ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4753 HJUD SB 78 - SB 79

325

SB

78

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD. 5-7-87 1:30 p.m.

HOUSE COMMITTEE REPORT

ate referred: 4/29/87

FURTHER REFERRALS:

DATE: 5-7-87

e Judiciary Committee has considered CSSB 78(SA)

n Act relating to unauthorized use of handicapped parking."

COMMENDS:

[✓] replace with HCS CS SB 78(Jud) [ ] the same title

[ ] attached amendment(s) [ ] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

OPTS: [ ] _____ letter of intent

TACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[-] same as previous zero fiscal note published 1-29-87

GNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

A M E N D M E N T

Offered in the HOUSE
TO: HCS CS SB78 (HESS)

Page 1, Line 19:

After "AS 28.10.495" Add:

", or a special license plate issued to disabled or handicapped persons by the department under AS 28.10.181(d),"

Temporary Permit

Adopted by Judiciary

Alaska State Legislature
Senate

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

April 1, 1987

CSSB 78

An Act relating to unauthorized use of handicapped parking.

Sponsor Synopsis

This bill will give the state troopers the authority to give tickets and the court system the jurisdiction to collect fines in areas where there is not a municipal ordinance covering handicapped parking.

There are now areas where there are no ordinances. CSSB-56 will allow for state enforcement in those areas, thus closing a loophole in present law.

The bill also sets up a statutory fine schedule. An offender will be fined no less than $100.00 for parking in a handicapped parking place (since this is an infraction the maximum fine will be $300.00).

The Department of Motor Vehicles supports this legislation as necessary for enforcing unauthorized use of handicapped parking. The State Troopers also supprort the bill.

This bill is a step toward making life a bit simpler and easier for the handicapped by enacting a deterrent to unlawfully parking in handicapped spaces.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M April 28, 1987

SUBJECT: Sectional analysis - HCSCSSB 78(HESS)

TO: Representative Niilo Koponen

FROM: Michael F. Ford
Legislative Counsel

The following is a section by section analysis of HCSCSSB 78(HESS):

Section 1 - Prohibits a person from using a handicapped parking permit except when transporting the disabled or handicapped person. Requires the permit be returned to the department upon death of the disabled or handicapped person.

Section 2 - Prohibits parking in a space reserved for the handicapped or disabled unless the person has special permit or license plate issued by the department or by another state, province, territory, or country. Establishes a penalty of not less than $100 for each violation.

MFF:mkr
m11/080

BILL NO: HCS CSSB 78 (HESS)

DATE: 5/5/87

TITLE: "An Act relating to unauthorized use of handicapped parking."

CONTACT: Maj. Walter J. Gilmour
Acting Director
Alaska State Troopers

DEPARTMENT OF PUBLIC SAFETY

To provide a section in the Alaska statut making illegal parking in a handicapped parking space an infracture and setting forth a minimum fine. Also, to provide for return of mits upon death of the permittee.

This proposed legislation provides a separate section for unauthorized parking in a handicapped parking space and provides a minimum $100.00 fine. This legislation will greatly discourage those who have a tendency to utilize these reserved parking places and hopefully reduce the growing number of infractions presently taking place statewide.

Perhaps consideration should be given to including provisions to impound the vehicle in violation at the expense of the owner.

The Department of Public Safety supports passage of this legislation.

ARTHUR ENGLISH
Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HCSCSSB78(HESS)

REQUEST
Revision Date:
Title: "An Act relating to unauthorized use of handicapped parking."
Sponsor: Sen. Kerttula
Requestor: House Judiciary

Publish Date:
Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR
5/6/87

Prepared by: Francis C. Allan
Phone: 269-5691
Division: Alaska State Troopers
Date: 5/5/87

Approved by Commissioner: Arthur English
Date: 5/7/87
Agency: Public Safety

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

page ____ of ____

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

SENATE
BILL VERSION: CSSB 78(SA)
PUBLISH DATE: 3/16/87

REQUEST:

Revision Date:
Title: An Act Relating to Handicap Parking
Sponsor: Kerttula
Requestor: Senate Judiciary

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS:

No fiscal impact.

Prepared by: Robert G. Fisher, Fiscal Officer
Division: Alaska Court System
Phone: 264-8215
Date: 1-28-87

Approved by: Stephanie J. Cole, Deputy Director
Agency: Alaska Court System
Date: 1-28-87

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 11, 1987

MEMORANDUM

TO: Representative Niilo Koponen

ATTN: Lisa McLaren

FROM: Karla Hart
Legislative Analyst

RE: **Handicapped Parking for Interstate Visitors**
Research Request 87.103

You requested information regarding parking permits for handicapped visitors to Alaska and for handicapped Alaskans visiting other states. For handicapped visitors to obtain an Alaska permit for handicapped parking, they must have an Alaska-licensed physician complete an Affidavit of Handicap or Disability (Form 12-861) and return it to the Division of Motor Vehicles within the Department of Public Safety. The permit will then be issued immediately.

At this time, there is no Alaska statute requiring a handicapped license or permit to park in handicapped parking spaces. Most local governments have ordinances governing handicapped parking. The Alaska State Troopers currently cite vehicles wrongly parked in handicapped spaces outside of local jurisdictions. The violation carries a five to ten dollar fine. Committe **Substitute for Senate Bill 78 (State Affairs)** would restrict the use of handicapped parking places to those persons holding an **Alaska permit or license plate** and impose a fine of not less than $100 for violations.

Interstate Agreements

Many states have **reciprocity** agreements for handicapped parking (see Attachment A). Washington State's statute reads:

> 46.16.390 Special plate, card, or decal issued by another jurisdiction. A special license plate, card, or decal issued by another state or country that indicates an occupant of the vehicle is disabled, entitles the vehicle on or in which it is displayed and being used to transport the disabled person to lawfully park in a parking place reserved for physically disabled persons.

Oregon has individual reciprocity agreements with 13 other states at this time. They are sending information on how Alaska can enter into an agreement with them. Several states recognize any permit that displays the international symbol of access (wheelchair logo). Although Alaska does not have any reciprocity agreements, the Division of Motor Vehicles said any state or country's permit displaying the international symbol is currently honored by the Troopers and local police.

Types of Permits

Several states offer various forms of placards and stickers which individuals can take with them as they travel. Nevada offers residents a choice of a license plate (permanently attached to a single vehicle) or a plastic or metal permit which is transferable between vehicles and allows a person to use handicapped parking privileges regardless of what vehicle they are using (including a rental).

Texas handicapped permits are issued by the counties. Individuals may purchase their choice of stickers, cardboard tags (to be used in any vehicle and in other states with reciprocity agreements) or disabled plates from the State Motor Vehicle Division. Texas honors any other state or country's permits.

Federal Recommendations

Public Law 98-78, Title III, Section 321, August 15, 1983 addresses handicapped parking and states that Congress encourages each of the several states to:

1) adopt the International Symbol of Access as the only recognized and adopted symbol to be used to identify vehicles carrying those citizens with acknowledged physical impairments;

2) grant to vehicles displaying this symbol the special parking privileges which a State may provide; and

3) permit the International Symbol of Access to appear either on a specialized license plate, or on a specialized placard.

The statute also encouraged States to enter into agreements of reciprocity relating to special parking privileges for handicapped people so as to:

1) facilitate the free and unencumbered use between the several States, of the special parking privileges afforded those people with acknowledged handicapped conditions, without regard to the State of residence of the handicapped person utilizing such privilege;

2) improve the ease of law enforcement in each State of its special parking privileges and to facilitate the handling of violators; and

3) ensure that motor vehicles carrying individuals with acknowledged handicapped conditions be given fair and predictable treatment throughout the Nation.

The Congressional Research Service report **Parking and Licensing of Motor Vehicles Used by Handicapped Persons: A Comparison of Model Regulations and Other Existing Standards** (Attachment B) provides more information and a copy of the public law. Abuse of handicapped parking privileges, is addressed in Attachment C which is an article from a Kansas newspaper.

If you have further questions, please call.

KH

Attachments

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 14, 1987

MEMORANDUM

TO: Representative Niilo Koponen

ATTN: Lisa McLaren

FROM: Karla Hart KH
Legislative Analyst

RE: Handicapped Parking Regulations
Research Request 87.260

You requested information to be used in preparing legislation on handicapped parking. Each of your questions is addressed below.

Handicapped Parking Permits Currently Issued in Alaska

Handicapped permits are currently issued in Alaska by the **Division of Motor Vehicles (DMV), Department of Public Safety.** Applicants must present a statement by an Alaska-licensed physician stating the need for handicapped parking privileges. Applicants then receive their choice of a license plate or a heavy paper permit, both with the international symbol of access (wheelchair logo). The paper permit is assigned to an individual rather than a vehicle. Unless the doctor specifies that the handicap is of a temporary nature, the permit is issued for an indefinite period of time. There is no charge for the permit, and the license plate fee is the same as for a standard plate.

The **Juneau Police Department** issues permits that are valid only within the Juneau city and borough. A physician's statement of need is required and the permit is issued for a set period of time, requiring regular renewals. The permit is the same as that issued for legislators, delivery vans, and others who are allowed special parking privileges; it does not display the wheelchair logo. The Chief of Police stated that he would be glad to have the State handle the issuance of all handicapped permits. Police departments in Anchorage, Fairbanks and Ketchikan were also contacted. None of these communities issue any sort of handicapped permit, they refer all inquiries for permits to DMV.

The **Division of Vocational Rehabilitation, in the Department of Education,** has also been giving handicapped parking decals--wheelchair logo stickers to affix to a car bumper or window--to their clients who they believe are in need of handicapped parking privileges. This

distribution is apparently handled differently at each vocational rehabilitation office in the state. Pat Young, Deputy Director of Vocational Rehabilitation, was unaware that permits were available free of charge at DMV. He indicated that he would have no objection to letting DMV handle the distribution of all handicapped parking permits.

Permit Styles

Handicapped permit styles used in various states include: license plates; plastic, metal or cardboard permits to place in the dash; metal "taglets" affixed to license plates; stickers placed in specified car windows; and annual validation stickers which include the wheelchair logo. Glenn Turner, Chairman of the American Association of Motor Vehicle Administrators' Ad Hoc Committee on Handicapped Reciprocity, felt the ideal permit may be one similar to that used in Louisiana--a laminated cardboard permit approximately twice as large as a driver's license which is hung from the rear view mirror. This permit is visible from the back of the vehicle or the front, making enforcement easier. The size is such that it is easily transferred from vehicle to vehicle. Louisiana requires that permit holders also carry an identification card with them to prevent abuse of permit privileges.

Permit Fees and Renewals

Mr. Turner said that fees for handicapped parking permits generally range from one to five dollars. For example, Florida's permits are five dollars, with two dollars going to county tag agents for issuing permits and three dollars to the state. No serious complaints have been made regarding the fee in Florida. Mr. Young foresaw no problem with charging a nominal fee to cover the cost of issuing handicapped parking permits in Alaska, as long as the fee was set to cover costs and not to generate revenue for the State.

Florida found that permits issued indefinitely were subject to a great deal of abuse. A person purchasing a car with a handicapped sticker in place could park in handicapped spaces, or the family of a deceased handicapped permit holder could continue to use the permit. Florida currently requires an annual renewal, although Mr. Turner said legislation has been introduced to renew permits biennially. A doctor's authorization is required only with the initial application.

Penalties for Handicapped Parking Violations

Handicapped parking violations generally result in the issuance of a uniform traffic citation and fines range from $15 to $50 according to Mr. Turner. In Florida, the counties elected to add a fee of $100 as an extra deterrent to individuals who may be willing to risk getting a small parking fine.

An issue related to penalties is the treatment of handicapped permit holders who fail to display the proper permit and are ticketed. Options include: forgiving the entire penalty if proof of a valid permit is submitted to the ticketing agency within a specified period of time; requiring payment of a token fine to encourage individuals to remember to display permits; and, leaving the disposition of the ticket up to the licensing authority.

Posting of Handicapped Parking Spaces

You were concerned that handicapped parking spaces be signed in such a manner that winter conditions would not obscure the sign. The Department of Transportation requires that a handicapped posting be visible when a vehicle is parked in the space. This also assures that under normal snow conditions, a sign would not be snow covered. The City and Borough of Juneau has recently introduced standards for signing handicapped parking spaces (Attachment).

I hope this information is helpful. If you have additional questions, please call.

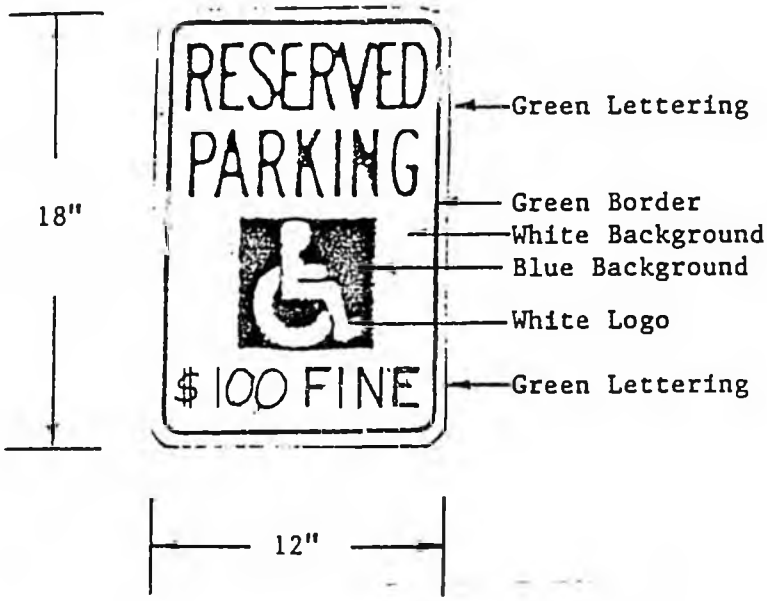
Attachment

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

HANDI-CAP PARKING STANDARDS

The owner or his representative in control of private property which is open to the public may establish legally enforceable handi-cap parking zones by placing privately owned traffic control devices in a manner as approved by a municipality, or as outlined in the Manual of Uniform Traffic Control Devices.

The approved signs used for establishing a handi-cap parking zone shall be twelve inches wide by eighteen inches high (12"x 18"). They shall have a white background with green lettering and borders. The handi-cap logo shall be white with a blue background. Wording shall be as shown below.



155 South Seward Street, Juneau, Alaska 99801

If the handi-cap parking zone is to be established along a private street or roadway, the zone shall be posted by placing a designated sign at both the beginning and end of the zone. The zone should be a minimum of fifteen feet (15') in length and have the curb painted blue the full length of the zone. In addition to this, a blue thirty-eight inch square (38 x 38") handi-cap logo must be painted on the pavement in the center of the zone.

A handi-cap parking zone established within a parking lot must have the designated sign posted so it is centered at the head of the parking space. Six inch (6") blue lines must be painted on both sides of the space and at the head of the space. If either side or the head of the space is adjacent to the curb this should be painted blue. In addition, the blue thirty-eight inch square (38" x 38") handi-cap logo must be painted on the pavement in the center of the space. The space should be a minimum of ten feet (10') wide to allow proper access.

If the signs are posted on poles or posts where they could interfere with or be a hazard to foot traffic, the bottom of the sign should be placed a minimum of seven feet (7') off of the surface. If the sign is placed flush on a building wall the bottom of the sign should be three feet (3') off of the paved surface.

The C.B.J. Public Works Department will loan out our handi-cap logo stencil for pavement painting provided arrangements are made in advance. We will also supply the required signs at cost beginning May 1, 1987. For further information please contact us at 586-5254.

DN/jlh

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/20/87

FURTHER REFERRALS: Judiciary

DATE: 4/28/87

The Health, Education and Social Services Committee has considered CSSB 78(SA)

"An Act relating to unauthorized use of handicapped parking."

RECOMMENDS:

[ ] replace with H CS CSSB 78 (HESS)

[✓] the same title

[ ] a new title

[ ] attached amendment(s)

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ______ Committee

ADOPTS: [ ] ______ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ______

[✓] same as previous zero fiscal notes published ______

SIGNING DO PASS:

[signatures]

SIGNING OTHER RECOMMENDATIONS:

[signature]

Co-Chairman's signature

[signature]

Patrick M. Rodey
Senator

Alaska State Legislature

1024 W. 6th Avenue, Suite 308
Anchorage, Alaska 99501
(907) 276-6731

During Session:
Pouch V
Juneau, Alaska 99811
(907) 465-3717

Senate

MEMORANDUM

TO: All Members
House Health, Education and Social Services Committee

FROM: Senator Pat Rodey

DATE: February 5, 1988

RE: SB 79, "An Act relating to runaway and missing minors."

On Wednesday, February 10th, the House HESS Committee is scheduled to hear SB 79. As prime sponsor of SB 79, I am writing in advance to let you know of my satisfaction with the proposed House HESS committee substitute for this bill, and to request your swift action in moving this bill forward.

In its' current form, SB 79 will provide greater flexibility for law enforcement officers dealing with runaways, and allows for temporary detention in very limited cases. The House HESS Committee substitute has added new language requiring the Department of Health and Social Services to review, inspect and approve all private runaway and homeless youth programs.

The Department of Health and Social Services, parent's rights groups, and Covenant House have worked together to develop this bill, and all support its' passage.

I appreciate your consideration and encourage you to call if you have any questions.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE CS FOR CS FOR SENATE BILL NO. 79 (HESS)

For an Act entitled: "An Act relating to runaway and missing minors."

NATURE AND SCOPE OF THE PROBLEM

The common perception that runaways are simply troublesome or disobedient youth who leave home for adventure is not supported by fact. Most runaways come from severely troubled homes. Others run from families in which parents lack skills in communication, conflict resolution, discipline, and other important parenting skills.

Studies both nationally and in Alaska indicate that youth run away from home in general because of:

1) family conflict;
2) physical or sexual abuse or neglect;
3) alcohol or drug abuse of a parent or the child;
4) school problems;
5) family instability or dysfunction.

The National Center for Missing and Exploited Children cites one study which found that 40% of runaways were physically abused in their homes and that 70% of female and 40% of male runaways were victims of sexual abuse. An estimated 20-30% of youth who are identified as runaways have actually been forced out of their homes.

There is no definitive data on the numbers of runaway youth in Alaska. The most thorough study to date focused only on the Anchorage area.[1] That study concluded that there are at least 1,200 known runaways in the Anchorage area and estimated that at least 3,600 youths run away or are forced from their homes in that area each year. Based on the Anchorage study, population distribution, and the distribution of runaways served by the Division of Family and Youth Services it can be estimated of that there are probably 2,400 and possibly as many as 7,000 runaways in Alaska each year.

Most youth who leave home without parental permission for at least 24 hours do so only once or twice and most (80%) return home voluntarily within 2-7 days. Only a small percentage become chronic runaways. Chronic runaways and the 20-30% of "runaway" youth who are forced from their homes - the castaways or throwaways - are the youth who are at highest risk of being victimized or committing a crime.

---

[1] Final Assessment Report, Runaway Support Network Project, Paul Wasserman, 1985.

EFFECTS OF HCSCSSB 79 (HESS)

Key provisions of this bill address several issues related to the problems of runaway and homeless youth and their families. These include:

Reporting

Section 1 would make the reporting of runaway and missing youth easier for parents by requiring police agencies to respond to telephonic as well as written requests to locate these youths. This could increase the usefulness of such reports to law enforcement agencies by making the reports more timely.

Placement of Runaways Taken into Custody

Section 1 makes changes in the placement options available when a runaway is taken into protective custody by a law enforcement agency. It maintains the ability of a youth to choose between returning home and other available placements. However, it requires that a parent consent to the return of a child to the home. This is intended to address parental concerns that they are now required to accept their child's return home and assume responsibility to care for the child even if they believe the child will be beyond their control when the law enforcement officer is no longer present. The Department does not support this provision viewing it as unnecessary, since parents can and do refuse to accept return of their children under present law, and as poor policy, potentially encouraging parents to shift parental responsibilities to the state. However, the Department would not oppose the bill solely because of this provision.

This Section also establishes two additional placement options to which police would be required to take a runaway child in protective custody. These are: 1) a "nearby location" agreed to by the child and parent, and 2) an approved runaway program. The first of these is intended to allow a child to be taken to a safe location (such as the home of a relative or family friend) when both the child and parent agree that the location is suitable and preferable to the child returning home. The second option would allow placement of a child in an approved runaway program defined in other sections of the bill. This allows the child another option beyond an office or contract agency of the Department.

Detention of Runaways

Section 2 would address the problem of protecting runaways who endanger themselves by allowing their temporary detention under certain limited circumstances. Runaways could be detained only by court order and only when: 1) a prior court order has been violated, 2) the youth's circumstances present a severe and imminent danger, and 3) no reasonable alternative to detention exists. Youth detained under these

circumstances could be held in youth facilities only - detention in a jail or other secure facility holding adult prisoners would be prohibited. A runaway detained under the proposed AS 47.10.141(c) must be brought before a court within 48 hours to determine if the youth is in civil contempt of court.

It is the understanding of the Department that it is intended that these youth not be subject to an adjudication of delinquency for contempt of court. In any event, it would be the policy of the Department not to initiate delinquency proceedings on the basis of a contempt of court citation in the absence of another delinquent act.

Development of Innovative Programs for Runaways

The bill would promote the development of innovative programs for runaway and homeless youth in several ways. It would:

1. define a specific type of program for runaway and homeless youth including the general requirements and some specific responsibilities of such programs;
2. establish within the Department of Health and Social Services review, inspection, and approval authority over such programs;
3. exempt from licensure approved runaway programs of the statutorily defined type;
4. immunize officers and employees of these programs from liability for civil damages for admission and release actions but not from reckless or intentional misconduct;
5. authorize the Department to award grants for the establishment and operation of approved programs;

The runaway programs defined by the bill could provide needed alternative placements for runaway youth where these youth could be safely sheltered and receive medical and counseling services while reunification efforts are begun. The mechanism of supporting these services through grants to approved programs has proven effective with other preventive services and is supported by the Department.

DEPARTMENT POSITION

The Department supports this bill as an effective means of addressing many of the troubling problems of runaway youth.

The development of much needed shelter services for runaway and homeless youth would be encouraged by the bill and the utilization of shelter and attendant reunification services by these youth may be increased by its provisions. By allowing youth to reside in approved facilities for 45 days without the consent of custodians, the bill establishes a non-punitive approach for these programs which may be viewed by runaway youth as safer and more attractive than other options. Increased use of

shelter and reunification services would also be encouraged by the provision establishing such facilities as a placement option for runaway youth taken into custody by police.

Importantly, the bill achieves a careful balance in its approach to the use of detention to protect runaways. The bill avoids the damaging and ineffective use of detention as a means of addressing the problems of most runaways by limiting the use of detention to those few chronic runaways whose behavior places them in clear danger. It also avoids the danger of over use of detention by requiring that detention occur only on order of the alternative exists. The bill provides a critical protection for these non-criminal youth by prohibiting their detention in adult jails avoiding the inherent dangers of mixing youths with adult prisoners.

RECOMMENDED: _____
Yvonne M. Chase, Director
Division of Family
and Youth Services

DATE: _____

APPROVED: _____
Myra M. Munson, Commissioner
Department of Health
and Social Services

DATE: 2-16-88

BILL NO: HCS CSSB 79 (HESS)

DATE: March 16, 1988

TITLE: An Act relating to runaway and missing minors.

CONTACT: Col. Robert E. Jent 269-5641

DEPARTMENT OF PUBLIC SAFETY

There is a need to have a solution for protecting minors other than to arrest and detain them. Society simply cannot allow runaway minors to seek shelter on the streets. These youngsters often commit criminal acts simply to survive, and they frequently become victims of crimes themselves.

This bill allows law enforcement to act in a preventative manner on behalf of the community and those reported minors who are avoiding legal custodial control, or are considered missing from their normal custodial situation, by requiring the minor to go to an appropriate housing facility and ultimately address the issues underlying the "running".

The Department supports this bill.

for Arthur English
Commissioner

POSITION PAPER
CSSB 79 (HESS)

APR 2 1 1987

This bill mandates the efforts of law enforcement agencies in locating runaway minors. The revised subsection (c) now also mandates the detention of the minor if the minor is a runaway in violation of a valid court order under subsection (f) and is posing a clear and present danger to the minor's own welfare.

The revised subsection (c) is a great improvement over previous language requiring a thirty-day detention of a second-time runaway. However, the current bill could result in the detention of first-time runaways because a standard order would be issued pursuant to subsection (f) listing the consequences of violation. Thus, a finding of violation of a court order would be easily made if the minor left the placement. Many, if not most, cases would involve a finding of "clear and present danger" because most children would present a danger to themselves if not living in a safe environment.

If the primary purpose of the bill is to provide for the detention of chronic runaways, then language requiring a finding under subsection (c) that the child had exhibited previous runaway behavior would assure that detention would be used only for repeat runaways.

The Office of Public Advocacy would support CSSB 79 (HESS) if the statute expressly targeted the limited population of chronic runaways.

Brant McGee, Director
Office of Public Advocacy

Date

Commissioner Garrey Peska
Department of Administration

2/17/87
Date

1/2D1/0410-09/1

UNIVERSITY OF ALASKA, ANCHORAGE
3211 Providence Dr
Anchorage, Alaska 99

MAR 04 1988

COLLEGE OF ARTS AND SCIENCES
DEPARTMENT OF SOCIAL WORK

February 29, 1988

PWP in SB79 file.

Representative John Sund, Chair
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re:CSSB79-Runaway Minors

Dear Representative Sund,

This letter is intended to advise you of my support for the provisions in CSSB79 which will enable the Department of Health & Social Services to facillitate the development of programs and services for runaway minors.

At the same time I am also concerned about Sec. 2 of the Bill and its potential for violation of the constitutional rights of minors adjudicated Child In Need of Aid under AS 47.10.080. At present, incarceration in McLaughlin Youth Cener is not one of the dispositional alternatives possible for a Child In Need of Aid because the child has not broken the law and therefore cannot be deprived of her/his constitutional right to liberty. Yet, Sec.2 of CSSB 79 would appear to permit such an alternative if the child violates a court order which requires that he/she remain in the placement ordered by the Department of Health & Social Services. To provide for institutionalizing children adjudicated delinquent who violate a court order not to run away is alredy permitted under present statutes , but to do so for children who have not broken the law would be a mistake in my opinion. I realize that CSSB 79 intends that such an alternative would only be utilized in the most extreme cases where "no reasonable placement alternative" exists, but the constitutionality still seems questionable.

I believe that the House Judiciary Committee should consider amending CSSB79 to limit the provisions of Sec. 2 to only those minors who have been adjudicated delinquent or eliminate it altogether.

If the Committee decides to retain Sec. 2 it would also seem advisable that the statute delineate the possible consequences of a contempt of court finding so that minors can be made aware of actions that the court may take while at the same time providing guidance for the court in these situations.

Sec. 3 of the Bill also raises some concerns about situations where the minor might have had good reason to run from a Department arranged placement. Nor does it require that consideration be given to such possibility before the court holds the minor in contempt. I would urge the Committee to consider amending CSSB 79 to require such consideration and make it part of the court record in a contempt hearing.

I would very much appreciate notification regarding future hearings on

CSSB 79 so that I could give testimony on these issues. The portions of the Bill which support the development of ruaway shelters and other runaway services is badly needed in Alaska and should proceed to final passage as rapidly as possible.

Thank you for your consideration of my concerns regarding CSSB 79 and the issue of runaway minors.

Sincerely,

Pudge Kleinkauf

Cecilia "Pudge" Kleinkauf, MSW, ACSW
Associate Professor and Chair
Department of Social Work

COVENANT HOUSE UNDER 21
460 WEST 41 STREET
NEW YORK, N.Y. 10036
(212) 613-0300

THE INSTITUTE FOR YOUTH ADVOCACY

December 10, 1987

Jim Nordlund
Office of Rep. Johnny Ellis
3111 C Street, Suite 455
Anchorage, Alaska 99503

Re: Runaway Legislation

Dear Jim:

As we discussed over the phone, I am enclosing, with some trepidation, some tentative language on protective custody of runaways. The basis for this language is, of course, Senate Bill No. 79, Section 2, but the enclosed proposal includes substantial modifications of the original version.

All of us in this field view secure detention of runaways with a jaundiced eye; it is almost never a treatment strategy of choice. Nevertheless we are all forced to concede that some runaways--an extremely tiny minority, but not an insignificant absolute number--are embarked on a course so clearly self-destructive that all other hopes for them pale beside the need simply to keep them alive. In rare instances, it is impossible to deny that protective custody of short duration and in carefully controlled conditions can be a crucial legal implement.

The enclosed language attempts to recognize the need for the existence of such a remedy and the need to make its use extremely unusual. Such balancing does not lend itself to utter simplicity of language, but I hope the redefined standard is a clear one. Certainly this is an issue which we are all likely to be still struggling over 20 years hence, but perhaps some imperfect but manageable compromise is possible in the interim.

Please don't construe this proposal as an official Covenant House document; I have had no time to allow it to be reviewed carefully by other senior staff here, and Fr. Ritter has not been available to review it either. Still it does suggest, I think, our general view that absolutes on both sides of the secure-detention issue are mistaken, and that our best bet is to allow some leeway for case-by-case consideration of endangered runaways under clear and stringent standards.

I look forward to talking to you and to the Committee on Monday, and am deeply grateful for your superb work on this matter to date. All best, and thanks.

Yours sincerely,

Gregory A. Loken

Enc.

Protective Custody

Sec. 2. AS 47.10.141 is amended by adding a new subsection to read:

(c) A minor may be taken into protective custody by a peace officer and placed into temporary detention in a juvenile detention facility if there has been an order issued by a court upon a finding of probable cause that: (1) the minor is a runaway in violation of a valid court order issued under AS 47.10.142(f), (2) the minor's current situation poses a severe and imminent risk to the minor's health or safety, and (3) no reasonable placement alternative exists within the community. For the purposes of this subsection, a risk shall not be considered "severe and imminent" based solely on general conditions for runaway minors in the community, but must be assessed in view of the specific behavior and situation of the minor at issue. A minor detained under this subsection shall be brought before a court within 48 hours after the detention for a hearing to determine whether the minor is in civil contempt of court under AS 09.50.010(5). On no account may protective custody include placement of a minor in any jail or secure facility other than a licensed juvenile detention facility, nor may an order for such custody be enforced against a minor currently residing in a duly licensed runaway and homeless youth program.

The Honorable John Sund
House Judiciary Committee
P.O. Box V
Juneau, Ak. 99811

FEB 29 1988

February 26, 1988

Re: SB 79 (Hess) "An Act relating to runaway and missing minors

Dear Representative Sund,

Having recently obtained a Work Draft of SB 79, I feel compelled to write and urge its passage based upon personal experience, as well as recommend related statute changes.

When in January of this year our sixteen year old daughter ran away, we quickly learned that her age was a liability to our finding and recovering her. Even when we learned of her whereabouts, the Juneau Police could not legally enter the premises and remove her, even though she was living with a nineteen year old man -- AN ADULT. Under Alaska's existing laws, she can pretty much do as she pleases, when, where and with whom, so long as she does not violate a criminal law! Because she knows this, our hands are tied in keeping her under control or imposing reasonable limits and curfews upon her.

While some are, not all runaway children are from abusive, alcoholic or drug addicted households -- nor are these children all drug/alcohol abusers. Some, like our daughter, are rebellious in their endeavor to grow up quickly, but lack restraint and common sense. She has admitted to experimenting with alcohol and drugs, but her main complaint is that we are "unfair" to impose a midnight weekend curfew on her. Consequently, if she doesn't wish to come home on time she has chosen not to return all night, encouraged to stay by her nineteen year old boyfriend.

I do not believe you can enact effective new runaway legislation which defines runaway minor as "a person under 18 years of age," without ammending the statutory age of consent. These statutes are very closely related to the runaway minor problem, but exclude those over the age of 16 except in specific circumstances:

Section 11.51.130. Contributing the delinquency of a minor, if
"...being 19 years of age or older, the person
(5) aids, induces, causes, or encourages a child under 16 years of age to be absent from the custody of a parent, guardian, or custodian or to be repeatedly absent from school, without just cause."

Our daughter was aided and encouraged on the run for eleven days: four days by an adult woman; seven by a nineteen year old man -- neither saw fit to call and let us know of her whereabouts or welfare. And, she missed six days of school during this period, "without just cause," but this law, due to her age, precludes our doing anything about it.

If a minor is to be defined as a person under 18 years of age, this statute should be ammended to read:

> "...being 18 years of age or older, the person (5) aids, induces, causes, or encourages a child under 18 years of age to be absent from the custody of a parent, guardian, or custodian..."

Sec.11.41.434, 11.41.436 -- Sexual abuse of a minor in the first and second degree, protect children under the age of 16, however, both state:

> "...being 18 years of age or older, the offender engages in sexual penetration (contact) with a person who is under 18 years of age and who
> (A) is entrusted to the offender's care by authority of law; or
> (B) is the offender's son or daughter...;

I am appalled to see that the State feels a need to protect only those under 18 whom the State has "entrusted to the offender's care by authority of law...is the offender's son or daughter..." Why only protect children under the State's care, and not ones over 16 but under 18 unless they fit into these exclusive categories?

I believe these sections should be ammended to read:

> "...being 18 years of age or older, the offender engages in sexual penetration (contact) with a person who is under 18 years of age and not the wife/husband of the perpetrator."

This would eliminate the need for an "and who", protecting all minor children.

ALL CHILDREN deserve equal protection under the law. That we are not alone in this plight -- having a child whose age excludes her from protection under existing law, thereby depriving us of parental authority to restrict her activities and behavior -- makes it all the more deplorable!

As parents we should have the right to demand this protection for our children; we are legally responsible for them until they reach age 18. What we have now undermines the morality of the child and sanctity of family...Encourages rebellious behavior, and gives parents no legal recourse if their child falls under the influence of, or is sexually exploited by an adult.

If equal protection cannot be achieved under the law: I respectfully recommend that the State of Alaska automatically emancipate all minors at age sixteen. That the State assume responsibility as well as liability of these children who it has essentially emancipated by excluding them from equal protection.

Representative Sund, these children are our future: But many of them are running away without just cause, defying parental authority, becoming dope addicts, alcoholics, promiscuous,

pregnant and more. These children need legal limits upon their activities until such a time as they are mature enough to make responsible decisions for themselves.

Until there are laws designed to prosecute those 18 years of age or older who "aide, encourage..." or sexually use minors under 18 years of age, the runaway minor problem will continue. Only fear of prosecution will preclude irresponsible adults from encouraging juveniles in rebellious pursuit and delinquent behavior.

WHERE THERE IS NO PENALTY, THERE IS NO DETERRENT!

Please consider this: Unless something is done soon, today's adolescents will be adults in the near future, aiding and encouraging runaways, contributing to the delinquency and moral decay of TOMORROW'S YOUNG -- immune from prosecution!

Sincerely,

Betty J. Johnson

Mrs. Betty J. Johnson
2404 Kaseean Dr.
Juneau, Ak. 99801

Ph: 789-5702

Delinquency, runaway behavior linked to abuse

Youth problems often signal family distress

By GLENN COLLINS
The New York Times

NEW YORK — A study of adolescent runaways has provided new evidence that physical and sexual abuse are important contributors not only to chronic runaway behavior, but also to delinquency and emotional difficulties.

The study of 149 youths between the ages of 12 and 20 found that running away was often a symptom of family distress. High levels of conflict and aggression were common in the families of repetitive runaways, as well as a lack of commitment and mutual support.

Frequently the families set impossibly high expectations for children without helping them to be competent or independent.

The research, financed by a grant from the United States Justice Department, was presented at a recent conference in Toronto. Among the findings are these:

• Seventy-three percent of the runaways had been physically beaten, and 43 percent of them cited physical abuse as an important reason for leaving home.

• Seventy-three percent of the girls and 38 percent of the boys reported having been sexually abused. "We believe that the females [illegible] than males to have experienced [illegible] and abuse and to encounter [illegible] subsequent to running away," the study's principal investigator, Dr. Ann W. Burgess, who is the van Ameringen Professor of Psychiatric Mental Health Nursing at the University of Pennsylvania's School of Nursing.

• Sexually abused runaways were more likely to report suicidal feelings and anxiety than those who had not been abused. They were also more likely to be afraid of being alone and to feel as if they were going crazy.

• Runaway girls who had been sexually abused were more likely to have trouble in school, to be engaged in delinquent and criminal activity, to have participated in acts of violence and to have used alcohol and drugs.

• Runaway boys who had been sexually abused were more likely to be withdrawn, to report being depressed, to have difficulty forming and sustaining friendships, [illegible] both boys and girls, and they also reported more physical complaints, such as headaches and stomach aches.

"We need to change the way that people look at runaways," said Burgess, who will present the study's findings at the First Annual Symposium on Street Youth, a gathering of experts on homeless youngsters.

"People attach labels to them like 'wayward' or 'delinquent,'" she said. "But often the running away is simply a symptom of other problems that need attention."

She added: "We don't want to romanticize these kids -- they are no angels -- but they are often the victims of one sort of abuse or another."

The research was conducted as part of an ongoing study of child abuse and criminal behavior financed by the Office of Juvenile Justice and Delinquency Prevention of the Justice Department.

The randomly selected subjects were studied at Under 21, a crisis-intervention shelter in Toronto run by Covenant House, which also has shelters in New York City, Houston and Fort Lauderdale, Fla. Eighty-one percent of the mostly middle-class subjects were white, and all participants were promised anonymity.

Studies have estimated that from 9 to 12 percent of American children between the ages of 12 to 17 run away from home at least once. "Runaways are commonly perceived as 'Tom Sawyer types' who take off because they're lured by excitement or adventure," said the Rev. Mark-David Janus, a chaplain at the University of Connecticut who contributed to the research and served as consultant at Covenant House.

But chronic runaways "are more likely to have been abused and battered," he added. "Remember, Huck Finn left his father because he was beaten, and David Copperfield left home because of his cruel stepfather. This is closer to the truth we see."

Of the runaways, 46 percent came from "intact" families where two birth parents were present; 31 percent came from single-parent families where one birth parent was present, and 23 percent came from stepfamilies where one birth parent plus a stepparent was present.

The research suggested that financial stability was a more important factor in the abuse of runaways than the type of family structure. About 48 percent of the runaways had come from families that had experienced financial difficulty, and runaways from these homes were more likely to report physical or sexual abuse.

Although often "single-parent families are negatively stereotyped in our culture," Burgess said, there was no more abuse in single-parent families than in intact families when they had adequate income.

Often the runaways' families had been highly critical of the youths. Many were "really put down drastically," Burgess said, "and the kids internalized this and often had a very low self-concept."

The researchers found that many of the abused runaways displayed confusion about appropriate nurturing by adults. After running away, the youths were often vulnerable to pimps and others offering some degree of what the youngsters regarded as protection and affection.

Burgess' collaborators in the study, in addition to Janus, included Judith Wood, Dr. Arlene McCormack, Dr. Carol R. Hartman and Peter Gaccione.

The runaways were asked to complete drawings for the researchers. Some graphically illustrated anxiety or insecurity, as evidenced in broken or indecisive lines, according to Wood, one of the researchers and the director of the Therapeutic Arts Program at the Children's Hospital in Boston.

Other drawings suggested evidence of past sexual trauma or physical abuse. These runaways drew only partial pictures of human bodies or showed only the head, symbolizing the need to avoid confronting the abuse, the researchers said.

Burgess said the research called into question the way runaways are commonly treated by the criminal-justice system. Social and legal agencies often detain runaways with the goal of returning them to their families, "and that may simply set the stage for a repeat runaway episode," Burgess said.

"You can't assume that returning them to the home is a solution," she said, "yet at the same time our foster homes and group homes aren't free from abuse either." She said the evidence suggests that chronic runaways eventually become involved in the criminal-justice system as offenders, "and then they begin to prey on society."

She added: "We can't put our heads in the sand. It's looking more and more as if society pays a high price for failing to attend to the sexually abused child, if we consider the secondary effects such as substance abuse, suicide, delinquency and criminal behavior — plus what it does to them and their families."

Runaway youth: Another view

By Cecilia Kleinkauf

In spite of a number of recent reports and articles on runaway youth in Anchorage, the fact remains that the true extent of the problem is not known. Numerical totals in the thousands, often quoted to reflect the "epidemic" proportions of the problem have not, for the most part, been the result of valid scientific research. Nevertheless, most citizens, law enforcement and human service agency personnel would agree that runaway children exist as a population in need of attention.

The causes of runaway behavior are as individual as each family and each runaway youth, and research is only beginning to provide us with information which reflects patterns of running away in response to family problems, physical or sexual abuse or peer pressure.

"Blame" for the problem has been inaccurately and inappropriately placed by some onto the legislature and the courts — since the statutes which formerly criminalized status offenders (children who are runaways, truant from school or curfew violators) and those which dealt with other dependent and neglected children were revised in 1977. These revisions followed a review of their states' procedures, relevant research findings and federal law which was conducted by the 1975-76 Childrens Code Task Force — a group of citizens and professionals jointly appointed by the legislature and the governor to conduct such a review.

Many of the Task Force's recommendations were based upon the Federal Runaway and Homelss Youth Act — Title III of the Juvenile Justice and Delinquency Prevention Act. This legislation has as its objective the diversion of non-violent, less serious offenders from an already overburdened juvenile justice system, the provision of services to meet the needs of youth during the runaway episode, reuniting the youth and family, encouraging the resolution of family problems, strengthening the family relationship and assisting the youth in deciding upon a future course of action.

Since Alaska complied with the Act's mandate for criminalization of status offenders in 1977, the state has continued to receive federal money. The $225,000 currently received is being utilized to develop methods to remove (or prevent) youth from being held in adult jails as often occurs in rural Alaska. This right to be held in custody separated from adults derives from children's constitutionally protected right to liberty. Like adults, however, children can be institutionalized if they break the law or are determined to be a danger to themselves or others under Alaska's mental health statutes.

The issue, therefore, is not a need for more restrictive laws but rather a need to provide services to youth and their families which will address family conflicts and also protect youth who are away from home from exploitation. Current Alaska Statutes (A.S. 47.10.141) require that law enforcement agencies "take into protective custody" minors "evading the minor's legal custodian" and either return the child home or take the child to the Alaska Division of Family and Youth Services. DFYS is then required to assess the situation and provide social services or foster home placement. The problems arise with the extreme lack of social work staff to provide ongoing support services or monitoring of the situation or in the fact that many children do not come into contact with law enforcement of DFYS.

A major area of need is the provision of a comprehensive range of services from preventive counseling and support, and parenting classes to emancipation services for older youth. The Runaway Youth Act, for instance, mandates a 24-hour seven-day-a-week youth shelter where children may go to escape situations on the street. Instead, Anchorage has only 22 shelter beds at Alaska Youth and Parent Foundation, 14 of which are contracted for by DFYS and eight of which require parental consent. Most parents of runaway youth list their major concern as the safety of their child, yet Anchorage does not seem able to mobilize to provide the same safety and shelter for homeless youth that it does for its other homeless street-people.

Runaway shelters in other states which provide safety from the streets are required to notify the child's family of the child's whereabouts as a way of easing a family's concerns and alleviating claims that such shelters encourage running or harbor runaways. Such notification would also be required in any Anchorage shelter as statutes already provide for mandatory parental notice.

Many older youth and their families also need emancipation services as it becomes evident that family reunification is not possible. Rather than incarcerate such youth at high cost to the state as some suggest, legal emancipation accompanied by supportive group homes from which the youth can finish school or become employed and independent are much more productive and cost effective.

Public policy solutions to the runaway problem such as those which deprive youth of their constitutional rights or which seek to have the state punish the youth for the parent will not solve the problem. Instead, support for the services which families need in times of stress will produce a more individualized and positive result.

Cecilia Kleinkauf is an Associate Professor and Department of Social Work Chairperson at the University of Alaska, Anchorage.

STATE OF ALASKA
THE LEGISLATURE

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	4-20-88	1:30p.m.
H. JUD.	3-22-88	1:30p.m.
H. JUD.	3-17-88	1:30p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/19/88 FURTHER REFERRALS:

DATE: April 20, 1988

The Judiciary Committee has considered CSSB 79(Jud)am

"An Act relating to runaway and missing minors."

RECOMMENDS:

[✓] replace with HCS CS SB 79(Jud) [✓] the same title
[ ] attached amendment(s) [ ] a new title

- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [ ] fiscal impact
- [ ] zero fiscal note
- [ ] zero with analysis
- [ ] same as previous fiscal note published _____
- [ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Jan Ulmer
Sen Ott
M. K. Rhoades

SIGNING OTHER RECOMMENDATIONS:

Robin L. Taylor (DO NOT PASS)
R. Barnes w/ Lee

Chairman's signature

Original sponsors: Rodey, Faiks,
Fischer, et al.

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 79 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to runaway and missing minors."

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

* Section 1. AS 47.10.050(b) is amended to read:

(b) In a contempt hearing under AS 47.10.141(c) and in all proceedings initiated under a petition for delinquency, a minor shall have the right to be represented by counsel and if indigent have counsel appointed by the court. The court shall appoint counsel in such cases unless it makes a finding on the record that the minor has made a voluntary, knowing, and intelligent waiver of the right to counsel and a parent or guardian with whom the child resides or resided before the filing of the petition concurs with the waiver. In cases in which it has been alleged that the minor has committed an act which would be a felony if committed by an adult, waiver of counsel shall not be accepted unless the court is satisfied that the minor has consulted with an attorney before the waiver of counsel.

* Sec. 2. AS 47.10.141 is amended to read:

Sec. 47.10.141. RUNAWAY AND MISSING MINORS. (a) Upon receiving a written, telephonic, or other request to locate a minor evading the minor's legal custodian or to locate a minor otherwise missing, a law enforcement agency shall make reasonable efforts to locate the minor and shall immediately complete a missing person's report containing information necessary for the identification of the minor. As soon as practicable, but not later than 24 hours after completing the report, the agency shall transmit the report for entry into the Alaska Public

Safety Information Network and the National Crime Information Cente computer system. As soon as practicable, but not later than 24 hour after the agency learns that the minor has been located, it shal request that the Department of Public Safety and the Federal Bureau o Investigation remove the information from the computer systems.

(b) A peace officer shall take into protective custody a minc described in (a) of this section if the minor is not otherwise subjec to arrest or detention. The peace officer shall honor the minor' preference to [EITHER] (1) return the minor to the legal custodian : the legal custodian consents to the return; (2) take the minor to nearby location agreed to by the minor and the legal custodian; or ([(2)] take the minor to an office specified by the Department Health and Social Services, a program for runaway minors licensed the department under AS 47.10.310, or a facility or contract agency the department. If an office specified by the department, a licens program for runaway minors, or a facility or contract agency of t department does not exist in the community, the officer shall take t minor to another suitable location and promptly notify the departmer A minor under protective custody may not be housed in a jail (except as provided in (c) of this section, in a [OTHER] detent facility. Immediately upon taking a minor into protective custody officer shall advise the minor orally and in writing of the right social services under AS 47.10.142(b), and, if known, the offi shall advise the legal custodian that the minor has been taken i protective custody.

* Sec. 3. AS 47.10.141 is amended by adding a new subsection to read

(c) A minor may be taken into protective custody by a pe officer and placed into temporary detention in a juvenile detent home if there has been an order issued by a court upon a finding

probable cause that (1) the minor is a runaway in wilful violation of a valid court order issued under AS 47.10.080 or 47.10.142(f), (2) the minor's current situation poses a severe and imminent risk to the minor's health or safety, and (3) no reasonable placement alternative exists within the community. For the purposes of this subsection, a risk may not be considered severe and imminent solely because of the general conditions for runaway minors in the community, but shall be assessed in view of the specific behavior and situation of the minor. A minor detained under this subsection shall be brought before a court within 24 hours after the detention for a hearing to determine whether the minor is in contempt of court under AS 09.50.010(5). Protective custody may not include placement of a minor in a jail or secure facility other than a juvenile detention home, nor may an order for protective custody be enforced against a minor who is residing in a licensed program for runaway minors, as defined in AS 47.10.390.

* Sec. 4. AS 47.10.142 is amended by adding a new subsection to read:

(f) When a minor is committed to the department for temporary placement under (e) of this section, the court order shall specify the terms, conditions, and duration of placement. The court shall require the minor to remain in the placement provided by the department and shall clearly state in the order the consequences of violating the order, including the possibility of detention under AS 47.10.141(c).

* Sec. 5. AS 47.10 is amended by adding new sections to read:

ARTICLE 5. PROGRAMS FOR RUNAWAY MINORS.

Sec. 47.10.300. POWERS AND DUTIES OF THE DEPARTMENT. The department shall

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

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

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

(4) submit to the legislature and governor each January a report on programs for runaway minors in the state;

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

Sec. 47.10.310. LICENSING OF PROGRAMS FOR RUNAWAY MINORS. (a) A person may not operate a program for runaway minors in the state without a license issued under this section. A person who violates this subsection is guilty of a violation.

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

(1) is operated by a corporation organized under AS 10.20 or a municipality; and

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

(c) A program for runaway minors shall

(1) explain to a minor who seeks assistance from the program the legal rights and responsibilities of runaway minors and the services and assistance provided for runaway minors by the program and by the state or local municipality;

(2) attempt to determine why a minor in the program is a runaway;

(3) provide or help arrange for the provision of services necessary to promote the health and welfare of a minor in the program and, if appropriate, members of the minor's family; services may

include, but are not limited to, the provision of food, shelter, clothing, medical care, and individual or family counseling;

(4) promptly inform the department of a minor in the program who claims to be the victim of child abuse or neglect, as defined in AS 47.17.070, or whom an employee of the program has cause to believe has been a victim of child abuse or neglect;

(5) be operated with the goal of reuniting runaway minors with their families, except in cases in which reunification is clearly contrary to the best interest of the minor; and

(6) maintain adequate staffing and accommodations to ensure physical security and to provide crisis services to minors residing in a facility operated by the program; residents under 18 years of age shall be segregated from residents who are 18 years of age or older.

(d) A program for runaway minors may provide services for the protection of the health and welfare of a person under 21 years of age who is in need of the services and who is without a place of shelter in which supervision and care of the person are available.

Sec. 47.10.320. RESIDENCE IN RUNAWAY MINOR PROGRAM FACILITIES. A runaway minor may maintain residency for a period not exceeding 45 days at a facility operated as part of a licensed program for runaway minors. Tne minor may maintain residency without the consent of the person or agency having custody of the minor, except that if the court has ordered the minor committed to the custody of the department, written consent of the department is required. The residency may be extended for an additional period of 45 days with the written consent of the person or agency having custody of the minor. A minor may not maintain residency beyond the 90th day following admission to a licensed program for runaway minors without the written consent of the person or agency having custody of the minor and the written consent

of the department.

Sec. 47.10.330. NOTICE TO MINOR'S LEGAL CUSTODIAN. (a) The director of a program for runaway minors shall make a good faith effort to notify a minor's legal custodian as soon as possible, but in no event more than 48 hours after the minor is admitted to the program, unless there are compelling circumstances that justify withholding notice. The notice must describe the minor's physical and emotional condition and the circumstances surrounding the minor's admission to the program.

(b) The director of a program for runaway minors shall promptly notify a minor's legal custodian if the minor is released from the program into the custody of a person other than the legal custodian or a person representing the legal custodian.

Sec. 47.10.340. CONFIDENTIALITY OF RECORDS. Records of a licensed program for runaway minors that identify a minor who has been admitted to or has sought assistance from the program are confidential and are not subject to inspection or copying under AS 09.25.110 - 09.25.120, unless

(1) after being informed of the minor's right to privacy, the minor consents in writing to the disclosure of the records;

(2) the records are relevant to an investigation or proceeding involving child abuse or neglect or a child in need of aid petition; or

(3) disclosure of the records is necessary to protect the life or health of the minor.

Sec. 47.10.350. IMMUNITY FROM LIABILITY. (a) The officers, directors, and employees of a licensed program for runaway minors are not liable for civil damages as a result of an act or omission in admitting a minor to the program.

(b) This section does not preclude liability for civil damages as a result of recklessness or intentional misconduct.

Sec. 47.10.360. MUNICIPAL POWERS. Authority to establish and operate a licensed program for runaway minors is granted to municipalities that do not otherwise have that authority.

Sec. 47.10.390. DEFINITIONS. In AS 47.10.300 - 47.10.390

(1) "licensed program for runaway minors" means a residential or nonresidential program licensed by the department under AS 47.10.310;

(2) "runaway minor" means a person under 18 years of age who

(A) is habitually absent from home;

(B) refuses to accept available care;

(C) has no parent, guardian, custodian, or relative able or willing to provide care; or

(D) has been physically abandoned by

(i) both parents;

(ii) the surviving parent; or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 25.23.180(c) or AS 47.10.080 or voluntarily relinquished.

most runaways are 1 time

Offered: 2/19/88
Referred: Judiciary

5-0310N

Original sponsors: Rodey, Faiks, Fischer, et al.

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 79 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to runaway and missing minors."

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

* Section 1. AS 47.10.141 is amended to read:

Sec. 47.10.141. RUNAWAY AND MISSING MINORS. (a) Upon receiving a written or telephonic request to locate a minor evading the minor's legal custodian or to locate a minor otherwise missing, a law enforcement agency shall make reasonable efforts to locate the minor and shall immediately complete a missing person's report containing information necessary for the identification of the minor. As soon as practicable, but not later than 24 hours after completing the report, the agency shall transmit the report for entry into the Alaska Public Safety Information Network and the National Crime Information Center computer system. As soon as practicable, but not later than 24 hours after the agency learns that the minor has been located, it shall request that the Department of Public Safety and the Federal Bureau of Investigation remove the information from the computer systems.

(b) A peace officer shall take into protective custody a minor described in (a) of this section if the minor is not otherwise subject to arrest or detention. The peace officer shall honor the minor's preference to [EITHER] (1) return the minor to the legal custodian if the legal custodian consents to the return; (2) take the minor to a nearby location agreed to by the minor and the legal custodian; or (3) [(2)] take the minor to an office specified by the Department of Health and Social Services, a program for runaway minors approved by

preferences

the department under AS 47.10.310, or a facility or contract agency of the department. If an office specified by the department or a facility or contract agency of the department does not exist in the community, the officer shall take the minor to another suitable location and promptly notify the department. A minor under protective custody may not be housed in a jail or, except as provided in (c) of this section, in a [OTHER] detention facility. Immediately upon taking a minor int protective custody the officer shall advise the minor orally and in writing of the right to social services under AS 47.10.142(b), and, if known, the officer shall advise the legal custodian that the minor has been taken into protective custody.

* Sec. 2. AS 47.10.141 is amended by adding a new subsection to read:

(c) A minor may be taken into protective custody by a peace officer and placed into temporary detention in a juvenile detention home if there has been an order issued by a court upon a finding of probable cause that (1) the minor is a runaway in violation of a valid court order issued under AS 47.10.142(f), (2) the minor's current situation poses a severe and imminent risk to the minor's health or safety, and (3) no reasonable placement alternative exists within the community. For the purposes of this subsection, a risk may not be considered severe and imminent solely because of the general conditions for runaway minors in the community, but shall be assessed in view of the specific behavior and situation of the minor. A minor detained under this subsection shall be brought before a court within 48 hours after the detention for a hearing to determine whether the minor is in civil contempt of court under AS 09.50.010(5). Protective custody may not include placement of a minor in a jail or secure facility other than a juvenile detention home, nor may an order for protective custody be enforced against a minor who is residing in an

child in need of aid: civil contempt

set up civil contempt procedure so when breached can impose a jail term (detention).

approved program for runaway minors, as defined in AS 47.10.390.

* Sec. 3. AS 47.10.142 is amended by adding a new subsection to read:

(f) When a minor is committed to the department for temporary placement under (e) of this section, the court order shall specify the terms, conditions, and duration of placement. The court shall require the minor to remain in the placement provided by the department and shall clearly state in the order the consequences of violating the order, including the possibility of detention under AS 47.10.141(c).

* Sec. 4. AS 47.10 is amended by adding new sections to read:

ARTICLE 5. PROGRAMS FOR RUNAWAY MINORS.

Sec. 47.10.300. POWERS AND DUTIES OF THE DEPARTMENT. The department shall

(1) review, inspect, and approve or disapprove proposed or established programs for runaway minors;

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

(3) award grants for the establishment or operation of approved programs for runaway minors;

(4) submit to the legislature and governor each January a report on programs for runaway minors in the state;

(5) adopt regulations for the administration of AS 47.10.-300 - 47.10.390, including regulations providing for the coordination of services to be provided by approved programs for runaway minors and by the department.

Sec. 47.10.310. APPROVAL OF PROGRAMS FOR RUNAWAY MINORS. (a) The department may approve a program for runaway minors under AS 47.-10.300 - 47.10.390 only if the program

(1) is operated by a corporation organized under AS 10.20 or a municipality; and

(2) meets the requirements of (b) of this section.

(b) A program for runaway minors shall

(1) explain to a minor who seeks assistance from the program the legal rights and responsibilities of runaway minors and the services and assistance provided for runaway minors by the program and by the state or local municipality;

(2) attempt to determine why a minor in the program is a runaway;

(3) provide or help arrange for the provision of services necessary to promote the health and welfare of a minor in the program and, if appropriate, members of the minor's family; services may include, but are not limited to, the provision of food, shelter, clothing, medical care, and individual or family counseling;

(4) promptly inform the department of a minor in the program who claims to be the victim of child abuse or neglect, as defined in AS 47.17.070, or whom an employee of the program has cause to believe has been a victim of child abuse or neglect;

(5) be operated with the goal of reuniting runaway minors with their families, except in cases in which reunification is clearly contrary to the health and welfare of the minor; and

(6) maintain adequate staffing and accommodations to ensure physical security and to provide crisis services to minors residing in a facility operated by the program; residents under 18 years of age shall be segregated from residents who are 18 years of age or older.

(c) A program for runaway minors may provide services for the protection of the health and welfare of a person under 21 years of age who is in need of the services and who is without a place of shelter in which supervision and care of the person are available.

Sec. 47.10.320. RESIDENCE IN RUNAWAY MINOR PROGRAM FACILITIES.

A runaway minor may maintain residency for a period not exceeding 45 days at a facility operated as part of an approved program for runaway minors. The minor may maintain residency without the consent of the person or agency having custody of the minor, except that if the court has ordered the minor committed to the custody of the department, written consent of the department is required. The residency may be extended for an additional period of 45 days with the written consent of the person or agency having custody of the minor. A minor may not maintain residency beyond the 90th day following admission to an approved program for runaway minors without the written consent of the person or agency having custody of the minor and the written consent of the department.

Sec. 47.10.330. NOTICE TO MINOR'S LEGAL CUSTODIAN. (a) The director of an approved program for runaway minors shall make a good faith effort to notify a minor's legal custodian within 72 hours after the minor is admitted to the program, unless there are compelling circumstances that justify withholding notice. The notice must describe the minor's physical and emotional condition and the circumstances surrounding the minor's admission to the program.

(b) The director of an approved program for runaway minors shall promptly notify a minor's legal custodian if the minor is released from the program into the custody of a person other than the legal custodian or a person representing the legal custodian.

Sec. 47.10.340. CONFIDENTIALITY OF RECORDS. Records of an approved program for runaway minors that identify a minor who has been admitted to or has sought assistance from the program are confidential and are not subject to inspection or copying under AS 09.25.110 - 09.25.120, unless

(1) the minor consents in writing to the disclosure of the

records;

(2) the records are relevant to an investigation or proceeding involving child abuse or neglect or a child in need of aid petition; or

(3) disclosure of the records is necessary to protect the life or health of the minor.

Sec. 47.10.350. IMMUNITY FROM LIABILITY. (a) The officers, directors, and employees of an approved program for runaway minors are not liable for civil damages as a result of an act or omission in admitting a minor to the program or releasing a minor from the program into the custody of a person other than the minor's legal custodian.

(b) This section does not preclude liability for civil damages as a result of recklessness or intentional misconduct.

Sec. 47.10.360. PROGRAMS EXEMPT FROM LICENSING. An approved program for runaway minors is not subject to licensing or regulation under AS 47.35.

Sec. 47.10.370. MUNICIPAL POWERS. Authority to establish and operate an approved program for runaway minors is granted to municipalities that do not otherwise have that authority.

Sec. 47.10.390. DEFINITIONS. In AS 47.10.300 - 47.10.390

(1) "approved program for runaway minors" means a residential or nonresidential program approved by the department under AS 47.10.310;

(2) "runaway minor" means a person under 18 years of age who

(A) is habitually absent from home;

(B) refuses to accept available care;

(C) has no parent, guardian, custodian, or relative able or willing to provide care; or

(D) has been physically abandoned by

(i) both parents;

(ii) the surviving parent; or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 25.23.180(c) or AS 47.10.080 or voluntarily relinquished.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : CSCSSB 79
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title : "An Act relating to runaway and missing minors."
Sponsor : Rodey, Faiks, Fischer, et al.
Requestor : _____

Agency Affected : Health & Social Services
BRU : _____
Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

N/A

Prepared by : Russell Webb for Yvonne M. Chase, ACSW, Director
Phone : 465-3170
Division : Family & Youth Services
Date : 4-20-88

Approved by Commissioner : Myra M. Munson
Date : 4-20-88
Agency : Department of Health & Social Services

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSCSSB 79 (H
PUBLISH DATE: 1/5/88

FISCAL NOTE

REQUEST:

Revision Date: 1/21/88
Title: "An Act relating to runaway and missing minors."
Sponsor: Rodey, Faiks, et al.
Requestor: Judiciary, Finance

Agency Affected: Administration
BRU: Office of Public Advocacy
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	204.5	212.7	221.2	230.0	239.2
TRAVEL		15.0	15.6	16.2	16.8	17.5
CONTRACTUAL		148.9	154.9	161.1	167.5	174.2
SUPPLIES		4.0	4.2	4.4	4.6	4.8
EQUIPMENT		15.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	387.4	387.4	402.9	418.9	435.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	387.4	387.4	402.9	418.9	435.7
FEDERAL FUNDS						
OTHER						
TOTAL	0	387.4	387.4	402.9	418.9	435.7

POSITIONS:

FULL-TIME	0	4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee
Phone: 274-1684
Division: Office of Public Advocacy
Date: 1/20/88

Approved by Commissioner: John Andrews
Date: 2/1/88
Agency: Department of Administration

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSCSSB 79

PERSONAL SERVICES

Anchorage

2	Associate Attorney II Positions Salary & Benefits 55,016 x 2 = 110,032	110.0
1	Legal Secretary - Civil Section Salary & Benefits = 32,363	32.2

Fairbanks

1	Associate Attorney II Salary & Benefits = 62,150	62.2

Subtotal Personal Services 204.5

TRAVEL

Additional travel funds to accommodate caseload increase.	15.0

15.0

CONTRACTUAL

Approximately 200 cases in Rural Areas @ 687.56 = 137,512	137.5
Additional Office Space in Anchorage for 2 Associate Attorney II positions. 380 sq.ft. x 2.50 = 950.00 950.00 x 12 months = 11,400	11.4

Subtotal Contractual 148.9

SUPPLIES

Misc. stationary, library and office supplies for 4 new positions. 1,000 x 4 = 4,000	4.0

4.0

EQUIPMENT

Office furniture and equipment for 3 professional positions. 3,000 x 3 = 9,000	9.0
Office furniture and equipment for Legal Secretary position = 6,000	6.0

Subtotal Equipment 15.0

 TOTAL 387.4

Position Title	No. of Positions	Range/Step	Barg. Unit
Associate Attorney II	2	19/A	X

Time Status	Staff Months	Location	Election District
PFT	24	EBA-Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary 40,236 X 2	80,472	
Benefits 14,780 X 2	29,560	
Premium Pay		
Other		
Total Personal Services		110,032
Travel		
Contractual		
Commodities		
Equipment		
Other		
Total Cost		110,032

Funding Source for Total Cost	
Federal Receipts 1002	
G. F. Match 1003	
General Fund 1004	110,032
GF Program Receipts 1005	
Other	

Justification

The Anchorage OPA office presently has 2 associate attorney positions which handle GAL appointments and 2 attorney positions who handle a combined caseload of GAL appointments and other civil litigation matters. Because of the anticipated increase in GAL appointments to runaways under this legislation, OPA estimates that at least 2 additional associate attorneys would be needed to handle the increased workload.

Request For New Position

Agency Administration

BRU Office of Public Advocacy

Component

Revised Date

FY 89

Position Title	No. of Positions	Range/Step	Barg. Unit
Legal Secretary I	1	10/A	G
Time Status	**Staff Months**	**Location**	**Election District**
PFT	12	EBA-Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	22,020	
Benefits	10,343	
Premium Pay		
Other		
Total Personal Services		32,363
Travel		
Contractual		
Commodities		
Equipment		
Other		
Total Cost		32,363

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	32,363
GF Program Receipts	1005	
Other		

Justification

The Anchorage civil section presently has one legal secretary who provides clerical support to 4 professional positions, 2 Vista volunteers, and the VGAL program. This one clerical position will not be able to absorb the workload increase which will be created by 2 additional associate attorney positions handling a full GAL caseload. Therefore, an additional Legal Secretary I position will be required to handle clerical support for the 2 associate attorney positions.

Request For New Position

Agency: Administration

BRU: Office of Public Advocacy

Component:

Revised Date

FY 89

Position Title	No. of Positions	Range/Step	Barg. Unit
Associate Attorney II	1	19/A	X

Time Status	Staff Months	Location	Election District
PFT	12	JBA-Fairbanks	16

Type of Expenditure		Amount
1	2	3
Salary	45,972	
Benefits	16,178	
Premium Pay		
Other		
Total Personal Services		62,150
Travel		
Contractual		
Commodities		
Equipment		
Other		
Total Cost		62,150

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	62,150
GF Program Receipts	1005	
Other		

Justification

The Fairbanks OPA office has only one associate attorney position which is devoted to GAL appointments. This one positions would not be able to absorb the additional GAL appointments to runaway cases, nor can the other 3 attorney positions absorb the anticipated increase caused by this bill. OPA estimates that at least one additional associate attorney position for the Fairbanks office would be needed to handle the increased workload in GAL appointments.

Request For New Position

Agency: Administration

BRU: Office of Public Advocacy

Component:

Revised Date

FY 89

STATE OF ALASKA
DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX H
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

April 8, 1988

The Honorable John Sund
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

John Hartle of your staff asked the department to explain why SB 79 was drafted to exclude runaway programs from licensure or regulation under AS 47.35. As you know, this provision of law grants the department the authority to license and supervise private residential care facilities and foster homes for children and dependent adults, and child care centers and homes for children.

This exclusion was to promote the innovative development of runaway programs. We do not believe it is desirable to require runaway programs to conform to regulations which were written to regulate facilities providing services which are fundamentally different than the services runaway facilities and programs will provide. Exempting licensure under AS 47.35 was an attempt by the department to affirmatively recognize this difference.

The DHSS does not intend that this exclusion from AS 47.35 means runaway programs are exempt from DHSS regulation. This legislation requires the DHSS to adopt regulations necessary to implement the bill. These regulations, as adopted by the DHSS, would impose strict but appropriate health and safety licensure standards upon runaway programs. The department intends that these licensing regulations will be just as stringent in protecting children in runaway programs as current regulations are in protecting children in other types of facilities. If this intent is not clear from the current version of the bill, the department would support changes suggested by the committee to clarify the department's regulatory responsibility toward runaway programs.

Should you have additional questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Myra M. Munson

Myra M. Munson
Commissioner

06-F38LH

COVENANT HOUSE UNDER 21
460 WEST 41 STREET
NEW YORK N Y 10036
(212) 613-0300

THE INSTITUTE FOR YOUTH ADVOCACY

Statement on Senate Bill No. 79

Before the Judiciary Committee

Alaska House of Representatives

March 22, 1988

Gregory A. Loken
Executive Director

Statement on Senate Bill No. 79

Mr. Chairman and Members of the Committee, I am very grateful for this opportunity to appear before you on behalf of Covenant House and the Institute for Youth Advocacy. My name is Gregory Loken, and I am executive director of the Institute and senior staff attorney at Covenant House New York. It is an honor to be in Alaska for the first time, especially at a moment when you are considering legislation, Senate Bill No. 79, of the highest importance to vulnerable children and their families.

Covenant House is the largest private organization in North America serving homeless and runaway children. Founded officially in 1972 by Fr. Bruce Ritter, a Franciscan priest, Covenant House annually provides crisis and long-term help to over 20,000 children and teenagers in New York City, Houston, Toronto, Fort Lauderdale, New Orleans, Guatemala, Panama and Honduras. Separated at least temporarily, but often permanently, from their families, these children and adolescents are forced into a desperate struggle for survival on the street, pushed into petty crime, prostitution, panhandling, and despair. The crisis shelters of the agency operate on an "open-intake" basis: no child or teenager is ever turned away on the first visit, and only serious misconduct or refusal to make use of proffered services limits repeat visits.

It was with great pride, but with also the deepest sense of challenge, that Covenant House determined this past year to accept the invitation of public officials, religious leaders, and private citizens to open a program in Anchorage. Brenda Moscarella, the project director responsible for launching the program in collaboration with Catholic Social Services, is here today, ready to discuss with you, as interest and time permits, the specific nature of our Anchorage program and the background of need to which it is addressed. As a friend and colleague of Brenda's for many years, I can only imagine your state to be already happier and saner for her presence.

The Institute for Youth Advocacy, my own branch of Covenant House, was established in 1982 to fight for homeless and runaway children in professional, legislative, and judicial forums throughout the country. Particularly concerned about the exploitation of street kids in prostitution and pornography, the Institute played a key role in passage of the Federal Child Protection Act of 1984 and Child Abuse Victims Rights Act of 1986--both designed to launch a strong federal attack on the sexual exploitation of the young. Our battle to protect children on the street has involved, too, strong support for expansion of the federal network of runaway and homeless youth shelters under Title III of the Juvenile Justice and Delinquency Prevention Act of 1974. Perhaps most crucially, though, we have attempted to bring attention to the crying need for careful,

comprehensive state legislation addressing the plight of homeless and runaway children and the frequent desperation of their parents.

Senate Bill No. 79, before you today, seems to me a luminous example of such legislation, and I urge you to give it searching, and favorable, consideration. In three important ways it seems to me an exemplary bill that could easily serve as a model for the rest of the country. First, it appears to provide clear guidance to law enforcement officials in an area of their responsibility often left inexcusably murky in the past. Second, it contains a thoughtful, if necessarily imperfect, approach to the intractable problem of "secure detention" for runaways. Finally, it establishes a vitally important framework for development of runaway and homeless youth programs throughout Alaska--programs that will meet the crisis needs of kids while reunifying and strengthening families. While you can assess far better than I the bill's impact from a specifically local perspective, it seems to me a remarkably well-balanced answer to problems that have frustrated legislators in every state in the Union.

1. Procedures for Peace Officers. Law enforcement officers are routinely given an overwhelmingly enormous range of responsibility with only the sketchiest, and sometimes self-contradictory, guidance to carry it out. Thus the apprehension of juvenile "status offenders" is an extraordinarily time-consuming and often thankless task that

is exacerbated in most states by the failure to give police officers any reasonable means of placing or handling the youths once they are in custody. Current Alaska law [AS 47.10.141(b)] already seems somewhat clearer than average in this last respect, providing for delivery of status offenders to their parents or to the Department of Health and Social Service. Yet Senate Bill No. 79 offers even more useful guidance, especially in situations where relations between parent and child are tense but not hopeless. Thus Section 1 of the bill would require that parental wishes be respected regarding a return home, and would allow for the often important alternative of placement in the home of a friend or relative that both parent and child can agree on. And in communities with approved programs for runaway and homeless children, peace officers would have yet another significant option currently not spelled out in law. As an attorney at Covenant House New York for the past eight years, I have the deepest admiration for the policemen and -women who struggle daily to help kids on the street, and I know my friends in the New York Police Department would welcome in their own work the clear and comprehensive language of this section.

2. Protective Custody. Probably the most wrenching issue for youth advocates over the past decade has been the extent to which secure detention should play a role in helping "status offenders". I have never been an admirer of detention of juveniles, and even less of the specific forms

such detention has taken in the past--from the most outrageously abusive and corrupt "reform schools" to the most perilous adult jails. And at Covenant House we have consistently supported the goals of the federal Juvenile Justice and Delinquency Prevention Act to remove juveniles from jail and otherwise reduce to an absolute minimum the number of children in secure detention for whatever cause.

Yet there are, in our experience, worse things than secure detention. It is worse for a 13- or 14-year-old girl to be selling herself on the street so that her pimp won't beat her or withhold her heroin. It is worse for an emotionally disturbed or mentally handicapped youth, whose parents have permanently exiled him from the house, to be forced to commit a crime before he can receive intensive help. Purity of concern for the rights of children and adolescents should not obscure the tragic fact that a few, a very few, are simply so out of control that some coercion is necessary if they are to have any real hope of survival, let alone happiness.

Section 2 of the Senate Bill No. 79 deserves your most careful review, both because of the long history of abusive detention of runaways in this country, and because it seems a reasonable, delicately balanced effort to allow secure detention only when strictly necessary, and only in licensed juvenile detention facilities. From New York it is impossible to assess whether the language perfectly suits the nature of your own institutions--particularly your

judiciary--but it seems a careful attempt to address all the competing interests and concerns. And, again, it offers an opportunity for Alaska to shape national policy in this area, for I do believe it strikes a balance that has eluded legislators in many other states.

3. Runaway and Homeless Youth Programs. The greatest virtue of Senate Bill No. 79, however, appears to lie in its effort to encourage a positive response to the plight of children on the street through establishment of state-approved and monitored runaway and homeless youth programs. Such programs exist in all fifty states, largely through funding under the federal Runaway and Homeless Youth Act, but nearly all of them operate without adequate state statutory authorization or state supervision. Section 4 of the bill before you would place Alaska alongside New York as the only states with a clear framework for operating these critically important programs.

That framework would include crucial protections for children and parents alike. Thus the Department of Health and Social Services would be given the authority to monitor and approve runaway and homeless youth programs to insure the quality of their services, and children who used the programs would be assured that their records there would be confidential. (Because of the stigma attached to even the briefest period on the street, and the fear runaways so often have of public humiliation on returning home, the assurance of confidentiality is an indispensable part of

successful efforts to reach and help them.) Parents would be guaranteed rapid notification of their children's presence in such a program, and would know that the services provided there are aimed at "the goal of reuniting runaway minors with their families." Both parents and children would benefit from the full range of services authorized by the bill.

Runaway and homeless youth programs would benefit, too, of course, and Covenant House makes no secret of its strong interest in passage of this section of the bill. Because runaway services have developed only recently, it is as yet extremely unclear in the law how they fit into traditional common-law and statutory structures. It is by no means certain that any substantial help can be offered to a homeless or runaway child without incurring risk of legal liability and, in some states, even criminal prosecution. Parental consent to giving such assistance is frequently unavailable in precisely those cases where the need for assistance is most critical. Section 4, which closely resembles New York statutory provisions that have worked exceedingly well for over a decade, again strikes a balance between crisis intervention and the longer-term need for family reunification. It is of the greatest importance in encouraging community groups to open and operate runaway and homeless youth programs--by removing their worst fears of legal conflict and crushing insurance bills.

Covenant House is, of course, itself committed to establishing its Alaskan program whatever the legislative resolution of these important issues. The need in Anchorage simply too great to wait. But we applaud the efforts of the sponsors of Senate Bill No. 79 to produce legislation of real merit and sensitivity. Homeless and runaway children do not vote, and their voices are rarely heard. You and your fellow legislators have made an effort to listen, and for that we at Covenant House are deeply grateful.

Please know that we stand ready to offer any assistance in our power during your deliberations, and that we will strive our utmost to justify the faith and good wishes the people of Alaska have already so generously extended our own efforts on behalf of vulnerable kids. Those kids deserve faith, they deserve good will, and they deserve a chance to escape the street. Thank you for lending their needs your Committee's valuable time, and for your serious consideration of this worthy legislation.

THE COURT OF APPEALS OF THE STATE OF ALASKA

LARRY JAMES CARTER, Appellant, v. CHRISTINE KAREN BRODRICK, Appellee.	File No. A-1333 OPINION [No. 788 - March 4, 1988]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Victor D. Carlson, Judge.

Appearances: Jacqueline Bressers, Assistant Public Defender, and Dana Fabe, Public Defender, Anchorage, for Appellant. David Mannheimer, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Grace Berg Schaible, Attorney General, Juneau, for the State of Alaska, as amicus curiae.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

BRYNER, Chief Judge.

Larry James Carter was convicted of contempt following a non-jury trial before Superior Court Judge Victor D. Carlson. Judge Carlson sentenced Carter to a term of six months' imprisonment with three months suspended. The contempt charge arose from Carter's failure to comply with the court's child custody order. Pursuant to the direction of the superior court, the contempt was prosecuted by the attorney

representing Carter's former wife -- the aggrieved party in the underlying civil case. Carter appeals, contending that the trial court erred in requiring him to testify and in applying the preponderance of the evidence standard to determine his guilt. Carter also contends that the trial court erred in directing that the case be prosecuted by the opposing party in the underlying civil case. We reverse.

Whether a contempt action is civil or criminal in nature depends upon the character and purpose of the proceeding. Johansen v. State, 491 P.2d 759, 763-65 (Alaska 1971). Civil contempt proceedings are by nature remedial: their goal is to coerce litigants to comply with the lawful orders of the court in order to remedy harm occasioned to other litigants by the noncompliance. Id.; Gwynn v. Gwynn, 530 P.2d 1311 (Alaska 1975). Persons incarcerated for civil contempt are not sentenced to definite terms of imprisonment. Rather, they "carry the keys of their prison in their own pockets." In re Nevitt, 117 F. 448, 461 (8th Cir. 1902). By agreeing to comply with the court's order, they may purge themselves of contempt and be released. Johansen, 491 P.2d at 766.

In contrast, criminal contempt proceedings seek to punish violations that have already occurred. Id. They are in essence punitive and not remedial. Gwynn, 530 P.2d at 1312-13; L.A.M. v. State, 547 P.2d 827, 831 (Alaska 1977). Because a criminal contempt proceeding seeks to punish past disobedience, future compliance will not purge the contempt. See Webber v. Webber, 706 P.2d 329 (Alaska App. 1985). Thus, a characteristic feature of a criminal contempt proceeding is that it is punishable by a definite term of imprisonment. Johansen, 491 P.2d at 764-66. "[C]riminal contempt [is] a crime in every fundamental respect because it 'is a violation of the law, a public wrong which is punishable by

fine or imprisonment or both.'" State v. Browder, 486 P.2d 925, 934 (Alaska 1971) (quoting Bloom v. Illinois, 391 U.S. 194, 201 (1968)).

A contempt that occurs outside the presence of the court is said to be indirect; one occurring in the court's presence is a direct contempt. See West v. District Court, 575 P.2d 797 (Alaska 1978). Under the Alaska Constitution, however, little distinction is drawn between direct and indirect criminal contempt. A person charged with either direct or indirect criminal contempt is entitled to the same procedural rights that exist in other classes of criminal prosecution. Browder, 486 P.2d at 939-40. See also Bloom v. Illinois, 391 U.S. at 201. Every element of a criminal contempt must be proved beyond a reasonable doubt, and the accused cannot be compelled to render testimony that might be self-incriminatory. Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 420 (1911); Continental Insurance Cos. v. Bayless & Roberts, Inc., 548 P.2d 398, 407 (Alaska 1976).

In the present case, there is little question that Carter was convicted of criminal contempt: the purpose of the proceedings below was to punish him for his past failure to comply with a visitation order, and, upon finding Carter guilty, the superior court imposed a definite term of imprisonment. Despite the criminal nature of the proceedings, the superior court applied the preponderance of the evidence standard in determining Carter's guilt. The court also required Carter to testify as the prosecution's chief witness, thereby depriving him of his right against self-incrimination. In so doing, the court relied on Johansen v. State, 491 P.2d 759 (Alaska 1971). Its reliance on Johansen was mistaken.

While Johansen was a contempt proceeding for nonpayment of child support, the case dealt exclusively with what has been traditionally

regarded as civil contempt -- a contempt proceeding whose purpose was to coerce future payment rather than to punish for past failure to pay. 491 P.2d at 766. The court in Johansen noted some potential difficulties in treating civil contempt cases for failure to pay support as entirely noncriminal for procedural purposes. Accordingly, the court struck a balance, conferring some, but not all of the benefits of a formal criminal proceeding upon individuals charged with civil contempt in such cases. Id. at 766-67. The court in Johansen expressly recognized, however, that when a nonpayment of support case is prosecuted as a criminal contempt, "the defendant would have to be afforded full procedural safeguards." Id. at 766 n.27.

Because the present case was prosecuted as a criminal contempt, we conclude that the superior court erred in depriving Carter of his right against self-incrimination and in applying the preponderance of the evidence standard to his case. We further conclude that these errors require reversal of Carter's conviction. See Delaware v. VanArsdell, ___ U.S. ____, 106 S.Ct. 1431, 1437 (1986).

Carter has also argued that the trial court erred in permitting the contempt action to be prosecuted by the attorney who represented his former wife. Carter relies on the United States Supreme Court's recent ruling in Young v. United States ex rel. Vuitton Et Fils S.A., ____ U.S. ____, 107 S.Ct. 2124 (1987).

In Rollins v. State of Alaska ex rel. Municipality of Anchorage, ____ P.2d ____, Op. No. 769 (Alaska App., January 13, 1988), this court, in light of Young, expressed concern about the wisdom of routinely appointing, as prosecutor in a criminal contempt action, counsel for the aggrieved party in the underlying civil litigation. We nevertheless

declined to apply Young to the circumstances in Rollins, because the party appointed to prosecute that case was not a private party, but, rather, was the Municipality of Anchorage, a governmental body that was duly authorized to and, in fact, regularly did perform the functions of a public prosecutor.

This case, in contrast, presents a far more difficult issue, because it involves a prosecution by a private party. However, Carter did not object below to the superior court's order appointing his former wife's counsel to prosecute the case, and the superior court did not have the opportunity to consider its appointment in light of the Supreme Court's decision in Young. Because Carter's conviction must be reversed on other grounds, we believe it preferable to allow the superior court an opportunity to consider in the first instance the conflict issue raised by Young. In the event of a retrial, the superior court should give due consideration to Young and Rollins in resolving the question of appointing a prosecutor for this case.

The conviction is REVERSED.

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less there appears
nd specific objec-
evidence. (*State*
. 506 P.2d 1132.)
the points raised
al and we find no
would require re-
Accordingly, the
t is affirmed.

In the Matter of L. A. M., Appellant,
v.
STATE of Alaska, Appellee.
No. 2221.

Supreme Court of Alaska.
March 15, 1976.

The Superior Court, Third Judicial District, Anchorage, James K. Singleton, J., entered order declaring minor a delinquent child for her willful failure to comply with certain court orders made after prior adjudication that she was child in need of supervision, and she appealed. The Supreme Court, Erwin, J., held that evidence supported conclusion that minor, who was chronic runaway, would not be distinguishable in sophistication or exposure to criminal activity from average child in population at state youth center, and thus, placement of such minor in state youth center was not precluded; that superior court had authority to enforce order entered against child in need of supervision, which order provided that child was not to remain away from children's home in which she had been placed without permission of appropriate adult authorities of the home; and that failure of minor to abide by court orders regarding her supervision constituted willful criminal contempt of court's authority, and she was, therefore, properly declared delinquent and subject to those sanctions available for correction of delinquent minor's behavior.

Affirmed.

Boochever, J., concurred and filed opinion in which Rabinowitz, C. J., joined.

Rabinowitz, C. J., concurred and filed opinion.

1. Contempt ⇐20

Before party may be held in criminal or civil contempt for failure to abide by court order, certain elements must be established: existence of valid order directing alleged contemnor to do or refrain from doing something and court's jurisdiction to enter that order; contemnor's notice of order within sufficient time to comply with it; and in most cases, contemnor's ability to comply with order; and contemnor's willful failure to comply with order.

2. Contempt ⇐2

Distinction between criminal and civil contempt is generally phrased in terms of whether character and purpose of contempt is "remedial" or "punitive."

3. Contempt ⇐3, 4

Where contempt power is invoked to punish alleged contemnor for "past, willful, flouting of the court's authority," contempt is criminal, but where contempt proceeding is instituted to "coerce future conduct," contempt is civil. AS 09.50.010(5), 09.50.050.

4. Contempt ⇐3

Contempt order issued against minor for minor's willful failure to comply with certain court orders made after adjudication that minor was child in need of supervision constituted criminal contempt. AS 09.50.010(5).

5. Infants ⇐16.5

Proceedings against children alleged to be in need of supervision are in substance and effect custody disputes where contestants are parent and child, and parent appeals to court to vindicate and enforce his custody rights in child against that child.

6. Adoption ⇐7.2(1)
Name ⇐9
Parent and Child ⇐2(1), 4, 5(1), 8

The following are "parental rights" protected to varying degrees by constitution: physical possession of child, which, in case of custodial parent, includes day-to-day care and companionship of child; right to discipline child, which includes right to inculcate in child parent's moral and ethical standards; right to control and manage minor child's earnings; right to control and manage minor child's property; right to be supported by adult child; right

to have child bear parent's name; and right to prevent adoption of child without parents' consent.

See publication Words and Phrases for other judicial constructions and definitions.

7. Adoption ⇐7.2(1)
Names ⇐9
Parent and Child ⇐2(17)

Of the so-called residual parental rights, those that remain after custody is placed in another include right to consent to adoption and to withhold consent to prevent adoption, right to visitation and right to have child bear parents' name.

8. Parent and Child ⇐2(1)

Like all legal rights, parent's right to custody of his child is not absolute and may be lost through divorce, by conduct depriving child of necessities of life, by abandonment, by child's emancipation, or, subject to constitutional limitations, where welfare of child requires limitation or termination of parental rights. AS 09.55.205, 25.20.010, 47.10.010(a)(4, 5), 47.10.080(c), 47.10.290(3).

9. Infants ⇐13

State has legitimate interest in protecting children from venereal disease, from exposure to use of dangerous and illicit drugs, from attempted rape, and from physical injury.

10. Infants ⇐16.1

Purpose of statute creating classification of child in need of supervision is reintegration of child into her family and resumption of parental custody, including parental control. AS 47.10.010(a)(2), 47.10.290.

11. Infants ⇐16.8

Evidence in delinquency hearings supported conclusion that minor, who was chronic runaway, would not be distinguishable in sophistication or exposure to criminal activity from average child in population at state youth center, and thus, placement of such minor in state youth center was not precluded.

12. Infants ⇐16.4

Whether child is characterized as delinquent child, child in need of supervision, dependent child, or merely child whose custody is disputed in domestic relations proceeding, court has authority, upon extending all procedural safeguards, to make orders affecting her custody. Const. art. 4, § 1.

13. Contempt ⇐33

While court may have limitations on its power to act, there are only due process limitations on its authority to compel enforcement of its orders.

14. Infants ⇐16.12

Superior court had authority to enforce order entered against child in need of supervision, which order provided that child was not to remain away from children's home in which he had been placed without permission of appropriate adult authorities of the home.

15. Infants ⇐16.2

Failure of minor to abide by court orders regarding her supervision, following adjudication that such minor was child in need of supervision, constituted willful criminal contempt of court's authority, and she was, therefore, properly declared delinquent and subject to those sanctions available for correction of delinquent minor's behavior. AS 09.50.010, 47.10.010(a) (2, 3, 6), 47.10.080(j), 47.10.290.

Herbert D. Soll, Public Defender, Phillip I. Weidner, Asst. Public Defender, and R. Collin Middleton Anchorage, Alaska, for appellant.

Avrum M. Gross, Atty. Gen., Juneau and Larry R. Weeks, Asst. Atty. Gen., Anchorage, for appellee.

Before RABINOWITZ, Chief Justice, and CONNOR, ERWIN, BOOCHEVER and BURKE, Justices.

OPINION

ERWIN, Justice.

L.A.M. seeks review of the superior court's order dated July 26, 1973, declaring her a delinquent [1] child for violation of AS 09.50.010,[2] i.e., willful failure to comply with certain court orders made after a prior adjudication that she was a child in need of supervision.[3]

In order to understand L.A.M.'s arguments and place her situation in context, it will be necessary to set out her history at some length.

L.A.M. was born in Canada in 1958 and was adopted by the M's shortly thereafter. The M.'s soon were divorced and Mrs. M. moved with L.A.M. to Alaska. In 1971 Mrs. M. married Mr. C. and retired from work, intending to spend more time with L.A.M. Difficulties arose almost immediately with L.A.M. neglecting to return home after staying with friends.

L.A.M. began a consistent pattern of running away in the Spring and Summer of 1972. During this period two petitions were filed seeking to have her declared a child in need of supervision, but in both cases the petitions were dismissed on stipulation and the matter handled informally.[4] On November 2, 1972, a new petition was filed. At the hearing L.A.M. admitted the allegations of the petition and was declared a child in need of supervision. She was ordered detained at the McLaughlin Youth Center pending adjudication.

On December 12, 1972, the disposition hearing was continued and L.A.M. was released to her parents. One week later the court was informed that she had run away. A pick-up order was issued and the minor was brought back to court on December 27, 1972, at which time she was detained pending disposition. The disposition hearing was finally held on January 11, 1973. Upon listening to testimony, the Master for the Family Court filed his recommendation that the minor be "released to her parents." A superior court judge adopted the finding and executed a release.

On March 19, 1973, L.A.M. was brought back to court by an intake officer who in-

1. AS 47.10.010(a)(1) provides in relevant part:
   (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor (1) violates a law of the state, or an ordinance or regulation of a political subdivision of the state . . ..

2. AS 09.50.010 provides in relevant part:
   Acts or omissions constituting contempt. The following acts or omissions in respect to a court of justice or court proceedings are contempts of the authority of the court:
   . . . . .
   (5) disobedience of a lawful judgment, order, or process of the court . . ..

3. AS 47.10.290 provides in relevant part:
   In this chapter, unless the context otherwise requires,
   . . . . .
   (7) "child in need of supervision" is a minor whom the court determines is within the provisions of (AS 47.10.010(a)(2), (3), (4), and (6)). [Matter in parentheses supplied.]

   AS 47.10.010(a)(2), (3) and (6) respectively provide:
   [B]y reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian;
   [I]s habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others;
   . . . . .
   [A]ssociates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others . . ..

4. Children's Rule 4(d) provides:
   Informal Disposition. If the intake officer, after investigation, believes that in the best interest of the child the matter should be handled on an informal basis, he may thereafter refrain from filing a petition and shall thereafter on behalf of the court, counsel with the child and parents, guardian or custodian, and with their consent and cooperation establish such informal supervision or disposition of the child matter as the circumstances may require.

formed the court that she had "been a runaway almost constantly since the time the court released her." The intake officer then filed a petition with the court alleging that the minor was a "child in need of supervision" by virtue of having been truant from school in violation of AS 47.10.-010(a)(3) and AS 14.30.010 (truancy).[5] At the hearing the court was informed that Mrs. C. had obtained a child psychiatrist who had met with the child and her mother, and together they had worked out some program of counseling. The parties agreed that L.A.M. would be placed in a foster home during a period of counseling and the judge accepted a stipulation to that effect. Having previously explained to L. A.M. that if she violated a court order she could be held in contempt of court and incarcerated, the judge informed the child that she was not to leave the foster home without contacting her psychiatrist, her social worker, or her mother. She agreed. The minor was released from McLaughlin on March 31, 1973, and placed in a foster home. She ran away on April 2, without notification, and was not apprehended until May 4.

A hearing was held on May 14, 1973, at which time L.A.M. was charged with contempt of court by the intake officer. Because of the uncertainty in this area, the trial court appointed the public defender to represent her. On May 17, 1973, the hearing resumed. The state argued that a child in need of supervision could not thereby be held in contempt of court and incarcerated, but that a child guilty of "criminal contempt" could on that basis be adjudicated a "delinquent child" and thereafter institutionalized. The State, therefore, moved to dismiss the petitions, alleging contempt of court and substituting a petition of alleged delinquency. The court denied the motion but permitted the State to file an amended petition alleging as a separate count an act of delinquency predicated upon "criminal contempt."

A petition alleging delinquency was filed on May 23, 1973, at which time a hearing was held. In responding to the petition L. A.M. denied the allegations and requested a trial. Pending trial, she was placed at the Alaska Children's Services receiving home. A written order was entered on June 8, 1973, specifically setting out the conditions under which L.A.M. would reside at the receiving home pending her adjudication hearing. Specifically, it provided that "[T]he child is not to remain away from the Anchorage Children's Christian Home overnight without the permission of the appropriate adult authorities of the home."

On July 26, 1973, an intake officer filed a petition for revocation of conditions of release pending L.A.M.'s adjudication hearing. In part, the petition stated that she had left the receiving home without permission on July 3, 1973, and remained away until July 24, 1973. A detention hearing was held on July 26th, and at the hearing L.A.M., through her counsel, admitted the allegations of the petition of alleged delinquency based on violation of a court order filed on May 23, 1973. L.A. M.'s counsel made it clear that the minor was only admitting the facts and reserving the right to litigate the legal consequences of those facts.

The court then proceeded to a consideration of the petition for revocation of conditions of release pending adjudication hearing filed on July 26, 1973. Upon admitting the allegations of this petition as well L.A.M. requested through her attorney that a disposition hearing be scheduled within thirty days.

5. AS 14.30.010 provides in relevant part:
When attendance compulsory. (a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall insure that the child is not absent from attendance.

At the disposition hearing held on August 28, 1973, and on August 31, 1973, two experts testified on behalf of the minor and two testified on behalf of the State. The expert testimony pointed up the substantial differences of opinion both as to principle and policy that exists regarding runaways and their treatment. After considering all of the evidence, the court accepted the recommendation of the Division of Corrections and ordered the minor institutionalized, but deferred execution of the order for a period of sixty days to give L.A.M. one more opportunity to establish that she could be rehabilitated within the community. During the deferred period L.A.M. was assigned to Sheila Lankford of the Division of Corrections Probation Department.

On November 2, 1973, the superior court, on the request of Ms. Lankford, vacated the deferred order of institutionalization and placed the child on regular probation, having been advised that L.A.M. was functioning effectively within the community while living at home. On November 5, 1973, the minor ran away but returned of her own accord on November 7. Two days later she ran away again and remained away until December 5, 1973, when she was apprehended by the police. On December 6, 1973, Ms. Lankford petitioned to revoke the minor's probation. At the hearing on this matter held on December 18, the superior court granted the petition to revoke probation but reinstated it on new conditions in light of a request by Ms. Lankford that the minor not be institutionalized. It was agreed that the child would reside in the Alaska Children's Services Receiving Home.

On March 18, 1974, Ms. Lankford filed a further petition seeking revocation of probation. In it she alleged that on February 20, 1974, the minor ran away from the receiving home and remained away until March 16, 1974, when she was apprehended by the police. At the hearing on the petition, held on March 22, 1974, the court found the minor had violated the conditions of her probation and had run away from the receiving home. The court considered the minor's objections presented by her attorney and, after considering the evidence and the argument of the parties, directed that the minor be institutionalized.

L.A.M. seeks to have her adjudication of delinquency set aside on two grounds. She contends that both as a matter of statutory interpretation and constitutional law, a child in need of supervision may not be prosecuted for criminal contempt; or, in the alternative, if such a prosecution is allowable, such prosecution cannot result in incarceration. Upon discussing the nature of contempt in this case, each of these grounds will be dealt with in order.

[1] Before a party may be held in criminal or civil contempt for failure to abide by a court order, certain elements must be established: (1) the existence of a valid order directing the alleged contemnor to do or refrain from doing something and the court's jurisdiction to enter that order; (2) the contemnor's notice of the order within sufficient time to comply with it; and in most cases, (3) the contemnor's ability to comply with the order; and (4) the contemnor's willful failure to comply with the order.

[2] The distinction between criminal and civil contempt is generally phrased in terms of whether the character and purpose of the contempt is "remedial" or "punitive."

[3] In *Johansen v. State*[6] we used a balancing test in determining that the failure to pay child support was criminal rather than civil contempt. We did so because incarceration was imposed for a fixed period under AS 09.50.020[7] to punish a completed act rather than to coerce future con-

6. 491 P.2d 759 (Alaska 1971).

7. See n. 2, *supra*.

duct pursuant to AS 09.50.050.[8] Specifically, the court held that where the contempt power was invoked to punish the alleged contemnor for "past, willful, flouting of the court's authority" pursuant to AS 09.50.010(5) (cf. AS 09.50.020), contempt was criminal, but where the contempt proceeding was instituted to "coerce future conduct" pursuant to AS 09.50.050, the contempt is civil.

[4] Applying that distinction here, the contempt order issued by the court would obviously be classified as "criminal." Were L.A.M. an adult, her failure to abide by court orders would be characterized as a "crime" under AS 09.50.010(5). Hence, L.A.M. could properly be declared a delinquent under AS 47.10.010(a)(1) after a proceeding in the Children's Court.

L.A.M. grounds her constitutional argument in *Breese v. Smith*,[9] where this court ruled that the right to liberty set out in Art. I, Sec. 1, of the Alaska State Constitution[10] guarantees every Alaskan regardless of age ". . . total personal immunity from governmental control: the right to be let alone . . .," which L.A.M. contends the supreme court qualified only to the extent that it ". . . must yield when [it] intrudes upon the freedom of others. . . ." Therefore, she continues, a citizen's right to liberty as enunciated in *Breese, supra*, (bolstered by the more recently enacted "right to privacy")[11] cannot be infringed by preventing her from doing anything that does not injure a specific definable victim. Consequently, L.A.M. concludes since her conduct, i.e. running away from home and foster home placement, did not injure anyone (except perhaps herself, which she contends has not been proved), it necessarily follows that it cannot constitutionally be interfered with by the State because there is no compelling state interest to justify such an interference.

L.A.M. assumes that the only interest to be protected by legislation in this area is that of the children. This is simply not the case. The parents' interest as well as the State's must be considered.[12]

[5–7] Proceedings against children alleged to be in need of supervision are in substance and effect custody disputes where the contestants are parent and child, and the parent appeals to the court to vindicate and enforce his custody rights in the child against that child.[13] Viewed in

8. AS 09.50.050 states in relevant part:
When the contempt consists of the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he has performed it.

9. 501 P.2d 159, 168–170 (Alaska 1972).

10. Art. I of the declaration of rights of the Alaska Constitution, § 1, provides:
Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

11. Alaska Constitution, Art. I, § 22, provides:
Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

12. The U. S. Supreme Court has on a number of occasions held that a parent's "right" to the custody and control of his child was constitutionally protected. *See Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965); *May v. Anderson*, 345 U.S. 528, 73 S.Ct. 840, 97 L.Ed. 1221 (1953); *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1932).

13. While there is much discussion of parental rights in reported cases, few cases attempt to define those rights making discussion difficult. A careful review of the literature, including case law, treatise and law review, indicates that the following have

this light, the statutes creating the status "child in need of supervision" provide a judicial remedy and discourage resort to self-help and the attendant risk of violence.[14]

[8] Thus, before L.A.M. can sustain her case that the child in need of supervision procedure, including the invocation of the court's contempt power to enforce orders made pursuant to it, is an unconstitutional invasion of her liberty and privacy, she must first establish that her mother has no legally enforceable right to her custody and the State thus has no right to enforce such an order. We note at the outset, however, that there is more to the parent-child relationship than simple custody. It is love and trust and a responsibility toward each other which cannot be defined legally. It is impossible to discuss severing this relationship without considering the heartache and anguish of the parents who must ultimately live with themselves and the decision after the child reaches adulthood. Further, the consideration of such an issue must accept the limitations of the State to be a parent; good intentions are not adequate substitutes for the day-to-day relationship which we have come to accept as necessary to the growth of children into responsible adults. True, like all legal rights, a parent's right to the custody of his child is not absolute and may be lost through divorce,[15] by conduct depriving the child of the necessities of life,[16] by abandonment,[17] by the child's emancipation,[18] or, subject to constitutional limitations, where the welfare of the child requires a limitation or termination of parental rights.[19]

been listed as "parental rights" protected to varying degrees by the Constitution:

(1) Physical possession of the child which, in the case of a custodial parent includes the day-to-day care and companionship of the child. In the case of a non-custodial parent, possession is tantamount to the right to visitation.

(2) The right to discipline the child, which includes the right to inculcate in the child the parent's moral and ethical standards.

(3) The right to control and manage a minor child's earnings.

(4) The right to control and manage a minor child's property.

(5) The right to be supported by an adult child.

(6) The right to have the child bear the parent's name.

(7) The right to prevent an adoption of the child without the parents' consent.

Of these so called residual parental rights, those that remain after custody is placed in another include the right to consent to an adoption and to withhold consent to prevent an adoption, the right to visitation and the right to have the child bear the parents' name. See the discussion in Burt, Forcing Protection on Children and Their Parents, 69 Michigan 1259 (1971); Dobson, The Juvenile Court and Parental Rights, 4 Family Law Quarterly 393 (1970); Young, The Problem of Neglect: The Legal Aspects, 43 Journal of Family Law 29 (1964); Note, Child Neglect: Due Process for the Parent, 70 Col.L.Rev. 465 (1970).

14. By withdrawing court assistance (and police assistance) from embattled parents, the state is not inducing compromise but may encourage violence, since parents have the right under Alaska law to physically control their children. See AS 11.15.110(1) as interpreted in *State v. England*, 220 Or. 395, 349 P.2d 668 (1960), and compare the civil liability of parents for disciplining their children which is discussed in *Hebel v. Hebel*, 435 P.2d 8, 14–15 (Alaska 1967).

15. AS 09.55.205 gives a court in a divorce action the right to provide for the custody of the children.

16. See AS 47.10.010(a)(5) which, when read in conjunction with AS 47.10.080(c) and AS 47.10.290(3), permits the state to take custody of a child who "lacks proper parental care by reason of the faults, habit or neglect of his parent, guardian or custodian."

17. See AS 47.10.010(a)(4), which authorizes the state to take custody of a child who has been abandoned.

18. A child is emancipated as a matter of law when he or she reaches the age of majority which in Alaska is 19 years of age: AS 25.20.010. *See R.L.R. v. State*, 487 P.2d 27 (Alaska 1971).

19. *Turner v. Pannick*, 540 P.2d 1051, (Op. No. 1189, 1975); *In the Matter of the Adoption of K. S.*, 543 P.2d 1191, (Op.No.1219, 1975).

L.A.M. was given an opportunity to show any of the foregoing as a defense to a finding that she was a "child in need of supervision" or, subsequent thereto, to a finding that she had committed criminal contempt of court and was therefore delinquent by violating orders regarding her placement; but she failed to do so.

Runaway children of L.A.M.'s age are generally incapable of providing for or protecting themselves. As a result, police spend a substantial amount of time protecting these youths from those who would prey upon them, as well as protecting the community from those who are ultimately driven to criminal activity to provide themselves with the necessities of life.

Various other social agencies also expend considerable efforts attempting to protect and shelter runaways in an effort to provide both an alternative to criminal activities and counseling in lieu of that they received from their parents. Without question these children's matters are of broad public interest and concern. They go to all aspects of the physical and mental well being of such children.[20]

The family, school, social agency and police resources allocated to aid the runaway are enormous. In this case, the child had continuing aid and support of (1) her mother and step-father, (2) a private psychiatrist hired by her mother, (3) counseling with social workers in Division of Family and Children's Services, (4) probation officers in Division of Corrections, (5) school counselors, (6) psychologists and psychiatrists from Langdon Clinic, (7) Alaska Youth Advocates, (8) group home counselors, (9) her court-appointed attorney, and (10) the court. To assert that the State has no interest in this child is to deny that the function of government is to protect its citizens. All of this presupposes the heartache and anguish of the parents, who in the first instance have been unable to deal with this problem but who must also live with the solution.

This court has previously found that there is sufficient State interest to justify restrictive measures on much less substantial grounds.[21] Further, this court has noted that distinct government interests with reference to children may justify legislation that could not properly be applied to adults.[22]

[9] The State has a legitimate interest in protecting children from venereal disease, from exposure to the use of dangerous and illicit drugs, from attempted rape, and from physical injury, all of which occurred in this case. Doubtless the State will never be entirely successful in its efforts. It does, however, have the right and obligation to *try* to protect its young people from such conditions.[23] The test set out by this court in *Ravin v. State*,[24] is whether the means chosen by the State are closely and substantially related to an appropriate government interest. Clearly they are here.

[10] While it may be argued that the necessary "supervision" contemplated by the statute is simply the furnishing of food, clothing, shelter and schooling in lieu of that which would otherwise have been provided by a parent, this argument begs the question, for the purpose of the supervision or treatment contemplated by the creation of the child in need of supervision and its predecessor non-criminal delinquency was reintegration of the child into her family and resumption of parental custody including parental control (cf. AS 47.10.-

20. *In Re G.M.B.*, 483 P.2d 1006 (Alaska 1971); *Wagstaff v. Superior Court*, 535 P.2d 1220 (Alaska 1975).

21. *Kingery v. Chapple*, 504 P.2d 831 (Alaska 1972).

22. *Ravin v. State*, 537 P.2d 494 (Alaska 1975).

23. In the analogous equal protection argument concerning ". . . economics and social welfare, a State does not violate the Equal Protection Clause merely because the classification made by its laws are imperfect." *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491.

24. 537 P.2d 494 (Alaska 1975).

280). Thus, the State's efforts regarding the child are not directed solely at providing an alternate living situation (as they are in a true case of dependency) but at putting the child back in her own home. The reestablishment of her mother's custody and supervision over her and any foster placement is merely a means to that end, not an end in itself. Thus, by rejecting these efforts L.A.M. defeats, or at least slows, this reintegration process and thereby prejudices her mother's right to her custody and control, subjecting herself to the more severe sanction contemplated by AS 09.50.020.

We note that L.A.M.'s primary argument in this case is that as a child in need of supervision whose conduct from the inception of the case to the present has not changed, she may not be placed in a closed setting, i. e. one where the doors may be locked. However, the cases upon which L.A.M. relies proceed to a different point, namely that the child should not be placed in a state training school. In Colorado, California, Illinois and New York,[25] children in need of supervision can at the first instance be placed in juvenile halls or youth centers, i.e. places with locked doors, but cannot be placed at the state training school, i.e. maximum security institutions. The McLaughlin Youth Center in Anchorage is more the equivalent of a juvenile hall than it is a state training school. It should be noted that Alaska has contracts with Colorado and California to place Alaska delinquents who are too sophisticated for McLaughlin in the state institutions in those states. Thus L.A.M. is not to be placed at either the California or Colorado training schools; she is threatened with placement at the McLaughlin Youth Center.

[11] Substantial evidence was introduced during the many hearings of this case regarding the population at the McLaughlin Youth Center. Based upon that evidence, it is clear that the kind of children who are extremely agressive, and extremely hardened in delinquency, are not treated at McLaughlin Youth Center but are sent outside for placement at schools in Colorado and California under contract with the State of Alaska. While the population at McLaughlin is made up at the present time exclusively of "delinquents," the evidence introduced at trial convinces us that while delinquency in some form is a prerequisite to gaining admission to McLaughlin, it is not the real reason that the child is at McLaughlin. The overwhelming majority of delinquents with strong family ties are treated in the community. Those delinquents who end up at McLaughlin are by and large there for the same reason that L.A.M. may be there, namely an unwillingness to remain at home or a home substitute and heed parental or a custodian's regulations. Based upon the evidence, it appears that L.A.M. and other chronic runaways would not be distinguishable in sophistication, exposure to criminal activity, etc., from the average child in the population at McLaughlin and that therefore the reasoning of the cases cited by L.A.M. should not apply to Alaska.

[12-14] Whether we characterize L.A.M. as a delinquent child, a child in need of supervision, a dependent child, or merely a child whose custody is disputed in a domestic relations proceeding, the court has authority, upon extending all procedural safeguards, to make orders affecting her custody. It is argued, however, that this is a situation where the court has no power to enforce its order, and thus the court must release L.A.M. This view is contrary to the inherent power of the court to enforce its orders or decrees.[26] While the court

25. *In re Presley*, 47 Ill.2d 50, 264 N.E.2d 177 (1970); *Matter of Tomasita N.*, 30 N.Y.2d 927, 335 N.Y.S.2d 683, 287 N.E.2d 377 (1972); *G. v. Redlich*, 32 N.Y.2d 588, 300 N.E.2d 424 (1973); Cal.Welf. and Inst. Code, §§ 601, 730, 777 (West 1972).

26. Alaska Const. Art. IV, § 1, provides in part:

> The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature.

See also *Ex Parte Robinson*, 86 U.S. (19

may have limitations on its power to act, there are only due process limitations on its authority to compel enforcement of its orders. Hence, we reject the argument that the superior court lacked the authority to enforce specific orders against L.A.M. in this case.

[15] The lower court determined that L.A.M. would not abide by any orders it entered regarding her supervision under AS 47.10.080(j). This behavior constitutes willful criminal contempt of the court's authority; were she an adult, her actions would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subject to those sanctions available for the correction of a delinquent minor's behavior. Certainly, conciliation should precede coercion; and if coercion is necessary, mild sanctions should first be tried before more severe sanctions are imposed. However, where mild sanctions fail, the court's orders must be enforced and severe sanctions should be imposed if necessary. In the instant case, all available sanctions, save institutionalization, were tried and found unsuccessful. Thus, the lower court determined that it had no choice but to order L.A.M. institutionalized.

In affirming this decision, we note that the trial judge was most innovative in fashioning a necessary remedy for a situation not covered by statute.[27] The very nature of the problem, however, calls for legislative overhaul of the statutes in this area, for the trial court's remedy is not easily modified to cover other situations where there is no statutory guidance.

BOOCHEVER, Justice, with whom RABINOWITZ, Chief Justice, joins, concurring.

I concur in the court's opinion based on the last three paragraphs thereof. I would not reach the other issues discussed in the opinion. Protection of parental rights to care, custody and supervision do not seem to me to be an appropriate rationale for placing a child in an institution. In my opinion, the court's efforts were devoted primarily to furthering the welfare of the child, a subject in which the state does have an interest.[1] There was ample testimony to indicate that L.A.M.'s conduct was harmful to her.[2]

Wall) 505, 510, 22 L.Ed. 205, 207 (1874); *In re Shortridge*, 99 Cal. 526, 528, 34 P. 227, 229 (1893); Frankfurter and Landis, Power of Congress over Procedure in Criminal Contempts in "Inferior" Federal Courts —A Study in Separation of Powers, 37 Harv. L.Rev. 1010, 1017–1022 (1924); Goldfarb, *The Contempt Power*, 37–40 (Columbia University Press 1963).

27. The trial judge was a model of patience and fairness in this extremely difficult case. Further, we are indebted to him for his scholarly memorandum opinion which aided in the preparation of this opinion.

1. The state's power to act in support of the welfare of children is exemplified by such statutory enactments as compulsory education (AS 14.30.010 et seq.); financial assistance for dependent children (AS 47.25.-310 et seq.); protective laws as to the employment of children (AS 23.10.325 et seq.); minimum age of consent for marriage (AS 25.05.171); prohibition of the use of alcohol and tobacco by minors and of the sale of either substance to minors (AS 04.15.-050 et seq. and AS 11.60.080); punishment for statutory rape (AS 11.15.120); contributing to the delinquency of a minor (AS 11.40.130); and for lewd or lascivious acts toward children (AS 11.15.134).
In *Anderson v. State*, 384 P.2d 669, 671 (Alaska 1963), this court stated that the purpose of the statute punishing acts which contribute to the delinquency of a minor is "to protect all children under the age of 18". In *Hanby v. State*, 479 P.2d 486, 498 (Alaska 1970), the court held that the state can enact statutes to protect the juveniles—to prevent as well as punish delinquency. In *Hanby*, the court found that material which was not so obscene as to be proscribed for the general population could be forbidden to minors. Children who were judged to be in a harmful environment were removed from their home in *In re P. N.*, 533 P.2d 13 (Alaska 1975). The court determines child custody in divorce proceedings according to the welfare and best interest of the child. *Horton v. Horton*, 519 P.2d 1131, 1132 (Alaska 1974); *Nichols v. Nichols*, 516 P.2d 732, 734 (Alaska 1973); *Carle v. Carle*, 503 P.2d 1050, 1052 (Alaska 1972).

2. While a runaway, L.A.M. was truant from school; was allegedly the victim of a

On the basis of the record, I do not believe that we can conclude that police spend countless hours protecting the community from anti-social conduct of runaway children. Recent studies indicate that status offenders (such as runaways) are not a source of general harm to others as contrasted with children who have committed offenses which, if perpetrated by adults, would be crimes.[3] I concur in the opinion since I believe that the state has an interest in the welfare of children justifying the entry of appropriate orders. In cases involving status offenders, only after all else fails, should placement in a closed setting be justified. But under the facts of this case, the trial judge had no alternative.

RABINOWITZ, Justice (concurring).

Although I am in agreement with the court's disposition of this appeal, I think it appropriate to answer appellant's contention that our prior decisions precluded the superior court from institutionalizing L.A.M. This contention is grounded upon *In re E.M.D.*, 490 P.2d 658 (Alaska 1971), where we rejected the argument that under Alaska's statutes a minor who has been adjudicated a child in need of supervision may be institutionalized by the state. Upon analysis of the relevant statutes, we concluded that ". . . the legislature has authorized institutionalization only when the child is found to be a delinquent minor."[1] Thus, if the superior court in the case at bar had institutionalized L.A.M. because she had been adjudicated a child in need of supervision, such action would have been erroneous under *E.M.D.*

But here L.A.M.'s status was not merely that of a child in need of supervision; the scope of her future conduct had been limited by the superior court's order. By virtue of this order L.A.M. was, as the state argues, essentially on probation.[2] The majority notes that the superior court found that L.A.M. had violated the conditions of her probation by running away. The majority then observes that

> Were L.A.M. an adult, her failure to abide by court orders would be characterized as a 'crime' under AS 09.50.010(5). Hence, L.A.M. could properly be declared a delinquent under AS 47.10.010(1) after a proceeding in the Children's Court.

I thus conclude that what essentially transpired below was that the trial court found a violation of the conditions of probation which it imposed pursuant to its determination that L.A.M. was a child in need of supervision, and ordered L.A.M. incarcerated.[3] In my view, *E.M.D.* did not prohibit the superior court from ordering the institutionalization of L.A.M. in the circumstances of this case.

rape as reported in a call to the police; contracted gonorrhea; suffered an injured jaw and broken teeth from a fall, which injuries had not received medical attention.

3. Clarke, Stevens H., "Some Implications for North Carolina of Recent Research in Juvenile Delinquency," Journal of Research in Crime and Delinquency, January 1975.

1. *In re E.M.D.*, 490 P.2d 658, 659 (Alaska 1971). In E.M.D., after finding the minor to be a child in need of supervision, the trial court committed E.M.D. to the custody of the Department of Health and Welfare and directed the Department to place her in a correctional or detention facility.

2. AS 47.10.080(j) provides in part:
> If the court finds the minor is a child in need of supervision it shall make any of the following orders of disposition for his supervision, care and rehabilitation:
>
> . . . . .
>
> (2) order the minor placed on probation under those conditions and limitations that the court may prescribe.

3. See AS 47.10.080(b)(1).

The Fairbanks Child Sexual Abuse Task Force
1423 Peger Road
Fairbanks AK 99709

March 17, 1988

House Judiciary Committee Members:
Representatives Sund, Ulmer, Cotten, Gruenberg, Navarre, Barnes, and Taylor
Interior Delegation Members:
Representatives Boyer, Davis, Frank, Koponen, Miller, Shultz
Senators Coghill, Fahrenkamp, Fanning
P.O. Box V
Juneau, AK 99811

Re: House CS for CS for Senate Bill 79

Dear Legislators,

We are writing on behalf of the Fairbanks Child Sexual Abuse Task Force, a coalition of agencies, organizations and associations involved in prevention and treatment of child sexual abuse. The CSATF wants to express its views on the current version of Senate Bill 79.

The bill as it is currently worded is a great improvement over the original version, but it creates several problems which we wish to bring to your attention.

First and foremost, this bill leaves unaddressed what we regard as the most crying need in this area, that of more funding for treatment programs for runaways. Without a substantial commitment on the part of the state to fill that need, the bill is more of a placebo than a solution.

Second: the bill leaves unclear what is to happen after the court holds its 48-hour hearing under the new AS 47.10.141. It is a little confusing in referring to "civil contempt of court under AS 09.50.010(5)" in that the Supreme Court has regarded that statutory subdivision as providing for criminal contempt rather than civil contempt, L.A.M. v. State, 547 P.2d 827, 832 (Alaska 1976), while AS 09.50.050 is the civil contempt section. It is also confusing in that the only remedy generally available for violations of AS 09.50.010(5) is a fine, under AS 09.50.020. Also, our group had questions about whether the protections of the Indian Child Welfare Act would apply to these hearings.

Third: it is unclear whether new AS 47.10.142(f), providing that the court commitment order is to specify the terms, conditions and duration of placement, is intended to overrule prior case law interpreting the existing statute to mean that the Division, not the court, is to make specific placement decisions. See B.A.M. v. State, 528 P.2d 437 (Alaska 1974).

Fourth: the bill makes no provision for an attorney for the child being taken into detention under a court order. It would appear that the child is facing a loss of liberty and accordingly should be entitled to an appointed attorney as a matter of due process. It is possible that an attorney has been already appointed in the pre-existing child-in-need case that is a prerequisite under the new statute; but it is more likely that the child has had a Guardian ad Litem appointed, not an attorney. These roles are substantially different, and a GAL would not fulfill the constitutional requirement that a child facing the potential deprivation of liberty under the new statute be given the right to counsel, including appointed counsel if necessary.

There are a couple of miscellaneous points we would like to bring to your attention: regarding the language on page 4, lines 21-22 providing that the program is to maintain adequate staffing and accommodations to ensure physical security and provide crisis services, it should be made clear that this refers to security in the sense of sufficient staff to keep the residents secure from danger, not sufficient staff to keep the residents securely held as in a detention facility. Also, our group felt that the language on page 4, line 20 should be changed from "contrary to the health and welfare of the minor" to "contrary to the best interests of the minor".

Thank you for your consideration.

Sincerely,

Theresa Tanoury
Coordinator
452-1342

Ruth Lister
Chair
452-2293

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on SB 79 bill/subject, dated March 22, 1988.

The Alaska Chapter of National Association of Social Workers (NASW) supports SB 79 in its present version. We support the provision of detaining runaway minors in a secure home or facility, if needed. We believe that at the time of detainment, the minor will have legal advocacy to protect his/her rights.

Signed: Marsha Schneider, Executive Director
Testifier

NASW
Representing (Optional)

PO Box 10430 Fairbanks 99710
Address

457-5914
Phone No.

9/86 Legislative Information Office

STATE OF ALASKA
THE LEGISLATURE
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POUCH Y . STATE CAPITOL
JUNEAU, ALASKA 99811
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MEMORANDUM November 18, 1987

SUBJECT: Sectional analysis of HCS CSSB 79 (HESS)

TO: Representative Johnny Ellis
Co-Chair, House HESS Committee

FROM: Edward H. Hein EHH
Legislative Counsel

Section 1 is the same as section 1 of CSSB 79 (Judiciary) am, with one exception. The HESS Committee version amends AS 47.10.141(b) by allowing a runaway minor who is picked up by police to choose to be taken to a private program for runaways that is approved by the Department of Health and Social Services, rather than to be taken home or to a place designated by the minor's legal custodian or to an office, facility, or contract agency of the department. Secs. 2 and 3 of that version of the bill have been deleted.

Sec. 2 is all new material based in part on the New York Runaway and Homeless Youth Act. This section creates a new Article 5 in AS 47.10 that provides for review, inspection, and approval by the Department of Health and Social Services of private nonprofit residential and nonresidential programs for runaway minors and homeless youth.

Sec. 47.10.300 sets out the duties and powers of the department with respect to these runaway programs. These include approving or disapproving the programs, maintaining a register of approved programs, awarding grants to approved programs, submitting an annual report on runaways to the legislature and the governor, and adopting regulations.

Sec. 47.10.310 sets out the requirements for a program to be approved by the department. A program must be operated by an Alaskan nonprofit corporation; explain to a runaway his or her legal rights and responsibilities as a runaway and explain the services and assistance available from the program, the state, and the local municipality; try to deter-

mine why the minor is a runaway; provide or help obtain various services for runaway minors and, if appropriate, their families; inform the department if child abuse or neglect of the minor is claimed or reasonably suspected; operate with the goal of reuniting the runaway minor and family, unless that is contrary to the minor's health and welfare; and provide physical security and emergency services for residents of the program, and separate minors under 16 from those 16 and older.

Sec. 47.10.320 establishes limits on the duration of a runaway's residency in a program. The limits are 30 days without consent of the legal custodian, 60 days with consent, beyond 60 days with approval of department and the legal custodian's consent.

Sec. 47.10.330 requires the program director to notify a minor's legal custodian within 72 hours after the minor is admitted to the program, unless there are compelling circumstances justifying withholding notice. The legal custodian is also entitled to notice when the minor is released from the program if he or she is released into the custody of someone other than the custodian or the custodian's representative.

Sec. 47.10.340 provides for confidentiality of records that identify particular runaway minors who have been in the program or sought assistance from it. Exceptions are provided for instances in which the minor consents to disclosure of the records, when the records are relevant to an investigation or proceeding involving child abuse or neglect or a child in need of aid petition, and when disclosure is necessary to protect the life or health of the minor.

Sec. 47.10.350 provides complete immunity from civil and criminal liability for officers, directors, and employees of runaway programs with regard to admitting a person to a program or releasing a person from a program into the custody of someone other than the legal custodian or representative.

Sec. 47.10.360 exempts the runaway programs from licensing and regulation under AS 47.35, which is the chapter that provides for departmental licensing of foster homes, boarding homes, and other private institutions for the regular care of children and dependent adults.