ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4021 SJUD JURY LIST FROM PERMANENT FUND LIST - JUVENILE CODE

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02-519 (REV 8/78)

JURY LIST FROM PERMANENT FUND LIST

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
907/465-3800

M E M O R A N D U M March 5, 1986

SUBJECT: Preparation of the jury list
(Work Order No. 14-1965)

TO: Senator Pat Rodey
Senate Judiciary Committee

FROM: Michael F. Ford MF
Legislative Counsel

Your request to amend AS 09.20.050(b) raises a constitutional issue regarding selection of an impartial jury. The above referenced work order would allow the court system to use only persons who file for permanent fund dividends during the preceding year who show Alaska addresses, for the purpose of creating a jury list. Under Article I, section 11 of the Constitution of the State of Alaska, a criminal defendant is entitled to an impartial jury. In Alvardo v. State, 486 P.2d 891 (AK 1971), the Alaska Supreme Court held that to meet this constitutional requirement, the jury must be selected "from a source truly representative of a fair cross section of the community." Alvardo at 903.
By using only those individuals eligible for a permanent fund dividend to create the jury list, you permanently exclude those residents who choose not to apply for a dividend. Also, because the dividend list only includes persons who file during the preceding year, you would exclude from jury service persons who live in the community for as long as a year and six months after they move to the community. A jury list based on the dividend program creates a lengthy durational residency requirement. Such a requirement is much longer than is required for voting, or for obtaining a resident hunting, fishing, or trapping license.

While the permanent fund dividend list is closer to representing a fair cross-section of the community than the list of those who vote or who obtain fishing, hunting, or trapping licenses, the residency requirements of the dividend list still raises constitutional questions concerning creation of an impartial jury.

MFF:mkr
m3/126

14-1965 ✓
Ford
3/5/86

IN THE SENATE BY THE JUDICIARY COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to preparation of the jury c."

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

* Section 1. AS 09.20.050(b) is amended to read:

(b) The jury list shall be based on the list described in (2) of this subsection or a combination of the following lists: (1) a list of all persons who purchased a resident trapping, hunting, or fishing license during the preceding calendar year who [WHICH] showed an Alaskan address (to be prepared by the Department of Fish and Game), (2) a list of all persons who filed for a distribution of Alaska permanent fund income under AS 43.23 during the preceding calendar year who [WHICH] showed an Alaskan address (to be prepared by the Department of Revenue), (3) a list of all persons who have registered to vote in this state (to be prepared by the director of elections), and (4) [,] if considered necessary by the administrative director of courts, a list of all persons who hold a valid Alaska drivers' license (to be prepared by the Department of Public Safety). The departments and the director of elections shall submit their respective lists to the Department of Administration not later than January 15 of each year. To the extent that it is available, the lists submitted by the departments and the director of elections shall contain the following information for each person on the list for the preceding calendar year: first name, middle initial, and last name; residence address as well as mailing address, including the zip code for each; birth date; and the number of years and months the person has been a resident of

the state. The lists submitted by the departments and the director of elections shall be recorded on magnetic tape compatible with Department of Administration data processing equipment.

Rule 15. Jurors–Predetermination of Qualifications–Service of Summons–Selection of Jury Panel–Periods of Jury Service.

(a) **Administration.**

(1) The administrative director of the courts shall be responsible for the management of the jury system.

(2) The administrative director may prescribe policies and procedures for efficient and effective jury management.

(3) Computerization may be utilized for the random selection of jurors and for management of the jury system. The administrative director may authorize random selections other than by computer when circumstances warrant.

(b) **Master Jury List.**

(1) By March 15 of each year the administrative director will prepare a statewide master list of prospective jurors in Alaska.

(2) The administrative director will divide the state-wi master list into local master jury lists for each court location. A court location's local master jury list will include the names of all prospective jurors who live in the community and other areas assigned to that court for jury selection purposes. Communities and other areas will be assigned to court locations for the purposes of jury selection according to the following criteria:

(i) Each court location will be assigned its own community and all non-court locations within a 50 mile radius of that court except as provided in (ii) and (iii) below.

(ii) If a non-court location is within the 50 mile radius of two or more court locations, that non-court location will be assigned to that court in the same senate district. If both court locations are in the same senate district, then the presiding judge will assign that non-court location to the court location deemed most appropriate.

(iii) If the non-court location is not within a 50 mile radius of any court, that non-court location will remain unassigned unless the presiding judge orders the non-court location assigned to a court.

(iv) No community will be assigned to more than one court location for the purpose of petit jury selection.

(3) Clerks and magistrates shall send a periodic listing of duplicate names, names of deceased persons or persons who are permanently excused from jury service to the administrative director. This list shall be used to update the annual master jury list to ensure that these names are not again selected for jury service.

(c) **Selection of Prospective Petit Jurors.**

(1) Prospective petit jurors shall be selected from the area defined in (b)(2) unless the court finds that the selection area defined in section (b)(2):

(i) will not provide a petit jury which is a truly representative cross-section of the appropriate community or,

(ii) would cause unreasonable transportation expenses, in which case the trial court, on its own motion or on the motion of the parties, may designate an area other than that specified in section (b)(2) from which the petit jurors shall be selected.

(2) Selection of prospective petit jurors will be from all locations assigned in (b)(2) unless an alternative assignment is specifically authorized by the presiding judge. The presiding judge will forward this authorization to the administrative director by February 1 of each year so that the area of selection can be changed.

(d) **Qualification of Jurors.**

(1) The administrative director shall be responsible for overseeing the mailing of a questionnaire to prospective jurors to determine if they are qualified to serve. Questionnaires may be served by regular mail.

(2) If a prospective juror's response to the questionnaire indicates that he or she is not qualified for service or, in the opinion of the judge or magistrate, the prospective juror has stated grounds sufficient to be excused or deferred, no summons shall be issued or, if already issued, the prospective juror shall be excused or deferred to a later date.

(3) A prospective juror shall not be paid jury fees or be reimbursed for travel expenses incurred and subsistence if the prospective juror appears at the court house:

(i) in response to a questionnaire rather than a summons;

(ii) because he or she failed to call-in as instructed; or

(iii) after having been sent an excusal notice or after having been otherwise notified that he or she was excused.

(e) **Summoning Jurors.**

(1) Summons may be served by regular mail.

(2) The summons shall state the court location, reporting date and reporting time or call-in date and call-in time for jury service.

(f) **Venire List.** The venire list is comprised of all prospective jurors whose responses on a jury questionnaire indicate they meet the minimum statutory qualifications for jury service.

(g) **Jury Panel.**

(1) Under the direction of the court, the clerk shall select a jury panel from the venire list.

(2) The jury panel is that group of prospective jurors who are summoned to report or call-in for a term of jury service.

(3) Persons on the jury panel will be required to be available for actual jury service as specified in section (j) of this rule.

(h) **Trial Panel.** The trial panel is that group of prospective jurors from the jury panel who are sent to a courtroom for possible inclusion on a trial jury.

(i) **Trial Jury.**

(1) A trial jury consists of those prospective jurors selected from the trial panel to hear a trial.

(2) Unless otherwise stipulated by the parties and ordered by the trial judge, a trial jury in superior court shall consist of 12 persons. A trial jury in district court shall consist of 6 persons. An inquest jury and a presumptive death jury shall consist of 6 persons.

(3) When a case is to be tried by jury, the clerk shall randomly select from the names of those on the trial panel a number of names sufficient to name a trial jury and alternate jurors, if the court decides alternate jurors are needed.

(4) The prospective trial jurors shall be examined, challenged, and sworn as provided in Civil Rule 47 and Criminal Rule 24.

(j) **Term of Service.**

(1) Except as otherwise provided by the administrative

director, a juror's term of service is based upon the size of the court's local master jury list as defined in section (b) of this rule. The maximum term of service and maximum length of actual service are shown below:

SIZE OF LOCAL MASTER JURY LIST	MAXIMUM LENGTH OF AVAILABILITY FOR JURY SERVICE (TERM OF SERVICE)	MAXIMUM LENGTH OF ACTUAL ANNUAL COURT ATTENDANCE (SERVICE)
Under 5000	1 year	30 days per year
5000 and over	30 consecutive days per jury year unless interrupted by a deferral	30 days per year

(2) "Term of service" begins the date the juror first appears in court or calls the court as ordered on a summons, unless the term of service is deferred at the request of the prospective juror.

(3) "Service" starts the first day the juror is paid for jury service.

(4) If the commencement of a prospective juror's term of service is deferred to a later date at the juror's request, his or her term of service shall commence on the date to which he or she is deferred. If after beginning a term of service a prospective juror requests a deferral, the court may defer the remaining portion of the term of service.

(5) After a person completes his or her term of service, that person shall not be required to serve as a juror within one year after the last day of actual court attendance for which he or she was paid.

(6) A juror who commences sitting in a trial within the term of service shall continue to serve in that matter until discharged by the trial judge.

(k) **Definitions.**

(1) Deferral of Jury Service – the postponement of jury service to a later date. This postponement can be no longer than 10 months from the date the initial term of service was to have started. A person may have jury service deferred if he or she shows that jury service at the time when he or she is summoned

will cause hardship to that person or others, or that transportation problems make it impossible to serve. Jury service may be deferred only if the person seeking the deferment agrees to a deferred date.

(2) Excused – a person may be excused from service as a juror if it is shown that his or her health, the health or proper care of his or her family, a physical or mental disability, or other conditions exist which would cause a hardship to the individual. Unless the court specifically authorizes a permanent excusal, all excusals from jury service shall be for the current jury year only.

(3) Jury Panel – that group of prospective jurors who are summoned to report or call in for a term of jury service.

(4) Jury Summons – a court order directing a prospective juror to report or call-in for jury duty.

(5) Jury Year – the term during which a master jury list is in effect; normally, from March 15 of one year (when the list is compiled) until March 14 of the next year (when a new master list must be prepared).

(6) Local Master Jury List – a randomly ordered listing of names of prospective jurors for a court location who may be sent qualification questionnaires for jury service.

(7) Natural Faculties – normal abilities to reason, hear, see, and move about.

(8) Permanent Excusals – a prospective juror may be permanently excused from all jury service if he or she:

(i) is advanced in age. Those people who are over age 70 and request in writing to be permanently excused shall be.

(ii) has a permanent physical disability. The disability must be verified in writing by a physician.

(iii) has a permanent mental disability. The disability must be verified in writing by a physician.

(9) Qualification List – a list of names from the local master jury list to which qualification questionnaires will be mailed in order to create a venire list.

(10) Questionnaire – document used to determine whether a prospective juror meets the statutory minimum qualifications for jury service.

(11) Resident – for jury qualification purposes, a person is a resident of the State of Alaska if he or she:

(i) has registered to vote in Alaska,

(ii) has obtained a resident fish and game permit for Alaska, or

(iii) is eligible for the Alaska permanent fund dividend.

(12) Term of Service – begins the date the juror first appears in the court or calls the court as ordered on a summons unless the term of service is deferred at the request of a prospective juror.

(13) Trial Jury – those prospective jurors selected from the trial panel to hear a trial.

(14) Trial Panel – that group of prospective jurors from the jury panel who are sent to the courtroom for possible inclusion on a trial jury.

(15) Venire List – a list of all prospective jurors whose responses on a jury questionnaire indicate they meet the minimum statutory qualifications for jury service. (Supreme Court Order 531 effective October 1, 1982)

Mike - Karla Forsythe of Judicial Council sent me the attached cases. They seem to indicate a lack of constitutional problems with a 1 year residency requirement for juror potential.

Comments?

SSGP

#3717

WORK ORDER REQUEST FORM

~~M~~14 - 1955

KEYWORDS: courts ASSIGNED TO Ford

REQUEST FOR: BILL [X] RESOLUTION [ ] RESEARCH [ ] OTHER [ ]

SUBJECT Jury List

REQUESTED FOR SJC (Sen. Judiciary) BY Suzanne EXT. 3717

* DELIVER TO Sen. Roder, Cap. 504 TAKEN BY Theresa

INSTRUCTIONS, EXPLANATIONS

Draft bill relating to preparation of the jury list.

See attached Draft.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ]

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: TBC Director, Legal Services

REVIEWED

IN 2/27/86 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT [X] FINAL [ ]

LA-L 10

February 26, 1986

M E M O R A N D U M

TO: Arthur H. Snowden, II
Administrative Director
Alaska Court System

FROM: Karla Forsythe
General Counsel

At the request of Dick Delaplain, Manager of Technical Operations, I have drafted a minor technical amendment to AS 09.20.050, which would permit the court system to compile the jury list from the permanent fund dividend list alone. Use of the permanent fund list is already required by law, but only in combination with lists from other sources.

Under current law, the court system is required to obtain and combine three separate lists to compile the jury lists: the list of all persons showing an Alaskan address who purchased a resident trapping, hunting or fishing license during the past year, the list of registered voters, and the list of all persons who filed for a permanent fund income distribution.

The process of combining these lists to eliminate duplicate names is time-consuming. Often a person's name appears in a different form on each list, which results in multiple issuance of a jury summons to that person.

There are several advantages to using the permanent fund list as the sole source for the jury list. First, the list contains more names of eligible Alaskans than the other lists. Second, since the list is updated annually, it is current. Most important, use of one list avoids duplicate names and the additional work to eliminate them.

In the event that the permanent fund distribution is repealed, the court system would revert to using the fish and game list and the voter registration list. The draft amendment permits the court to use any combination of the lists, so an immediate statutory amendment to delete the permanent fund reference would not be required.

Please let me know if you have any questions about the proposed amendment.

c: Dick Delaplain

room once confession has been admitted into evidence.

9. Criminal Law ⇐858(3)

In murder prosecution, superior court did not abuse its discretion in permitting taped confession to go to jury room. AS 11.15.010.

10. Criminal Law ⇐1037.1(2)

In murder prosecution, unobjected to alleged error consisting of comment on choice of accused not to testify was a "plain error" which would be determined on appeal. Rules of Criminal Procedure, rule 26(b)(6); U.S.C.A.Const. Amend. 5; AS 11.15.010.

11. Criminal Law ⇐656(7)

In prosecution for murder, superior court's remark, "The defendant does not wish to take the stand?", in context wherein it was uttered, was not tantamount to a comment upon accused's exercise of his privilege not to testify and did not constitute error. AS 11.15.010.

12. Jury ⇐33(1)

Key question addressed in constitutional challenges to jury selection is whether prospective jurors were drawn from a fair "cross-section of the community." U.S.C.A. Const. Amend. 6; Const. art. 1, § 11.

13. Jury ⇐33(1)

Any method of jury selection which "is in reality a subterfuge to exclude from juries systematically and intentionally some cognizable group or class of citizens in the community" must be held invalid. U.S.C.A. Const. Amend. 6; Const. art. 1, § 11.

14. Jury ⇐33(1)

Defendant's Sixth Amendment right to impartial jury was not impaired by exclusion from jury of group of less-than-one-year residents of Alaska. U.S.C.A.Const. Amend. 6; Const. art. 1, § 11.

15. Constitutional Law ⇐42.3(2)

As defendant was not a member of group of less-than-one-year residents of Alaska excluded from jury and as he was not prejudiced by their exclusion, defendant could not assert a violation of that group's rights to equal protection of the laws. U.S.C.A.Const. Amend. 14.

16. Constitutional Law ⇐250.2(4)

Exclusion of less-than-one-year-residents of Alaska from jury that convicted defendant of homicide did not violate his right to equal protection in view of fact that there was no denial of an impartial jury. U.S.C.A.Const. Amend. 6, 14; AS 11.15.010.

17. Criminal Law ⇐531(2)

Subnormal intelligence of an accused is certainly relevant in determining whether there has been a knowing, voluntary and intelligent waiver of constitutional rights and, thus, testimony relevant to issue of subnormal intelligence should be admissible.

18. Criminal Law ⇐1168(1)

In murder prosecution, although testimony sought to be introduced regarding defendant's alleged subnormal intelligence was relevant on issue of waiver, evidence should have been admitted at suppression hearing; where, even if evidence had been admitted and believed, evidence of subnormal intelligence would have been insufficient to support finding of involuntariness on that basis, there was no reversible error. AS 11.15.010.

19. Criminal Law ⇐525

The basic function level of the accused need not be particularly high in order to support a finding that the accused was capable of understanding the meaning of his rights and the consequences of his waiver. U.S.C.A.Const. Amends. 5, 6, 14.

20. Homicide ⇐354

Superior court's imposition of life sentence for crime of murder in first degree was not excessive. AS 11.15.010.

E. J. Fyfe, Anchorage, for appellant.

Glen C. Anderson, Asst. Dist. Atty., and Joseph D. Balfe, Dist. Atty., Anchorage, Avrum M. Gross, Atty. Gen., Juneau, for appellee.

rather innocuous expression of surprise by the trial court.[25]

In the superior court, Hampton challenged the array of both the grand jurors and the petit jurors. In support of this challenge, Hampton submitted the affidavit of the assistant jury clerk for the Third Judicial District in Anchorage. In this affidavit, it is stated:

> As part of the qualifications sought of each [of the] petit and grand jurors we ask that they be a resident of the State of Alaska for at least one year prior to jury service. If a prospective juror indicates that he or she has not been a resident for one year we note that fact as a basis for excusing the juror. The jurors are actually excused by the presiding judge, but my experience has been that prospective jurors who indicate on their jury questionnaire that they have been Alaska residents for less than one year have consistently been excused from jury service.

Hampton challenged the jury array on two grounds: that it denied him his constitutional right to an impartial jury,[26] and that potential jurors had been excluded in violation of the equal protection clause of the 14th amendment to the United States Constitution. The motion was denied.

[12, 13] The key question addressed in constitutional challenges to jury selection is whether the prospective jurors were drawn from a fair "cross-section of the community."[27] This court has stated:

> We recognize that the contours of a fair cross section of the community are elusive and, indeed, that they may not be susceptible of precise definition.[28]

Nevertheless, any method of jury selection which "is in reality a subterfuge to exclude from juries systematically and intentionally some cognizable group or class of citizens in the community"[29] must be held invalid.

The term "cognizable group" was defined by the federal district court in *United States v. Guzman*, 337 F.Supp. 140, 143–44 (S.D.N.Y.), *aff'd*, 468 F.2d 1245 (2d Cir. 1972), *cert. denied*, 410 U.S. 937, 93 S.Ct. 1397, 35 L.Ed.2d 602 (1973), in the following manner:

> A group to be 'cognizable' for present purposes must have a definite composition. That is, there must be some factor which defines and limits the group. A cognizable group is not one whose membership shifts from day to day or whose members can be arbitrarily selected. Secondly, the group must have cohesion. There must be a common thread which runs through the group, a basic similarity in attitudes or ideas or experience which is present in members of the group and which cannot be adequately represented if the group is excluded from the jury selection process. Finally, there must be a possibility that exclusion of the group will result in partiality or bias on the part of juries hearing cases in which group members are involved. That is, the group must have a community of interest which cannot be adequately protected by the rest of the populace. (citation omitted)

The Supreme Court of California recently addressed a constitutional challenge to the California statute prescribing a one-year residency requirement for jurors in *Adams*

may have acted without due circumspection, but his behavior was not wrongful.

25. We also note that the trial court instructed the jury:

> In this case, the defendant has elected not to take the witness stand. You are hereby instructed that under the law he has the right not to take the witness stand if he so elects, and you are instructed that you are not to draw any unfavorable inference against him on that account.

26. U.S.Const. amend. VI; Alaska Const. art. I, § 11.

27. *Avery v. State*, 514 P.2d 637, 641 (Alaska 1973); *Malvo v. J. C. Penney Co., Inc.*, 512 P.2d 575, 580 (Alaska 1973); *Alvarado v. State*, 486 P.2d 891, 898 (Alaska 1971); *Green v. State*, 462 P.2d 994, 997 (Alaska 1969), *cert. denied*, 398 U.S. 910, 90 S.Ct. 1704, 26 L.Ed.2d 70. *See also Kimble v. State*, [illegible] P.2d 73, 79 (Alaska 1975); *Bachner v. Pearson*, 479 P.2d 319, 333 (Alaska 1970).

28. *Alvarado v. State*, 486 P.2d at 898–99.

29. *Green v. State*, 462 P.2d at 998.

v. Superior Court, 12 Cal.3d 55, 115 Cal. Rptr. 247, 524 P.2d 375 (1974). In upholding the requirement, the majority noted that before the process is held unconstitutional there must be "a common thread" uniting the excluded group, that is, "a basic similarity of attitudes, ideas or experience among its members so that exclusion prevents juries from reflecting a cross-section of the community." [30] The court then concluded that, under that standard, the excluded group did not form a cognizable class. The court noted, "[t]he group's membership—cutting across economic, social, religious, and geographical lines—changes day by day, creating a lack of real commonality of interest among the newly migrated." [31] The court went on to consider the equal protection challenge to the procedure, finding a rational relationship between the classification and some conceivable legitimate state purpose, specifically, the one-year resident's "acquaintance with local conditions, customs and mores." [32]

There is a one-year residency requirement for jury service in the federal courts.[33] The legislative history of the provision illustrates that the purpose of the provision is to guarantee "some substantial nexus between a juror and a community whose sense of justice the jury as a whole is expected to reflect." [34] The constitutionality of the provision has been uniformly upheld.[35]

[14–16] Applying the "cognizable group" standards to less-than-one-year residents, we conclude that Hampton's sixth amendment right to an impartial jury was not impaired. The excluded group is not a static one with definite parameters. There is no common thread, "a basic similarity in attitudes or ideas or experience," except the lack of familiarity with the community. While circumstances can be imagined in which bias against a defendant member of the excluded group might exist, that possibility is too remote to justify reversal in the absence of a more specific suggestion of prejudice.[36]

[17–19] At the suppression hearing, counsel sought to introduce testimony from two lay witnesses to show Hampton's "basic functioning level . . . [as] to whether or not he [could] in fact enter a knowing and intelligent waiver." After listening to a substantial part of the testimony of one of the lay witnesses, the court sustained an objection on the grounds of relevancy. Counsel for the defense made an offer of proof regarding the testimony of both witnesses. The subnormal intelligence of the

30. *Adams v. Superior Court*, 12 Cal.3d 55, 115 Cal.Rptr. 247, 250, 524 P.2d 375, 378 (1974).

31. *Id.*

32. *Id.*, 115 Cal.Rptr. at 252, 524 P.2d at 380.

33. 28 U.S.C. § 1865(b)(1) (1970).

34. 1968 U.S.Code Cong. and Admin.News, pp. 1792, 1796.

35. *E. g., United States v. Owen*, 492 F.2d 1100 (5th Cir. 1974); *United States v. Perry*, 480 F.2d 147 (5th Cir. 1973); *United States v. Ross*, 468 F.2d 1213 (9th Cir. 1972), *cert. denied*, 410 U.S. 989, 93 S.Ct. 1500, 36 L.Ed.2d 188; *United States v. Gast*, 457 F.2d 141 (7th Cir. 1972), *cert. denied*, 406 U.S. 969, 92 S.Ct. 2426, 32 L.Ed.2d 668; *United States v. Grey*, 355 F.Supp. 529 (W.D.Okl.1973).

36. The foregoing holding that there was no denial of an impartial jury is dispositive of Hampton's equal protection claim. Hampton argues that there has been a violation of the less-than-one-year residents' rights to equal protection of the laws. Since he is not a member of the group, Hampton must show that he was harmed by the violation in order to assert the claim on their behalf. *See, e. g., United States v. Garrett*, 521 F.2d 444 (8th Cir. 1975); *In re Kundert*, 401 F.Supp. 822 (D.N.D.1975); *Levshakoff v. State*, 565 P.2d 504 (Alaska 1977). *Cf. Wagstaff v. Superior Court*, 535 P.2d 1220 (Alaska 1975) (counsel has standing to assert rights of unrepresented juveniles). In *Peters v. Kiff*, 407 U.S. 493, 92 S.Ct. 2163, 33 L.Ed.2d 83 (1972), the United States Supreme Court held that a white had standing to challenge a jury array which excluded Blacks. However, unlike Hampton, Peters was able to show prejudice stemming from the exclusion. Hampton also argues that his right to equal protection of the laws was violated by the exclusion of less-than-one-year residents. Since Hampton was afforded an impartial jury under sixth amendment standards, he has not shown a colorable equal protection claim. Therefore it is not necessary to further scrutinize the jury selection process under the equal protection clause.

webb

8. Criminal Law ⇐1037.1(4)

Supreme Court would not consider objection, raised for first time more than two months after conviction, to prosecutor's final argument to jury, in effect, that it is difficult to convict an attorney, particularly one who specializes in criminal cases, in absence of plain error. Rules of Criminal Procedure, rule 47(b).

9. Criminal Law ⇐1037.1(2)

Prosecutorial argument to jury, in prosecution of attorney, that it is difficult to convict attorney, particularly one who specializes in criminal cases, was not plain error. Rules of Criminal Procedure, rule 47(b).

10. Constitutional Law ⇐90.1(1)
Criminal Law ⇐393(1)

Defendant's lies to police which constituted principal basis for his indictment and conviction were not protected by constitutional guarantees of freedom of speech or privilege not to incriminate himself. U.S.C.A.Const. Amends. 1, 5; Const. art. 1, §§ 5, 9.

11. Criminal Law ⇐866

Evidence was sufficient to sustain verdict of guilt on charge of being accessory after the fact to first-degree murder, and record did not give rise to suspicion that it was a compromise verdict on theory that count two was erroneously submitted to jury by judge who admitted that evidence in count two was insufficient and that he would have dismissed it regardless of what jury did. AS 11.10.010, 12.15.020.

12. Criminal Law ⇐1184(1)

Although State has right to cross appeal on ground that sentence was too lenient, Supreme Court may not modify sentence, but can only express approval or disapproval of it. Rules of Appellate Procedure, rule 11(b)(1)(g); AS 12.55.120(b).

13. Homicide ⇐354

In prosecution of attorney for being accessory after the fact to first-degree murder, trial court's suspension of two-year imprisonments' with defendant being placed on probation was too lenient. Const. art. 1, § 12.

William H. Fuld, Robert L. Woodward and R. Michael Jackson of Kay, Christie, Fuld & Saville, Anchorage, for appellant.

Charles M. Merriner, Asst. Dist. Atty., Joseph D. Balfe, Dist. Atty., Anchorage, and Avrum M. Gross, Atty. Gen., Juneau, for appellee.

Before BOOCHEVER, C. J., CONNOR and MATTHEWS, JJ., and DIMOND, J. Pro Tem.

OPINION

DIMOND, Justice Pro Tem.

Duncan Webb was convicted of being an accessory after the fact to the first degree murder of John Rich.[1] Webb had been attorney for Wesley Ladd, one of the murderers. Before shooting Rich to death,[2] Ladd forced Rich to sign a power of attorney, giving Duncan Webb the control of all of Rich's assets. After Rich had been murdered, Webb had his secretary witness the power of attorney. However, there was no evidence that Webb had taken part in the murder of Rich or that he had any advance knowledge it was going to happen.

Webb's involvement in the Rich murder consisted primarily of his lying to the police on several occasions. For example, Webb told the police that he had witnessed Rich's

1. AS 12.15.020 provides:

Accessories after the fact. All persons who, after the commission of any felony, conceal or aid the offender with knowledge that he has committed a felony and with intent that he may avoid or escape from arrest, trial, conviction, or punishment are accessories. There are no accessories in misdemeanors.

AS 11.10.010 states:

Parties to crime classified. The parties to crime are
(1) principals;
(2) accessories.

2. A man named Zieger fired the first shot which wounded Rich seriously but did not kill him. A little while later, Wesley Ladd fired the second shot which killed Rich.

signing of the power of attorney, and that he had driven Rich to the airport on August 23, 1973, when in fact Rich had been murdered earlier that day. Webb's principal defense was that he had acted the way he did because of threats on his life by Rich's murderers, Ladd and Zieger.

It is the practice of the Third Judicial District to select as jurors only those persons who have been residents of Alaska for one year or more. Webb contends on appeal that this practice deprived him of his statutory [3] and constitutional right to an impartial jury [4] and was in violation of his rights to equal protection of the laws, which rights are guaranteed by the Fourteenth Amendment to the Federal constitution and Section 1, Article 1 of the Alaska constitution.

Similar arguments were made in *Hampton v. State*,[5] and in *Smiloff v. State*.[6] In rejecting an attack on the jury arrays in those cases, where persons with less than one year's residence in Alaska were excluded from the jury, we stated:

> There is a one-year residency requirement for jury service in the federal courts. The legislative history of the provision illustrates that the purpose of the provision is to guarantee "some substantial nexus between a juror and a community whose sense of justice the jury as a whole is expected to reflect." The constitutionality of the provision has been uniformly upheld.
>
> Applying the "cognizable group" standards to less-then-one-year residents, we conclude that Hampton's sixth amendment right to an impartial jury was not impaired. The excluded group is not a static one with definite parameters. There is no common thread, "a basic similarity in attitudes or ideas or experience," except the lack of familiarity with the community. While circumstances can be imagined in which bias against a defendant member of the excluded group might exist, that possibility is too remote to justify reversal in the absence of a more specific suggestion of prejudice. (footnotes omitted) [7]

In *Smiloff* we referred to the *Hampton* decision, where we stated at page 148:

> The term 'cognizable group' was defined by the federal district court in *United States v. Guzman*, 337 F.Supp. 140, 143–44 (S.D.N.Y.), *aff'd.*, 468 F.2d 1245 (2d Cir. 1972), *cert. denied*, 410 U.S. 937, 93 S.Ct. 1397, 35 L.Ed.2d 602 (1973), in the following manner:
>
> A group to be 'cognizable' for present purposes must have a definite composition. That is, there must be some factor which defines and limits the group. A cognizable group is not one whose membership shifts from day to day or whose members can be arbitrarily selected. Secondly, the group must have cohesion. There must be a common thread which runs through the group, a basic similarity in attitudes or ideas or experience which is present in members of the group and which cannot be adequately represented if the group is excluded from the jury selection process. Finally, there must be a possibility that exclusion of the group will result in partiality or bias on the part of juries hearing cases in which group members are involved. That is, the group must have a community of interest which cannot be adequately protected by the rest of the populace. (citation omitted)

Additionally, in *Smiloff*, we rejected the contention that AS 09.20.40 was violated by the one-year residency requirement, by holding that the statutory jury selection

3. AS 09.20.040 provides:
   Compliance with statute. The selection of jurors shall be made in substantial compliance with the following provisions. A failure in substantial compliance which prejudices the rights of a party is reversible error.

4. U.S.Const. amend. VI; Alaska Const. art. 1, § 11.

5. 569 P.2d 138 (1977).

6. 579 P.2d 28 Opn. No. 1637 (Alaska, 1978).

7. *Smiloff v. State*, 579 P.2d 28, Opn. No. 1637 (Alaska, 1978); *Hampton v. State*, 569 P.2d 138, 149 (Alaska 1977).

procedures were substantially complied with.[8] Similarly, they were substantially complied with in this case.

Despite the *Hampton* decision, at oral argument Webb's counsel still contended that the jury selection procedures deprived him of his constitutional rights. The basis of such argument was that persons like Webb, who are newcomers to Alaska, bring with them their own ideas concerning society and justice, and that such people could have related to Webb's state of mind at the time of his acts and at the time of trial, and that the exclusion from the jury of such persons left Webb with a jury comprised of people who "have been here long enough to 'know the ropes' and be familiar with the community, thus being less sympathetic and understanding with the plight of a new arrival."

[1, 2] The gist of such an argument, if we understand it correctly, is that persons who have been residents of Alaska for less than one year have brought with them to this state a different standard of values than is held by residents of more than one year and thus would tend to more readily believe Webb's defense of duress, i. e., that he had acted as he had because of his fear of Rich's killers. Such an argument has no substance. Webb was constitutionally entitled to a trial by an "impartial jury."[9] There is no constitutional right to a jury composed of a cognizable group that would tend to be "partial" or biased or prejudiced against the state and in favor of the accused in a criminal case. Webb's contentions on the jury selection question are without any merit.[10]

[3] Count I of the indictment against Webb provides:

> That between the dates of August 23, 1973, and December 3, 1973, at or near Anchorage, in the Third Judicial District, State of Alaska, Duncan Webb did unlawfully and feloniously after the commission of a felony, to-wit: murder, conceal or aid the offender or offenders with knowledge that he or they had committed a felony, to-wit: murder, and with intent that he or they may avoid escape from arrest, trial, conviction or punishment.
>
> All of which is contrary to and in violation of AS 11.10.050 and against the peace and dignity of the State of Alaska.

Webb claims that Count I of the indictment should have been dismissed because it did not contain a "plain, concise and definite written statement of the essential facts constituting the offense charged," as required by Criminal Rule 7(c).[11]

Webb had two trials. The first resulted in a mistrial in August, 1974, when the jury could not agree on a verdict. The second trial resulted in a jury verdict in May, 1975, finding Webb guilty on Count I of the indictment and not guilty on Count II.[12] Count III of the indictment was dismissed.[13] In August, 1975, Webb received a sentence of two years, with all of that time suspended subject to supervised probation.

Prior to the first trial, in June, 1974, Webb filed a motion to dismiss all counts of the indictment. The motion alleged that Count I did not state a crime of which Webb could be convicted. The memorandum in support of that argument dealt with the allegation that Count I was based on hearsay evidence. No assertion was made

8. *Id.*

9. U.S.Const. amend. VI; Alaska Const. art. § 11.

10. Our decision that Webb was not deprived of his constitutional right to an impartial jury is dispositive of his claim that he was denied due process of law under the Federal and State constitutions.

11. Crim.R. 7(c) states in part:

> The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.

12. Count II of the indictment accused Webb of violating AS 11.30.190, which deals with compounding or concealing a crime.

13. Count III of the indictment accused Webb of a violation of AS 11.30.315, which has to do with destroying, altering or concealing evidence.

Smiloff

OPINION

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR and BURKE, JJ.

RABINOWITZ, Justice.

Appellant Mike Smiloff was indicted for the crime of lewd and lascivious acts towards a child in violation of AS 11.15.134. Prior to trial Smiloff moved to dismiss the indictment on the grounds that AS 11.15.134 is unconstitutionally void for vagueness, and that the grand jury selection procedures did not comport with either applicable statutory requirements or constitutional mandate. Smiloff also filed a pretrial motion in which he sought to prevent the prosecution's exercise of any peremptory challenges to petit jurors. The three motions were subsequently denied.

After the jury had been selected and immediately prior to opening statements, Smiloff's counsel requested the superior court to examine the accused's competency to stand trial in light of the problems he had encountered in attempting to obtain assistance from Smiloff. The superior court, relying on the prior reports of the examining physician, concluded that there was "no evidence to suggest Mr. Smiloff is other than competent to stand trial." After trial, the jury returned a verdict of guilty, and the superior court sentenced Smiloff to a term of imprisonment of 5 years. This appeal followed.

[1] Before this court, appellant has asserted five separate specifications of error. We turn first to Smiloff's contention that AS 11.15.134 is unconstitutionally vague and overbroad.[1] This specification of error is controlled by *Anderson v. State*, 562 P.2d 351 (Alaska 1977). There, in the face of assertions of vagueness and overbreadth, we upheld the constitutionality of AS 11.15.134(a), stating, in part:

> However, the State argues that AS 11.15.134(a) is meant to punish only lewd and lascivious physical contact with children. We agree. We construe the words 'lewd or lascivious act . . . upon or with the body of a child' to require physical contact of the child's body by the adult or by some instrumentality controlled by the adult.[2]

[2] Smiloff next contends that the superior court erred in denying his motion to dismiss the indictment because unlawful and unconstitutional procedures were utilized in selecting grand jurors. Smiloff's assertions of illegality are bottomed on the contention that the Area Court Administrator from the Third Judicial District added an additional requirement for jury service, namely, that the prospective jurors have lived in the State of Alaska for at least one year. In appellant's view, this one year residency requirement is violative of AS 09.20.050(b)[3] and the equal protection pro-

1. AS 11.15.134(a) provides:

> A person who commits a lewd and lascivious act, including an act constituting another crime, upon or with the body of a child under 16 years of age, intending to arouse, appeal to, or gratify his lust, passions, or sexual desires, or the lust, passions, or sexual desires of the child is punishable by imprisonment for not more than 10 years nor less than one year.

2. *Anderson v. State*, 562 P.2d 351, 353 (Alaska 1973).

> In the case at bar, appellant adopted and incorporated by reference appellant's briefs in the *Anderson* case.

3. AS 09.20.050(b) provides:

> The jury list shall be based on a list of all persons who purchased a resident trapping, hunting or fishing license during the preceding calendar year which showed an Alaskan address (to be prepared by the Department of Fish and Game), a list of all persons who filed a state income tax return during the preceding calendar year which showed an Alaskan address (to be prepared by the Department of Revenue), and a list of all persons who have registered to vote in this state (to be prepared by the lieutenant governor). The departments and the lieutenant governor shall submit their respective files to the Department of Administration not later than January 15 of each year. To the extent that it is available, the files submitted by the departments and the lieutenant governor shall contain the following information for each person on the list for the preceding calendar year: his first name, middle initial, and last name; his residence address as well as his mailing address, including the zip code for each; his social security number; his birth date; and the number of years and months

visions of both the Federal and Alaska Constitutions. In *Hampton v. State*, 569 P.2d 138 (Alaska 1977), we were presented with a challenge that went to the array of both the grand and petit jurors. Parallel arguments were advanced in that case to these now urged by Smiloff. In rejecting Hampton's attack upon the jury array, we said, in part:

> There is a one-year residency requirement for jury service in the federal courts. The legislative history of the provision illustrates that the purpose of the provision is to guarantee 'some substantial nexus between a juror and a community whose sense of justice the jury as a whole is expected to reflect.' The constitutionality of the provision has been uniformly upheld.
>
> Applying the 'cognizable group' standards to less-than-one-year residents, we conclude that Hampton's sixth amendment right to an impartial jury was not impaired. The excluded group is not a static one with definite parameters. There is no common thread, 'a basic similarity in attitudes or ideas or experience,' except the lack of familiarity with the community. While circumstances can be imagined in which bias against a defendant member of the excluded group might exist, that possibility is too remote to justify reversal in the absence of a more specific suggestion of prejudice.[4] (footnotes omitted)

Thus, we conclude that *Hampton* is dispositive of Smiloff's constitutional attack on the grand jury selection procedures employed in the case at bar. As to the contention that the jury selection procedures were also violative of AS 09.20.050(b),[5] we hold that *Hampton*, as well as the provisions of AS 09.20.040 mandate that Smiloff's assertions of statutory violation be rejected.[6]

[3–5] Smiloff also challenges the constitutionality of Criminal Rule 24(d)[7] insofar

he has been a resident of the state. The files submitted by the departments and the lieutenant governor shall be recorded on magnetic tape compatible with Department of Administration data processing equipment.

4. *Hampton v. State*, 569 P.2d 138, 149 (Alaska 1973).

In *Hampton*, at 148, we further stated:

> The term 'cognizable group' was defined by the federal district court in *United States v. Guzman*, 337 F.Supp. 140, 143–44 (S.D.N.Y.), *aff'd*, 468 F.2d 1245 (2d Cir. 1972), *cert. denied*, 410 U.S. 937, 93 S.Ct. 1397, 35 L.Ed.2d 602 (1973), in the following manner:
>
> A group to be 'cognizable' for present purposes must have a definite composition. That is, there must be some factor which defines and limits the group. A cognizable group is not one whose membership shifts from day to day or whose members can be arbitrarily selected. Secondly, the group must have cohesion. There must be a common threat which runs through the group, a basic similarity in attitudes or ideas or experience which is present in members of the group and which cannot be adequately represented if the group is excluded from the jury selection process. Finally, there must be a possibility that exclusion of the group will result in partiality or bias on the part of juries hearing cases in which group members are involved. That is, the group must have a community of interest which cannot be adequately protected by the rest of the populace. (citation omitted)

5. *See* note 3, *supra*, for the text of AS 09.20.050(b).

6. AS 09.20.040 provides:

> The selection of jurors shall be made in substantial compliance with the following provisions. A failure in substantial compliance which prejudices the rights of a party is reversible error.

In our view, the statutory jury selection procedures were substantially complied with in the case at bar.

7. Criminal Rule 24(d) provides:

> *Peremptory Challenges.* After all challenges for cause are completed, the parties shall make or waive their peremptory challenges. First the plaintiff and then the defendant may exercise one or more peremptory challenges alternately until each party successively waives further peremptory challenges or all such challenges have been exercised. A party who waives peremptory challenge as to the jurors in the box does not thereby lose the challenge but may exercise it as to new jurors who may be called. A juror peremptorily challenged is excused without cause. If the offense is punishable by imprisonment for more than one year, the state is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year, or by fine or both, each side is entitled to 3 peremptory challenges. If there

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I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/7/89
Date

02-519 (REV 8/78)

JUVENILE CODE

JUVENILE JUSTICE IN ALASKA

a report to

THE HONORABLE BILL SHEFFIELD

GOVERNOR

STATE OF ALASKA

from the

DIVISION OF FAMILY & YOUTH SERVICES

March 19, 1985

John R. Pugh
Commissioner
Department of Health & Social Services

Michael L. Price
Director
Division of Family & Youth Services

Executive Summary

Despite widespread and persistent beliefs, juvenile crime in Alaska is neither increasing nor becoming more violent. The best measures show that while adult crime has increased at the same rate as the Alaska's population, juvenile crime has declined both in total numbers and rate and is only one-fourth of total crime in the state. Only 2% of Alaska's juvenile crime is violent crime. This is 1/10 of serious, violent crime in the state and only 1/2 of 1% of total Alaska crime.

Because juveniles commit generally less serious crimes and have a greater potential for rehabilitation than adult offenders, Alaska's juvenile justice system operates differently from the criminal justice system. The vast majority of young offenders are first time and less serious offenders who can be successfully diverted from the formal juvenile justice system. Court action is reserved for repeat offenders and those who have committed serious offenses. Most are adequately controlled and rehabilitated in community settings. A small number require the control and structure of secure detention and treatment facilities.

Programs for juvenile offenders were separated from adult correction programs and transferred to the Division of Family and Youth Services four years ago. Since then juvenile delinquency has received greater attention and services provided to protect the public and rehabilitate young offenders have increased dramactically. The number of youth under probation supervision is up 45% and the average populations of juvenile detention and secure treatment facilities have increased by 58% and 30% respectively. With greater focus, remedial increases in service, and earlier intervention fewer youth are "slipping between the cracks." Serious or repeat offenders are identified and dealt with sooner reducing multiple offenses. In short, increases and improvements in service seem to have been a primary factor in reducing juvenile crime in Alaska.

Despite essential growth, detention facilities average 40% above capacity and there are waiting lists for entry into secure treatment programs. Even planned expansion will not meet projected needs for these services. Overburdened programs quickly become ineffective and continued reductions in juvenile crime cannot be expected in the face of a growing population and overburdened programs.

The response cannot be to simply build more and larger facilities. This simplistic approach focuses massive resources on a single aspect of juvenile delinquency and has been discredited by its failure elsewhere. Its virtually limitless costs alone preclude adoption of this approach. Instead the Department of Health and Social Services has developed a balanced strategy essential in a time of decreasing resources and increasing population. The strategy emphasizes regionalization and increases in prevention, early intervention and communitybased services accompanied by modest increases in secure detention and treatment capacity. Other management initiatives to implement this strategy are development of a systematic method of case management and implementation of a comprehensive management information system (SYSMIS).

A systematic method of case management will provide a framework for effectively allocating resources on individual client and overall program levels, and for short and long range planning. A comprehensive information system is essential to provide information needed for monitoring and evaluating services and programs, and for decision making.

This strategy will help limit the need for growth in costly institutions, make community-based services available on a broader basis throughout the state and insure that limited resources are used most effectively to protect the public and rehabilitate young offenders.

DESCRIPTIVE ANALYSIS OF JUVENILE CRIME IN ALASKA

Certain misperceptions about juveniles and crime are widely accepted by the public and many policy makers and have influenced public policy relating to juvenile justice. These misperceptions are enforced periodically by sensational news reports and the entertainment media. It is important to consider these persistent perceptions in light of available facts if significant policy decisions are to be made wisely.

Incidence of Juvenile Crime

The most widely accepted belief about juvenile crime is that it is widespread and increasing - that there is a juvenile crime wave far out of proportion with the number of juveniles and beyond the level of adult crime. Available facts, however, do not support this belief.

Conservative estimates of population growth indicate that the population of youth in Alaska (those 0 - 18 years of age) increased by approximately 15% from 1979 to 1983. As Chart I indicates this represents an increase of 19,000 juveniles from 134,000 to 153,000. The adult population is believed to have grown at about the same rate and to be slightly more than twice the size as the juvenile population - approximately 329,000 persons.

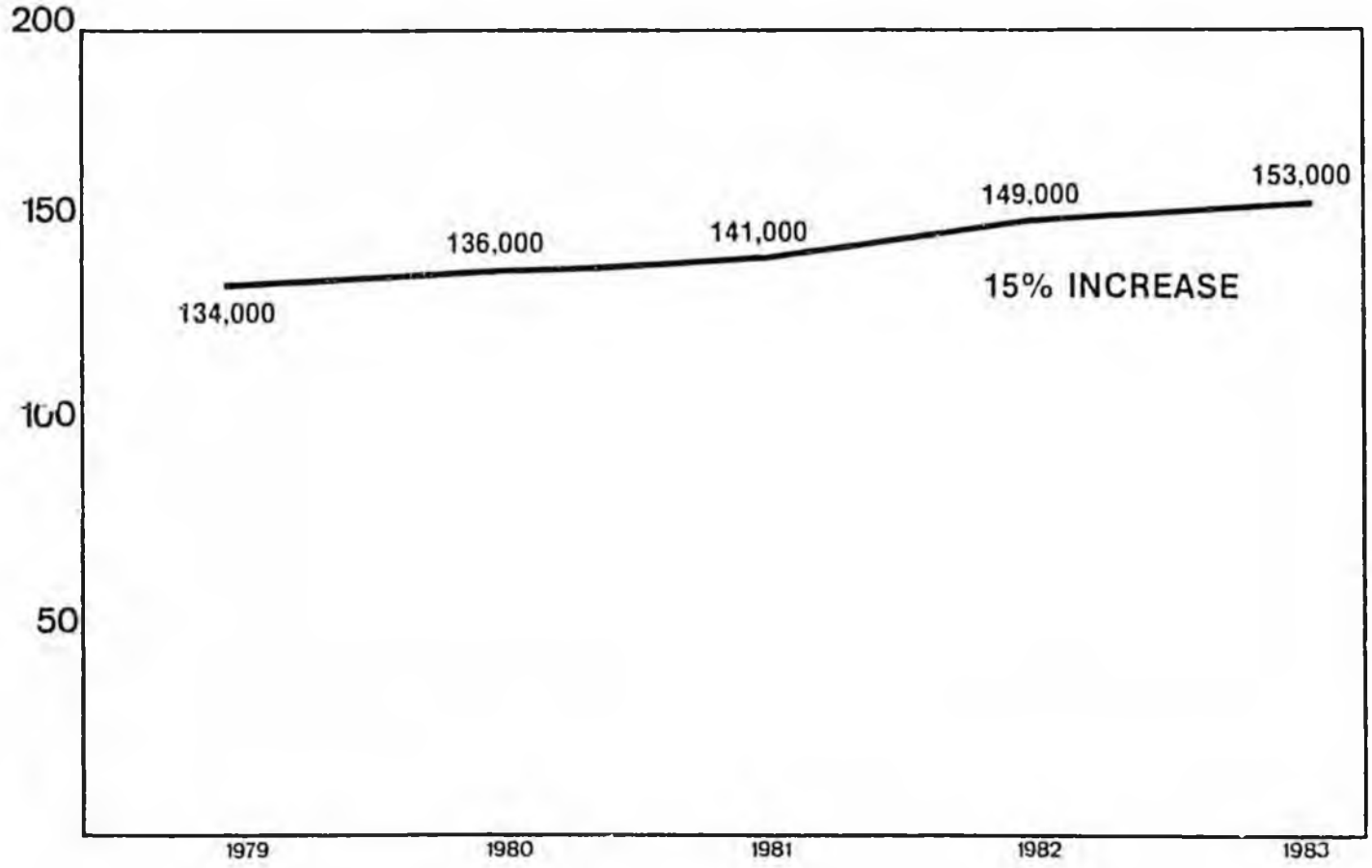
Despite the significant population increase juvenile crime as measured by arrests declined slightly. Chart 2 shows that juvenile arrests have remained relatively stable between 1979 and 1983, declining slightly - about 6%. In contrast adult arrests have shown a marked increase after 1980 and an overall increase during the five year period of about 13%. Juveniles arrests have declined despite population growth while increases in arrests of adults have essentially paralleled population growth.

Chart 3 illustrates another important measure of crime, the rate of arrest. The rate of juvenile arrests (arrests per 1000 persons) was relatively stable until 1982 when it declined sharply. This decline continued in 1983 resulting in an overall decline of 24% during the period 1979 - 1983. This decline follows a national trend of decreasing juvenile arrest rates. However, Alaska's juvenile arrest rate, 32.24 per 1000, is less than one half the most recently calculated national rate. (1) In contrast Alaska's adult arrest rate does not show a similar trend although the 1983 level was slightly (8%) below the 1979 high of 46.56 arrests per 1000 persons.

In summary, juvenile arrests in Alaska are declining despite significant population increases and the rate of juvenile arrest has declined substantially. Alaska's juvenile arrest rate is far below the national juvenile rate and 25% lower than Alaska's adult arrest rate.

(1) Report to the Nation on Crime and Justice: The Data, U.S. Department of Justice, Bureau of Justice Statistics, 1983.

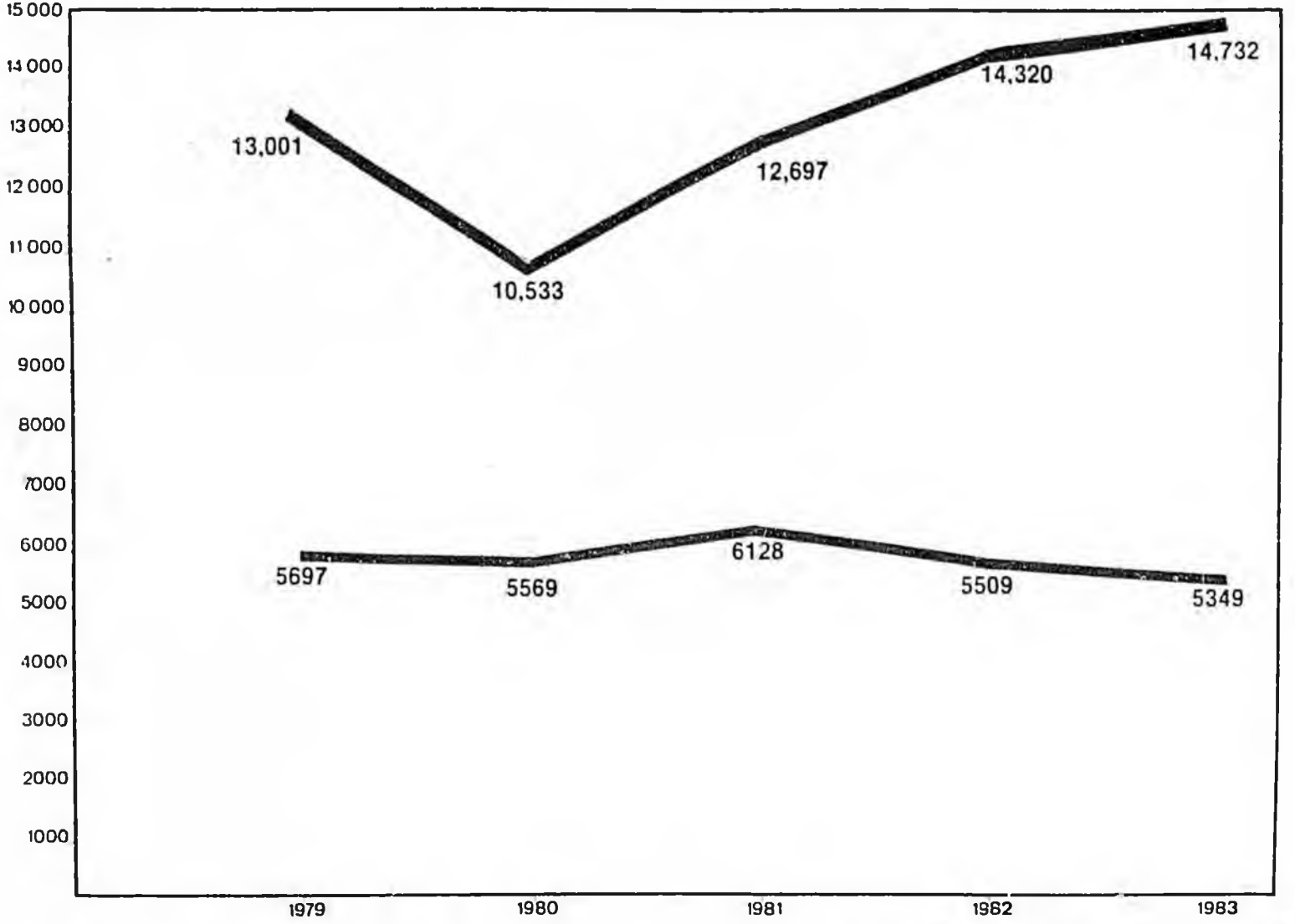
ALASKA YOUTH POPULATION
(0 to 18 Years)



Source Data: *Alaska Population Overview — 1981*
Alaska Department of Labor
U.S. Bureau of Census, 1980

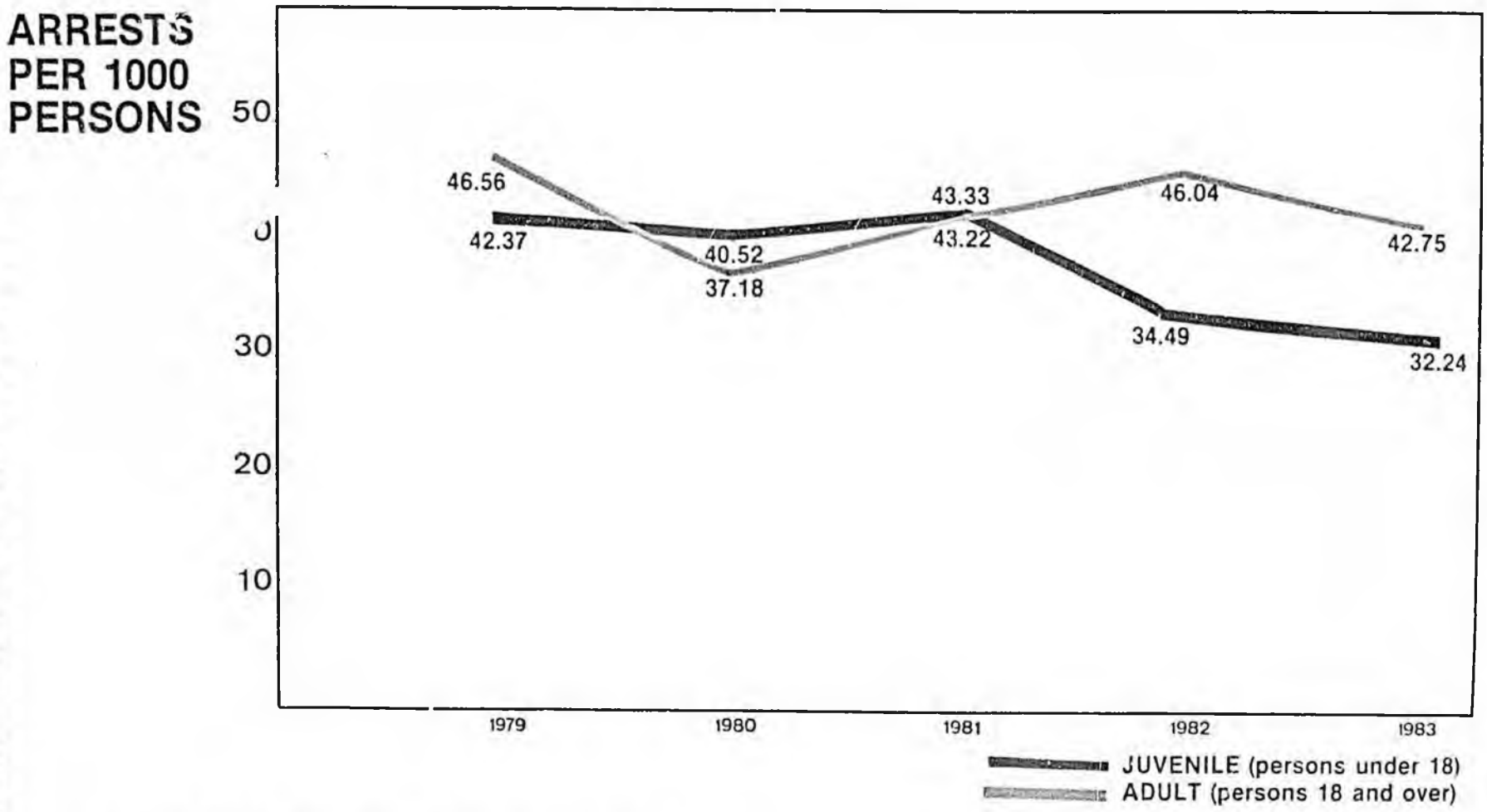
CHART 1

ARRESTS IN ALASKA



Source: *Crime in Alaska* 1979-1983. Department of Law
Department of Public Safety

ALASKA ARREST RATES



Data Sources: Arrest data, *Crime in Alaska — 1983*, Alaska Department of Public Safety
Alaska Population Overview — 1982, Alaska Department of Labor

CHART 3

Profile of Juvenile Crime

Another popularly accepted belief about juvenile crime is that it is characterized by a high level of violence - that juveniles commit a disproportionate number of violent crimes and that juvenile crimes often involve gratuitous violence.

Insight into the nature of juvenile crime in Alaska can be gained from studying the types and proportions of crimes for which juveniles are arrested and comparing these with adult arrests. Chart 4 depicts this information for 1983. Data for 1983 is shown since it is the most recent data available and because the pattern of arrests is essentially the same for the entire five year period.

Most importantly the data shows that arrests for serious violent crimes (homocide, rape, robbery, aggravated assault) are only a tiny proportion (2%) of juvenile arrests and only a small (10%) proportion of the total arrests for these crimes.

The data shows that juvenile crime in Alaska is primarily property crime (thefts, from shoplifting to burglary) which account for about one-half (49%) of all juvenile arrests. The other main categories of juvenile crime are liquor law violations such as minor consuming (21%), and status offenses such as runaway and curfew violations (8%). The smallest number and percentage of juvenile arrests (116 or 2% of total) is for serious violent crimes, - homocide, rape, robbery and aggravated assault. Other crimes against persons, such as misdemeanor assaults, account for only 3% of juvenile arrests.

A comparison of juvenile and adult arrests shows that arrests for violent crimes and crimes against people comprise a significantly greater proportion of adult arrests and that adult arrests for violent crimes are ten times greater than the number of juvenile arrests.

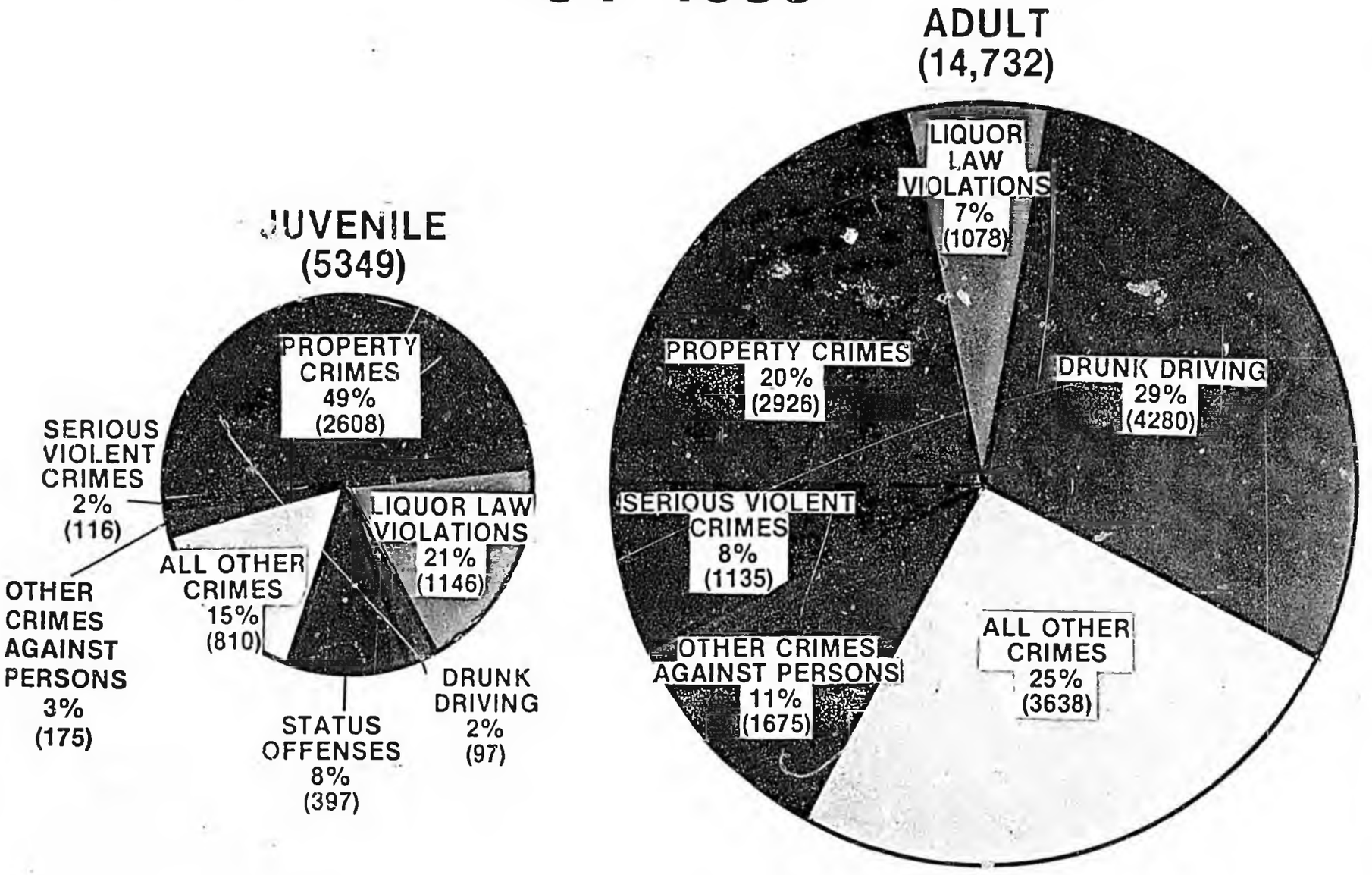
Interpretation

Although juvenile crime at any level is a serious social concern, national studies indicate that the magnitude of the problem is exaggerated in public perception. Studies and data also show that the public perception of a drastic and disproportionate increase in violent and serious crime by juveniles is erroneous. In fact, the National Crime Survey showed that during a recent five year period both the number and rate of personal victimizations by juveniles decreased while victimizations committed by adults increased. The same study showed that personal victimizations committed by juveniles were less serious in terms of weapons use, rate of injury, and financial loss, than similar crimes committed by adults. (2)

A study by Dr. Marvin Wolfgang of the University of Pennsylvania, which tracked all juveniles born in Philadelphia in 1958 is equally important in understanding violent juvenile crime. The Wolfgang study found that a small number of

(2) Analysis of National Crime Victimization Survey Data To Study Serious Delinquent Behavior, U.S. Department of Justice, Criminal Justice Research Center, M.J. Hindelang and M.J. McDermott, 1981.

PROFILE OF ARRESTS
CY 1983



Data Source: Crime in Alaska — 1983
Alaska Department of Public Safety

CHART 4

repeat offenders commits a disproportionate number, perhaps the majority, of violent crimes committed by juveniles. This study concluded that there is a need to be selective in identifying and dealing differently with that small number of juveniles while reacting in a far less severe manner to the majority of young offenders.

While there have been no such comprehensive studies specific to Alaska a comparison of Alaska and national data indicates that the findings of national studies probably hold true here. (3)

- o Alaskan juveniles comprise 32.5% of the state population while nationally juveniles make up 27.5% of the population.
- o Juvenile arrests comprise 26.6% of total arrests in Alaska compared to 19.8% nationally. This difference is approximately equal to the difference in the proportions of juveniles to the total population.
- o Only 2% of juvenile arrests in Alaska are for serious, violent crimes (murder, rape, robbery, aggravated assault) compared to 4.2% nationally.
- o Juvenile arrests for serious violent crimes in Alaska are 10% of the total number of arrests for these crimes compared to 18.5% nationally.
- o The proportion of juvenile arrests for violent crimes in Alaska has remained at the 10% level since 1979.
- o Nearly half (49%) of Alaska's juvenile arrests are for property crimes compared to 42% nationally. Two thirds of these arrests in Alaska are for thefts.
- o Status offenses (curfew, runaway, liquor law violations) account for nearly one third (29%) of Alaska juvenile arrests compared to 18% nationally.

In general terms then, Alaska's juvenile crime patterns parallel national trends, with some important differences. While total juvenile crime and rate of juvenile crime are declining both nationally and in Alaska, these declines are accompanied nationally by a decline in the juvenile population while Alaska's juvenile population is increasing.

Perhaps the most important difference is in the level of violent crime. Violent crime by juveniles in Alaska is a much smaller proportion of both total juvenile crime and total violent crime than is the case nationally (about half the national proportions), and a minute proportion (one-half of 1%) of all crime in the state. Juvenile property crime is a higher proportion of total property crime in Alaska than is true nationally (47% vs 37%) and is the most prevalent type of juvenile crime. Juvenile crime in Alaska is largely (80%) property crime, liquor law violations, and status offenses. Juvenile crime is only about one-fourth (26.6%) of the total crime problem in the State compared to 20% nationally. The difference in these proportions is almost precisely the

(3) SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1983, U.S. Department of Justice, Bureau of Justice Statistics.

same as the difference in the proportion of juveniles to the total state versus national population - 5%.

JUVENILE JUSTICE SYSTEM IN ALASKA

Juvenile justice systems were established nationwide and in Alaska in recognition of significant differences in the characteristics and rehabilitative potential of adult and juvenile offenders and differences in the general types and seriousness of offenses committed by the two groups. The vast majority of juvenile crime is far less serious than adult crime and the likelihood of changing behavior of children is greater than the likelihood of rehabilitating adult offenders. In recognition of these differences the juvenile justice system has developed with a greater reliance on informal resolution, diversion, and intervention than is true in the adult criminal justice system. The emphasis of the juvenile system has been to employ the least intensive and least expensive interventions necessary to achieve the equally weighted goals of protection of the public and rehabilitation of the juvenile offender.

The juvenile justice system may be seen then as a screening process through which the less volatile and more readily rehabilitated youth are separated from those who present a danger to themselves and others. Assessments of the risk juvenile offenders present and of their rehabilitative needs are inherent in key decisions in the juvenile justice system and are of prime importance in the distillation process. The effectiveness of a juvenile justice system may be measured by its ability to accurately assess risk and need and provide services which successfully address each. The essence of evolution in juvenile justice is improvement in methods of assessing risk and need and providing more effective services.

System Flow

Chart 5 illustrates in simplified form the flow of the juvenile justice system. The chart emphasizes key decision points and actions in the screening process. Because complete statistical information is not routinely collected, the chart illustrates estimated client flow during calendar year 1982 based on a sampling study by Wasserman and McNabb (4) (commissioned by the Division of Family and Youth Services).

Key decision points and actions illustrated are:

1. Decision to arrest - This is a decision of law enforcement based on evidence of a crime. The data shows that only about 3% of the total juvenile population is arrested even if multiple arrests are not considered.

2. Decision to detain or release to parent - Detention of juveniles on arrest is a decision made by police officers based on the officer's assessment of danger to the youth or others. As chart 5 illustrates, a substantial number of juvenile arrests (nearly half) result in secure detention. This occurs despite the fact that the vast majority of juvenile arrests are for

(4) Youth Services Research and Evaluation Report, P.Z. Wasserman and S.L. McNabb, 1983.

status or property offenses and most of those youths detained are eventually dealt with informally. It is clear that the rate of detention is unjustified by the types of offenses being committed and the level of danger presented by the youth. Certainly the national detention rate is far below the nearly 50% level found in Alaska. This high rate of detention has a significant impact on the population of juvenile detention facilities and locally operated municipal jails. It also causes a variety of problems including overcrowding in juvenile detention facilities, inefficient use of adult facilities, and detention of juveniles in adult facilities without statutorily required sight and sound separation from adults.

3. Decision to release from detention, dismiss, divert through informal action or initiate formal action - In general this is a decision of the DFYS intake officer, often in consultation with legal counsel. This decision is based on an assessment of (a) the offense, (b) the youth and the youth's past behavior, and (c) the likelihood that public protection and rehabilitation of the child can occur through informal action (e.g., restitution, community service, counseling, etc.) or that formal court action will be necessary to achieve these goals. Chart 5 shows and Chart 6 more graphically illustrates that the vast majority of juvenile offenders (first offenders and those who have committed less serious offenses) are diverted from the system and informal supervision is employed. Chart 6 indicates that an estimated 74% of juvenile offenders were diverted from the formal juvenile justice system in 1982. Eight percent required a higher level of intervention through informal probation supervision for a short period of time, up to six months. A very small number (1%) of cases where dismissed as unfounded or lacking sufficient evidence.

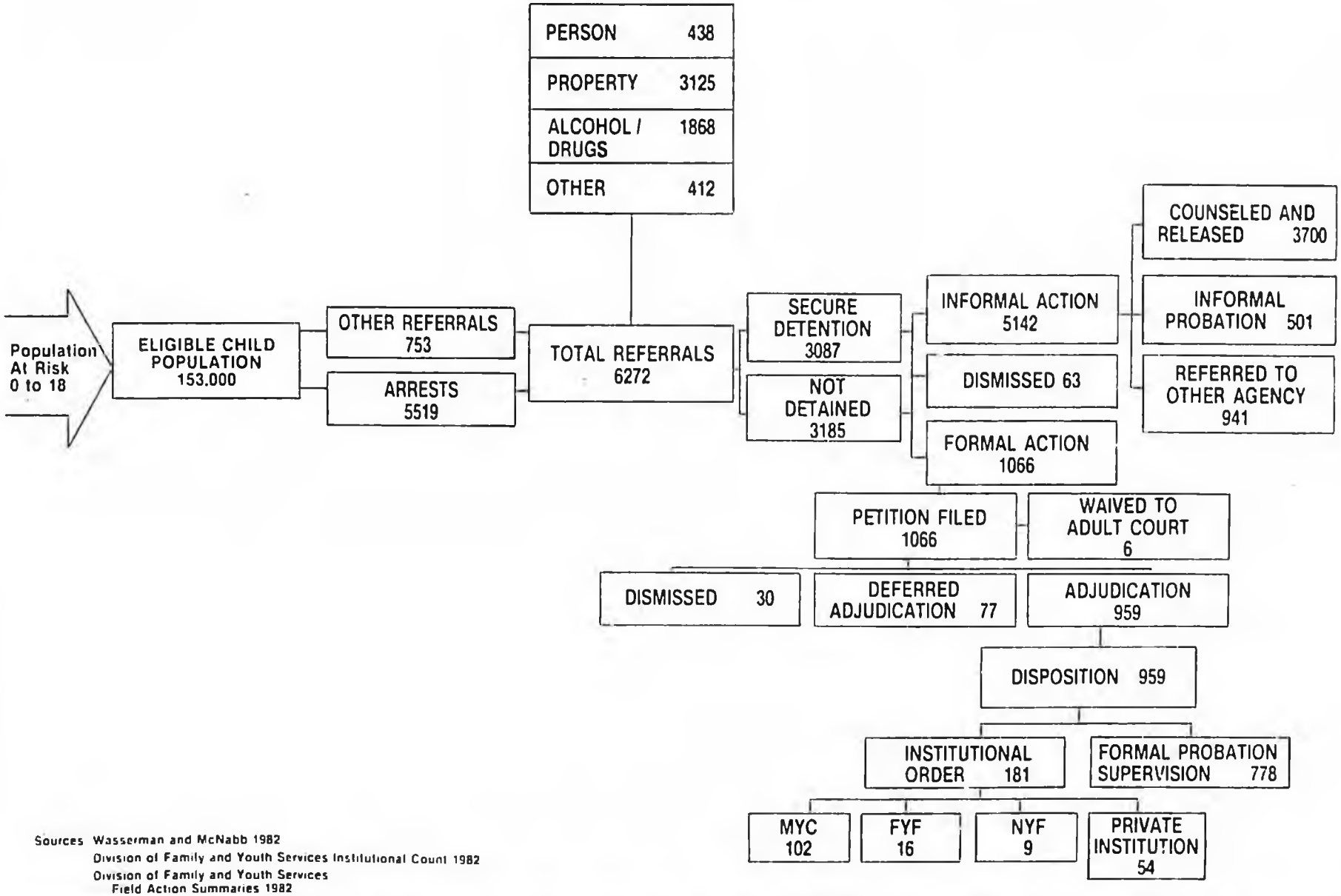
4. Formal action - Filing of formal delinquency petitions is the responsibility of the intake officer but may also be initiated by prosecutors. In a very small number of cases - those few juveniles who have committed offenses so serious and whose rehabilitative potential is so small that they can not be appropriately dealt with in the juvenile justice system - waiver of juvenile jurisdiction may be sought.

   Formal petitions were filed in 17% or nearly 1,100 cases in 1982. The majority (90%) resulted in delinquency adjudications. Approximately 3% were dismissed before trial or were found insufficient to prove delinquency. Adjudication was deferred in about 7% of cases, generally conditioned upon satisfactory behavior under probation supervision. Waiver to adult jurisdiction occurred in 6 cases.

5. Disposition - After a finding of delinquency the court determines, within statutory guidelines, the general plan to be implemented to both protect the public and to rehabilitate the young offender. Chart 6 shows that the majority (72%) of formal actions resulted in formal probation supervision in the community. Approximately 181 cases (67%) resulted in orders requiring placement of youths in secure rehabilitative treatment facilities or structured private residential care facilities. The number of youth institutionalized is roughly one and one half times the number of

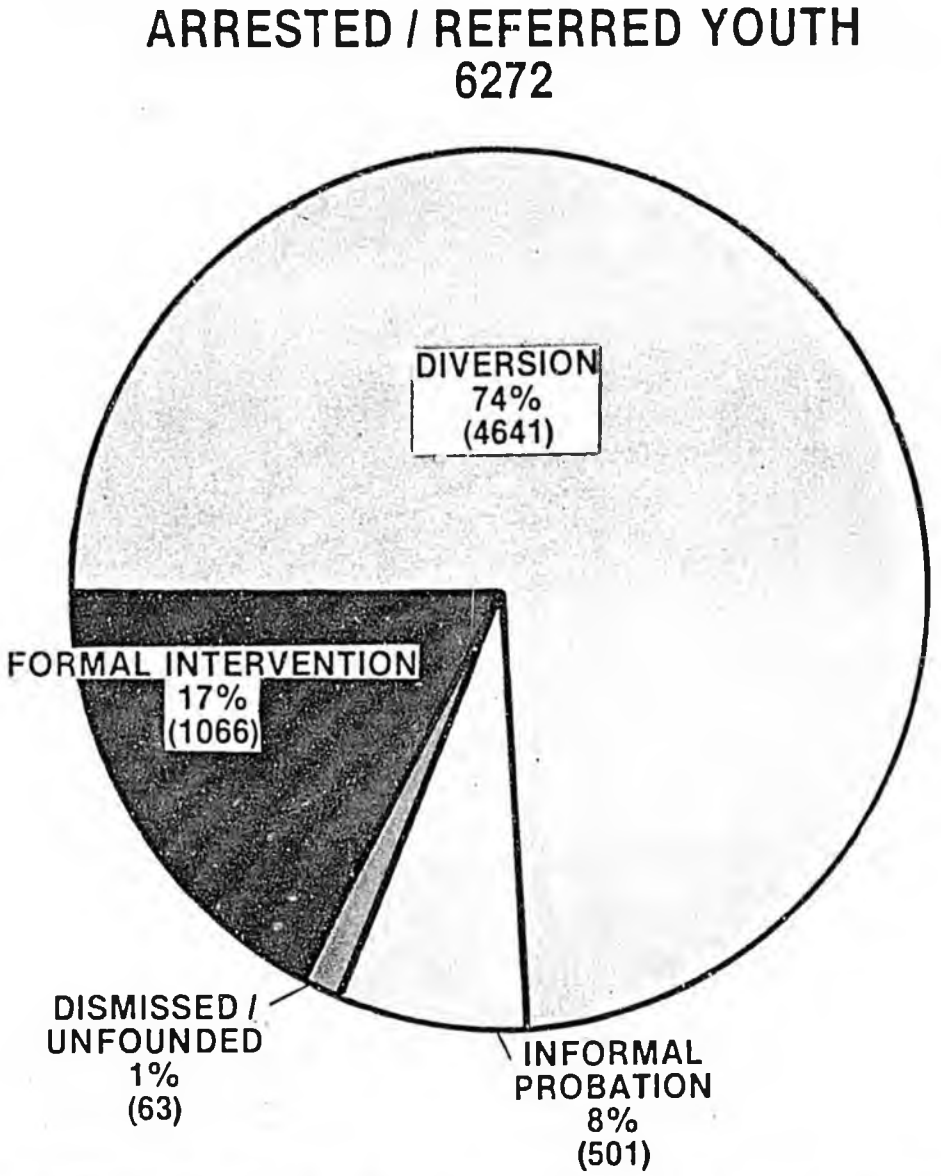
juveniles arrested for serious or violent crimes (181 institutionaiiz-ations versus 116 violent crime arrests) indicating that the most severe sanction and expensive treatment is reserved for those youth who present a danger to the community.

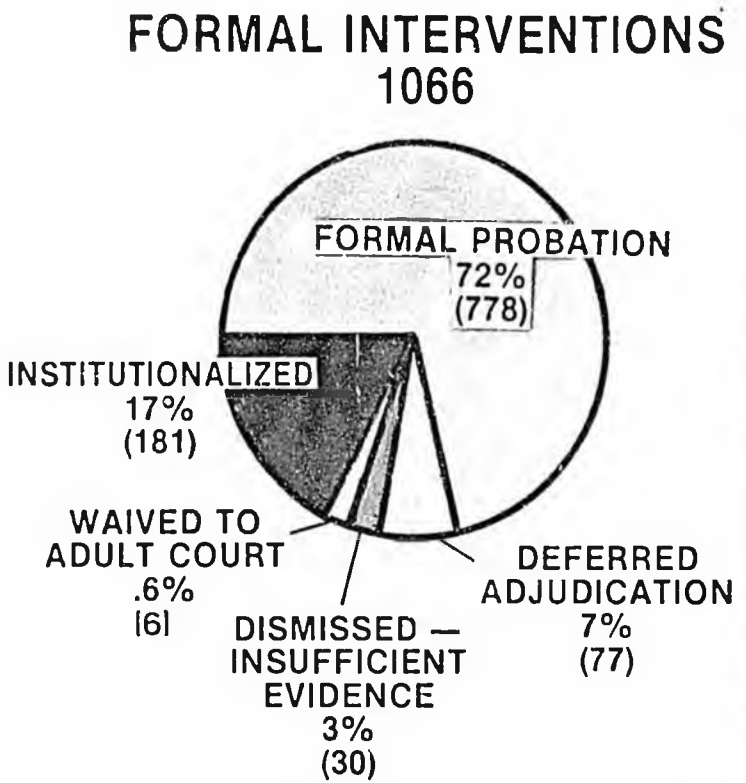
JUVENILE JUSTICE SYSTEM
CLIENT FLOW CY 1982



Sources Wasserman and McNabb 1982
Division of Family and Youth Services Institutional Count 1982
Division of Family and Youth Services
Field Action Summaries 1982

INTERVENTIONS EMPLOYED 1982





Data Source: Wasserman and McNabb. 1983

DHSS RESPONSE TO JUVENILE CRIME

Perspective

Before December, 1980 responsibility for providing rehabilitation programs for juvenile offenders was assigned to the Division of Corrections within the Department of Health and Social Services. These programs were provided largely as an adjunct to adult correctional programs. In all areas of the state except Anchorage and Fairbanks probation officers were assigned both adult and juvenile cases. Only one facility existed for the detention and secure treatment of juveniles (McLaughlin Youth Center). Because of this structure juvenile programs were largely subordinated to adult programs. Responsibility for providing juvenile rehabilitation programs was transferred to the Division of Family and Youth Services in December, 1980; an action based on recommendations from several studies which indicated that increased efficiency and effectiveness could be expected from such a change. In December, 1984 full responsibility for performing the juvenile intake function for the superior court was administratively transferred to the Department of Health and Social Services. Previously this function had been split between the Alaska Court System and the Department of Health and Social Services. Court system employees performed the juvenile intake function in Anchorage, Fairbanks, Kenai and Palmer and DHSS juvenile probation officers performed the function in all other areas of the state.

Growth in Demand for DHSS Services : Probation, Detention, Secure Treatment

Charts 7, 8 and 9 illustrate the significant increases in the demand for DHSS services to protect the community and to rehabilitate juvenile offenders.

Probation: Chart 7 illustrates the average number of youth under probation supervision from 1981 through 1984. Youth under formal, court ordered supervision comprise 90% of these cases while youth under informal supervision as a diversion from formal justice system account for 10%. As is illustrated there was a 45% increase in the average number of youth under probation supervision during the four year period, rising from 867 in 1981 to 1260 in 1984.

Detention: Chart 8 illustrates the growth in the average number of youth detained in juvenile detention facilities since 1978. It also projects future growth and compares this with the actual and planned capacity of juvenile detention facilities.

Between 1978 and 1984 there was a 58% increase in the average daily population of juvenile detention facilities. The average daily census was approximately 18% above actual capacity in 1978 and, despite growth in the capacity of juvenile detention facilities, presently exceeds actual capacity by approximately 40%. Juvenile detention facilities in Anchorage and Fairbanks are dangerously overcrowded at the present time and if the historical growth rate holds true to 1987 even the planned 30% increase in juvenile detention facility capacity will not meet the need and the detention facilities will continue to be seriously overcrowded.

GROWTH IN PROBATION SERVICES

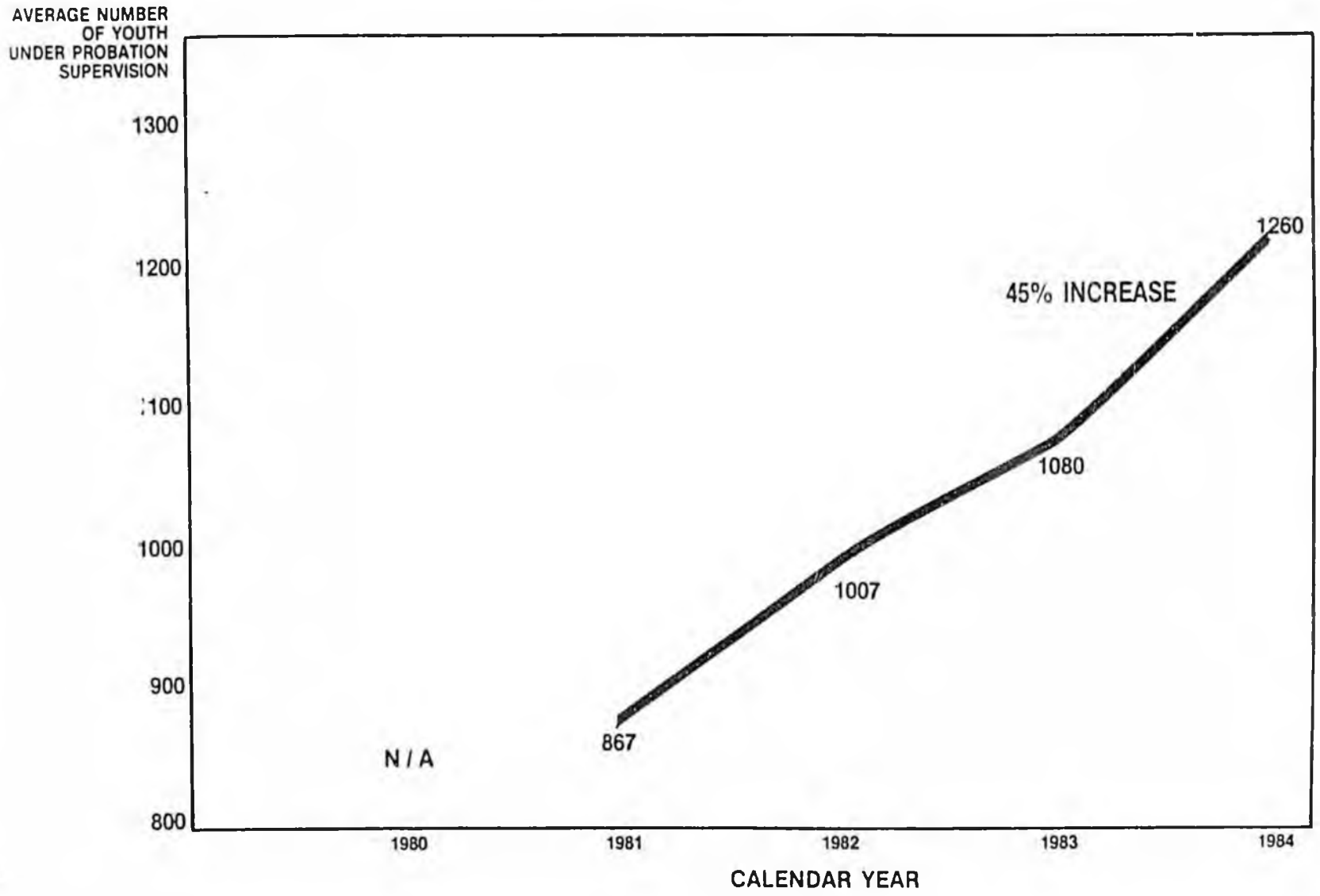


CHART 7

GROWTH IN DETENTION

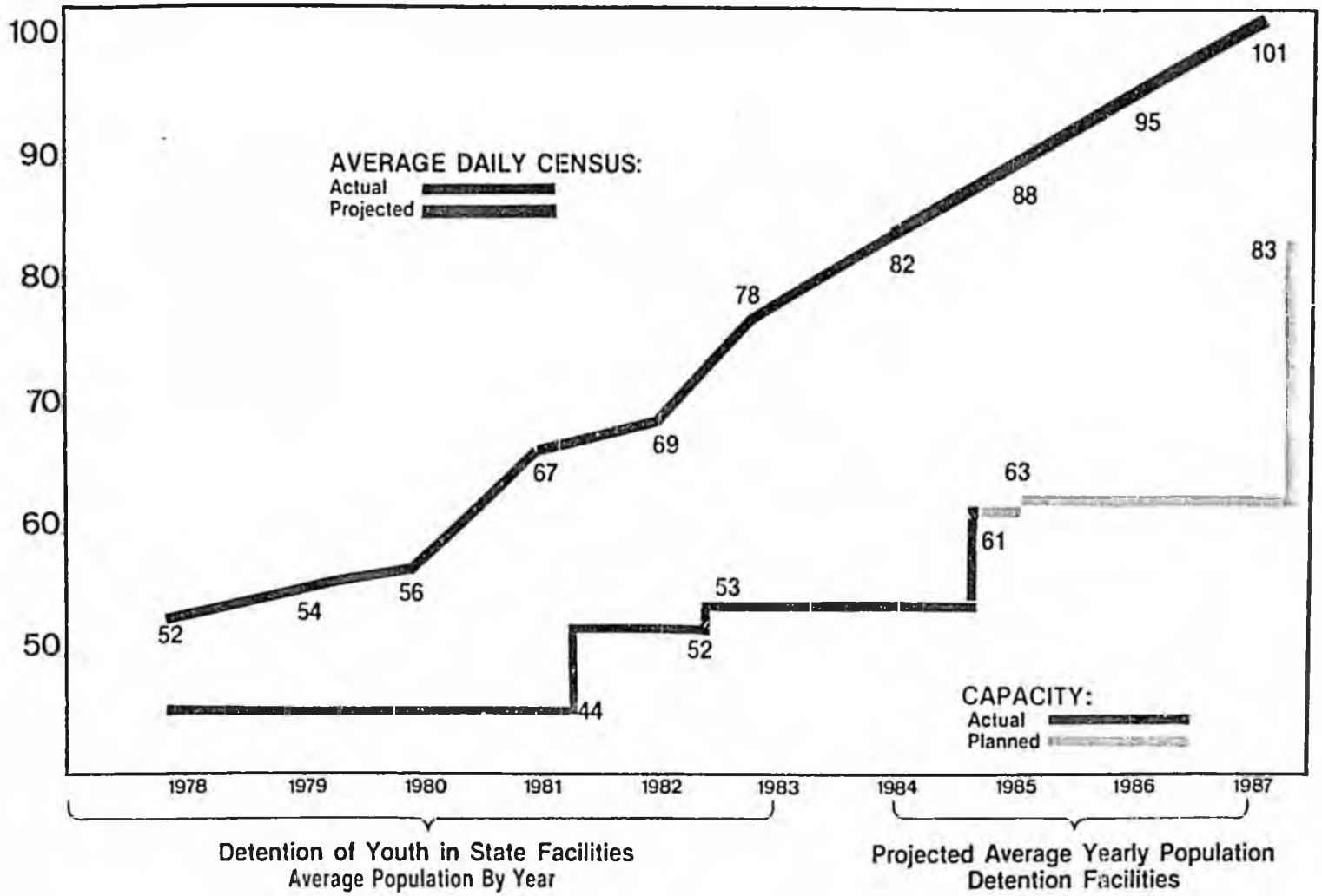
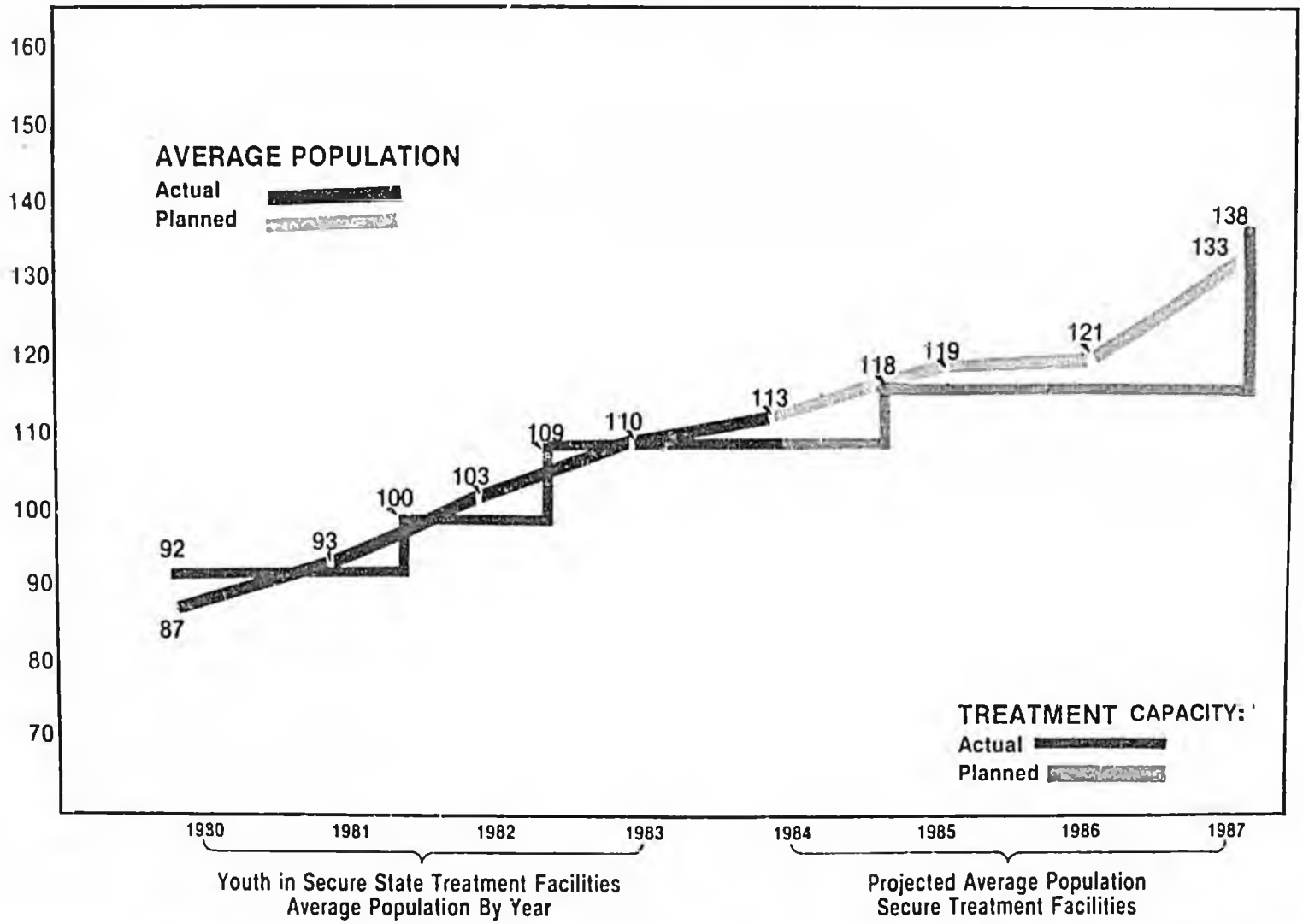


CHART 8

GROWTH IN SECURE TREATMENT



These figures do not include youth detained in municipally operated jail facilities around the state and do not, then, represent the full extent of the juvenile detention problem.

The significant growth in the population of juvenile detention facilities seems contradictory to what might be expected given the decrease in the number of juveniles being arrested. Obviously part of this increase may be explained by an increase in the detention capacity since an increase in the capacity, if filled, will lead to a higher daily population rate. However, the demand is far greater than increases in capacity. Possible explanations for this seeming contradiction are:

1. an over-utilization of detention upon arrest;

2. lack of immediate (24 hour) intake and diversion services result in the unnecessary detention of youth who do not truly present a danger to themselves or to the community (This was found to be true by a grand jury in the Fairbanks area and led to recommendations that DFYS assume greater intake authority in order to correct the problem.);

3. lack of sufficient secure treatment capacity which results in a backlog of adjudicated youth being held in detention pending placement in a secure treatment program.

Secure Treatment: Chart 9 illustrates the growth in secure treatment for juvenile offenders. The chart shows that the actual number of youth being treated in secure facilities is essentially the same as the capacity of those facilities. Projections show that this will continue to be true in the future. This does not provide a complete picture of the need for secure treatment because the population in secure treatment is administratively held at the rated capacity. Population is limited to maintain the effectiveness of the rehabilitation programs and preclude the development of a dangerous circumstance due to overcrowding. The number of youth in treatment at any given time is controlled through several important mechanisms:

1. an admission policy which requires the release of a youth who has completed the treatment program before admitting another youth;

2. decreases in the length of treatment which allows treatment of a greater number of youth without increases in facility capacity;

3. utilizing secure detention as an interim placement for youth who require secure treatment pending an opening in a secure treatment program;

4. placement of a strictly limited number of youth in secure facilities outside the state.

Analysis

The dramatic growth in numbers of youth receiving probation, detention and secure treatment services seems unwarranted by the level and nature of juvenile

crime in Alaska. The number and rate of juvenile arrests shows a decrease and the seriousness of offenses committed by juveniles is relatively stable, yet there is an increasing number of juveniles under probation supervision, in detention, and in secure treatment. These seemingly contradictory sets of facts may be complementary instead. The following hypotheses may help explain some of the apparent anomalies in the data.

1. When rehabilitative services for juvenile offenders were part of an adult corrections agency, services for juveniles were subordinated to efforts to deal with adult criminals and many youths were allowed to "slip between the cracks" resulting in multiple offenses and arrests of the same youths before intervention occurred.

2. Reorganization of rehabilitative services for juvenile offenders within a child and family-focused agency resulted in increased attention to juvenile offenders and increased service levels.

3. Intervention in matters of juvenile delinquency is occurring earlier and higher levels of services are being provided.

4. Increased services and earlier intervention result in earlier identification of repeat offenders and greater use of the formal juvenile justice system to deal with these youth.

5. Earlier intervention, earlier identification of repeat or serious offenders, and higher service levels result in reductions in repeat offenses and arrests, and a lower overall rate of arrest.

YOUTH SERVICES OUTLOOK : ISSUES AND STRATEGIES

The juvenile system has evolved rapidly since separation of juvenile rehabilitation programs from the adult correctional system four years ago. This evolution has included long delayed growth, increased sophistication, and change in emphasis. However a number of critical issues and problems remain and these must be addressed immediately or in the near future. The choices made in addressing these issues and problems will determine the structure of correctional services for youth and the allocation of resources within that structure for many years.

In general terms the broad problem being faced is that of protecting the public through rehabilitation and control of young offenders when the population of youth is increasing and resources are limited. Decisions made will determine whether Alaska develops a highly centralized approach relying heavily on long term institutional placements or adopts a regionalized approach relying more on prevention, early intervention, and community based treatment.

Issues

Specific system problems to be addressed include:

1. a need for detention and secure treatment of juveniles which exceeds present capacities and will exceed planned expanded capacities;

2. a growing need for detention and secure treatment outside the major urban areas.

3. a need for alternative services and approaches in order to limit growth in expensive detention and secure treatment;

4. an increased need for probation and other community-based services.

5. a need for systematic prioritization of services based on risk and need of youth and available resources; and

6. a need for information on juvenile offenders sufficient to allow analysis of trends, evaluation of program effectiveness, short term plan adjustments, and long term planning.

DFYS Strategy

The Division of Family and Youth Services has developed a balanced strategy for achieving its mandate to protect the public and rehabilitate juvenile offenders, while addressing current system problems. This strategy focuses on reducing deficits in certain critical services, limiting future need for expansion in institutional services, and containing costs through increased program efficiency and effectiveness. The strategy has five major initiatives which are:

1. Increasing secure detention and treatment capacity;

2. Increasing emphasis on prevention, early intervention, and community based services;

3. Regionalization of services;

4. Development of systematic case management system;

5. Development of a comprehensive management information system.

Initiative Number 1 : Increase in Detention and Secure Treatment

Chart 10 illustrates detention and secure treatment capacity of state operated juvenile facilities as they presently exist and as planned through FY 86. With additions planned through FY 86, detention capacity will increase by 46%, treatment capacity will increase 41%, and capacity for closed treatment (treatment for the most difficult and dangerous of juvenile offenders) will increase by 100%. The total capital cost of these increases will be approximately $9.9 million. Additional operating costs are estimated at approximately $4.2 million per year.

Even with these unavoidable additions to detention and treatment capacity, projections show that the demand for these services will meet or exceed the expanded capacity (charts 8 and 9). And, while development of increased detention and treatment capacities are necessary, charts 10 and 11 illustrate that these are expensive services. As chart 11 shows the true expense cannot be measured simply in terms of the initial capital costs. Construction costs of a 20 bed facility (a 20 bed facility is the minimum size for cost efficiency) comprise only 10% of the total life cycle cost of the facility. Operating costs of a facility account for 90% of total costs. Thus, even if all other factors were disregarded, costs alone would require that use of detention and secure treatment be highly selective.

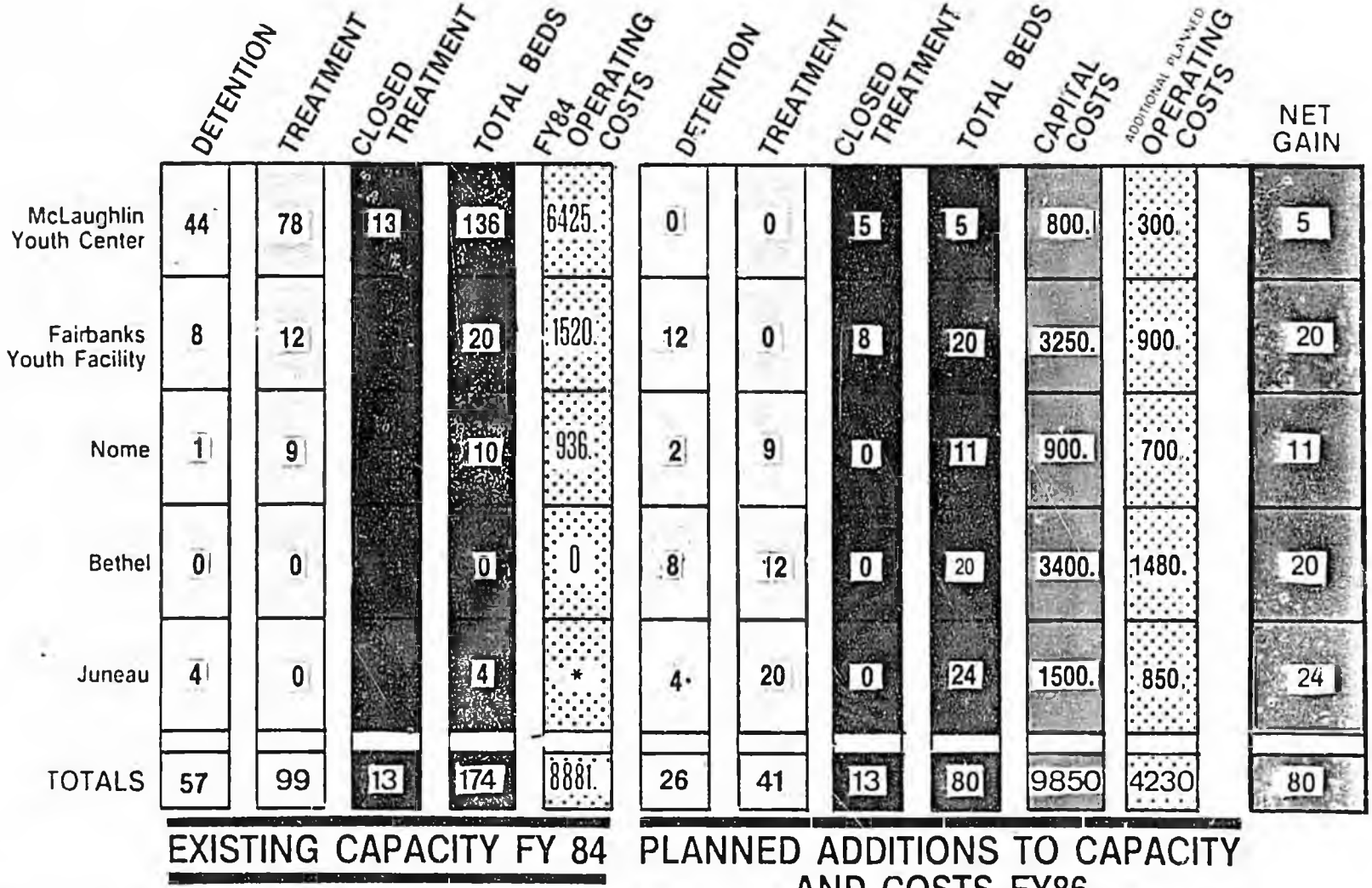
Initiative Number 2 : Increased Emphasis on Community Based Services

To avoid unending increases in detention and secure treatment DFYS proposes to increase community-based rehabilitative efforts for juvenile offenders. These services include prevention and diversion services as well as probation supervision and alternatives such as foster care.

An initial step in increasing emphasis on community-based services, assumption of statewide control over the juvenile court intake function, was achieved on December 3, 1984. Implementation of uniform statewide policies for juvenile intake and the availability of intake officers on a 24 hour basis in state operated detention facilities will allow better and quicker screening to reduce unnecessary detention of youth who do not pose a danger to the public. It will also allow earlier and more effective intervention and diversion services following the initial arrest of juveniles. Funding of prevention and diversion programs through grants is an important part of increasing reliance on community-based services. A model program providing community service as a diversion alternative has recently been expanded to include restitution collection and to serve the most populated areas in the state.

DIVISION OF FAMILY AND YOUTH SERVICES

Secure Youth Facilities



Sources: Division of Family and Youth Services, Capital Budget, FY85
Department of Health and Social Services, Capital Plan, FY85
Division of Family and Youth Services, Budget FY84

*Information not comparable operated as facility for both adult prisoners and juveniles in FY84

CHART 10

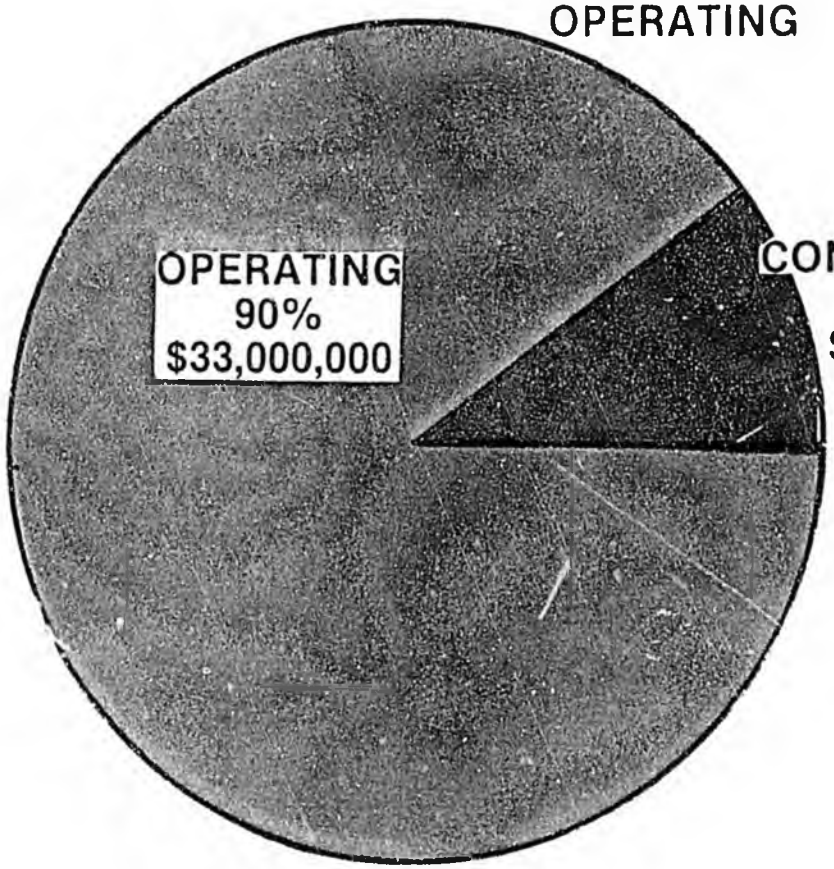
TYPICAL YOUTH FACILITY COSTS
20 Beds

CONSTRUCTION

Cost per bed	170,000
Cost per facility	3,400,000

ANNUAL OPERATING

Staff cost	1,160,000
Food cost	72,000
Maintenance	60,000
Utilities	43,900
TOTAL ANNUAL OPERATING	1,335,900



Life Cycle Cost Comparison
20 Year Life Expectancy

Source: Division of Family and Youth Services
Fiscal Year Budget 1985

CHART 11

Initiative Number 3 : Regionalization

DFYS' regionalization strategy is illustrated in Chart 12. As the chart shows, this is a significant departure from the centralized approach of the past. This configuration will improve secure detention and treatment services in several ways. Since intake and diversion services will be available from the regional facilities unnecessary detention of many youth will be eliminated and earlier intervention and diversion will occur. The need to transport youths from outlying areas to a centralized facility in Anchorage or Fairbanks will be reduced thereby reducing the time youths spend in detention and treatment. In addition greater reliance on existing community and family resources will occur in all aspects of intervention, diversion and treatment, increasing their effectiveness.

The regional approach will more efficiently utilize resources since it will allow better and earlier screening and intervention. Reductions in length of time necessary for rehabilitation of juvenile offenders will allow more youth to be rehabilitated without an otherwise necessary expansion of facilities.

Regionalization of services will, then, expand the types of services available in outlying areas, better utilize community and family resources in rehabilitation efforts, provide earlier and more effective intervention and diversion, allow a greater number of treatment strategies to be used, reduce the time necessary for detention and treatment of youth, and allow a larger number of youth to be served without continuing institutional expansion.

Initiative Number 4 : Case Management

To ensure that agency resources are used most effectively DFYS is developing a formal, systematic method of case management. This will give DFYS an objective, reliable method of assessing the risks presented by delinquent youth and their rehabilitative needs. It will also establish workload and performance standards, uniform methods of case planning, and mechanisms for monitoring and evaluation for individual cases.

On both an individual case and program level development of a formal method of case management will provide a systematic planning process. This process will provide a framework for analyzing problems, developing objectives, identifying resources to be used in achieving objectives, and achieving accountability through monitoring and evaluating effectiveness and performance. A critical part of a case management system is the collection of information about clients and programs essential in providing a basis for decisions on all levels. Without a sufficient capability for collection and analysis of needed information a case management system cannot function effectively.

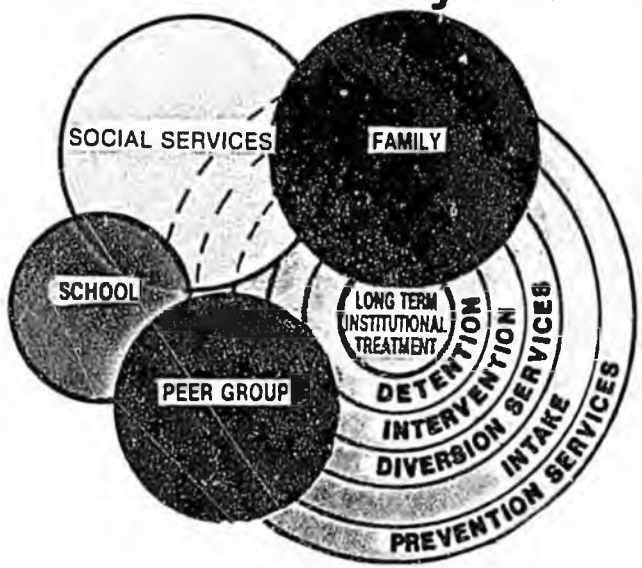
Initiative Number 5 : Management Information System (MIS)

Development of a comprehensive management information system is essential to DFYS' overall strategy since it will enable the agency to routinely collect information necessary for numerous case and management functions.

REGIONAL YOUTH DETENTION AND TREATMENT CENTERS

Youth Community Based Services - Division of Family and Youth Services

1978



1988

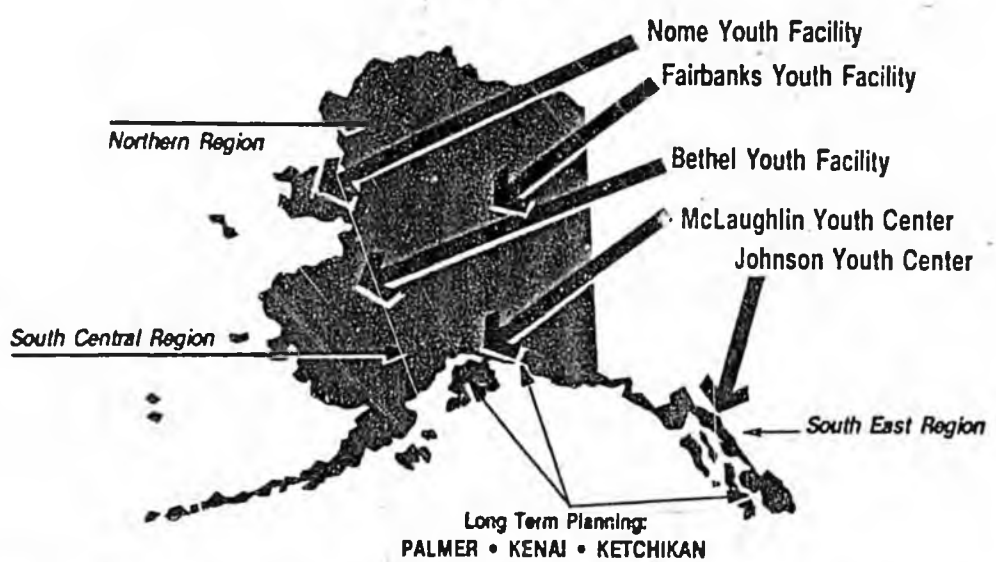


CHART 12

A comprehensive MIS will provide detailed information for program evaluation and accountability, and for a variety of decisions from the individual client level to the administrative and legislative policy level.

The Department has been mandated to require and collect statistics on juvenile offenses and offenders, but has not had the capability to do so. With the assumption of responsibility for the juvenile court intake function DFYS now has the ability to develop a system of tracking juvenile offenders from the time of their referral to the intake officer through all processes of the juvenile justice system. This is extremely important since it can provide previously unavailable information for analysis of statewide trends. Major policy decisions and day to day program operations require such information and the evaluations such information makes possible. With completion of this initiative, the Department will be able to carry out this mandate and meet information needs on a general level.

Conclusion

Significant progress has been made in recent years to address the problem of juvenile crime in Alaska. Separation of services for juvenile offenders from programs for adult criminals has focused greater attention on juveniles and resulted in dramatic increases and improvements in services. This has been a primary cause for decreases in both total numbers and rate of measurable juvenile crimes. Earlier intervention and increased service means fewer youth become repeat offenders and serious offenders are identified and dealt with sooner.

However, Alaska's population continues to increase and programs for juvenile offenders are now overburdened. This has occurred at a time when revenues have begun to decline and resources are increasingly limited. Without effective use of available resources and some resource increases program effectiveness will decline and increases in juvenile crime will almost certainly occur.

The strategy devised by DFYS to protect the public and rehabilitate young offenders is designed to direct resources to the most cost effective services and contain the need for additional resources. The strategy includes several management initiatives. Some are designed primarily to address specific problems presently being faced. Others will increase accountability and effectiveness of existing services. Development of a systematic method for identifying future problems and needs, evaluating programs and services, and allocating resources most effectively as circumstances change will be a primary focus in these initiatives.

The need for resources will undoubtedly increase as the state's population increases. However, DFYS' management initiatives are predicated on limiting the need for additional resources through informed planning and decision making and by concentrating on the most effective and least expensive services. Immediate needs will require increased resources for institutional services. But regionalization will insure the most effective use of these and future resources.

Through these initiatives and emphases DFYS hopes to avoid the failures of other states in focusing on a single aspect of juvenile crime - the end of the service continuum, institutions and secure treatment. Instead DFYS hopes to focus resources on prevention, diversion, early intervention, and community - based services. These approaches effectively protect the public and rehabilitate the vast majority of young offenders without the massive resource requirements of institutions.

National Office for Social Responsibility
208 N. Washington St., Alexandria, VA 22314 (703) 549-5305

MARCH 21, 1986

HONORABLE PATRICK M. RODEY
CHAIRMAN
SENATE JUDICIARY COMMITTEE
STATE CAPITOL
JUNEAU, AK 99811

DEAR CHAIRMAN RODEY:

THE FEDERAL OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP) HAS ANNOUNCED A NATIONAL INITIATIVE TO EXPLORE THE FEASIBILITY OF CONTRACTING-OUT THE OPERATION OF CORE PROBATION FUNCTION(S) TO THE PRIVATE SECTOR. THE NATIONAL OFFICE FOR SOCIAL RESPONSIBILITY (NOSR) HAS BEEN AWARDED A CONTRACT TO ASSIST IN SELECTING DEMONSTRATION SITES FOR THIS INITIATIVE.

STATE AND LOCAL JURISDICTIONS RESPONSIBLE FOR JUVENILE PROBATION SERVICES ARE ELIGIBLE TO APPLY AS A DEMONSTRATION SITE. THOSE SELECTED WILL BE PROVIDED WITH THE NECESSARY FEDERAL ASSISTANCE TO PLAN AND IMPLEMENT A COMPETENT DEMONSTRATION.

NOSR WILL BE HOLDING A SERIES OF INFORMATIONAL OUTREACH SESSIONS ACROSS THE COUNTRY TO INFORM JURISDICTIONS ON ALL ASPECTS OF THE INITIATIVE, AND TO PROVIDE COMMUNITIES INTERESTED IN BEING CONSIDERED AS DEMONSTRATION SITES WITH THE APPROPRIATE APPLICATION PROCEDURES.

AS A STATE LEGISLATOR YOU UNDOUBTEDLY ARE FACED WITH MAKING TOUGH DECISIONS ON EXPENDITURES FOR ALL TYPES OF SERVICES. PRIVATE SECTOR PROBATION OFFERS AN OPTION WHICH CAN BE MORE COST EFFECTIVE WHILE MAINTAINING A HIGH LEVEL OF CORRECTIONAL SERVICES. IT IS AN APPROACH WHICH MAY BE TAILORED TO OTHER SERVICES AS WELL. I ENCOURAGE YOUR ATTENDANCE, OR THAT OF YOUR PRINCIPAL STAFF ASSISTANT, AT ONE OF THESE SESSIONS. THE PROBATION ADMINISTRATOR AND THE APPROPRIATE JUDICIAL REPRESENTATIVE FROM YOUR JURISDICTION HAVE ALSO BEEN INVITED. THE INFORMATIONAL SESSIONS FOR YOUR REGION OF THE COUNTRY WILL BE HELD ON:

1. WEDNESDAY, APRIL 30, 1986

   LOS ANGELES AIRPORT MARRIOTT
   5855 WEST CENTURY BLVD.
   LOS ANGELES, CALIFORNIA

2. FRIDAY, MAY 2, 1986

   BOARD CHAMBERS
   ALAMEDA COUNTY ADMINISTRATION BUILDING
   ROOM 512
   1221 OAK STREET
   OAKLAND, CALIFORNIA

3. TUESDAY, MAY 6, 1986

AUDITORIUM
PORTLAND CITY BUILDING
520 S.W. 5TH
PORTLAND, OREGON
(NEXT TO CITY HALL)

YOU MAY CHOOSE TO ATTEND ONE OF THE ABOVE SESSIONS. EACH SESSION WILL BEGIN AT 9:30 A.M. NOSR WILL PROVIDE PERTINENT INFORMATION ABOUT THE INITIATIVE AND APPLICATION PROCEDURES BY 12 NOON. FOR THOSE WHO WISH TO REMAIN FOR INDIVIDUAL CONSULTATIONS AND/OR FURTHER DISCUSSION OJJDP AND NOSR STAFF WILL BE AVAILABLE UNTIL 4:30 P.M.

PLEASE COMPLETE AND RETURN THE ENCLOSED RESPONSE SHEET TO NOSR. WE WILL MAIL YOU ADVANCED READING MATERIALS AND AGENDA UPON RECEIPT. IF YOU HAVE QUESTIONS YOU MAY CALL US AT (703) 549-5305.

CORDIALLY,

R. J. Gemignani

ROBERT J. GEMIGNANI
PRESIDENT

RJG/EB

ENCLOSURE

RESPONSE SHEET

1. /___/ YES, I OR MY REPRESENTATIVE WILL ATTEND THE SESSION IN:

   /___/ LOS ANGELES, CA, APRIL 30, 1986

   /___/ OAKLAND, CA, MAY 2, 1986

   /___/ PORTLAND, OR, MAY 6, 1986

2. /___/ NO, I WILL NOT BE ABLE TO ATTEND

3. LIST OTHERS WHOM YOU SUGGEST SHOULD BE INVITED TO THIS INFORMATIONAL SESSION:

   NAME: _____
   TITLE: _____
   ADDRESS: _____
   TELEPHONE #: _____

   NAME: _____
   TITLE: _____
   ADDRESS: _____
   TELEPHONE #: _____

   NAME: _____
   TITLE: _____
   ADDRESS: _____
   TELEPHONE #: _____

4. COMMENTS:

   _____
   _____
   _____
   _____
   _____
   _____

NAME: _____
TITLE: _____
ADDRESS: _____
TELEPHONE #: _____

NATIONAL OFFICE FOR SOCIAL RESPONSIBILITY
208 NORTH WASHINGTON STREET
ALEXANDRIA, VA 22314
(703) 549-5305

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4545

TONY KNOWLES, MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

December 5, 1984

Senator Pat Rodey, Chairman
Senate Judiciary Committee
801 West Fireweed Lane, Suite 102
Anchorage, Alaska 99503

Re: Juvenile Code Revisions

Dear Pat:

I circulated your inquiry among members of my staff and received the attached comments from Assistant Municipal Attorney Mike Marsh. If we can be of further assistance in your work on the Juvenile Code or other matters coming before the Judiciary Committee, please let me know.

Very truly yours,

DEPARTMENT OF LAW

Jerry Wertzbaugher
Municipal Attorney

JW:gml
Attachment

Municipality of Anchorage

MEMORANDUM

DATE: November 13, 1984

TO: Jerry Wertzbaugher, Municipal Attorney

FROM: Mike Marsh, Assistant Municipal Attorney Mike Marsh

SUBJECT: Junvenile Code Changes

My only suggestion:

AS 47.10.090(a) places strict limits on access to records of adjudications of delinquency (juvenile convictions) on criminal charges. The only way the Municipal Prosecutor can learn about a defendant's convictions as a juvenile (adjudications), for perhaps serious crimes, is to subpoena the Family Court Intake Officer to the sentencing. This obviously cannot be done for every sentencing and the Prosecutor only subpoenas the intake officer when the Prosecutor has a strong suspicion that the defendant has a criminal history as a juvenile. This means that there is great potential for a District Court Judge to unknowingly sentence an adult defendant as a first offender, when the defendant has actually committed similar crimes before as a juvenile. AS 47.10.090(a) should be amended to allow court employees to reveal a defendant's record of juvenile convictions (adjudications) to prosecuting attorneys, subject to the same safeguards currently provided for adult criminal histories (6 AAC 60.010 et seq.).

MM:mrk

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
465-3603

December 5, 1984

Honorable Patrick Rodey
Alaska State Senate
801 W Fireweed, Suite 102
Anchorage, AK 99503

Dear Senator Rodey:

Thank you for asking me to comment on the possible revision of Alaska's Juvenile Code. Several years back I investigated various potential revisions to the portions of the statutes concerning juveniles alleged to be delinquent. The Department of Law was interested in exploring a statutory model developed in the State of Washington. I have not, however, done any work in this area since that time.

A major concern to me has been the difficulties that the Department of Health and Social Services has in dealing with protecting children in need of aid, generally teenagers, who refuse to remain in foster homes or other non-secure settings. Although the Department of Health and Social Services is charged with protecting these children, there are few adequate resources either social or legal to accomplish that task.

Another area for revision could be the incorporation of the Indian Child Welfare Act requirements into our current statutes.

I am certain that other assistant attorneys general, who work with children's matters, would be able to offer more specific suggestions for statutory revisions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Elizabeth L. Shaw
Elizabeth L. Shaw
Assistant Attorney General

ELS:bap

ALASKA STATE SENATE

PATRICK RODEY
SENATOR

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3793
(907) 465-3754

November 28, 1984

Thomas H. Robertson
Assistant Attorney General
Department of Law
Pouch K, State Capitol
Juneau, Alaska 99811

Dear Tom:

Thank your for your letter of November 23, 1984.

I would appreciate it if you would contact me sometime in December on the results of your informal in-house poll and let me know the issues the Department of Law feels need to be addressed in a revision of the juvenile code.

I look forward to working with you and the Governor on this important area.

Sincerely yours,

Senator Pat Rodey

PR/rp

cc: Norman C. Gorsuch
Attorney General

Don Edwards
Assistant Attorney General

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
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FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

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

465-3603

November 23, 1984

Honorable Patrick Rodey
Alaska State Senate
801 W Fireweed, Suite 102
Anchorage, AK 99503

Dear Senator Rodey:

General Gorsuch has asked that I respond to your letter of November 2, 1984, requesting suggestions for revision of the juvenile code. We are conducting an informal poll of attorneys handling children's cases and hope to provide you with our suggestions by mid-December. Assistant Attorney General Don Edwards of our Anchorage office is coordinating this effort.

If you have questions in the meantime, please do not hesitate to contact Don or me.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Thomas H. Robertson
Assistant Attorney General

THR:bap

cc: Norman C. Gorsuch
Attorney General

Don Edwards
Assistant Attorney General

03-C5LH

Letter sent to list in file folder

November 2, 1984

Dear

Alaska's Juvenile Code has not been reviewed and revised for several years. I believe a host of changes are necessary. As an attorney and former Chairman of the Senate Judiciary Committee, I would appreciate your candid thoughts on those practical changes which can be made. Any suggestiosn you make will be confidential and will not be released without approval.

With your help, we should be able to get some legislation moving and some changes made this coming session.

Sincerely,

Pat Rodey

276-6731
801 W Fireweed Suite 102
Anchorage, Alaska 99503

ALASKA STATE SENATE

PATRICK RODEY
SENATOR

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3793
(907) 465-3754

November 30, 1984

George Mason, Supervisor
Community Unit
Family Connections
1836 West Northern Lights
Anchorage, Alaska 99503

Dear George:

I understand that you are interested in the proposed juvenile code revisions I am working on, and I understand you wrote to me about it. I apparently did not receive your reply, so I would appreciate it if you could take the trouble to write to me again about your concerns.

The background to this proposed revision goes back to a couple of years ago when the legislature did an extensive revision of the criminal code, but decided not to go into any revisions of the juvenile code at that time. This was in part because the issues were so complex, and also because there were other issues and revisions at the time that took priority over revisions of the juvenile code.

To help you focus better on the areas I plan to concentrate on in the juvenile code revision, I would be especially interested in any comments you might have regarding juvenile offenders, as well as the issues of child abuse and sexual abuse.

My staff is attempting to obtain a copy of the juvenile code for you; it will be sent on to you as soon as we receive it.

It would be timely if you could get any comments to us by January 1 for inclusion into a draft bill for the code revision, and at the very latest by January 30. Once a bill gets submitted for this, it will have scheduled public hearings in various legislative committees, including the Senate Judiciary Committee, which I will chair. I will let you and other interested parties know when the hearings for this are scheduled for my Committee.

Thank you again for your interest and concern.

Sincerely yours,

Pat Rodey

Senator Pat Rodey

PR/rp

Letter sent to list in file folder

November 2, 1984

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Sincerely,

Pat Rodey

276-6731
801 W Fireweed Suite 102
Anchorage, Alaska 99503

COPIES of this resolution shall be sent to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

ALASKA STATE SENATE

PATRICK RODEY
SENATOR

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3793
(907) 465-3754

November 30, 1984

George Mason, Supervisor
Community Unit
Family Connections
1836 West Northern Lights
Anchorage, Alaska 99503

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Thank you again for your interest and concern.

Sincerely yours,

Pat Rodey

Senator Pat Rodey

PR/rp

FAMILY CONNECTION

A counseling agency for youth and their families

1836 W. Northern Lights, Anchorage, Alaska 99503 (907) 279-0551

November 8, 1984

Senator Patrick Rodey
801 W. Fireweed, Suite 102
Anchorage, AK 99503

Dear Senator Rodey,

On behalf of the staff of Family Connection, I want to thank you for your invitation to assist in your efforts to review and revise the Alaska Juvenile Code. As you are no doubt aware, our agency specializes in work with families and juveniles. Of particular importance to us are issues of abuse, neglect, child welfare, runaways, and emergency foster care.

Again, we appreciate this opportunity to participate in your efforts, and we wish you success at the many tasks ahead. To best assist you and your staff in this matter, please let us know of your progress, type and format of input, or any other relevant information. Meanwhile, we will begin to formulate our thoughts and suggestions on this significant issue.

We look forward to helping,

Sincerely,

George Mason
Community Unit Supervisor

cc: Peter Scales, Ph.D.
Executive Director

ALASKA STATE SENATE

PATRICK RODEY
SENATOR

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3793
(907) 465-3754

November 27, 1984

Jay Warner, Intake Officer
Trial Courts, State of Alaska
Third Judicial District
303 "K" Street
Anchorage, Alaska 99501

Dear Jay:

Thank you for your letter of November 20, 1984.

I appreciate your comments, and as I develop more information on the topic during the coming session, I will get back in touch with you to obtain your comments and insights.

Meanwhile, if you have any other comments or observations, please feel free to contact me about them.

Sincerely yours,

Senator Pat Rodey

PR/rp

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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PHONE: (907) 452-1568

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

January 21, 1985

Honorable Pat Rodey
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Confidential Comments on Possible Revisions of the Juvenile Code

Dear Senator Rodey:

You will recall the letter of November 20, 1984, from Thomas H. Robertson which indicated that I would be responding to your inquiry about possible changes in the juvenile code. I have canvassed the attorneys in the Juneau, Fairbanks, and Anchorage Human Services sections, of the Office of the Attorney General. This letter summarizes some of the views of the attorneys. The views are offered as points of discussion and not as final conclusions as to what changes should be made.

As a general prefatory statement, it is the strong and unanimously held view that additional funding for new positions (attorneys, paralegals or possibly even law student interns) is by far the best thing which the Legislature could do to enhance the Department of Law's child protection efforts. Although all agree that some changes to the juvenile code would be very worthwhile, the code is functional and there are no major problem areas. The statutes which we have are adequate--at least for our purposes in civil child in need of aid cases. However, understaffing frequently prevents our effective use of them. The Governor's Child Protection bill, to be submitted this session, will, hopefully, net one additional attorney for Fairbanks and

03-C5LH

one additional attorney for Anchorage. The additional two attorneys do not come anywhere near keeping pace with the growth of the workload for Human Services areas in recent years. 1/

The Governor's Child Protection Legislation

I understand the Governor will soon be submitting legislation designed to address those changes in the child protection laws, which the Department of Law and the Department of Health and Social Services feel are most critical.

AS 47.10.010

AS 47.10.010(a)(2)(F) (physical abuse and neglect) is believed by some of the attorneys to be subject to attack on the grounds that it is vague. Apparently similar wording has been stricken down by other states' supreme courts. Subparagraph (F) is unnecessary since subparagraph (A), as interpreted by the definition of "caring" [AS 47.10.290(9)], and subparagraph (C) cover anything which subparagraph (F) might contemplate.

AS 47.10.020

This section arguably permits private parties to bring petitions alleging a child to be in need of aid, or for delinquency. Some assistant attorneys general believe that this could be a problem.

AS 47.10.080(f)

The supreme court's interpretation of the above statute in Rita T. v. State, 623 P.2d 344 (Alaska 1981) exploits ambiguity in the statute to conclude that where an adoptive placement of a child has not been finalized by court order, the previously entered order terminating parental rights can be repeatedly re-examined. This injects needless uncertainty into adoption processes and, in our view, tips the balance too far in the favor of parental rights at the expense of the rights of the child. This section of the statute could be changed to clarify that an order terminating parental rights is a final order which is not subject to periodic collateral attacks.

1/ For example, the Anchorage child protection caseload has more than tripled since 1980.

Interviewing Children In Schools

Some school districts (e.g., City of Anchorage, Matanuska-Susitna Borough and Kodiak) have entered into "hold harmless" agreements wherein the state has agreed to hold the school district harmless in return for which the school district has agreed to permit social workers access to interview children without parental consent under specified circumstances. The agreements also outline the parties' responsibilities to notify parents in a timely fashion. However, other school districts have not entered into these agreements and arbitrarily withhold permission for investigators to contact children. This is especially a problem in sexual abuse cases because disclosure to the parents that an investigation is underway permits a parent to pressure the child into not disclosing any information. This problem could be addressed statutorily by requiring schools and other institutions having children in their custody to permit access to specified investigators for specified purposes without prior notification to parents. The statute could also outline notification timeframes and responsibilities and define the liability of the entities involved.

Mental Illness And Incarceration As Grounds For Termination of Parental Rights

Occasionally it may be necessary to terminate parental rights because of chronic mental illness or long term incarceration. Currently, there are no references to these as grounds for termination of parental rights in the children's code. While this does not mean that we do not terminate parental rights for these reasons, the task is much more difficult without statutory guidance. Obviously, drafting additions to the code to address these issues should be done with extreme care. In particular, mental illness grounds should be drafted only after due deliberation and consultation with mental health experts. Nevertheless, having worked in this area for a number of years, I believe it is imperative that termination of parental rights be permissible on grounds which arise primarily out of serious mental illness.

Abandonment

In Adoption of V. M. C., 528 P.2d 788 (Alaska 1974), the court has defined abandonment. It may be useful to include this definition of abandonment in the children's code.

Location of Relinquishment Provisions

Some assistant attorneys general believe that relinquishment provisions should be moved from AS 25.23.180 to AS 47.10. In the process, the statute could be clarified to state that relinquishments can only be given to agencies and not to private individuals. Consents to adoption, which are revocable under limited circumstances until the final adoption decree, would still be available for use in so called "private" adoptions. 2/

Indian Child Welfare Act

Some assistant attorneys general have suggested that some cross-reference of the children's code to the Indian Child Welfare Act in the areas of notice of proceedings and termination of parental rights would be useful since issues occasionally arise as to how this federal statutory overlay affects procedures under the state children's code.

Separation Of Delinquency And CINA Statutes

It might be useful to separate those statutes dealing with delinquency from those statutes dealing with child in need of aid proceedings. Occasionally, it is unclear whether or not certain provisions of the children's code apply to delinquencies and child in need of aid proceedings, or to only one of those types of proceedings.

Clarification And Simplification

Much of the children's code could use re-drafting to clarify its meaning. The goal of this effort could be to clarify the currently accepted intent and to incorporate judicial interpretations. For example, AS 47.10.080 is extremely difficult to understand. To my knowledge it has been the subject of at least two supreme court appeals and there is another supreme court appeal pending which will interpret this statute. 3/

2/ Several assistant attorneys general believe that the adoption code is in far greater need of revision than the children's code. I suggest that interested persons call Kathleen Harrington, the Anchorage Probate Master, and the counsel for the Catholic Social Services Agency for comments on changes to the adoption code.

3/ For another example see the discussion above under the heading "AS 47.10.010." As a general rule of drafting, definitions should not be needed to separate sections to clarify the meaning of statutes.

Conclusion

The changes noted above are deserving of exploration. However, we do not believe, given current under-staffing, that we have the ability to expend the time necessary to explore and draft needed changes during this legislative session. Nevertheless, we remain intensely interested in these subjects and ask that you consult with us at any critical stages. We are encouraged by your interest in this area and are pleased to work with you now and in the future on these projects.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Donald W. Edwards
Donald W. Edwards
Assistant Attorney General

cc: Ron Lorensen
Art Peterson

Alaska Association Chiefs of Police

107 South Willow Street, Kenai, Alaska 99611

November 7, 1984

The Honorable Pat Rodey
Alaska State Senate
801 W. Fireweed
Suite 102
Anchorage, Alaska 99503

Dear Senator Rodey,

We appreciate your inquiry concerning the need to change portions of Alaska's Juvenile Code. During the next several weeks particular attention will be given to this area and our input will be forwarded to your office.

Again, thank you for contacting us on this matter of great importance.

Respectfully yours,

Chief Richard Ross
President
Alaska Association
Chiefs of Police

RAR/kdl

Legislator pushes automatic waiver plan for youth crime

by Rosanne Pagano
Times Writer

When Pat Rodey discusses criminal youth in a roomful of Alaska Democrats, he likes to rely on Sen. Ted Kennedy who, Rodey claims, once warned against laws that specially shield teens from stiff prosecution.

"The poor and the elderly — those most often victimized by juveniles — don't make the distinction," Rodey quoted. "And neither should we."

Rodey, a Democratic state senator from Anchorage, relied on the Kennedy logic to explain his bill that will automatically send youths, aged 16 and 17, into adult courts on murder, rape or kidnapping charges. If adopted, the bill will take away power judges now have to decide case-by-case when juveniles should be tried as adults.

"Make no mistake," Rodey said in his Thursday talk before the Bartlett Democratic Club, "they (teenagers) know what they're doing." As an example, he told of the case of a minor accomplice who was encouraged to club to death the victim of an adult attacker. Rodey claimed the adult handed the weapon over, knowing a youth's punishment would be more mild.

"I say this (special treatment) is unfair and unreasonable," Rodey said.

But he was unable to say exactly how many sophisticated, violent, unremorseful youth are escaping adult punishment because they are being tried in the juvenile system, where trials are secret and emphasis is on rehabilitation, not punishment.

"I can't say there's a floodgate," Rodey said. "We're talking about relatively small numbers."

How small those numbers are is unclear, said Public Defender Dana Fabe, who countered Rodey. She said no statistics exist to prove the need for his bill, first introduced in 1981.

"It's my experience," she said, "that in the vast majority of cases, when the prosecutor asks that a juvenile be waived (into adult court), the judge agrees." In fact, Fabe said a judge ruled just last week to send a 17-year-old into adult court on a sex offense charge.

And, she said, automatically sending 16-and 17-year-olds to adult court gives prosecutors unchecked power because they will determine where a youth is tried by deciding which offense to try.

"Sen. Rodey's bill is like a net that has some holes in it," she said. "It doesn't take into account the child's remorse, cooperation since the crime, past attempts to treat that child and whether she is a victim of abuse."

Recent state figures on waivers to adult court are incomplete. One recent survey showed 23 youths were remanded from 1981 to 1984. At least 13 of those were for crimes included in Rodey's bill; 14 of the youths were aged 16 or 17.

Fabe also wondered whether more stringent law is needed at all, since state figures suggest the arrest rate for juveniles is not rising. In a later conversation, she agreed with a part of

See Crime, page B-3

Anch Times Friday Dec 12, 1985

Crime

Continued from page B-1

Rodey's bill that will remove first-time juvenile offenders convicted of certain crimes from the presumptive sentencing laws. What Alaska courts should do with criminal youth is a popular question, especially since the arrests this summer of two youths, aged 19 and 14, in connection with the shooting deaths of three elderly Anchorage residents.

A judge may decide next month whether the 14-year-old should be tried as an adult. Only a few days ago, the Anchorage Chamber of Commerce Crime Commission recommended that a court reform law like Rodey's should be a top priority for the 1986 legislature.

But at least one state official is ready to question that reform.. Michael L. Price, director of the Division of Family and Youth Services, which oversees the youth correction system, said Thursday that automatic waiver laws are like presumptive sentencing laws because both attept to impose sure punishment.

Price said, "I plan to ask legislators, if punishment is working why are adult violent crimes still up?" Presumptive sentencing went into effect here in 1980. Price's figures show that between 1980 to 1983, the number of adult violent crime arrests has increased from 864 statewide to 1,035.

"Everyone's for law and order," he said. "but you have to ask, 'What are the facts?' "

Funeral correction

The funeral service for Daniel D. Enders, 26, will be held at 2 p.m. Saturday at Kehl's Forest Lawn Memorial Chapel in Anchorage. A story on the service on Page B-3 of Thursday's paper listed the service location as Palmer.

Referred: Judiciary and Finance

IN THE HOUSE

BY PESTINGER, FURNACE, UEHLING, FLOOD, BARNES AND BUSSELL

HOUSE BILL NO. 109

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to criminal prosecution of minors."

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

* Section 1. AS 12.55.015 is amended by adding a new subsection to read:

(e) If the court sentences a defendant to a term of imprisonment and the defendant is a minor over whom children's court jurisdiction is waived under AS 47.10.060, the court shall

(1) order that the defendant be confined in an institution designated by the Department of Health and Social Services for offenders under 18 years of age; and

(2) order that the defendant be transferred to an adult correctional facility when the defendant reaches 19 years of age if more than one year then remains of the defendant's term of imprisonment.

* Sec. 2. AS 47.10.060(a) is repealed and reenacted to read:

(a) The court shall order a case closed and, subject to the provisions of AS 12.55.015(d), the minor shall be prosecuted as if the minor were an adult if the court finds at a hearing on a petition

(1) that the minor was 16 years of age or older at the time of the offense and that there is probable cause to believe that the minor has committed an unclassified felony or a class A felony; or

(2) that the minor is not amenable to treatment under this chapter and there is probable cause to believe that the minor is delinquent.

LETTER OF INTENT
FOR
CSHB 109 (Judiciary)

The legislature expressly acknowledges that the enactment of this legislation may likely result in the need for additional correctional facilities in future years.

However, it is also clear, as evidenced by the rapid and unpredictable growth in the state's prisoner population, that an accurate assessment of the need for these facilities is not possible at this time.

At the same time, the legislature believes that cost estimates for these facilities can best be determined by detailed planning, analysis, and design of specific facilities in identified locations.

Therefore, the legislature has approved a fiscal note that grants ten per cent of the funds requested by the Division of Adult Corrections for new facilities. These funds shall only be used for planning and detailed design of necessary correctional facilities which are the direct result of the passage of CSHB 109 (Judiciary).

Following the completion of this work, the agency may present to the legislature a capital budget request for these facilities.

Respectfully Submitted,

Al Adams, Chairman
House Finance Committee

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHS 109 (Judiciary)
Title...Persons 16 or 17 yrs. charged with majro felonies...s waiver proceedings
Requested by House Finance Committee Date April 26, 1983

II. FISCAL DETAIL
Agency Affected Department of H & SS--Division of Adult Corrections
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		1008.4	*			
700 GRANTS,CLAIMS,ETC.						
TOTAL		1008.4	*	**	**	**

FUNDING (Thousands of Dollars)

GENERAL FUND		1008.4	*	**	**	
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME				**	**	**
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The 1008.4 shall be appropriated and expended in compliance with a letter of intent to be adopted by the legislature. As provided for in the letter of intent, these funds represent 10 per cent of the funds initially estimated by the Division of Adult Corrections for the construction of new correctional facilities and are to be used for detailed planning and design of those facilities. The legislature acknowledges that additional bed space may be necessary if this measure is approved, but would prefer to appropriate funds for capital improvments on the basis of clearly delineated plans and cost estimates.

*As noted, the legislature acknowledges that additional funds for capital construction may be necessary in FY 85 but prefers to address the need for and extent of those appropriations at that time.

**Inasmuch as operational costs in the form of additional personnel, contractural services, commodities and the like are closely linked to decisions on capital construction, the legislature declines to endorse any estimates of those costs at this time. When capital construction plans are known, these additional costs will be addressed.

IV. DATE April 26, 1983 PREPARED BY Albert R. Adams
AGENCY House Finance Committee
PHONE 465-3706

Original: Legislative Finance
cc: Budget and Management

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No.: House Bill No. 109 No. 2 Date on Bill: January 24, 1983
Title: "An Act relating to the criminal prosecution of minors."
Sponsor: Representatives Pestinger, Furnace, Uehling, Flood, Barnes, and Bussell
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 35	FY 86		
Capital				15,714.0	-0-	-0-	-0-	-0-
Operating				-0-	-0-	3,389.7	3,563.0	3,776.7
Total				15,714.0	-0-	3,389.7	3,563.0	3,776.7

b. Revenues:

Revenue				-0-	-0-	-0-	-0-	-0-

2. Source of funds to offset fiscal impact of Bill:

Funding source not identified by Bill author.

3. Assumptions:

Available statistical data indicates there would be 31 juveniles arrested annually for unclassified or class A felonies. This would represent an increase of 28 in the number of juveniles subjected yearly to prosecution as adults. An average of 3 juveniles are waived from juvenile court jurisdiction each year under the existing judicial waiver mechanism. Of the additional 28 juveniles subjected to adult prosecution, 18 would be convicted and sentenced to imprisonment for periods of up to 20 years if adult prosecution and conviction rates are assumed. The first two years of the sentence would be served in a juvenile facility with up to 13 years served in an adult facility if it is assumed all offenders earn their maximum good time based on a formula of one day good time for three days served.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Roger C. Lange and Michael L. Pride Phone: 465-3376 & 465-3170
Division: Adult Corrections and Family and Youth Services Date: February 22, 1983

Approved by Commissioner: Robert Loh. Smith Ph.D. Date: 3/4/83
Department: Health & Social Services

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

"An Act relating to criminal prosecution of minors."

COST ESTIMATES

A. Enactment of House Bill No. 109 will have a significant fiscal impact on the Department of Health and Social Services, both in juvenile and adult corrections. Since the new language would class individuals sixteen years and older as adults for unclassified and class A felonies, the time served by convicted sixteen and seventeen year-olds would increase substantially.

It is the estimate of the Department of Health and Social Services that ultimately an additional 97 beds will be needed to care for this group of individuals in a secure setting. Details of this estimate follow.

B. Youth Services Impact

1. FY 84 Capital Expenses: The construction of facilities to house 40 juveniles sentenced as adult prisoners is based upon the most recent available arrest data (1981).

2. This data shows that approximately 28 additional juveniles would annually be subject to prosecution under adult criminal statutes for unclassified and class A felony offenses. Assuming a conviction rate equal to the conviction rate for adult offenders similarly accused it might be expected that 18 juveniles would be convicted of such offenses annually and sentenced as adults under the provisions of House Bill No. 109.

Analysis of the arrest data yields expected frequency of convictions and sentences which would result in all juveniles sentenced as adults serving at least two years in the juvenile facility prior to transferring to an adult facility and two youths expected to serve their entire sentence of 3.75 years in a juvenile facility. Within two years 36 juveniles would then be serving adult sentences of at least two years in juvenile facilities. This population would stabilize after two years at approximately 38-40 because of the transfer of prisoners to adult facilities.

The FY 84 estimate is based upon 464 square feet for each of 40 maximum security cells; plus 1 station for each of the 2 detention units: one to accommodate 5 staff and 1 to accommodate 6 staff including the typist; and 1 common day room that can be utilized for meals, a rehabilitative program (counseling and education), and recreation. (No costs are included for a kitchen, as meals would be prepared in the existing facilities at McLaughlin and carried to the units.) It is also assumed that the Department's major study for

expansion would be revised to accommodate construction of the two units to connect with the existing building.

DOT/PF cost estimates for 464 square feet in a maximum security facility during the FY 85 construction season is $162.0. This includes design and planning costs which would begin in FY 84. The remaining funds would be carried over into FY 85 for construction and equipping the units.

$162.0 x 40 cells = $6,480.0

3. FY 86 Operating Costs and Juvenile Expenses

June 30, 1985 would be the estimated completion date. Operating costs are estimated as follows:

100 Personal Services	$1,391.6
200 Travel	24.5
300 Contractual Services	119.0
400 Commodities	131.6
500 Equipment	22.6
700 Benefits to Individuals	109.4
	$1,798.7

The above estimates are based upon 30% of the related costs for the McLaughlin Youth Center's FY 84 Governor's Budget, with 6% added for FY 85 and FY 86.

Personal Services includes 1 Unit Leader, 3 Youth Counselor III's, 5 Youth Counselor II's, and 4 Youth Counselor I's for each unit. The staffing pattern is based on the necessity of operating the units as maximum security facilities. This level of security is required due to the high escape risk presented by those juveniles to be housed and upon the nature of the offenses for which they are sentenced. An Assistant Cook will serve in the existing kitchen, and a Clerk Typist III will provide all clerical support for both units.

Travel of staff to meetings, conferences, courses, and for transportation of new hires is included.

Contractual Services are estimated for the additional costs for communications, utilities, copier usage, equipment rental, inmate laundry, and fire, accident, and liability insurance.

Commodities include purchase of food, replacement of tableware, glassware, bedding, janitorial and cleaning supplies, and general office supplies.

Equipment items necessary for on-duty staff, closed circuit TV monitor of units and a camera for inmate ID are included.