

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6817 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

HB

100

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

RECEIVED J 1991

WALTER J. HICKEL, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 5, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 100 (Rights of Victims of Crimes)

Dear Representative Donley:

I have had the opportunity to review the March 1, 1991, work draft for a committee substitute for HB 100, and am pleased to say that it addresses all of the concerns raised in our letter of February 26th.

Thank you for having provided us with the opportunity to comment on the bill.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Khuth
Margot O. Khuth
Assistant Attorney General

MOK:ma

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

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February 26, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 100 (Rights of Victims of Crimes)

Dear Representative Donley:

By letter dated January 31, 1991, you have asked whether we believe there are any problems with the above-referenced bill and whether we support, oppose, or are disinterested in it. Please be advised that we generally support this legislation. As discussed below, we do note a few technical and practical problems. We believe, however, that these can be readily cured.

This bill will assist the victims of crimes by increasing their rights to maintain a civil suit or claim for harm caused by a felony or a violent crime, to be present and address the court at the defendant's sentencing hearing, and to be present and address the court at juvenile offenders' proceedings.

Sections 2 and 3 amend existing law (AS 09.38) to allow a victim-creditor to levy against a debtor's otherwise exempt wages or property to enforce a claim resulting from the debtor's criminal conduct if that conduct resulted in a felony conviction. We have no objection to this provision and generally support it.

Section 4 amends the "special actions and proceedings" chapter of the Code of Civil Procedure (AS 09.55) to add an article on "actions by crime victims," which authorizes a victim to recover treble damages and full attorney's fees in a civil suit for harm caused by a defendant's violent crime. We have no objection to this provision and generally support it. We suggest, however, that you consider adding arson to the list of crimes set out in section 4 of the bill (proposed AS 09.55.601(c)). Although it is included within the chapter on property offenses in title 12, it is often intended to be and experienced as a violent offense, at least as intrusive as the "offenses against the person" listed in AS 12.41.

Sections 5 - 8 amend existing laws (AS 12.55.023, AS 12.55.088) to allow a victim to make an oral statement, as well as or instead of, a written statement to the court at the time of the defendant's felony sentencing or request for a modification of such a sentence. Sections 15 and 16 amend the Criminal Rules to reflect this change. We have no objection to this provision and generally support it.

We note, however, a possible technical error. Section 15 amends Criminal Rule 32(g), which requires the trial court to consider a victim's statement when sentencing the defendant. Both the existing rule and the proposed amendment refer to statements (or presentations) made under AS 12.55.023. This statute relates only to felonies. If the legislature wants the court to consider the victim's statements when sentencing a defendant on misdemeanor offenses, as well, Rule 32(g) should be amended to refer to AS 12.61.010 instead of to AS 12.55.023. (Although the Criminal Rules were written for superior court, which hears only felonies, they are applicable to district court -- and hence misdemeanors -- as well. See Dist. Ct. Crim. R. 1.)

Section 9 amends the "rights of victims" chapter of the Code of Criminal Procedure (AS 12.61) to give victims the right to make a written or oral statement at all sentencings, rather than only at sentencings for felonies or domestic violence assaults. We have no objection to this provision and generally support it.

Sections 10 and 11 amend the statute setting out the "duties of prosecuting attorney[s]," (AS 12.61.015), to require that reasonable efforts be made to notify victims of their right "in any case" to appear and be heard at the defendant's sentencing. It is unclear whether this change is intended to expand the class of persons entitled to notice, beyond those who are victims of felonies or domestic violence assaults, or not. In either event, we suggest that the amendment be rewritten to clarify the law.

We would have a concern if the section were intended to require notice to all victims, rather than just those victims of felonies or domestic violence assaults. We believe that such a change in the notification requirement would cause an unintended problem. Although the statute requires only "reasonable efforts" to notify the victim, it is uncertain what the courts will consider reasonable. We are concerned that the courts will construe this type of provision to require that some type of effort be made to notify the victim before the defendant is sentenced.

This presents a problem because many misdemeanor defendants wish to plead out and be sentenced at their first appearance, rather than be required to return to court. Needless to say, we try not to discourage this. If the victim had to be given notice, however, the sentencing would have to be continued

The Honorable Dave Donley

February 26, 1991
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and the defendant, who would then be required to return to court in any event, could well decide to contest the charges after all. We predict that such a notice requirement would slow the justice system down and add to the workload of the district attorneys' offices. We hope that section 10 was not intended to broaden the notice requirement and ask, if it were, that you consider deleting the amendment.

Sections 12 - 14 amend statutes within the chapter on "delinquent minors." Section 12 amends AS 47.10.070 to give the victims of juvenile offenders the right to attend the various hearings, which otherwise are closed to the public, and section 17 amends Delinquency Rule 3(c) to reflect this change. Under existing law (AS 47.10.072 and Delinquency Rule 3(c)), it is up to the judge whether a victim should be permitted to attend the hearings. Section 13 amends AS 47.10.081 to require the inclusion of a victim impact statement in the juvenile's predisposition hearing report. Section 18 amends Delinquency Rule 22(a)(1) to reflect this change. We have no objection to these amendments and generally support them.

The remaining sections make amendments that are either minor or technical in nature (and as to which we have no objection). Thus, the only section we find troublesome is section 10 and it is likely that this is a matter requiring only clarification. If there is agreement on the intent of the section, we suggest that the following language be substituted for "right in any case" on page 5, line 17: right in a case that is a felony or a domestic violence assault

Thank you once again for the opportunity to comment on this bill. If you have any further questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: _____

Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

MOK:mm-024

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 20, 1991

SUBJECT: Sectional analysis of CSHB 100 ()

TO: Representative Dave Donley
Chair, House Judiciary Committee
Attn: Laurie Otto

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill gives its short title, the Victims' Rights Act of 1991.

Sections 2 - 4 provide that a criminal's victims may seize earnings and assets of the criminal that would not be seizable by other creditors of the criminal, and define victims to include the spouse and dependents of a deceased person and the spouse, parents, or guardian of a minor or of an incompetent or incapacitated person.

Section 5 provides that victims of violent crime, including those injured or damaged while trying to prevent the commission of a crime, to apprehend the offender, or to assist a police officer, may obtain treble damages from the criminal and may recover full attorney's fees necessary to bring a civil action for damages.

Sections 6 - 9 give a victim of a crime the right, at the sentencing hearing of the criminal who victimized him or her, or at a hearing on a subsequent motion to modify the sentence, to give sworn testimony or to make an unsworn statement.

Section 10 - 12 amend the rights-of-victims chapter of the code of criminal procedure to be consistent with the changes made in sections 6 - 9 of the bill.

Sectional Analysis

Representative Dave Donley
March 20, 1991
Page 2

Section 13 gives the victim of an offense with which a juvenile has been charged the right to attend all proceedings involving the juvenile, even though those proceedings are normally closed to the public.

Section 14 requires juvenile probation officers, after a juvenile has been adjudged delinquent for an offense with a victim, to prepare a victim impact statement for the court's consideration in ordering the appropriate disposition of the delinquent minor.

Section 15 makes a technical change, relocating a definition.

Sections 16 - 19 provide for changes in court rules consistent with the statutory changes made by the bill.

Section 20 repeals a statute that has been superseded by other sections of this bill.

Section 21 provides that sections 2 - 5 of this bill will apply only to crimes committed after the effective date of the enactment.

Sections 22 - 23 note that section 5 of this bill alters the attorney fees provision of the Alaska Rules of Civil Procedures and will only take effect if it receives a two-thirds vote in each house.

JBG:lmb:pl
91-090.lmb

Alaska Association Chiefs of Police



March 21, 1991

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Donley,

Those of us in the law enforcement community for many years have felt that the rights of victims are overlooked in our legal system. Too often, victims are helpless and unable to recover damages they suffer at the hands of criminals. Compounding this is the fact that victims are excluded from having a voice in post-conviction hearings for adults, while being totally barred from any proceeding involving a minor.

The Alaska Association of Chiefs of Police supports House Bill 100 because many of these injustices would be corrected. We are supportive of laws that give victims a voice in a system that has traditionally focused on wrongdoers, rather than the innocent.

Sincerely,

A handwritten signature in cursive script, reading "Duane S. Udland".

Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507

Letters of Support

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
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3111 "C" STREET, SUITE 450
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(907) 561-7629 (FAX) 562-4376




CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

MEMORANDUM

TO: All Members
HESS Committee

FROM: Representative Dave Donley 

RE: ██████████/HB 101 - Public Support

DATE: March 20, 1991

I have received a large number of public opinion messages in support of HB 100 and HB 101. Representative comments include:

"My three year old daughter was a victim of a violent crime. The perpetrator was a juvenile. We were not able to obtain, or have any input regarding the case. I would like to urge you to support HB 100 and HB 101." Michele Hailey, Anchorage

"I support HB 100, HB 101. As a 40 year resident of Alaska and with juvenile crimes on the increase, it is time that juveniles be held responsible for the crimes they commit against society. For juveniles to commit serious crimes such as murder, robbery and rape and not be held accountable for their crimes after age 20 is repulsive. The victims need more rights. Thanks." Jack Merrell, Anchorage

"Please vote for HB 100, 101. Government should provide three things: protection, education, and roads. Please protect us from teenage criminals." Michael Mitchell, Anchorage

"I do support HB 100, HB 101. I feel the victims should have more rights than the criminals. It is really sad when we don't." Linda Charles, Chugiak

"I am totally in support of HB 100, HB 101, as these bills are dealing with victims rights and at this point and time, victims today need all the help they can get." Marti Ressler, Eagle River

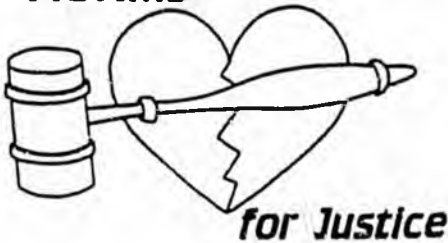
A list of all the people who sent POMs in support of HB 100 and HB 101 is attached.

DD:lc



Public Opinion Messages/Letters in Support of HB 100 and HB 101

Edith Sherwood	3419 W. 80th Avenue	Anchorage	99502
James Brodie	2211 Dahl Lane	Anchorage	99503
Carol Elkins	1353 Oxford Drive	Anchorage	99503
Philip Fear	4808 Kent Street	Anchorage	99503
Michele Hailey	4639 Kent Street	Anchorage	99503
James Hailey	4639 Kent Street	Anchorage	99503
Mark Manville	1321 Harding Way	Anchorage	99503
Michael Mitchell	6626 Foothill Drive	Anchorage	99504
Norma Ossenkop	2110 Banbury Circle	Anchorage	99504
Bufford Vopalensky	7221 Sitkin Circle	Anchorage	99504
Ruth Fenton	5442 Larkspur Circle	Anchorage	99507
John Lopetrone	1510 Thuja	Anchorage	99507
Dan O'Haire	3130 Lark Apt. E	Anchorage	99507
Edward Simpson	3130 E. 46th Avenue, #2	Anchorage	99507
Michael Webster	2380 Stonebridge Circle	Anchorage	99507
Donna Harper	4130 Peterkin, #4	Anchorage	99508
Mary Ellen Summers	P.O. Box 110423	Anchorage	99511
John Kimball	P.O. Box 111666	Anchorage	99511
Judith Lewis	P.O. Box 111375	Anchorage	99511
Henrietta Childs	12801 Brandon Street	Anchorage	99515
Jack Morrell	8628 Vernon Street	Anchorage	99515
Gladys Obermiller	1620 Helen	Anchorage	99515
Ralph Tolman	12901 Hace	Anchorage	99515
Linda West	1823 Bellevue Loop	Anchorage	99515
Karen Casmeyer	12841 Foster Road	Anchorage	99516
Effie McEwen	3401 E. 144th	Anchorage	99516
Joyce Seibert	4511 Trapline Circle	Anchorage	99516
Mike Miller	2907 W. 35th Avenue	Anchorage	99517
Jack Doyle	1320 E. 68th, Suite 112	Anchorage	99518
Helen Boehm	HC 78, Box 2890	Chugiak	99567
Ray Carloni	SR2, Box 4865	Chugiak	99567
Linda Charles	HC 78, Box 2275	Chugiak	99567
Theresa Cain	P.O. Box 771318	Eagle River	99577
Gary Pogany	P.O. Box 323	Eagle River	99577
Marti Ressler	P.O. Box 16431	Eagle River	99577
Gary Jacobson	P.O. Box 284	King Salmon	99613
Joyce Alto	P.O. Box 225	Naknek	99633
Thomas Sokolowski	P.O. Box 3367	Palmer	99645
Bob Cooksey	P.O. Box 875601	Wasilla	99687
James Plumley	Box 3208-M	Wasilla	99687
Lloyd Rudd	P.O. Box 871864	Wasilla	99687

VICTIMS

March 19, 1991

Representative Dave Donley
 House of Representatives
 P.O. Box V
 Juneau, Alaska 99811

Dear Representative Donley,

Thank you so much for your support and help in writing legislation concerning victims. Our goal is to see "justice for all... even the victim"!

Paul Stockler, a local attorney, who until this month, has worked for the District Attorney's Office is now the legislative liaison and Board Member of Victims for Justice. Paul is writing to you from the legal perspective concerning the 1991 Anti-Crime Legislation. I am writing from the victim's perspective and only on the issues that I have dealt with directly in working with victims.

HB 100 would be a wonderful help to families whose loved ones have been murdered by a juvenile. Presently, if a juvenile murders a family member, a terrible process begins which compounds the victim's grief, and virtually neglects the families legal needs. The victim's family must first go through the trauma of filling out a petition to attend the juvenile hearings. After the juvenile petition is filed the defense attorney will usually respond as to why the family should not attend the proceedings. A family has no legal representation and is always overwhelmed with the defense's response. Mr. Cole, from the Attorney General's Office, due to the juvenile privacy law cannot provide the family with any legal help, "as he represents the State not the victim". The right to be informed is wrongly denied these suffering families.

The family needs to confront the perpetrator, just as the law says the perpetrator must face the victim, so the victim needs to confront the perpetrator as a part of the healing process. The juvenile perpetrator needs the opportunity to face the victim in order to deal with accountability. In a recent case, the family won the decision to be a part of the hearings, but they kept the juvenile behind a two-way glass because he did not want to face the family whose son he murdered. What a terribly painful experience for the victim's family. I also believe an injustice to the juvenile perpetrator.

In adult court Victim Impact Statements are encouraged at the time of sentencing. In a juvenile hearing the victim's family is not allowed to give a victim impact statement. Espe-

information in order to face accountability and the victim needs the opportunity to feel a part of the system. This bill would be very valuable in considering the victim's rights. The criminal justice system is traumatic enough without the complications of considering only the juvenile's rights.

One issue I would suggest be changed in HB 101 is "minors under the age of 18 who are treated as adults be placed in juvenile institutions rather than adult prisons." Minors who are adjudicated as adults should not be placed in McLaughlin but perhaps isolated in an adult jail, away from adult prisoners or in a special prison. McLaughlin is overcrowded and mixing murderers with the general population creates some negative roll models to already disturbed children.

HB 103:Fingerprinting of Minors: Most crimes are committed by juveniles under the age of 16. Therefore tracking these early offenders is a way to help these youths face accountability.

HB 105: Facilitating Joint Trials of Multiple Defendants and Joining Charges Against One Defendant: This bill saves money, provides a jury with a more accurate picture of the crime and allows the victim to experience the pain of one trial instead of multiple.

HB 142: Closing Loopholes in Escape Statue. I was surprised that this would even be an issue. I am grateful that someone is interpreting the law to make it more practical and realistic.

Thank you for your hard work.

Sincerely,

Janice Lienhart
Sharon Nahorney
Janice Lienhart
Sharon Nahorney

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

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CHAIRMAN
JUDICIARY COMMITTEE
VICE CHAIRMAN
REGULATION REVIEW COMMITTEE
MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

MEMORANDUM

TO: Representative Georgianna Lincoln, Co-Chair
Representative Pat Carney, Co-Chair
Health, Education, and Social Services Committee

FROM: Representative Dave Donley *D*

RE: HB 100 - Victim's Rights Act of 1991

DATE: March 21, 1991

Since HB 100 was introduced, I have been working with the administration to work out technical and practical problems with the bill. Attached is a proposed CS to HB 100 that resolves problems in the original version of the bill. A sectional analysis for the CS is also attached. Finally, I have included two letters from the Department of Law; the first outlines the problems with the original version of the bill and the second indicates that the problems have been resolved in the CS.

There are only minor differences in the two versions of the bill. They are:

- (1) a definition of "victim" is added on page 2, lines 28 - 29 of the proposed CS;
- (2) arson in the first degree is added to the definition of "violent crime" on page 3, line 25 of the proposed CS;
- (3) a technical amendment (removing the phrase "in any case") is made on page 5, line 22 of the proposed CS; and
- (4) a conforming reference ("and AS 09.38.065(d), added by sec. 4 of this Act") is made on page 7, line 27 of the proposed CS.

DD:lc



P.O. F

summary of changes to CS

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REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

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SPONSOR STATEMENT

House Bill 100, the Victim's Rights Act of 1991, increases the rights available to crime victims by:

- making it easier for victims of felony crimes to recover damages from the person who injured them by giving the victims the ability to levy against property that would be exempt from execution by a contract debtor;
- allowing victims of violent crimes to recover triple damages and full attorneys fees in civil cases brought against the person who committed the crime;
- increasing the rights of victims of crime to participate in sentencing and post-conviction hearings by allowing victims to make oral presentations to the court (current law only allows victims to submit written remarks to the judge which is a hardship for those victims who do not feel comfortable communicating in writing); and
- allowing victims of criminal offenses committed by a minor to attend all court hearings involving the minor.

Studies have shown that one of the primary reasons criminal cases are lost, and dangerous offenders not incarcerated, is lack of cooperation from crime victims and witnesses. All too often this is because victims and their families feel revictimized by a criminal justice system that is inflexible and unresponsive to their needs.

By increasing victim access to the criminal justice process, and by making it easier for victims to recover civil damages from the person who caused them injury, HB 100 seeks to readjust the balance of our criminal justice system in a manner that does not infringe on the rights of criminals. In addition to helping victims by making the experience of being involved in a crime less burdensome, HB 100 will reduce the number of criminal cases lost or dismissed as a result of poor victim cooperation and will provide an increased incentive for reporting crimes.



JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



SPONSOR STATEMENT

BILL NO: HB 100

DATE: 3/22/91

TITLE: An Act relating to the rights of victims of crime. . .

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY

POSITION PAPER

This bill is intended to assist the victims of crimes by increasing their rights to maintain a civil suit for harm caused by a felony or a violent crime, to be present and address the court at the defendant's sentencing hearing, and to be present and address the court at juvenile delinquency proceedings.

The Department of Public Safety supports HB 100, but offers a suggestion which we believe will improve the bill. Section 4 of the bill authorizes a victim to recover treble damages and full attorney's fees in a civil suit for harm caused by a defendant's "violent crime". In this section of the bill, "violent crime" is defined to include offenses such as coercion, extortion, and DWI. We suggest that there are other felony-level crimes which present a great danger to a victim's safety and which should be added to the list of crimes subject to a treble damages claim. These include:

- AS 11.41.455 Unlawful Exploitation of a Minor (using a child under 18 to produce pornography);
- AS 11.46.300-310 Burglary in any degree;
- AS 11.46.400-410 Arson in any degree;
- AS 11.46.480-484 Felony Criminal Mischief (includes intentional damage to an oil pipeline, airplane, or helicopter, and tampering with food or drugs);
- AS 11.51.100 Endangering the Welfare of a Minor (intentionally deserting a young child under circumstances creating a substantial risk of physical injury to the child);
- AS 11.56.300-320 Felony Escape;
- AS 11.56.510 Interference with Official Proceedings (includes using force to influence or retaliate against a witness or juror); and
- AS 11.66.110 Promoting Prostitution in the First Degree (includes using force to induce a person to engage in prostitution).

We urge the Legislature's favorable consideration of both the bill itself and the additions proposed above.



Richard L. Burton
Commissioner

D.O. P.S. Position Paper

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC);
Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Manilaq Regional Women's Crisis Program;
Tongass Community Counseling Center; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Sitkans Against Family Violence (SAFV);
Seward Life Action Council (SLAC); Southwestern Alaska Council
for the Prevention of Child Sexual Assault (SWACPCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HB 100 VICTIM'S RIGHTS

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit membership organization comprised of 23 agencies statewide that work with victims of domestic violence & sexual assault and their families.

The Network supports HB 100, which provides important additions to the rights of crime victims in Alaska. The Network is especially supportive of provisions which allow for oral presentations and sworn testimony, for treble damages in civil actions, and for victims of violent crimes to be present at juvenile hearings.

The Network believes that providing an opportunity for oral presentation is important to victims who may not have writing skills or who may be dealing with English as a second language. It is appropriate to ensure that victims can make their statements in the manner most comfortable and least threatening to them.

The bill provides for treble damages and fees in cases where someone has been injured as a result of violent crime or as a result of trying a victim of such a crime. Civil action, particularly in cases of rape and child sexual assault, provides a means for victims to recover the long-term damages suffered as a result of their victimization. It holds the offender responsible for paying those costs.

Victims of violent crimes should have a right to attend all proceedings that bear on their case. According to the Committee for Children, in 1987 children under the age of 15 were arrested for 11,284 aggravated assaults and 1,660 forcible rapes. Among teen girls who are raped, 40-65% are assaulted by an acquaintance, usually a date or boyfriend. When these cases are prosecuted under current law, the victim of the crime may never know what, if anything, was done in his/her behalf. This is extremely difficult for victims for whom coming forward in the first place can be a tough decision. It is an ineffective treatment of offenders, many of whom minimize or deny the impact their action has had on the victim.

HB100
Page Two

The Network would like to request that the sponsor consider the addition of the words "or the victim's designee" to Section 12 to allow a victim to designate an advocate or other party to attend the hearings in their behalf, and to consider wording to allow the victim to bring an advocate to those hearings at which the victim is required to testify. The Network is concerned, however, that when children strike back against a physically or sexually abusive party, that that party not be allowed into hearings under this bill, and would respectfully request that a waiver of this right be considered in such circumstances.

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics



Children in Custody, 1975-85

Census of Public and Private
Juvenile Detention, Correctional,
and Shelter Facilities

Table 41. Number of juveniles held in public and private juvenile facilities, by reason held and sex, 1985

Reason held	Number of juveniles in:								
	All facilities			Public facilities			Private facilities		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Total	83,402	66,393	17,009	49,322	42,549	6,773	34,080	23,844	10,236
Juveniles detained or committed for:									
Delinquent acts^a	57,743	51,001	6,742	46,086	40,929	5,157	11,657	10,072	1,585
Violent offenses	14,093	12,858	1,235	12,245	11,214	1,031	1,848	1,644	204
Murder, nonnegligent manslaughter, forcible rape, robbery, and aggravated assault	9,466	8,840	626	8,656	8,096	560	810	744	66
Negligent manslaughter, simple assault, and sexual assault	4,627	4,018	609	3,589	3,118	471	1,038	900	138
Property offenses	27,918	25,230	2,688	22,020	19,978	2,042	5,898	5,252	646
Burglary, arson, larceny-theft, and motor vehicle theft	19,312	17,882	1,430	16,129	14,948	1,181	3,183	2,934	249
Vandalism, forgery, counterfeiting, fraud, stolen property, and unauthorized use of a motor vehicle	8,606	7,348	1,258	5,891	5,030	861	2,715	2,318	397
Alcohol/drug offenses	3,356	2,902	454	2,660	2,319	341	696	583	113
Public-order offenses and probation violations	7,147	5,651	1,496	6,493	5,157	1,336	654	494	160
All other offenses^b	5,229	4,369	869	2,668	2,261	407	2,561	2,099	462
Nondelinquent reasons	25,451	15,248	10,203	3,104	1,519	1,585	22,347	13,729	8,618
Status offenders^c	9,019	5,092	3,927	2,293	1,096	1,197	6,726	3,996	2,730
Nonoffenders^d	9,280	5,646	3,634	512	263	249	8,768	5,383	3,385
Voluntary admissions	7,152	4,510	2,642	299	160	139	6,853	4,350	2,503
Other^e	208	144	64	132	101	31	76	43	33

Note: The data were collected on Feb. 1, 1985.

^a Acts that would be criminal if committed by adults.

^b Includes unknown and unspecified

delinquent offenses.

^c Acts that would not be criminal for adults, such as running away, truancy, and incorrigibility.

^d Those held for dependency, neglect,

abuse, emotional disturbance, or mental retardation.

^e Includes all other unspecified acts.

Table 14. Perceived race of offender(s), by race and age of victim, and type of violent crime, 1982-84

Type of crime and race and age of victims	Total	Percent of victimizations involving:				Race not known not ascertained
		All white offenders	All black offenders	All other race offenders	Offenders of different races	
White victims						
Crimes of violence*	100%	76%	15%	4%	3%	2%
12-19 years old	100	71	20	4	2	4
20 and older	100	71	20	4	2	4
Robbery						
12-19 years old	100	49	38	5	6	—
20 and older	100	41	48	5	4	4
Aggravated assault						
12-19 years old	100	76	12	6	2	4
20 and older	100	75	15	3	2	5
Simple assault						
12-19 years old	100	83	10	3	2	2
20 and older	100	79	14	3	1	3
Black victims						
Crimes of violence*						
12-19 years old	100	11	83	2	2	3
20 and older	100	13	78	2	3	5
Robbery						
12-19 years old	100	8	86	—	—	—
20 and older	100	9	80	—	4	6
Aggravated assault						
12-19 years old	100	9	86	—	—	—
20 and older	100	14	76	2	3	5
Simple assault†						
12-19 years old	100	14	79	—	—	—
20 and older	100	14	78	—	—	4

Note: Percentages may not total to 100 because of rounding.
 *Too few cases to obtain statistically reliable data.
 †Includes data on rape, not presented as a separate category.

Table 16. Police reporting rates, by age of victim and type of crime, 1982-84

Type of crime and age of victim	Percent of victimizations:	
	Reported to police	Not reported to police
Crimes of violence		
12-15 years old	31%	67%
16-19	41	58
20 and older	53	46
Rape		
12-15 years old	74	—
16-19	53	47
20 and older	48	51
Robbery		
12-15 years old	34	64
16-19	46	54
20 and older	60	39
Aggravated assault		
12-15 years old	41	57
16-19	48	50
20 and older	61	38
Simple assault		
12-15 years old	25	74
16-19	34	65
20 and older	45	54
Crimes of theft		
12-15 years old	9%	90%
16-19	19	79
20 and older	31	67

Note: Percentages may not total to 100 because of rounding and the exclusion from the table of percentages (2% or less) where police reporting was not known or not ascertained.
 —Too few cases to obtain statistically reliable data.

Table 15. Perceived age of offender(s), by age of victim and type of violent crime, 1982-84

Type of crime and age of victim	Total	Percent of victimizations involving offender(s) who were:					Age not known/not ascertained
		All under 15	All 15-17	All 18-20	All 21 and older	Mixed ages	
Crimes of violence*							
12-15 years old	100%	32%	29%	7%	13%	16%	4%
16-19	100	1	20	24	35	16	4
20 and older	100	1	4	10	70	8	7
Robbery							
12-15 years old	100	22	32	10	8	25	—
16-19	100	—	13	23	30	27	7
20 and older	100	1	6	12	54	15	11
Aggravated assault							
12-15 years old	100	29	21	6	16	20	8
16-19	100	—	17	23	38	17	4
20 and older	160	1	3	9	71	9	7
Simple assault							
12-15 years old	100	37	30	8	11	12	3
16-19	100	—	24	25	33	13	4
20 and older	100	1	3	9	76	6	4

Note: Percentages may not total to 100 because of rounding.
 *Too few cases to obtain statistically reliable data.
 †Includes data on rape, not presented as a separate category.

Introduction

From 1982 through 1984, teenagers (ages 12-19) experienced an average of 1.8 million violent crimes and 3.7 million crimes of theft annually. Teenage victimization rates for these crimes were about twice as high as those of the adult population, ages 20 and older. The average annual violent crime victimization rate was 60.1 per 1,000 teenagers compared to 26.9 for the adult population. For crimes of theft, the teenage rate was 123.5; the adult rate, 65.6.

Within the teenage population itself, older teens (ages 16-19) had higher violent crime victimization rates than did younger teens (ages 12-15). The two groups had similar victimization rates for crimes of theft.

Trends in crime rates against teenagers since 1973 have been similar to those for adults. Teenagers have experienced a decline in theft victimization rates, but violent crime victimization rates have remained essentially unchanged.

Both younger and older teens were more likely than adults to be attacked during a violent crime and were less likely than adults to be injured. In other ways, however, the characteristics of incidents against older teens more closely resembled those of adult victimizations. Similar proportions of older teens and adults faced armed offenders and, if injured, sustained serious injuries. By contrast, younger teens were least likely of the three age groups to face armed offenders; if injured, they were less likely to sustain serious injuries.

Crimes against teenagers were less likely to be reported to the police than crimes against adults. Among teenagers, crimes against younger teens were less likely to be reported than crimes against older teens.

Violent crimes against teenagers were more likely to be committed by other teenagers than by adults. Most

of these crimes against younger teenagers were committed by offenders under 18 years old. Close to half of the violent crimes against older teenagers were committed by offenders under 21. By contrast, 70% of the violent crimes against adults were committed by offenders age 21 or older.

Teenagers of all ages also reported knowing their assailants more often than adults. Younger teens were most likely to report that the offender was a casual acquaintance or someone known by sight, but least likely to identify their assailant as a complete stranger.

The information in this report is based on data obtained from the National Crime Survey (NCS) for the years 1982 through 1984. The NCS obtains information about personal and household crimes, including crimes not reported to the police, from individuals ages 12 and over in a nationally representative sample of households. Although NCS interviewers obtain information directly from most household members, nearly all the interviews for 12- and 13-year-olds are completed by a knowledgeable adult household member (see methodology).

Victimization rates

● Teenagers had higher annual violent crime victimization rates than did adults from 1982 through 1984. Young teenagers had a rate of 52.0 per 1,000 teens; the rate for older teens was 67.8 per 1,000 (table 1). Adults had a violent crime victimization rate of 26.9 per 1,000. For each category of violent crime (rape, robbery, and assault) teenagers in both age groups had higher victimization rates than adults.

● Overall, teenagers had higher victimization rates for crimes of theft than adults. The rates for personal larceny with contact (purse snatching or pocket picking) were not measurably different for teens and adults. The rate for personal

larceny without contact, however, was higher for teenagers than for adults.

● Within the adolescent population, older teenagers had higher victimization rates than younger teens for crimes of violence in general and for the specific violent crimes of robbery and aggravated assault. Younger and older teens experienced similar rates of personal thefts.

● Within the U.S. population, personal victimization rates generally decrease as the age of the victim increases (table 2). Because older age groups have lower personal victimization rates than do young adults, the rates for the entire adult population are lower than the rates for teenagers. However, the victimization rates for young adults ages 20-24 and teenagers are more similar than the aggregated adult rates suggest.

● Similar to the adult population, male teenagers had higher violent and theft crime rates than did female teens. Black teenagers had higher violent crime rates than teenagers of other racial groups. Within categories of teenagers based on race and sex, however, older teens consistently had higher victimization rates for violent crimes than younger teens in the same group (table 3).¹ On the other hand, victimization rates for crimes of theft generally did not vary by age within these same categories; young black teens, however, had higher rates than older black teens.

¹The difference between victimization rates for 12-15-year-old blacks and 16-19-year-old blacks was significant at the 90% confidence level.

Children And Violence

There has never been a time, in the past two centuries, when our children were exposed to and exhibited the violent tendencies of today. Violence surrounds the children of the '90's. In today's media-oriented society, the television and movies children watch, and the music they listen to, all contribute to learned patterns of violent behavior.

The theory 30 years ago focused on violent children as products of their environments; ghettos produced gangs, which perpetrated violence against each other and society. A movie popular in the 1950's, "The Bad Seed", portrayed an angelic-looking, upper middle-class child who committed violent crimes against people who displeased her. Then, it was dismissed as "movie fantasy."

Just Some Examples

- Approximately 5,200 secondary school teachers are attacked each month by students.
- In a borough of New York City, a 17-year-old student was killed in November, 1989 by a gun-toting classmate in a crowded hallway of his high school as he was changing classes.
- An assistant principal was shot in the back at an Arlington, Texas junior high school parking lot, reportedly by a 13-year old student.
- And students at an elementary school in Stockton, California still live in fear, following the January 1989 schoolyard attack by a man carrying an AK-47 semiautomatic assault rifle that left five children dead and 29 others injured.

How Safe Are You?

Violence against children — which can range from throwing an object to using a weapon — occurs in 62 percent of American families every year. But violence against children is not limited to the home. According

to the Committee For Children in Seattle, Washington:

- In a study of 8th and 10th grade students, 34% of students reported that another student threatened to hurt them during the year.
- Almost 8% of urban junior and senior high school students miss at least one day of school each month because they are afraid to go.
- Each month, about 282,000 students are physically attacked in America's secondary schools by other students.
- ✓ In 1987, children under the age of 15 were arrested for 11,284 aggravated assaults and 1,660 forcible rapes.

The More You Know

Violence against children and in schools is rapidly reaching epidemic proportions. Think back to the time when you were a student. Did your school have metal detectors you had to pass through before entering? How many times were teachers assaulted on school property? Did "gang activity" mean anything more to you than simply the kids you hung around with? Was the most dangerous thing offered to you in the school restroom a cigarette?

Yet, the children of today face life and health-threatening hazards simply by showing up at school each morning.

The grief and anger a child feels after a victimization are sometimes more intense than an adult's reaction would be.

There is still a tendency in our society to blame the victim:

- When your car gets stolen, the first question asked is "Did you leave the keys in the ignition?", indicating you were responsible for the crime.

POSITION PAPER

HOUSE BILL NO. 100

FOR AN ACT ENTITLED: "An Act relating to the rights of victims of crimes; and amending Rule 82 of the Alaska rules of civil procedure, Rule 32 of the Alaska rules of criminal procedure and Rules 3 and 22 of the Alaska Delinquency Rules."

This bill, known as the Victims' Rights Act of 1991, would increase the rights available to crime victims by:

1. giving creditors who are crime victims the ability to levy against otherwise exempt property of a debtor if the debt arises from the debtors conviction of a felony;
2. allowing victims of violent crimes to recover treble damages and full attorneys fees in civil cases brought against the person who committed the crime;
3. increasing the rights of victims of crime to provide written victim impact statements, sworn testimony and unsworn statements for adult offender sentencing and post conviction hearings and juvenile disposition proceedings; and
4. allowing victims of criminal offenses committed by a minor to attend all court hearings involving the minor.

BACKGROUND

Currently, nothing in Title 9 Code of Civil Procedure, prevents a crime victim from seeking a monetary judgement against the person responsible for committing the crime. Chapter 38 of Title 9, the Alaska Exemptions Act, limits the practical ability of a crime victim who has been awarded damages by the court to collect from the responsible party. The Alaska Exemption Act shields some assets from levy. The present laws may be considered a barrier to a victim seeking civil redress, particularly a victim of violent crime.

Previous victim rights legislation have amended Title 12 to give a crime victim the opportunity to attend criminal hearings for the person who perpetrated the offence against a victim and provide comments to which the court must consider at sentencing or sentencing modification. A crime victim may appear at the perpetrators sentencing hearing only if the defendant was convicted of a felony or domestic violence assault.

HB100
Rights of Victims
Page 2

The Alaska Rules of criminal procedure number 32 only require the court to consider a victim's written statement in a sentencing related to a felony offence or domestic violence assault and does not provide for accepting the victim's sworn testimony or unsworn oral presentation at the sentencing hearing.

Victim rights advocates argue that without giving the victim an opportunity to speak in court the victim remains limited to a role of an observer at an adult criminal sentencing.

In recent years the delinquency laws contained in Title 47 have also been amended to provide for the rights of victims. The victim of an offence committed by a minor may ask the court for permission to attend the minor's hearing. The Department of Health and Social Services is obligated to assist victims in preparing written requests to attend hearings. The Department of Health and Social Services routinely advises victims that they may request the court's permission to attend hearings and assist victims in preparing the request. Few victims have requested access to juvenile hearings and even fewer have been granted permission by the court. Prior to acting on a victim's petition the court has routinely given the minor and the minor's attorney an opportunity to object. The current law is most effective for an articulate and persistent victim. Except with the special permission of the court, victims and others are excluded from observation or participation in juvenile hearings both by statute and Alaska Delinquency Rules.

In a children's matter, a victim has no statutory right to submit a written or oral victim impact statement and the court has no obligation to consider such a statement in deciding on a disposition for an adjudicated delinquency.

Because there is no statute or court rule which prevents the department from obtaining a victim impact statement and submitting it to the court with a predisposition report, the Department's Division of Family and Youth Services has developed written policies and procedures to include a victim impact statement in predisposition reports prepared by Juvenile Probation Officers. Those procedures include notification to the victim, a format to aid the victim in responding and procedures to be followed in presenting the victim's information to the court and other parties.

HB100
Rights of Victims
Page 3

BILL ANALYSIS

This bill would provide a variety of new statutory rights and opportunities for victims.

HB100 would permit a victim to make a levy against the exempt property of a perpetrator convicted of a felony. It would enable a victim to recover treble damages arising from an attempt on the part of the victim to prevent the commission of a violent crime, to apprehend the person who has committed a violent crime or to aide a police officer or other victim in apprehending the perpetrator of a violent crime.

The Code of Criminal Procedure would be changed to permit a victim to present a written statement or to give sworn testimony or make an unsworn oral presentation at the time of sentencing without regard to the crime which the defendant was convicted.

In delinquency matters a victim would have the right to be present at all hearings and to present a victim impact statement for a predisposition report. At a disposition hearing the victim would be given the opportunity to provide sworn testimony or an unsworn statement to the court. There is no provision in this bill to protect the confidentiality of information disclosed at child proceedings at which a victim may be present. There is nothing to prevent a victim from disclosing any and all information learned at a juvenile hearing to others.

DEPARTMENTS POSITION

The Department takes no position on the portions of HB100 concerning changes to civil procedures or criminal procedures. The Department supports provisions that enhance the information available to the court to make an informed decision. The Department does not support portions of Sections 12, 17, and 19, which would further open closed and confidential juvenile hearings, except for the purpose of providing factual sworn testimony or information for the court to make a finding of fact.

The Department recommends that section 12 of HB100 be changed to add to AS 47.10.072,

(d) The court may grant permission for victims to attend a hearing only for the purpose of receiving sworn testimony from the victim concerning the offense and it's effect on the victim.

(e) a victim who has permission to attend a hearing may not disclose information obtained at the hearing directly or indirectly to anyone without court permission. A person who violates this provision is guilty of a misdemeanor.

HB100
Rights of Victims
Page 4

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

Date: 3/22/91

Approved: Theodore A. Mala
Theodore A. Mala MD, MPH
Commissioner
Department of Health and
Social Services

Date: 23 March 1991

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 4, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 3-25-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 100

HOUSE BILL NO. 100

VICTIMS' RIGHTS

"An Act relating to the rights of victims of crime; and amending Rule 82 of the Alaska Rules of Civil Procedure, Rule 32 of the Alaska Rules of Criminal Procedure and Rules 3 and 22 of the Alaska Delinquency Rules."

RECOMMENDATIONS:

be replaced with CS HB 100 (HES) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note D.O.L. + D.O.P.S.

zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

(Lincoln)	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>[Signature]</i>	Betty Davis (DAVIS)		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>[Signature]</i> (CARNEY)	Phen Davis			<input checked="" type="checkbox"/>
<i>[Signature]</i> (GONZALES)	(As per sponsor's comments)			
<i>[Signature]</i> (HAMLEY)				

[Signature]
CO-Chairman's Signature

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 100

Revision Date: _____
Title: An Act relating to the rights
of victims of crime.
Sponsor: Representative Donley
Requestor: H. HESS

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact on the Alaska State Troopers is anticipated.

Prepared by: Gavle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: 3/22/91
Approved by Commissioner: *Richard L. Burton* Richard L. Burton
Agency: Department of Public Safety Date: 3/22/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 100

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to the rights of victims of crime..." BRU: Prosecution/Legal Services
 Sponsor: Representative Donley Component: Prosecution/Criminal Justice Litigation
 Requestor: House Judiciary Legal Services/Operations
 COMPONENT SERIAL NO.

		8	9
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9 3

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 15, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 15, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FN & D.O.L.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 100

House Bill 100 changes victims' rights laws and court rules in three important respects. If adopted, the bill will become known as the Victims' Rights Act of 1991.

First, AS 09.58 would be amended to add a new section that allows a victim to recover treble damages in a civil action against an offender for injury or damage resulting from a violent crime. In addition to the usual definitions of violent crimes, the bill also includes driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is intoxicated, within the meaning of violent crime. A victim who prevails under this section would be entitled to recover full reasonable attorney fees. These provisions deal with litigation between private parties and will not have a fiscal impact on the Department of Law.

Second, existing laws that provide that a victim has the right to submit written statements at court proceedings involving sentencing and sentence modification would be amended to also provide that a victim has the right to give sworn testimony or make an unsworn oral presentation at sentencing or sentence modification hearings. Likewise, existing laws that provide that a victim has the right to present an oral statement, have been amended to replace the phrase "oral statement" with the phrase "to give sworn testimony or an unsworn oral presentation."

Of particular importance to the Department of Law are amendments to AS 12.61.015(a), contained in Section 10 of the bill, which prescribes the duties of prosecuting attorneys in assisting victims. If a victim of a felony or domestic violence assault requests, the prosecuting attorney is required to make a reasonable effort to notify the victim of the right to appear personally at the defendant's sentencing hearing to present a written statement and (as amended) to give sworn testimony or an unsworn oral presentation. The bill also amends this subsection by adding the words "of the victim's right in any case" to appear personally. Because this additional phrase occurs within the subsection that addresses victims of felonies or domestic violence assaults, we are interpreting the phrase to mean in any felony or domestic violence assault case, and not any criminal case. Discussions with House Judiciary counsel staff affirm this interpretation. Consequently, the amendment to AS 12.61.015(a), as proposed in Sec. 10, will not have a fiscal impact on the Department of Law. Any interpretation of the amendment broadening this right to include the victims of any crime would have a severe fiscal consequence for the department and require substantial fiscal note funding, because the assistance the department currently provides to victims would increase three or fourfold.

Third, children's proceedings laws would be amended to give the victim of an offense that a minor is alleged to have committed the right to be present at all hearings involving the offense against the victim. Before a disposition juvenile hearing, the predisposition report would be expanded to include a victim impact statement in the same manner as these statements are currently included in presentence reports in adult court. If a minor is found to have committed the offense, the victim would be permitted to give sworn testimony or make an unsworn oral presentation concerning the offense and its effect on the victim. Under existing law, the general public is excluded from children's proceedings; however, the bill would require that a victim of a juvenile's offense be admitted. This is a significant policy change, but it will not have a fiscal impact on the Department of Law.

CS FOR HOUSE BILL NO. 100 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DONLEY, Ulmer, Larson, Parnell, Barnes, G.Phillips, Sharp, Martin, Leman, Carney, Zawacki, Baker, R.Phillips, M.A.Miller

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the rights of victims of crime; and amending Rule 82 of the Alaska
2 Rules of Civil Procedure, Rule 32 of the Alaska Rules of Criminal Procedure and Rules
3 3 and 22 of the Alaska Delinquency Rules."

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

5 * Section 1. This Act may be known as the Victims' Rights Act of 1991.

6 * Sec. 2. AS 09.38.030(c) is amended to read:

7 (c) A creditor may levy upon earnings exempt under (a) and (b) of this section if the
8 creditor's claim is

9 (1) enforceable against exempt property under AS 09.38.065(a)(1) or (3)
10 [AS 09.38.065(a)(1)]; or

11 (2) enforceable under an order of a court of bankruptcy under 11 U.S.C. 1301 -
12 1330 (Bankruptcy Reform Act of 1978).

13 * Sec. 3. AS 09.38.065(a) is amended to read:

14 (a) Notwithstanding other provisions of this chapter,

1 (1) a creditor may make a levy against exempt property of any kind to enforce
2 a claim for

3 (A) child support;

4 (B) unpaid earnings of up to one month's compensation or the full-time
5 equivalent of one month's compensation for personal services of an employee; or

6 (C) state or local taxes; [AND]

7 (2) a creditor may make a levy against exempt property to enforce a claim for

8 (A) the purchase price of the property or a loan made for the express
9 purpose of enabling an individual to purchase the property and used for that purpose;

10 (B) labor or materials furnished to make, repair, improve, preserve, store,
11 or transport the property; and

12 (C) a special assessment imposed to defray costs of a public improvement
13 benefiting the property; and

14 (3) a creditor may make a levy against exempt property of any kind to
15 enforce the claim of a crime victim if the claim arises from criminal conduct of the debtor
16 that results in a felony conviction, except that the debtor is entitled to an exemption in
17 property

18 (A) not to exceed an aggregate value of \$3,000 chosen by the debtor
19 from the following categories of property:

20 (i) household goods and wearing apparel reasonably
21 necessary for one household;

22 (ii) books and musical instruments, if reasonably held
23 for the personal use of the debtor or a dependent of the debtor; and

24 (iii) family portraits and heirlooms of particular
25 sentimental value to the debtor; and

26 (B) not to exceed an aggregate value of \$2,800 of the debtor's
27 implements, professional books, and tools of the trade.

28 * Sec. 4. AS 09.38.065 is amended by adding a new subsection to read:

29 (d) In this section, "victim" has the meaning given in AS 12.55.185.

30 * Sec. 5. AS 09.55 is amended by adding a new section to read:

31 ARTICLE 7A. ACTIONS BY CRIME VICTIMS.

1 Sec. 09.55.601. DAMAGES AND ATTORNEY FEES FOR VICTIMS OF VIOLENT
2 CRIME. (a) A victim of a violent crime who has been injured or damaged may recover from
3 the offender treble the amount of damages that may be awarded in a civil action if the injury or
4 damage resulted from

5 (1) an attempt on the part of the victim to prevent the commission of a violent
6 crime or to apprehend an offender who has committed a violent crime, or aiding or attempting
7 to aid a police officer to do so, or aiding another victim of a violent crime; or

8 (2) the commission or attempt on the part of the offender to commit a violent
9 crime.

10 (b) A victim who prevails in an action under (a) of this section is entitled to recover full
11 reasonable attorney fees.

12 (c) In this section,

13 (1) "victim" has the meaning given in AS 12.55.185;

14 (2) "violent crime" means the following offenses:

15 (A) murder in any degree;

16 (B) manslaughter;

17 (C) criminally negligent homicide;

18 (D) assault in any degree;

19 (E) kidnapping;

20 (F) sexual assault in any degree;

21 (G) sexual abuse of a minor in any degree;

22 (H) robbery in any degree;

23 (I) coercion;

24 (J) extortion;

25 (K) arson in the first degree;

26 (L) driving while intoxicated or another crime resulting from the operation

27 of a motor vehicle, boat, or airplane when the offender is intoxicated.

28 * Sec. 6. AS 12.55.023(b) is amended to read:

29 (b) A victim may submit to the sentencing court a written statement that the victim
30 believes is relevant to the sentencing decision, and may give sworn testimony or make an
31 unsworn oral presentation to the court at the sentencing hearing.

1 * Sec. 7. AS 12.55.088(d) is amended to read:

2 (d) A victim has the right to comment in writing to the court on a motion to modify or
3 reduce a sentence filed by the person who perpetrated the offense against the victim, and has the
4 right to give sworn testimony or make an unsworn oral presentation at a hearing held in
5 connection with the motion.

6 * Sec. 8. AS 12.55.088(f) is amended to read:

7 (f) The court shall provide copies of the victim's written comments to the prosecuting
8 attorney, the person filing the motion to reduce or modify a sentence, and that person's attorney.

9 * Sec. 9. AS 12.55.088(g) is amended to read:

10 (g) In deciding whether to modify or reduce a sentence, the court shall consider the
11 victim's comments, testimony, or unsworn oral presentation, when relevant, and any response
12 by the prosecuting attorney and the person filing the motion.

13 * Sec. 10. AS 12.61.010(a) is amended to read:

14 (a) Victims of crimes have the following rights:

15 (1) the right to be informed by the appropriate law enforcement agency or the
16 prosecuting attorney of the date of trial and the date of sentencing of the case in which the victim
17 is involved;

18 (2) the right to be notified that a sentencing hearing or a court proceeding to
19 which the victim has been subpoenaed will not occur as scheduled;

20 (3) the right to receive protection from harm and threats of harm arising out of
21 cooperation with law enforcement and prosecution efforts, and to be provided with information
22 as to the protection available;

23 (4) the right to be informed of the procedure to be followed to apply for and
24 receive any compensation under AS 18.67;

25 (5) at the request of the prosecution or a law enforcement agency, the right to
26 cooperate with the criminal justice process without loss of pay and other employee benefits
27 except as authorized by AS 12.61.017 and without interference in any form by the employer of
28 the victim of crime;

29 (6) the right to obtain access to immediate medical assistance and not to be
30 detained for an unreasonable length of time by a law enforcement agency before having medical
31 assistance administered; however, an employee of the law enforcement agency may, if necessary,

1 accompany the person to a medical facility to question the person about the criminal incident if
2 the questioning does not hinder the administration of medical assistance;

3 (7) the right to make a written or oral statement for use in preparation of the
4 presentence report of a felony defendant:

5 (8) [IF THE CRIME FOR WHICH THE DEFENDANT WAS CONVICTED
6 WAS A FELONY OR A DOMESTIC VIOLENCE ASSAULT,] the right to appear personally
7 at the defendant's sentencing hearing to present a written [OR ORAL] statement, and to give
8 sworn testimony or an unsworn oral presentation; and

9 (9) the right to be informed by the prosecuting attorney, at any time after the
10 defendant's conviction, about the complete record of the defendant's convictions.

11 * Sec. 11. AS 12.61.015(a) is amended to read:

12 (a) If a victim of a felony or a domestic violence assault requests, the prosecuting
13 attorney shall make a reasonable effort to

14 (1) confer with the person against whom the offense has been perpetrated about
15 that person's testimony before the defendant's trial;

16 (2) in a manner reasonably calculated to give prompt actual notice, notify the
17 victim

18 (A) of the defendant's conviction and the crimes of which the defendant
19 was convicted;

20 (B) of the victim's right in a case that is a felony to make a written or oral
21 statement for use in preparation of the defendant's presentence report, and of the victim's
22 right to appear personally at the defendant's sentencing hearing to present a written [OR
23 ORAL] statement and to give sworn testimony or an unsworn oral presentation;

24 (C) of the address and telephone number of the office that will prepare the
25 presentence report; and

26 (D) of the time and place of the sentencing proceeding;

27 (3) notify the victim in writing of the final disposition of the case within 30 days
28 after final disposition of the case.

29 * Sec. 12. AS 12.61.015(b) is amended to read:

30 (b) The notice given under (a)(2) of this section must inform the victim that the
31 statement, sworn testimony, or unsworn oral presentation of the victim may contain any

1 relevant information including

2 (1) an explanation of the nature and extent of physical, psychological, or
3 emotional harm or trauma suffered by the victim:

4 (2) an explanation of the extent of economic loss or property damage suffered by
5 the victim:

6 (3) an opinion of the need for and extent of restitution and whether the victim has
7 applied for or received compensation for loss or damage; and

8 (4) the recommendation of the victim for an appropriate sentence.

9 * Sec. 13. AS 47.10.070 is amended by adding a new subsection to read:

10 (b) Notwithstanding (a) of this section, the victim of an offense that a minor is alleged
11 to have committed has a right to be present at all hearings held under this section. If the minor
12 is found to have committed the offense, the victim may at the disposition hearing give sworn
13 testimony or make an unsworn oral presentation concerning the offense and its effect on the
14 victim. If there are numerous victims of a minor's offense, the court may limit the number of
15 victims who may give sworn testimony or make an unsworn oral presentation, but the court may
16 not limit the right of a victim to attend a hearing.

17 * Sec. 14. AS 47.10.081(a) is amended to read:

18 (a) Before the disposition hearing of a delinquent minor the department shall submit a
19 predisposition report with a recommended plan of treatment to aid the court in its selection of
20 a disposition, a victim impact statement reporting the information set out in AS 12.55.022,
21 and any further information that the court may request. In preparing the predisposition report,
22 the department shall contact the victim of the minor's offense.

23 * Sec. 15. AS 47.10.990 is amended by adding a new paragraph to read:

24 (9) "victim" has the meaning given in AS 12.55.185.

25 * Sec. 16. Rule 32(g), Alaska Rules of Criminal Procedure, is amended to read:

26 (g) MATTERS [WRITTEN STATEMENT] SUBMITTED BY VICTIM OR VICTIM'S
27 REPRESENTATIVE. If a written statement is prepared and submitted by the victim of an [A
28 FELONY] offense [OR A DOMESTIC VIOLENCE ASSAULT] under AS 12.55.023, or if the
29 victim gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023,
30 the trial court:

31 (1) shall take the content of the [WRITTEN] statement, testimony, or

1 presentation into consideration:

2 (A) when preparing those elements of the sentencing report required by
3 AS 12.55.025 that relate to the effect of the offense on the victim;

4 (B) when considering the need for restitution under AS 12.55.045; and
5 (2) may take the content of the [WRITTEN] statement, testimony, or
6 presentation into consideration in any other circumstances that the court believes necessary.

7 * Sec. 17. Rule 32(h), Alaska Rules of Criminal Procedure, is amended to read:

8 (h) In (g) of this rule [,

9 (1) "DOMESTIC VIOLENCE ASSAULT" HAS THE MEANING GIVEN IN
10 AS 12.61.900;

11 (2)] "victim" has the meaning given in AS 12.55.185.

12 * Sec. 18. Rule 3(c), Alaska Delinquency Rules, is amended to read:

13 (c) GENERAL PUBLIC EXCLUDED. Hearings are not open to the public unless
14 requested by the juvenile. However, the court may, after due consideration for the welfare of the
15 juvenile and the interests of the public, admit specific individuals to a hearing, and shall admit
16 victims of the juvenile's offense to hearings as required by AS 47.10.070(b).

17 * Sec. 19. Rule 22(a)(1), Alaska Delinquency Rules, is amended to read:

18 (1) The predisposition report filed by the Department may include information
19 concerning the following: the juvenile's family background, educational history, past
20 adjudications, verified past incidents of delinquent behavior; the juvenile's medical, psychological
21 and psychiatric history; and a description of the delinquent act and the juvenile's attitude about
22 the act. The report must contain a recommendation regarding the recommended form of
23 treatment that would be in the best interests of the juvenile and the public, and the victim
24 impact statement required by AS 47.10.081(a).

25 * Sec. 20. AS 47.10.072 is repealed.

26 * Sec. 21. APPLICABILITY. AS 09.38.030(c) and 09.38.065(a), as amended by secs. 2 and 3 of
27 this Act, and AS 09.38.065(d), added by sec. 4 of this Act, apply to a levy to enforce a claim if the
28 claim arises from a crime committed on or after the effective date of this Act. AS 09.55.601, added by
29 sec. 5 of this Act, applies to an action arising from a crime committed or attempted on or after the
30 effective date of this Act.

31 * Sec. 22. AS 09.55.601(b), added by sec. 5 of this Act, amends Rule 82, Alaska Rules of Civil

- 1 Procedure, by requiring an award of full reasonable attorney fees to prevailing victims of certain crimes.
- 2 * Sec. 23. AS 09.55.601(b), added by sec. 5 of this Act, takes effect only if sec. 22 of this Act
- 3 receives the 2/3 vote required by art. IV, sec. 15, Constitution of the State of Alaska.



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

SUBJECT OF MEETING:
HB100 VICTIMS' RIGHTS

DATE: March 25, 1991

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Jay Frank	State form 115 Allstate " " Progressive " "	One Sealaska Pl Suite 303 Juneau			6-5912	(Y) N	HB 100
Gail HORETSKI	DPS	BOX N., JUN				Y N	HB 100
Mike Price	DHSS	PO Box N	99811		465 3170	Y N	
Randall Hines	DHSS				2112 465 3024	Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

HB

101

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 19, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 101 (Criminal Charges Brought Against Minors)

Dear Representative Donley:

Thank you for the opportunity to review the work draft of proposed CS for HB 101, relating to criminal charges brought against minors. This draft resolves all of the concerns raised in our letter of February 26, 1991.

Once again, we support this bill and appreciate the opportunity to comment on it.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: _____

Margot O. Knuth
Margot O. Knuth

Assistant Attorney General

MOK:mm-033

BILL NO: HB 101

DATE: 3/22/91

TITLE: An Act relating to criminal charges brought against minors. . .

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY
POSITION PAPER

HB 101 would make it easier for the state to try a juvenile offender as an adult if he or she has committed a serious crime such as murder or attempted murder, or has previously been "adjudicated a delinquent" or "waived to adult court". The Department of Public Safety supports this bill, which will vastly improve the way the justice system in Alaska responds to serious crimes committed by persons under age 18. This is an area which has been in need of improvement for many years.



Richard L. Burton
Commissioner

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
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OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 26, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 101 (Criminal Charges Brought Against Minors)

Dear Representative Donley:

By letter dated January 31, 1991, you have asked whether we believe there are any problems with the above-referenced bill and whether we support, oppose, or are disinterested in it. We expect that one or more constitutional challenges may be made to the laws amended by this bill, but we believe that the legislation is constitutional and we support it. We suggest a few minor revisions to clarify the bill.

Section 1 amends the statute setting out "authorized sentences" (AS 12.55.015) to specify that a minor who has been convicted as an adult "may" be committed to the custody of the Department of Health and Social Services until the minor's 18th birthday, at which time the minor shall be transferred to the custody of the Department of Corrections. We have no objection to this provision. It is unclear to us, however, whether this section is intended to preclude the court from committing a minor to the custody of the Department of Corrections. If it is, we suggest that the section be revised to say so explicitly. One possibility would be to amend the language to read as follows:

Add at page 1, line 7: not order the defendant committed to the custody of the Department of Corrections, but instead may

Section 2 amends AS 47.10.010 (jurisdiction in children's proceedings) in several respects. First, it adds subsection (e), which specifies that, unless ordered by the court under (h) below, the delinquency procedures set out in that chapter will not apply to minors age 14 and older who have been charged with the following crimes: murder or attempted murder in the first degree, an unclassified or class A felony if the minor has been previously adjudicated as a delinquent for felonious conduct, or any other

felony if the minor has been so adjudicated twice before or has been previously prosecuted as an adult for a felony.

Next, it adds subsection (f), which specifies that, unless otherwise ordered under (h) below, other charges against the minor that have been joined with the charges listed above also may not be handled under the delinquency proceedings. Instead, pursuant to new subsection (g), minors facing these charges are to be prosecuted and sentenced as adults in the superior court. We suggest the following minor editorial change in this section:

Add at page 2, line 13:

(f) If a minor is charged [UNDER] with an offense specified in (e) of this section

....

Subsection (h) authorizes a minor facing these charges to file a petition with the court seeking to have the charges heard as delinquency proceedings under AS 47.10 on the basis that the minor is amenable to treatment before age 20. This will trigger the appointment under subsection (i) of a psychiatrist or psychologist to examine the minor and determine his or her amenability to treatment. Under subsection (j), at the court's hearing on the issue, the minor will bear the burden of proving by a preponderance of the evidence that the minor is amenable to treatment.

Subsection (k) indicates that none of these provisions affect the ability of a party to seek waiver (for presumably other types of charges) under existing AS 47.10.080.

Section 3 of the bill amends AS 47.10.080 to provide that, if a minor is prosecuted under these new provisions, but is convicted only on charges that would not qualify for "automatic waiver," then the proceedings shall be converted into delinquency proceedings with a disposition order entered pursuant to AS 47.10.080(b). If, however, the minor was convicted of a felony, the state may petition the court to sentence the minor as an adult upon establishing that the minor is not amenable to treatment.

We expect that this legislation will be challenged on constitutional grounds. We note, however, that in W.M.F. v. State, 723 P.2d 1298 (Alaska App. 1986), the Alaska Court of Appeals acknowledged that a juvenile offender "has no constitutional right to be tried in a juvenile court.... Rather, it is a right granted by the state legislature, and the legislature may restrict or qualify the right as it desires, so long as no arbitrary or discriminatory classification is involved." 723 P.2d at 1300.

We believe that, inasmuch as the legislature could deny minors different treatment altogether, the courts should conclude

that it is constitutional for the legislature to shift the burden of proof to the minor on the issue of amenability to treatment in the circumstances set out in the bill. The classifications established by this legislation (minors who bear the burden of establishing amenability to treatment and minors who do not) do not appear to be arbitrary or discriminatory, but instead seem to reasonably reflect the difference in the seriousness of the offense committed by the minor or the fact that there have been prior, unsuccessful interventions under the minor system.

Another constitutional issue we anticipate being raised is whether the provision requiring an evaluation and report by a psychiatrist or psychologist (when the minor petitions for treatment under the delinquency statutes) violates the minor's "right to be free from compelled self-incrimination," as set out in R.H. v. State, 777 P.2d 204 (Alaska App. 1989). In R.H., the Alaska Court of Appeals held that a judge could not order a minor to submit to an psychological evaluation for purposes of determining the minor's amenability to treatment because it was tantamount to making the minor a witness against himself. 777 P.2d at 210.

The Alaska courts might apply this same analysis to proposed AS 11.47.010(i). They may well instead, however, recognize that the evaluation under subsection (i) helps the minor in carrying his or her burden of proof to avoid prosecution as an adult, rather than helping the prosecution with its case. See R.H. v. State, 777 P.2d at 211 ("the same conclusion would not be warranted had R.H. sought to present psychiatric evidence in his own behalf [U]nder those circumstances, the superior court could have properly found that R.H. waived his fifth amendment privilege"). This analysis would be further warranted if the psychiatric or psychological evaluation were made optional for the minor, rather than mandatory. This change in the bill could be achieved as follows:

At page 2, line 31:

(i) [UPON] After filing [OF] a petition under (h)(1) of this section, the minor may request the court [SHALL] to appoint a

While focusing on this section, we note that it provides for the appointment of "a qualified psychiatrist or a forensic psychologist certified by the American Board of Forensic Psychology" Communities such as Juneau and Fairbanks do not have any forensic psychologists, but do have psychologists who are experienced and trained in working with delinquent children and are familiar with the available treatment programs. The committee might consider amending the section to delete the reference to forensic psychologists as follows:

At page 3, lines 1 and 2:

qualified psychiatrist or [A FORENSIC] psychologist [CERTIFIED BY THE AMERICAN BOARD OF FORENSIC PSYCHOLOGY] to examine the minor and report to the court in writing on the minor's amenability

Another small change we suggest relates to proposed AS 47.10.010(e) and (f). We believe it would be helpful if this bill specifies that not only may the "procedure prescribed in AS 47.10.020 - 47.10.090" not be followed in the circumstances described in AS 47.10.010(e), but that the Alaska Delinquency Rules are also inapplicable in those circumstances. Doing this will acknowledge that the Delinquency Rules specify different procedures than the Criminal Rules and indicate that the "adult" rules are to be applied in these proceedings. The specific changes that we recommend are as follows:

Add at page 1, line 14:

AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules may not be followed when a minor is 14 years of age and older and

Add at page 2, line 14:

AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules may not be followed when a minor is 14 years of age and older and

We note for your general reference that some members of the defense bar are predicting that this bill will cause minors to contest delinquency proceedings with greater vigor and frequency because the consequences to them of being adjudicated a delinquent on a felony matter will be greater. If so, the resources that the state might save under this bill in prosecution efforts to waive minors to adult court may ultimately be expended in handling more delinquency adjudication proceedings. It is impossible, however, to make any certain predictions in this regard.

The Honorable Dave Donley

February 26, 1991

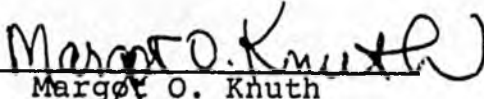
Page 5

Once again, we support this bill and appreciate the opportunity to comment it. If you have any further questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: _____


Margot O. Knuth
Assistant Attorney General

MOK:mm-025

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 20, 1991

SUBJECT: Sectional analysis of CSHB 101

TO: Representative Dave Donley
Chair, House Judiciary Committee
Attn: Laurie Otto

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill provides that a minor under 18, but at least 14, must be tried as an adult if the minor is charged with 1) first degree murder or attempted first degree murder; 2) an unclassified or class A felony, and the minor has been previously adjudicated delinquent for felonious conduct; or 3) any felony, if the minor has been previously adjudicated delinquent twice for felonious conduct, or has been previously tried and convicted as an adult on a felony charge. The minor must also be tried as an adult on all related charges (e.g., a charge of burglary for breaking into a house to commit a rape).

Section 1 also allows the minor to petition the court to be tried under juvenile procedures, notwithstanding the charges against him or her. The minor bears the burden of persuading the court that juvenile proceedings would be appropriate, unless the minor contends that he or she cannot be properly tried as an adult (for instance, that he or she has not previously been adjudicated delinquent for felonious conduct). In that case the state bears the burden of proving that the minor has been previously adjudicated delinquent as the state alleges.

Sectional Analysis of CSHB 101

Representative Dave Donley

March 20, 1991

Page 2

Finally, section 1 provides that current law, allowing the state to seek prosecution as an adult of any minor for any offense, remains in effect. (Under current law, the state must show that the minor is not likely to be amenable to treatment before reaching age 20.)

Section 2 provides that a minor who is charged as an adult under section 1, but who is convicted only of a lesser offense that would not have given rise to an adult charge under that section, shall have his or her case disposed of under juvenile proceedings. However, the state may petition the court to sentence the minor as an adult, in which case the state must show that the minor would not be amenable to treatment before age 20.

Section 3 provides that sections 1 and 2 of this bill, if enacted, would apply only to offenses committed after the effective date of the enactment.

JBG:mi:pl

91-057.mai

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376


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CHAIRMAN
JUDICIARY COMMITTEE
VICE CHAIRMAN
REGULATION REVIEW COMMITTEE
MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

MEMORANDUM

TO: All Members
HESS Committee

FROM: Representative Dave Donley 

RE: HB 100/~~XXXXXX~~ - Public Support

DATE: March 20, 1991

I have received a large number of public opinion messages in support of HB 100 and HB 101. Representative comments include:

"My three year old daughter was a victim of a violent crime. The perpetrator was a juvenile. We were not able to obtain, or have any input regarding the case. I would like to urge you to support HB 100 and HB 101." Michele Hailey, Anchorage

"I support HB 100, HB 101. As a 40 year resident of Alaska and with juvenile crimes on the increase, it is time that juveniles be held responsible for the crimes they commit against society. For juveniles to commit serious crimes such as murder, robbery and rape and not be held accountable for their crimes after age 20 is repulsive. The victims need more rights. Thanks." Jack Morrell, Anchorage

"Please vote for HB 100, 101. Government should provide three things: protection, education, and roads. Please protect us from teenage criminals." Michael Mitchell, Anchorage

"I do support HB 100, HB 101. I feel the victims should have more rights than the criminals. It is really sad when we don't." Linda Charles, Chugiak

"I am totally in support of HB 100, HB 101, as these bills are dealing with victims rights and at this point and time, victims today need all the help they can get." Marti Ressler, Eagle River

A list of all the people who sent POMs in support of HB 100 and HB 101 is attached.

DD:lc

JUNEAU OFFICE

(During Legislative Session January through May)

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



7000

Public Opinion Messages/Letters in Support of HB 100 and HB 101

Edith Sherwood	3419 W. 80th Avenue	Anchorage	99502
James Brodie	2211 Dahl Lane	Anchorage	99503
Carol Elkins	1353 Oxford Drive	Anchorage	99503
Philip Fear	4808 Kent Street	Anchorage	99503
Michele Hailey	4639 Kent Street	Anchorage	99503
James Hailey	4639 Kent Street	Anchorage	99503
Mark Manville	1321 Harding Way	Anchorage	99503
Michael Mitchell	6626 Foothill Drive	Anchorage	99504
Norma Ossenkop	2110 Banbury Circle	Anchorage	99504
Bufford Vopalensky	7221 Sitkin Circle	Anchorage	99504
Ruth Fenton	5442 Larkspur Circle	Anchorage	99507
John Lopetrone	1510 Thuja	Anchorage	99507
Dan O'Haire	3130 Lark Apt. E	Anchorage	99507
Edward Simpson	3130 E. 46th Avenue, #2	Anchorage	99507
Michael Webster	2380 Stonebridge Circle	Anchorage	99507
Donna Harper	4130 Peterkin, #4	Anchorage	99508
Mary Ellen Summers	P.O. Box 110423	Anchorage	99511
John Kimball	P.O. Box 111666	Anchorage	99511
Judith Lewis	P.O. Box 111375	Anchorage	99511
Henrietta Childs	12801 Brandon Street	Anchorage	99515
Jack Morrell	8628 Vernon Street	Anchorage	99515
Gladys Obermiller	1620 Helen	Anchorage	99515
Ralph Tolman	12901 Hace	Anchorage	99515
Linda West	1823 Bellevue Loop	Anchorage	99515
Karen Casmeyer	12841 Foster Road	Anchorage	99516
Effie McEwen	3401 E. 144th	Anchorage	99516
Joyce Seibert	4511 Trapline Circle	Anchorage	99516
Mike Miller	2907 W. 35th Avenue	Anchorage	99517
Jack Doyle	1320 E. 68th, Suite 112	Anchorage	99518
Helen Boehm	HC 78, Box 2890	Chugiak	99567
Ray Carloni	SR2, Box 4865	Chugiak	99567
Linda Charles	HC 78, Box 2275	Chugiak	99567
Theresa Cain	P.O. Box 771318	Eagle River	99577
Gary Pogany	P.O. Box 323	Eagle River	99577
Marti Ressler	P.O. Box 16431	Eagle River	99577
Gary Jacobson	P.O. Box 284	King Salmon	99613
Joyce Alto	P.O. Box 225	Naknek	99633
Thomas Sokolowski	P.O. Box 3367	Palmer	99645
Bob Cooksey	P.O. Box 875601	Wasilla	99687
James Plumley	Box 3208-M	Wasilla	99687
Lloyd Rudd	P.O. Box 871864	Wasilla	99687

Alaska Association Chiefs of Police



March 21, 1991

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Donley,

Alaska, like most states, has a juvenile justice system designed to keep juveniles apart from and treated differently than adults. The reasons for this are many, but certainly one the main considerations is that, because of their age, juveniles do not need to be treated as harshly as adults. In most cases, juveniles commit less serious crimes than adults and are easy to rehabilitate.

Unfortunately, there are some young people under the age of eighteen that have committed some very heinous crimes, that if committed by adults would result in years of incarceration simply as a measure to protect the public. There are also many cases where juveniles repeatedly demonstrate through repetitive criminal acts, that rehabilitation in the juvenile system is failing.

The Alaska Association of Chiefs of Police believes that the current laws as they pertain to the worst juvenile offenders are deficient. House Bill 101 would help correct some of those deficiencies and we urge its passage. We do not advocate the scrapping of our juvenile justice system. We do, however, ask that our laws recognize the hard fact that some juveniles commit crimes so repeatedly or brutally, that they should be held to a higher standard of accountability than they are under current law.

Sincerely,

A handwritten signature in cursive script, reading "Duane S. Udland".

Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507

Letters of Support

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376



ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
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FIDUCIARY COMMITTEE
VICE CHAIRMAN
REGULATION REVIEW COMMITTEE
MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

M E M O R A N D U M

TO: Representative Georgianna Lincoln, Co-Chair
Representative Pat Carney, Co-Chair
Health, Education, and Social Services Committee

FROM: Representative Dave Donley *D*

RE: HB 101 - Prosecution of Juvenile Felons

DATE: March 21, 1991

Since HB 101 was introduced, I have been working with the administration to work out technical and practical problems with the bill. Attached is a proposed CS to HB 101 that resolves problems in the original version of the bill. A sponsor statement and sectional analysis for the CS are also attached. Finally, I have included two letters from the Department of Law; the first outlines the problems with the original version of the bill and the second indicates that the problems have been resolved in the CS.

The differences in the two versions of the bill are:

(1) Section 1 (page 1, lines 4 - 11) of HB 101 have been deleted from the proposed CSHB 101. The section has been deleted at the request of the administration for both practical and policy reasons. The practical reason for deleting the requirement for incarcerating minors who are prosecuted as adults in juvenile institutions is that the juvenile institutions are not set up administratively to handle parole, probation, and "good time" accounting, which are required for all persons prosecuted as adults. The policy reason for deleting this provision is that it is not conducive to the rehabilitation of minors who are treated within the juvenile justice system to house them with those who are treated as adults.

(2) For technical drafting reasons, the language "and the Alaska Delinquency Rules does not apply" was added on page 1, line 5 and page 2, line 5 of the proposed CS.



P.O. BOX

Summary of changes to CS

FAX) 463-5661 • mrc

(3) For technical drafting reasons, the phrase "as a result of violating a criminal law" was substituted for the phrase "for conduct" on page 1, line 10 and line 13 - 14 of the proposed CS.

(4) For technical drafting reasons, the phrase "with an offense specified in" was substituted for the word "under" on page 2, line 4 of the proposed CS.

(5) The text of HB 101 on page 2, line 31 and page 3, lines 1 - 10 has been deleted and replaced with the text that is set out on page 2, lines 22 - 31 and page 3, lines 1 - 6 of the proposed CS. The changes in this portion of the CS are (1) to allow all qualified psychologists to testify as expert witnesses on a minor's amenability to treatment as a juvenile (the original bill allowed only forensic psychologists to testify, however, many communities in Alaska do not have forensic psychologists); (2) the elimination of a potential constitutional problem that could have existed in requiring the court to select the psychiatrist or psychologist used by the minor; and (3) to clearly set out a time frame for submission of expert witness reports in order to ensure that hearings on a minor's amenability to treatment are handled in an orderly manner.

DD:lc

REPRESENTATIVE DAVE DONLEY



ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
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CHAIRMAN
INDUCTARY COMMITTEE
VICE CHAIRMAN
REGULATION REVIEW COMMITTEE
MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

SPONSOR STATEMENT

HB 101 reforms the juvenile justice system by making it easier to treat the very small minority of serious or habitual juvenile offenders as adults. In so doing, the legislation balances the needs of society to be protected from dangerous offenders against the importance of treating the vast majority of minors within the juvenile justice system.

Under current law, people under 18 are treated as juveniles. With only one exception, no matter what crime is committed or how many felony convictions the person has, a person under 18 who is convicted of a crime is released from all state supervision at age 20. The only exception is where the state can prove that the minor is not amenable to treatment as a juvenile.

Until late 1989, in deciding whether a minor was amenable to treatment, the courts relied heavily on the testimony of expert psychiatrists and psychologists. However, in R.H. V. State, 777 P.2d 204 (Alaska App. 1989), the court ruled that requiring minors to be examined by psychiatrists and psychologists to determine amenability to treatment is unconstitutional. Today courts are increasingly being asked to decide whether a minor is or is not amenable to treatment without the benefit of expert testimony.

The level of potential dangerousness presented by minors who commit first degree murders or with a record of committing felony offenses is extremely high. In these cases, the courts must have access to the greatest possible amount of information about the minor before making a decision to treat the minor as a juvenile or as an adult. The only way it is constitutionally possible for the courts to gain access to this type of information is to switch the burden of proving amenability to treatment from the state to the minor.

HB 101 requires a limited number of minors to prove that they are amenable to treatment as a juvenile before they can be kept within the juvenile justice system. Under HB 101, the burden of proof is shifted only when the minor is 14 years of age or older and (1) is charged with murder in the first degree or attempted murder in the first degree; (2) is charged with an unclassified or class A felony and has previously been adjudicated as a delinquent for a prior felony offense; or (3) is charged with any other felony and has previously been twice adjudicated as a delinquent for prior felony offenses.

DD:lc



P.O. BOX

SPONSOR STATEMENT

FAX) 463-5661



POSITION PAPER

HOUSE BILL 101

Background

In Alaska, as in most other states the age of criminal responsibility coincides with the age of majority (18 years of age). This recognizes the fundamental differences between children and adults and is expressed in numerous other laws limiting the rights, privileges, and responsibilities of children. Because the designated age of criminal responsibility is an arbitrary standard, legal mechanisms are necessary to identify and properly address the inevitable exceptions. Waiver of juvenile jurisdiction is the generally established mechanism for differentiating between the vast majority of youthful offenders and those few offenders whose behavior identify them more closely with adult criminals.

Waiver of juvenile Court jurisdiction occurs in Alaska through a formal Court process as a judicial determination. Alaska's law (AS 47.10.060) does not establish a minimum age for which a youth can be transferred to adult criminal jurisdiction. AS 47.10.060 allows the "waiver" of a youth of any age for any delinquent act. The Court must determine the youth to be "not amenable" to treatment as a juvenile. The state has the burden of proof. A youth is considered unamenable to treatment if the youth "probably cannot be rehabilitated under juvenile jurisdiction, before reaching 19 years of age. In determining amenability to treatment the Court may give consideration to four factors: (1) the seriousness of the alleged offense; (2) the youth's delinquent history; (3) the causation of the delinquent offense and (4) the availability of treatment facilities for the youth.

Analysis/Program Impact

The critical issues in structuring a waiver law are:

1. defining the standard(s) for consideration in determining waiver decisions; and
2. establishing a competent and unbiased method of applying waiver standard(s) to specific cases.

Under present Alaska law the method of applying the waiver standard is a judicial proceeding. All evidence bearing on the waiver decision is considered by the Court. Waiver decisions made by judges require a threshold finding of probable cause, that the accused juvenile offender committed the alleged offense. The probable cause standard is guided by statutorily established criteria (standards), and is subject to review (appeal).

The standards for making waiver decisions under a judicial process are legislatively determined and applied by the judiciary. Factors to be considered in determining which cases meet the standard for waiver are also legislatively established. A balance of society's interest in public protection, and rehabilitation is sought.

HB 101 proposes a presumptive waiver method for some minors 14 years of age and older, that removes the threshold finding of probable cause from consideration in the waiver process. Prosecutors could accomplish waiver simply by specifying the initial charge.

This bill would change the jurisdictional authority for child proceedings found in title 47 to enable the automatic prosecution of a minor in adult Court for certain offenses. The offense for which the minor is charged would be the primary determining factor. For some offenses, but not all, prior history of delinquency adjudication would also be a determining factor. This bill would secondarily amend criminal sentencing structures to allow the Court to sentence a waived juvenile to secure facilities operated by the Department of Health and Social Services.

For the most part youth who have been waived to adult jurisdiction under current statutes have committed exceptionally violent crimes such as murder. In most of these cases, Alaska's existing waiver law has functioned effectively and the court has issued an order of waiver. The law has been somewhat less effective for older youth nearing the age of 18 who have committed serious, but less sensational criminal acts; and for those youth who demonstrate a substantial repetitive pattern of delinquent acts.

In most waiver cases, the decision to waive has depended on the belief of psychologists and psychiatrists that a youth cannot be rehabilitated before juvenile jurisdiction expires. If these "expert" witnesses do not provide overwhelming testimony that a youth is not amenable to treatment, then the statutory framework presumes that jurisdiction will remain with the juvenile court. Recent case law is now denying the Court access to this expert testimony and the potential for the state to prevail in a waiver request has diminished.

In part, HB 101 attempts to;

... restore the availability of psychiatric and psychological evidence for use by the court; and

... increase the potential to waive habitual juvenile offenders.

These two goals are not inconsistent with the prevailing position of most Alaska juvenile justice practitioners. The strategy proposed in HB 101 would however, introduce new systematic problems as great as those it attempts to correct.

HB 101 would permit the presumptive waiver and the adult prosecution of a minor 14 years of age and older when;

the minor is charged with murder in the first degree attempted murder in the first degree; or

the minor is **charged** with an unclassified, or class A felony, with a previous adjudication for a felony offense in Alaska or elsewhere; or

the minor is **charged** with a felony of any degree and has either two previous adjudications for felony offenses in Alaska or elsewhere or has previously been waived and convicted of a felony offense.

A minor could petition the Court to have the charges heard under children's proceedings. In such "reverse waiver" proceedings the minor, not the state would have the burden of proof. The minor would have to show a preponderance of evidence of being amenable to treatment by age 20. The Court would appoint a qualified psychiatrist, or forensic psychologist to examine and evaluate the minor's ability to be rehabilitated. The Court would consider the same four factors as found in the existing waiver statute (AS 47.10.060) to determine amenability or to prosecute the minor as an adult. Adding a statutory requirement for appointment of a qualified psychiatrist or forensic psychologist would potentially overcome recent case law which now denies the court access to psychological and psychiatric reports at waiver hearings unless the minor consents to an examination.

A minor subject to the presumptive waiver provisions of HB101 would be denied the same protection for appointment of counsel as currently afforded minors under juvenile jurisdiction. The special provision for consultation and waiver of counsel contained in AS 47.10.050 would not be guaranteed to the minor. This would limit the minor's availability to rapidly obtain counsel and prepare a case for treatment as a juvenile.

If a minor prosecuted in adult court is not convicted as charged under the provisions of this bill, but is convicted of a lesser charge to which presumptive waiver does not apply, the minor would have to be sentenced as a juvenile. The state could however, petition the Court to waive a minor found guilty of a felony for the purpose of sentencing the minor as an adult. For such a second waiver attempt the state would have the burden of proving the minor's non-amenability to treatment by age 19.

The Court could order a minor who has been waived and convicted to be committed to a secure facility operated by DHSS. A minor committed to DHSS for placement in a secure facility, would remain in the custody of DHSS until the minor reached 18, and then the minor's custody would be transferred to the Department of Corrections.

This legislation would increase the number of older youth confined at DHSS facilities. These youth would be determinately sentenced as adult offenders. It is likely that they would have longer commitments to confinement than youth under juvenile jurisdiction. Longer confinements of one class of offenders would reduce the Department's capacity for treatment of other youthful offenders, unless additional beds were constructed.

If DHSS facilities house waived minors, it would be necessary to provide separate programing and quarters to maintain standards for safety and security. Special program considerations would be necessary because a waived minor would have little incentive to meet behavioral expectations. in the same manner as a youth under indeterminate juvenile disposition. This lack of behavioral incentives would be further compounded by the apparent absence of provisions for good time, or parole as is afforded to other adult offenders.

Enactment of this legislation would create the need for the construction and operation of a new security facility for the incarceration of waived minors. This facility would; 1) insure adequate bed space, 2) achieve the required separation of waived minors from other detained minors, and 3) provide the necessary level of secure custody.

Presumptive waiver laws such as HB 101 predicate the waiver decision on three factors only; (1) age at the time of the alleged offense and (2) the offense charged (3) the previous delinquent or criminal history of the minor. There would be no standard established for the decision which determines waiver. Instead waiver would be based on the prosecutor's prerogative to determine which cases would be charged and at what level. The standard becomes reduced to a discretion mechanism for which there is no review.

DEPARTMENTS POSITION

The department is opposed to HB NO.101 as it would remove the responsibility for making waiver decisions from the Court and place it with the Department of Law. Enactment would also require the construction and operation of a separate facility at considerable cost to the state.

A presumptive waiver attempts to mechanize a most difficult decision in which society has competing interests. There must be a balancing of the goals of public protection, and society's interest in protecting and rehabilitating youthful offenders.

The Department believes that a more reasonable way to correct deficiencies in the current waiver law would be to statutorily change the second of only two standards in AS 47.10.060 which the Court must use to determine waivers. The second standard, in addition to probable cause, is amenable to treatment. Factors such as seriousness of offense and prior delinquent history can only be considered as they relate to the amenability standard. They are not separate standards. Interests such as deterrence of others and reinforcing societal norms are not even included in the current statutory scheme. The Department believes a more balanced approach is necessary which includes, but is not restricted to, the standard of amenability to treatment.

Michael L. Price 3/22/91

Michael L. Price
Director

Theodore A. Malá, MD, MPH
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. H.B. 101

Revision Date: _____ Department Affected: Corrections
 Title: "An Act relating to criminal charges brought against minors..." BRU: _____
 Sponsor: Rep. Donley Component: _____
 Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director Phone: 465-3376
 Division: Administrative Services Date: 03-21-91

Approved by Commissioner: _____ Date: 03-21-91
 Agency: Department of Corrections

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & impacted Agency(ies).

STATE OF ALASKA
Department of Corrections
LEGISLATIVE POSITION PAPER
Lloyd Hames, Commissioner

P.O. Box 'T', Juneau, AK 99811-2000 (907) 466-8376

Carl Michel, Legislative Liaison

HOUSE BILL 101

"An act relating to criminal charges brought against minors.."

House Bill 101 basically states that under certain circumstances, juveniles charged as adults will be confined in a juvenile detention facility until the age of 18 years. This happens rarely and would impact the Department of Corrections positively, if passed, by limiting the custody of a juvenile until the age 18.

This bill may have a negative impact upon the Dept. of Health and Social Services if they do not currently have adequate facilities to house juveniles charged as adults.

The Department does not have a position on this legislation.

FISCAL NOTE:
ZERO
ATTACHED

APPROVED: _____

L. H. by Carl F. Michel
Commissioner

DATE: 3-21-91

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to criminal charges brought against minors..." BRU: Prosecution/Legal Services'
 Sponsor: Representative Donley Component: Prosecution/Criminal Justice Litigation
 Requestor: House Judiciary Legal Services/Operations
 COMPONENT SERIAL NO.

		8	9
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9 3

Expenditure/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 19, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 19, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 101

This bill provides the framework for a major departure from the way that the state adjudicates minors charged with serious criminal offenses.

Historically, the state has used the Children's Proceedings process provided in AS 47.10 to handle delinquent behavior unless the court found that the minor was not amendable to treatment as a juvenile. In such cases, the state has been required to petition the court for a waiver of jurisdiction so that the minor may be prosecuted as an adult in the superior court. In determining whether or not a minor is amendable to treatment, the court considers the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available for treating the minor.

While still retaining the waiver of jurisdiction provision, AS 47.10.060, HB 101 also provides that Children's Proceedings under AS 47.10.020 -47.10.090 may not be followed when a minor is fourteen years of age and older and is charged with the following crimes:

- (1) the offense of murder in the first degree or attempted murder in the first degree;
- (2) an unclassified or a class A felony, and the minor has been previously adjudicated as a delinquent for conduct that would have been a felony if committed by an adult;
- (3) a felony of any degree, and the minor has been previously twice adjudicated as a delinquent for conduct that would have been a felony if committed by an adult; or
- (4) previously prosecuted and convicted as an adult for a felony.

Consequently, a minor accused of the above listed offenses would be charged, prosecuted, and sentenced in the superior court in the same manner as an adult.

The bill does provide that if a minor is charged under these provisions, the minor may petition the court seeking to have the charges handled as a Children's Proceeding under AS 47.10.020 - 47.10.090. The effect of these changes is to shift the burden of proof from the prosecution to the defense in determining whether a minor charged with a serious crime should be tried in children's court or as an adult in superior court.

Finally, the bill amends AS 12.55.015 to provide that a minor under the age of 18 who has been convicted under the foregoing provisions, or following a waiver of juvenile jurisdiction under AS 47.10.060, may be committed to the custody of the Department of Health and Social Services until the minor's 18th birthday. A minor thus committed would be placed in a secure facility, could not be released except upon an order of the court, and would be transferred to the custody of the Department of Corrections when reaching 18 years of age.

Because of its effect, transferring the responsibility for bringing most waiver hearings from the prosecution to the defense, the bill will not have a fiscal impact on the Department of Law. The department currently handles about twelve waivers of jurisdiction under the existing statute.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: _____ Dept. Affected Health & Social Services
 Title: An Act relating to criminal charges brought BRU: Youth Services
against minors and providing that minors convicted... Component: To be established
 Sponsor: Representative Donley
 Requestor: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES		967.0	967.0	967.0	967.0	967.0
TRAVEL		14.2	14.2	14.2	14.2	14.2
CONTRACTUAL		145.5	145.5	145.5	145.5	145.5
SUPPLIES		137.5	137.5	137.5	137.5	137.5
EQUIPMENT		20.0	20.0	20.0	20.0	20.0
LAND & STRUCTURES						
GRANTS, CLAIMS		50.0	50.0	50.0	50.0	50.0
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,334.2	1,334.2	1,334.2	1,334.2	1,334.2
CAPITAL	5,767.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING:

(Thousands of Dollars)

GENERAL FUND	FY92	FY93	FY94	FY95	FY96	FY97
FEDERAL FUNDS						
OTHER						
TOTAL	5,767.0	1,334.2	1,334.2	1,334.2	1,334.2	1,334.2

POSITIONS:

FULL-TIME	FY92	FY93	FY94	FY95	FY96	FY97
PART-TIME						
TEMPORARY						
	0	18	18	18	18	18
	0	1	1	1	1	1
	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

Based upon an analysis of arrest data, wavier data, and sentencing information this fiscal note assumes that 10 youth will be waived and sentenced annually with an average length of stay of 2.5 years. Based on this funding DHSS would need to construct and operate a facility with a capacity for 25 waived youthful offenders.

Prepared by: Michael L. Price, Director *Michael L. Price*
 Division: Division of Family and Youth Services
 Approved by Commissioner: Theodore A. Mala, MD, MPH *for*
 Agency: Department of Health and Social Services

Phone: 465-3170
 Date: 3/22/91
 Date: 3/22/91

Distribution (by preparer):
 Legislative Finance OMB
 Legislative Sponsor Impacted Agency(ies)
 Requestor

ANALYSIS (cont.):

Assumptions

1. An analysis of arrest data indicates that 40 youth could be arrested annually for offenses subject to presumptive waiver under HB 101.
2. It is estimated that 60% will not request or prevail in attempts to be tried as juveniles.
3. Based on an analysis of conviction rates for juveniles, 80% of these arrested could be convicted under the presumptive waiver provisions of HB 101.
4. Based on an analysis of adult sentencing information 50% of offenders are convicted of the offense charged.
5. The average age of minors at arrest under presumptive waiver consideration would be 15.5 years.

Program Summary

Waived minors cannot be housed with other juvenile offenders for two reasons. First, waived minors who have long sentences pose a greater security risk. The physical design and arrangement of a secure facility must meet the needs of this higher risk population. Secondly, this population has no incentive to meet behavioral expectations in the same manner as other detained minors, thus dictating completely different programs for each group.

FY 92

Capital Project - One 25 bed separate secure detention facility would be built in Anchorage. The facility would house minors who were charged, pending "reverse waiver" trial sentenced under the presumptive waiver provisions of HB 101 and also those waived minors pursuant to AS 47.10.060. It is estimated that the facility would be 11,00 square feet at a cost of \$300.00 sq. ft. for a total cost of \$5,767,000.

FY 93

Facility operational costs for a separate secure facility located in Anchorage.

Personal Services \$811,00

- One Superintendent I
- One Unit Leader
- Three Youth Counselor III's
- Twelve Youth Counselor II's
- One Maintenance Worker II
- One Clerk-Typist IV
- One 1/2 time Nurse II

Personal Services include staff for 24 hour supervision of the offender population and 37.5 hour per week staffing of administration.

ANALYSIS (cont.):

Travel \$ 14,200

Travel includes costs for administrative travel, staff training and per diem.

Contractual \$145,000

Contractual costs include purchase of public utilities, laundry services, communications, and other professional services.

Supplies \$137,000

Supply costs include the purchase of office supplies, household/institutional supplies, repair/maintenance supplies and food.

Grants/Claims \$ 50,000

Grants/claims costs include travel at admissions and release for the minor and escort, commissary, clothing and medical care.

FISCAL NOTE
HB 101
(page 2 of 3)

Analysis:

Based upon an analysis of arrest data, wavier data, and sentencing information this fiscal note assumes that 10 youth will be waived and sentenced annually with an average length of stay of 2.5 years. Based on this finding DHSS would need to construct and operate a facility with a capacity for 25 waived youthful offenders.

Assumptions

1. An analysis of arrest data indicates that 40 youth could be arrested annually for offenses subject to presumptive waiver under HB 101.
2. It is estimated that 60% will not request or prevail in attempts to be tried as juveniles.
3. Based on an analysis of conviction rates for juveniles, 80% of those arrested could be convicted under the presumptive wavier provisions of HB 101.
4. Based on an analysis of adult sentencing information 50% of offenders are convicted of the offense charged.
5. The average age of minors at arrest under presumptive waiver consideration would be 15.5 years.

Program Summary

Waived minors cannot be housed with other juvenile offenders for two reasons. First, waived minors who have long sentences pose a greater security risk. The physical design and arrangement of a secure facility must meet the needs of this higher risk population. Secondly this population has no incentive to meet behavioral expectations in the same manner as other detained minors, thus dictating completely different programs for each group.

FY 92 Capital Project - One 25 bed separate secure detention facility would be built in Anchorage. The facility would house minors who were charged, pending "reverse wavier" trial sentenced under the presumptive wavier provisions of HB 101 and also those waived minors pursuant to AS 47.10.060. It is estimated that the facility would be 11,000 square feet at a cost of \$300.00/sq.ft. for a total cost of \$5,767,000.

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 4, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 3-25-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 101

HOUSE BILL NO. 101

PROSECUTION OF JUVENILE FELONS

"An Act relating to criminal charges brought against minors, and providing that minors convicted as adults may be confined in juvenile facilities."

RECOMMENDATIONS:

be replaced with CS HB 101 (HES) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DHSS

fiscal note(s) _____

zero fiscal note D.O.C. + D.O.L.

zero fiscal note(s) _____

SIGNING DO PASS: (Lincoln)

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>[Signature]</i> (CARNER)	<i>Cheri Davis</i>		X	
<i>J. G. Gonzalez</i> (GONZALES)				
<i>Mark Hamley</i> (HAMLEY)				

[Signature]
CO-Chairman's Signature



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

SUBJECT OF MEETING:
HB101 PROSECUTION OF JUVENILE FELONS

DATE: March 25, 1991

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
✓ SHERRIE GORE	ALASKA WOMEN'S LOBBY	P.O. Box 22156 Juneau	99802		436744	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB101
CARL NICKEL	Dept of Correct.					<input type="radio"/> Y	<input type="radio"/> N	
Michael Price	DFYS DHSS	Box H Juneau		(H?) 465-3191		<input type="radio"/> Y	<input type="radio"/> N	
Randall Hines	DFYS			(H?) 465-2422		<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	

CS FOR HOUSE BILL NO. 101 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DONLEY, Ulmer, Larson, Barnes, G.Phillips, Sharp, Martin, Leman, Zawacki, B.Davis, Baker, R.Phillips

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal charges brought against minors."

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

3 * Section 1. AS 47.10.010 is amended by adding new subsections to read:

4 (e) Unless ordered by the court under (h) - (k) of this section, the procedure prescribed
5 in AS 47.10.020 - 47.10.090 ~~and AS 47.10.010~~ when a minor is
6 14 years of age and older and is charged with

7 (1) the offense of murder in the first degree under AS 11.41.100 or attempted
8 murder in the first degree;

9 (2) an unclassified or a class A felony, and the minor has been previously
10 adjudicated as a delinquent in this or another jurisdiction ~~and~~
11 that would have been a felony under the laws of this state if committed by an adult;

12 (3) a felony of any degree, and the minor has been previously

13 (A) twice adjudicated as a delinquent in this or another jurisdiction ~~and~~

14 ~~and~~ that would have been a felony under the laws of this

1 state if committed by an adult; or

2 (B) prosecuted and convicted as an adult for a felony in this or another
3 jurisdiction.

4 (f) If a minor is charged ~~with an offense specified~~ in (e) of this section, the procedure
5 prescribed in AS 47.10.020 - 47.10.090 ~~and the Alaska Delinquency Rules does not apply~~ with
6 regard to all charges that are properly joined to the offense described in (e)(1), (2), or (3) of this
7 section, unless otherwise ordered by the court under (h) - (k) of this section.

8 (g) A minor accused of an offense specified in (e) or (f) of this section shall be charged,
9 prosecuted, and sentenced in the superior court in the same manner as an adult, unless otherwise
10 ordered by the court under (h) - (k) of this section. If a minor is accused of an offense specified
11 in (e)(2) or (3) of this section, the charging document shall be accompanied by an sworn
12 statement stating that the minor has been previously convicted as an adult for a felony or
13 adjudicated as a delinquent for conduct that would allow charges to be brought under (e)(2) or
14 (3) of this section.

15 (h) If a minor is charged as an adult under (e) or (f) of this section, the minor may file
16 with the court a petition seeking to have the charges heard under the procedure prescribed in
17 AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules. The minor shall file a petition
18 under this subsection within 10 days of the date that the minor is charged that alleges that

19 (1) the minor is amenable to treatment under this chapter before the minor's 20th
20 birthday; or

21 (2) the allegations in a sworn statement filed under (g) of this section are not true.

(i) At a hearing on a petition under (h)(1) of this section, the minor bears the burden of
proving by a preponderance of the evidence that the minor is amenable to treatment under this
chapter before reaching 20 years of age. In ruling on the petition, the court shall consider the
factors set out in AS 47.10.060(d).

(j) At a hearing on a petition under (h)(1) of this section, the minor may introduce as
evidence the testimony or the report of a qualified psychiatrist or psychologist on the minor's
amenability to treatment before reaching 20 years of age. Notice of intent to introduce this
evidence shall be given to the court by the minor at least 20 days before the hearing. If the
minor gives this notice and the state requests that the minor be examined by another psychiatrist
or psychologist, the court shall order that the minor be examined by a qualified psychiatrist or

psychologist selected by the state. A report by a psychiatrist or psychologist that either the minor or the state intends to introduce as evidence at the hearing shall be filed with the court and served on the opposing party at least 48 hours before the hearing.

(k) At a hearing on a petition under (h)(2) of this section, the state bears the burden of proving by a preponderance of the evidence that the allegations of a sworn statement under (g) of this section are true.

7 (l) Nothing in this section limits the right of a party to an action under this chapter to
8 seek waiver of jurisdiction under AS 47.10.060(a).

9 * **Sec. 2.** AS 47.10.080 is amended by adding a new subsection to read:

10 (o) A minor who is charged and prosecuted as an adult under AS 47.10.010(e) - (g) but
11 who is convicted only of offenses with which the minor could not be charged under
12 AS 47.10.010(e) shall be treated as though the charges had been heard under this chapter, and
13 the court shall order disposition of the charges of which the minor is convicted under the
14 provisions of (b) of this section. However, if any of the charges of which the minor is convicted
15 is a felony, the state may petition the court to sentence the minor as an adult. If the court finds
16 that the minor is not amenable to treatment under this chapter, as defined in AS 47.10.060(d),
17 the court may grant the petition. The court shall employ the same standards and consider the
18 same factors as it would in determining a petition for waiver of juvenile jurisdiction under
19 AS 47.10.060.

20 * **Sec. 3. APPLICABILITY.** This Act applies to offenses committed after the effective date of this

21 Act.

HB

103

Alaska Association Chiefs of Police



February 2, 1991

Representative Dave Donley
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Donley,

On behalf of the Alaska Association of Chiefs of Police I want to express our whole hearted support for House Bill 103. The ability to Fingerprint juveniles would be an important law enforcement tool.

We know that the majority of property offenses are committed by juveniles. House Bill 103 would help apprehend juveniles while still young. This would greatly aid efforts to correct their behavior before they become adult career criminals. It would also help us recover stolen property and return it to victims.

If we can do anything to assist you in the passage of this bill, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Duane S. Udland", is written over the typed name.

Duane S. Udland
President

Chiefs of Police Position

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

DATE 2/20/91

JOINT _____

TAPE # 11

JOINT _____

TIME CALLED TO ORDER 8:35 (am/pm)

TIME ADJOURNED 9:50A

ROLL CALL:	PRES	ABST	TIME ARRVD	JOINT MEMBERS PRESENT:
Rep. Patrick Carney	✓			
Rep. Georgiana Lincoln	✓			
Rep. Bettye Davis	✓			
Rep. Cheri Davis	✓			
Rep. John Gonzales	✓			
Rep. Mark Hanley	✓			
Rep. Mary Miller	✓	✓		late @ 8:39am

AGENDA:

BILL NO.	SHORT TITLE	ACTION TAKEN
HB 44	Amending Domestic Violence Laws	Passed out w/ final - Ind. Rec.
*HB 103	Fingerprinting of Minors	Passed out w/ final - Ind. Rec.

OTHER:

Rep. Frank Ulmer x 4947

Rep. Dave Donley x 3892

SPECIAL ANNOUNCEMENTS:

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 103

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to fingerprinting." BRU: Prosecution/Legal Services
 Component: Prosecution/Criminal Justice Litigation
Legal Services/Operations
 Sponsor: Representative Donley
 Requestor: House Judiciary COMPONENT SERIAL NO.

		8	9
		9	3

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 This bill involves fingerprinting of minors in custody, which is a concern of law enforcement agencies and the Division of Family and Youth Services. There will not be a fiscal impact for the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 15, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 15, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).