

ALASKA LEGISLATIVE COMMITTEE FILES 1900-1900 00/2

4022 SJUD JUVENILE CODE

898

FISCAL NOTE CONTINUATION

HOUSE BILL NO. 109 No. 2

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Benefits to Individuals includes costs for medical and dental care, and a work program for 20 inmates.

C. Adult Confinement

It is assumed that no appreciable bed impact will be experienced by the Division of Adult Corrections until FY 1986. This is based on the assumption that the average age of offenders affected by this legislation will be 17 years, and that they will serve two years in a juvenile facility prior to transfer to an adult facility. This fiscal note identifies a need for 57 additional beds in an adult facility.

Based on arrest data indicating 28 additional persons 16 and 17 years of age being subject to adult prosecution annually for crimes in the unclassified or class A felony categories, and using conviction rates and average sentence lengths for adult offenders, the following is predicted:

1. Unclassified Felony

One conviction per year with an average sentence of 15 years to serve (20 years less good time) will require 13 additional beds.

2. Sexual Assault I (Rape) With Gun, Dangerous Weapon, and/or Caused Serious Physical Injury

One conviction per year with a sentence of 7.5 years to serve (10 years less good time) will require 5.5 beds.

3. Sexual Assault I (Rape) Without Weapon/Injury

Three convictions per year with a sentence to serve of 6 years (8 years less good time) will require 12 beds.

4. Class A Felony With Gun

Five convictions per year with a sentence to serve of 5.25 years (7 years less good time) will require 16.25 beds.

5. Class A Felony Without Gun

Eight convictions per year and two sentenced so as to serve all time in a juvenile facility. Therefore, 6 individuals will serve an average of 1.75 years in an adult facility.

$$6 \times 1.75 = 10.5 \text{ beds}$$

6. Total beds required is 57 (rounded).

FISCAL NOTE CONTINUATION

HOUSE BILL NO. 109 No. 5

Page 5 of 5

7. Cost Estimates

- a. Capital Expenditures: Because of the serious nature of the offenses, construction of maximum security beds was considered appropriate at \$162,000 per bed.

57 beds @ \$162,000 per bed
57 x \$162,000 = \$9,234,000

- b. Operating Expenditures: It is estimated that 23 positions will be required to provide security and support for these 57 beds: 1 Correctional Officer III, 20 Correctional Officer II's, and 2 Institutional Counselors. Costs for these positions will not occur until FY 1985, the anticipated opening date for the new beds.

FY 1986 Costs - Adult Confinement

Personal Services	\$1,177,700
Travel	6,400
Contractual Services	184,000
Commodities	187,000
Equipment	5,900
Inmate Gratuities	<u>30,000</u>

TOTAL \$1,591,000

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

POSITION PAPER

HOUSE BILL NO. 109

PAGE 1

"An Act relating to criminal prosecution of minors."

House Bill No. 109 would add additional provisions to AS 12.55 and AS 47.10 to accomplish two major purposes. The Act would: 1) alter and further define the process by which a determination is made to waive juvenile court jurisdiction over certain minors and subject them to prosecution as adults; and 2) define the type of facility in which minors who have been prosecuted and sentenced as adults are to serve their terms of imprisonment.

Section 2 of HB 109 would maintain the existing judicial waiver mechanism and mandate waiver of juveniles 16 years old or older upon a court finding of probable cause to believe they had committed an unclassified or class A felony. This Bill would embody in statute the presumption that older youths accused of serious violent crimes are responsible and should be held accountable for their acts as would adults similarly accused. The focus in dealing with such youth under the adult criminal code would be primarily upon retribution and deterrence rather than upon the equal balancing of the interests of the public and the youth under the juvenile code.

The effect of Section 2 of the Bill would be to increase the number of juveniles subject to prosecution under the adult criminal statutes and to increase the liability of such juveniles to sanctions more severe, both in nature and duration, than those to which they would have been liable under the juvenile code. Based on Calendar Year 1981 arrest data, it can be estimated that approximately 31 persons 16 and 17 years of age are arrested annually for crimes in the unclassified and Class A felony categories and would be, therefore, subject to prosecution as adults under the provisions of House Bill No. 109. This would represent an approximate increase of 28 in the number of juveniles prosecuted each year as adults.

The Department supports the conceptual basis for the alteration of AS 47.10.060 proposed in House Bill No. 109 - the presumption that older juvenile offenders accused of serious and violent crimes should be held accountable as adults. It is the Department's position that, though few in number, older youths accused of heinous violent crimes require sanctions qualitatively and quantitatively different from those available under the jurisdiction of the juvenile court. An additional provision is suggested, however, to protect the interests of those juveniles who, though accused of offenses which would require their waiver to adult jurisdiction, are ultimately acquitted or convicted only of lesser included offenses which would not mandate waiver of the juvenile. Such a provision could be added as AS 47.10.060(f) and be worded as follows:

- (f) Any person over whom jurisdiction is waived under (a)(1) of this section who is prosecuted as an adult but is acquitted or convicted of a lesser included offense which would not make him eligible for waiver under (a)(1) shall be subject to juvenile court

POSITION PAPER

HOUSE BIL. NO. 109

PAGE 2

jurisdiction for disposition and for subsequent unlawful conduct other than that governed under (a)(1) or (a)(2).

In addition, the Department supports maintaining the existing judicial waiver allowing for adult prosecution of those persistent, repetitive juvenile offenders who have not or are unlikely to respond to treatment within the juvenile justice system. A discretionary waiver mechanism also allows for the prosecution as an adult for the rare juvenile below the age of 16 who has committed an egregious violent crime and is not amenable to rehabilitative treatment within the juvenile justice system.

Section 1 of House Bill No. 109 would provide statutory definition of the type of facility in which minors who have been sentenced as adults are to serve their term of imprisonment. The Bill would add provisions to AS 12.55.015 to require those juvenile defendants who had been prosecuted and convicted as adults would, if sentenced to a term of imprisonment, be confined in a juvenile correctional facility until reaching age 19, after which they would be transferred to an adult facility if more than one year remained on their terms of imprisonment. The Department opposes this provision.

It is expected that youth receiving substantial adult sentences for serious crimes would require a much greater level of security than would be provided in juvenile institutions. In addition, administrative prudence would also require that such youths be separated from other less sophisticated juveniles and be provided with rehabilitative programs differing markedly from those designed for younger juvenile offenders. Older youths convicted of serious, violent crimes would best be dealt with in a system designed to provide a continuum of security and rehabilitative program levels to address the range of maturity and sophistication of young adult offenders. Such a continuum could best be provided within the adult correctional system.

Housing juvenile offenders convicted as adults in juvenile facilities on an interim basis would tend to make rehabilitative programs within those facilities less effective. The interim nature of programs designed for juveniles sentenced as adult offenders would render the programs less effective and decrease the level of motivation of those offenders involved in them. In addition, the presence within a juvenile facility of a group of older, more sophisticated, violent offenders would be a disruptive influence on treatment programs for younger offenders. Finally, it is the position of the Department that the protection of sentenced juvenile offenders from abuse or exploitation by adult prisoners within the adult correctional framework would be best achieved administratively rather than through legislation such as Section 1 of HB 109. A classification system assessing each individual offender's characteristics and circumstances and assigning the offender to a facility and program which provides adequate security and appropriate rehabilitative programming is a more appropriate method of providing necessary protection and a decidedly more flexible mechanism for managing prisoner populations.

POSITION PAPER

HOUSE BILL NO. 109
PAGE 3

In summary, the Department is supportive of the concept of holding older juveniles accused of serious, violent crimes accountable within the adult criminal system. However, the Department suggests an additional provision which would preclude any inequities for those juveniles ultimately acquitted after prosecution in the adult system for waivable offenses or after having been convicted of lesser offenses which would not make them eligible for mandatory waiver. The Department opposes the provision requiring juveniles convicted and sentenced under the adult criminal statutes to be housed in juvenile facilities.

RECOMMENDED BY: *Yvonne Elder Walker*
Yvonne Elder Walker
Acting Director
Division of Family and
Youth Services

DATE: *February 3, 1983*

RECOMMENDED BY: *Roger C. Lange*
for Roger Endell, Director
Division of Adult
Corrections

DATE: *February 14, 1983*

APPROVED BY: *John R. Bay*
for Robert London Smith, Ph.D.
Commissioner

DATE: *2/18/83*

California

§ 705

WELFARE AND INSTITUTIONS CODE

§ 705. Holding minor in psychopathic ward of county hospital

Whenever the court, before or during the hearing on the petition, is of the opinion that the minor is mentally . . . disordered or if the court is in doubt concerning the mental health of any such person, the court may . . . proceed as provided in Section 6550 of this code or Section 4011.6 of the Penal Code.

(Amended by Stats.1970, c. 445, p. 1178, § 3, urgency, eff. July 10, 1970.)

The subject matter of this section insofar as it related to dependent children is now contained in section 357.

Library References
Infants § 16.9.
C.J.S. Infants § 99.

1. In general
In absence of any statutory procedure for so doing, the juvenile court has inherent

power to hold hearing to determine minor's mental competence to understand nature of juvenile court fitness hearing and to assist counsel in rational manner at hearing. James Paul H. v. Superior Court of Riverside County (1978) 143 Cal.Rptr. 338, 77 C.A.3d 169.

§ 706. Evidence as to proper disposition of minor; reception of social study in evidence

After finding that a minor is a person described in . . . Section 601 or 602, the court shall hear evidence on the question of the proper disposition to be made of the minor. The court shall receive in evidence the social study of the minor made by the probation officer and such other relevant and material evidence as may be offered, and in any judgment and order of disposition, shall state the social study made by the probation officer has been read and considered by the court.

(Amended by Stats.1976, c. 1068, p. 4700, § 50.)

The subject matter of this section insofar as it related to dependent children is now contained in section 355.
1975 Amendment. Deleted reference to section 600.

Law Review Commentaries
Parents' rights at dependency hearings. (1973) 6 U.C.D.Law Rev. 240.

1. Construction and application
In respect to a petition to adjudge a child dependent and to award physical custody to a nonparent, a finding of juvenile court jurisdiction does not necessarily require the removal of the child from the then existing custodial circumstance. In re Randy B. (1976) 132 Cal.Rptr. 720, 62 C.A.3d 89.

3. Procedure
Trial court's order committing minor who had pleaded guilty to rape and kidnapping to Youth Authority was improper, where decision to commit was made prior to determination of jurisdictional and dispositional phases of juvenile proceedings and was made after minor had been given alternative of being treated as juvenile and committed to Youth Authority or of being prosecuted as an adult and minor chose to be treated as juvenile. In the Matter of J. L. P. (1972) 100 Cal.Rptr. 601, 25 C.A.3d 86.

§ 707. Fitness hearing

(a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

- (1) The degree of criminal sophistication exhibited by the minor.
- (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.
- (3) The minor's previous delinquent history.
- (4) Success of previous attempts by the juvenile court to rehabilitate the minor.
- (5) The circumstances and gravity of the offense alleged to have been committed by the minor.

Underline Indicates changes or additions by amendment

WEL

A determination that under the juvenile courts set forth above, in which a hearing has taken place and no plea which may be entered at the hearing.

(b) The provisions of this section shall apply to a minor is alleged to be a person described in Section 602 when he or she was 16 years of age or older.

- (1) Murder;
- (2) Arson of an inhabited building;
- (3) Robbery with a dangerous weapon;
- (4) Rape with force or violence;
- (5) Sodomy by force, violence, or threat of force or violence;
- (6) Lewd or lascivious acts.

Penal Code:

(7) Oral copulation causing physical harm;

(8) Any offense specified in this section.

- (9) Kidnapping for ransom;
- (10) Kidnapping for a purpose other than ransom;
- (11) Kidnapping with intent to injure, intimidate, or extort;
- (12) Assault with a dangerous weapon;
- (13) Assault with a firearm;
- (14) Assault by any means;
- (15) Discharge of a firearm;
- (16) Any offense defined in this section.

(c) With regard to a minor who is the subject of a violation of any of the offenses listed in subdivision (b), the probation officer shall submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness.

Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

- (1) The degree of criminal sophistication exhibited by the minor.
- (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.
- (3) The minor's previous delinquent history.
- (4) Success of previous attempts by the juvenile court to rehabilitate the minor.

Asterisks . . . indicate changes or additions by amendment

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at such hearing.

(b) The provisions of subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder;

(2) Arson of an inhabited building;

(3) Robbery while armed with a dangerous or deadly weapon;

(4) Rape with force or violence or threat of great bodily harm;

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm;

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code;

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm;

(8) Any offense specified in Section 289 of the Penal Code;

(9) Kidnapping for ransom;

(10) Kidnapping for purpose of robbery;

(11) Kidnapping with bodily harm;

(12) Assault with intent to murder or attempted murder;

(13) Assault with a firearm or destructive device;

(14) Assault by any means of force likely to produce great bodily injury;

(15) Discharge of a firearm into an inhabited or occupied building;

(16) Any offense described in Section 1203.09 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the . . . minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless . . . the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

. . . (1) The degree of criminal sophistication exhibited by the minor.

. . . (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. . . .

. . . (3) The minor's previous delinquent history. . . .

. . . (4) Success of previous attempts by the juvenile court to rehabilitate the minor. . . .

Asterisks . . . indicate deletions by amendment

ACT

Violent offenses and offenders.
Apprehension and release of children — Detention.
Appeals.

State v. Linquist, 99 Idaho 766, 101 (1979).

jurisdiction of the United States jurisdiction over any child of any act, omission or status, the county in which the act, following cases:

Prohibited by federal, state, local minority only, regardless of

of any federal, state, local or a crime if committed by an except traffic, watercraft and that the prosecuting attorney citation of a motor vehicle while suspended or revoked; the while under the influence of drugs; the operation of a motor of a watercraft in a careless watercraft, or fish and game violated of any combination of game violations, regardless of or suspension occurred; of the interstate compact on Idaho Code.

Violators of beer, wine or other prohibited by 1976, ch. 233, § 2, p. 1. 222, § 6, p. 412; am. 1982,

took place" for "found or living county."
amendment by ch. 222 added (4).
deleted "a" in clause 2 was inserted piler.
of S.L. 1981, ch. 222 is compiled as

16-1804. Transfer from other courts. — If during the pendency of a criminal or quasi-criminal charge against any minor in any other court, it shall be ascertained that the child was under the age of eighteen (18) years at the time of committing the alleged offense, except where such child has left the state, or where said charge is that such child is a juvenile traffic, beer, wine or other alcohol or tobacco violator, or is within the purview of section 16-1806(1)(a) or (1)(b), Idaho Code, it shall be the duty of such court forthwith to transfer the case, together with all the papers, documents and testimony connected therewith, to the court. The magistrate, justice of the peace or district court making such transfer shall order the child to be taken forthwith to the court or place of detention designated by the court or shall release such child to the custody of some suitable person to be brought before the court at a time designated. The court shall then proceed as provided in this act. [1963, ch. 319, § 4, p. 876; am. 1981, ch. 222, § 7, p. 412; am. 1982, ch. 110, § 2, p. 311.]

Compiler's notes. Section 3 of S.L. 1982, ch. 110 is compiled as § 18-1502.

16-1805. Retention of jurisdiction.

Cited in: In re Wolf, 99 Idaho 476, 583 P.2d 1011 (1978).

16-1806. Waiver of jurisdiction and transfer to other courts. — (1) After the filing of a petition and after full investigation and hearing, the court may waive jurisdiction under the youth rehabilitation act over the child and order that the child be held for adult criminal proceedings when:

- (a) A child is alleged to have committed an act after he or she became fourteen (14) years of age which would be a crime if committed by an adult; or
- (b) An adult at the time of the filing of the petition is alleged to have committed an act prior to his having become eighteen (18) years of age which would be a felony if committed by an adult, and the court finds that the adult is not committable to an institution for the mentally deficient or mentally ill, is not treatable in any available institution or facility available to the state designed for the care and treatment of children, or that the safety of the community requires the adult continue under restraint; or
- (c) An adult already under the jurisdiction of the court is alleged to have committed a crime while an adult.

(2) A motion to waive jurisdiction under the youth rehabilitation act and prosecute a child under the criminal law may be made by the prosecuting attorney, the child, or by motion of the court upon its own initiative. The motion shall be in writing and contain the grounds and reasons in support thereof.

(3) Upon the filing of a motion to waive jurisdiction under the youth rehabilitation act, the court shall enter an order setting the motion for

hearing at a time and date certain and shall order a full and complete investigation of the circumstances of the alleged offense to be conducted by the board, or such other state agency or investigation officer designated by the court.

(4) Upon setting the time for the hearing upon the motion to waive jurisdiction, the court shall give written notice of said hearing to the child, and the parents, guardian or custodian of the child, and the prosecuting attorney, at least ten (10) days before the date of the hearing, or a lesser period stipulated by the parties, and such notice shall inform the child and the parents, guardian or custodian of the child of their right to court appointed counsel in accordance with these rules. Service of the notice shall be made in the manner prescribed for service of a summons under section 16-1809, Idaho Code.

(5) The hearing upon the notice to waive jurisdiction shall be held in the same manner as an evidentiary hearing upon the original petition and shall be made part of the record.

(6) If as a result of the hearing on the motion to waive jurisdiction the court shall determine that jurisdiction should not be waived, the petition shall be processed in the customary manner as a youth rehabilitation act proceeding. However, in the event the court determines, as a result of the hearing, that youth rehabilitation act jurisdiction should be waived and the child should be prosecuted under the criminal laws of the state of Idaho, the court shall enter findings of fact and conclusions of law upon which it bases such decision together with a decree waiving youth rehabilitation act jurisdiction and binding the child over to the authorities for prosecution under the criminal laws of the state of Idaho.

(7) No motion to waive youth rehabilitation act jurisdiction shall be recognized, considered, or heard by the court in the same case once the court has entered an order or decree in that case that said child has come within the purview of the youth rehabilitation act, and all subsequent proceedings after the decree finding the child within the purview of the youth rehabilitation act must be under and pursuant to the youth rehabilitation act and not as a criminal proceeding.

(8) In considering whether or not to waive juvenile court jurisdiction over the child, the juvenile court shall consider the following factors:

(a) The seriousness of the offense and whether the protection of the community requires isolation of the child beyond that afforded by juvenile facilities;

(b) Whether the alleged offense was committed in an aggressive violent, premeditated, or willful manner;

(c) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(d) The maturity of the child as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(e) The child's record and previous history of contacts with the juvenile justice system;

(f) The likelihood of rehabilitation of the child by use of facilities available to the court;

full and complete to be conducted by officer designated by

upon the motion to waive said hearing to the child, child, and the prosecuting of the hearing, or a lesser shall inform the child and d of their right to court Service of the notice shall a summons under section

iction shall be held in the original petition and shall

to waive jurisdiction the t be waived, the petition youth reh2bilitation act rmines, as a result of the should be waived and the s of the state of Idaho, the f law upon which it bases youth rehabilitation act thorities for prosecution

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(g) The amount of weight to be given to each of the factors listed in subsection (8) of this section is discretionary with the court, and a determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of waiver.

(9) If the court does not waive jurisdiction and order a child or adult held for criminal proceedings, the court in a county other than the child's or adult's home county, after entering a decree that the child or adult is within the purview of this chapter, may certify the case for disposition to the court of the county in which the child or adult resides upon being notified the receiving court is willing to accept transfer. In the event of a transfer, which should be made unless the court finds it contrary to the interest of the child or adult, the jurisdiction of the receiving court shall attach to the same extent as if the court had original jurisdiction. [I.C., § 16-1806, as added by 1977, ch. 165, § 2, p. 427; am. 1981, ch. 162, § 1, p. 284.]

Sec. to sec. ref. This section is referred to in §§ 16-1804 and 16-1819.

ANALYSIS

- Application.
- Discretion of court.
- Double jeopardy.
- Legislative intent.
- Purpose.
- Waiver.
 - Criteria.
 - Procedural requirements.
 - Review.

Application.

This section and § 18-216 make it clear that not all chronological age juveniles will receive treatment as juveniles. In re Wolf, 99 Idaho 476, 583 P.2d 1011 (1978).

Discretion of Court.

The magistrate did not abuse his discretion in waiving Youth Rehabilitation Act jurisdiction, where there was ample competent evidence in the record from which the magistrate reasonably concluded that defendant was a dangerous individual; that a real possibility existed that he would not be rehabilitated before he reached the age of 21; and that protection of the community required his isolation beyond that afforded by the juvenile facilities. State v. Christensen, 100 Idaho 631, 603 P.2d 586 (1979).

Double Jeopardy.

This section does not authorize an adjudication or determination of facts beyond the existence of probable cause to believe that a particular crime was committed and that a particular juvenile committed it; it merely authorizes the trial court to consider circumstances in aggravation as bearing on

the question of whether juvenile jurisdiction should be retained and a determination which exceeds that narrow scope could result in the attachment of double jeopardy and a plea in bar to any proceedings in an adult court. In re Wolf, 99 Idaho 476, 583 P.2d 1011 (1978).

Legislative Intent.

It was entirely proper for the magistrate, in considering defendant's record and history of previous contacts with the juvenile justice system, to allow testimony concerning his misdemeanor offenses and dismissed felony charges, inasmuch as there is nothing in the Youth Rehabilitation Act to indicate the legislature, in referring to a child's "record" and "contacts with the juvenile justice system," intended to limit the magistrate's consideration to felony type conduct only. State v. Christensen, 100 Idaho 631, 603 P.2d 586 (1979).

Purpose.

This section and its antecedents were intended to implement the statutory provisions of § 18-216 and to the extent of the conflict, § 18-216 controls. In re Wolf, 99 Idaho 476, 583 P.2d 1011 (1978).

The sole function of the transfer hearing is to determine whether the interests of the child and society are best served by Youth Rehabilitation Act proceedings or by adult proceedings, and the hearings upon which the determination is made are to be informal in nature. State v. Christensen, 100 Idaho 631, 603 P.2d 586 (1979).

Waiver.

— Criteria.

A probable cause finding in conjunction with the procedure of waiving juvenile

MEMORANDUM

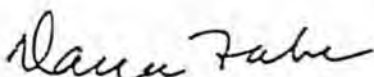
State of Alaska

TO: Senator Victor Fisher

DATE: April 16, 1982

FILE NO:

TELEPHONE NO:

FROM: 
Dana Fabe
Public Defender

SUBJECT: SSSB 685

Thank you for inviting me to comment on the sponsor substitute for Senate Bill No. 685, "An Act relating to unlawful conduct of minors." Our agency is appointed to represent juvenile offenders who cannot afford to retain an attorney. It is my personal opinion that the bill has a number of problems.

The statutory scheme for juvenile offenders now provides that where the court finds any juvenile offender to be untreatable, juvenile jurisdiction may be "waived" and the offender tried as an adult. SSSB 685 would change the law to automatically waive juvenile jurisdiction for all children 16 or over who have been charged with Class A or unclassified felonies. The bill further provides that if the child wishes to petition the court to retain juvenile jurisdiction over him, he may do so but the burden of proving amenability to treatment is his. I see the following problems with this approach:

1. Shift of focus from treatability of offender. The presumptive sentencing provisions of the adult criminal code focus the court's attention almost entirely on the circumstances of the offense rather than the offender. Such factors as the defendant's age, his family background, any drug or alcohol problems which he might have, and his attitude towards treatment and rehabilitation are ignored by the presumptive sentencing provisions of the adult criminal code. These factors are routinely focused upon in the juvenile justice system. It would appear that if there is any place in the system that the rehabilitation of the individual offenders should be emphasized it is in the juvenile justice system.

Many of our juvenile clients have been physically and psychologically abused by their parents. Many have drug and alcohol problems. Many are simply immature and unduly subject to peer pressure. These factors are not recognized as mitigating factors for sentencing under the adult criminal code. Yet, they may be the primary motivators for an offense such as robbing a liquor store in order to obtain alcohol. Thus, my first problem with this bill is that it would radically shift the focus from treating juveniles and preventing them from re-entering the system, to punishing them as adults without concern for the motivating factors behind the offense or amenability to treatment.

2. Increased jail sentences. The adult criminal code establishes severe sentences of presumptive or mandatory incarceration for many persons convicted of Class A or unclassified felonies. A 16 year old who robs a liquor store in order to obtain alcohol and has a firearm in his possession would receive a mandatory presumptive term of six (6) years without the possibility of parole under the adult criminal code.

The bill provides that that 16 year old would remain in a juvenile institution for a period before being transferred at the age of 19 to an adult penitentiary. This sentencing scheme would certainly alter the current treatment emphasis at a juvenile facility such as McLaughlin. Persons with lengthy periods of incarceration would be mixed with juvenile runaways and other kids who do not have serious problems.

Furthermore, a 19 year old youth who is transferred into an adult correctional facility and incarcerated with adult offenders may find himself abused physically and psychologically by the adult inmates. In my opinion, incarceration of youthful offenders who committed crimes as juveniles with adults would be counter-productive to the goals of rehabilitation and reducing recidivism.

3. Waiver hearings -- increased court time. Because this bill sets up a procedure by which any juvenile may challenge his being waived into adult court, the number of waiver hearings are going to increase drastically.

As the law presently stands, professionals from the juvenile intake division and Health and Social Services make a screening determination regarding whether a child is a serious enough offender to be waived into adult court. The primary focus is his amenability to treatment. Waiver hearings are held in the cases where those professionals feel that a juvenile is not amenable to treatment. The revised law will necessitate waiver hearings in virtually every case.

A defense attorney who represents a 16 year old charged with a serious felony will most certainly have to challenge the waiver into adult court in order to effectively represent his client and protect his client's exposure. If the presumptive waiver procedure were not challenged, and the child were later incarcerated for a lengthy period of time, post-conviction relief actions regarding the effectiveness of counsel would certainly result, taking up the time of the appellate courts. Waiver hearings would probably involve psychiatric testimony and testimony of family and friends of the juvenile. These hearings would

NOT THE
ISSUE !!
Type of
Offense

be time consuming, would occur in almost all cases, and would often result in appeals. This is not an obstructionist view of the system; it is a realistic one, since post-conviction relief challenges on the effectiveness of counsel would certainly result where no attempt was made to keep the child within the juvenile justice system.

The courts do waive juvenile offenders who are not amenable to treatment under the present law. For example, I represented a client charged with killing two taxi drivers who was waived into adult court in a summary fashion based on his prior contact with the juvenile justice system and the nature of the offense. See: J.R. v. State, 616 P.2d 865 (Alaska 1980). This is not an isolated case. See e.g. N.P.A. v. State, 604 P.2d 599 (Alaska 1980). If the legislature wishes to waive more juvenile offenders into the adult court system, changes should be made in the waiver standards, perhaps to make it easier to waive a 16 year old charged with Class A or unclassified felony into adult court.

Again, I appreciate your asking my opinion on this very important matter. If I can answer questions about the specific workings of our office, particularly in terms of juvenile offenders, please do not hesitate to call me.

Juvenile & Family Court
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Special Issue — Summer 1984

The
Juvenile Court
and
Serious Offenders

38 Recommendations

The National Council of Juvenile and Family Court Judges

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Recommendations

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THE FACTS

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A Definition of "Serious Juvenile Crime"

The term "serious crime" historically has had no widely accepted definition. Definitions have varied with political philosophies and the prevailing winds of public sentiment as well as empirical research and delinquency theory. However, when researchers are asked to trend changes in the volume of serious crime, they are forced to utilize a definition that is consistent with available data. This practical restriction leads most to adopt as a measure of serious crime the FBI's statistics on the following offenses: murder/non-negligent manslaughter, forcible rape, robbery, aggravated assault (which, as a group, are labeled "Violent Offenses"), burglary, larceny-theft, and motor vehicle theft (which, as a group, are labeled "Serious Property Offenses"). Therefore, in the work that follows, "Serious Juvenile Crime" is defined as the "Violent" and "Serious Property" offenses committed by individuals who are below 18 years of age.

FBI Uniform Crime Reports' Arrest and Clearance Data

It is a common exercise to compare the number of juveniles and adults arrested for serious crime and to conclude from this comparison the relative contribution of juveniles to the nation's serious crime problem. While juvenile arrest statistics reflect the number of juveniles who come in contact with law enforcement, they are a poor measure of the contribution of juveniles to the nation's total crime problem, for they are a count of persons arrested and not crimes committed. Juveniles tend to commit crime in groups more often than adults and are, in general, more easily apprehended. Therefore, to compare the arrest figures of juveniles and adults, and to interpret the comparison as a measure of the proportion of serious crime committed by each group, tends to overestimate the juvenile contribution to serious crime.

Each year a large number of serious crimes are reported to law enforcement agencies. Some of these crimes are "cleared" by arrest. A reported crime is cleared by arrest when a law enforcement agency has identified the offender and has sufficient evidence to charge the individual and take the individual into custody. Each year the FBI reports the percentage of crimes cleared in cities that were cleared by the arrest of a juvenile. Obviously, clearance statistics are a much better measure of the juvenile contribution to the seri-

ous crime problem than are arrest statistics. Clearance statistics are based on a count of crimes and not on a count of persons arrested; consequently, a portion of the bias in arrest figures is overcome even though that bias caused by the fact that juveniles are more easily apprehended is still present.

Violent Juvenile Crime

Between 1964 and 1982 juveniles were responsible for about one in every ten violent crimes cleared (see Figure 1) and involved in two of every ten violent crime arrests. This difference can be explained by the fact that juveniles tend to commit crimes in groups. Both clearance and arrest data indicate that the relative responsibility of juveniles for the nation's violent crime problem has not changed since the mid-1960s. However, the volume of violent crime committed by juveniles has increased; between 1964 and 1982 the number of juvenile violent crime arrests increased by 160%. But during the same period the number of adult arrests increased by 180%. Therefore, the growth in the volume of violent crime in this country between 1964 and 1982 should not be characterized as a growth in juvenile violence alone. The responsibility for the growth in the volume of crime is shared proportionately by juveniles and adults.

Serious Juvenile Property Crime

The portion of the nation's serious property crime problems attributed to juveniles has decreased dramatically since the mid-1960s. In 1964, 43% of all serious property crimes cleared were cleared by the arrest of juveniles, compared to only 24% of the total in 1982 (see Figure 2). From 1964 through 1982, while the number of juvenile serious property crime arrests increased by 40%, the number of adult arrests increased by 220%. Consequently, juvenile arrests made up a much larger proportion of all serious property crime arrests in 1964 than they did in 1982. In 1964, 55% of all persons arrested for a serious property crime were juveniles, compared to only 34% in 1982. Therefore, the growth in the number of serious property crimes between 1964 and 1982 can largely be attributed to a growth in the number of serious property crimes committed by adults.

Figure 1
Violent Crimes
Proportion Cleared: 1964-1982

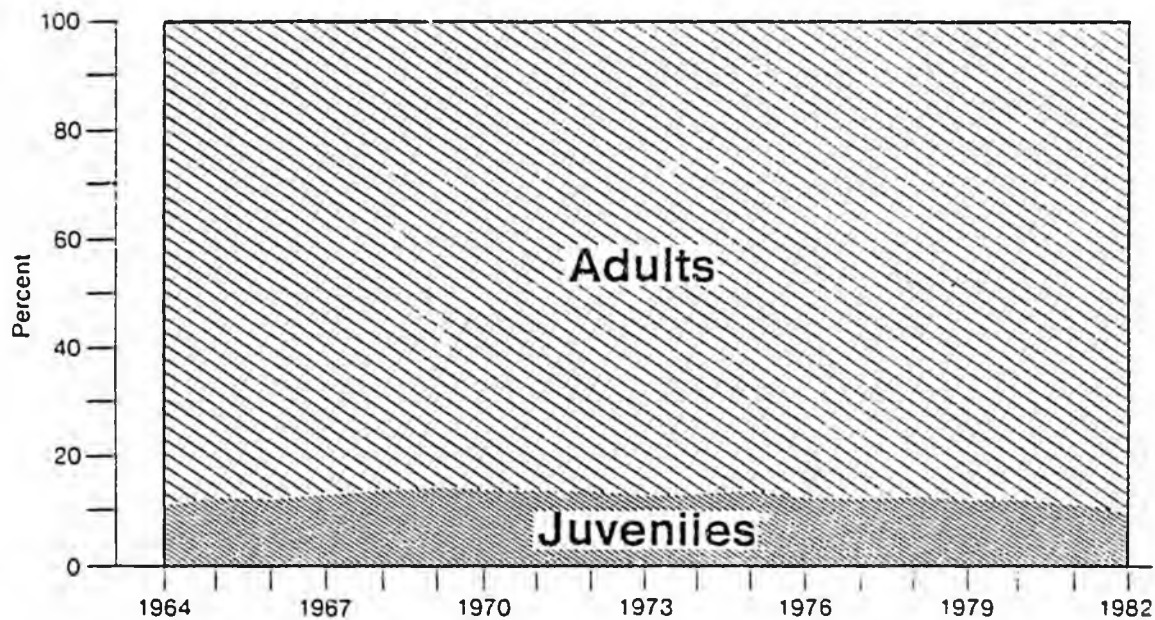
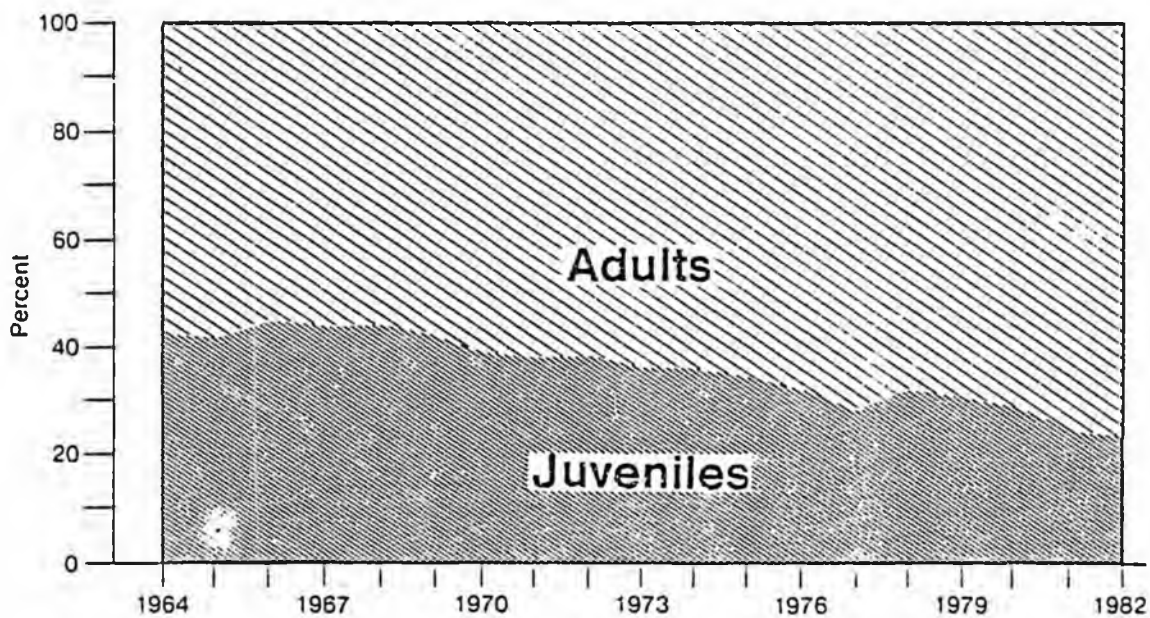


Figure 2
Serious Property Crimes
Proportion Cleared: 1964-1982



Serious Juvenile Offender Characteristics

The Council's National Center for Juvenile Justice, through the support of the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, has established the National Juvenile Court Data Archive, which stores all available data on the juvenile courts' handling of youth referred for a delinquent or status offense. From this archive, 275,000 automated delinquency case records describing the activities of the juvenile courts in seven states (Alabama, California, Florida, Iowa, Kansas, Nebraska and Pennsylvania) in 1980 were analyzed and the results were used to develop the following information on serious juvenile offenders referred to juvenile courts.

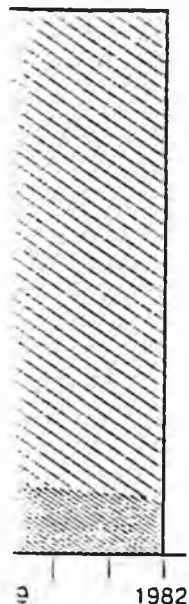
In this sample, seven percent of all delinquency referrals were charged with a violent offense and another 46 percent with a serious property crime. Therefore, over half of all the delinquency cases processed by these juvenile courts involved a youth charged with a serious crime. Who were the serious offenders? Eight of every ten individuals referred for a violent or serious property offense were male. Forty-three percent of all youths charged with a violent offense, and 53% charged with a serious property offense, were 15 years of age or younger. Fifty-six per-

cent of all youths charged with a violent offense, and 45% charged with a serious property offense, had at least one previous referral to juvenile court.

Metropolitan Courts

There were substantial differences between the character of juvenile court caseloads of metropolitan and nonmetropolitan areas in this seven state sample. Metropolitan courts, due to their larger populations, had much larger caseloads than courts in nonmetropolitan areas. However, even after controlling for differences in the number of juveniles in the general population, metropolitan juvenile courts had twice the rate of violent crime cases and a 16% higher rate of serious property crime cases than did the nonmetropolitan courts in the sample. In addition, compared to nonmetropolitan courts, a greater percentage of serious crime referrals to metropolitan courts involved a juvenile with a prior court history. Therefore, metropolitan areas not only had a greater proportion of their youth population involved in serious crime, but these youth were also more likely to be recidivists.

Metropolitan juvenile courts are faced with a greater serious crime problem than nonmetropolitan courts, and funding programs must be sensitive to this increased burden and responsibility.



Each of the following thirty-eight recommendations was approved by the members of the National Council of Juvenile and Family Court Judges on July 12, 1984, at their Forty-Seventh Annual Conference in Colorado Springs, Colorado.

I DISPOSITION POLICIES

Serious Juvenile Offenders Should Be Held Accountable By the Courts

The primary focus of the juvenile court for the disposition of serious, chronic or violent juvenile offenders should be accountability. Dispositions of such offenders should be proportionate to the injury done and the culpability of the juvenile and to the prior record of adjudication, if any.

The National Council of Juvenile and Family Court Judges recognizes that the principal purpose of the juvenile justice court system is to protect the public. For chronic offenders, violent offenders and juveniles who commit serious crimes, the public is best protected by holding them accountable, restricting their liberty as necessary and imposing consequences proportionate to the injuries done.

Individualized Treatment Should Be Considered for Every Juvenile

The needs of all serious, chronic or violent juvenile offenders are not the same. While many require secure placement, decisions regarding levels of security and intensity of treatment should be tailored to meet the offender's individual needs while being sensitive to concerns for public safety.

Since no two children have the same personality, strengths and weaknesses, nor the same family supports and pressures, their dispositions must be individualized. While the severity of the present and prior offenses are critical in determining an appropriate response, the needs, circumstances and problems of the individual offender can vary enormously and dictate flexibility in intervention. Given this variation, responses can range from placement in secure, institutional facilities to relatively open, community-based programs.

Rehabilitation Should Be a Primary Goal of the Juvenile Court

To the extent public safety will permit, the primary goal of the juvenile court should be rehabilitation, but with consideration for general deterrence, general prevention and the strengthening of social institutions such as families, schools and community organizations.

Historically, the juvenile courts have adopted the principle that the public is best protected and the children best helped by focusing on the future and preventing new offenses by rehabilitating the individual delinquent, rather than focusing on the past by punishing an offense which is over and done. Rehabilitation has been remarkably successful for most juvenile offenders. It has not been successful for the small number of chronic and serious offenders. For them, strict accountability appears necessary.

Social Investigations Should Be Used for Individualized Treatment

A thorough diagnostic assessment should be undertaken for all adjudicated serious, chronic or violent juvenile offenders and a treatment and placement plan submitted to assist the court at the dispositional hearing.

Recognizing that jurisdiction over actual facility placement varies from state to state, the location of the diagnostic assessment (juvenile court vs. juvenile corrections agency) is intentionally unspecified in the original recommendation. The recommendation focuses on strengthening the process of determining where to place the serious juvenile offender regardless of which juvenile justice system component has authority to make that determination, but stresses the conviction of the judges that placement decisions should be judicial decisions.

II CAUSES AND PREVENTION

Families and Schools Should Be Strengthened to Reduce Delinquency

There exists strong evidence that the prevention of serious delinquency by the family, by the school, by friends and by socially organized communities is often more effective than that provided by the law.

When social institutions are strong, communities well organized, parents and schools competent and caring, there is a very small serious delinquency problem. The deterrence provided by the juvenile justice system in such communities is an important backup, and should be supported and strengthened by the court. However, when these institutions are weak and provide little or no prevention, serious questions can be raised about whether the court can have a substantial effect.

Close Liaison Should Be Maintained Between the Courts and the Schools

There should be a close and continuing relationship between the juvenile court and school authorities in every community.

The court, the school and the police should cooperate in developing and implementing policies to deal with the problems of delinquency. There is a pressing need to examine the relationships between student abilities, inclinations and performance, classroom curricula, school attendance and delinquency.

The Impact of School Problems on Delinquency Should Be Researched

Research is necessary to assist in the formulation of court and community policy as to truancy enforcement, compulsory school

laws, crimes in the schools, under-education and frustrated learning experiences.

We need to know how curriculum tracking or its absence in elementary and secondary schools affects delinquency. We need to know which truants should be compelled back to school and which should be encouraged in vocational directions. And, we need to know how to recruit and retain highly skilled and motivated teachers to inner city schools. Included in the needed research is a program of study designed to determine why some schools or school administrators are successful in keeping truancy and serious delinquency low while others are not.

Business and Labor Should Provide Jobs and Job Training for Juveniles

Juvenile court judges should enlist the aid of business and labor to provide more youth employment and training opportunities.

The plight of many inner-city communities is aggravated by high unemployment, poor schools and ineffective social institutions. Jobs, like the school and family, can be an important socializing force in the community. When a youth can be committed to a job and the advancement a job provides, then that youth will be less likely to engage in serious delinquency. A partnership created between schools, businesses and the government to develop projects to tie schooling and employment together may offer the best hope. Because of their involvement in the youth problem, and because of their special knowledge of the hardships posed by excessive levels of youth unemployment, juvenile court judges have a special role to play in fostering these partnerships. By calling for juvenile court judges to be more active in enlisting the aid of business and labor,

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this recommendation is in no way intended to diminish the responsibility of federal, state and local governmental agencies in providing youth employment and training.

The Causes of Delinquency Should Be Studied In Depth

Adequate funds should be made available at the national level to provide for both short and long-term research into the causes and prevention of delinquency. The quality and utility of the research to improve the functioning of the juvenile justice system should

be enhanced by closer interaction between research investigators, judges, lawyers, probation officers and treatment staff.

Dissemination of such research should be in a manner which makes the results accessible to persons working within the system. Long-term research on the causes and prevention of delinquency is critical if there is to be hope that in the future we will be closer to the solutions necessary for the reduction of delinquency. The results of previous long-term delinquency research demonstrate that such hope is not ill-founded. Criminology is a young science: one that needs and deserves support.

III | GUIDELINES

Guidelines Should Be Developed to Reduce Disparities

Guidelines incorporating all decisional factors should be adopted as a means of reducing dispositional disparity for serious, chronic or violent offenders. The guidelines should be focused primarily on accountability, fitting the severity of the disposition to the severity of the present and past offenses.

Guidelines which specify the criteria to be used in sentencing serious juvenile offenders, and which distinguish between them and the remainder of the delinquent population, can provide consistency with individualization.

Guidelines must be flexible, subject to continuous review and revision, to accommodate changing public and professional views of the legitimate social role of punishment in the sentencing of serious offenders.

Provide Judicial Discretion for Individualized Treatment

Provision should be made in any guidelines for the judge to be able to depart from the presumptive disposition upon setting forth in writing the specific aggravating and mitigating factors found to justify such departure.

Guidelines for dispositions for the serious juvenile offender are urged. Often, full discretion tends toward greater inconsistencies. But, legislatively-imposed mandatory sentencing schemes, enacted to promote equity of sentences, tend to be both too extreme and too limited in scope. That is, disproportionately severe penalties are mandated or the necessary exercise of judicial discretion is drastically restricted, and other sources of disparities in decisionmaking are

ignored. The essential feature of any guideline system must be to preserve the discretion of the judge to depart from the guidelines' prescriptions if the judge feels that the interests of justice or equity will be better served.

Guidelines should include controls on plea bargaining so that a new disparity does not arise by shifting discretion from the judges to the lawyers.

A System-Wide Commission Should Devise the Guidelines

The guidelines for each state should be drawn, researched and, from time to time, modified by a commission of that state consisting of representatives of all sectors of the juvenile justice system.

The guidelines should be developed, refined and continuously monitored by a commission which should: (a) be comprised of a representative group of juvenile justice policy-makers and practitioners, as well as citizen participants; (b) have the authority to develop and promulgate policy statements which will guide decision-makers in sentencing serious, chronic or violent juvenile offenders; and (c) have a staff of researchers and analysts sufficiently funded and authorized to conduct assessments of the impact of the guidelines on a continuing basis, and to work with the commission to draft revisions as needed. There should be a commitment on the part of the legislative and executive branches to provide the range of resources necessary to implement these guidelines.

The recommendation adopted does not specify by or under what authority (legislatively-authorized or otherwise) such guidelines would be developed. Such structure is intended to be left to the individual states.

IV | TRANSFER TO THE ADULT CRIMINAL COURT

Offenders Unamenable to Juvenile Treatment Should Be Transferred

The juvenile court and juvenile justice system are in the best position to respond effectively to the problem of serious juvenile crime, however, there are juveniles for whom the resources and processes available to the juvenile court will serve neither to rehabilitate the juvenile, nor to provide a suitable sanction for the offense, nor to adequately protect the public. Such juveniles should be tried and, if convicted, sentenced in the adult criminal court.

Transfer of juveniles to the adult criminal courts — also termed “waiver,” “certification,” “reference,” and “remand” — should be based upon the inability of the juvenile justice system to protect the public. The inability may be because juvenile court jurisdiction (which is based on the child’s age) will run out too soon. It may be because the juvenile court does not have a disposition which is commensurate with the seriousness of the offense. It may be because the juvenile court does not have access to a secure facility. The number of children transferred to the criminal courts can be reduced by extending the age when juvenile court jurisdiction expires and by providing the juvenile courts with a greater range of resources, including secure facilities.

The Juvenile Court Should Make the Transfer Decision

The decision to waive a juvenile from the juvenile court to the adult criminal court should be made by the judge of the juvenile court under guidelines developed to protect the constitutional rights of the juvenile and the safety of the public.

The decision to transfer is made in most states by the juvenile court after a full due process hearing where the public’s rights and the juvenile’s rights are carefully protected and with assurance that the juvenile was probably involved in the offense before the right to juvenile proceedings is lost. In some states, however, the decision is made without a hearing by the prosecutor, who may be under political pressures. In some states, transfer is based simply on offense, regardless of whether the juvenile court has the facility to better protect the public. In some states, serious charges are filed in the adult court which then decides whether to transfer the child to the juvenile court. It should be recognized that juvenile courts and their professional staff are most experienced in analyzing juveniles, that they are best acquainted with what they can and cannot do and that they have demonstrated ability to provide fair and knowledgeable transfer proceedings.

To provide not only consistency in transfer decisions, but also to insure that they are made with full knowledge of the resources and facilities available to both the juvenile and criminal courts, guidelines should be prepared by a coordinated effort of the two courts, based on local resources, facilities and circumstances.

A New Transfer Decision Should Be Required for Subsequent Offenses

For subsequent charges, previously transferred juveniles should be subject to juvenile court jurisdiction and its decision as to whether to transfer again.

Children should not be denied future access to juvenile court jurisdiction solely on the grounds of prior transfer which resulted in acquittal. Also, automatic transfer fails to recognize that prior adult procedures may have effectively reduced such juveniles’ threat to the public safety.

V | CONFIDENTIALITY

Open Hearings

Fact finding hearings involving juveniles charged with criminal law violations and hearings for transfer to an adult criminal court should generally be open to the public while dispositional hearings should generally be closed. In a given case the court should exercise discretion to open or close the hearing to the public.

Our tradition of open government was the primary rationale advanced in support of this recommendation. Promotion of the state's interest in rehabilitation of juveniles and protection of innocent family members from adverse publicity were other issues considered. However, when a child is involved in a serious crime, the public, the victims and the police have a right to know how the juvenile court manages the trial where guilt or innocence is determined unless, in a rare case, the publicity will demonstrably cause more harm than good. Public safety overrides the reasons for confidentiality. Except in a rare case, however, public safety does not require the public to be present at the disposition hearing where all of the intimate details of the family will be discussed in order to determine the best means of helping the child and protecting the public.

Police Should Be Informed of Court Actions in Their Cases

Juvenile courts should provide a law enforcement agency with the legal charge and disposition of juveniles referred by such agency for criminal law violations.

It is important for reasons of efficiency and the administration of justice, as well as fairness to individuals who may have their cases acquitted or dismissed, that police be provided with accurate court information. Law enforcement agencies should have such information so they can main-

tain accurate records in cases where the individual becomes involved in subsequent criminal law violations, either as a juvenile or an adult.

Juvenile Records Should Be Provided to Adult Courts When Sentencing

Once a person has been convicted of a crime in the adult criminal court, the legal record of any findings of guilt of charges of a criminal law violation in juvenile court should be made available to the adult criminal court upon its request.

When an adult has been convicted of a crime, the criminal court judge, for sentencing purposes, needs to know if the individual has a prior record in the juvenile court equivalent to a finding of guilt on a criminal law violation.

Legal Records of Juveniles Should Be Open to Those Who Need to Know

Legal records of juveniles adjudicated for criminal law violations should be open to the child, the parents, the child's attorney, the guardian ad litem, the prosecutor and, at the discretion of the judge, to any other person having a legitimate interest. "Legal" records would not include social histories, medical and psychological reports, educational records or a transcript of the dispositional hearings.

Traditionally, hearings and records of juvenile courts have been deemed confidential and have been unavailable, often even to the parents and the press, in order to protect children from the punishment of publicity. For children abused and neglected by their parents, for children being adopted, for immature children involved in petty offenses, the justification for confidentiality is sound. For children who can be rehabilitated without danger to the public, the

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reasoning is sound particularly where publicity will interfere with the rehabilitation. Where publicity will bring shame and abuse to brothers and sisters, grandparents and relatives without adding any useful information to the public or any better provision for its safety, confidentiality is merciful. When public safety is involved, those responsible for protecting the public must have access to the legal records of any juvenile charges and juvenile court dispositions, but even in these cases they have no need for access to the social records which contain the activities, marital problems, likes and dislikes, psychological evaluations or intelligence quotients of the various members of the child's family. The police need to know which children have violated the law and

what the court has done with them; they do not need to know the family's problems.

The Effects of Expunging Juvenile Records Should Be Researched

A study should be authorized to review the practice of sealing and expunging juvenile records to determine the impact on the administration of juvenile and criminal justice.

The effects of the variations in statutes and practices from state to state in expunging, sealing and destroying records upon the administration of justice, is largely unknown, as is the extent to which it is a benefit or detriment to the juveniles.

VI TREATMENT CONSIDERATIONS

Programs in the Community Should Provide Adequate Public Protection

Community-based programs for serious, chronic or violent juvenile offenders should provide protection for the public and staff. Such security can best be achieved through limiting numbers of juvenile offenders, adequate staffing and program content.

Issues of safety and security as they apply to the physical welfare of the community-at-large, program staff and the offender are important. Clearly, concerns for community protection, client control and supervision and program security are important to any discussion of community-based correctional programs for this difficult offender population. Contrary to the usual perception that proper levels of security can only be maintained in secure institutional settings, community-based programs are, in fact, able to exert intensive control and supervision and capable of transmitting to offenders a very clear sense that serious consequences follow from both criminal transgression and continued inappropriate social behavior. Rather than relying upon mechanical and physical constraints to maintain the required level of security, these programs utilize social, psychological and behavioral methods to achieve that goal. Security is accomplished through intensive use of staff numerous enough to work closely with offenders. Control is facilitated by keeping offenders busy at all times. In nonresidential programs, supervision requires intensive tracking of clients while they are away from the program facility.

Programs Should Provide Assistance to Strengthen Families

No social policy or prevention program concerning delinquency should be adopted before careful attention is paid to the consequences of such a policy or program on families.

Perhaps the greatest influence the court can have in its interventions is to be sensitive to the family causes of delinquency. But the general educative function of the court — the ability to influence other community institutions — is formidable. One duty of the juvenile court is to inform the community of the implications of weak families on the serious delinquency problem. Because of its special knowledge and interest in the problem, the juvenile court should be a leader in the fight to improve knowledge of effective parenting and to seek ways to deliver this knowledge to the community.

Programs Should Provide Progress Reports and Family Involvement

Strategies which should be incorporated into a treatment plan for serious, chronic or violent juveniles include:

- a. Frequent progress reports advising the juvenile of standing, achievements, deficiencies and expectations.*
- b. Involvement of the family with an analysis of the family's problems and assistance with these.*
- c. Academic education and social, vocational and employability training and assistance.*

All states should implement a "monitoring process" in order to assure residential placements provide the services called for under law and to assure the safety and rights of the public and the juveniles. The concept and process of accomplishing each of the above strategies should be clearly defined within each jurisdiction.

Re-Entry into the Community Should Be Phased

Juvenile delinquents will eventually be returned to the community without court controls. Thus, reintegration into the community

the court can be sensitive to the needs of the general public — the ability to deal with the court is to initiate solutions of weak offenders of weak problem. Be interested in the court to be a leader in effective parenting knowledge.

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should be supervised with intensive and adequate aftercare. When secure care is necessary, attention should be directed toward the gradual re-entry of youths into the community through a staging process utilizing half-way houses, group homes, day treatment and other appropriate aftercare programs.

Far too often serious juvenile offenders are returned to the community "cold turkey," straight from secure placement without adequate resources and efforts for gradual reintegration into community living. Evaluation data suggests that failure to assist youths in this reintegration process often cause those gains made in residential placement to "wash out" upon the youth's return to the community. Serious offenders should move from secure care through a "staging process" with different levels of residential and community involvement prior to termination of aftercare.

Methods of Treating Serious Offenders Should Be Further Researched

Research and evaluation on the treatment of serious, chronic or violent juvenile offenders should be continued with emphasis on rehabilitation, accountability and public safety.

The only way significant improvements in treatment can occur is by implementing and systematically evaluating innovative programs. Following the lead of recent research efforts funded by the Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice, future studies should: develop programs which link theory and practice; utilize experimental models whenever possible; and examine what variations in treatment work best with which types of youth and in what settings.

VII | SPECIFIC PROGRAMS

Secure Facilities Should Be Provided for High-Risk Juveniles

For that group of high-risk delinquents who cannot be treated outside a closed setting, it is preferable to use small, secure treatment units.

It is crucial that the court's disposition for the chronically violent be in secure placement which will allow time to conduct extensive diagnostic evaluations, and allow behavior to be stabilized and brought under control. High-risk offenders can best be treated and supervised in facilities housing only a small number. Larger, secure facilities have a tendency to display mass handling techniques with a level of impersonality and necessary regimentation. They display a greater reliance on mechanical forms of security. They promote "underground" and informal subcultures. They possess little discharge planning. They lack adequate after-care services. They create impersonal, dehumanizing environments and possibilities for physical abuse and violence by other juveniles or staff.

Substance Abuse Programs Should Be Provided for Juveniles

Substance abuse treatment should be made a part of the dispositional plan for those serious, chronic or violent juvenile offenders whose criminal conduct is determined to be related to substance abuse. Juvenile and family courts must exercise leadership in the development of local community policies and programs to prevent and treat drug, alcohol and other substance abuse by juveniles.

Research literature strongly suggests a close

connection between substance and alcohol abuse and serious delinquency. Although the precise mechanisms are unclear, the juvenile court sees the relationship with a frightening regularity. There is a pressing need for the judiciary to make these facts widely known and to actively work with other community leaders to seek ways to prevent and treat such abuse. There is need for statutory authority whereby the courts can require serious, chronic or violent juvenile offenders whose criminal conduct is clearly related to drug or alcohol abuse to submit to treatment. Too often in the past, the court has been able only to refer these offenders on a voluntary basis. Mandatory treatment for alcohol and substance abuse is necessary, with a concerted effort to coordinate both the judiciary and treatment providers to ensure appropriate services.

Mental Treatment Facilities Should Be Designed for Juveniles

Separate and secure facilities should be provided for serious, chronic or violent juveniles who are mentally ill or emotionally disturbed.

One of the most glaring deficiencies in the juvenile justice system is providing the care and treatment of serious, chronic or violent juvenile offenders who have been evaluated and diagnosed as being in need of mental health services. All such youth should receive appropriate care and services as the responsibility of the mental health system, which must be provided with necessary resources. These services should be made available to the juvenile correctional system by both private service providers and government community mental health services. Most of the serious, chronic or violent juvenile offenders requiring in-patient care need mental health services beyond the capabilities of juvenile correc-

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tion departments. Also, the level of security needed is beyond that currently provided by children's mental health facilities.

All Programs Should Be Studied for Adverse Impact on Families

Existing policies and prevention programs should be researched to determine which of them have adverse consequences for families.

Society is rapidly moving away from the traditional family structure in which children are reared in two-parent homes and in which the mother does not work outside the home. Other

forces are causing equally important changes in the family. The dramatically rising proportion of children who are born to unmarried women causes major changes in the supervision and role models given children. These social shifts imply dramatic changes in the supervision and socialization of children. We do not fully understand the implications of these changes for serious delinquency, let alone how to affect them, or whether it would be desirable to affect them. There is need for careful research into the consequences of these changes in the family for delinquency. We need to be better informed of the potential consequences of our policy choices — particularly when one might be increased delinquency.

VIII STATUS OF THE COURT

Courts for Children Should Have the Stature of General Trial Courts

Courts exercising jurisdiction in juvenile and family matters should be equivalent in rank and stature to courts of general jurisdiction.

The juvenile and family courts have huge daily responsibilities protecting the public, intervening in family disputes, rehabilitating juveniles and setting an example in the community. These courts should have the stature among the judiciary and the public if they are to acquire adequate resources and mechanisms to support their immense responsibilities. The undeniable importance of the work of the juvenile and family courts should be reflected in their rank, stature and available resources.

Judges Should Have Long-Term Assignment to This Complex Court

Judges should be selected on the basis of their professed interest in juvenile and family matters with an assignment for a substantial number of years to insure adequate training, adequate experience and adequate control of the court.

The work of these courts must be better understood for society to afford it the status inherent in its responsibilities of intervening in the lives of children and their families.

To be effective, a judge requires special education and experience over a substantial number of

years, thus assignment to these responsibilities should be based upon proposed interest in, ability for and commitment to the special responsibilities involved.

Judges Should Lead in Developing Community Resources for Children

Juvenile and family court judges must act as advocates and catalysts in the development and allocation of resources.

Judges should actively seek opportunities to explain the goals, plans and problems of the court. They should develop a close and continuing relationship with schools, law enforcement agencies and business and labor organizations in the community. They should develop court-citizen committees to advise the court. They should seek out and utilize community resources to develop citizen-court volunteer programs appropriate to the needs of youth under their jurisdiction.

Research Should Have the Participation of Judges

Juvenile and family court judges must have an active role in the development of relevant research involving the juvenile justice system and should advise on an individual basis concerning conclusions drawn and applicability.

Research is necessary, but the practical experience and knowledge of judges who will be expected to use the product is necessary if the research is to be useful.

IX | RESOURCES

On-Going Training Should Be Provided for the Professional Staff

Staff are the most important resource of the court; therefore, activities which promote professional development of court and juvenile justice system personnel are critical to maintaining quality programs and services and should be supported.

The staff of a juvenile court and its attendant services are the key to successful program implementation. Professional development activities which improve the quality of staff are of great importance. Judges can and should be instrumental in insuring adequate staff development regardless of whether staff report directly to the court or to an administrative agency.

Courts Should Have a Broad Range of Dispositional Resources

Probation is an essential resource of juvenile justice. Juvenile courts should act to strengthen the probation function through implementation of case classification procedures, restitution, constructive sanctions, service brokerage and other probation innovations.

Probation is the primary service around which all other juvenile justice interventions are built, but it is too often taken for granted and too seldom reviewed for possible improvements. In some courts it has operated in a manner unchanged over the past thirty years, even though research has demonstrated program innovations which can modify and improve the effectiveness and efficiency of probation services.

Judges Should Ensure the Efficient Use of Existing Resources

Resources to deal with serious crime in our nation's largest cities have never been available in adequate supply to ensure an effective and efficient response. While advocating for additional necessary resources, the juvenile court should also ensure that existing resources derive maximum utility from current levels of financial support.

Juvenile courts must examine their current practices in order to better justify and substantiate

the need for additional resources. While necessary resources have never been available in the past, courts could do a better job of using those resources which currently exist. The court should secure additional funds to better accomplish its goals and assure that existing funds are being most effectively utilized.

Technical Assistance Should Be Provided for Court Operation

The juvenile court and juvenile justice system are in need of assistance to implement their resources in an efficient and effective manner. Technical assistance to the juvenile justice system should be available from federal, state and local governments and from private sector sources. It should address current operating problems of the juvenile justice system and should be based upon the needs determined by that system.

Technical assistance which addresses the operating concerns of the court could be extremely valuable in maximizing existing levels of resources. As such, a relatively small expenditure made to provide technical assistance could result in substantial savings. In order for such assistance to be valuable, however, it should be based on the perceived needs of the local court, rather than on the desire of the provider. Past technical assistance efforts have had limited utility because they have not heeded this point.

Training in Juvenile and Family Law Should Be Provided

Appropriate curricula should be further developed, implemented and continued in the National Council of Juvenile and Family Court Judges, the nation's schools of law and other disciplines for career development of judges and other juvenile justice practitioners.

The training programs of the National Council, currently reaching several thousand judges, lawyers, probation officers, court administrators and treatment staff in both the Reno headquarters and in most of the fifty states, should be expanded and participants provided with sophisticated research, professional textbooks and awarded degree credits.

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY CONVICTION	SECOND FELONY CONVICTION	THIRD FELONY CONVICTION
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"A" Felony	0-20 3-[6]*-20	5-[10]-20	7 1/2-[15]-20
"B" Felony	0-10	0-[4]-10	3-[6]-10
"C" Felony	0-5	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder or kidnapping - \$75,000
 A, B, or C Felony - \$50,000
 A misdemeanor - \$ 5,000
 B misdemeanor - \$ 1,000
 Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or
 3 X pecuniary gain
 - whichever is greater

KEY

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

* Six year presumptive term applies if first
 A felony conviction, other than manslaughter,
 and defendant used or possessed a firearm
 during the offense or caused serious physical
 injury.

MAXIMUM TERMS OF IMPRISONMENT
 FOR MISDEMEANORS

A misdemeanor - 1 year
 B misdemeanor - 90 days

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder in the First Degree
AS 11.41.100
20-99 years

Murder in the Second Degree
AS 11.41.110
5-99 years

Kidnaping
AS 11.41.300
5-99 years

Sexual Assault I

CLASSIFIED FELONIES

2-2

A	B	C
Attempted Murder or Kidnaping AS 11.31.100(d) (1)	Attempted A felony AS 11.31.100(d) (2)	Attempted B felony AS 11.31.100(d) (3)
Solicitation of Murder or Kidnaping AS 11.31.110(c) (1)	Solicitation of A felony AS 11.31.110(c) (2)	Solicitation of B felony AS 11.31.110(c) (3)
Manslaughter AS 11.41.120	Assault II AS 11.41.210	Criminally Negligent Homicide AS 11.41.230
Assault I AS 11.41.200	Sexual Assault II AS 11.41.420	Custodial Interference I AS 11.41.320
Sexual Assault I AS 11.41.410 <i>Sexual Abuse of a Minor</i>	Unlawful Exploitation of a Minor AS 11.41.455	Sexual Assault III AS 11.41.430

CLASSIFIED FELONIES

A	B	C
Robbery I AS 11.41.500	Robbery II AS 11.41.510	Sexual Abuse of a Minor AS 11.41.440
Arson I AS 11.46.400	Extortion AS 11.41.520	Incest AS 11.41.450
Escape I AS 11.56.300	Theft I AS 11.46.120	Coercion AS 11.41.530
Criminal Possession of Explosives with Intent to Commit Murder or Kidnapping AS 11.61.240(b) (1)	Issuing a Bad Check, \$25,000 or more AS 11.46.280(d) (1)	Theft II AS 11.46.130
	Burglary I AS 11.46.300	Concealment of Merchandise, \$500 or more AS 11.46.220(c) (1)
	Arson II AS 11.46.410	Removal of Identification Marks, \$500 or more AS 11.46.260(b) (1)
	Criminal Mischief I AS 11.46.480	Unlawful Possession (of Altered Property,, \$500 or more AS 11.46.270(b) (1)
	Forgery I AS 11.46.500	Issuing a Bad Check, \$500 or more AS 11.46.280(d) (2)
	Scheme to Defraud AS 11.46.600	Fraudulent Use of a Credit Card, \$500 or more AS 11.46.285(b) (1)
	Defrauding Creditors, \$25,000 or more AS 11.46.730(c) (1)	

CLASSIFIED FELONIES

R

Bribery
AS 11.56.100

Receiving a Bribe
AS 11.56.110

Perjury
AS 11.56.200

Escape II
AS 11.56.310

Interference with
Official Proceedings
AS 11.56.510

Receiving a Bribe by a
Witness or Juror
AS 11.56.520

Criminal Possession of
Explosives with Intent
to Commit A felony
AS 11.61.240(b)(2)

Promoting Prostitution I
AS 11.66.110

C

Obtaining a Credit Card by
Fraudulent Means
AS 11.46.290(a)(1),(2)

Burglary II
AS 11.46.310

Criminal Mischief II
AS 11.46.482

Forgery II
AS 11.46.505

Criminal Possession of Forgery
Device
AS 11.46.520

Criminal Simulation \$500 or
more
AS 11.46.530(b)(1)

Offering a False Instrument
for Recording
AS 11.46.550

Falsifying Business Records
AS 11.46.630

Commercial Bribe Receiving
AS 11.46.660

Commercial Bribery
AS 11.46.670

CLASSIFIED FELONIES

C

Defrauding Creditors, \$500
- \$25,000
AS 11.46.730(c)(2)

Endangering Welfare of Minor
AS 11.51.100

Perjury by Inconsistent State-
ments
AS 11.56.230

Escape III
AS 11.56.320

Permitting an Escape
AS 11.56.370

Promoting Contraband I
AS 11.56.375

Jury Tampering
AS 11.56.590

Misconduct by a Juror
AS 11.56.600

Tampering with Physical Evidence
AS 11.56.610

Hindering Prosecution I
AS 11.56.770

Terroristic Threatening
AS 11.56.810

2-5

CLASSIFIED FELONIES

C

Riot
AS 11.61.100

Misconduct Involving Weapons I
AS 11.61.200

Criminal Possession of Explosives with Intent to Commit
B Felony
AS 11.61.240(b)(3)

Unlawful Furnishings of Explosives
AS 11.61.250

Promoting Prostitution II
AS 11.66.120

Promoting Gambling I
AS 11.66.210

Possession of Gambling Records I
AS 11.66.230

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

MISDEMEANORS AND VIOLATIONS

A	B	VIOLATIONS
Attempted C Felony AS 11.31.100(d) (4)	Attempted A or B misdemeanor AS 11.31.100(d) (5)	Littering AS 11.46.488
Solicitation of C Felony AS 11.31.110(c) (4)	Solicitation of A or B misdemeanor AS 11.31.110(c) (5)	Failure to Permit Visitation with a Minor AS 11.51.125
Assault III AS 11.41.230	Theft IV AS 11.46.150	Refusing to Assist Peace Officer or Judicial Officer AS 11.56.720
Reckless Endangerment AS 11.41.250	Concealment of Merchandise, less than \$50 AS 11.46.220(c) (3)	Gambling- First Offense (Second offense & each subsequent offense is Class B misdemeanor) AS 11.66.200
Custodial Interference AS 11.41.330	Removal of Identification Marks less than \$50 AS 11.46.260(b) (3)	Selling or Giving Tobacco to a Minor AS 11.76.100
Theft III AS 11.46.140	Unlawful Possession (of Altered Property), less than \$50 AS 11.46.270(b) (3)	
Concealment of Merchandise, \$50-\$500 AS 11.46.220(c) (2)	Issuing a Bad Check, less than \$50 AS 11.46.280(d) (4)	
Removal of Identification Marks \$50 - \$500 AS 11.46.260(b) (2)	Fraudulent Use of a Credit Card, less than \$50 AS 11.46.285(b) (3)	
Unlawful Possession (of Altered Property), \$50 -\$500 (AS 11.46.270(b) (2)		

MISDEMEANORS

A	B
Issuing a Bad Check, \$50-\$500 AS 11.46.280(d) (3)	Criminal Trespass II AS 11.46.330
Fraudulent Use of Credit Card, \$50 - \$500 AS 11.46.285(b) (2)	Criminal Mischief IV AS 11.46.486
Obtaining a Credit Card by Fraudulent Means AS 11.46.290(a) (3)	Criminal Simulation, less than \$50 AS 11.46.530(b) (3)
Criminal Trespass I AS 11.46.320	Unlawful Evasion II AS 11.56.350
Criminally Negligent Burning AS 11.46.430	Hindering Prosecution II AS 11.56.780
Failure to Control or Report a Dangerous Fire AS 11.46.450	Impersonating a Public Servant AS 11.56.830
Criminal Mischief III AS 11.46.484	Disorderly Conduct AS 11.61.110 (10 day maximum)
Forgery III AS 11.46.510	Harrassment AS 11.61.120
Criminal Simulation, \$50- \$500 AS 11.46.530(b) (2)	Obstruction of Highways AS 11.61.150
Obtaining a Signature by Deception AS 11.46.540	Misconduct involving Weapons III AS 11.61.220

2-8

MISDEMEANORS

A

B

Criminal Impersonation
AS 11.46.570

Misapplication of Property
AS 11.46.620

Deceptive Business Practices
AS 11.46.710

Misrepresentation of Use of
a Propelled Vehicle
AS 11.46.720

Defrauding Creditors, \$500
or less
AS 11.46.730

Criminal Nonsupport
AS 11.51.120

Contributing to the Delin-
quency of a Minor
AS 11.51.130

Unlawful Marrying
AS 11.51.140

Receiving Unlawful Gratuities
AS 11.56.120

Unsworn Falsification
AS 11.56.210

Criminal Possession of
Explosives with Intent
to Commit A or B Mis-
demeanor
AS 11.61.240(b) (5)

Prostitution
AS 11.66.100

MISDEMEANORS

A

Escape IV

AS 11.56.330

Unlawful Evasion I

AS 11.56.340

Promoting Contraband II

AS 11.56.380

Tampering with a Witness

AS 11.56.540

Simulating Legal Process

AS 11.56.620

Resisting or interfering
with Arrest

AS 11.56.700

Compounding

AS 11.56.790

Making a False Report

AS 11.56.800

Tampering with Public
Records

AS 11.56.820

Official Misconduct

AS 11.56.850

Misuse of Confidential
Information

AS 11.56.860

2-10

2-10

MISDEMEANORS

A

Misconduct Involving a
Corpse

AS 11.61.139

Cruelty to Animals

AS 11.61.149

Misconduct Involving Weapons II

AS 11.61.219

Possession of Burglary Tools

AS 11.61.239

Criminal Possession of Ex-
plosives with Intent to
Commit C Felony

AS 11.61.240 (E) (4)

Promoting Prostitution III

AS 11.66.130

Promoting Gambling II

AS 11.66.220

Possession of Gambling
Records II

AS 11.66.240

Possession of Gambling
Device

AS 11.66.260

Interference with Consti-
tutional Rights

AS 11.76.110

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H-05
JUNEAU, ALASKA 99811
PHONE: (907) 465-3170

DIVISION OF FAMILY AND YOUTH SERVICES

November 21, 1984

The Honorable Patrick Rodey
Alaska State Senate
2335 Lord Baranof
Anchorage, AK 99503

Dear Senator Rodey:

This is in response to your letters to John Pugh and me suggesting a task force review of the Children's Code in order to better address issues of child abuse and neglect. Your interest and concern are very much appreciated. A review of the Children's Code by our staff indicates that it provides adequate mechanisms to address child abuse and neglect except for a few specifically identified problem areas. The Division of Family & Youth Services is currently working with the Department of Law on legislative proposals to remedy the specific problems identified in the Children's Code and related statutes. These proposals will, I believe, promote adequate review of the weak areas in the code without the need for a full task force.

Topics that we anticipate will be included in the child protection legislative package are as follows:

- 1) Negligent endangerment of a minor. This section would make it a crime to endanger through criminal negligence a child entrusted to a person's care.
- 2) Private Adoption studies. This section would relieve from the Department of Health and Social Services the burden of conducting home studies for the court in private adoption situations unless the child is a "hard to place child" or the parents are unable to pay the costs of a private study.
- 3) Emergency Custody. This would amend the emergency custody statute to allow more realistic standards and conform with the interpretations of existing statute held by courts throughout the State. It would provide for the filing of petitions on the next business day following the assumption of emergency custody.

- 4) **Sexual Abuse Definition.** This would define the term sexual abuse for use in child in need of aid proceedings under AS 47.10. It will help avoid legal challenges to the existing law (AS 47.10.010 (a) (2) (D)) asserting the vagueness of the statute by clarifying what conduct is forbidden.
- 5) **Use of Reports for Prosecution Purposes.** A series of changes would permit prosecutors to use information obtained from reports of child abuse investigations filed pursuant to AS 47.17 in prosecuting perpetrators of offenses against children.
- 6) **Enjoining a Dangerous Person From Contact With Children.** This provision would permit the attorney general to bring actions to restrict from contact with children persons who have neglected, sexually or physically abused children, or who present a danger to children.
- 7) **Criminal History.** This provision would authorize the Department of Health and Social Services to check the criminal record of persons who are responsible for the care of children or who regularly come in contact with children in State licensed facilities.
- 8) **License Violations.** A proposed provision would increase penalties for violations of state licensing statutes and regulations by making such violations class B misdemeanors. It would also provide statutory authority for regulations to create a system of civil enforcement of licensing statutes and regulations.
- 9) **Statute of Limitations.** This provision would eliminate the five year limitation on prosecution of sexual offenses committed against children since many child victims may have been incapable of reporting within that period.
- 10) **Curfew.** This provision would eliminate conflicts in existing law and enable communities to better enforce curfews for children.

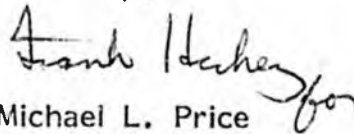
While no final decision has been made on introduction of the above items, substantial work has been done and additional sections are being drafted by the Criminal Division of the Department of Law. It is my hope that you will give careful consideration to these proposals when they are introduced.

While some statutory changes are needed to assist the Division in carrying out its child protective function, the real problems we face are not shortcomings in our statutory basis for intervention. Instead the primary limitation on our ability to protect children is the lack of adequate resources. We simply do not have sufficient staff to perform our statutory mandates. The mandates are adequate. The resources

are not. Enclosed for your information and use is a copy of a report to Governor Bill Sheffield on child abuse and neglect in Alaska. This report summarizes the problem of insufficient resources. If you have questions about material in the report or related issues I will be happy to provide additional information.

Thank you for your concern. I look forward to discussing these issues with you during the session.

Sincerely,

A handwritten signature in cursive script that reads "Michael L. Price". The signature is written in dark ink and is positioned above the typed name.

Michael L. Price
Director

MLP:PJO:paj

Enclosure

CHILD ABUSE AND NEGLECT IN ALASKA

A REPORT TO
THE HONORABLE BILL SHEFFIELD
GOVERNOR
STATE OF ALASKA

Revised September 18, 1984

John R. Pugh
Commissioner
Department of Health
and Social Services

Michael L. Price
Director
Division of Family
and Youth Services

DFYS: ALASKA'S PRIMARY AGENCY TO PROTECT CHILDREN

The Division of Family and Youth Services (DFYS) is the primary state agency which provides a range of social services designed to prevent or remedy child abuse and neglect. The state mandate to provide child protective services is found in AS 47.10 Delinquent Minors and Children in Need of Aid, AS 47.17 Child Protection, and AS 47.35 Private Institutions.

In state fiscal year 1985, the division was appropriated \$53 million and 453 positions. Of this total, \$21 million was appropriated for 183 child protection social workers, licensing staff, and clerical staff located in five regional and 36 field offices. The balance of the budget is appropriated for adult protective services, youth services, and a continuum of purchased services for children, youth, and adults.

CHILD ABUSE AND NEGLECT IN ALASKA: A GROWING CONCERN

The problem of child abuse and neglect has become a matter of increasing concern in Alaska as it has throughout the United States. There is a heightened public awareness of the problem exemplified by substantial attention in the news media, increased constituent interest, and inquiries of legislators concerning child related issues. Perhaps the most significant indicator of the public concern with the problem of child abuse and neglect has been the significant increase in reports of harm to children and a demand for intervention and services to protect children and strengthen families.

A major issue is the ability of the Division of Family and Youth Services to respond to the increased need for services.

LEVEL OF RESPONSE TO CHILD ABUSE AND NEGLECT: AN ANALYSIS

Although the population of children at risk of harm from neglect and abuse has increased, the effect of this increase is overshadowed by the significant increases in the reports of abuse and neglect, the number of children served, and overall DFYS caseloads. DFYS staffing levels, on the other hand, have not kept pace with the increased need and demand for services, resulting in a decrease in the level of services the agency has been able to provide. There is now a gap between the agency's ability to respond and the level of response expected by the public and the Legislature. The agency's ability to perform its mandated services at acceptable levels is becoming questionable. Increased demands for mandated services have resulted in competing priorities for the agency's limited resources. The extent of the problem and the difficulty experienced by the agency in responding at desirable levels are clearly illustrated in the following information.

I. Growth in At Risk Population

During the six year period from FY 78 to FY 83 the population of Alaska grew by approximately 15% from an estimated 411,600 to 472,419. The number of children at risk of harm from abuse and neglect (those ages 0 to 18 years of age) is estimated to have increased at the same rate as the overall population (15%) from 133,000 in FY 78 to 153,000 in FY 83. (See Appendix B, chart 1, magenta border - At Risk Child Population in Alaska.)

II. Growth in Need for Protective Social Services

In striking contrast to the population growth, DFYS caseloads (total number of persons being served) in both child protection and adult protection services increased by 173% during the six year period FY 78 to FY 83. During this same period there was a 122% increase in the number of children receiving protective services and a 363% increase in the number of adults receiving protective services. (See Appendix B, chart 2, blue border - Ak. Div. of Family and Youth Services Clients Served.)

Of particular importance is the 219% increase in reports of child abuse and neglect during the same six year period (Appendix B, chart 3, red border). During this period there was a 272% increase in reports of sexual abuse of children and a 579% increase in the number of such reports that were substantiated (Appendix B, chart 4, purple border). These are particularly significant since the nature of alleged abuse requires an intensive investigation, and formal court action is more frequently required in order to achieve adequate protection for the children.

The growth in the need for response by DFYS to reduce risk of harm to persons who must reside outside their own homes is reflected by an increase in the number of licensed facilities providing care such as child day care centers and homes, foster homes, and residential facilities serving both children and adults (Appendix B, chart 5, green border). During the period from January 1980 to August 1984, there has been a 70% increase in the number of licensed facilities. This reflects additional responsibility of DFYS to license adult facilities, increased demand for day care facility licensing, and an increased utilization of family foster homes. Increases to the state day care assistance program have significant effects on the demand for licensed day care facilities since the state requires assistance be utilized to provide care for children in licensed facilities. This acts as an incentive for facilities to be licensed.

III. Agency Resources

Despite the increasing demand for protective services provided by DFYS, the service resources - social work staff, community licensing specialists, and clerical support staff - have not been increased propor-

tionately (Appendix B, chart 6, gold border). Although overall DFYS caseload has increased 173% since FY 78, there was only an 18% increase in social work staff during that period. While the number of licensed facilities increased by 70% from January, 1980 to the present, licensing staff increased only 23% during the same period. Support staff in regional and field offices increased only 6% during the period FY 78 through FY 83. Lack of adequate support staff has placed an increasing burden on professional staff who must perform clerical functions, decreasing time available for them to perform the direct client services. This problem was cited in a recent Division of Legislative Audit Special Report on the Division of Family and Youth Services Emergency Custody Procedures.

IV. Level of Response

As is illustrated in Appendix B, chart 7 (brown border), in 21 of 36 field offices the average number of cases served by DFYS social work staff exceeds the maximum caseload standard of 50 (this figure represents the maximum number of cases for social workers to provide minimally acceptable services.) In seven of these offices this maximum number is exceeded by 100% or more. Chart 8 in Appendix B (indigo border) illustrates the number of social work staff needed to bring caseloads in various Division of Family and Youth Services offices down to the maximum standard.

A comparison of work load standards for licensing workers with existing DFYS staff responsibilities indicates some workers exceed the recommended standard by more than 100%. As a result it has been necessary to convert three social work positions to perform licensing and to add licensing responsibilities to other already overburdened caseworkers.

DFYS staff levels have resulted in continually decreasing levels of service to clients and inability of the agency to perform other than mandated or crisis services. Decreasing service levels and increasing expectations by the public and legislators have led to greater numbers of complaints to legislators, the Ombudsman, and to increasing litigation. As the need and demand for services increase, and the level of public expectation has increased without commensurate increases in staff resources, there has been an increasingly high rate of staff turnover, errors of judgement, and an inability to implement appropriate agency policies and procedures on a uniform basis. Increasing complaints, increased agency liability and litigation, and increased legislative oversight through legislative audits are to be expected (three special audits by the Division of Legislative Audit have been conducted in the past one and one-half years).

V. Agency Strategy

DFYS' strategy for responding to client needs is based on its analysis of the continuum of services provided to clients and its existing allocation of resources along that continuum. Services may be categorized

or located on a continuum based on several indices. Such indices are the cost of service per client, restrictiveness of the services to the client, the severity of the client problem appropriately served by the service, the number of clients expected to be served, and the amount budgeted to provide the service.

Under a desirable scheme for resource allocation, client needs would be identified and met at the earliest possible time, in the least restrictive setting, and at the lowest cost. Under a desirable configuration for resource allocation, the greatest amount of resources would be allocated to provide services to prevent client problems or provide early intervention to the client in his or her own home (see Appendix B, chart 9, black border). This would reduce the severity of the problem and eliminate the need for more restrictive and expensive types of services. As smaller numbers of clients are served in more restrictive settings, the cost per client increases disproportionately.

As social services agencies become overburdened, their ability to maintain the desirable configuration for resource allocation diminishes. The agency's ability to provide critical prevention, and early intervention decreases as staff time must be focused on crisis response. DFYS' actual resource allocations for FY 83, unfortunately, do not follow the desired configuration (see chart 10, raspberry border). Instead, a large proportion of resources are devoted to providing service to a very few clients in restrictive settings. The agency goal has been to move toward an allocation of resources more closely resembling the desired configuration. DFYS has taken a number of steps to achieve this. An example is the increased use of family foster care and decreasing the reliance on residential care for children in need of out-of-home protective services.

RECOMMENDED ADMINISTRATION RESPONSE

The Division of Family and Youth Services is mandated through its various statutory requirements to be a comprehensive social service agency providing a full range of services to strengthen families and promote the individual well-being of children. However, the agency has not had adequate resources to accomplish its mandate. Most critically the agency is presently understaffed to a degree which limits services to a level little greater than crisis response, and may be inadequate to achieve minimally acceptable protection of children.

An immediate response is needed to eliminate this crisis circumstance and both raise the level of service to clients and reduce the liability of the state. This would require funding of additional staff positions to provide necessary social services and perform required licensing functions. It would also include administrative support staff. The minimum number of staff necessary to increase the agency's ability to provide services is illustrated in the accompanying Appendix A. Briefly, this

would require 35 positions, including 15 full time social workers, 5 full time community care licensing specialists, and 15 field support staff distributed throughout the state in areas experiencing the most critical need.

Long term solutions to the problems currently being faced will initially require additional resources in prevention and early intervention services and an altering of the configuration for allocation of resources. This change in resource allocation will necessarily be gradual but will eventually result in reduced need for more expensive and restrictive client services and, perhaps, reductions in overall resources required to meet client needs.

APPENDIX A

Recommended Staff Augmentation
by Location

SUMMARY OF REQUEST - 35 POSITIONS

Social Workers - 15 Full-Time Positions

Community Care Licensing
Specialists - 5 Full-Time Positions

Administrative and
Clerical Support - 15 Positions
11 Full-Time Positions
8 Part-Time Positions

Southcentral Region - 17 Positions

Anchorage Service Unit

1 Social Worker IV
1 Social Worker III
2 Social Worker I's
2 Community Care Licensing Specialist I's
2 Clerk Typist III's

Kenai

2 Social Worker III's

Homer

1 Social Worker III
1 Clerk Typist III

Field Office Clerical Support

3 Clerk Typist III's
.5 Valdez
.5 Copper Center
.5 Unalaska
.5 Wasilla
.5 Cordova
.5 Dillingham

Regional Office

1 Administrative Assistant II
1 Accounting Clerk III

Northern Region - 11.5 Positions

Fairbanks Service Unit

2 Social Worker III's
2 Community Care Licensing Specialist I's
2 Social Services Associate III's
1 Clerk Typist III

Delta

.5 Clerk Typist III

Galena

1 Social Worker III

Northern Region (continued)

Barrow

1 Clerk Typist III

Regional Office

1 Administrative Assistant III
1 Accounting Clerk II

Southeastern Region - 6.5 Positions

Juneau Service Unit

1 Social Worker IV
1 Social Worker III

Ketchikan Service Unit

1 Social Worker III
1 Community Care Licensing Specialist I
1 Clerk Typist III

Craig

.5 Clerk Typist III

Regional Office

1 Administrative Assistant I

APPENDIX B

AT RISK CHILD POPULATION IN ALASKA 0 TO 18

POPULATION

200,000

15% Increase

153,536

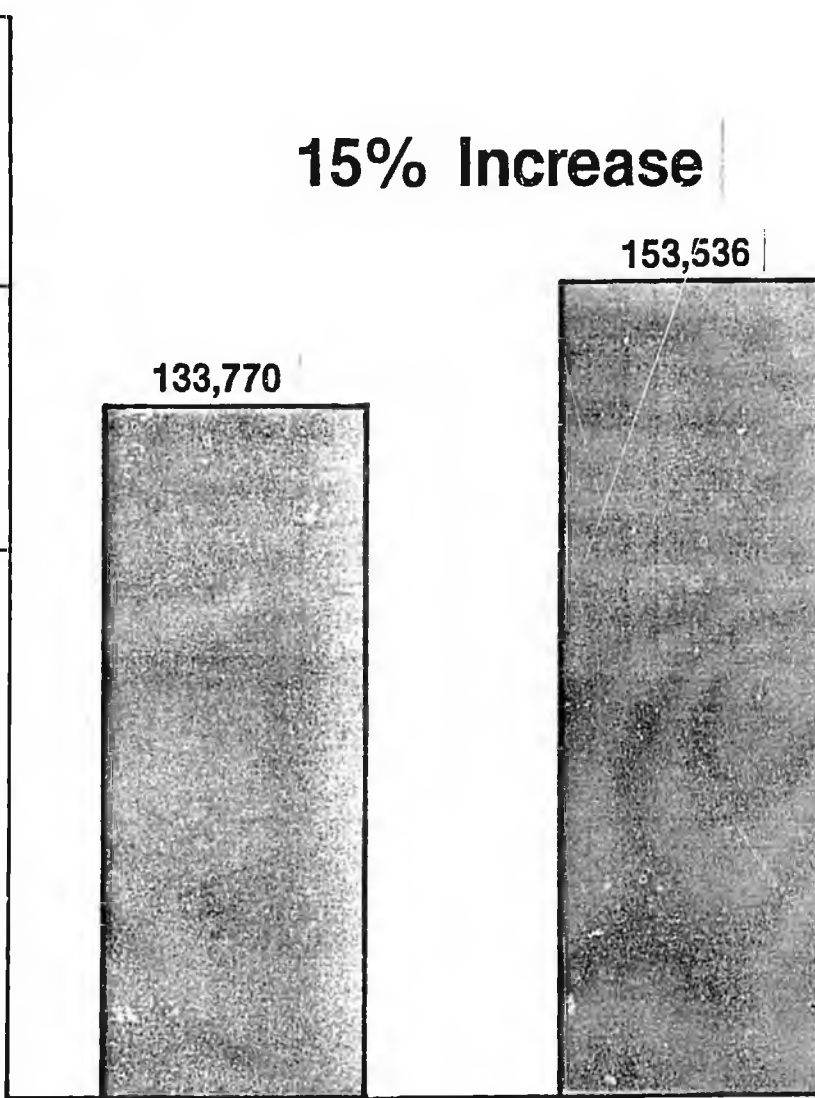
133,770

100,000

FY78

FY83

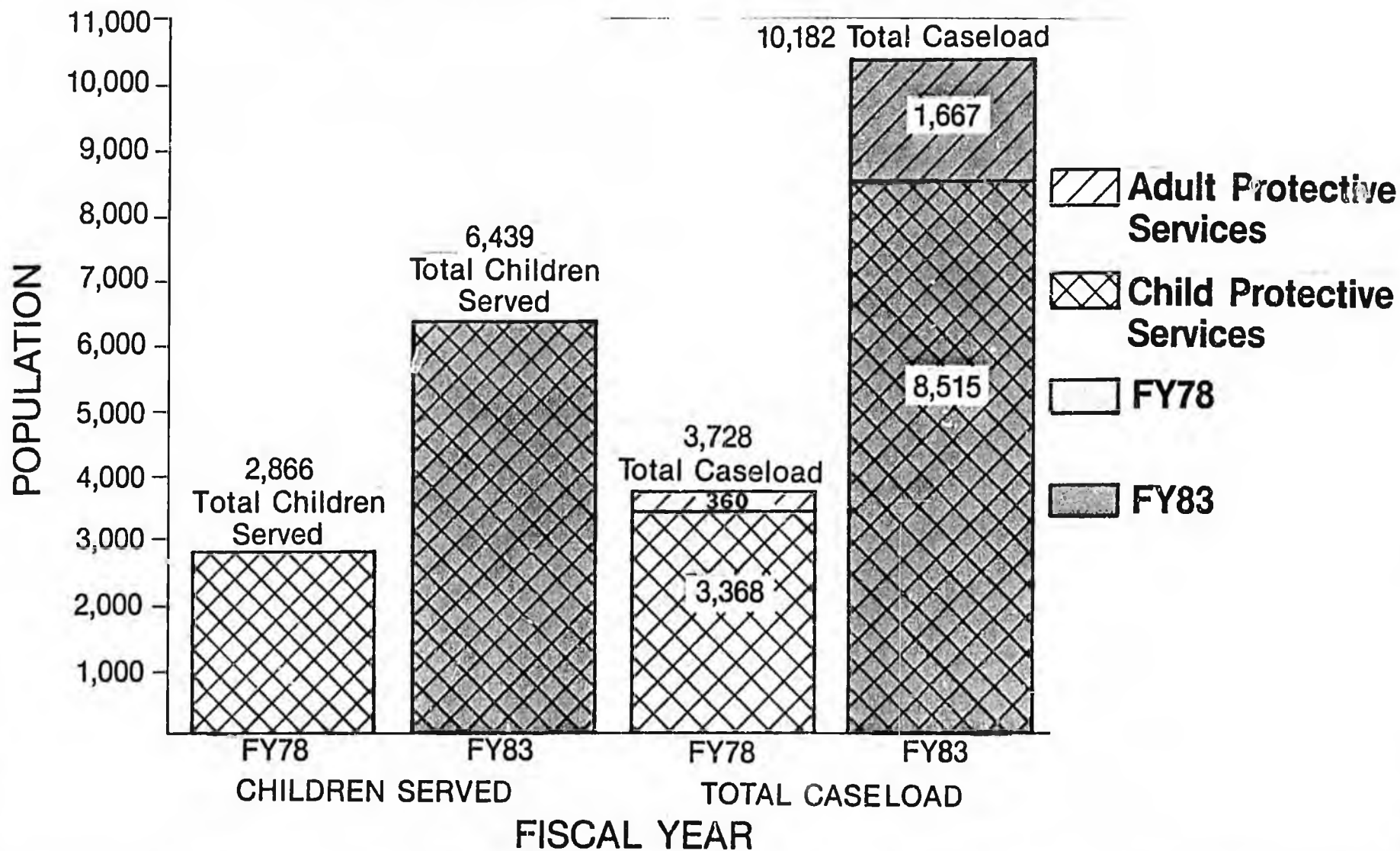
FISCAL YEAR



AK. DIV. OF FAMILY AND YOUTH SERVICES CLIENTS SERVED

122% Increase

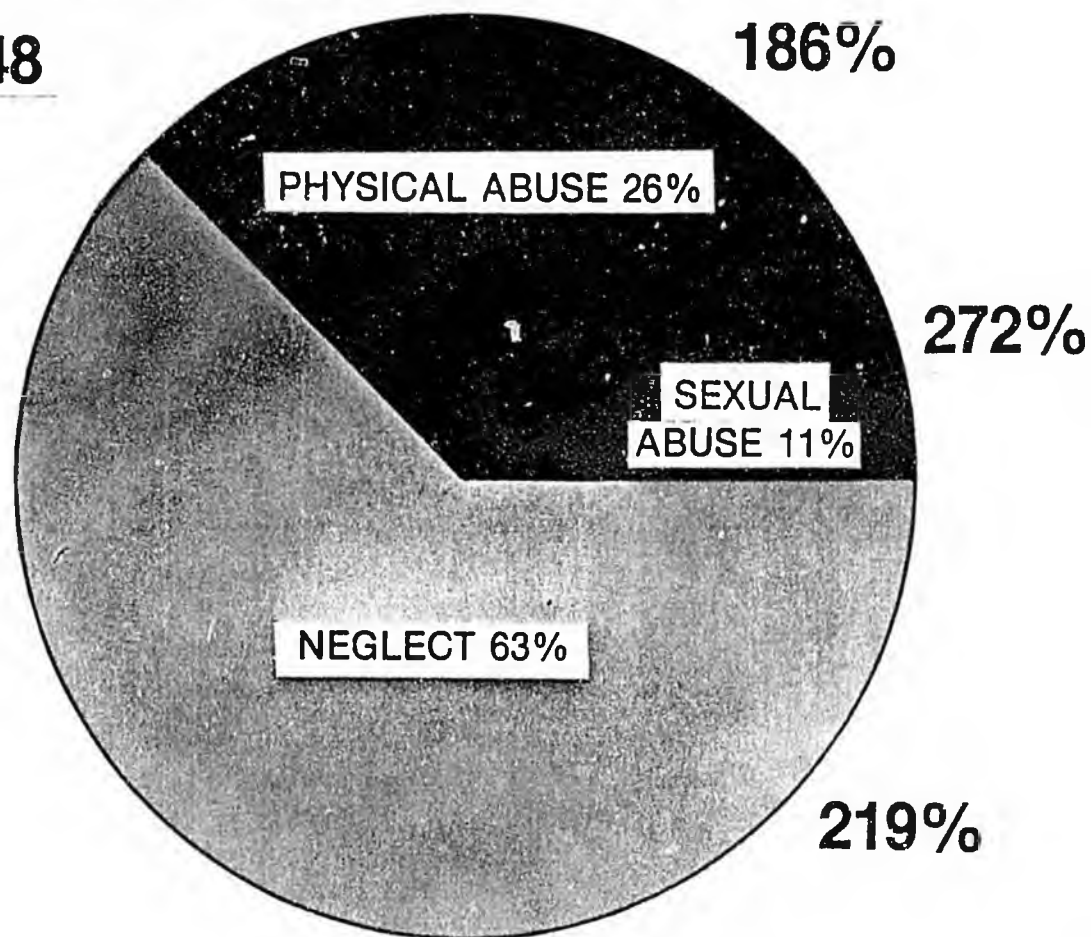
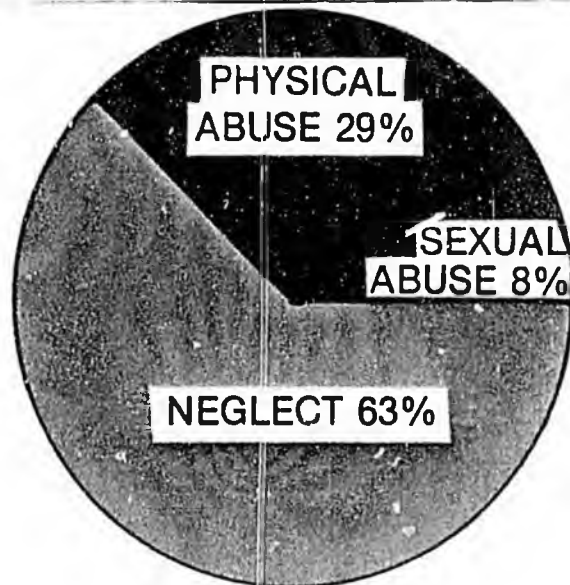
173% Increase



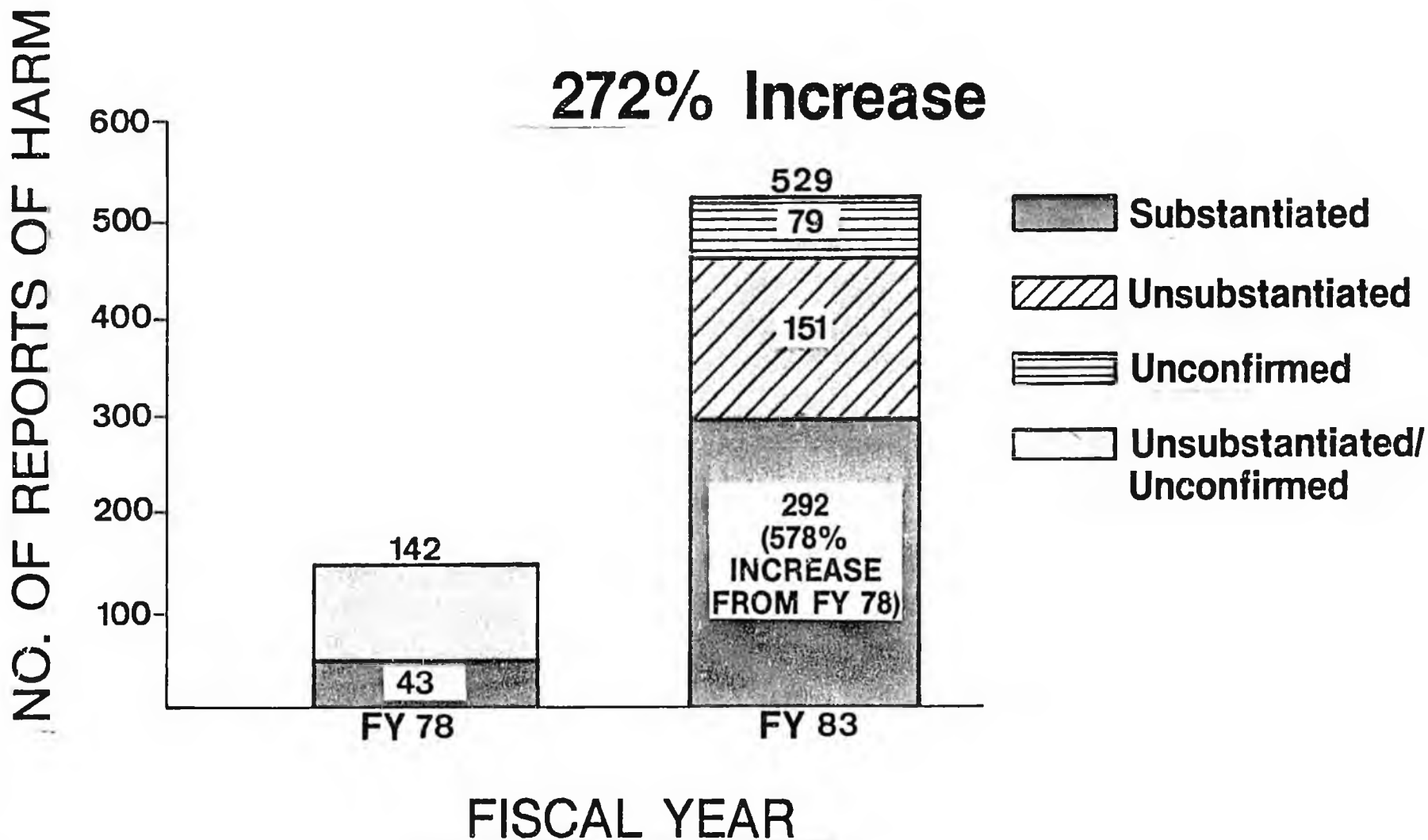
REPORTS OF CHILD ABUSE AND NEGLECT IN ALASKA

FY83 Total Reports: 5,574

FY78 Total Reports: 1,748



REPORTS OF CHILD SEXUAL ABUSE IN ALASKA



LICENSED FACILITIES IN ALASKA

January 1980

1,039 Facilities

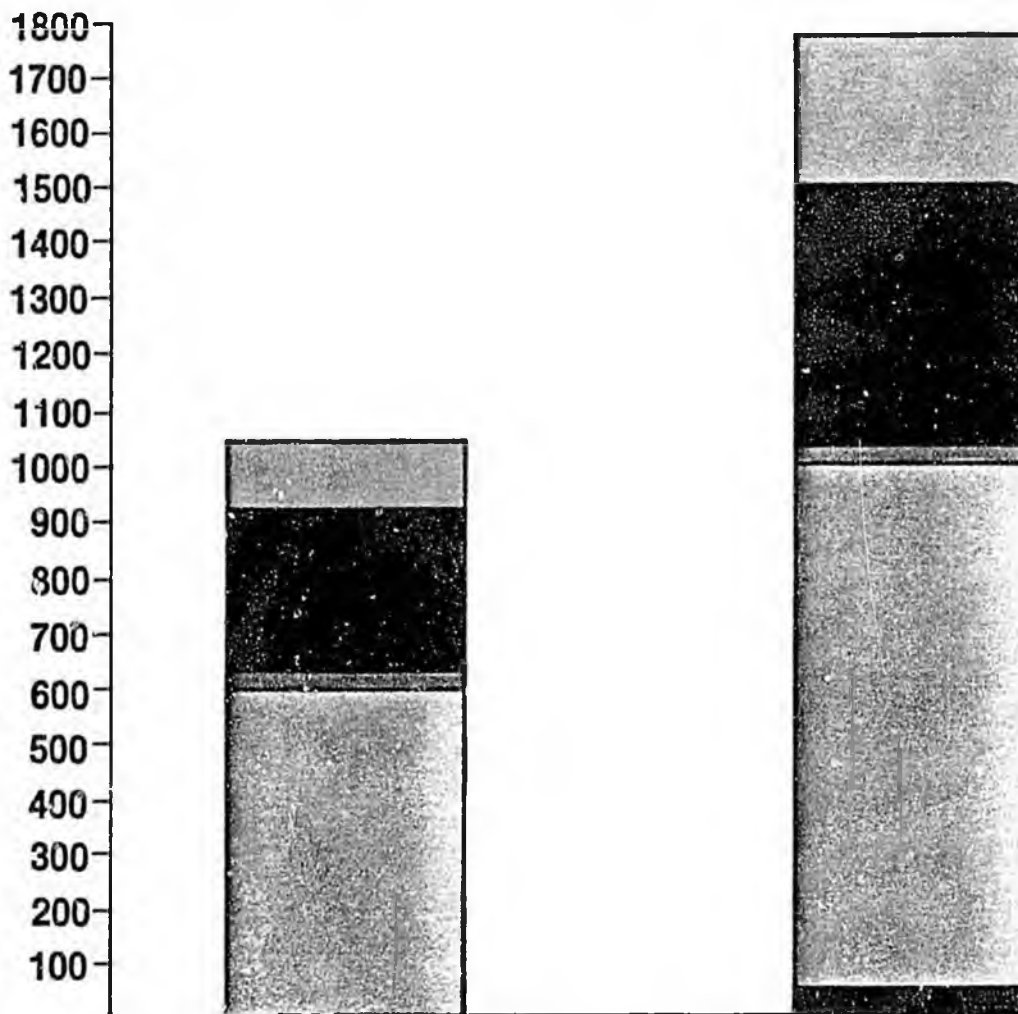
7,043 Capacity






August 1984

1,755 Facilities = 70% Increase

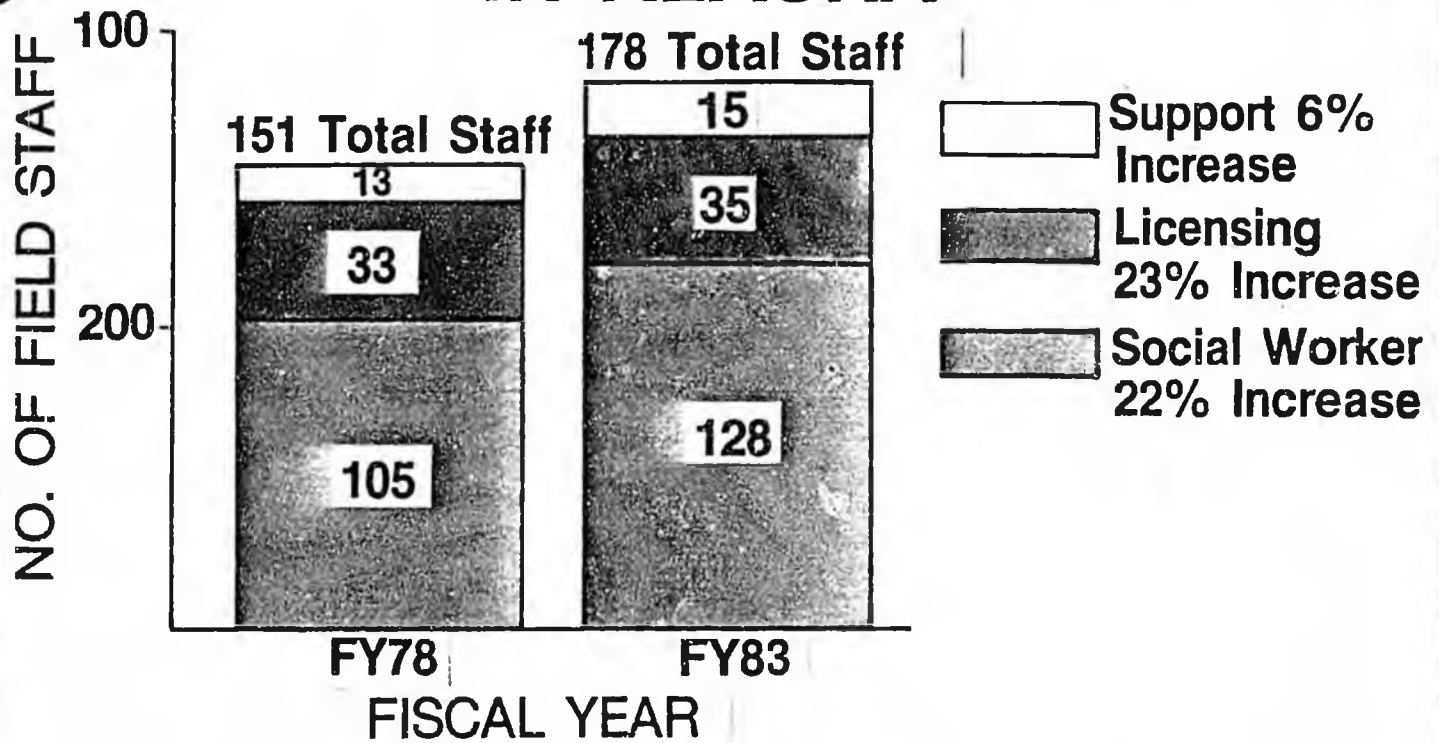
12,617 Capacity = 79% Increase

Increase

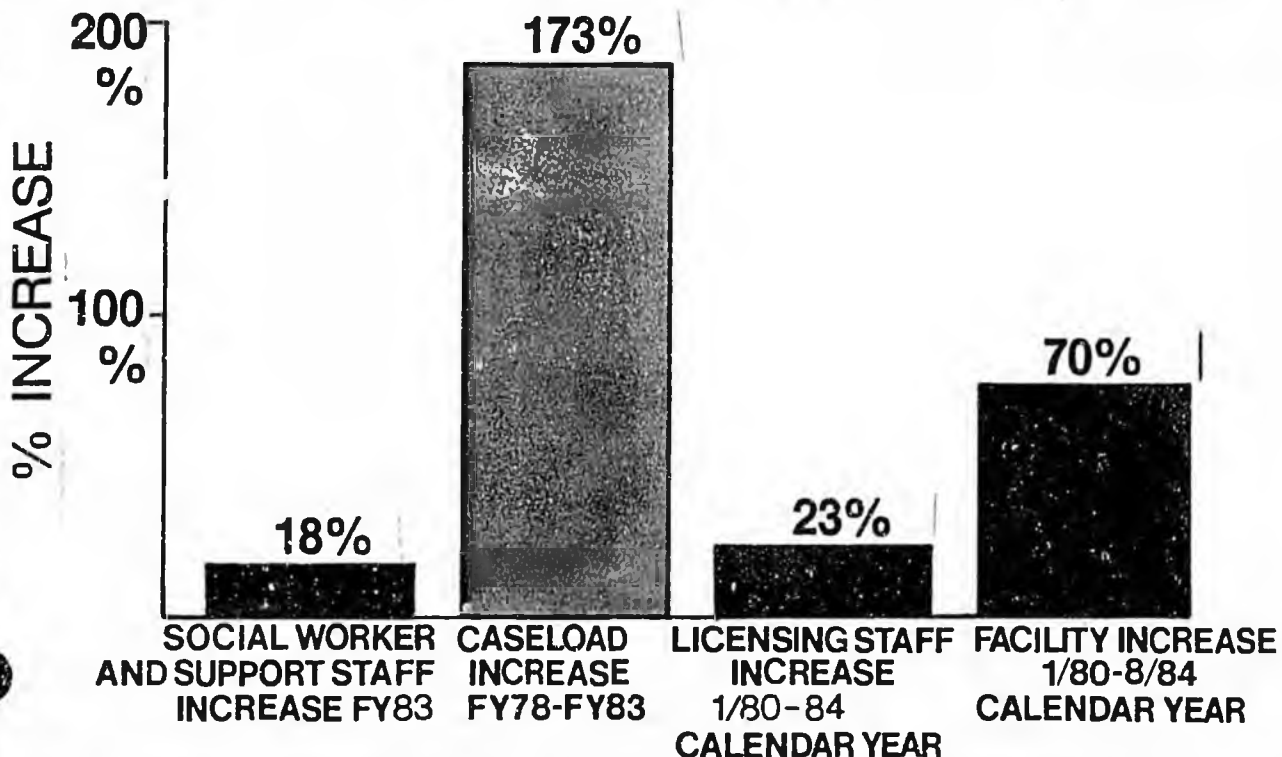


-  Child Care Centers
-  Family Child Care Homes
-  Residential Child Care Facilities
-  Child Foster Homes
-  Adult Residential Care Facilities
-  Adult Foster Homes

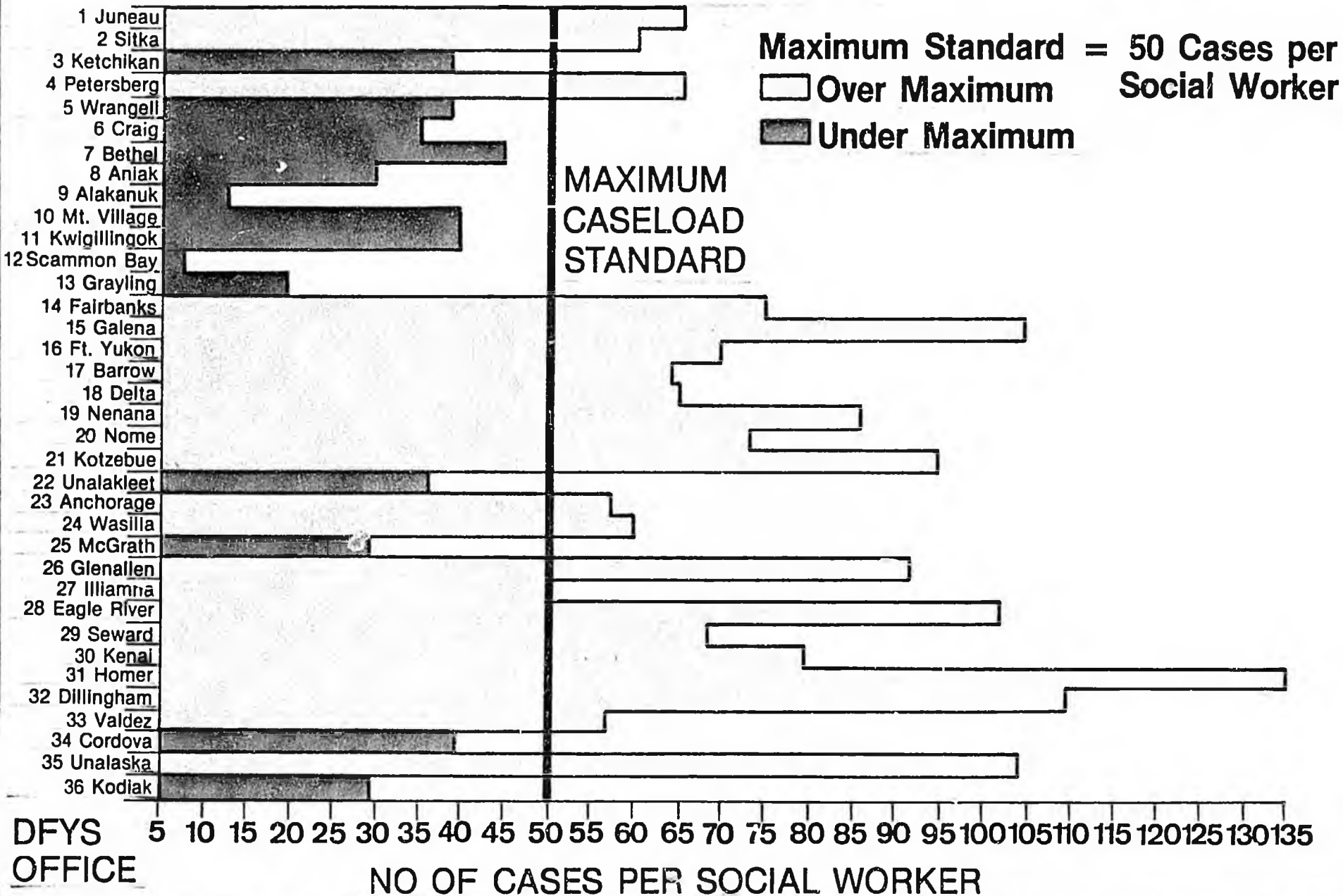
DFYS FIELD STAFF RESOURCES IN ALASKA



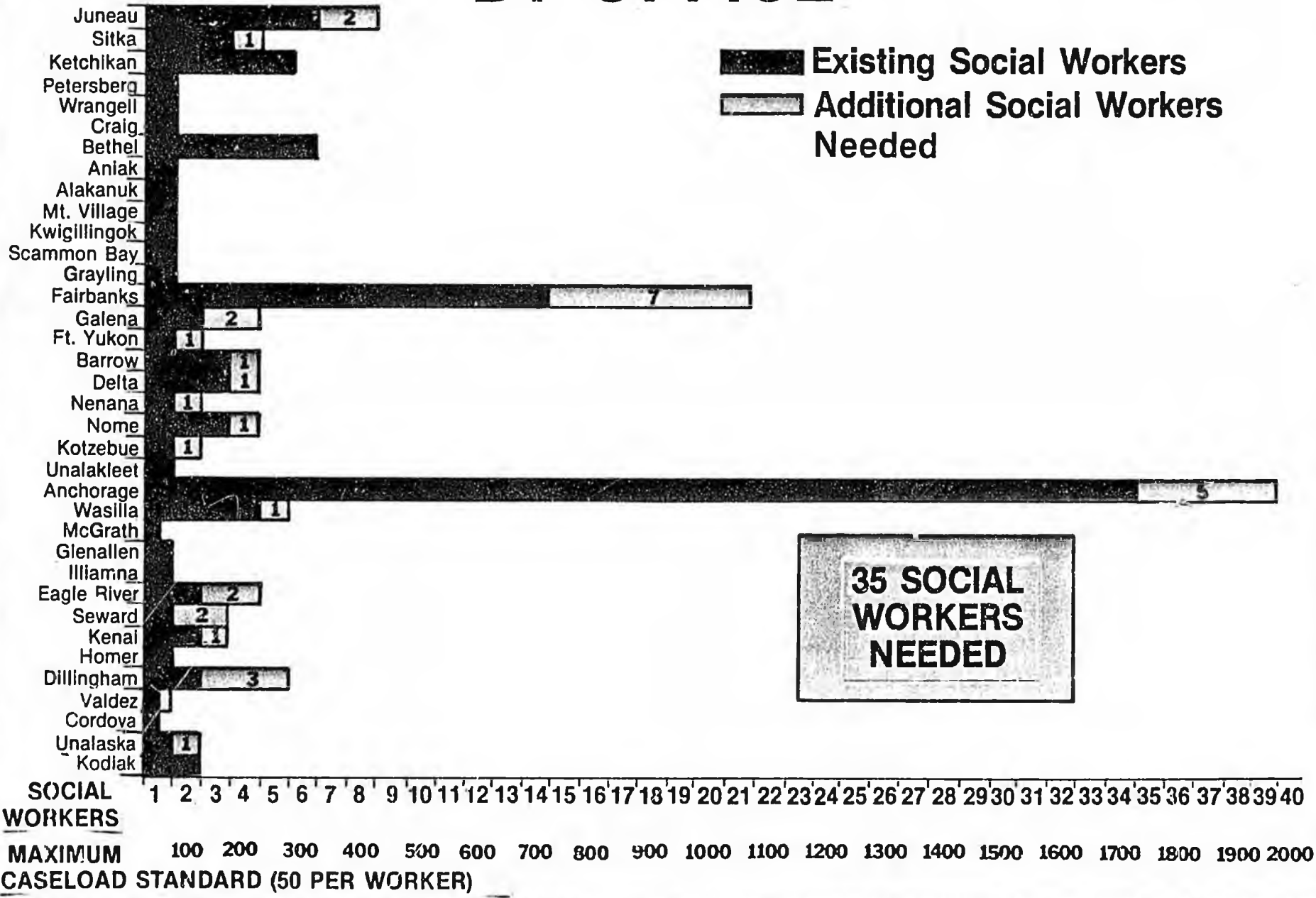
DFYS FIELD STAFF COMPARED TO CASELOAD INCREASES IN ALASKA



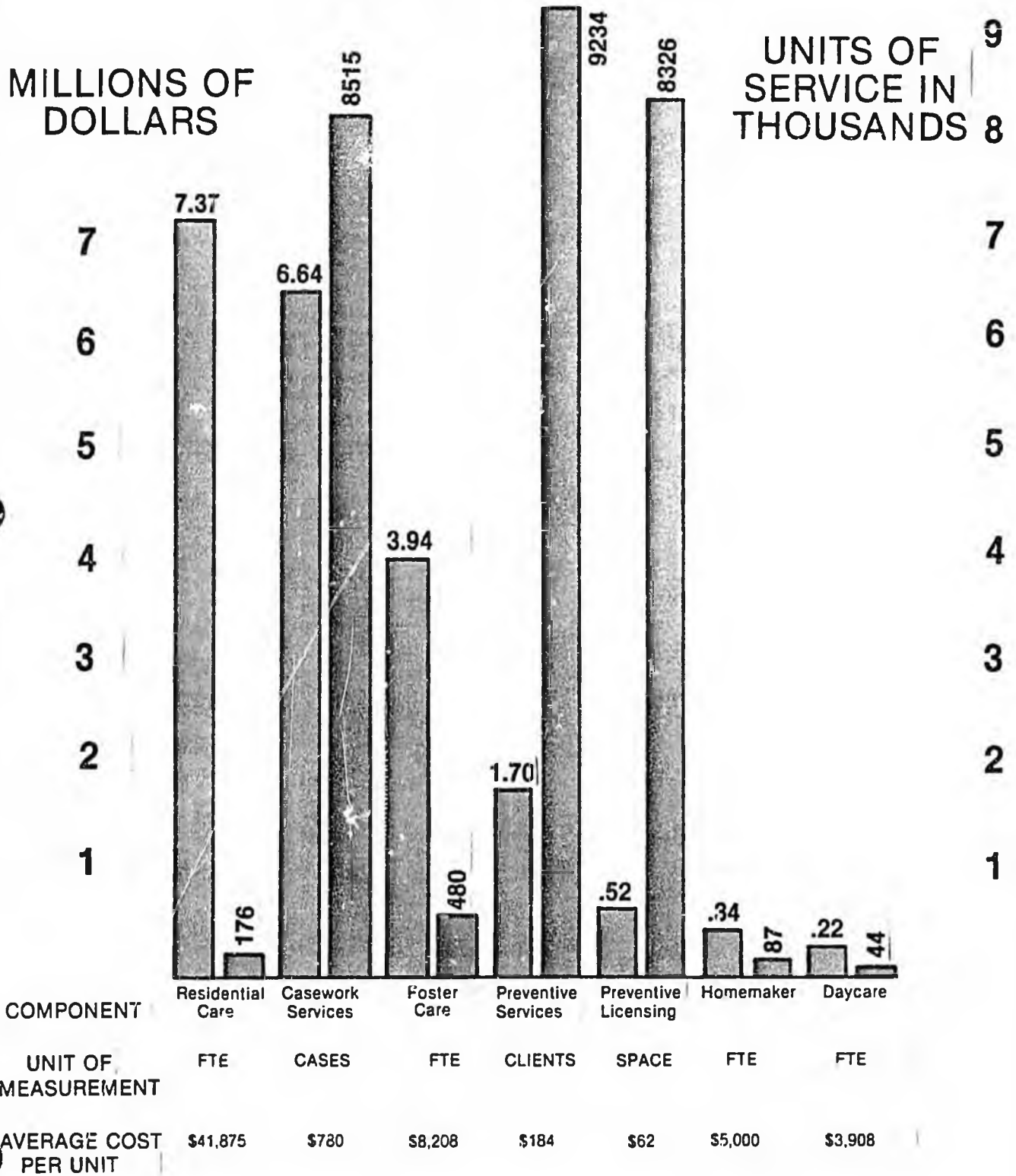
AVERAGE SOCIAL WORKER CASELOAD BY OFFICE



NEEDED SOCIAL WORKERS BY OFFICE



ACTUAL RESOURCE ALLOCATION — FY83 (\$20,728,900)

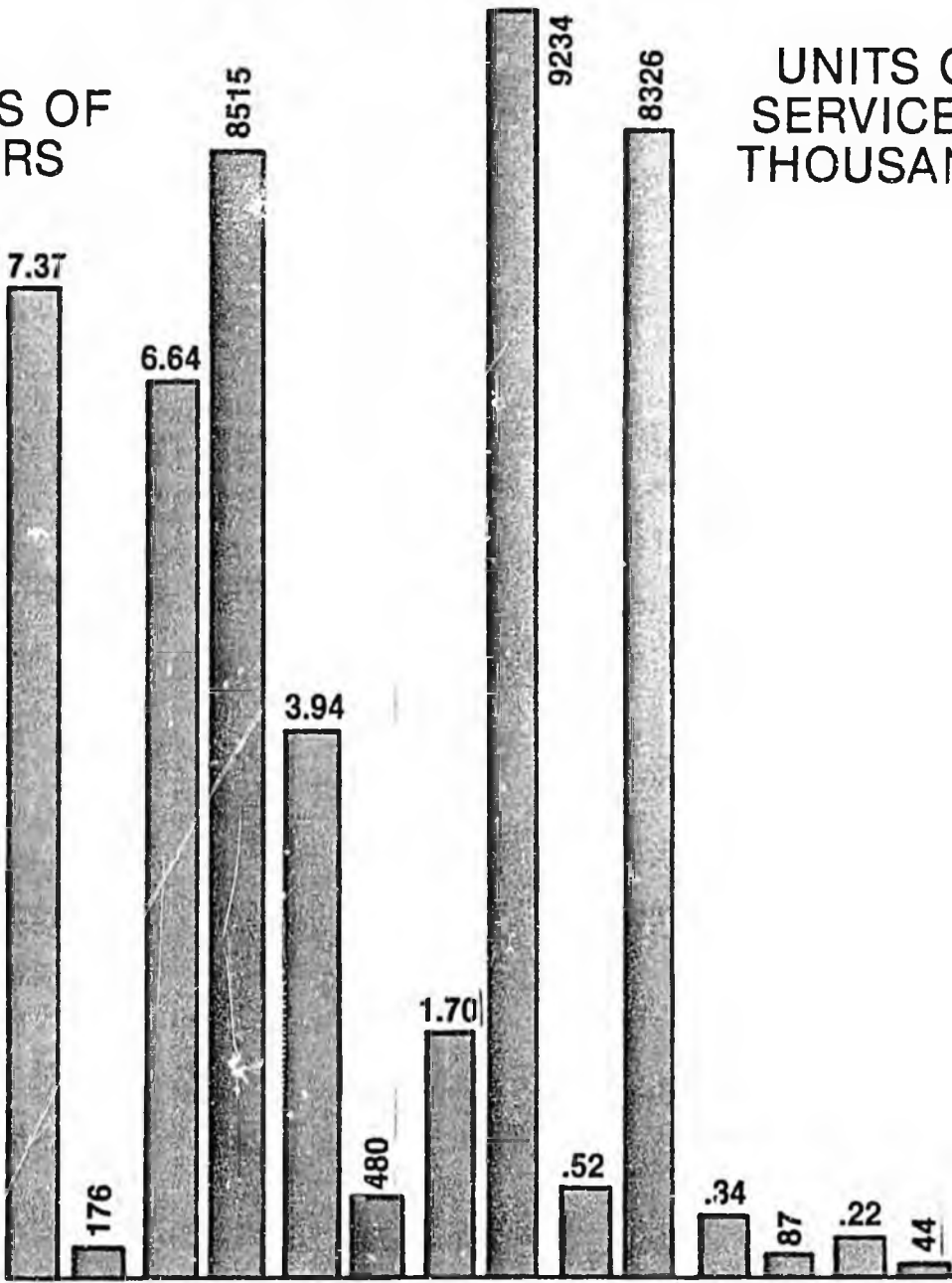


MILLIONS OF DOLLARS

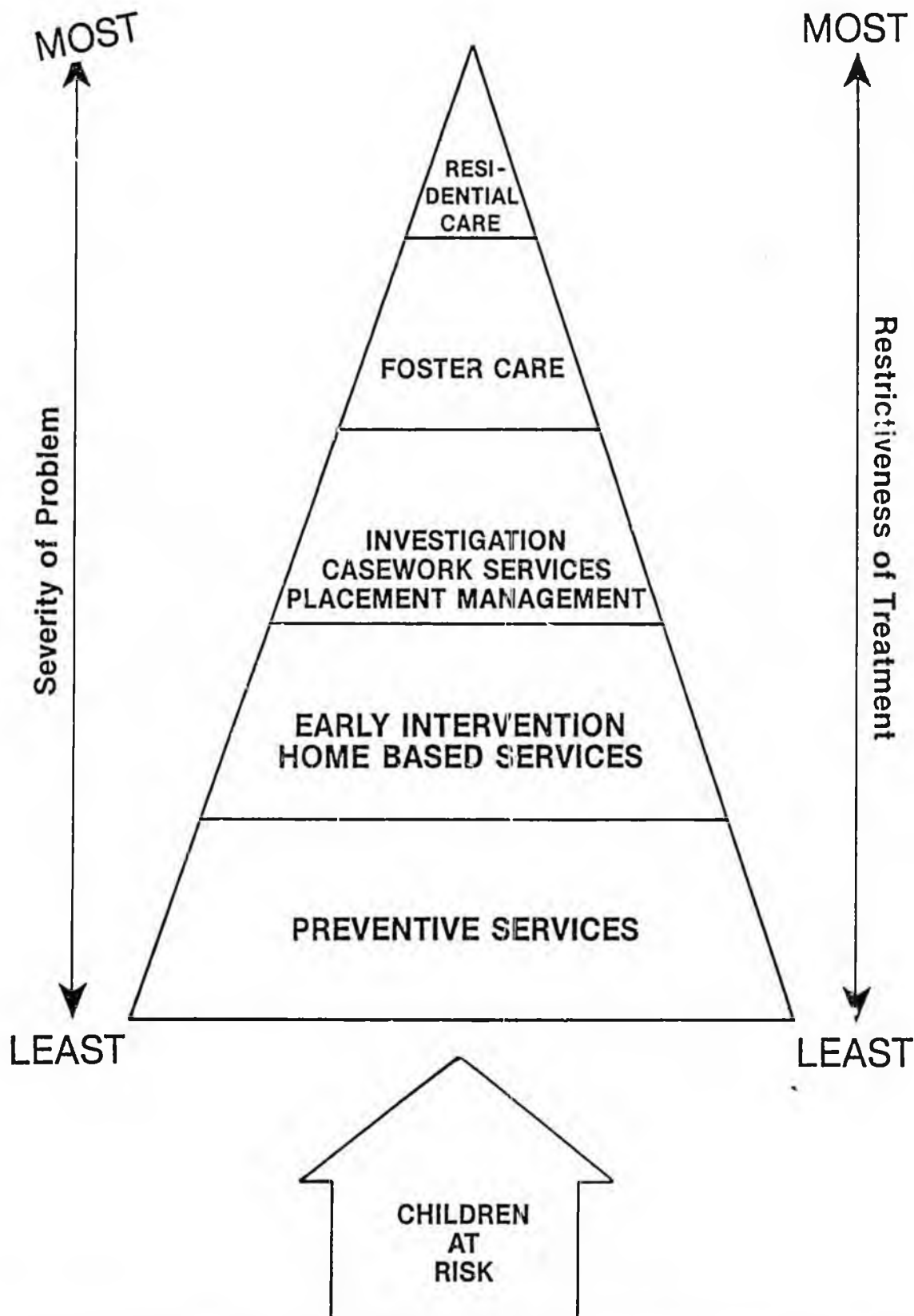
UNITS OF SERVICE IN THOUSANDS

7
6
5
4
3
2
1

9
8
7
6
5
4
3
2
1



SERVICE CONTINUUM



465-3500 Marsha Hubbard
Special Assistant for Health & Social Services
Office of the Governor
POUCH A
Juneau, Alaska 99811

264-6549 Patrick Burke-Reinhart
Staff MOA Commission on Youth
Department of Social Services
POUCH 6-650
Anchorage, Alaska 99502

Bill Wood Chair
563 4444

LAW ENFORCEMENT

465-4322 Robert Sundberg, Commissioner
Department of Public Safety
POUCH N
Juneau, Alaska 99811

269-5644 Col Michael Kolivosky
Director
Alaska State Troopers
PO BOX 6188 Annex
Anchorage, AK 99502

264-4389 Brian Porter
Chief of Police
Anchorage Police Department
625 C Street
Anchorage, Alaska 99501

264-4125 SGT Bob Foster
Youth Services
Anchorage Police Department
625 C Street
Anchorage, Alaska 99501

283-7879 Chief Richard Ross
President
Alaska Chiefs of Police Association
107 South Willow Street
Kenai, Alaska 99611

279-1441 Capt Del Smith
Sect'y/Treasurer
AK Chiefs of Police Association
Anchorage Police Department
625 C Street
Anchorage, Alaska 99501

283-7879 SGT Lonnie Kalar
President
Alaska Peace Officers Association
PO BOX 10-3520
ANCHORAGE, AK 99510

561-1158 Holli Ploog
AK Peace Officers Association
701 W 58th
Anchorage, AK 99502

DEFENSE

179-7541 Dana Fabe
Public Defender
Department of Administration
900 W 5th Ave Suite 200
Anchorage, AK 99501

274-1684 Brant McGee
Public Advocate
Department of Administration
941 W 4th 3rd Floor
Anchorage, AK 99501

272-9431 Robert Hickerson
Alaska Legal Services
550 W 8th Suite 200
Anchorage, Alaska 99501

PROSECUTION

465-3600 Norm Gorsuch
Attorney General
POUCH K
Juneau, Alaska 99811

465-3600 Elizabeth Shaw
Assistant Attorney General
Department of Law
POUCH K
Juneau, Alaska 99811

465-3428 Dan Hickey
Chief Prosecutor
Department of Law
POUCH KC
Juneau, Alaska 99811

277-8622 Vic Krumm
District Attorney
Department of Law
1031 W 4th Ave Suite 520
Anchorage, AK 99501

264-4545 Jerry Wertzbaugher
Municipal Attorney
Municipality of Anchorage
POUCH 6-650
Anchorage, AK 99502

COURT SYSTEM

264-0545 Ric Barrier
Director of Operations
Alaska Court System
303 K Street
Anchorage, Alaska 99501

264-0415 Al Szal
Area Court Administrator
AK Superior Court
303 K Street
Anchorage, Alaska 99501

264-0422 Jay Warner
Intake Officer
Juvenile Intake
Alaska Court System
303 K Street Rm 219
Anchorage, Alaska 99501

William Hitchcock
Standing Master
Alaska Court System
303 K Street
Anchorage, AK 99501

DEPT OF HEALTH & SOCIAL SERVICES

465-3030 John Pugh, Commissioner
Department of Health & Social Services
POUCH H-01
Juneau, Alaska 99811

465-3170 Michael Price
Director
Division of Family & Youth Services
Department of Health & Social Services
POUCH H-05
Juneau, Alaska 99811

274-4671 Dave Arnold
Youth Services Administrator
Division of Family & Youth Services
Department of Health & Social Services
437 E Street
Anchorage, Alaska 99501

279-0516 Richard Illias
Regional Manager
Youth Services Section
Department of Health & Social Services
400 Gambell Suite 300
Anchorage, Alaska 99501

Jim Orr
Juvenile Justice & Delinquency Prevention Advisory Committee
Youth Services Section Division of Family & Youth Services
Department of Health and Social Services
437 E Street
Anchorage, Alaska 99501

561-1433 Jerry Jackowski, Superintendent
McLaughlin Youth Center
2600 Providence Drive
Anchorage, Alaska 99508

NON GOVERNMENT GROUPS

346-2101 Tom Gunderson, Acting Director
Alaska Children's Services
4600 Abbott Road
Anchorage, Alaska 99507

337-7824 Barbara Nutt
AK Foster Parents Association
8320 E 12th Court
Anchorage, AK 99504

Rita Schmidt
Anchorage Foster Parents Association
SR 2 BOX 104
Ravensview Loop Road
Chugicak, Alaska 99567

274-6541 Shelia Gaddis
Executive Director
Alaska Youth Advocates
600 Cordova
Anchorage, Alaska 99501

279-0552 George Mason
Family Connection
1836 W Northern Lights Blvd
Anchorage, Alaska 99503

272-7469
272-1422 Randall Burns
Executive Director
Alaska Bar Association
310 K Street
Anchorage, Alaska 99501

279-5608 Diane Vallentine, President
Alaska Trial Lawyers Association
Vallentine & Giannini
540 L Street Suite 101
Anchorage, Alaska 99501

786-1810 Stephen Conn
School of Justice
University of Alaska
3211 Providence Drive
Anchorage, Alaska 99508

333-9561 Dr Stephen Daeschner
Asst. Superintendent for Instruction
Anchorage School District
POUCH 6614
Anchorage, Alaska 99502

JUDGE KLEINFELDER
PROFESSOR OF SOCIAL WORK
M.A.
3211 PROVIDENCE DR.
08

1/10/85

Summary

PMR sent letter requesting suggestions for changes to Juvenile Code. Kevin Bruce had done this for him several years ago. They had recieved several practical ideas for legislation.

Letter was sent to list attached to file folder.

Responses are enclosed. Generally, they refer to the work being done on crimes against children not to handling of delinquents.

drop list of agencies involved
write letter

HIST: July 75 formed Children's Code Task Force [joint by Council & Office of the
Fall 76 final report
Sept 77 med recommendations adopted
(per Richard's ideas, w/ Howard's input)

Emergency task force currently stuck
what are they
juvenile justice & delinquency
advisory committee
exp. by 8/85

PHSS account

protecting family unit

duration of T.M.

To 100% or higher risk
of #
rate of recidivism
custody
treatment plan

1/10/84
- 100% or higher risk
- 100% or higher risk
- 100% or higher risk
- 100% or higher risk
- 100% or higher risk

"In an ideal world" perspective

Howard

11/2/84 - letter sent
what is Howard doing

LIST - Juveniles
FILL-IN - Juveniles

REQUEST STATUS

Justice: JUVENILE FINGERPRINTING

NAME
PHONE
ADDRESS

PMR

REQUEST DATE
REQUEST:

STATUS:

264-4389

BRIAN PORTER
Chief of Police
211 W 7th
99501

not to be used
LADOTTE

3rd District, Anchorage, Alaska 99501
B. Porter, 211 W 7th St, Anchorage, Alaska 99501

561-1158

Holli Ploog
701 W 58th
99502

AK Police Chiefs Assn.
Eric Ross, Pres
Red Smith, Secy/Treas

AK Peace Officers Assn
ANC Police DEPT ASSO.
EMPLOYERS

Pres: [unclear] 4174

TROOPERS

DoA

279-7541

Dana Fabre
Public Defender
900 W. 5th Ave SUITE 200
01

10 - whole pt of fingerprint system is not used in that branch
inappropriate

274-1684

BRANT MAGEE
Public Advocate
941 W 4th 3rd Floor
01

DEPT OF LAW

465-3428 DAN HICKEY
Chief PROSECUTOR
POUCH KC

465-3600 ELIZABETH SHAW
ASST. A.G.
POUCH K

277-8622 VIC KRUMM
D.A.
1031 W 4th Ave Suite 520

Robert BUNDY
Chief Asst. D.A.

CRT SYSTEM

264-0422 JAY WARNER
JUVENILE CRT INTAKE OFFICER
3031K St 215 Rm (01)
In ad of Intake

informant protocol
plus vid/court

Wm HITCHCOCK Stang
Asst. JUVENILE CRT MASTER
3031K (01)

CRT SYSTEM

264-0545 RIC BARRIER
Dir. of Operations
3031K Street (01)

letter to him regarding policy

264-0406 SUPERIOR COURT
MARK ROWLAND
PRESIDING JUDGE

AL SZAL 264-0415
ARBA CRT ADMR

DHSS

274-4671 DAVE ARNOLD
Youth Services Adm.
437 E ST

274-1457
274-1458

279-0516 Richard Illies
Youth Services
400 GAMBELL
Presider Office - ?

Reg Myr
95 St
301

274-6541 SHEILA GARDIS
ALASKA YOUTH ADVOCATES
WOODCRODVA 01