ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2548 SJ HB 520 - HB 569

2548

(b) Any person who intentionally accesses or causes to be accessed any computer system or computer network for the purpose of (1) devising or executing any scheme or artifice to defraud or extort or (2) obtaining money, property, or services with false or fraudulent intent, representations, or promises shall be guilty of a public offense.

(c) Any person who maliciously accesses or causes to be accessed any computer system or computer network for the purpose of obtaining unauthorized information concerning the credit information of another person or who introduces or causes to be introduced false information into that system or network for the purpose of wrongfully damaging or wrongfully enhancing the credit rating of any person shall be guilty of a public offense.

(d) Any person who maliciously accesses, alters, deletes, damages, or destroys any computer system, computer network, computer program, or data shall be guilty of a public offense.

*** (e) Any person who violates the provisions of subdivision (b) ***, (c), or (d) is guilty of a felony and is punishable by a fine not exceeding five thousand dollars ($5000), or by imprisonment in the state prision for 16 months, or two or three years, or by both such fine and imprisonment, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

*** (f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction.

auditors commended Sandia's corrective actions and stated that it appeared that the problems had been solved. However, it would not pay those responsible for the laboratory to become complacent. Without continual policing, the problem will return. The auditors recommended periodic random sampling of computer files to check on unauthorized use of the system.

For Sale: Credit Ratings

While evidence is still not clear, it seems possible that a data theft gang has been operating in southern California. It appears that the ring has allowed those with poor credit ratings to use someone else's good rating as the basis for opening charge accounts and obtaining loans.

The crime apparently involved unauthorized access to a credit bureau data base to obtain financial information about individuals with a clean credit history. Good credit ratings are sold to people who have problems obtaining credit. The bad credit risk purchases information that will allow him to assume for credit purposes the identity of someone who has the same name but a better financial record. Information supplied includes such things as social security number, bank account number, and driver's license number.

This suspected crime came to light when an individual with a good credit rating became aware that his identity was being used by another. He contacted a number of different law enforcement agencies and informed them about the alleged crime. To date, investigative efforts have been hampered by the fact that, although everyone acknowledges that a crime has indeed taken place, no one has been able to figure out who has jurisdiction. Meanwhile, a number of questions remain unanswered:

- How was the data obtained from the supposedly secure files of the credit bureau?
- Who obtained the data?
- Is it an inside job?

These questions will remain unanswered until jurisdiction problems can be ironed out and further information developed.

Student Cracks School District's Computer System

A high school senior in Tucson, Arizona was successful in breaking into the school district's computer system. However, he is beginning to have regrets about his actions. Since his successful intrusion, security measures have been tightened, and his access to the computer has been reduced.

The student, Joel Snyder, first realized that he could break the system's security code when he was accessing the computer through a remote job entry terminal at his high school. He was quoted as saying that anyone with a knowledge of assembly language could easily circumvent the system's security features. The passwords protecting student grades and other information were unimaginative.

His attempt to gain access to another user's password was successful. As a result, Snyder felt he should inform the authorities about the security risks involved. However, officials tended to doubt that Joel Snyder had actually cracked the system. They were willing to acknowledge that he had obtained access to passwords, but they were never sure how he had done it.

In his attempt to publicize the security weakness, Joel appeared at a school board meeting and brought the matter to the attention of the board. This action had some results. System security was soon tightened. Students are now allowed to access the system only from RJE stations (not by dialing up from a modem), only during certain hours, and only while a teacher is present.

While he has proven that he has more than a passing knowledge of computers and their security features, Snyder does not plan a career in data processing. His first college choice is Stanford University, where he plans to major in liberal arts.

Although Joel Snyder's reasons for breaking security were not malicious, his action shows the ease with which intelligent students can circumvent security features in today's systems. Obviously, there are basic weaknesses in most security provisions.

SEP 3 1976

U.S. Charges Six Fixed Reports On Credit-Risk Buyers For Fee, Fed False Data Into Computers

Authorities Believe Plot May Have Led To Millions Of Dollars In Unpaid Bills

LOS ANGELES (AP) —With the aid of a file clerk, six men sought out persons with poor credit records and for fees of up to $1,500 improved their credit reports in the computer banks of the country's largest consumer credit bureau, a federal indictment charges.

The credit records were kept in the computers of TRW Credit Data in Anaheim, Calif. The company maintains credit files on about 50 million Americans living in 20 cities.

The files are used by banks, credit card companies, and other businesses seeking information concerning the credit worthiness of customers.

Authorities said the alleged scheme may have produced millions of dollars in unpaid bills and caused untold legal problems for firms that rely on credit information.

The six men are charged with conspiracy in the indictment returned Thursday by a grand jury. All six also are charged with at least one count of making false loan-application statements.

A TRW Credit Data file clerk, Kathleen Bennett, was named as an unindicted co-conspirator. Federal authorities said she is to be a government witness.

According to the indictment, Miss Bennett was paid $50 each time she improved the computerized credit records of people solicited by the ring.

Some Information Deleted

This allegedly was done by deleting bad payment records, information about bankruptcies, and other unfavorable material. In some cases, material indicating a good credit history was inserted, authorities said.

The indictment lists 26 persons who paid between $300 and $1,500 to have their credit records altered, but authorities said as many as 150 persons may have paid for such falsifications between August, 1974, and March, 1975.

With their improved credit records, these people obtained banks loans, credit cards, and credit at retail stores, authorities said, and many of them subsequently defaulted on payments.

FBI agents uncovered the plot and broke up the ring 18 months ago, authorities said. It took the FBI, a Justice Department Organized Crime Strike Force, and the U.S. Attorney's office nearly 1½ years to obtain the evidence needed to present the case to a grand jury.

Seven Counts In Indictment

Charged in the seven-count indictment were Philip Kostoff, 31, the alleged ringleader; his brother, Paul Kostoff, 33; Ronald C. Rossi, 41; John R. Dubbs, 41, Kenneth L. Stevenson, 39, and Sean Shanahan, 45. All live in Orange County, where Anaheim is located.

The indictment alleged that Philip Kostoff hired the other defendants to locate persons who wanted their credit ratings improved and also recruited Miss Bennett.

Authorities said TRW Data Credit, a division of Cleveland-based TRW, Inc., cooperated in the investigation and is lightening its security.

Authorities seize stolen computer reports

ORANGE — Detectives, armed with search warrants, last week seized several thousand credit reports that were allegedly stolen from TRW computers in Orange.

The records were seized by police during raids at three Los Angeles area companies — H.E.L.P. Locksmiths of Van Nuys, Searchers Investigations and Searchers Security Co., Los Angeles.

Police said entry into TRW's computer bank was made via telephone and teleprinters, using that company's codes.

No charges were filed against the officers of the three companies.

The search warrants served Thursday and Friday culminated a three-month investigation into what police said is "to the best of our knowledge, the first known reported crime of this particular type in California and the country."

Gil Hamblet, TRW's vice president of industry and public affairs, said the company first noticed the illegal access to their computer records six months ago.

He said the material relates to the pay habits of Southern California residents and does not include any other personal information, except their names, addresses and previous addresses.

The Van Nuys firm is an automobile repossession company and the two Los Angeles companies are private investigators who work for attorneys and corporations.

"Such records are used to obtain credit information on individuals," Detective John Carson said. "The records are also used in skip tracing."

Carson said the material is now being inventoried, and it will probably be a week before the police and the district attorney will be ready to file charges.

3 Firms Probed in Theft Of TRW Computer Data

Two Los Angeles private detective agencies and a Van Nuys vehicle repossession firm have been accused of illegally obtaining credit information from computers at TRW, Orange County authorities said Tuesday.

Police said the three firms gained access to the TRW records credit reporting agency's computer by using the codes issued to TRW subscribers. No dollar value has been set on the alleged theft.

Investigators said Tuesday that H.E.L.P. Locksmiths, the repossession company, had been using the codes of two Los Angeles Searchers and Searchers Security Co. investigations, the detective agencies, had been using them since 1977, police said.

Orange police Detective Roger Braham said that charges have been filed, but investigators are continuing thousands of records—mostly computer printouts—seized from the three firms in raids last week.

Gil Hamblet, vice president of public affairs for TRW's Information Services Division in Orange, said the firm's computer security surveillance system first spotted the illegal information requests entering in January.

Officials of the three companies that allegedly obtained the information illegally could not be reached for comment Tuesday.

APR 6 1982

Authorities seize stolen computer reports

ORANGE — Detectives, armed with search warrants, last week seized several thousand credit reports that were allegedly stolen from TRW computers in Orange.

The records were seized by police during raids at three Los Angeles area companies — H.E.L.P. Locksmiths of Van Nuys, Searchers Investigations and Searchers Security Co., Los Angeles.

Police said entry into TRW's computer bank was made via telephone and teleprinters, using that company's codes.

No charges were filed against the officers of the three companies.

The search warrants served Thursday and Friday culminated a three-month investigation into what police said is "to the best of our knowledge, the first known reported crime of this particular type in California and the country."

Gil Hamblet, TRW's vice president of industry and public affairs, said the company first noticed the illegal access to their computer records six months ago.

He said the material relates to the pay habits of Southern California residents and does not include any other personal information, except their names, addresses and previous addresses.

The Van Nuys firm is an automobile repossession company and the two Los Angeles companies are private investigators who work for attorneys and corporations.

"Such records are used to obtain credit information on individuals," Detective John Carson said. "The records are also used in skip tracing."

Carson said the material is now being inventoried, and it will probably be a week before the police and the district attorney will be ready to file charges.

Los Angeles Times
LOS ANGELES CA
D. 1,000,455 S. 1,174,115

APR 7 1982

3 Firms Probed in Theft of TRW Computer Data

Two Los Angeles private detective agencies and a Van Nuys vehicle repossession firm have been accused of massive electronic theft of credit information from computers at TRW, Orange County authorities said Tuesday.

Police said the three firms gained access to the records of thousands credit reporting agency's computer by obtaining codes issued to TRW subscribers. No dollar value has been set on the alleged theft.

Investigators said Tuesday that H.E.L.P. Locksmiths, the repossession company, had been using the codes for six months. Searchers and Security and Searchers Investigations, the detective agencies, had been using them since 1972, police said.

Orange police Detective Roger Graham said no charges have been filed, but investigators are considering thousands of records—mostly computer printouts—seized from the three firms in raids last week.

Gil Hamblet, vice president of public affairs for TRW's Information Services Division in Orange, said the firm's own security surveillance system first spotted the illegal information request entries in January.

Officials of the three companies that allegedly obtained the information illegally could not be reached for comment Tuesday.

Audit concludes state computers are vulnerable

By KARIN DAVIES
Daily News reporter

JUNEAU — The state computer system is poorly protected against tampering by unauthorized individuals, a recently released state audit says.

Because the computer security system is inadequate, someone who puts his mind to it could play with state records — including personnel, payroll and permanent fund dividend files, said James Shea, Department of Administration deputy commissioner of information resource management.

The Department of Administration's lack of policies, procedures and standards for computer operations "leaves the system open to errors and inefficiencies," the Legislative Audit Division said.

"In the worst case, the absence of adequate access controls over production files could expose application systems to errors, fraud and sabotage," the audit said.

Anyone with a current state computer account can change, replace or delete backup programs for the central accounting system, the report said.

The department has asked the legislature for $280,000 in the 1984-85 budget year to beef up security systems for central state computers in Juneau and Anchorage, Shea said. The money would pay for a security system and two people to maintain it.

Shea said computer tampering has become a concern nationwide as "computer literacy" increases. Recently, a state employee was disciplined for gathering the information that would have allowed him to enter files that were off limits to him.

House Speaker Joe Hayes, R-Anchorage, recently introduced legislation making it a felony to use computers to illegally obtain or alter information, steal money or to defraud or deceive someone.

A better computer security system would cut down on the number of checks and audits of records that the state would have to perform, Shea said.

The department also plans to comply with suggestions that rules for operating the state computer system be written, distributed and enforced, Shea said.

Several other procedural corrections will be made as well, according to a department response to the audit.

Computer meddling leads state to ask for more security

ADN 12/23

The Associated Press

JUNEAU — Allegations that a state employee tampered with a computer in an effort to gain access to the names of permanent fund dividend recipients has prompted officials to request a new, $240,000 computer security system, a spokeswoman said Thursday.

Frances Rose, a public information officer with the state Department of Administration, said the employee's name would not be released because he was not charged with any crime.

"He was suspended for 15 days, reduced two steps in rank and had his security clearance lifted," she said.

"If he had been successful, I presume he would have been fired straight out."

The employee is accused of trying to "get information he did not need," or the names of permanent fund dividend recipients, she said.

"I guess he thought he would solicit things from people after they got their checks," Rose said.

"This is the first time this kind of thing has happened. ... It's straight out of 'War Games' (a film about computer tampering)."

A system of "passwords" had been used by the state to safeguard computer information, "but I guess it's not foolproof," she said.

"There's a recognized need that we have to beef up our security," she said.

"We have a proposal in the fiscal '85 budget that would fund the installation of a new computer security system.

"The one they have in mind would cost $240,000 and include creating a data security office and an officer to monitor computer use," Rose said.

Gayle Horetski, an assistant attorney general, said Thursday the case was not referred to the Department of Law so there was no criminal prosecution.

"Computer tampering is something of a gray area and we're working now on legislation that would tighten it up," she said.

FILE WITH HB 520

TO: Senator Bill Ray

FROM: Paula d. Scavera

DATE: March 26, 1984

RE: HB 520 (Finance) am

SECTION 1

Adds new language which establishes the crime of Theft of Services. The penalty level for a specific crime will depend on the value of the service used. (Attached is a value of crime, and level of penalty chart.)

SECTION 2

Adds to the crime of Criminal Mischief in the Third Degree, a class A misdemeanor, a person who has no right, to knowingly access a computer.

SECTION 3

Adds a new crime to existing law; Criminal Use of a Computer and makes that crime a Class C felony.

SECTION 4

Adds new defintions of "access", "computer", "computer network", "computer system", and "data".

SECTION 5

Amends the definition of "services" to include use of a computer, computer time, or a computer system or network.

THEFT OF SERVICES VALUE/LEVEL CHART

SECTION 1 CSHB 520(Finance) am

VALUE	CRIME	LEVEL	PENALTY
$0-49	Theft 4th°	B mis.	90 days/ $1,000
$50-499	Theft 3rd°	A mis.	1 year/ $5,000
$500-24,999	Theft 2nd°	C Felony	5 years/ $50,000
$25,000 or more	Theft 1st°	B Felony	10 years/$50,000

HB

530

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revis Date:

REQUEST
Bill/Resolution No.: CS HB 530(Jud)
Title: "An Act relating to waiver of juveniles as adults
Sponsor: Rep. Pestinger
Requested
Date of

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

EXPENDITURES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL						
200 TRAVEL						
300 CONTRACTUAL		16.0				
400 SUPPLIES		24.9				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		3.9				
800 MISCELLANEOUS						
TOTAL OPERATING		44.8				
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUND		44.8				
FEDERAL FUNDS						
OTHER						
TOTAL		44.8				

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

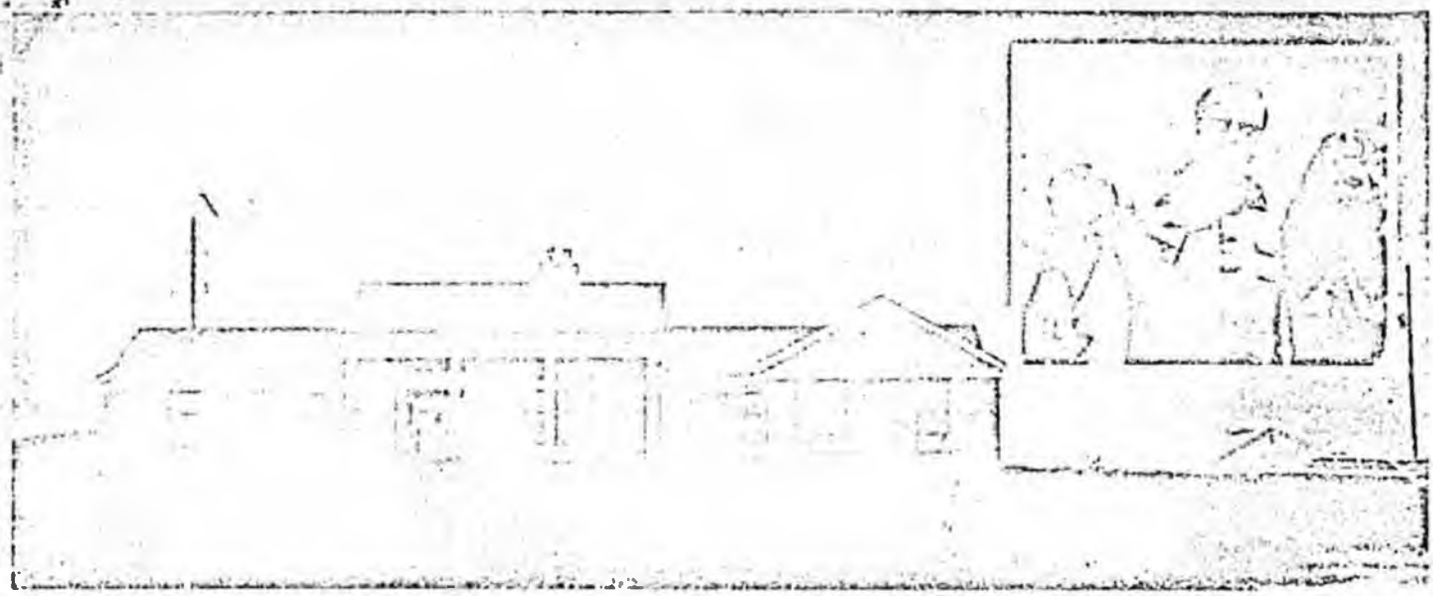
ANALYSIS: Attach a separate page for analysis

Prepared By: Al Adams, Chair Phone: 465-3706
Division: House Finance Committee Date: 4/26/84

Approved by Commissioner: Date:
Agency:

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

12/1/83



Dave Buresh—Denver Post

The Jahnke house; Richard, Deborah and their father before the tragedy: The kids' answer to child abuse was murder

When Kids Kill Their Parents

The night they killed their father, Richard and Deborah Jahnke put the pets in the basement to keep them safe. Raiding Dad's ample arsenal, they stacked guns and ammunition at every entrance to their comfortable red-brick colonial in Cheyenne, Wyo. Deborah, 17, stood watch in the living room with an M-16 rifle, while Richard, 16, waited in the darkened garage, a 12-gauge shotgun cradled in his arms. As Richard C. Jahnke parked the family Volkswagen and lumbered toward him, his son lifted the shotgun and fired three slugs into his father's stocky frame. Then he dropped the shotgun and raced into the house, shouting to Deborah, "I did it."

Parricide is the most chilling of all crimes. It strikes at the roots of society and the core of human values—at the institution of the family itself. For the Jahnke children, killing their father meant ridding themselves of a tormentor who had beaten Richard and sexually abused Deborah for as long as either could remember. But for a frightening number of teen-agers, murdering their parents seems to be a solution to problems as murky as the Oedipus complex—or as petty as being grounded for the weekend. It is still a rare crime—so rare in fact, that no one keeps formal statistics. But it is not as rare as parents might wish.

■ Last December Alain Paul de Cock, 22, was visiting his family in suburban Washington, D.C., where his father was a loan officer with the World Bank. One afternoon, de Cock's mother remarked that Alain's sister, who had earlier died of cancer, had been a better child than he. Alain shot and killed his mother, then, when his father came home from work, killed him, too.

■ Just after midnight last Dec. 2, George Burns Jr., 17, walked up quietly behind his father as he watched television in the family's Jacksonville, Fla., living room. Without a word, the longtime victim of child abuse fired six shots from a .357 magnum into his father's back and chest.

■ David Chi, a 20-year-old honor student in architecture at Cornell, was studying at home when he suddenly grabbed a butcher knife from the kitchen, rushed to the front porch, stabbed his father to death and fell into his mother's lap, sobbing. "I really can't answer why," Chi told a Maryland judge. "I can't give any excuse or explanation."

Parricide may be impossible to excuse but it does follow certain patterns. Almost all murders of parents are committed by sons, and in the rare cases that involve daughters, they often recruit a male agent. Usually parent killing involves a drunken, physically abusive father killed by a son who sees himself as the protector of not only himself but also of his mother and siblings. "When you look at parricide, you look at domestic violence," says Dr. Sol Wasserman, director of child and adolescent psychiatry at San Jose (Calif.) Hospital. "People who come from normal families don't know what heavy family conflict is like."

Richard and Deborah Jahnke know. They grew up hearing their father, a

Miller (left), J. M.: A chilling crime

Courtesy San Jose Mercury News

\$38,500-a-year investigator for the U.S. Internal Revenue Service, beat their mother. At first, Richard would lock the door to his room and hide under the bed. "I could hear her screams and I couldn't help her," he recalls. At the age of 10, he finally intervened, screaming, "Leave my mother alone, you bastard." His father turned on him in a fury, and after that, Richard was the main target of his wrath. A frail, soft-spoken youth, he could offer no resistance, but says, "I felt I was protecting her by drawing him away." Pretty, dark-haired Deborah had a different problem. When she was in fifth grade, her father started abusing her sexually in full view of her mother and brother. Although she and Richard pleaded with their mother to do something, Mrs. Jahnke sided with her husband. Deborah gradually stopped bathing to make herself less attractive, locked herself in her room and retreated into a fantasy world. Moments before the shooting, she asked Richard if he planned to kill their mother. When he said no, he later testified, "she asked me to kill Mom."

Oedipal Urges: Michael Miller's anger is less easy to explain. Miller, the son of a Palos Verdes Estates, Calif., lawyer who handled personal matters for Ronald Reagan, began slipping into schizophrenia after an older brother committed suicide. Psychiatrists felt his condition could be improved significantly with psychoactive drugs, but Miller, a fanatic nutritionist like his mother, rejected them as unfit for humans. After an unsuccessful try at acting in New York, Michael returned home, entered psychotherapy and helped his mother in her garden overlooking the Pacific. Last March police found 52-year-old Marguerite Miller nude in a pool of blood in her bedroom. She had been raped and bludgeoned to death with a wooden club. Michael, 21, has admitted he contemplated killing his father, as well. He has been found incompetent to stand trial, and is in a mental institution. The Oedipal enormity of his crime hasn't

eluded him. "I took my father's wife away," he has confessed.

Perhaps the most frightening of parricide cases are those that seem simply perverse. Martha Feroben of San Jose, Calif., was a divorcée, her son, Jerry Mack Feroben Jr., a 16-year-old with a history of minor scrapes with the law. They got along well, according to friends, arguing over problems common to all parents and teen-agers: spending money, grades and late hours. But J. M., as his family called him, was a 16-year-old with a difference. One searing August afternoon, J. M. watched some TV, took a dip in the backyard pool and stapled play books for his football coach. "What are you doin' tonight?" asked a friend. "I'm going to kill my mother," J. M. replied. Later, he and two buddies hit Martha Feroben with a baseball bat, strangled her with a piece of cord and stole $1,583 in weekly receipts from her beauty parlor. J. M. confessed to the murder, and when police asked his motive, he whined, "She got me mad."

Penalties Parricide poses major problems for the legal system. Most states allow minors to be tried as adults for murder—depending on the circumstances—but penalties vary widely. George Burns got 15 years of probation for killing his father; Richard Jahnke was sentenced to 5 to 15 years, a sentence his lawyers are appealing with considerable public support. Usually, given the history of child abuse in most cases, courts tend to be lenient in punishing parricides.

According to some experts, the problem may grow worse. "This generation seems to have more difficulty controlling its basic, primitive emotions," says psychiatrist Herb McGrew of Napa State Hospital. "People used to internalize problems and get depressed. Now there's this frightening change: there's more extroversion, less inhibition." In addition, many traditional outlets for aggression have been closed. Kids who used to leave home when they were big enough to beat up the old man must wait longer to assume adult roles. The sagging economy has eroded the father's breadwinner role, forcing children to make do with less and heightening family conflict. And most social agencies are reluctant to intervene in troubled families before the tragedies occur. That was certainly the case with Richard Jahnke. When he approached local authorities for help, he reports, "they treated me like a rebellious teen-ager." A caseworker dropped by, chatted amiably with the family, then left—unable to believe that the violence Richard reported could take place in such a comfortable middle-class home. The beatings grew worse.

"I didn't want to do it," says Jahnke. "I wanted to drop the gun and hug him." But Richard had tried that before. His father had called him a baby—and beat him all the harder. So he pulled the trigger.

GERALD C. LUBENOW

MF

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB530
Title: "... [illegible persons 16 or 17 charged with felonies ..."
Sponsor: Rep. Pestinger
Requestor: House Finance
Date of Request: 3/19/84

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Due Process
BRU, Program or Subprogram(s) Affected: Public Defender Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		67.9	72.0	76.3	80.9	85.8
200 TRAVEL		5.0	5.3	5.6	5.9	6.3
300 CONTRACTUAL		8.0	8.5	9.0	9.5	10.1
400 SUPPLIES		3.0	2.0	2.1	2.2	2.3
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	85.4	87.8	93.0	98.5	104.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	85.4	87.8	93.0	98.5	104.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund

ANALYSIS: Attach a separate page for analysis

Prepared By: Dana Fabe, Public Defender — Phone: 279-7541
Division: Public Defender Agency — Date: 3/19/84

Approved by Commissioner: Lisa Rudd, Comm. — Date: 3/27/84
Agency: Dept. of Administration

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

CSHB350
Public Defender Agency
March 19, 1984

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

The Department of Law estimates "that approximately 25-35 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 10-15 additional felony prosecutions will be required to implement this bill." The Department of Law has stated that it will need an additional full-time attorney to handle this load of new adult cases.

Unclassified felonies are the most serious cases and time consuming cases that this Agency handles, and transferring them into the more adversarial adult justice system will require a great deal of additional attorney time. Thus, if this bill is enacted, one full-time Assistant Public Defender will be needed.

FISCAL ANALYSIS

(One full-time Attorney IV in the Third District, Anchorage)

1st Year (FY85)

Personal Services		67.9
Travel		5.0
Contractual		
Communications	2.0	
Experts	6.0	8.0
Commodities		
Office Supplies	1.0	
Law Library	2.0	3.0
Equipment (One Time)		1.5
Total		85.4

1.	POSITION TITLE Attorney IV			RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 4464/mo.	53,568	
6.	Benefits	9,165	
7.	Supplemental Benefits	2,550	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES 01		67,913
10.	Travel 02		5,000
11.	Contractual 03		8,000
12.	Commodities 04		3,000
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		85,413

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	85,413
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR OMB USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This full-time Attorney IV position will be needed to handle the estimated 10 to 15 additional serious felony cases that will result from enactment of the juvenile waiver bill. The full working level of Attorney will be required because those cases to be tried will be unclassified felonies, which are the most serious criminal offenses.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Third Judicial District

Revised Date

FY 85

Fiscal Note
Analysis
CSHB 530 (Judiciary) Page 2 of 4

February 29, 1984

This bill provides that persons 16 or 17 years of age who are charged with unclassified 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 unclassified felonies may be waived to adult court upon motion by the prosecutor and after a hearing in juvenile court.

It is estimated that approximately 25 - 35 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 10 - 15 additional felony prosecutions will be required to implement this bill. Additionally, the bill provides that if an offender is ultimately convicted of a lesser offense which is not an unclassified felony, the offender may be transferred back to juvenile court, at the court's discretion, after a hearing to determine if there is a substantial likelihood that the offender can be successfully rehabilitated under the children's court system.

Because we anticipate an increase in the number of serious felonies to be prosecuted, and because defense counsel can be expected to seek to transfer offenders back to children's court whenever prosecution results in a conviction for a lesser offense, precipitating a motion practice to retain adult jurisdiction on the part of state prosecutors, the addition of one full time prosecutor will be necessary if the bill is enacted.

Dept. of Law

Page 3 of 4

FISCAL ANALYSIS - CSHB 530 (Judiciary)

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

Children who murder

How Colorado treats teen-agers who have killed

By S.J. GUFFEY
The Associated Press

LAKEWOOD, Colo. — They are the boys next door, the nice kids down the block. Their All-American good looks are the first thing people notice about Jason, Aaron and Michael.

They are popular, too. Girls call and ask why their letters weren't answered.

To the staff at the Closed Adolescent Treatment center in this Denver suburb, the trio is often "the cherubs." That's an inside joke. These youngsters are killers.

Five young murderers are housed here, among twice that many teen-age child molesters and rapists, some gang leaders and others described as "assaultive." Twenty-six in all, supposedly the worst of Colorado's violent juvenile offenders.

The CAT doesn't get them all. According to director Vicki Agee, "There are so many they just leak throughout the system."

The CAT, a part of Colorado's Division of Youth Services, is run on the proposition that its duty is both to the kids inside and to the society outside that sent them there.

Daily group therapy sessions are aimed at enlisting peer pressure to accept personal accountability — both for the acts that brought the young criminals here and for their future behavior.

Ms. Agee, who holds a doctorate in psychology, and some other professionals who deal with young criminals think the number of very violent teens is growing. According to Ms. Agee, "It looks like kids are getting a lot sicker a lot younger."

Gary Corbett, the Arapahoe County probation supervisor who recommended Michael Wilkerson's placement in CAT, disagrees. Sort of.

"It's not like we're inundated, but we are finding many more middle-class things," says Corbett. "I wouldn't say there are all that many of those. When one happens, though, it's front page."

Ms. Agee has a special name for these criminals. "Middle-class murderers," she calls CAT residents like Jason Rocha, Aaron Carter and Michael Wilkerson.

"I still think this is a rare crime," argues Dr. John MacDonald, psychiatrist at the University of Colorado Health Sciences Center. "You get three or four and then you don't hear of any for a long time."

"Last year, we had parents killing children, this year, we have children killing parents," says Public Defender Craig Truman, who represented Mike Wilkerson.

While the experts disagree on the numbers, there is also a vast difference in what happens once a youngster turns killer.

Sixteen-year-old Richard and 18-year-old Deborah Jahnke of Cheyenne, Wyo., received prison terms after shooting their father in November 1982. Richard was given a 5-to-15-year sentence for manslaughter. Deborah got 3-to-8 years for "aiding and abetting manslaughter."

The case drew national attention for its lurid detail and because children's rights' advocates saw the prison sentences as unnecessarily harsh for two youngsters who had already had lifetimes of physical and sexual abuse at their father's hands.

On Father's Day 1983, 16-year-old John Carner of Denver shot his father dead. As in the Jahnke case, the picture that emerged from the murder investigation was of a victim who died after he had victimized his wife, son and daughter for years.

Jim Weissman, the chief deputy district attorney in Denver, called it "an incident that truly cried out for humanity."

Today, John Carner remains an honor student at his high school and still holds a part-time job. The case, says Denver Police Detective Gene Guigli, "was handled the way it should have been."

Comparing the Jahnke and Carner cases, Guigli says, "We didn't turn it into a three-ring circus."

There was no plea bargain in the Carner case; the district attorney's office simply refused to charge him as an adult. In Colorado, anyone over 14 can be tried as either an adult or within the juvenile court system.

If tried as an adult, the offender can still be sentenced as a child. The longest juvenile sentence is two years. For serious crimes, courts almost always grant an institution's request to double that, but Ms. Agee calls the two-year terms for murderers "just kind of petty ... like another message that human life isn't worth very much."

A bill before the Colorado Legislature this session would make five-year terms mandatory for the most serious juvenile crimes — first- and second-degree murder and habitual violent offenders.

"The problem with violent crime is that it is almost by definition irrational," says District Judge James Leh of Sterling, in the eastern plains of Colorado. He tried a pair of 17-year-olds who killed a junior college student who had stopped to help them with their apparently disabled car.

David Schenler and Robert Hudson, both of Fort Morgan, Colo., later told authorities they "just wanted to see what it feels like to kill someone."

Leh, in court, called the facts of the case "horrendous" and sentenced both to the maximum 24 years in prison.

Away from court, talking about teen-age violent crime, Leh notes the widespread unraveling of family bonds and says, "an awful lot of kids have to raise themselves. It's a tough time, it seems to me, to be a kid."

"We live in an excuse-giving society," says Ms. Agee, always blaming a youngster's misdeeds "on the family or the neighborhood or economic conditions or something." At CAT, such rationalizations don't wash. Young criminals, in CAT's philosophy, must take responsibility for their crimes and group therapy keeps the pressure on.

Outside doors are perpetually locked at the CAT. Large windows stretch the feeling of space within the low red brick building, but 10-foot fences topped by barbed wire edge the courtyards just outside. It is hard to look anywhere and not be reminded that this is, after all, a jail.

Records show that only a third of those who stay at the CAT commit another crime. After 10 years of developing what is considered a model treatment program for violent teens, Ms. Agee's expertise is widely acknowledged.

Yet she concedes, "We really don't know what causes criminal behavior."

Physical, emotional and sexual abuse of children has increased in recent years, she believes, in a general relaxation of social and moral standards to which the mass media have contributed.

Another factor, as she sees it, is the de-institutionalization movement in mental health and corrections. "People are having children and are raising and abusing them who, prior to this movement, were locked up," she says. "Schizophrenics, drug abusers and criminals are much more likely to have children who become violent."

Within the children themselves, she sees strong evidence that two particular types of behavioral problems are on the rise, too.

"Products of the Age of Narcissism, these are the ones we've been getting lately," she says. "These are kids who feel they're entitled to be treated as the center of the universe. They react with violence when they go into what psychiatrists call a narcissistic crisis — when they realize everything's not going their way."

The other category that she says "seems to be increasing enormously" is the "borderline" child — "a kid on the border between being in contact with reality and not being in contact with reality."

Borderlines, she says, often go untreated because the child acts one way at school and another way at home. "People don't agree on what's wrong because each can see only one side."

As many as a quarter of those at the CAT are borderline, she says.

Ms. Agee pauses and looks out the door of her office, toward the common room where the 26 who live at the CAT spend most of their days.

"They tell me down at Juvenile Hall that kids come in now and say, 'I was psychologically abused.' The juvenile court system is designed to help, not merely punish, and some kids take advantage of that.

"The vast majority of the kids who come in here don't have any remorse at all. In most states, the response to all the violent crime is to lower the age that you can send someone to prison.

"But we love them, too. Call it a caring confrontation that hurts. Sort of like the slow lancing of a boil."

AP Laserphoto

Center's director

Dr. Vickie Agee is the director of the Close Adolescent Treatment Center near Lakewood, Colo. The center is internationally known for its treatment program for violent teen-age youths.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: May 10, 1984

REQUEST:
Bill/Resolution No.: CS for HB No. 530 (Fin)
Title: "An Act relating to waiver of juveniles as adults."
Sponsor: Rep. Pestinger
Requestor: Senate Judiciary Committee
Date of Request: May 10, 1984

FISCAL DETAIL:
Agency Affected: DEPT. OF CORRECTIONS
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 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES				993.9	1,053.5	1,116.7
200 TRAVEL				4.6	4.9	5.2
300 CONTRACTUAL		16.0	51.0	162.8	172.6	182.9
400 COMMODITIES		24.9	79.3	182.1	193.0	204.6
500 EQUIPMENT				6.4		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		3.9	12.2	20.0	21.2	22.5
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	44.8	142.5	1,369.8	1,445.2	1,531.9
CAPITAL	-0-	6,393.8	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	6,438.6	142.5	1,369.8	1,445.2	1,531.9
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	6,438.6	142.5	1,369.8	1,445.2	1,531.9

POSITIONS:

FULL-TIME	-0-	-0-	-0-	19	19	19
PART-TIME						
TEMPORARY						
TOTAL	-0-	-0-	-0-	19	19	19

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: Roger C. Lange Roger C. Lange by Daniel S. Arnold Telephone: 465-3376
Division: Administratjve Services Date: May 10, 1984

Approved by Commissioner: William M. Ladwig, Deputy Comm Date: May 10, 1984
Department: DEPARTMENT OF CORRECTIONS By Daniel S. Arnold

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

12/1/83

ANALYSIS

A. Assumptions:

Based on FY 1982 Juvenile arrest data and the Department of Law's estimate that 25-35 juveniles per year will be waived into Adult Court, it is estimated that 46.5 additional beds will be needed by the Department of Corrections if CS for H.B. No. 530 is enacted. A detail of this estimate is given in Attachment 1. It is noted that the estimated sentence length for most offenses have been revised downward from the fiscal note on the original bill. Additional information was compiled since that writing indicating that juveniles waived under existing statutes received significantly lower sentences than adults, with the exception of murder.

This legislation will have an additional fiscal impact not addressed in this fiscal note as a result of Section 4. This section will require that prior felony offenses as a juvenile be considered for presumptive sentencing purposes for subsequent felony offenses. Presumptive sentences for second felony convictions carry significantly longer sentences than for first offenses. It is assumed that a number of the juveniles waived as adults will commit subsequent felony crimes. Four or five of these cases per year could result in the long term need for 20 additional beds. Since there is no accurate measurement for this secondary impact, it is not specifically identified in the financial impact of this fiscal note.

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/maximum security beds are estimated to be $137,500 per bed.

   46.5 beds @ $137,500 = $6,393,750

2. Full operating costs would not occur until FY87. It is estimated that nineteen (19) positions will be required to provide security and support for these beds: One (1) Correctional Officer III, sixteen (16) 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	$ 993,900
200	Travel	4,600
300	Contractual Services	162,800
400	Commodities	182,100
500	Equipment	6,400
700	Inmate Gratuities	20,000
Total		$1,369,800

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 Conviction	Presumptive Sentence or Mandatory Minimum	Estimated Average Sentence for 16 and 17 Year Olds Convicted as Adults	Actual Time to Serve With Credit for Good Time
Automatic Waiver			
Unclassified felonies			
2 murder I	20 years	20 years*	2 x 15.0 = 30.0 years
1 murder II	5 years	5 years*	1 x 3.75 = 3.75 years
1 sexual assault 1st (with firearm)	10 years	3 years	1 x 2.25 = 2.25 years
5 sexual assault 1st (without firearm)	8 years	3 years	3 x 2.25 = 6.75 2 probation
Judicial Waiver			
2 Class A felonies (with firearm)	7 years	2 years	1 x 1.5 = 1.5 years 1 probation
3 Class A felonies (without firearm)	5 years	1 year	2 x .75 = 1.5 years 1 probation
	Non-presumptive Range		
2 Class B felonies	0-10 years	1 year	1 x .75 = .75 1 probation
			TOTAL: 46.5 person-years

*Mandatory minimum sentences are used for purposes of this fiscal note. This fugure may be low based on two convictions for murder of waived juveniles in the past two years. Each of the juveniles received the maximum sentence of 99 years.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CS HB 530(Ju
Title: "An Act relating to waiver of juveniles as adults
Sponsor: Rep. Pestinger
Requestor:
Date of Request:

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

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		16.0				
400 SUPPLIES		24.9				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		3.9				
800 MISCELLANEOUS						
TOTAL OPERATING		44.8				
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUND		44.8				
FEDERAL FUNDS						
OTHER						
TOTAL		44.8				

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Al Adams, Chair
Phone: 465-3706
Division: House Finance Committee
Date: 4/26/84

Approved by Commissioner:
Date:
Agency:

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

12/1/83

SECTION-BY-SECTION ANALYSIS OF CSHB 530 (FIN)

RELATING TO JUVENILE WAIVER PROVISIONS

Section 1.

This section adds a new provision to AS 12.05, dealing with waiver of juvenile court jurisdiction over persons who have committed serious criminal offenses. Subsection (a) of new AS 12.05.020 provides that a person who is 16 or 17 years of age and who is charged with an unclassified felony offense must be prosecuted as an adult. In effect, these persons are automatically removed from the jurisdiction of the juvenile court.

AS 12.05.020(b) recognizes that, as under current law, a person may also be transferred, in the court's discretion, to adult court following a hearing under AS 47.10.060 (juvenile waiver provisions). If a person is transferred to adult court under this procedure, he will be prosecuted as an adult.

As discussed in section 2, below, a person who is transferred to adult court, either automatically or in the court's discretion, but who is ultimately convicted of an offense (not unclassified) which is less

serious than the offense for which juvenile court jurisdiction was waived, may be "transferred back" to juvenile court for disposition rather than be sentenced under AS 12.55. as an adult. New AS 12.05.020(c) provides that a person who has been convicted of an offense after being prosecuted as an adult must be prosecuted as an adult for any subsequent criminal offense, unless he was transferred back to juvenile court for disposition on the first offense.

There are several reasons for continuing the adult court's jurisdiction over a person who has been previously convicted and sentenced as an adult. It is expected that a person will be "waived" into adult court only for the most serious offenses. Following conviction for the original offense, or for a lesser (but still serious) offense, the person will be sent to an adult institution if a sentence of imprisonment is received. If the person commits another crime while still under the age of 18, it would not be appropriate to send him to a juvenile facility. The younger, less sophisticated persons who are generally found in juvenile institutions should be protected from contact with more "hardened" criminals. Also, the convicted person will almost certainly either still be in custody or have been released on probation or parole for the first offense. Any subsequent criminal offense, felony or misdemeanor, is likely to be a violation of the terms of the probation or parole in the adult court. Thus, it makes sense to prosecute the subsequent offense in adult court, as that is the court which will have to consider the offense in connection with possible revocation of the probation or parole anyway.

Subsection (d) merely makes it clear that references in this section to a person's age mean the person's age at the time of the offense, not at the time of prosecution or conviction.

Section 2.

Section 2 of the bill adds a new provision to AS 12.55, establishing procedures for sentencing offenders convicted of a crime after waiver to adult court. Under AS 12.55.007 a person who has been waived into adult court, either automatically or after a court hearing, and who is convicted of the offense charged or of a lesser included offense, will be sentenced as an adult under AS 12.55 rather than as a juvenile under AS 47.10, unless the person is "transferred back" to juvenile court for disposition. A person who was waived to adult court, but ultimately convicted of an offense (not unclassified) less serious than the offense for which juvenile court jurisdiction was waived may file a petition seeking return to juvenile court, and the court must hold a hearing on the petition. The court may transfer the case back to juvenile court if the person can show that there is a "substantial likelihood" that he can be successfully rehabilitated under the juvenile court system. The factors which the court must consider in making a determination of the likelihood of rehabilitation under the juvenile court system are those that apply when a court is considering the discretionary waiver of an offender into adult court, discussed in section 7, below.

Section 3.

This section adds a new subsection (j) to present AS 12.55.125. This new subsection provides that, notwithstanding the presumptive terms set out in AS 12.55.125(a)-(i), a person who has been waived into adult court from juvenile court is not subject to mandatory minimum or presumptive sentences upon his first felony conviction. Thus, the adult court may take all relevant factors into consideration when sentencing a young first felony offender, and is not bound to impose a predetermined sentence. Any potential harshness which might result in individual cases from the automatic waiver can thus be remedied when the court decides upon the appropriate sentence.

Based upon a review of sentences imposed upon persons who have been waived into adult court under current law, it is expected that a young person will almost always receive a lighter sentence for a first offense than he would if he were subject to presumptive sentencing. Under this bill, the court may suspend imposition of sentence, or place the person on probation, options which are not available under the presumptive sentencing scheme.

Section 4.

This section adds a new subsection (f) to existing AS 12.55.145. Under this provision, a person who has been previously waived into adult court and convicted of a felony and who is subsequently convicted of a second felony offense is subject to presumptive sentencing as a second offender. While it might be appropriate to give a young offender "a break" the first time he commits a serious offense, if he continues to

commit felony offenses he should be treated as any other adult repeat offender.

Section 5.

New AS 12.80.060 provides that a person who is waived into adult court, either automatically or in the court's discretion after a hearing, will be confined in an adult institution following indictment if he is held in custody while awaiting trial or sentencing. This is basically what happens under present procedure. Currently, if a juvenile offender is waived into adult court following a hearing under AS 47.10.060, he or she is transferred to an adult institution, not left in juvenile institutions to mix with and influence young, less sophisticated offenders.

If an offender who has been waived into adult court is sentenced to a period of incarceration after conviction, the sentence will be served in an adult correctional facility. Offenders will be assigned to appropriate facilities through the general corrections classification system. Incarcerated offenders under the age of 18 will be assigned to sleeping quarters separate from those of adult offenders until the juveniles reach the age of 18.

Earlier versons of juvenile waiver bills required that young offenders stay in a juvenile facility until age 18, and then be transferred to an adult facility. The Department of Health and Social

Services objected to this, arguing that it was not appropriate to house those charged with or convicted of murder, rape, or armed robbery with youngsters who are discipline problems or who had been sent to a juvenile institution for relatively minor offenses. Additionally, offenders convicted as adults present a serious security risk. A person housed in a youth facility who knows that he will be transferred to an adult facility at age 18 has an incentive to flee from the juvenile facility before the time set for the transfer. Juvenile facilities are not designed to provide maximum security.

Section 6.

This section merely makes conforming amendments to the language of existing AS 47.10.010(a) to make it clear that persons who are charged with an unclassified felony or who have been discretionarily waived into adult court are exempted from the jurisdiction of the children's court.

Section 7.

This section rewrites the current juvenile waiver law, AS 47.10.060, to alter the circumstances under which a juvenile offender can be waived, in the court's discretion, to adult court.

Subsection (a) provides that the court shall waive juvenile court jurisdiction over an offender if the court finds, based on a preponderance of the evidence, that there is probable cause to believe that the person committed a felony offense and that there is "no substantial likelihood that the person can be successfully rehabilitated under children's court proceedings." The "preponderance of evidence"

standard is the burden of proof which the prosecutor must meet under existing law. See In the Matter of F.S., 586 P.2d 607 (Alaska 1978). The revised verson of AS 47.10.060 changes the standard for the discretionary waiver of an offender into adult court from present law's "not amenable to treatment" standard to the "no substantial likelihood" language set out above. The standard has been changed to make it somewhat more likely that a juvenile offender who does not come under the mandatory waiver provisions of AS 12.05.020(a) (see section 1) will be waived into adult court for serious or repeated criminal conduct.

Under the current law, the "not amenable to treatment" standard has been interpreted by the courts to require that the state prove, by a preponderance of the evidence, that the juvenile offender probably could not be successfully treated under the juvenile court system. Experience under the present law has shown that, if the person has never before come to the attention of the authorities, it is extremely difficult to prove that he or she would not be amenable to treatment, regardless of the seriousness of the crime. The "no substantial likelihood" standard strikes a more appropriate balance between the legitimate goal of treatment in the juvenile justice system for those offenders who are likely to benefit from such services and the equally legitimate interests of protection of society and deterrence of crime.

AS 47.10.060(b) specifically enumerates the factors which the court must consider when making a determination as to the likelihood of successful rehabilitation under the children's court system. Most of

the eleven factors set out in the section have been taken, either verbatim or with slight modification, from similar statutes in other jurisdictions.

Subsection (c) indicates that the court must decide how much weight to give to each factor, and must issue a written decision. A finding of no substantial likelihood of successful rehabilitation may be based on any one or a combination of the factors. Subsection (d) explains what waiver of children's court jurisdiction means, and provides that the waiver is for the principal charged offense and all included or related offenses. These sections are modelled upon similar provisions contained in the laws of other states.

UNCLASSIFIED FELONIES

AS 11.41.100	MURDER IN THE FIRST DEGREE
AS 11.41.110	MURDER IN THE SECOND DEGREE
AS 11.41.300	KIDNAPPING
AS 11.41.410	SEXUAL ASSAULT IN THE FIRST DEGREE
AS 11.41.434	SEXUAL ABUSE OF A MINOR IN THE FIRST DEGREE
AS 11.71.010	MISCONDUCT INVOLVING CONTROLLED SUBSTANCES IN THE FIRST DEGREE

Alaska's young criminals from all levels of society

Anch Times
1/27/83

by Jeff Berliner
and Anne Willette
Times Writers

First of three parts

A 14-year-old boy killed the Ekwok village postmaster and his wife.

A 14-year-old Fairbanks youth shot his father and stepmother to death.

Shelly Bosch, 17, helped 16-year-old James Ridgely and 18-year-old William Plumley bludgeon to death an elderly Cantwell woman.

A 17-year-old boy and a 14-year-old boy earned a convertible for killing an Anchorage Air Force sergeant. The list goes on.

Nearly half of those arrested for major crimes in Alaska last year were teenagers.

FBI crime reports for 1982 show that 2,263 of the 5,089 people arrested for the state's most serious crimes — murder, rape, robbery, assault, burglary, larceny, vehicle theft and arson — were

See Alaska's, page A-5

Continued from page A-1

under the age of 18.

The rate of juvenile arrests in Alaska outstrips the national average for the eight serious crimes tracked by the Federal Bureau of Investigation. One of every three people arrested in this country for committing one of those crimes is a juvenile; in Alaska, that number is nearly one of every two arrests.

When all crimes are considered, juveniles make up 17.9 percent of the arrests in the United States. In Alaska, minors account for 26.5 percent of all people hauled in by police and state troopers, according to the FBI.

Alaska's young criminals come from every class, every area of the state, every race, every background. Most of them steal, use drugs and alcohol, break into homes and businesses, or destroy property. Some of them beat others, a few rob. A handful kill.

• Fifteen-year-old Christopher Conners is accused of arming himself with a shotgun and pistol one night last August and ending the lives of those closest to him in the small village of Pilot Point. Dead are his mother Evelyn Conners, 9-year-old brother Guy, and family friend James Achayok. Four others escaped the shooting spree wounded but alive.

The boy is now locked in the crowded detention area of Mclaughlin Youth Center, Anchorage's only depository for accused youth, waiting for a judge to decide next month whether he should face trial as an adult or as a child.

• Jack (his real name and those of others have been withheld at the request of juvenile authorities) took aim at the cars and trucks that drove by his hideout alongside the Glenn Highway near Tok, filling them with bullets, but miraculously not killing anyone in the Sept. 16, 1982 incident. The admitted sniper, now 17, has been in McLaughlin for 14 months. He knows he's not ready to leave the center, but he's been readying for his return to society is convinced he's going to make it. So are those who have him in custody.

• Billy was 12 years old when the law caught up with him earlier this year. He was on the run from his Anchorage home, had become an expert car thief, and says, without contradiction from juvenile authorities, that he had been smoking marijuana since he was 5 years old. But Billy, despite his criminal experience, after nine months in McLaughlin says he was just a scared little boy, cut to the core by a lifetime of pain and suffering, and looking to get caught.

• Shawn Whitmore, 21, has spent about 10 months on the street in the last seven years. He repeatedly experienced firsthand Alaska's juvenile justice system until his crimes finally landed him in state prison. He says he learned to adapt to crime and courts before the system learned how to help him. Then, it was too late. After catching young offenders, juvenile authorities must act fast, he says, to treat young criminals during that fleeting moment when treatment can still make a difference.

• Like Whitmore, 20-year-old Patrick Marrs grew up in McLaughlin. Now he's growing older in jail, serving a sentence for armed robbery. Breaking the law as a teen-ager, he says, was an "attention-getting" device. Now he talks about helping others. "I'm still young," he says. "I don't want to stay in these four walls forever."

• An 11-year-old boy and his friend decided to play Russian roulette in an Anchorage home one day a few years ago. The boy shot his friend to death. Then, instead of killing himself according to the boys' sworn pact, he faced a murder charge.

• A boy just old enough to qualify as the youngest adult in an Alaska prison confides that he roamed several Anchorage neighborhoods committing scores of house burglaries for which he was never caught. He is one of many such youths — some now in jail, some in McLaughlin, some still out on the street.

throughout the state were punished for breaking the law. A third of them were charged with a crime on the FBI's list of the eight most serious offenses.

These Alaskan youngsters accounted for more than half the state's burglary, larceny, vehicle theft and arson arrests; 20 percent of the state's 40 murder arrests; 10.2 percent of the rape arrests; 12.5 percent of the robbery arrests; and 11.5 percent of the arrests for aggravated assault.

Although the horrendous crimes, like murder, earn the most attention, most youthful offenders are guilty of shoplifting, vandalizing or using alcohol and drugs.

Just over half of the minors disciplined in 1982 committed property crimes. Another 30 percent violated drug and alcohol laws.

Seven percent of the 6,172 youngsters who went through Alaska's juvenile justice system last year committed violent crimes: robbery, assault, rape. Eight of them murdered.

Youngsters in 81 percent of the cases statewide were let off with warnings. For most of them, that's enough to keep them out of trouble, says Jay Warner, Anchorage juvenile intake officer.

Formal charges were filed in 17 percent of the cases: 763 of those youths ordered up on probation, 177 were institutionalized, 30 had their cases dismissed after charges were filed and 77 were given time to straighten themselves out and thus avoid prosecution.

Six of the 6,172 youngsters in the juvenile justice system in 1982 were tried as adults. Under proposals to skip juvenile court and send 16-and 17-year old murder, rape and kidnap defendants to adult court, about 20 minors would end up in Alaska Superior Court every year, according to records of the state Division of Family and Youth Services.

Cases for the remaining 2 percent of the 6,172 youngsters who came in contact with the juvenile justice system were dismissed before any kind of action was taken.

People who work with juvenile criminals say there are no easy explanations for why these children break the law. Some common factors do exist, however. The majority have been physically or sexually abused. And many of them excessively use drugs and alcohol.

Alaska's juvenile justice system is designed to treat youth in the least restrictive way. Lawbreaking youngsters are guided toward rehabilitation, not punishment.

Those formally charged often are put on probation or placed in a foster or group home.

McLaughlin Youth Center is the end of the line. Only those who commit the most horrible crimes end up there after a first offense. Most of the others have had many chances to straighten out but haven't been able to do so. They need the restrictive atmosphere, counseling and treatment McLaughlin provides.

McLaughlin takes juveniles from all over the state and is always full.

The detention units, sort of a holding area for just-busted juveniles, are jammed beyond capacity. The 40-bed boys detention area housed 60 teens on a recent weekend.

Last year, 1,271 boys and girls spent at least one night in McLaughlin's detention unit bunks until juvenile court officials could figure out what to do with them. At McLaughlin, teens accused of shoplifting sleep next to teens accused of murder.

Twelve-year-olds are the youngest McLaughlin usually gets, and it sends its wards back out into the world when they reach 19 or have spent two years at the institution, whichever comes first.

Trees conceal the cottages from thousands of motorists driving by McLaughlin's 25-acre campus across the street from Anchorage Community College and next door to the Alaska Psychiatric Institute. Those driving by on Providence Drive usually see only the gym.

While the institution's 120-member staff quietly goes about the business of helping its anonymous residents, juvenile crime has become anything but anonymous. Teen-age criminals have become a political football kicked around by politicians in debates over major pieces of legislation. The more sensational cases take attention away from the typical offender and his needs. Suddenly, laws are being changed because a few teenagers committed heinous crimes.

As one McLaughlin teen says, "Legislators need to look at us as individuals and not judge us solely by our crime."

A recent conference here explored the connection between neglect and abuse and juvenile delinquency.

Inside McLaughlin, counselors, psychologists, psychiatrists, teachers and the residents themselves are exploring what made them do what they did and what they need to do to get out — and not commit more crimes.

NEXT: McLaughlin's teenagers

JUVENILE ARRESTS IN ALASKA

CRIME	1982	1981	1980	1979	1978	1977
Murder	8	2	2	3	4	1
Rape	14	8	7	13	5	3
Robbery	13	23	25	32	26	35
Assault	86	59	82	46	45	49
Burglary	509	522	563	544	545	714
Larceny	1,444	1,349	1,556	1,596	1,793	1,618
Auto Theft	168	192	173	230	231	223
Arson	21	23	27	36	25	27
TOTAL	2,263	2,178	2,435	2,500	2,674	2,670

Anchorage Times Chart
Source : Alaska Department of Public Safety: Crime in Alaska, 1977-1982
1982 FBI Uniform Crime Report

MAJOR CRIMES	STATEWIDE TOTAL	TOTAL ARRESTS	JUVENILE ARRESTS	JUVENILE ARRESTS IN ALASKA BY %	JUVENILE ARRESTS IN U.S. BY %
Murder	81	40	8	20.0	8.5
Rape	374	137	14	10.2	14.7
Robbery	586	104	13	12.5	26.4
Assault	1,691	749	86	11.5	13.2
Burglary	5,204	852	509	59.7	39.6
Larceny	16,672	2,855	1,444	50.5	32.4
Auto theft	2,603	311	168	54.0	36.0
Arson	209	41	21	51.2	37.2
TOTALS	27,420	5,089	2,263	44.4	30.9

Anchorage Times Chart
Source: 1982 FBI Uniform Crime Report

Authorized Sentences For Crimes Under Criminal Code

UNCLASSIFIED FELONIES	JAIL TERMS Mandatory Minimum[1]	Maximum	Presumptive[2] 1st Off.	Sec. Off.	Third Off.	Maximum Fine
Murder in the First Degree	20 YRS	99 YRS	-	-	-	$75,000
Murder in the Second Degree	5 YRS	99 YRS	-	-	-	$75,000
Kidnapping	5 YRS	99 YRS	-	-		$75,000
Sexual Assault in the First Degree	-	30 YRS	4[8][3]30	7½[15]30	12½[25]30	$75,000
Sexual Abuse of a Minor in the First Degree	-	30 YRS	4[8][3]30	7½[15]30	12½[25]30	-
Misconduct Involving Controlled Substances in the First Degree	5 YRS	99 YRS	-	-	-	$75,000
CLASS A FELONIES	-	20 YRS	3½[7][4]20	5[10]20	7½[15]20	$50,000

KEY

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

1. Persons who receive mandatory minimum (non-presumptive) sentences are eligible for parole after serving one third of the sentence. (also receives 1 day reduction in sentence for every 3 days of "good time")

2. Persons who receive presumptive sentences are not eligible for parole (do receive "good time" credit of 1 day for every 3 days of good time).

3. If first felony conviction, and defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury, presumptive term is 10 years instead of eight.

4. Seven year presumptive term applies if first felony conviction, other than manslaughter, and defandant possessed a firearm, used a dangerous instrument, caused serious physical injury, or knowingly directed the conduct toward an on-duty uniformed police officer or other emergency responder. If none of these factors is present, the presumptive term is five years.

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 commited 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 ve a standard of proof which is inadequately defined and therefore en to broad interpretation. In addition, the court is not required to nsider specifically defined factors in making waiver determinations. us, 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 State Legislature

House of Representatives

Sam Pestinger

committees:

Vice Chairman, State Loans

Vice Chairman, Health, Education and Social Services

Labor and Commerce

Official Business

6661 Round Tree
Anchorage, AK 99507
(907) 344-7770

While in Juneau
Pouch V
Juneau, AK 99811
(907) 465-3879

FBI statistics indicate that nearly 50% of Alaska's most serious crimes are committed by persons under 18 years of age.

HB 530 specifically addresses the areas of jurisdiction, retention and sentencing of juveniles who commit unclassified felonies, and provides adequate safeguards concerning those persons who are first-time offenders.

Unclassified felonies are:

Murder in the First Degree
Murder in the Second Degree
Kidnapping
Sexual Assault in the First Degree
Sexual Abuse of a Minor in the First Degree
Misconduct involving controlled substances
in the First Degree

This bill would require automatic waiver to adult court of 16 and 17 year olds who commit an unclassified felony. It additionally requires the juvenile to remain under the jurisdiction of Adult Corrections and, when court ordered, serve his time in an adult facility.

Upon arrest, the juvenile is incarcerated in a youth facility pending indictment. Following an indictment or preliminary hearing, wherein evidence is produced to substantiate waiver to adult court, the juvenile is then transferred to Adult Corrections.

If convicted of an unclassified felony, if court ordered, the juvenile will be incarcerated in an adult facility, but will be assigned to sleeping quarters separate from those of adult offenders until the juvenile reaches the age of 18.

A person who is waived to adult court, but is ultimately convicted of a lesser offense (not an unclassified felony) may file a petition seeking return to juvenile court, and the court must hold a hearing on the petition. If, in the court's discretion there is a "substantial likelihood" that the juvenile can be successfully rehabilitated in a juvenile facility, the case can be transferred back to juvenile court.

Under this provision, and through provisions included in other sections of the bill, a first-time offender is protected from any potential harshness which might result from automatic waiver to adult court.

HB 530 allows the court to consider all relevant factors when sentencing a first-time offender and preserves the option of suspending imposition of sentencing or placing a juvenile on probation.

It further provides that a person who has been previously waived into adult court and convicted of a felony, and who commits a second offense, shall be treated as any other adult repeat offender. This provision would act as a deterent to the current high rate of recidivism among juvenile offenders.

HB 530 has the support of our local community organizations, the Dept. of Law and the Dept. of Health and Social Services and effectively deals with our increasing problem of juvenile crime.

Sam Pestinger

REP. SAM PESTINGER

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, 1985. 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

---

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

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

---

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

Teen-age runaway raped in Ketchikan jail

A 13-year-old boy who had run away from his foster home was raped when he was placed in a Ketchikan jail overnight, state officials said Wednesday.

The boy was raped Feb. 22 by a 17-year-old youth being held on a criminal trespass charge, said Assistant Commissioner of Corrections Kevin Bruce. The 13-year-old was sharing the cell with the 17-year-old, and Bruce said two solid doors stood between the cell and the nearest guard.

The boy reported the rape to his guardian when he was let out of jail on a pass, Bruce said. The incident is being investigated by state troopers, he said.

The state is seeking funds for a juvenile detention facility in Ketchikan, but in the meantime all juveniles picked up by authorities are put in the Ketchikan jail, said John Pugh, deputy commissioner of Health and Social Services.

These include juveniles, like the 13-year-old, who are the responsibility of the state Division of Family and Youth Services.

"The juveniles in the Ketchikan jail are a sore point with us," Bruce said. The new 64-bed jail was opened in late 1982.

An old detention facility for women and children in Ketchikan was closed down for health and fire safety reasons when the new jail opened, Pugh said. For the past two years, the state has sought funding for a replacement juvenile facility, and in the meantime juveniles have been held at the Ketchikan jail.

This year the governor's proposed budget includes $1.3 million for site acquisition and design of a new juvenile detention facility in Ketchikan, Pugh said. The entire facility will cost $3.1 million, he said.

The state now has youth detention facilities in Anchorage, Fairbanks, and Nome, and a facility for women and juveniles in Juneau. Elsewhere in Alaska, juveniles are held in state jails, though a long-range plan calls for construction of regional juvenile detention centers, Pugh said.

HB

560

COMMITTEE REPORT

SENATE

FURTHER:

Date _____

Mr. President

The Committee on _____ considered _____

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS

_____

_____

_____

_____

_____

_____

_____

_____

_____
Chairman

_____
Chairman recommendation

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

2/6/84

Date: 2-7-84

The Committee on JUDICIARY has had SSHB 560
"An Act relating to the jurisdiction of the district court and magistrates; and providing for an effective date."

under consideration and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ______ [ ] same title [ ] new title

and recommends ______

[ ] AND attaches a "Letter of Intent"

[ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS:

John L. Sisk[?]

[signature] Hayes

[signature]

Clite Bussell

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature] — no recommendation[?] impact shown[?]

[signature] Malone No Rec

[signature] Wendte NO REC

Ohlie Bussell

CHAIRMAN

Introduced: 2/6/84
Referred: Judiciary and Finance

IN THE HOUSE BY BUSSELL

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 560

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the jurisdiction of the district court and magistrates; and providing for an effective date."

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

* Section 1. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases and proceedings as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest and attorney fees does not exceed ~~$50,000~~ 25,000 [$10,000, EXCEPT AS PROVIDED IN (10) OF THIS SUBSECTION];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed $50,000 [$10,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $50,000 [$10,000];

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 - 09.55.060;

[(6) Repealed

(7) Repealed]

(6) [(8)] for the recovery of the possession of premises in

the manner provided under AS 09.45.070 - 09.45.160 when the value of the property or of the arrears and damage to the property does not exceed $50,000 [$10,000];

(7) [(9)] for the foreclosure of a lien when the amount in controversy does not exceed $50,000 [$10,000];

(8) [(10)] for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed $50,000 [$15,000];

(9) [(11)] over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.030.

* Sec. 2. AS 22.15.120 is amended to read:

Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY HEAR. A magistrate shall preside only in cases and proceedings under AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

(1) for the recovery of money or damages only when the amount claimed, exclusive of costs, interest, and attorney fees, does not exceed $5,000 [$1,000];

(2) for the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed $5,000 [$1,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $5,000 [$1,000];

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) to give judgment of conviction upon a plea of guilty by the defendant in a criminal proceeding within the jurisdiction of the

district court;

(6) to hear, try, and enter judgments in all cases involving misdemeanors, if the defendant consents in writing that the magistrate may try the case;

(7) to hear, try and enter judgments in all cases involving infractions under AS 28 and violations of ordinances of political subdivisions. [;

(8) Repealed]

* Sec. 3. AS 34.35.005(a) is amended to read:

(a) When an action is required to enforce a lien provided for in AS 34.35.005 - 34.35.425, the action shall be started in the superior court in the judicial district in which the property upon which the lien attaches is located. When an action is required to enforce a lien provided for in AS 34.35.430 - 34.35.480, the action may be started in the district court in the judicial district in which the property upon which the lien attaches is located. The procedure, except as otherwise provided in AS 34.35.005 - 34.35.045, is the same as in the trial of an action to secure property to hold it for the satisfaction of a lien against it.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

TO: Senator Bill Ray

FROM: Paula d. Scavera

DATE: May 17, 1984

RE: SSHB 560

Section 1

Raises the dollar amount of jurisdiction of cases and proceedings in District Court from $10,000 to $50,000.

Also there some housekeeping deletions on Page 1 Lines 27 and 28.

Section 2

Raises the dollar amount of jurisdiction of cases and proceedings that are handled by magistrates from $1,000 to $5,000.

Section 3

Adds language to make it clear that certain liens can be filed in District court.

Section 4

Immediate effective date clause

The Court System has $255,200 fiscal note, but the House adopted the House Judiciary zero fiscal note. There is a referral to Finance.

Chief Justice Burke opposes the raising of the dollar amount in District Courts as it seems like it would slow district court and create the need for additional judges.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SSHB 560
Title: "...relating to the jurisdiction of the District Court..."
Sponsor: Bussell
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

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						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: [signature] Phone: 465-4990
Division: House Judiciary Committee Date: 7 February, 1984

Approved by Commissioner: Date:
Agency:

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

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 560
Title: Jurisdiction of District Court
Sponsor: Bussell
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		239.0	253.3	268.5	28'.6	301.7
200 TRAVEL						
300 CONTRACTUAL		2.2	2.3	2.4	2.5	2.7
400 SUPPLIES						
500 EQUIPMENT		14.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		255.2	255.6	270.9	287.1	304.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		255.2	255.6	270.9	287.1	304.4
FEDERAL FUNDS						
OTHER						
TOTAL		255.2	255.6	270.9	287.1	304.4

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: ROBERT G. FISHER Phone: 264-0561
Division: ALASKA COURT SYSTEM Date: 2/16/84

Approved by Commissioner: Date: 2/16/84
Agency: ALASKA COURT SYSTEM

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

12/1/83

ALASKA COURT SYSTEM

HB 560 - JURISDICTION OF DISTRICT COURT

FISCAL IMPACT

The fiscal impact of an increase in district court jurisdiction depends not only upon the extent to which future caseloads and support resources can be shifted between courts, but also upon existing case backlogs and case filing patterns.

Court System statistics indicate 2,500 civil cases were filed in Anchorage Superior Court during FY 83 and 656 were filed in Superior Court in Fairbanks. These are the two court locations which this bill will primarily impact. Since 30% of the Anchorage Superior Court civil cases request relief in an amount under $25,000, it is assumed that approximately 750 cases would be filed in District rather than Superior Court. With an increase to $50,000, 40% of the cases (approximately 1,000) would be filed instead in Anchorage District Court. In Fairbanks statistics indicate that 35% of cases (approximately 230) would be filed in District Court if jurisdiction increases to $25,000.

The Anchorage Superior Court civil division reports a caseload backlog of 1,000 cases per judge. A shift in new filings would not eliminate the bulk of the existing backlog, but would free Superior Court resources to handle it.

Historically, the bar has expressed a preferred filing in Superior Court and this trend may continue even with increased District Court jurisdiction, since dollar amounts requested at the beginning of a case are somewhat flexible. The Superior Court will continue to hear other cases which must be assigned to it because of the nature of the relief sought.

If the jurisdictional increase results in a smaller percentage of new cases filed in District Court than anticipated from present statistics, the District Court should be able to absorb the new cases with no additional resources. Superior Court time could then be directed toward reducing the backlog. However, if a substantial percentage of case filings transfer to District Court, the resulting fiscal impact may require a request for a supplemental appropriation in addition to the resources requested in this fiscal note.

The fiscal impact will also depend upon the extent to which superior court resources can be reallocated to the District Court. A shift in resources will be problematic if the backlog persists. It appears from present caseload statistics that an increase to $50,000 will require an additional judge and support staff in Anchorage with costs calculated below. While it is impossible to predict in advance the impact of various levels of District Court jurisdiction, it is the Court System's evaluation that an increase to $25,000 could be absorbed by the District Court without the need for additional resources.

FY 85 FISCAL IMPACT

PERSONNEL:

Position	Salary	Benefits	Total Cost
1 District Court Judge (Anchorage)	$63,636	$76,314	$139,950
1 In-Court Clerk (Range 12B-Anchorage)	24,516	8,164	32,680
1 Secretary (Range 12B-Anchorage)	24,516	8,164	32,680
1 Law Clerk (Range 13A-Anchorage)	25,332	8,348	33,680
Total Personnel Costs			$238,990
Contractual			2,250
Equipment (One-time item)			13,962
TOTAL FY 85 COST			$255,202

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

TABLE OF CONTENTS

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 - P.B.) 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 furnish 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.

(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. District Court Jurisdiction

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).

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

March 12, 1984

Senator Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: SCS CSHB 569.

Dear Senator Ray:

Here is a copy of the proposed SCS CSHB 569, an act relating to cemetery associations, nonprofit cemetery corporations and cemetery lots.

I am told by Representative Phillips, prime sponsor of the original bill, that either Senator Josephson or Pettyjohn will be prepared to carry this bill upon request, inasmuch as the same people who asked Randy to introduce the bill made the same request of the two good senators.

I hope that is the case, for I certainly can't muster up any enthusiasm for the legislation. On the other hand, I have nothing against the bill.

The major change between all other versions of the bill and the bill before you is that on page two, lines seven and eight, we have endeavored to obviate your objection to the earlier language. As I recollect, you thought it was pretty loosely drawn and that interest or income, as applied to property, could be utilized for almost any purpose whatsoever. Now it is restricted to the property of the association or corporation related to operation of a cemetery.

Apparently the residue or balance in an irreducible fund can be dispersed pursuant to other provisions of the law found in Section 10.20.

Finally, I suggest that my final attachment, the letter of February 23rd from Assistant Attoreny General Sipe to Speaker Hayes, be disseminated to all members of the Senate whenever the bill is calendared. It explains the bill as well as anything or anybody ever could.

I hope this helps.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 3, 1984

FEB 03 1984

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

Re: House Bill _____
relating to nonprofit
cemetery corporations

Dear Representative Hayes:

You have asked the Consumer Protection section of the Attorney General's office to review House Bill _____ regarding nonprofit cemeteries, and to inform you whether the Department of Law has any difficulties with the overall concept behind the bill, specifically whether it would pose a threat of injury to the consuming public dealing with nonprofit cemeteries in the state.

My understanding of the intent behind the bill is to modernize and clarify the 1949 Nonprofit Cemetery Association statute presently in effect. The bill would allow nonprofit cemetery associations to be incorporated as nonprofit corporations under AS 10.20 and would generally give the nonprofit cemetery association or corporation more flexibility in how it invests the monies in its irreducible fund, how it spends its other revenues and how and for what purposes it may contract debts. The crucial part of this updating was to add a definition of "cemetery lot" to include not only grave spaces but also mausoleum crypts, or crematory niches, since those items are often the preferred choice of modern consumers.

The Consumer Protection section in the Attorney General's office is not opposed to this bill and does not think that it will cause any harm to the public. If anything, the bill will allow those nonprofit cemetery associations operating in the state to better serve their own membership. Since these associations are like cooperatives, owned and controlled by the members, there is little danger of overreaching or abuse of the corporation's cemetery assets. The changes in this statute will only further the worthy purposes of the cemetery associations as

they will be able to respond to the needs of their own association for the erection of new buildings, acquisition of new lands or equipment or development of new cemetery services such as mausoleums.

The last section of the bill also adds a broader definition of "cemetery lot" to the Alaska Unfair Trade Practices and Consumer Protection Act. This definition refers to AS 45.50.471(b)(24), which regulates the sales of funeral or burial goods or services before "need" (i.e. before death). Under 471(b)(24) as it presently exists, a corporation or association making advance sales of funeral goods or services is required to deposit the consumers' monies in a trust fund pending actual use by the consumer. There is presently an exemption from trust deposit for the amount paid for the actual cemetery lot and grave marker. By expanding the definition of cemetery lot, an advance purchase of a mausoleum crypt, or a crematorium deposit space of some sort, would also be exempt from this trust deposit requirement.

The Department of Law does not oppose this change, since it seems reasonable that this broader definition of cemetery lot be adopted to meet with modern day marketing of burial goods such as crematory crypts. The Consumer Protection section does not believe that broadening this definition will lead to any abuse of the advance-need funeral statute, despite what members of the public or Legislature might fear because of the recent debacle with the Valley Memorial Garden Cemetery near Palmer. (Unfortunately, most of the advance-need burial sales made by that cemetery were made before the effective date of AS 45.471(b)(24), and it was the lack of any trust requirement for any portion of the advance-need sales price which allowed the abusive dissipation of those funds by the for-profit cemetery corporation known as Valley Memorial Gardens, Inc.)

If legislators have a concern that the purchase monies from consumers who purchase cemetery lots or crematory crypts in advance need further protection, a further sentence could be added to 471(b)(24) to the effect that cemetery lots (as more broadly defined by this bill) are exempt if they are in fact, upon payment of the purchase price, "transferred" from the seller to the consumer. Although transfer is not usually made in the sense of legal property "title" transfer, designation of the space as a consumer's by the placement of a grave stone marker already marked with the consumer's name and designation of the plot or crypt as the consumer's on the official map of the cemetery should be sufficient protection.

Overall, the Attorney General's office does not see significant problems with the enactment of House Bill _____.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Connie J. Sipe
Connie J. Sipe
Assistant Attorney General
Consumer Protection Section

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577
(907) 694-4949

Representative Randy Phillips
HOUSE DISTRICT 15

MEMORANDUM

TO: The Honorable Bill Ray
Chairman, Senate Judiciary Committee

FROM: Representative Randy Phillips RP

DATE: March 2, 1984

RE: CSHB 569 (L&C) -- Cemetery Associations

I am attaching a copy of a letter I received from the Chairman of the Special Committee of Angelus Memorial Park Association in Anchorage. As you can see from his letter, the Association wishes to build a building to house much-needed administration and service-related activities. Under present law, the Association could only accomplish the building of such a structure by selling off a portion of the land it owns; in other words, present statutes prohibit the Association from financing such structures. Additionally, under present statutes, a cemetery association cannot incorporate as a non-profit association. CSHB 569 (L&C) would permit this.

Also attached is a copy of a memorandum from Connie J. Sipe, Assistant Attorney General, Chief, Consumer Protection Section, to Representative Cowdery. The suggestion in Ms. Sipe's memorandum was incorporated into CSHB 569 (L&C) -- see Sec. 14.

If you have any questions, please contact my office.

EVERLASTING CARE ENDOWED

MEMBER
NATIONAL ASSOCIATION OF CEMETERIES

Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 19,1984

CEMETERY
AND
OFFICE
ON KLATT ROAD

Mr. Randy Phillips
State Legislator
Juneau, Alaska

Dear Mr. Phillips:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining tc non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, were to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years agc before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association realy needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niche and storage vault. Also we can not even build a much needed administartion building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non paid.

Sincerely,
Special Committee
Mr. Alvah C. Buswell, Jr.
Chairman

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures
This material has also been sent to Representative Joe Hayes

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.070. Creation of irreducible fund. The association may by its bylaws provide that a stated percentage of the money realized from the sale of lots and donations (AND OTHER SOURCES OF REVENUE) constitutes an irreducible fund, which may be invested in the manner or loaned upon the securities the association or the trustees consider proper. The interest or income from the irreducible fund provided for in any bylaw or as much as may be necessary shall be devoted exclusively to the preservation and embellishment of the (CEMETERY) grounds, buildings and property of the association and or corporation and the lots and space in buildings or grounds sold to the members of the association and or corporation, or to the payment of the interest or principal of the debts authorized by the association for the purchase of land, equipment, erecting buildings and improvements. Where a bylaw has been enacted for the creation of an irreducible fund, (IT) the set amount or percentage stated in the bylaw, may not be amended except for the purpose of increasing the fund. (36-5-5 ACLA 1949

I was told to use caps & put in brackets those words to be deleted and to underline all new wording.

Office

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.090. Debts of association and or corporation. A cemetery association and or corporation may (NOT) contract debts in anticipation of future receipts, (EXCEPT) for the (ORIGINAL) purchase of cemetery land and or for other cemetery purposes, the laying out and embellishment of the grounds and avenues of the cemetery, repairing their buildings, erection of new buildings, mausoleums, columbariums, and purchasing necessary equipment, for which debts the association may issue bonds or notes. The association may secure these debts by mortgage upon its lands, except lots which have been conveyed to the members of the Association, or by security interest in no more than 50% of the irreducib fund. (36-5-5 ACLA 1949).