measure since there is no accurate way to detect it. Finally, the Federal Government will be using the index, starting in 1985, to index tax brackets. Thus, the most accurate index possible is desired.

MEMORANDUM

State of Alaska

TO: Gordon S. Harrison
Associate Director

DATE: January 19, 1984

FILE NO: 84B-3

TELEPHONE NO: 465-3568

FROM: Thomas P. Chester TC
Principal Analyst

SUBJECT: Spending Limit/HB 524

Adoption of HB 524 will result in the following spending limits:

Fiscal Year	Limit [a]	=	Prior Limit	X	(R1 [b]	+	R2 [c])
82	$2,500						
83	2,765	=	$2,500	X	(1 + .02837	+	.07750)
84	3,040	=	2,765	X	(1 + .02837	+	.07111)
85	3,151	=	3,040	X	(1 + .02837	+	.00835)

[a] Rounded to nearest million.
[b] Rate of population change.
[c] Rate of inflation.

Estimation of rate of population change (lines 20 - 23).

.02837 = 1/10 X ln (401,851/302,583)

Estimation of rate of inflation (lines 15 - 19)

Month	Year	CPI-U	Rate of Change
July	80	228.4	-
July	81	246.1	(246.1/228.4) - 1 = .07750
July	82	263.6	(263.6/246.1) - 1 = .07111
July	83	265.8	(265.8/263.6) - 1 = .00835

mm

Attachment

cc: The Honorable Al Adams

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

M E M O R A N D U M

DATE: January 17, 1984

TO: Rep. Al Adams, Chairman
House Finance Committee

FROM: Mike Creany, Director
Legislative Finance Division

SUBJ: Spending Limit

Legislative Finance Division (P.S. Dhillon) has reviewed your draft legislation for the spending limit.

This is to confirm that it produces precisely the same spending limit as SB 326 (Ferguson): $3151.4 for FY 85.*

The only difference between the two versions is that your's removes unnecessary language in Section 1(2).

---

*

	Limit ($ Millions)
FY 82	$2500.0
FY 83	$2764.7 = $2500.0 X (1 + (0.0284 + 0.0775))
FY 84	$3039.8 = $2764.7 X (1 + (0.0284 + 0.0711))
FY 85	$3151.4 = $3039.8 X (1 + (0.0284 + 0.0083))

SS SB 326 -- Appropriations Limit

	Limit ($ millions)		Population Rate of Change	Anchorage CPI-U Rate of Change
FY 82	$2500.0			
FY 83	$2764.7 = $2500.0	X (1 + (0.0284	+	0.0775))
FY 84	$3039.8 = $2764.7	X (1 + (0.0284	+	0.0711))
FY 85	$3151.4 + $3039.8	X (1 + (0.0284	+	0.0083))

Note 1. The population adjustment used above is the continuously compounded annual rate of change between the 1970 and 1980 (April 1) estimates of population established by the U.S. Census Bureau in their decennial censuses. It is computed as follows:

$$\text{Population}_{1980} = \text{Population}_{1970} \cdot e^{rt}$$

or $$\text{Rate of Change} = r = \frac{\ln(\text{population } 1980/\text{population } 1970)}{t}$$

or $$\text{Rate of Change} = .0284 = \frac{\ln(401851/302583)}{10}$$

Note 2. The rate of change in the Anchorage CPI-U is computed as the July to July change in the index as published by the U. S. Department of Labor, Bureau of Labor Statistics.

L.F.D./p.s.d.
1/17/84

GENERAL ELECTION, NOVEMBER 2, 1982
BALLOT MEASURE NUMBER 4
APPROPRIATION LIMIT

ED	TOTAL	FOR	%	AGAINST	%
1	8192	4741	57.9	3451	42.1
2	4332	2428	56.0	1904	44.0
3	4696	2740	58.3	1956	41.7
4	14766	7979	54.0	6787	46.0
5	9308	5825	62.6	3483	37.4
6	4022	2551	63.4	1471	36.6
7	4601	2960	64.3	1641	35.7
8	9417	6029	64.0	3388	36.0
9	8114	5309	65.4	2805	34.6
10	8575	5392	62.9	3183	37.1
11	8375	5277	63.0	3098	37.0
12	8604	5116	59.5	3488	40.5
13	7868	4961	63.1	2907	36.9
14	9260	5999	64.8	3261	35.2
15	9052	6018	66.5	3034	33.5
16	10706	6848	64.0	3858	36.0
17	4387	2634	60.0	1753	40.0
18	4679	2954	63.1	1725	36.9
19	5160	3168	61.4	1992	38.6
20	9240	5706	61.8	3534	38.2
21	5573	3337	59.9	2236	40.1
22	3545	2023	57.1	1522	42.9
23	3728	2096	56.2	1632	43.8
24	3964	2232	56.3	1732	43.7
25	4053	2120	52.3	1933	47.7
26	3638	2078	57.1	1560	42.9
27	3645	2148	58.9	1497	41.2
TOTAL	181,500	110,669	61.0	70,831	39.0

Source: State of Alaska, Official Returns by Election Precinct General Election, November 2, 1982.

HB

530

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST:
Bill/Resolution No.: House Bill No. 530
Title: "An Act relating to waiver of juveniles as adults."
Sponsor: Rep. Pestinger
Requestor: House Judiciary Committee
Date of Request: January 25, 1984

FISCAL DETAIL:
Agency Affected: ADULT CORRECTIONS AGENCY
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Northern, Southcentral & Southeastern Regional Corrections, Admin. & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY84	FY 85	FY	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES				1,520.1	1,611.4	1.708.0
200 TRAVEL				7.1	7.5	8.0
300 CONTRACTUAL		25.0	79.5	218.8	231.9	245.8
400 COMMODITIES		38.8	123.8	223.4	236.8	251.0
500 EQUIPMENT				6.4	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		6.0	19.1	36.0	38.2	40.4
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	69.8	222.4	2,011.8	2,125.8	2,253.2
CAPITAL	-0-	10,621.5	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	10,691.3	222.4	2,011.8	2,125.8	2,253.2
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	10,691.3	222.4	2,011.8	2,125.8	2,253.2

POSITIONS:

FULL-TIME	-0-	-0-	-0-	29	29	29
PART-TIME						
TEMPORARY						
TOTAL	-0-	-0-	-0-	29	29	29

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the bill sponsor.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: William W. Ludwig for Roger C. Lange
Division: Administrative Services
Phone: 465-3376
Date: February 21, 1984

Approved by Commissioner: [signature]
Department: ADULT CORRECTIONS AGENCY
Date: 2/21/84

Distribution:
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency (ies)

12/1/8

ANALYSIS

A. Assumptions:

Based on FY 1982 Juvenile arrest data and the Department of Law's estimate that 45-50 juveniles will be waived into Adult Court, it is estimated that 72.75 additional beds will be needed by the Adult Corrections Agency,. A detail of this estimate is given in Attachment 1.

B. Program Summary:

1. In FY85, funds would be required to begin planning and design for construction of medium security beds. Because of the serious nature of the offenses, however, it is assumed that a significant number of the offenders would spend some time in a maximum security setting. Capital costs for medium security beds are estimated to be $146,000 per bed.

72.75 beds @ $146,000 = $10,621,500

2. Full operating costs would not occur until FY87. It is estimated that twenty-nine (29) positions will be required to provide security and support for these beds: One (1) Correctional Officer III, twenty-six (26) Correctional Officers II and two (2) Probation Officers II. Costs for these positions will occur in FY87, the anticipated opening date for the new beds. Estimated costs are as follows:

100	Personal Services	$1,520,100
200	Travel	7,100
300	Contractual Services	218,800
400	Commodities	223,400
500	Equipment	6,400
700	Inmate Gratuities	36,000
	Total	$2,011,800

Operating cost for FY85 and FY86 are for inmate cost of food, clothing, medical, etc., for the estimated persons coming into existing facilities before the new beds can be completed.

Inflation of 6% for all expenditure object groups was assumed for subsequent fiscal years.

Attachment 1

Estimated Annual Frequency of Convictions	Presumptive Sentence	Estimated Average Sentence for 16 and 17 Year Olds Convicted as Adults	Actual Time to Serve With Credit for Good Time
*Unclassified felony (automatic waiver)			
2 murder I	20 years	15 years	11.25 x 2 = 22.5 years
1 murder II	5 years	4 years	3.0 x 1 = 3 years
1 sexual assault 1st (with firearm)	10 years	7 years	5.25 x 1 = 5.25 years
5 sexual assault 1st (without firearm)	8 years	5 years	3.75 x 3 = 11.25 2 probation
3 Class A felonies (with firearm)	7 years	6 years	4.5 x 2 = 9 years 1 probation
5 Class A felonies (without firearm)	5 years	4 years	3 x 4 = 12 years 1 probation
	Non-presumptive Range		
6 Class B felonies	0-10 years	3 years	2.25 x 4 = 9 2 probation
2 Class C felonies	0-5 years	1 year	.75 x 1 = .75 years 1 probation
			TOTAL: 72.75 person-years

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: An Act relating to..... class A felonies, waivers
Sponsor: Pestinger
Requestor:
Date of Request: 2/6/84

FISCAL DETAIL
Agency Affected: HEALTH AND SOCIAL SERVICES
Program Category Affected: Social and Economic Assistance for the General Population
BRU, Program or Subprogram(s) Affected: Youth Correctional Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael R. Price
Division: Family and Youth Services
Phone: 465-3170
Date: 2/6/84

Approved by Commissioner: Robert London Smith Ph.D. Date: 2/8/84
Agency: Dept of Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

July 22, 1983

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: SCS CSHB 109(HESS) am S - waiver of children's proceedings for felonies
Our file: 388-108-83

Dear Governor Sheffield:

As Emil Notti requested on your behalf, we have reviewed SCS CSHB 109(HESS) am S, which is commonly referred to as a "juvenile waiver" bill. The bill provides that a person 16 or 17 years of age who is charged with an unclassified felony must be tried as an adult. It also alters the legal standard for deciding whether a juvenile offender charged with any other felony offense should be handled in juvenile court or whether the court should "waive" its juvenile jurisdiction in favor of handling the case in adult court.

The criminal division of the Department of Law has been seeking changes in the existing juvenile waiver law for several years, and testified in favor of HB 109 throughout the committee process during this last legislative session. However, last minute Senate amendments have so seriously flawed the bill that we are compelled to advise you to veto it.

To understand the problems in the bill which require a veto, it is necessary to briefly review its legislative history. Early this legislative session, HB 109 and SB 127 were introduced to amend existing laws relating to juvenile waiver. Based on several years of first-hand experience by state prosecutors, the criminal division of the Department of Law suggested numerous changes in both bills during testimony before legislative committees. Most of the suggestions were adopted in committee substitutes for both HB 109 and SB 127.

By late April, the portions of HB 109 and SB 127 which dealt with juvenile waiver were virtually identical. Both contained provisions requiring an "automatic" waiver of juveniles

aged 16 or 17 who were charged with serious felony offenses. Both also altered the legal standard for waiver to make it easier for the prosecution to obtain a discretionary judicial waiver of offenders who were not automatically waived.

The major difference in the two bills was that CSHB 109(Jud) automatically waived juveniles charged with both unclassified 1/ and class A felonies, 2/ while CSSB 127(Jud) automatically waived only those charged with unclassified felonies. The House bill also provided that a juvenile offender tried in adult court would be sentenced as an adult, even if convicted of an offense less serious than the one originally charged. The Senate version allowed a person convicted of a class A, or less serious, offense to petition the court to return him to juvenile court for disposition rather than to be sentenced as an adult.

CSHB 109(Jud) was passed by the House on April 29, 1983. On reconsideration the next day, the bill was amended to come closer to the Senate version and provided that a juvenile offender convicted in adult court of only a lesser included offense, other than an unclassified or class A felony, must be "sentenced" (the proper term would be "disposed of") as a delinquent minor in juvenile court. H. Jour. at 1108-1110 and 1133-1135.

On June 25, one day before adjournment, the Senate Health, Education, and Social Services Committee recommended a committee substitute for CSHB 109(Jud) am which radically altered crucial portions of the bill, and which disregarded comparable provisions in CSSB 127(Jud). The Senate HESS committee substitute provided automatic waiver only for those persons aged 16 or 17 who were charged with unclassified offenses, and required a return to juvenile court for "sentencing" of an offender who was ultimately convicted of an offense less serious than an unclassified felony. The Senate HESS committee substitute also required a discretionarily waived juvenile offender who was convicted in adult court and sentenced to a period of incarceration to be confined to a juvenile facility until age 18. Other language in the bill continued to require that

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1/ Unclassified felonies include murder in the first degree, murder in the second degree, kidnapping, sexual assault in the first degree and misconduct involving controlled substances in the first degree.

2/ Class A felonies include manslaughter, assault in the first degree, robbery in the first degree, arson in the first degree, escape in the first degree, solicitation (to commit an unclassified offense), and misconduct involving controlled substances in the second degree.

juvenile offenders held in custody following either an automatic or discretionary waiver be transferred to adult facilities upon indictment.

The HESS committee substitute was the result of a thirteen minute committee meeting held on June 24, 1983. No testimony was taken during the hearing. Since the Department of Law was not notified of the meeting, no representative from the department was present. Referral of the HESS committee version of the bill to the Senate Judiciary and Finance committees was waived, and the bill was considered by the Senate on June 26, the final day of the session. Section 7 of the bill, dealing with confinement of minors, was amended on the floor to provide that juvenile offenders automatically waived to adult court must be held in juvenile facilities until convicted. The section dealing with discretionarily waived offenders was not amended. SCS CSHB 109(HESS), as amended, was then adopted. S. Jour. 1555-57, 1578-79. The House concurred in these amendments on the same day. H. Jour. at 2106-2109.

The Senate HESS committee substitute and the amendments made on the floor so altered the original intent and procedures included in the bill that its enactment into law would weaken rather than improve the laws relating to juvenile waiver. In addition, in its present form, SCS CSHB 109(HESS) am S contains insurmountable equal protection and due process problems and procedures that do not make sense.

The most serious problem in the bill is a procedural scheme which denies equal treatment under the law to persons who have been convicted of identical offenses. As previously noted, the bill automatically waives juvenile offenders charged with unclassified felonies to adult court. Under the bill, if an offender charged with an unclassified felony is convicted of a lesser included offense, such as a class A felony, he must be transferred back to juvenile court for "sentencing" (disposition). However, a juvenile charged with a class A felony who is discretionarily waived after a hearing, and is convicted in adult court of the class A felony, must be sentenced as an adult. There is no provision authorizing the court to transfer the discretionarily waived person back to juvenile court, and there is no provision allowing the adult court to retain jurisdiction over an automatically waived offender convicted of an A felony, regardless of the nature of the crime or the lack of rehabilitative potential of the offender.

What this means is, for example, that an offender who is waived into adult court because he is charged with first degree murder, but who is ultimately convicted for the lesser offense of manslaughter, a class A felony, must be treated as a juvenile. He will spend two or at most three years in a juvenile facility and then must be released. But an offender who was originally charged with manslaughter, because the facts of the killing did not justify a murder charge, and who was

waived into adult court and convicted, will be sentenced as an adult, and faces up to 20 years in prison. Thus, two offenders, both convicted of manslaughter, will receive vastly unequal treatment. One who was automatically waived because there were good reasons to believe that a more serious offense was committed, will go back to juvenile court for disposition. The other who was discretionarily waived for a less serious offense will be treated and sentenced as an adult. This result cannot be justified on any legal, logical, or public policy grounds.

A second major problem with the bill is found in section 7, which now provides that a juvenile offender who is discretionarily waived to adult court must be transferred from a juvenile facility to an adult jail at the time of the waiver until after trial, but requires that the offender then be returned to a juvenile facility upon conviction to serve his sentence until he reaches the age of 18.

The confinement of persons who have been tried, convicted, and sentenced as adults with juvenile offenders is directly contrary to one of the primary purposes of the bill, which was to remove hardened or untreatable juveniles from treatment programs designed for younger, less sophisticated, children. Older offenders convicted of murder, kidnapping or forcible rape should not be confined with youngsters who have committed minor property offenses or are having disciplinary problems.

At the recommendation of the Department of Health and Social Services, divisions of corrections and family and youth services, both bills originally provided that a juvenile offender would be held in a juvenile facility until waived and indicted for a felony offense. At that point the person would be transferred to an adult facility, where he would await trial and serve his sentence if convicted. This procedure is the one followed under present law and makes good policy sense. Shuffling a young defendant back and forth between juvenile and adult facilities makes no sense at all. Additionally, now that the division of corrections is a state agency independent of the Department of Health and Social Services, the transfer of an offender from a juvenile to an adult facility would require a transfer from the custody of one department to another, and then back again.

Another legal problem arises because the Senate changed the House version of the bill to provide that the only juveniles to be automatically waived were those convicted of unclassified felonies. The Senate did so, however, without changing the title, which describes: "An act relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; . . . ." As you know, Rule 41(b) of the Uniform Rules of the Alaska State Legislature prohibits a change in the title of a bill which originated in the other house. In

order to get around this rule, the Senate added subsection AS 12.05.020(b), which states that a person 16 or 17 years of age who is charged with a class A felony is subject to juvenile court jurisdiction. This was done so that the bill would "relate to" persons charged with class A felonies, as the title requires.

However, the addition of the language now contained in subsection AS 12.05.020(b) means that a juvenile court adjudication of delinquency for a class A felony would constitute a "prior conviction" for presumptive sentencing purposes on subsequent adult offenses. See, section AS 12.55.145. This result was probably not intended and the policy implications not considered. Juvenile court adjudications have never been treated as "prior convictions," and that treatment is probably inconsistent with the whole concept of the juvenile justice system.

Enactment of this bill into law would actually leave prosecutors less able to effectively prosecute juvenile offenders who have committed serious felony offenses. Those indicted for the most serious offenses such as murder, sexual assault in the first degree (forcible rape), or kidnapping, would be automatically returned to juvenile court for disposition if convicted of a lesser, but still serious, offense. Currently, it is difficult to obtain waiver of a juvenile offender. But once waiver is obtained under the present law, the offender stays in adult court, even if convicted of a lesser offense such as manslaughter or attempted sexual assault. Under this bill, if a prosecutor believes that a 17 year old offender has committed murder, he must choose between charging the offender with murder, and risking the person's automatic return to juvenile court if he is convicted for manslaughter, or charging him only with manslaughter so that he may be sentenced in adult court if convicted. Both of these alternatives are unacceptable.

Because the bill denies equal treatment under the law to persons convicted of identical offenses, because the provisions regulating the place of confinement of juvenile offenders are illogical, and because the bill would render prosecutors less able to effectively deal with 16 and 17 year olds charged with the most serious and violent felonies, CSC CSHB 109(HESS) am S should be vetoed. We have attached a draft veto message for your consideration.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:GAH:gb
Enclosure

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 27, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SCS CSHB 109(HESS) am S -- Relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; and amending the children's proceedings waiver provisions.

Dear Mr. Speaker:

Under the authority granted by art. II, sec. 15, of the Alaska Constitution, I have vetoed Senate Committee Substitute for Committee Substitute for House Bill No. 109 (HESS) am S, commonly referred to as a "juvenile waiver" bill. I have vetoed this bill because it weakens rather than improves existing laws relating to juvenile waiver. If this bill were enacted into law it would leave prosecutors less able to effectively prosecute juvenile offenders who have committed serious felony offenses.

The bill contains insurmountable equal protection and due process problems. It denies equal treatment under the law to persons who have been convicted of identical offenses. The bill automatically waives juvenile offenders charged with unclassified felonies to adult court. If an offender charged with an unclassified felony were convicted of a lesser included offense, such as a class A felony, he would be transferred back to juvenile court for "sentencing" (disposition). However, a juvenile charged with a class A felony who was discretionarily waived after a hearing, and was convicted in adult court of the class A felony, would be sentenced as an adult.

If the bill became law, it would mean that an offender who was waived into adult court because he was charged with first degree murder, but who was ultimately convicted for the lesser offense of manslaughter, a class A felony, would be treated as a juvenile. He would "serve" two or at most three years in a juvenile facility and then must be released. But an offender who was originally charged with manslaughter, because the facts of the killing did not justify a murder charge, and who was waived into adult court and convicted, would be sentenced as an adult, and faces up to 20 years in prison. Thus, two offenders, both convicted of manslaughter, would receive vastly unequal treatment. One who was automatically waived because there were good reasons to believe that a more serious offense was committed would go back to juvenile court for disposition. The other who was discretionarily waived for a less serious offense would be treated and sentenced as an adult.

If this bill were to become law, a prosecutor who believes that a 17 year old offender has committed murder must choose between charging the offender with murder, and risking the person's automatic return to juvenile court if he is convicted for manslaughter, or charging him only with manslaughter so that he may be sentenced in adult court if convicted. A prosecutor should not have to make such a choice. The jury should be the one to decide of which crime, if any, a defendant is guilty.

The bill also provides that a juvenile offender who is discretionarily waived to adult court must be transferred from a juvenile facility to an adult jail at the time of the waiver until after trial, but requires that the offender then be returned to a juvenile facility upon conviction to serve his sentence until he reached the age of 18. This shuffling back and forth between juvenile and adult facilities makes no sense at all.

Persons who have been tried, convicted, and sentenced as adults should not be confined with juvenile offenders. Hardened or untreatable juveniles do not belong in treatment programs designed for younger, less sophisticated, children. If this bill were to become law, older offenders convicted of murder, kidnapping or forceable rape would be confined with youngsters who have committed minor property offenses or are having disciplinary problems. I cannot accept that result.

The bill presents other legal and public policy problems, but the two factors discussed above are themselves serious enough to require veto of the bill. As you are aware, my Administration worked closely with the Legislature on Senate Bill No. 127, which would have rationally strengthened existing law and would have enabled the courts to deal more effectively with juvenile offenders charged with serious, violent felonies. This bill, unfortunately, reaches an exactly opposite result, and that is why I have vetoed it.

Sincerely,

Bill Sheffield
Governor

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: "...amending children's proceedings waiver provisions."
Sponsor: Rep. Pestinger
Requestor: House Judiciary
Date of Request: 2-3-84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		67.5	71.6	75.9	80.4	85.2
200 TRAVEL		5.0	5.3	5.6	5.9	6.3
300 CONTRACTUAL		8.0	8.5	9.0	9.6	10.1
400 SUPPLIES		4.5	3.2	3.4	3.6	3.8
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	86.5	88.6	93.9	99.5	105.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	86.5	88.6	93.9	99.5	105.4
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Date: 2-6-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues / FOR) Date: 2-6-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 530

February 6, 1984

This bill provides that persons 16 or 17 years of age who are charged with unclassified felonies and Class A felonies will be prosecuted as adults. The bill makes the waiver of these persons from juveniles to adult court automatic; there is no need for a hearing in juvenile court prior to the waiver.

Juveniles of any age charged with felony offenses below Class A may be waived to adult court upon motion by the prosecutor and after a hearing in juvenile court.

It is estimated that approximately 45-50 persons a year will be waived into adult court under this bill. This figure includes those persons who are now waived, in the judge's discretion, under existing standards. It is estimated that 20-25 additional felony prosecutions will be required to implement this bill, necessitating the hire of one full-time prosecutor.

FISCAL ANALYSIS - HB 530

The bill will require the addition of one full-time Attorney IV prosecutor in the Third Judicial District in Anchorage. Costs beyond FY 85 include a 6% annual inflation factor.

1st Year (FY 85)

	AIV (PFT)
Personal Services	67.5
Travel	5.0
Contractual	
Communications & Copying	4.8
Witness Fees	3.2
Commodities	
Office Supplies	1.8
Library Materials	1.2
Commodities - single time	
New Position Supplies	1.5
Equipment - single time	
New Position Equipment	1.5
Total	86.5

POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
Attorney IV				24A	X				
TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT	12				Anchorage	8			

CONTINUATION LEVEL | | ADDITION | |

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
4.	Salary 4,464/mo.	53,568	
5.	Benefits	8,785	
6.	Supplemental Benefits	2,550	
7.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	67,533
0.	Travel	02	5,000
1.	Contractual	03	8,000
2.	Commodities	04	4,500
3.	Equipment	05	1,500
4.	Other		
5.	TOTAL COST		86,533

	RECEIPT CODE	FUNDING SOURCE		
6.		Federal Receipts	1002	
7.		G.F. Match	1003	
8.		General Funds	1004	86,533
9.		I-A Receipts	1005	
0.		Program Receipts	1023	
1.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This full-time Attorney position will be needed to handle the estimated 20 to 25 additional felony cases that will occur as a result of the automatic hearing waivers from juvenile to adult court if HB 530 becomes law. The Attorney IV, or full working level of Attorney will be required because those cases to be tried will be either Class A or unclassified felonies, which are the most serious criminal offenses.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

THIRD JUDICIAL DISTRICT

Revised Date

FY 85

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 530
Title: An Act relating to..... class A felonies, waivers
Sponsor: Pestinger
Requestor:
Date of Request: 2/6/84

FISCAL DETAIL
Agency Affected: HEALTH AND SOCIAL SERVICES
Program Category Affected: Social and Economic Assistance for the General Population
BRU, Program or Subprogram(s) Affected: Youth Correctional Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael L. Price
Division: Family and Youth Services
Phone: 465-3170
Date: 2/6/84

Approved by Commissioner: Robert London Smith Ph.D. Date: 2/8/84
Agency: Dept of Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

POSITION PAPER
HOUSE BILL 530

"An Act relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; and amending the children's proceedings waiver provisions."

This Bill would make several changes in the manner of dealing with juveniles accused of felony offenses. It would:

1) Require prosecution within the adult criminal system of 16 and 17 year old juveniles accused of unclassified or class A felonies;
2) Change the standard for judicially waiving juveniles who would not be subject to automatic exclusion from juvenile jurisdiction, and define factors which the court must consider in making waiver decisions; and
3) Define sentencing and confinement procedures relating to juveniles who are waived to adult jurisdiction.

PROBLEMS ADDRESSED BY THE BILL

Recent highly publicized and unpopular court decisions regarding specific juveniles who have committed violent crimes but were not waived to adult jurisdiction have led to a misperception on the part of some segments of the public. Many have concluded from these isolated cases that juvenile crime, particularly violent juvenile crime, is widespread and increasing and that the existing waiver mechanism and the juvenile justice system as a whole are ineffective. The further conclusion has been reached that wholesale changes are necessary. The facts, however, do not substantiate these conclusions.

Juvenile crime, as measured by arrests, decreased by 15.8% during the most recent period for which data is available, 1982. This is below even 1979 in absolute numbers and represents a significant decrease in the rate of arrest since the juvenile population has risen by nearly twenty thousand youths or 15%. There has, unfortunately, been an increase in the numbers of juveniles arrested for the most highly publicized violent crime - murder. However, these arrests comprise only slightly more than one tenth of one percent of the total number of juvenile arrests, and are not indicative of the extent and nature of juvenile crime. They nonetheless receive the most media attention and guide public opinion.

In general juvenile crime may be characterized as property crime - simple thefts account for nearly one third or 28% of juvenile arrests. Liquor law violations result in 26% of all juvenile arrests. Although arrest data is the most comprehensive data available to represent the extent of crime, limitations of these data and some general research findings about juvenile crime must be kept in mind when drawing conclusions from arrest data. First, arrest data do <u>not</u> accurately represent the number of crimes committed since more than one person may

be arrested for a single crime. For instance, if three persons burglarize a store and are arrested, the arrest data seem to indicate that three separate burglaries occurred although only one crime was committed. Second, juveniles tend to commit crimes in groups while adults tend to commit crimes alone. Thus, juvenile arrests seem to indicate a disproportionate number of crimes when in fact they represent a smaller number of crimes but a disproportionate number of participants. Last, juveniles tend to be arrested more frequently than are adults. Juveniles are less sophisticated and are more likely to be caught committing crimes and there is a greater tendency of law enforcement personnel to arrest juveniles.

The public misperception in Alaska follows a national trend which has been reflected in legislation in a number of states to lower the age of criminal responsibility and/or enact broad waiver laws which bring large numbers of juveniles under the jurisdiction of the adult criminal system. These approaches have begun to be discredited recently as there has been an increasing understanding of the fact that those juveniles who have committed violent crimes or have repeatedly committed serious offenses are extremely small in number. National studies have concluded that the most cost effective and efficient approach is to carefully and selectively identify those juveniles and treat them differentially from the vast majority of youth.

The existing judicial waiver mechanism in Alaska has been more thoughtfully criticized, primarily by prosecutors, as one which makes waiver of juveniles to the adult system difficult to achieve. Although this criticism is not entirely justified, the existing mechanism does have a standard of proof which is inadequately defined and therefore open to broad interpretation. In addition, the court is not required to consider specifically defined factors in making waiver determinations. Thus, little guidance is given to the court on the basis for making waiver decisions. Despite the shortcomings of the existing waiver mechanism, fourteen of fifteen waivers attempted from 1979 through 1982 were granted. Waived juveniles were charged with offenses ranging from Murder (3), to Sexual Assault (3), to Burglary (5) to Criminal Mischief (1).

AUTOMATIC WAIVER

House Bill 530 would institute an automatic or legislative waiver of certain juveniles based on age and the offense alleged. Under the provisions of the Bill, the only method for dealing with juveniles 16 and 17 years of age who are accused of unclassified or class A felonies would be through criminal proceedings under the adult jurisdiction of the Superior Court. Any such youth suspected by police of having committed an unclassified or class A felony would be subject to arrest, prosecution, and pretrial confinement in precisely the same way as would an adult.

Automatic or legislative waiver mechanisms can be effective in identifying youths who cannot be adequately dealt with in the juvenile justice system. However, because such mechanisms as those proposed in HB 530 are essentially unreviewable, irreversible, and carry consequences of extreme significance to both the individual youth and society, they should be very narrowly applied.

The Department of Health and Social Services opposes the inclusion of class A felony offenses within the category requiring automatic waiver. Inclusion of these offenses makes the category of automatically waivable offenses too broad and would require the waiver of a number of juveniles who could be effectively controlled and rehabilitated within the juvenile justice system. Narrowing the category to include only unclassified felonies is preferable for several reasons: 1) it would be more economical - the fiscal impact of the bill would be reduced; 2) though serious in nature, class A felony offenses also include offenses which differ significantly from unclassified offenses in the degree of violence or harm done to victims; and 3) the strengthened judicial waiver mechanism proposed in HB 530 would allow for adequate protection of the public by selectively identifying those juveniles accused of class A felonies who should be dealt with in the adult criminal system. The strengthened judicial waiver would allow for differentiation among juveniles based on the actual seriousness of the offense and prior behavior of the youth, rather than relying solely on the classification of offenses and age of the juvenile. Those juveniles who do not present a danger to the public could be retained within the juvenile justice system.

JUDICIAL WAIVER

Change in Standard

In addition to instituting an automatic waiver, HB 530 would significantly alter the existing judicial waiver mechanism. The existing judicial waiver mechanism would be strengthened by a change in the standard necessary for making waiver determinations under the provisions of HB 530. The court would be required to find only that there is no substantial likelihood that a juvenile could be successfully rehabilitated under children's court proceedings. The standard of proof required would be a preponderance of the evidence.

Factors Establishing Likelihood of Rehabilitation

The Bill also establishes nine (9) specific factors which must be considered by the court in determining the probability of a juvenile's success or rehabilitation under juvenile court jurisdiction. Although these factors relate in large part to the specific offense alleged and the circumstances surrounding the offense, they also include factors relating to the individual juvenile including age, maturity, the outcome of previous attempts to rehabilitate the juvenile, the adequacy of time

available to the children's court to allow for rehabilitation and the resources for treatment of a juvenile under juvenile court jurisdiction.

The Department recommends that other factors which have a significant bearing on the likelihood of a juvenile's rehabilitation be considered as well. These are:

1) the physical and mental health of the juvenile;
2) his or her intellectual capacity;
3) the alleged role of the juvenile in the offense; and
4) the attitudes exhibited and expressed by the juvenile toward authorities, society, the victim or victims if any, and him or herself.

Failure to require consideration of such factors as these would allow decisions about the likelihood of rehabilitation of juveniles to be made without consideration of some of the most important factors contributing to the success or failure of rehabilitative efforts.

SENTENCING OF WAIVED JUVENILES

Referral For Juvenile Disposition

Under the provisions of HB 530, 16 and 17 year old juveniles automatically waived to adult jurisdiction would be sentenced within the adult system unless they were convicted of a lesser included offense that was not an automatically waivable offense. In such cases the juveniles would be referred to juvenile court jurisdiction for disposition. This provision is intended to guard against error and preclude discriminatory or punitive overcharging by prosecutors in order to make certain juveniles subject to the more stringent sanctions of the adult system.

An alternative and preferable approach to providing these safeguards would be to allow a discretionary "transfer back" to juvenile court jurisdiction based on a hearing applying the same standard of "likelihood of successful rehabilitation" used in making judicial waiver decisions. In this way safeguards would be maintained while older juveniles convicted of serious, though not automatically waivable offenses would be held to the same standard for waiver to adult jurisdiction that would have been applicable had an automatically waivable offense been charged. Unless the "transfer back" provision is discretionary, older juveniles accused of automatically waivable offenses would be immune from waiver to adult jurisdiction if convicted of lesser though still serious offenses. This would give these persons special protections not afforded to other youth.

Exemption from Mandatory Sentences

Although juveniles waived to adult criminal jurisdiction would be sentenced as adult offenders and confined within the adult correctional system, under the provisions of HB 530 they would not be subject to mandatory minimum or presumptive sentences for a first felony conviction. This allows the Bill not only to achieve its purpose in holding older juvenile offenders more accountable for their offenses but also affords adequate discretion to the court in fashioning appropriate sentences for these juveniles. Judicial discretion is needed to allow for the significant differences in levels of maturity and sophistication among waived juveniles and between the juveniles and adult offenders.

Since exclusion from juvenile jurisdiction under the automatic waiver provision is based solely on the offense committed and the age of the juvenile, judicial discretion in sentencing would be appropriate. Studies show that all serious offenses are not the culmination of lengthy delinquent careers and that disparity in the sophistication and history of delinquent behavior among waived juveniles must be expected. Sentencing discretion such as is provided under the provisions of HB 530 is necessary to justly address this disparity. It would also allow for consideration of the differences in the specifics and seriousness of the offenses committed by juveniles.

CONFINEMENT OF WAIVED JUVENILES

Under this Bill, all juveniles subject to criminal jurisdiction under either the automatic or judicial waiver provisions would, if confined to custody, be confined in adult correctional facilities. These provisions are straightforward but unfortunately do not provide sufficient procedural protections. Since automatically waived juveniles would be housed in adult facilities from the time of arrest, the decision about where these juveniles should be housed would, then, essentially be made at the discretion of the arresting officer based on the crime the officer chose to allege. Youths would be subject to the unreviewed judgment of police officers and could be housed in adult facilities based on police officer error, punitive overcharging, or discrimination in alleging a more serious charge than can be proven from the facts. It is likely that errors would occur, juveniles arrested and booked into adult facilities and that upon review by the District Attorney or Court it may be found that the offense alleged by the police officer at the time of booking was not supported by the facts. Thus, a juvenile would have been unjustly and unjustifiably placed in an adult facility.

These problems could be avoided and a more equitable and certain system provided by requiring that juveniles be housed in juvenile facilities until procedural reviews had occurred. Such reviews would include a grand jury or preliminary hearing before the court from which an indictment or finding of probable cause had been found to believe that the juvenile had committed an automatically waivable offense or a

judicial waiver. This would avoid not only inequities arising from error, but also the possibility that juveniles were charged with waivable offenses simply to allow their incarceration in an adult facility. It would also avoid a variety of difficulties in the already overburdened adult correctional system.

EFFECTS OF THE BILL

The effect of HB 530 would be to increase the number of juveniles subject to prosecution under the adult criminal statutes and increase the liability of these juveniles to sanctions more severe both in nature and duration than those to which they would have been liable under the juvenile code. With the suggested narrowing of the automatic waiver to include only those juveniles accused of unclassified felonies, the Bill would appropriately focus the liability of adult prosecution on older violent juvenile offenders and other juveniles who had committed particularly heinous crimes or who had records of repetitive delinquent behavior.

DEPARTMENT POSITION

The Department strongly supports the concepts embodied in HB 530. Though few in number, older juveniles accused of violent crimes require sanctions qualitatively and quantitatively different from those available under the jurisdiction of the juvenile court.

With the suggested changes - limitation of automatic waiver to unclassified felonies, consideration of additional factors in determining likelihood of successful rehabilitation within the juvenile justice system, confinement of juveniles in juvenile facilities until judicial procedural reviews had occurred, and discretionary rather than mandatory "transfer back" - HB 530 would adequately address the problem of dealing with older, violent or repetitive juvenile offenders by holding them accountable in the same manner as adults. This would focus directly on the highly publicized problem which is the cause of much public misperception of juvenile crime and juvenile offenders. It would also allow the juvenile justice system to focus on those youths for whom the likelihood of rehabilitation is much greater.

The changes suggested are merely refinements which provide necessary procedural protections to guard against abuses or human error and to appropriately narrow the focus and reduce the fiscal and social impacts.

RECOMMENDED BY: Michael L. Price

Michael L. Price, Director
Division of Family and
Youth Services

DATE: Feb. 8, 1984

APPROVED BY: Robert London Smith

Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

DATE: 2/8/84

Alaska Youth Advocates, Incorporated

SHEILA A. GADDIS
EXECUTIVE DIRECTOR

600 Cordova, Suite 3
Anchorage, Alaska 99501
907-274-6541

February 1, 1984

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 530
Waiver of Juvenile Court Jurisdiction

Dear Representative Bussell,

Alaska Youth and Parent Foundation (commonly known as Alaska Youth Advocates, Inc.) is opposed to the proposed amendments to Alaska Statutes 12.05.020, 12.55, 12.80, and 47.10.060 waiving juvenile court jurisdiction. We propose a case-by-case determination regardless of the minor's age as one viable alternative.

There is not time or space to cite the long, costly, involved and ultimately useless battle fought over juvenile waiver legislation in other jurisdictions.

Legislative enactments similar to proposed House Bill No. 530:

1) have forced taxpayers to spend an ever increasing amount of their tax dollars on maximum security prisons,
2) have allowed minors to be warehoused for many years past their majority,
3) have not solved the problem of juvenile street crimes and,
4) have not solved the problem of increased juvenile participation in serious felonies.

Waiver bills pave the way for minors of any age to be confined as adults without benefit of treatment, rehabilitation, or consideration of their special, (yes special) status and in violation of their procedural due process rights.

In formulating removal procedures as part of the overall plan for treatment of juvenile offenders/delinquents, it must be presumed that the legislature had studied and considered potential confusion inherent in this bifurcated system as well as any threats to an accused juvenile's procedural due process rights created thereby. Thus it can only be concluded that the legislative intent was to incorporate certain well-defined safeguards into the removal process so that it might jealously protect those constitutional rights readily recognized, and nothing less than strict adherence to these statutory procedures would violate the legislature's purpose and intent. These constitutional safeguards are conspiciously missing.

Sec 47.10.060 (2)(b) fails to mention other factors the juvenile judge should properly consider such as:

1) the availability of an appropriate environment,
2) the possibility of rehabilitation,
3) the family relationship and control,
4) the history of abuse (sexual and physical),
5) the persistency and seriousness of past adjudicated criminal offenses,
6) the safety of the community and,
7) the best interests of the child.

The public, and certainly the child, will be placed in greater jeopardy by warehousing these youth for a large portion of thir adult lives. We need only look to New York, Illinois, and California, to name a few, to realize violent juvenile crime is on the increase in spite of similar legislative waiver provisions. We will be placing troubled youth in a job training environment, learning to become vicious, dangerous adult members of society.

Sincerely,

Louis C. Jacobs
Executive Director

FAMILY CONNECTION

A counseling agency for youth and their families

204 E. 5th Ave., Suite 215, Anchorage, Alaska 99501 (907) 279-0551

JAN 19 1983

January 17, 1983

Representative Joe L. Hayes
Pouch V
Juneau, Alaska 99811

Dear Mr. Hayes:

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the State's juvenile justice system.

Family Connection has provided Family Therapy services to a variety of youth institutionalized at McLaughlin Youth Center for the past three years. We are contracted to join the treatment team for a particular youth by either McLaughlin staff or Juvenile Probation staff. We have worked primarily with youth and their families prior to release from McLaughlin. Our goal has been to facilitate a smooth transition for the youth back into the family and community and to reduce the rate of recidivism. We specifically look at how the family functions and the interactional process that produces delinquent behavior.

We have been impressed with the expertise and professionalism of both McLaughlin staff and Juvenile Probation staff. They work with dedication to treat, rehabilitate and return youth to the community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughlin Youth Center for rehabilitation, rather than to the Adult Justice System. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment. Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

First, the waiver is not used enough. Clearly, there have been youth who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treament the youth is still unchanged and dangerous, according to State law the youth must still be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the Juvenile Justice System. How can we ethically release a youth into the community knowing the youth is a danger to society.

Another problem involves the length of institutionalization. A youth cannot be held longer than two years or until their 19th birthday. We have observed a youth who committed a violent murder receive a sentence of less than one year. In this case the youth simply refused to participate in treatment. Therefore, he is not adequately treated or punished. Again, treatment staff are put in a bind by the court as they are given an impossible task to perform with no recourse to protect either the treatment process or the community.

The State of Alaska has done well in providing rehabilitation for youth, while at the same time protecting the safety of our people. However, there are serious handicaps in Alaska's Juvenile Law that we feel need immediate attention, particularly with the present climate of overreaction. We would be greatly discouraged to see the State lose the flexibility in our laws to rehabilitate and punish by giving way to oversimplified, reactionary solutions.

We hope this letter will initiate a process of change. We are willing to devote our time to this issue and would like your feedback as to where we might direct our energies. Also, we would like to know what the role of your office will take in initiating change.

Sincerely,

Kathy Apple

Kathy Apple, RN
Family Therapist

Sincerely,

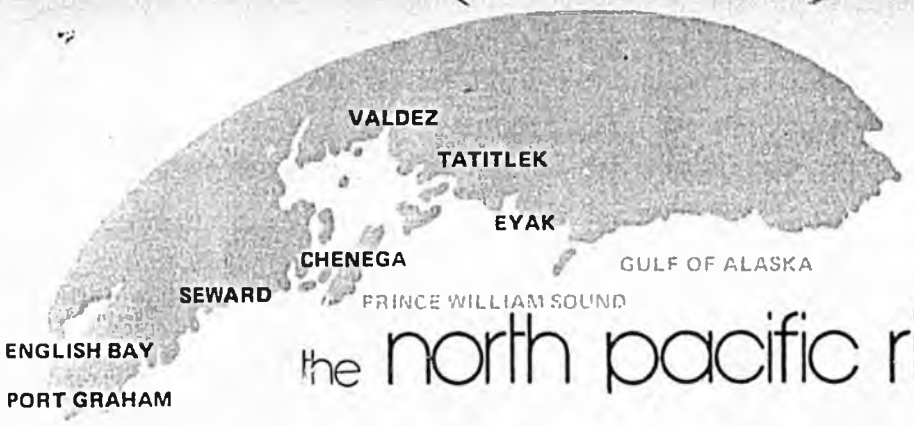
Rosemary Unterseher

Rosemary Unterseher, ACSW
Clinical Supervisor

KA/RU/MT
cc: all Judicial Members

HB109
HB103

Judiciary Referral



the north pacific rim

April 4, 1983

Representative Charlie Bussell
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

I am writing to inform you of our opposition to certain parts of the CSHB 103 (Jud.), "An Act establishing a Department of Corrections...". We are also opposed to CSHB 109 which you will be hearing later this month. It proposes to amend the children's proceedings waiver provisions, and relates to the criminal prosecution of minors. Please consider the concerns of The North Pacific Rim (TNPR) as you deliberate and decide on these bills.

While TNPR agrees that establishing a separate Department of Corrections is a positive move, we object to the inclusion of juveniles in this bill. Juveniles who commit crimes can be better served by remaining under the jurisdiction of the Department of Health & Social Services. It is through a rehabilatative approach, such as that offered by DHSS, that juveniles can gain the needed insight, resources, and skills to lead more socially acceptable lives.

With the great demand for resources within each Department, the needs of juvenile offenders risk becoming secondary to the needs of adults. This is especially true when one considers 1) the larger adult caseload, 2) the new focus on developing a correctional industries program, and 3) the high cost of rehabilatative treatment needed by both adults and juveniles.

903 W. Northern Lights Blvd., Suite 203 / Anchorage / Alaska 99503 / Ph. (907) 276-2121

The Non-Profit Corporation Serving The People Of The Chugach Native Region

TNPR is also concerned that the inclusion of juvenile offenders under the Department of Corrections would adversely affect the quality of services they receive. In the villages and rural areas, the same Probation Officer would most likely have both adults and minors on their caseloads. The attitude that one develops after working with adult offenders would not generally serve the best interest of the minor. In working with minors, even those determined "criminal", it is important that the Probation Officer retain some faith in the human spirit and in the person's ability to change.

Finally, we are fearful that the combination of youth with adult corrections will result in less diverson for youth, as well as a decreased emphasis on youth facilities. Of the 6,128 juvenile arrests in 1981, only 648 were adjudicated delinquents, and only 95 were sentenced to a closed youth facility such as McLaughlin. This means that over 6,000 youth were diverted from closed institutions, thereby keeping costs down and preventing the less dangerous youth from entering the criminal system.

Of course, there are those minors who are "unamenable to treatment", or who commit certain types of felonies such as murder and rape. These are the youth who are dealt with in CSHB 109 (Jud.). Section 9 of CSHB 109 outlines quite adequately the circumstances under which a waiver of children's court jurisdiction should be used. We think that Section 1 of CSHB 109 (Jud.) should be deleted entirely from the bill. A decision to try a 16 year old as an adult should be made on a case by case basis. The waiver as it stands in the current law can be used in this way; and yet its use in past years has been minimal. I would like to see an investigation of the reasons for the lack of use of the waiver before it is established as a general policy for all 16 and 17 year old suspected felons.

In addition, the presumptive sentences outlined in Sections 3 and 4 are too harsh for minors. Without treatment, the youth sentenced to such long terms will have little hope of leading normal, well-adjusted lives upon release. Two to three years in McLaughlin would serve the offender, society, and the State much better. If the youth is not amendable to treatment, it is unnecessary to pass this law if the goal is to have an effective system for treating criminal youth. The waiver in the current law is quite adequate.

In sum, The North Pacific Rim strongly opposes passage of CSHB 109 (Jud.), and we oppose inclusion of juveniles in the proposed new Department of Corrections. Thank you for your time and consideration of our concerns.

Sincerely,

The North Pacific Rim
Richard A. Rolland
Director
Health & Social Services

FOR MORE INFORMATION CONTACT:
Connie Kastelnik 212-887-4060

FOR IMMEDIATE RELEASE
FEBRUARY 13, 1983
PLEASE CREDIT "ABC NEWS"

One out of five Americans has been a crime victim in the past year, according to a new ABC News poll, and 13 percent of the adult population - nearly 22 million people - have been victims of violent crime.

The results of a special ABC News crime poll on the perceptions and realities of crime will be broadcast nationally during two weeks of special ABC News programming on "Crime in America," beginning Sunday, February 13.

The poll also revealed that three out of 10 Americans living in cities were victims of crime last year, along with nearly one quarter of all suburbanites and about one in seven Americans living in small towns and rural areas.

The ABC News poll also found that:

- Blacks are two-and-one-half times more likely than whites to be confronted by violent criminals. Twenty-six percent of all Blacks say they have been violent crime victims, compared to 10 percent of all whites.

- One in 12 Americans has had a close relative murdered, and one in eight knew someone in their neighborhood who was slain. Blacks are more than three times as likely as whites to have had a relative murdered. Twenty percent of blacks have had a relative slain, compared to six percent of whites.

- Twenty-six percent of those surveyed said they worried at least a "good deal of the time" about being murdered. Forty-three percent of victims of crime worry about being murdered, compared to 23 percent of people who never have been victims of violent crime.

- Nearly half of the women polled - 46 percent - said they worry about rape either a good deal or a great amount. Three percent report that they have been raped.

MORE MORE MORE

- Fifty-eight percent of those polled said unemployment, poverty, and related problems are the factors more responsible for crime in the U.S. Eighteen percent blamed drugs and 15 percent blamed breakdowns in family, society, morals, etc.

- A majority of 56 percent feels most judges have more sympathy for criminals than for their victims. Nearly two-thirds think judges have been giving shorter sentences in the last few years, and 88 percent said that is not the way they want it.

- Seventy-six percent want the death penalty for murderers. Seventy percent approve of building more prisons so that longer sentences can be given to criminals and 88 percent of these people are willing to have their taxes raised to pay for the new prisons.

- Seventy percent felt prisons mainly should be places that "teach criminals how to be useful, law-abiding citizens when they get out" rather than places to "punish criminals."

- Most people - 65 percent - disagree that armed citizen patrols are the only way to solve the crime problem. Forty-seven percent believe the best protection against crime is a strong police department.

- More than two-thirds of the gun owners polled said they would use their firearms if a burglar broke into their home. Nearly half of the American households - 47 percent - have firearms.

- Eighty percent said there would be less crime if more parents strictly disciplined their children. Exactly half of those polled said juveniles between the ages of 14 and 18 should be punished as adults if they commit a crime, and 46 percent said they should not be punished as adults.

Some 2,500 people were interviewed for the ABC News poll between December 7 and 18. The margin of error is plus or minus three percent.

(EDITOR'S NOTE: ABC News' two-week programming effort on "Crime in America" will focus on the myths and realities of crime, law enforcement, criminal justice and the prison system in the U.S. It will begin Sunday, February 13 with a special edition of "This Week with David Brinkley," with guests William Webster, FBI Director and William French Smith, Attorney General. The two weeks of programming (February 13 to February 25) will continue on "World News This Morning," "Good Morning America," World News Tonight," "Nightline," "20/20," "The Last Word" and "Viewpoint."

# #

TIMES
11.4.83

Kids may be tried as adults

by Jeff Berliner
Times Writer

District Attorney Victor Krumm on Thursday unveiled an administration proposal to try 16- and 17-year-old accused murderers in adult court.

Other juveniles accused of violent felonies also would have their cases moved to adult court under the proposal.

Krumm said it is "intolerable that a juvenile who commits a murder is held for two or three years" in McLaughlin Youth Center in Anchorage.

He unveiled the new juvenile waiver bill at the opening of a two-day conference on the connection between child abuse and juvenile delinquency, co-sponsored by the state Division of Family and Youth Services.

Division research shows that up to 20 youths every year are accused of committing crimes serious enough to bump them up to adult court, if prosecutors petition the court to accept them. In the past several years only a fraction of these cases actually ended up in state superior court.

Krumm, the Anchorage district attorney, cited the "soaring" rate of violent crimes committed by juveniles.

Although Gov. Bill Sheffield vetoed a juvenile waiver bill passed last legislative session, this bill satisfies his concerns and has the backing of the Department of Law, said assistant attorney general Gayle Horetski, who is putting the finishing touches on the proposal.

Charges of murder, rape or kidnapping would automatically put 16-and 17-year-old youths in adult court, Horetski said.

Younger defendants and teenagers charged with other crimes also could have their cases moved to adult court after a hearing.

But, Horetski said, this bill "makes it easier" for prosecutors to prove that those under 16 or those charged with felonies other than murder, rape and kidnapping should be taken out of the juvenile justice system.

Under current law, a juvenile may be placed in adult court at a judge's discretion following a hearing.

Delinquency expert attacks proposal

Continued from page A-1

This proposal, Horetski said, for the first time establishes nine standards for taking the teens out of juvenile court. The standards include seriousness of the crime, prior offenses, previous rehabilitation efforts, the amount of time required to rehabilitate the youth, and protection of the public.

The proposal Krumm unveiled came under immediate attack by the conference's keynote speaker, New York attorney and delinquency expert Andrew Vachss.

"How many 16-year-old kidnappers did you have in Alaska last year?" he asked, noting that such a law has "political utility" but will not bring needed change to the guilty youth or society.

"I don't think we had any," Horetski said, "but we sure had a lot of (under-age) murderers."

Vachss, who ran a prison for teens in Massachusetts, said in an interview later he would neither put the violent young offenders in a "soft" setting for youths nor put them in an adult prison.

He said he opposes mixing the violent teens with runaways in McLaughlin and said placing a 16-year old murderer in a state jail would likely transform him into an involuntary homosexual and a better criminal.

The answer, Vachss said, is a prison just for these violent youngsters, even if it is part of McLaughlin.

Teen-age murderers are released from McLaughlin when they become adults and most spend no more than two or three years in state custody, Krumm said.

Most violent teen-age offenders are not brought to the district attorney's attention "unless the crime is a triple murder in front of a lot of people," Horetski said. As a result, they end up in McLaughlin for a couple of years with little or no fanfare.

Serious cases that do come to prosecutors' attention often are ignored without any attempt to move them into adult court, Horetski said, because it is so difficult to do under current law.

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Alaska State Legislature

SENATOR
FRITZ PETTYJOHN
SRA BOX 2385 M
ANCHORAGE, ALASKA 99510
907 345-5174

Senate

LEGISLATIVE ADDRESS
POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907/465-3473

2-10-83
eB

TO: Representative Barnes
Representative Bussell
Representative Hayes
Representative Liska
Representative Pestinger

FROM: Senator Fritz Pettyjohn

DATE: February 8, 1983

SUBJECT: Juvenile Justice

Attached is a copy of a Letter to the Editor of the Anchorage Daily News from staff members of Family Connection, Inc. in regards to juvenile justice.

Point 1 is addressed by HB 109. Points 2 and 3 could also be looked into?

Attachment

Anchorage Daily News 2/8/83

LETTERS FROM THE PEOPLE

Suggestions for juvenile justice

As staff members of Family Connection, Inc., a non-profit family counseling agency, we would like to share and articulate some serious, but correctable difficulties we have observed within the state's juvenile justice system.

Family Connection has provided family therapy servic- to a variety of youth institutionalized at McLaughlin Youth Center for the past three years. We are contracted to join the treatment team for a particular youth by either McLaughlin staff or juvenile probation staff. We have worked primarily with youth and their families prior to release from McLaughlin. Our goal has been to facilitate a smooth transition for the youth back into the family and community and to reduce the rate of recidivism. We specifically look at how the family functions and the interactional process that produces delinquent behavior.

We have been impressed with the expertise and professionalism of both McLaughlin staff and juvenile probation staff. They work with dedication to treat, rehabilitate and return youth to their community. However, present legalities place great limitations on the expertise of these professionals.

We support the Waiver of Jurisdiction Statute, Section 47.10.060 of the Alaska Statutes. The waiver allows for a procedure that determines if a minor is amenable to treatment, and if so, the minor is sent to McLaughline Youth Center for rehabilitation, rather than to the adult justic system. We believe that if there are indications that a youth is amenable to treatment, society is better served by providing treatment services along with punishment.

Unfortunately, our experience has shown us that the waiver statute has been abused in two ways.

First, the waiver is not used enough. Clearly, there have been youths who should have been waived to adult status for committing atrocious, violent crimes. This sentiment has been expressed by many in the past year. Why isn't the waiver being used effectively? How could this process be changed to facilitate more frequent use?

Secondly, the present statute contains serious limitations that has made the members of the juvenile justice system appear ineffective. As an example, if a youth is amenable to treatment but after an intensive course of treatment the youth is still unchanged and dangerous, according to state law the youth still must be released. There is no other recourse. This has been a difficult moral and ethical dilemma for professionals within the juvenile justice system. How can we ethically release a youth into the community knowing the youth is a danger to society?

Another problem involves the length of institutionalization. A youth cannot be held longer than two years or until their 19th birthday. We have observed a youth who committed a violent murder receive a sentence of less than one year. In this case the youth simply refused to participate in treatment. Therefore, he is not adequately treated or punished. Again, treatment staff are put in a bind by the court as they are given an impossible task to perform, with no recourse to protect either the treatment process or the community.

The State of Alaska has done well in providing rehabilitation for youth, while at the same time protecting the safety of our people. However, there are serious handicaps in Alaska's juvenile law that we feel need immediate attention, particularly with the present climate of overreaction. We would be greatly discouraged to see the state lose the flexibility in our laws to rehabilitate and punish by giving way to oversimplified, reactionary solutions.

— Kathy Apple, RN
Family Therapist
— Rosemary Unterseher, ACSW
Clinical Supervisor
Family Connection

HB

546

(e) In a prosecution under this section, it is an affirmative defense that the person

1) had a right to obstruct or hinder the hunting, fishing or trapping, or

2) reasonably believed that the person had the right to obstruct or hinder the hunting, fishing or trapping.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 13, 1984

SUBJECT: Harassment of hunters, fishers and trappers (CSHB 546 (Resources)(draft)

TO: Representative John Ringstad
Chairman, House Resources Committee

FROM: Edward H. Hein
Legislative Counsel

Enclosed is a draft of Resource Committee Subsitute for HB 546 requested by Dave Stancliff.

I have rewritten sec. 16.05.925(a) and (b) in an effort to address the problems raised in the second paragraph of Governor Sheffield's veto letter relating to HB 163 last year.

Also, I have attached copies of the laws relating to harassment of hunters, fishers and trappers in seven other states. Note that every one of the laws uses the term "interfere" without defining it. Despite this, it is my opinion that the words "obstruct" and "hinder" are slightly more precise and therefore preferable.

Feel free to contact me at your convenience if I may be of further assistance.

EHH:ojb
J4/072
Enclosures

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 546

Support

"HB 546 - An Act relating to harassment of persons lawfully engaged in hunting, fish ng, or trapping."

The Department of Public Safety supports passage of HB 546.

This bill adequately addresses conduct that is illegally aimed at interfering with lawful hunting, fishing or trapping.

British Columbia has had severe problems between legal hunters and anti-hunting groups that have led to armed confrontations. The potential for that to occur in Alaska is evident and I think enacting a law to address this problem would be a good start toward prevention.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 546
Title: Act Relating to Harassment of Persons Lawfully Engaged...
Sponsor: House Resources
Requestor: House Resources
Date of Request: 2-23-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Fish & Wildlife Protection
BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE				-		

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Paul Conger — Phone: 465-4333
Division: Administrative Services — Date: 2-22-84

Approved by Commissioner: [signature] — Date: 2/24/84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

LOUISIANA

§ 648. Definitions

As used in this Subpart, the following definitions shall apply:

(1) "Wild animal" means any wild creature, including fish, wild birds, and wild quadrupeds, the taking of which is authorized by the provisions of this Title.

(2) "Process of taking" means any act directed at the lawful taking of a wild animal, including the acts of travel, camping, or other activity occurring in preparation for the taking which occurs on state-managed lands or waters governed by the provisions of R.S. 56:781–R.S. 56:787 or which occurs on private lands or waters with the permission of the owner or his agent.

Added by Acts 1982, No. 376, § 1.

§ 648.1. Harassment and disturbance prohibited

No person shall engage in any of the following activities on lands or waters managed by the state pursuant to R.S. 56:781–R.S. 56:787, or upon private lands or waters where a hunter, trapper, or fisherman has been given permission by the owner or his agent to take wild animals:

(1) Interfere with the lawful taking of a wild animal by a hunter, trapper, or fisherman or interfere with the process of taking, with intent to prevent the taking.

(2) Disturb a wild animal, or engage in any activity or place any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal, with intent to prevent or hinder its lawful taking.

(3) Disturb any hunter, trapper, or fisherman who is engaged in the lawful taking of a wild animal or who is engaged in the process of taking, with intent to dissuade or otherwise prevent the taking, or to prevent such person's enjoyment of the outdoors.

(4) Enter or remain upon state-managed lands or waters or upon private lands or waters with intent to violate the provisions of this Section.

Added by Acts 1982, No. 376, § 1.

On authority of R.S. 24:253, subsection designations A to D as found in Acts 1982, No. 376 were changed to paragraph redesignations (1) to (4).

Library References
Game ⇨7.
C.J.S. Game § 10 et seq.

§ 648.2. Remedies, damages, and penalties

A. The secretary may seek injunctive relief to restrain and prevent violations of R.S. 56:648.1, upon request by the person affected or who reasonably may have been affected by such conduct.

B. Any person adversely affected by a violation of R.S. 56:648.1 shall be entitled to recover actual damages, including expenditures of the affected person for license and permit fees, travel, guides, special equipment and supplies, to the extent that such expenditures were rendered futile by the actions of the person violating the provisions of this Section.

C. Violation of the provisions of R.S. 56:648.1 constitutes a class two violation.

Added by Acts 1982, No. 376, § 1.

§ 648.3. Failure to obey order; violation

A. It shall be unlawful for any person to continue any conduct in violation of R.S. 56:648.1 when ordered to desist by an enforcement officer who has observed such conduct or who has reasonable grounds to believe that the person has engaged in such conduct on that day or plans or intends to engage in such conduct that day on a specific property.

B. Violation of the provisions of R.S. 56:648.3(A) shall constitute a Class three violation.

Added by Acts 1982, No. 376, § 1.

ARIZONA

§ 17-316. Interference with rights of hunters; violation; classification

A. The commission may, by rule, establish designated hunting areas on public lands if it finds that a significant interference or disruption of a hunt is likely to occur on those lands.

B. It is a class 2 misdemeanor for a person while in a designated hunting area to intentionally interfere with the lawful taking of wildlife by another or to intentionally harass, drive or disturb any game animal for the purpose of disrupting a lawful hunt.

C. It is a class 3 misdemeanor for a person to enter or remain in a designated hunting area on any state lands including state trust lands with the intent to interfere with the lawful taking of wildlife.

D. The commission or any person properly licensed to take wildlife who is directly affected by a violation of this section may bring an action to restrain conduct declared unlawful in this section and to recover damages.

E. A peace officer who reasonably believes that a person has violated this section may order the person to desist or to leave the area or arrest such person upon refusal to desist or leave.

F. The conduct declared unlawful in this section does not include any incidental interference arising from lawful activity by public land users, including ranchers, miners or recreationists.

Added by Laws 1981, Ch. 239, § 1.

MICHIGAN

312.10. Unlawful hunting

Sec. 10. (1) Unless otherwise specified, a person shall not do any of the following:

(s) Intentionally interfere in any manner with the lawful hunting, pursuing, or taking of a wild bird or a wild animal by another person.

HB 407

January 24, 1983

Representative Dick Schultz
State Capitol Building
Juneau, Alaska 99801

Dear Dick:

On January 5, 1983 the Tok Cutoff-Nabesna Road Advisory Committee met in a general meeting to discuss hunting regulations. There were several things discussed with two of them pertaining to you.

#1 We would like to see legislation written and passed that would control or rather stop harrassment of hunters, trappers, and fishermen. We would be able to carry on our life-style without harrassment from the "greenies".

#2 We would like to see legislation written and passed that would eliminate the $25 trophy tag for resident grizzly/brown bear hunters. We believe the State is rich enough without charging its residents a $25 fee.

Our committee will be meeting within a few weeks and correspondence from you would be appreciated. I would like to able to tell the folks something about these two items.

Good luck and if there is anything I or this committee can do to help, please let me know.

Sincerely,

Bill Ellis, Chairman
Tok Cutoff-Nabesna Rd. Advisory Committee
P. O. Box 350
Tok, Alaska 99780
907/883-3426

friends of animals, inc. *11 West 60th Street, New York, N.Y. 10023 • (212) 247-8120*

TIPS FOR HUNT SABOTEURS

Fourteen million Americans will be shouldering their rifles and shotguns within the next few months, marching off to their annual offensive against our wildlife. These legions, which are more numerous, and generally better equipped than the entire Nazi armies of the Second World War, will take a bloody toll before the season ends. They will kill deer and rabbits, ducks, dogs, cats, a few children, and even a few hunters.

It is time for friends of animals to start organizing a defense that will serve to at least temper the wanton destruction. There are many ways that a friend of animals can become a forest partisan on behalf of our wildlife, and we offer here a few suggestions that range in effort, depending upon a person's abilities and commitment:

1. Deny the hunter the land to hunt on. Much hunting is done on private lands. To protect these animals, encourage your neighbors, especially those who own large tracts such as farms and ranches, to post their land and forbid hunting. Try to convince them that hunters invariably cause more damage to agriculture than the wild animals do.

2. Many areas have hunting restricted to a specified number of hunters who have special permits. Commonly, these permits allow the hunter to use a particular blind or hunt less common species, such as bear. Apply for these permits yourself. The permits are usually awarded by a simple lottery selection. If you're lucky, you'll win a permit and deny a hunter his kill.

3. Get into the woods yourself the day before the hunting season. If you're familiar with the most commonly hunted areas, try to drive wildlife away. A stroll through the forest with a nice loud radio and a dog on a leash, will serve to make wildlife more wary of humans. This is particularly important for younger animals that have not yet had the traumatizing experience of being hunted.

4. Certain substances, such as rotten eggs, when rubbed into hunting blinds, make these enclosures even more uncomfortable for the hunters. Uncomfortable hunters are irritable, and are also poorer shots. Plastering the floor of a hunting blind with cow dung is another good idea.

5. If you're familiar with wildlife habits in your neighborhood, try to encourage them to break these habits shortly before hunting season. For instance, many hunters like to stalk along deer tracks which are pretty well defined to a good woodsman. Placing deer repellent (available at many feed and hardware stores) along these tracks will encourage the deer to move away and leave the hunter with a route devoid of the species. If you want to save money, just scoop up a bag of human hair from a local barber shop and hang handfuls of it in little bags about two or three feet from the ground, along the deer track. The deer will soon get the message that there are humans in the area and will drift away.

6. If there is much hunting with dogs in your area, try to get hold of a female dog in heat and lead her, on a leash, through an area that is heavily hunted. Male dogs in the hunter's pack will "get wind" of the female and lose their enthusiasm for chasing rabbits or deer.

7. Hunters frequently like to ambush their prey by setting out food and then hiding in blinds. Commonly, bushels of apples are set out a few days before hunting season to encourage deer to browse in this area. When hunting season comes, the hunter merely comes to the site, climbs into a blind, and waits for the deer to come to him. To disrupt this, there are two alternatives. First, remove all apple piles immediately on finding them during the days preceding hunting season. Second, if there are just too many apples to carry away, give them a good spraying with deer repellent and spread barber shop hair clippings all over the area.

8. Encourage your municipality to pass an ordinance that bans, in the interest of public safety, the use of all weapons within its limits. Rifles, shotguns, bows and arrows have been known to kill people too.

9. If you have a portable tape recorder, get a cassette recording of wolf howls. Play this in the woods a few times in the days before hunting season. It will make wildlife wary.

10. Try to develop strong anti-hunting sentiment in your community by writing letters to the editor of your local newspapers, meeting with neighbors, getting on talk shows. Creating public awareness of the problem is a vital point. Let your neighbors know that the law recognizes wildlife as belonging to all people, and they are not the exclusive property of hunters until after they have been murdered.

11. Work on a project to get your State to pass a law that would require all hunters to carry written permission from the landowners of the places they hunt. This further curbs the hunter's battlegrounds because many farmers are reluctant to sign permits that would allow people to hunt on their lands. Also, much land is owned by summer residents, corporations, etc. that are nearly impossible to get hold of.

12. Approach your Congressperson and Senators with demands that hunting and trapping be prohibited on national wildlife refuges and all public land.

13. If you have any old, stuffed animal toys, set these around commonly hunted areas. Hunters often don't take the time to check if an animal is real. Better to have a hole in a cotton rabbit than a real one - and the noise of the gun going off might serve to scare away other wildlife.

14. We will be trying to put together a better activist's guide for next hunting season, so if you have any ideas or procedures you've found effective, please let us know. Mail them in to Bill Clark, Friends of Animals, 11 West 60th Street, New York, NY 10023.

Use your imagination. There are plenty of ways to frustrate the hunt, depending on your own abilities and enthusiasm. The main point here is to do something. By your work, you will be helping animals in two ways. First, you will be protecting them from the hunters and second, you will be letting the hunters know that friends of animals are in the woods. This serves to anger them, and angry hunters do not stalk so quietly, their aim is not so precise. Emotions can play heavily in the success of a hunt, and the most effective killers are cool and methodical. Disrupt!

ANTI-HUNTERS VS. HUNTERS: WAR IN THE WOODS

Greenpeace fanatics are harassing hunters in the field. It's a vicious and very dangerous movement, and you could be the next victim. Here's what to expect plus some very good advice on what not *to do about it.*

By Richard Starnes, Editor-at-Large

The lush alpine valleys and rugged highlands of northeastern British Columbia have witnessed the opening skirmishes in what threatens to become all-out war between big-game hunters and anti-hunting zealots who have sought to stop them by harassment, abuse, intimidation and—it is charged—physical violence.

How much violence has occurred to date is in dispute, but there have been several angry confrontations involving hunters and anti-hunting activists, one beating has already taken place, and feeling is running so high that Canadian provincial authorities are alarmed at the prospect of more violence when the big-game season opens this fall.

"It's only a question of time before some hothead loses his composure and someone gets hurt," said one hunter who was victimized by the anti-hunters.

Arrayed against each other in the conflict are the hunters, outfitters, and game-management officials of British Columbia, and a dedicated, well-financed, implacable organization of anti-hunters who call themselves Greenpeace.

Greenpeace is no collection of saloon conspirators content to crank out mimeographed anti-hunting diatribes and picket sporting-goods stores. It is slick, professional, worldwide, and growing rapidly. Its Vancouver chapter alone budgets nearly $500,000 a year for anti-hunting activities. Its tools are $1,000-a-day helicopters, expensive sound cameras, and self-confessed expertise at manipulating the press and television. Its tactics are harassment, confrontation, and attempts physically to restrain hunters. Its leader, Dr. Patrick Moore of Vancouver, made it clear in an interview with OUTDOOR LIFE that episodes of harassment and intimidation that took place in the rich hunting grounds of British Columbia in 1979 and 1980 were only the opening salvos in the conflict.

"We'll be back this year," he said. "They can't stop us. We intend to stop trophy hunting, first in British Columbia, ultimately all over the world."

How Greenpeace seeks to frustrate hunters is perhaps best told in the words of Richard A. Mielke, a 50-year-old Pontiac, Michigan, fire fighter who last year took a 21-day hunt-of-a-lifetime in the rugged, 1.6-million acre Spatsizi Wilderness Park in British Columbia. He and his partner, Darryl Hastings, 40, a computer broker from Rochester, Michigan, encountered the Greenpeacers on the first day of the hunt.

"They barged right into our camp," Mielke said. "They stuck sound cameras right in our faces. They harangued and abused us. One of them screamed at me, 'Is there something wrong with your sex life? Is that why you're up here killing animals?' When we tried to ride out of camp they locked arms across the trail to stop us. One of them grabbed the bridle of my horse. That was dangerous. That's rough country up there. If the horse had shied and fallen I could have been badly hurt."

Eventually the hunters and their guide broke free and continued the hunt, but on nearly every day of the hunt the harassment continued. On one day Mielke took his rifle—unloaded—to a dock on tiny Bug Lake to scope a wolf that had been howling near the camp.

"One of these Greenpeace guys crowded up against me, bumped me, and yelled, 'You're not going to shoot that animal while I'm here!' He grabbed my rifle, and then he fell into the lake."

"They would taunt you in every way they could," Hastings added. "You

couldn't even go to the john without one of them sticking a camera in. It's hard to keep your cool under those circumstances, yet I couldn't give them the satisfaction of bothering me."

Although the Greenpeacers scornfully characterize hunters such as Mielke and Hastings as "jet-set headhunters," both are men of modest means.

"I scrimped and saved and worked at odd jobs for two years to get the money for that hunt," Mielke said. "By the time I'd paid air fares, outfitters' fees, and license and trophy fees it cost me around $10,000."

Hastings put the cost of his hunt at near $12,500, and noted it would be a long time, if ever, before he could afford another hunt of that magnitude.

Both hunters report that attempts to reason with the anti-hunters were futile.

"We were after Stone sheep, principally," Hastings said. "But they kept alluding to them as 'bighorns.' I told one of them, 'You're such a phony; you don't even know what species you're talking about.' "

Both men got trophy sheep as well as other trophy specimens, but the Greenpeace activitists succeeded in blighting what would otherwise have been an idyllic hunt.

"There were several days when I didn't hunt because of them," Hastings said.

Complaints to provincial wildlife authorities were to no avail. "Early in the hunt a park ranger came into our camp," Hastings said. "We asked him why he wouldn't protect our right to carry on a lawful activity. I'd paid around $1,000 for licenses and tags, and these people were trying to deprive me of my right to hunt. The ranger replied that there was nothing he could do. 'It's a public park,' he told me. 'They can go anywhere they please.' "

Later, after the anti-hunter fell (Greenpeacer Moore says he was pushed) into the lake, four Royal Canadian Mounted Police officers and two B.C. Fish and Wildlife Department officials arrived at the Mielke-Hastings camp by helicopter. Again the two hunters repeated their plea for protection, again the officials said there was nothing they could do.

"They told us they were trying to figure out how to resolve the issue," Hastings told OUTDOOR LIFE. "But all they did was to tell us, 'We want you fellows to be patient and keep the peace.' " (There are indications, however, which we will come to later, that B.C. officials are preparing to abandon their policy of noninterference when the 1981 season opens.)

Violence against them would give Greenpeace "proof" that all hunters are thugs and violence-prone killers.

Even after Mielke and Hastings quit their camp to return home, the Greenpeace contingent pursued them. After alerting press and television, the anti-hunters continued their tactics of harassment. They followed the two hunters into the airport at Vancouver, taunting them, haranguing and vilifying them, and waving professionally-made anti-hunting placards for the benefit of news and television cameras. Several wore animal costumes, including horns or antlers. The Greenpeacers drove the two hunters to take refuge in the airport lounge, where the bartender did what the Royal Canadian Mounted Police and game department officials had been unable or unwilling to do. He chased the anti-hunters out of the place.

What was possibly an even uglier incident took place during the 1979 season in Spatsizi. Gary Zechel, an engineer with the Ford Motor Company, who lives in the Detroit area, was hunting Ranger Creek with his wife Jo-Carole, who is a hunter, but wasn't hunting on this occasion. Accompanied only by an Indian guide, the Zechels were traversing one of the wildest, most primitive areas in North America.

"We were six or eight hours by horseback from our base camp, staying in a spike camp," Zechel recalled, "when these Greenpeace people showed up. There were seven men and one woman. There was lots of taunting, harassment, and intimidation. They said they would do whatever they could to stop us. They said if they couldn't persuade us to abandon our hunt they would restrain us physically. When we rode out for a day of hunting, they locked arms in front of us. When I tried to go to my wife's aid, one of them grabbed my horse's reins. Eventually our guide broke through, and my wife and I got away from them. They chased us several hundred yards up the trail, and our guide's horse fell into a bog. That was very dangerous. Even a minor injury is serious in that remote wilderness."

Like Mielke and Hastings, Zechel is an experienced hunter and outdoorsman, clearly able to take care of himself. But some insight into the psychological impact of the Greenpeace tac-

In the fall of 1980, the Gary Zechel hunting party camped in the Spatsizi wilderness in British Columbia and ran into harassment by eight Greenpeace agitators (left). When Zechel and his wife rode out of their camp for a day of hunting with their guide, the Greenpeacers locked arms across the trail to block their way and screamed abuse. A female Greenpeacer grabbed Zechel's reins to hold him back. The guide broke through the human barrier, and the Zechels pulled away and rode around them. Gary Zechel stated that his greatest fear was that one of the horses would spook and injure or kill someone. The painting is based on a photograph supplied by the Greenpeacer organization! At right, Greenpeacers in animal costumes harass Richard A. Mielke and Darryl Hastings in the Vancouver airport after their successful hunt.

Illustration by Domenick D'Andrea

tics can be won when Zechel says, "One of those guys had an ice ax he kept waving in my face. I felt more fear than I have felt in a long time."

Zechel's wife seems to have been singled out for particular attention by the Greenpeacers.

"They ran raving and yelling at her," he reported. "It was like a riot. They came within five or ten feet of her."

Exercising what can only be described as saintly restraint, the Zechels and their guide did their best to ignore the anti-hunters.

"This drove them into a frenzy," Zechel said. "They acted nearly hysterical, obviously looking to cause some action or incident." Not surprisingly, the Greenpeace tactics finally wore down Jo-Carole's emotional reserves. "She was terrified and finally broke down crying and screaming for them to leave us alone. They refused and she ran into the tent, sobbing 'They're crazy—I'm afraid of them.' She spent the final days of the hunt in her tent."

When the Zechels broke camp and returned to Smithers, he filed an assault charge against the Greenpeace anti-hunters. Although technically the charge is still pending, it has been "stayed" and provincial authorities made it clear they have no plans to prosecute it.

Ralph Aldrich, chief conservation officer of the British Columbia fish and wildlife agency, undertook to explained why.

"From an enforcement point of view we can only follow the law," he said in an interview. "There is no law against yelling. It's just like picketing. Of course, if they threaten assault and take some overt action, that may be assault."

Is it illegal to impede hunters' horses? Aldrich's reply was something less than definitive. "It depends," he said. Thereupon he passed the buck to Peter Ewart, crown counsel (prosecuting attorney) for the Spatsizi district. From Prince George, B.C., Ewart indicated that, while still open, the charges laid by Gary Zechel against the Greenpeacers would likely never be prosecuted.

"We took a look at the evidence and the probable outcome of a trial and put a 'stay' on the case," Ewart said. But then, plainly choosing his words carefully, Ewart laid out what may be provincial officials' plan to end the threat to one of British Columbia's prime industries. "I would have been much happier," he said, "if the charge had been intimidation instead of assault." British Columbia, he said, has a statute making it illegal to "impede or attempt to impede any person from carrying out a lawful activity" by threats, harassment, or coercion.

"What he says is a crock," bluntly charged Ray Collingwood, whose firm outfitted both the Zechel and Mielke-Hasting parties. "They didn't prosecute because of the expense of getting witnesses back up here to testify. I've lost all respect for the government."

Collingwood revealed what apparently is not known by provincial authorities—real violence has already broken out.

"One of these [Greenpeace] guys tried to stop one of our pilots from taking off from an airstrip we maintain in the park," he told OUTDOOR LIFE. "He grabbed a wing strut of the Beaver and tried to force our pilot to abort his take-off. The plane got off anyway and later the pilot returned, landed the aircraft, and punched the guy out. He knocked him down and slapped him around some. He just hung a little licking on him."

Despite the degree of restraint exercised by Mielke, Hastings and Zechel, provincial authorities are acutely aware of the potential for violence. Like the hunters themselves, provincial officials see the tactics of Greenpeace as calculated provocations designed to spark violent reaction. All agree that would be counterproductive and, as one put it, "would give Greenpeace 'proof' that all hunters are thugs and violence-prone killers." Chief conservation officer Aldrich pointedly noted that there will be combined Royal Canadian Mounted Police and game department patrols in Spatsizi during the 1981 season.

Greenpeace's Moore airly dismissed the prospect of being prosecuted under the intimidation statue.

"The attorney general (of British Columbia) hired a man last summer especially to research the question," he said. "He concluded there was no law that could stop us. Our activities are as legal as the hunters'. All we're doing is occupying nonconsumptive space, competing for resources with the hunters. They can't say we're interfering with their rights. Those [game] animals don't belong to anyone until they're actually taken into possession."

It is clear that Patrick Moore is the architect, principal voice, and presiding genius of Greenpeace. He conceived and created the organization while a graduate student at the University of British Columbia (he is now a doctor of ecology) five years ago. His title is Canadian director of Greenpeace International, but plainly his sway extends to the worldwide branches of the organization. He is one of 12 salaried, full-time employees of Canadian Greenpeace, and he is paid $1,200 a month. There are offices in Vancouver,

"We intend to shut down trophy hunting in Spatsizi to show that it can be done."

Victoria, Toronto, and Montreal, as well as branches in the United States, the United Kingdom, the Netherlands, France, New Zealand, and Australia. A Greenpeace "secretariat" in Washington coordinates the activities of the international branches, and it has an annual budget of $120,000.

"Our forte," Moore said in an interview, "is organizing expeditions into remote areas in order to confront in a nonviolent manner acts that we consider environmentally detrimental. Our funding is entirely private—donations from individuals that are generally less than $50. We have no foundation or government grants. Our methods are too controversial to attract money from conservative quarters."

Greenpeace's first confrontation took place when Moore and others chartered an 85-foot vessel and sailed to the Aleutian island of Amchitka in an attempt to halt the testing of nuclear bombs. "We lost that battle but we won the war," he said. "They've stopped testing now and Amchitka is a wildlife preserve."

Later Greenpeace made expeditions to the South Seas in an attempt to stop nuclear testing by France (they failed), and they have conducted offensives against whalers and seal hunters.

"But we cut our teeth on nuclear testing," Moore said. "From it we learned how to deal with the media and how to understand international politics. We're fortunate in having people who understand the media—that's how you communicate with people in the modern world, knowing what sort of images appeal to the media."

Although Canadian authorities are tippy-toeing around the Greenpeace campaign of intimidation in Spatsizi, the government ended similar tactics that were attempted against commercial hunters of harp seals in Newfoundland.

"They enacted what they called 'seal protection regulations'," Moore said, "just to keep us out. It's ironic, and very undemocratic."

Moore insists that ending all hunting is not his goal. "Hunting can be part of a harmonious relationship with nature," he said. "Indian bowhunters lived in a balanced state with nature for

10,000 years. But what we're saying is that the relationship between man and animals has changed dramatically. These hunters are an extension of the Detroit urban-industrial ecosystem. They have no place in Spatsizi. In a park set aside for protecting these animals, we must stop thinking of them as a natural resource and think of them as a national treasure."

Moore's disclaimer notwithstanding, Greenpeace's program would effectively end hunting. It would totally rule out all trophy hunting, even under the rigidly controlled conditions prevailing in Spatsizi. It would prohibit hunting by all outsiders, insisting that only food hunters "that are part of the (local) environment be permitted to hunt." It would, in short, permit only subsistence hunting, and then only if the cessation of hunting would "dramatically affect" the life-style of the hunter, and only if subsistence hunting remained in "balance" with the environment.

Moore repeatedly insisted that the hunters who were assailed by the Greenpeacers were unthinking trophy freaks who habitually left the meat of their animals to spoil after removing horns, antlers, and capes. All three hunters heatedly denied the charge, noting that they had painstakingly packed all usable meat back to camp, either for shipment home or for use by the outfitter's crew. The outfitters confirmed this. In fact, British Columbia law requires that the meat of game animals be removed and used for food, and in its exhaustive investigation of the incidents, the provincial game department found no violations of the law by the hunters.

For the record, Moore denies any of the Greenpeace activists at Spatsizi committed assault by grabbing anyone's arm. He denies that Mielke's rifle was pushed, but he insists that either Mielke or his companion shoved one of the Greenpeacers into the icy waters of Bug Lake. He concedes that they tried to block progress of the hunters' horses, but denies any member of his group seized them by the bridles. "They ran their horses at us," he insisted.

"They're crazy—I'm afraid of them," Gary Zechel's wife said. She spent the final days of the hunt in her tent.

"Our intention is to be there again this year. We intend to shut down trophy hunting in Spatsizi to show that it can be done. They say we are intefering with them. We deny that. We're competing, as is our right, and they can't stop us."

Perhaps more philosophical than many hunters would be, Richard Mielke warns future hunters of Spatsizi that the Greenpeace anti-hunters "are trying to provoke you into taking a poke at them. And that's the last thing anyone should do. It's exactly what they want."

Unfortunately, however, it isn't the last thing that's likely to happen—unless British Columbia takes a page from Newfoundland's book and contrives a way to keep the Greenpeace people away from the hunters. There are some indications B.C. officialdom, perhaps belatedly, is now working hard to find a way to end the harassment of hunters. In reply to a letter of complaint from Mielke, B.C. Minister of Environment Stephen Rogers wrote:

"I wish to extend my personal apologies for the harassment you suffered (and) I also want to congratulate you and your hunting partner for the restraint you both showed under trying circumstances. The hunters in Spatsizi by their good behavior, as opposed to the conduct of Greenpeace, gained in general public stature while Greenpeace suffered.

"We are working with the Parks Branch to see what can be done to prevent situations such as you experienced from recurring."

The Force Behind Friends of Animals

Alice Herrington Raises the Hackles of Sportsmen in Her War on Hunting

Alice Herrington

By E. J. NILSSON
Grit Staff Writer

Whether Alice Herrington is right or wrong, she is anything but a bore. As founder and president of Friends of Animals (FOA), Herrington arouses strong feelings among sportsmen and others in her crusade against hunting.

Herrington, who lives with eight cats in Little Silver, N.J., founded FOA in 1957 to try to reduce the numbers of stray dogs and cats. And that is still the major purpose of the organization, she said.

But the group's chief claim to fame is Herrington's verbal bouts with hunters and trappers.

"To call this a sport is just pure nonsense," she said about hunting. "It's a real cruelty. It can't be justified."

IN HERRINGTON'S view, the only people worse than hunters are trappers.

"Deer hunters are not nearly as bad as trappers," she said. "I can't imagine how hunters, who pride themselves on fine shooting, ally themselves with trappers, who practice sadism. Deer hunters are due a little credit for at least the speed of their kill."

Despite the fireworks that FOA ignites with its "full program of hunting and trapping disruption," Herrington wants to convince the public that there "are two cruelties."

Besides the killing of "free animals, which are called wildlife," she explained, she's concerned about man's treatment of all domesticated animals—including pets and livestock.

"It's an American syndrome to love kittens and puppies but then throw out dogs and cats," she said, adding that millions of dogs are killed "in American municipal dog pounds, but they were loved as puppies."

In 1970, Herrington organized low-cost spaying programs for 20,000 animals. By 1980, the number had risen to 60,000.

Last September in Neptune, N.J., she opened a low-cost spaying clinic, said to be "a model of its kind with room for 80 animals and two veterinarians." Across the nation, her group pays for part of the cost of spaying in cooperation with 750 participating veterinarians.

ONE OF the prime targets of Herrington and the FOA is the food business.

"Cruelty to animals is practiced on a larger scale by the food industry than by any other single sector of human activity," an FOA publication asserts.

And Herrington adds:

"If people want to support an industry that is destroying the land, then they can continue to eat these creatures. But if not they can eat vegetables."

Other institutions also are criticized by FOA, including zoos.

"Zoos must be phased out," said an FOA publication.

Herrington's concern for animals was heightened when she returned to the United States in 1954. Working as a War Department statistician, she had seen relatively few animals running loose in Europe.

In the United States, she said, "I was shocked to find stray animals everywhere."

HERRINGTON, a graduate of the University of Wisconsin in Madison, put her statistical talents to work calculating the rate of increase of dogs and cats. She said she realized that cutting the prolific birthrate was the only long-range solution.

This realization led to the founding of FOA, which worked with volunteers until 1967. Now the group has 12 full-time em-

Herrington was asked whether she would advise FOA members to take traps that were legally set.

"Yes! Why not? Certainly," she said.

But wouldn't the "solution" be stealing?

"You could say that it's stealing if you like," she replied, "but the Robin Hood approach to life is still a very nice way to go."

To All Comm. Offices
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3/25/81
CDI

Humane Group To Seize Animal Leghold Traps

By STEVE GRANT

Friends of Animals Inc. said Friday it is going to trip up trappers by setting off their leghold traps when the season opens next week.

The organization said it will ask its 4,500 members in Connecticut to look for the traps, touch them off with a stick and remove them, because it believes the traps are inhumane.

"We can't as an organization advise people to remove legally set leghold traps. It wouldn't be a smart thing to do. What we're asking them to do is remove illegally set traps. Our guess is most of them are illegal," said Priscilla Feral, the organization's Connecticut director.

Game laws require all leghold traps to have the owner's name on them and they must be placed underwater or in an animal's burrow.

A spokesman for trappers questioned the new campaign, which will begin next Saturday, when the season opens.

"They're setting up a vigilante group. Vigilantes in any situation are not good. They don't know enough and they tend to break the law themselves," said Robert Crook of Madison, a member and former president of the Connecticut Trappers Association which has about 800 members.

"I wouldn't object to anybody coming out and checking my traps, as long as they had the permission of the landowner, and as long as they didn't steal them, set them off or take animals out. But I really don't think that's their responsibility," Crook added.

He said the state Department of Environmental Protection is responsible for seeing that trapping is conducted legally and that he understood the group was told by DEP not to remove illegal traps but instead to report them to a game warden.

Ms. Feral said a trapper's name legally can be placed anywhere on a trap, so members would have to trip them to check. She said members would not be advised to reset legal traps.

"DEP can read the riot act to me if it wishes. But no way will we aid the trapper. Our object is to get rid of the legnold trap," she said.

The organization has argued that the trap, which has two steel jaws that slam shut when an animal touches a piece of bait, is barbaric because some animals die slowly or are left crippled. Ms. Feral said domestic animals also have been caught in the traps. There are other traps available that are more humane, she said.

Crook estimated that there are 8,000 trappers in Connecticut, with the average trapper placing 50 or 100 traps in the wild.

The most commonly trapped animal in the state is the muskrat, which can yield a pelt that will fetch up to $8. Raccoon, fox, mink, opposum, weasel, skunk and beaver also can be trapped legally, though the season for some of those animals does not begin until later.

Friends of Animals, which is based in New York, has waged other campaigns against hunters. Some members went into the Connecticut woods recently to play recorded wolf howls to alert animals of danger when the deer hunting season opened.

AN ACT RELATING TO HARASSMENT OF PERSONS LAWFULLY ENGAGED IN HUNTING, FISHING, CAMPING, OR TRAPPING

PRIME SPONSOR: SHULTZ.
CO-SPONSORS:
CURRENT STATUS: 1/16/84 EXPIRED 1ST SESSION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/04/83	01	0173	FIRST READING -- COMMITTEE REPORTS
03/21/83	02	0572	RES -- CS05, NR02
03/21/83	03	0572	RES F/NOTE EQUALS ZERO
04/20/83	04	0942	JUD -- DNP01, RES CS04, NR02, OTHER01
04/20/83	05	0957	NOT MOVED FROM RLS COMM BY DIV 12-25-03
04/21/83	06	0968	RLS -- CS05, NR02, OTHER02
04/22/83	07	0994	SECOND READING
04/22/83	08	0994	RLS CS ADOPTED BY UNAN CONSENT
04/22/83	09	0995	AM01 WITHDRAWN
04/22/83	10	0995	AM02 NOT ADOPTED BY DIV 15-19-06
04/22/83	11	0996	AM03 ADOPTED BY UNAN CONSENT
04/22/83	12	0996	AM04 ADOPTED BY UNAN CONSENT
04/22/83	13	0997	AM05 NOT ADOPTED BY DIV 14-18-08
04/22/83	14	0997	ADVANCED TO 3RD READING BY UNAN CONSENT
04/22/83	15	0997	THIRD READING
04/22/83	16	0997	PASSED BY DIV 24-09-07
04/22/83	17	0998	NOTICE OF RECONSIDERATION GIVEN
04/25/83	18	1029	RECONSIDERATION NOT TAKEN UP
06/26/83	39	2101	CONCURRED IN SENATE AMS BY DIV 31-09-00
07/05/83	40	2134	TRANSMITTED TO GOVERNOR

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/26/83	19	0868	FIRST READING -- COMMITTEE REPORTS
05/16/83	20	0970	RES -- SP02, NR04
05/27/83	21	1135	JUD -- CS05
06/10/83	22	1266	RLS -- JUD CS03, OTHER03
			TAKEN UP IMMEDIATELY
06/16/83	32	1334	JUD -- 2ND CS05
06/26/83	33	1529	RLS -
			TAKEN UP IMMEDIATELY
06/10/83	23	1263	SECOND READING
06/10/83	24	1263	JUD CS ADOPTED BY UNAN CONSENT
06/10/83	25	1263	ADVANCED TO 3RD READING BY UNAN CONSENT
06/13/83	30	1283	AM01 WITHDRAWN
06/13/83	31	1286	RECOMMITTED TO JUD BY UNAN CONSENT
06/26/83	34	1534	READ AGAIN SECOND TIME
06/26/83	35	1534	2ND JUD CS ADOPTED BY UNAN CONSENT
06/26/83	36	1534	ADVANCED TO 3RD READING BY UNAN CONSENT
06/10/83	26	1263	THIRD READING
06/10/83	27	1264	PASSED BY DIV 13-05-02
06/10/83	28	1264	NOTICE OF RECONSIDERATION GIVEN
06/13/83	29	1283	RETURNED TO 2ND READING BY UNAN CONSENT

DATE	SEQ	PAGE	LEGISLATIVE ACTION
06/26/83	37	1534	READ AGAIN THIRD TIME
06/26/83	38	1534	PASSED ON RECONSIDERATION BY DIV 17-03-00
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NEVADA

Section 1. Chapter 503 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. It is unlawful for a group of people, acting together, intentionally to interfere with a person who is lawfully hunting or trapping. For the purpose of this subsection, hunting or trapping is "lawful" only if permitted by the owner or person in possession of the land, other than the government, in addition to any requirement of license or permit from a public authority.

2. The provisions of subsection 1 do not apply to any incidental interference arising from lawful activity by users of the public land, including without limitation ranchers, miners or persons seeking lawful recreation.

MAINE

§7541 Harassment prohibited.

1. Interference with taking. No person may willfully interfere with the lawful hunting, fishing or trapping of a wild animal, wild bird or fish.

2. Disturbing wild animals, wild birds or fish. No person may willfully disturb or attempt to disturb a wild animal, wild bird or fish with the intent to interfere with the hunting, fishing or trapping of them.

3. Violation. A violation of this section is a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

4. Property rights otherwise provided by law. This chapter shall not be construed in any way to limit the ownership use, access or control of property rights otherwise provided by law.

§7542 Injunction; damages.

1. Injunction. The District Court or Superior Court may enjoin conduct which would be in violation of section 7541 upon notification by a person affected or who reasonably may be affected by the conduct, upon a showing that the conduct is threatened or that it has occurred on particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(d) enters or remains upon public lands, or upon private lands without permission of the owner or his agent, with intent to violate this Section.

[S.H.A. ch. 61, ¶303]

Section 3. Any person who knowingly performs any of the following acts is guilty of a Class B misdemeanor;

(a) fails to obey the order of a peace officer to desist from conduct in violation of Section 2 of this Act if the officer observes such conduct, or has reasonable grounds to believe that the person has engaged in such conduct that day or that the person plans or intends to engage is such conduct that day on a specific premises.

[S.H.A. ch. 61 ¶304]

Section 4. (a) Any court may enjoin conduct which would be in violation of Section 2 of this Act upon petition by a person affected or who reasonably may be affected by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(b) A court may award damages to any person adversely affected by a violation of Section 2, which may include an award for punitive damages. In addition to other items of special damage, the measure of damages may include expenditures of the affected person for license and permit fees, travel, guides, special equipment and supplies, to the extent that such expenditures were rendered futile by prevention of the taking of a wild animal.

SOUTH DAKOTA

Section 1. No person may intentionally interfere with any person or group of persons lawfully engaged in the process of taking or attempting to take any game or fish. No person may engage in any activity specifically intended to harass or otherwise prevent the lawful taking of any game or fish. No person may engage in any activity to scare or disturb any game with specific intent to prevent their lawful taking. This section may not be construed to prohibit a landowner from revoking a prior grant of permission to hunt on his land. A violation of any provision of this section is a Class 2 misdemeanor.

Section 2. Any person who fails to obey the order of a peace officer to desist from conduct in violation of section 1 of this Act, if the officer observes such conduct, or has reasonable grounds to believe the person was engaged in such conduct that day or intends to engage in such conduct that day on a specific premises, is guilty of a Class 1 misdemeanor.

Section 3. The court may enjoin conduct which is in violation of section 1 of this Act upon petition by a person affected or who reasonably may be affected by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and may reasonably be expected to be repeated. The court may award damages to any person adversely affected by a violation of section 1 of this Act. Damages may include an award for punitive damages, license fees, travel or other expenses which were rendered futile by preventing the licensee from taking game or fish.

Signed March 12, 1983.

ILLINOIS

[S.H.A. ch. 61, ¶301]

Section 1. Definitions. As used in this Act:

a. "wild animal" means any wild creature the taking of which is authorized by the fish and game laws of the State.

b. "Taking", means the capture or killing of a wild animal and includes travel, camping, and other acts preparatory to taking which occur on lands or waters upon which the affected person has the right or privilege to take such wild animals.

[S.H.A. ch.61, ¶302]

Section 2. Any person who knowingly performs any of the following is guilty of a Class C misdemeanor;

(a) interferes with the lawful taking of a wild animal by another with intent to prevent the taking.

(b) disturbs or engages in an activity that will tend to disturb wild animals, with intent to prevent their lawful taking.

(c) disturbs another person who is engaged in the lawful taking of a wild animal or who is engaged in the process of taking, with intent to dissuade or otherwise prevent the taking.

(d) enters or remains upon public lands, or upon private lands without permission of the owner or his agent, with intent to violate this Section.

[S.H.A. ch. 61, ¶303]

Section 3. Any person who knowingly performs any of the following acts is guilty of a Class B misdemeanor;

(a) fails to obey the order of a peace officer to desist from conduct in violation of Section 2 of this Act if the officer observes such conduct, or has reasonable grounds to believe that the person has engaged in such conduct that day or that the person plans or intends to engage is such conduct that day on a specific premises.

[S.H.A. ch. 61 ¶304]

Section 4. (a) Any court may enjoin conduct which would be in violation of Section 2 of this Act upon petition by a person affected or who reasonably may be affected by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(b) A court may award damages to any person adversely affected by a violation of Section 2, which may include an award for punitive damages. In addition to other items of special damage, the measure of damages may include expenditures of the affected person for license and permit fees, travel, guides, special equipment and supplies, to the extent that such expenditures were rendered futile by prevention of the taking of a wild animal.

2dSCS CSHB 163(Jud)

The following letter dated July 25, 1983, was received:

Re: 2d SCS CSHB 163 (Jud) -- Relating to harassment of persons lawfully engaged in hunting, fishing, camping, or trapping.

Dear Mr. Speaker:

Under the authority granted in art. II, sec. 15, of the Alaska Constitution, I have vetoed 2d Senate Committee Substitute for Committee Substitute for House Bill 163 (Jud) which makes it a misdemeanor to interfere with hunting, fishing, camping and trapping activity. Existing law, particularly the disorderly conduct, assault, criminal mischief, and general harassment statutes provide adequate penalties for criminal acts that interfere with these activities.

This legislation also presents a constitutional problem because it fails to define what constitutes "interference" with the protected activities. Conceivably, a person who talks too loud near a salmon stream may be subject to arrest and 30 days imprisonment under this bill for interfering with a sport fisherman's ability to catch a salmon. Criminal statutes must be sufficiently precise for the ordinary citizen to know what conduct is prohibited. Because the coverage of this statute is so vague, and since existing criminal statutes provide adequate coverage for physical interference with hunting and fishing activities, I have vetoed this bill.

Sincerely,

/s/ Bill Sheffield
Bill Sheffield
Governor

SCS CSHB 109(HESS) amS

The following letter dated July 27, 1983, was received:

Re: SCS CSHB 109(HESS) am S -- Relating to persons 16 or 17 years of age who are charged with unclassified or class A felonies; and amending the children's proceedings waiver provisions.

HB
537

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 31, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will authorize a court to order the forfeiture to the state of a deadly weapon possessed or used by a defendant during the commission of a crime. As used in the bill, "deadly weapon" means any firearm (including a pistol, revolver, rifle, or shotgun) or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive.

Although current law authorizes the forfeiture of weapons used to commit fish and game offenses (AS 16.05.195) or offenses involving controlled substances (AS 17.30.110), there is no statutory provision that expressly allows a court to order, as part of a defendant's sentence, the forfeiture of a weapon used to commit crimes such as assault, robbery, or murder. AS 11.61.200 prohibits a felon, during the five years immediately following his "unconditional discharge" (i.e., release from custody or parole or probation) for a felony, from knowingly possessing "a firearm capable of being concealed on his person," and AS 12.55.080 gives a court broad powers to determine and impose reasonable probation conditions (such as no possession of firearms during the period of probation); however, neither of these statutes specifically authorizes a court to order the forfeiture of a weapon used to commit a crime.

To address this surprising omission in existing law, this bill adds a new paragraph to the general sentencing provisions in AS 12.55.015(a) to authorize a court to order the forfeiture of a weapon as part of a defendant's sentence following conviction. Forfeiture is not required in every case, but may be imposed at the court's discretion.

It is important that the elected officials in this state do as much as we can to decrease the number of violent crimes committed against innocent citizens. This bill will allow a court to remove a weapon used to commit a crime from the hands of the convicted criminal, and will prevent the convicted person from using that weapon to commit another crime in the future. I urge your prompt action on this bill.

Sincerely,

Bill Sheffield
Governor

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

OFFICE OF THE COMMISSIONER

February 9, 1984

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

RE: Disposal of
Stolen Property
(Weapons)

Dear Chairman Bussell:

It has always been the policy of the Department of Public Safety that every effort will be made to return stolen property to its rightful owner.

If stolen property has been used in the commission of a crime, the weapon or property is returned to the rightful owner once the case has been adjudicated. That is, if the owner has reported the property stolen, or the Department, through its records or other means, can locate the respective owner.

Property that cannot be traced back to its rightful owner is held for a period of time until a Court order is issued disposing of same.

Customarily, the victim of theft reports the item or items to law enforcement, who in turn enters it into the computer system. This computer system is used as a tracking point in identifying stolen property and its rightful owner. It is important, of course, to be able to identify the stolen property specifically by a serial number of other specific identifier.

Sincerely,

Robert J. Sundberg
Commissioner

cc: Lisa Nelson
Assistant Attorney General
Department of Law

12-L2LH

FISCAL NOTE

[Revision Date:]

REQUEST
Bill/Resolution No.: HB 557
Title: "...forfeiture of weapons used to commit a crime..."
Sponsor: Governor
Requestor: House Judiciary
Date of Request: 2-6-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis No fiscal impact anticapated.

Prepared By: Francis C. Allan F.C.A. MCK Phone: 269-5691
Division: Alaska State Troopers Date: 1-4-84

Approved by Commissioner: R. J. Sundberg Date: 2-9-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Revision Date:

DEC 27 198

DEPT OF LAW
CRIMINAL DIVISION

REQUEST
Bill/Resolution No.:
Title: "An Act relating to forfeiture of weapons used to commit a crime."
Sponsor: Rules by req. of the Gov.
Requestor: Office of the Governor
Date of Request: December 22, 1983

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 12/22/83

Approved by Commissioner: Norman C. Gorsuch — Date: 12/22/83
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

12/22/83

ANALYSIS

This bill amends AS 12.55.015(a) to give the court the discretionary power to order the forfeiture of a weapon as part of a defendant's sentence following conviction. Although prosecutors will have the added responsibility of advocating forfeiture, when appropriate, this advocacy duty can be accomplished without additional expense.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Support

HOUSE BILL 557

This legislation adds a new paragraph to the general sentencing provisions statute which would authorize a court to order the forfeiture, as part of a defendant's sentence upon conviction, of a deadly weapon which was possessed or used by a defendant during the commission of a crime.

It is common to encounter persons who are convicted of violent crimes repeating similar offenses. By being able to hinder such individuals from obtaining the "tools" to commit such crimes an added degree of safety for the public can thus be provided.

Law enforcement agencies often spend a considerable effort returning knives, clubs, axes, etc. from evidence storage back to individuals who have committed violent crimes. Certainly this effort can be better expended if the weapons can be disposed of at the discretion of the State.

Robert J. Sundberg
Commissioner

incorporated into the criminal code as this section. Nell v. State, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

Legislative intent reflected. — The presumptive sentencing provisions contained in AS 12.55.125 and 12.55.155 reflect the legislature's intent to assure predictability and uniformity in sentencing by the use of fixed and relatively inflexible sentences, statutorily prescribed, for persons convicted of second or subsequent felony offenses. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), P.2d (1983).

The comprehensive and highly regimented provisions of the presumptive sentencing statute were enacted to assure that sentencing would become a predictable process and that disparity in sentencing between similarly situated offenders would be eliminated. Lacquement v. State, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982).

Criteria enumerated in this section must be given primary significance in the sentencing of first offenders under the Alaska Revised Criminal Code. Kimbrell v. State, Ct. App. Op. No. 101 (File No. 5944), P.2d (1982).

Adjustment of presumptive sentence. — When applied to the adjustment of a presumptive sentence, the State v. Chaney, 477 P.2d 441 (Alaska (1970), analysis, as stated in AS 12.55.005, should not be broadened into a consideration of all circumstances of the offense, as if the sentence were being imposed anew, without regard for the presumptive term. Instead, consideration of the Chaney criteria should focus specifically on the aggravating and mitigating conduct in the particular case. The presumptive term should remain as the starting point of the analysis, and the Chaney criteria should be employed for the limited purpose of determining the extent to which the totality of the aggravating and mitigating factors will justify deviation from the presumptive term. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), aff'd, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Nature of offense is relevant factor in sentencing. — Throughout the supreme court's review of sentences, the degree of physical or psychological violence involved in the offense has been an important factor. Kelly v. State, Sup. Ct. Op. No. 2268 (File Nos. 4097, 4529), 622 P.2d 432 (1981).

In attempting to eliminate consideration of the nature of the offense from its consideration of relevant factors at sentencing, the superior court was clearly mistaken and the sentences in the case had to be reversed. Kelly v. State, Sup. Ct. Op. No. 2268 (File Nos. 4097, 4529), 622 P.2d 432 (1981).

Applied in Hartley v. State, Ct. App. Op. No. 153 (File No. 5737), P.2d (1982); Peetook v. State, Ct. App. Op. No. 178 (File No. 6630), P.2d (1982); Weston v. State, Ct. App. Op. No. 183 (File No. 5734), P.2d (1982); Tazruk v. State, Ct. App. Op. No. 195 (File No. 6954), P.2d (1982).

Quoted in Kelly v. State, Ct. App. Op. No. 251 (File No. 6311), P.2d (1983).

Stated in Erhart v. State, Ct. App. Op. No. 185 (File No. 6244), P.2d (1982); State v. Rastopsoff, Ct. App. Op. No. 228 (File No. 6295), P.2d (1983).

Cited in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), P.2d (1983); Martin v. State, Ct. App. Op. No. 261 (File No. 6665), P.2d (1983).

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a fine when authorized by law and as provided in AS 12.55.035;

(2) order the defendant to be placed on probation under conditions specified by the court which may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution as provided in AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work as provided in AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed as provided in AS 12.55.080;

(8) suspend imposition of sentence as provided in AS 12.55.085.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of his present offense and his prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty.

(d) A court, in imposing sentence on a defendant convicted of misconduct involving a controlled substance in the first, second, third, fourth, fifth, or sixth degree, may, in addition to any mandatory minimum sentence required by law, order the defendant to participate in a program for treatment of drug abusers if the court determines that the defendant is a drug abuser. Participation in such a program may be imposed as a condition of probation, a condition of suspended execution of sentence, or a condition of suspended imposition of sentence. Nothing in this subsection shall be construed to reduce any mandatory minimum sentence. (§ 12 ch 166 SLA 1978; am § 37 ch 102 SLA 1980; am § 3 ch 45 SLA 1982).

Cross references. — As to offenses relating to controlled substances, see AS 11.71.010 — 11.71.080.

Effect of amendments. — The 1982 amendment, effective January 1, 1983, added subsection (d).

Editor's notes. — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

NOTES TO DECISIONS

Applied in Austin v. State, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981).

Quoted in Leuch v. State, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Stated in Kimbrell v. State, Ct. App. Op. No. 101 (File No. 5944), P.2d (1982); Erhart v. State, Ct. App. Op. No. 185 (File No. 6244), P.2d (1982).

Cited in Whittlesey v. State, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980); Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982); Lacquement v. State, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982).

Sec. 12.55.025. Sentencing procedures. (a) When imposing a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court, shall prepare, as a part of the record, a sentencing report which includes the following:

(1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed; and

(4) recommendations as to the place of confinement or the manner of treatment.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the division of corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, his term of confinement commences on the date of imposition of sentence. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time he spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after he has been sentenced may not be credited toward service of his sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Health and Social Services shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

HB
560

Western Regional Office

CIVIL LITIGATION IN ALASKA
IMPROVEMENT THROUGH SIMPLIFICATION

A Report to the
Supreme Court of Alaska
by the National Center for State Courts

Frederick G. Miller, Staff Attorney
Larry L. Sipes, Regional Director

December 1983

National Center for State Courts
720 Sacramento Street
San Francisco, California 94108

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adoptions, child in need, domestic violence if child custody is an issue, or guardianship of a minor. By accelerating steps in the appellate process, which are explained in detail in the recommendations, final decisions would be obtainable in these cases within not more than 170 days from judgment.

G. District Court Jurisdiction

The personal injury and commercial task forces concluded that the monetary jurisdiction of the District Court is unrealistically low and would appreciably reduce the number of cases in the Superior Court if increased. This in turn would presumably expedite the processing of cases in the Superior Court. The task forces therefore recommended increasing District Court jurisdiction to include actions involving up to $25,000. (or higher limit - $$$.) As both recommendations are virtually identical, the recommendation is included in this report in the personal injury recommendations only at page 33.

H. Civil Rule 41: Voluntary Dismissal

Both the personal injury and the commercial task forces have recommended changes to Civil Rule 41 to assure that cases are not voluntarily dismissed to avoid court control of caseflow. The personal injury task force recommends that a case governed by its proposed new Civil Rule 16.2 may not be dismissed without approval by the court. The commercial task force recommends additional language to Civil Rule 41 requiring certification of the reasons for dismissal.

V. PERSONAL INJURY TASK FORCE RECOMMENDATIONS

The task force recommends the following addition to existing Civil Rule 16 to provide for status conferences.

A. New Civil Rule 16.2: Status Conference

(a) A status conference shall occur in each action filed in the Third District in which any party seeks damages for injury to person or property. The Judge in whose court the action is pending shall schedule and conduct the conference not more than 30 days following the last day on which a response to the complaint could have been filed. If service of process has not been completed the parties shall notify the court and the conference shall be continued until 30 days after service is completed.

(b) Each party shall funish to the other parties the following items or information and shall do so not later than the fifth day preceding the status conference:

1) photographs
2) statements
3) diagrams
4) investigative reports
5) contracts
6) medical reports and bills
7) tax returns
8) insurance policies
9) expert witness reports

The documents to be produced are examples of those which would be subject to discovery under Civil Rule 34.

(c) Each party shall attend the status conference in person or by counsel and shall be prepared to specify the discovery planned by that party. It is the intention that this Rule and the conference held herein be held after the parties have produced as much discoverable information about the incident complained of as possible in order to permit realistic evaluation of the case for possible settlement purposes or to draft a realistic litigation schedule to bring the case to conclusion within one year.

(d) The Judge shall enter an order at the conclusion of the conference (1) setting a date not more than 180 days following the conference by which discovery shall be completed by all parties; (2) setting a date not more than 120 days following the conference for a second status conference if the Judge is persuaded for good cause that discovery cannot be completed within 180 days; (3) scheduling a pretrial conference, as provided in this Rule, not more than 30 days following the date set, if any, for completion of discovery.

33

(e) In all cases where it appears to the court that the case should be considered as a complex case, then the court shall issue an order exempting the case from the time constraints of this Rule. The request for exemption shall be by motion under Civil Rule 77.

(f) The Judge in whose court the action is pending shall order a party or counsel who fails to comply with any order issued pursuant to this Rule to pay $200 for the first, $300 for the second, and $500 for each subsequent act of noncompliance. The Judge by written order may reduce, suspend, or eliminate an otherwise required payment upon a written and verified showing of good cause filed with the Court by which a party or counsel establishes that noncompliance was excusable.

(g) All sanctions for violations of this Rule shall be considered under the provisions of Civil Rules 37 and 95.

(h) A case assigned under this rule may not be dismissed under Civil Rule 41 without approval of the Court. Any stipulations between the parties or attorneys as to anything scheduled under this rule are invalid until approved by the court and the parties may not rely on such stipulation as an excuse to fail to comply with time limits, etc. unless the court has approved the same.

B. <u>District Court Jurisdiction</u>

Jurisdiction of the District Courts should be increased to encompass actions in which the amount of monetary damages involved does not exceed $25,000. (or the jurisdictional limit).