

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6881 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

FEDERAL DEFINITION:

- "The term 'developmental disability' means a severe, chronic disability of a person which—
- (A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (B) is manifested before the person attains age twenty-two;
  - (C) is likely to continue indefinitely;
  - (D) results in substantial functional limitations in three or more of the following areas of major life activity:
    - (i) self-care,
    - (ii) receptive and expressive language,
    - (iii) learning,
    - (iv) mobility,
    - (v) self-direction,
    - (vi) capacity for independent living, and
    - (vii) economic self-sufficiency; and
  - (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated."

PL 95-602, Section 102(7)

STATE DEFINITION:

A. Developmental Disability is a Disability which:

- (A) is attributable to:
  - (i) mental retardation, cerebral palsy, epilepsy, or autism;
  - (ii) any other condition found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to impairment resulting from mental retardation; or
  - (iii) dyslexia resulting from a disability described in (i) or (ii) of this subparagraph, and
- (B) constitutes a substantial handicap to the person's ability to function normally in society.

NOTES TO DECISIONS

Quoted in In re K.M.L., 626 P.2d 574 (Alaska 1981).

Collateral references. — Construction discrimination in housing on account of and effect of state legislation forbidding physical handicap. 28 ALR4th 685.

Sec. 47.80.020. Protection and advocacy of rights. The department shall establish a system to protect and advocate rights of persons with handicaps. The system

(1) has the authority to pursue legal, administrative, and other appropriate remedies to assure the protection of the rights of persons with handicaps; and

(2) shall be independent of any state agency that provides treatment, services, or habilitation of persons with handicaps. (§ 2 ch 165 SLA 1978)

NOTES TO DECISIONS

This section was enacted in response to a federal statute, 42 U.S.C. § 6012(a), providing for joint federal and state protection and advocacy of the rights of developmentally disabled individuals. In re K.M.L., 626 P.2d 574 (Alaska 1981). No authority to involuntarily com-

mit the handicapped. — This section should not be read so broadly as to create the implied authority to involuntarily commit the handicapped. In re K.M.L., 626 P.2d 574 (Alaska 1981). See also notes under same catchline following chapter analysis, Notes to Decisions.

Article 2. Governor's Council for the Handicapped and Gifted.

|   |                        |
|---|------------------------|
| Section   | Section                |
| 30. Governor's council for the handicapped and gifted | 70. Officers and staff |
| 40. Composition                                       | 80. Bylaws             |
| 50. Term of office                                    | 90. Responsibilities   |
| 60. Compensation, per diem, and expenses              |                        |

Sec. 47.80.030. Governor's council for the handicapped and gifted. There is established the Governor's Council for the Handicapped and Gifted. For budgetary purposes, the council is located within the Department of Health and Social Services but is the interdepartmental planning and coordinating agency of the Department of Health and Social Services, the Department of Education, and other departments that deliver services to persons who are handicapped or gifted. In addition, the council is the state planning council for purposes of federal laws relating to the handicapped or gifted. (§ 2 ch 165 SLA 1978)

Sec. 47.80.040. Composition. (a) The council consists of no fewer than 18 nor more than 23 members appointed by the governor in accordance with P.L. 91-517, P.L. 94-103, P.L. 94-142, as amended, and AS 14 30.231. P-99-457

(b) At least one-third of the members shall be representatives of the principal state agencies concerned with services for handicapped or gifted persons.

(c) At least one-third of the members shall be developmentally disabled persons or parents or guardians of such persons, who are not officers or directors of an entity, or employees of a state agency, which receives funds or provides services under P.L. 91-517 or P.L. 94-103, as amended.

(d) The remaining members shall be appointed to represent the public at large, local agencies, nongovernmental agencies, and groups concerned with services to handicapped or gifted persons.

(e) Membership of the council shall at all times comply with the requirements of P.L. 91-517, as amended.

(f) In the appointment of all members other than state agency members, due regard shall be given to geographically balanced representation of areas of the state and to representation of persons with a variety of different mental and physical handicaps. (§ 2 ch 165 SLA 1978)

Editor's notes. — P.L. 91-517 cited in this section may be found at 42 U.S.C. 2661 — 2666, 2670 — 2677, 2691 and 2693 — 2696. P.L. 94-103 cited in this section may be found at 42 U.S.C. 6001 — 6012, 6031 — 6033, 6041 — 6043, 6061 — 6064 and 6081. P.L. 94-142 cited in this section may be found at 20 U.S.C. 1401, 1405, 1406, 1411 — 1420 and 1453.

Sec. 47.80.050. Term of office. (a) Council members serve staggered terms of three years.

(b) A vacancy occurring in the membership of the council shall be filled by appointment of the governor for the unexpired portion of the vacated term.

(c) Council members serve at the pleasure of the governor, notwithstanding their terms of office.

(d) It is the legislative intent that the governor replace any member who, by poor attendance or lack of contribution to the council's work, demonstrates ineffectiveness as a council member. (§ 2 ch 165 SLA 1978; am § 37 ch 168 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 22, 1990, substituted "members serve staggered terms" for "members' terms are" and deleted the former second sentence, relating to terms of initial appointees.

**Sec. 47.80.060. Compensation, per diem, and expenses.** Members of the council receive no salary but are entitled to per diem and reimbursement for travel and other expenses as authorized by law for boards. (§ 2 ch 165 SLA 1978)

**Cross references.** — For per diem and travel expenses, see AS 34.20.180.

**Sec. 47.80.070. Officers and staff.** (a) The council, by a majority of its membership, shall elect a chairman and other officers it considers necessary from among its membership, to serve on a yearly basis.

(b) The department shall provide for the assignment of personnel to the council to ensure that the council has the capacity to fulfill its responsibilities. The personnel shall be directly responsible to the council for performance of their duties. (§ 2 ch 165 SLA 1978)

**Sec. 47.80.080. Bylaws.** The council, on approval of a majority of its membership, shall adopt and amend bylaws governing its composition, proceedings and other activities consistent with AS 47.80.030 — 47.80.090 and including, but not limited to, provisions concerning a quorum to transact council business and other aspects of procedure, frequency and location of meetings, and establishment, functions and membership of council committees. (§ 2 ch 165 SLA 1978)

**Sec. 47.80.090. Responsibilities.** The council shall

(1) serve as a forum by which issues and benefits regarding current and potential services to handicapped and gifted persons may be discussed by consumer, public, private, professional, and lay interests;

(2) advocate the needs of handicapped and gifted persons before the executive and legislative branches of the state government and before the public;

(3) advise the executive and legislative branches of the state government and the private sector on programs and policies pertaining to current and potential services to handicapped or gifted persons and their families;

(4) submit periodic reports to the commissioner of health and social services, the commissioner of education and to other appropriate departments, on the effects of current federal and state programs regarding services to handicapped or gifted persons; these reports shall include program performance reports to the governor, the federal government, and to state agencies as required by P.L. 91-517, P.L. 94-103, or P.L. 94-142, as amended;

(5) in conjunction with the Departments of Health and Social Services and Education, develop, prepare, adopt, periodically review, and revise as necessary an annual state plan prescribing programs which

meet the needs of persons with developmental disabilities as required under P.L. 91-517 or P.L. 94-103, as amended;

(6) review and comment to commissioners of state departments on all state plans and proposed regulations relating to programs for persons with handicaps before the adoption of a plan or regulation; for this purpose, the appropriate departments shall submit the plans and proposed regulations to the council;

(7) recommend the priorities and specifications for the use of funds received by the state under P.L. 91-517, P.L. 94-103 and P.L. 94-142, as amended;

(8) submit annually to the commissioner of health and social services, the commissioner of education, and the commissioner of community and regional affairs a proposed interdepartmental program budget for services to handicapped or gifted persons which includes, insofar as possible, projected revenues and expenditures for programs implemented by state agencies, local governmental agencies, and private organizations; the interdepartmental program budget is an informational supplement to the regular annual budgetary submissions of the departments to the Office of the Governor;

(9) provide information and guidance for the development of appropriate special educational programs and services for exceptional children as defined in AS 14.30.350;

(10) monitor and evaluate budgets or other implementation plans and programs for handicapped and gifted persons to assure nonduplication of services and encourage efficient and coordinated use of federal, state and private resources in the provision of services; members of the council, with the approval of the council, have access to information in the possession of state agencies subject to disclosure restrictions imposed by state or federal confidentiality or privacy laws;

(11) perform other duties required under P.L. 91-517, P.L. 94-103, P.L. 94-142, as amended, or AS 14.30.231, and as the governor may assign; and

(12) govern the special education service agency, and may hire personnel necessary to operate the agency. (§ 2 ch 165 SLA 1978; am § 6 ch 112 SLA 1986)

**Effect of amendments.** — The 1986 amendment added paragraph (12).

**Editor's notes.** — P.L. 91-517 cited in this section formerly appeared as 42 U.S.C. 2661 — 2666, 2670 — 2677, 2691 and 2693 — 2696. However, 42 U.S.C. 2661 — 2666, 2670, 2691, and 2693 — 2696 were repealed in 1975 by P.L. 94-103, § 302(c). 42 U.S.C. 2675 and 2676 were repealed in 1975 by P.L. 94-103, § 112. 42 U.S.C. 2671 — 2674 and 2677 were transferred to 42 U.S.C. 6061, 6062,

6067, 6063, and 6064 respectively. P.L. 94-103 cited in this section formerly appeared as 42 U.S.C. 6001 — 6012, 6031 — 6033, 6041 — 6043, 6061 — 6068 and 6081. However, 42 U.S.C. 6010 — 6012, 6031 — 6033, and 6065 — 6068 were omitted in the general revision of that chapter by P.L. 98-527. P.L. 94-142 cited in this section formerly appeared as 20 U.S.C. 1401, 1405, 1406, 1411 — 1420 and 1453. However, 20 U.S.C. 1453 was repealed in 1986 by P.L. 99-457, § 316.

Article 3. Programs and Plans.

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|--|--|
| Section                                  | Section  |
| 100. Programs for persons with handicaps | 150. Liability for expense of services           |
| 110. Program principles                  | 160. Transportation                              |
| 120. Habilitation plans                  | 170. Provision for personal needs upon discharge |
| 130. Powers and duties of the department |  |
| 140. Licensing and certificates of need  |  |

Sec. 47.80.100. Programs for persons with handicaps. (a) The Department of Health and Social Services, the Department of Education, and other departments of the state as appropriate, shall, in coordination, plan, develop, and implement a comprehensive system of services and facilities for persons with handicaps, that is consistent with the state plan adopted under AS 47.80.090(5) and is dispersed geographically within the state.

(b) The services required in (a) of this section are specialized services or special adaptations of services available to the general population and shall be directed toward the social, personal, physical, or economic habilitation or rehabilitation of persons with handicaps.

(c) Within the limits of appropriations and other available funds, the appropriate department may itself provide the services and establish, operate, and maintain the facilities required under (a) and (b) of this section, or it may provide the services or facilities entirely or in part through contractual arrangements with public or private agencies. (§ 2 ch 165 SLA 1978)

Sec. 47.80.110. Program principles. The system of services and facilities required under AS 47.80.100 shall accord with the principle that treatment, services, and habilitation shall be designed to maximize individual potential, minimize institutionalization, and shall be provided in the least restrictive setting, enabling a person to live as normally as possible within the limitations of the handicap. (§ 2 ch 165 SLA 1978)

NOTES TO DECISIONS

Goal of minimal institutionalization. — A fundamental goal of AS 47.80 is to minimize institutionalization in the habilitation of handicapped individuals. In re K.M.L., 626 P.2d 574 (Alaska 1981).

Sec. 47.80.120. Habilitation plans. A state agency, contractor, or grantee who is directly responsible for providing services to persons with handicaps shall develop an individual habilitation plan for each person whose program of services utilizes state funds. The plan shall be completed in writing and furnished to the department within 30 days of admission of a client to the program of services. The plan, its renewals, and any changes of it, shall have the written concurrence of

the client, or the client's parent or guardian when appropriate, and the agency or contractor responsible for providing services. The development and content of a plan shall conform to requirements established by the department by regulation. Insofar as practicable, the requirements shall conform to those established for individual habilitation plans under P.L. 91-517 or P.L. 94-103, as amended. Each plan shall be time-limited, evaluated, and renewed at least annually. (§ 2 ch 165 SLA 1978)

Sec. 47.80.130. Powers and duties of the department. (a) The department shall

(1) develop budgets and receive and distribute appropriations and funds under this section;

(2) adopt regulations regarding standards of services and facilities for persons with handicaps and the quality of services and the process by which services are to be delivered;

(3) adopt any other regulations necessary to implement this chapter;

(4) provide technical assistance to public and private agencies in planning, developing, and implementing programs to serve handicapped persons;

(5) operate programs and facilities, and enter into agreements, contracts, or grants necessary to provide services required under this chapter;

(6) take the actions and undertake the obligations that are necessary to participate in federal grant-in-aid programs and accept federal or other financial aid for the study, examination, care or treatment of the handicapped.

(b) For purposes of P.L. 91-517 and P.L. 94-103, as amended, the department is designated the sole administering agency; it shall make applications for, receive, and expend grants under P.L. 91-517 or P.L. 94-103, as amended, and otherwise exercise the powers and perform the duties and functions necessary to comply with P.L. 91-517 and P.L. 94-103, as amended.

(c) The Department of Education may make applications for, receive, and expend grants under P.L. 91-230 (The Education for the Handicapped Act), as amended, and otherwise exercise the powers and perform the functions necessary to comply with that Act. (§ 2 ch 165 SLA 1978)

Sec. 47.80.140. Licensing and certificates of need. (a) A person may not establish or operate a residential facility without first obtaining a license to do so. The department by regulation shall provide for licensing of residential facilities that are not within the licensing provisions of AS 18.20.010 — 18.20.130, AS 47.35.010 — 47.35.080 or other law requiring state licensing of such facilities. Regulations of

the department must include but need not be limited to (1) standards of operation promoting and protecting public health, safety, and welfare, and (2) procedures governing applications for and issuance of licenses and duration, renewal, and revocation of licenses for cause. The department may at reasonable times inspect and examine residential facilities licensed under this subsection for conformity with licensing requirements.

(b) A certificate of need is required as a prerequisite for licensing a residential facility established after July 1, 1978 and not otherwise provided for in AS 18.07.031 — 18.07.111. A certificate shall be issued and regulated in the same manner as provided in AS 18.07.031 — 18.07.111 for certificates of need for health care facilities. (§ 2 ch 165 SLA 1978)

Collateral references. — 40 Am. Jur. 2d, Hospitals and Asylums, § 4.  
7 C.J.S., Asylums, §§ 5-8.

**Sec. 47.80.150. Liability for expense of services.** (a) A person with a handicap or the person's legal representative acting in a representative capacity, the person's spouse, or the person's parents if the person is a minor, shall pay or contribute to the payment of the charges for the care or treatment in accordance with the fee schedule adopted under AS 44.29.022. The order of the department relating to the payment of charges shall be prospective in effect and may relate only to charges to be incurred, except that if a person intentionally conceals ability to pay, the person shall be ordered to pay to the extent of the person's ability to pay the charges accruing during the period of the concealment. The order of the department relating to the payment of charges by the person with a handicap or the person's legal representative, or the person's spouse or parents, shall be issued within six months of the date on which the charge was incurred. The department may make necessary investigations to determine the ability to pay. The order shall remain in full force and effect unless modified by subsequent court or department orders.

(b) As used in (a) of this section, the term "actual cost of the care and treatment" means the lesser of (1) the rate provided for by a contract entered into under this chapter, (2) the fee established under AS 44.29.022 for services provided under this chapter or, (3) if the person is under the age of 18, the cost of care of a person of the same age who is not a person with a handicap and who resides with a parent or guardian, and includes expenses of transportation incidental to treatment and carrying out the intent of this chapter. In establishing fees for services under this chapter, the commissioner shall consider the income and family size of the responsible party, age of the person receiving the services, and other factors that relate to the ability to pay. Fees may not exceed the actual cost of the care or treatment.

(c) [Repealed, § 101 ch 138 SLA 1986.]

(d) The department may charge, or accept money or property from a person, for the care or treatment of an inpatient or outpatient or for other purposes, even if the payment is not required by an order of the department. The total payments received may not exceed the actual cost of care or treatment.

(e) All money paid to the department by the person with a handicap or on the person's behalf, under this section, shall be deposited in the general fund.

(f) If an order of payment is entered by the department under this section and delinquency in the payment of any amount due the state under the order continues for a period of more than 30 days after the notification by the department to the person, the legal representative, parent, or spouse of the person with a handicap, the state may proceed to collect the amounts due by appropriate proceedings. Actions to enforce the collection of payments may only be brought within three years after the date of notification of a delinquent payment.

(g) The commissioner of administration shall separately account for medical care and treatment fees collected under this section that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter. (§ 2 ch 165 SLA 1978; am §§ 96 — 101 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (a), substituted "the person's parents if the person is a minor" for "parents" and "in accordance with the fee schedule adopted under AS 44.29.022" for "in the manner and proportion which the department finds is not detrimental to rehabilitation and which is within the responsible person's ability to pay. The charges may not exceed the actual cost of the care or treatment as determined by the department" in the first sentence substituted "may relate" for "shall relate" in the second sentence and made grammatical changes; in subsection (b), substituted "the lesser of (1)" for "either" and substituted items (2) and (3) for "in the absence of a contract, a daily rate fixed by the department" in the first sentence and added the last two sentences; repealed subsection (c); inserted "to the department" and substituted "general fund" for "state treasury" in subsection (e); inserted "the person" following "the notification by the department to" in subsection (f); and added subsection (g).

**Sec. 47.80.160. Transportation.** When an individual is to be treated under this chapter, the department shall arrange, upon the request of a person having a proper interest in the individual's treatment, and may pay for the individual's transportation to the designated facility, with appropriate medical or nursing attendants and by the available means that are appropriate and suitable. The department may pay return transportation of an individual and appropriate medical and nursing attendants. When practicable, one or more relatives or friends of the individual to be treated shall be permitted to accompany the individual. The department may pay necessary travel, housing and meal expenses incurred by one relative or friend in ac-

companying the individual to the facility if the department determines

- (1) that the best interests of the individual's health require that the individual be accompanied by the relative or friend;
- (2) the relative or friend accompanying the individual is indigent. (§ 2 ch 165 SLA 1978)

**Sec. 47.80.170. Provision for personal needs upon discharge.** The department shall make arrangements which are necessary to ensure that

- (1) no patient is discharged or placed on convalescent status from a designated facility without suitable clothing; and
- (2) an indigent patient discharged or placed on convalescent status is furnished suitable transportation to the patient's permanent residence in this state or other suitable place at the discretion of the department, and a reasonable amount of money to meet immediate needs. (§ 2 ch 165 SLA 1978)

#### Article 4. Special Funds.

| Section                          | Section                         |
|----------------------------------|---------------------------------|
| 200. Self-sufficiency trust fund | 230. Effect on other assistance |
| 210. Contributions to the fund   | 240. Charitable account         |
| 220. Use of the trust fund       | 290. Definitions                |

**Sec. 47.80.200. Self-sufficiency trust fund.** (a) There is established in the state treasury the self-sufficiency trust fund. It consists of money deposited in the trust fund by the commissioner of health and social services under AS 47.80.210.

(b) The commissioner of revenue is the custodian of the trust fund in the same manner as provided for the public school trust fund in AS 37.14.160 — 37.14.170, except where the provisions of AS 47.80.200 — 47.80.290 conflict. (§ 1 ch 207 SLA 1990)

**Sec. 47.80.210. Contributions to the fund.** (a) The department shall deposit into the trust fund money accepted by the department from a self-sufficiency trust under an agreement with the trust. The agreement must name a beneficiary who is a resident person with a handicap or mental illness and specify the care or treatment to be provided for the beneficiary. The agreement may name more than one qualified beneficiary.

(b) The commissioner of revenue shall keep separate accounts in the trust fund for each beneficiary named under (a) of this section and allocate interest earned on the fund pro rata to the respective accounts. (§ 1 ch 207 SLA 1990)

**Sec. 47.80.220. Use of the trust fund.** (a) Money in the accounts established under AS 47.80.210 may only be used by the department under its regulations to provide care and treatment to the named beneficiaries in accordance with the terms of the agreements by which the money was accepted and to pay the costs incurred by the Department of Revenue and the Department of Health and Social Services in administering AS 47.80.200 — 47.80.290. The commissioner of revenue shall direct payments from the trust fund upon vouchers properly certified by the Department of Health and Social Services.

(b) If the department determines that the money in an account cannot be used consistent with the agreement by which it was accepted or the regulations of the department, or upon request of the self-sufficiency trust that deposited the money, the balance of the account, together with any accumulated interest on it, shall be promptly returned to the self-sufficiency trust. (§ 1 ch 207 SLA 1990)

**Sec. 47.80.230. Effect on other assistance.** The receipt by a beneficiary of money from the trust fund, or of care or treatment provided with that money, does not in any way affect the benefits to which the beneficiary is otherwise entitled by law. (§ 1 ch 207 SLA 1990)

**Sec. 47.80.240. Charitable account.** (a) There is established in the trust fund a handicap and mental illness charitable account. The account consists of money from any source that is deposited with the commissioner of revenue for the account.

(b) Subject to appropriation, the department may use money in the account to provide care and treatment of low-income persons with handicaps or mental illnesses. (§ 1 ch 207 SLA 1990)

**Sec. 47.80.290. Definitions.** In AS 47.80.200 — 47.80.290

- (1) "mental illness" has the meaning given in AS 47.30.915;
- (2) "person with a handicap" has the meaning given in AS 47.80.900, except that it does not include "gifted children" as defined in AS 14.30.350;
- (3) "self-sufficiency trust" means a trust established by a nonprofit organization that
  - (A) has as its purpose the provision or care or treatment of persons with handicaps or mental illnesses;
  - (B) is incorporated under AS 10.20; and
  - (C) meets the requirements of 26 U.S.C. 501(c)(3);
- (4) "trust fund" means the fund established under AS 47.80.200. (§ 1 ch 207 SLA 1990)

## Article 5. General Provisions.

Section  
900. Definitions

Sec. 47.80.900. Definitions. In this chapter

(1) "council" means the Governor's Council for the Handicapped and Gifted created by AS 47.80.030;

(2) "department" means the Department of Health and Social Services;

(3) "facilities for persons with handicaps" means publicly or privately operated facilities, or specified portions of facilities, designed primarily for the delivery of services to those persons; the term includes but is not limited to residential facilities;

(4) "habilitation" means education or training for the handicapped to enable them to function better in society;

(5) "least restrictive setting" means a residential or other setting for meeting the needs of a handicapped person which requires the least amount of restriction of personal liberty by enabling the person to function in as normal an environment as possible and to live as normally as possible, within the limitations of the handicap;

(6) "person with a handicap" means a person with a developmental disability as defined in (7) of this section or a person who is hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically or otherwise health impaired, or who has a specific learning disability; the term includes but is not limited to "exceptional children" as defined in AS 14.30.350(1) and AS 47.20.050;

(7) "person with a developmental disability" means a person having a disability that

(A) is attributable to

(i) mental retardation, cerebral palsy, epilepsy, or autism;

(ii) any other condition found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to impairment resulting from mental retardation; or

(iii) dyslexia resulting from a disability described in (i) or (ii) of this subparagraph; and

(B) constitutes a substantial handicap to the person's ability to function normally in society;

(8) "residential facility" means a publicly or privately operated facility that provides 24-hour care for four or more persons with handicaps, excluding family, foster family, or adoptive homes;

(9) "substantial handicap" means a disability that prevents or substantially impedes the person's participating in and benefiting from the social, economic, educational, recreational, or other opportunities

generally available to peers in the community who are not similarly handicapped. (§ 2 ch 165 SLA 1978)

## NOTES TO DECISIONS

Stated in In re K.M.L., 626 P.2d 574  
(Alaska 1981)

## Chapter 90. Displaced Homemakers.

## Section

10. Program established  
20. Multipurpose service centers  
30. Employment of displaced homemakers

## Section

40. Consultation and coordination  
50. State employment assistance  
60. Regulations  
70. Definitions

Cross references. — For legislative intent in connection with the enactment of this chapter, see § 1, ch. 61, SLA 1982 in the Temporary and Special Acts

Sec. 47.90.010. Program established. (a) The commissioner, in consultation with state and local government agencies, community groups, and groups concerned with displaced homemakers, may

(1) contract with eligible private profit and nonprofit corporations for multipurpose service centers for displaced homemakers; contracting under this paragraph is governed by AS 36.30 (State Procurement Code); and

(2) coordinate existing state programs for displaced homemakers.

(b) The commissioner shall adopt regulations prescribing the standards to be met by each multipurpose service center for displaced homemakers in accordance with the policies established in this chapter.

(c) *Repealed, § 67 ch 106 SLA 1986.*

(d) To be eligible for an award of a contract under this chapter a private profit or nonprofit corporation must be governed by a board of directors whose membership is broadly representative of the community in which it operates as determined by the commissioner. (§ 2 ch 61 SLA 1982; am §§ 64, 67 ch 106 SLA 1986)

Effect of amendments. — The 1986 amendment inserted "contracting under this paragraph is governed by AS 36.30 (State Procurement Code)" at the end of paragraph (1) of subsection (a) and made a related grammatical change and repealed subsection (c).

October 8, 1986

CHESAPEAKE AND OHIO  
CANAL PARK—  
SR.

Chesapeake and Ohio Canal National Monument

of Representatives of the United States, That (a) the Chesapeake and Ohio Canal National Monument, Sr. in grateful reserve and protect the

his Act, the Secretary of the Interior shall provide such identification materials, maps, markers, and information to the public of the

authorized and directed in the exterior boundary of the Chesapeake and Ohio Canal National Monument, appropriate memorial to the history of such design and to be determined.

up to \$25,000 to carry out such design and to be determined.

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Natural Resources

PUBLIC LAW 99-457 [S. 2294]; October 8, 1986

EDUCATION OF THE HANDICAPPED ACT  
AMENDMENTS OF 1986

For Legislative History of Act see Report for P.L. 99-457  
in Legislative History Section, post.

An Act to amend the Education of the Handicapped Act to reauthorize the discretionary programs under that Act, to authorize an early intervention program under that Act for handicapped infants and toddlers and their families, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Education of the Handicapped Act Amendments of 1986".

(b) REFERENCE.—References in this Act to "the Act" are references to the Education of the Handicapped Act.

TITLE I—HANDICAPPED INFANTS AND TODDLERS

SEC. 101. ADDITION OF A NEW PART RELATING TO HANDICAPPED INFANTS AND TODDLERS.

(a) AMENDMENT.—The Act is amended by inserting after the part added by section 316 the following new part:

"PART H—HANDICAPPED INFANTS AND TODDLERS

"FINDINGS AND POLICY

"SEC. 671. (a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

20 USC 1471.

"(1) to enhance the development of handicapped infants and toddlers and to minimize their potential for developmental delay,

"(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after handicapped infants and toddlers reach school age,

"(3) to minimize the likelihood of institutionalization of handicapped individuals and maximize the potential for their independent living in society, and

"(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps.

"(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

State and local governments.

"(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for handicapped infants and toddlers and their families,

"(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

"(3) to enhance its capacity to provide quality early intervention services and expand and improve existing early interven-

tion services being provided to handicapped infants, toddlers, and their families.

“DEFINITIONS

20 USC 1472.

“Sec. 672. As used in this part—

“(1) The term ‘handicapped infants and toddlers’ means individuals from birth to age 2, inclusive, who need early intervention services because they—

“(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Cognitive development, physical development, language and speech development, psychosocial development, or self-help skills, or

“(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay. Such term may also include, at a State’s discretion, individuals from birth to age 2, inclusive, who are at risk of having substantial developmental delays if early intervention services are not provided.

“(2) ‘Early intervention services’ are developmental services which—

“(A) are provided under public supervision,

“(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees,

“(C) are designed to meet a handicapped infant’s or toddler’s developmental needs in any one or more of the following areas:

- “(i) physical development,
- “(ii) cognitive development,
- “(iii) language and speech development,
- “(iv) psycho-social development, or
- “(v) self-help skills,

“(D) meet the standards of the State, including the requirements of this part,

“(E) include—

- “(i) family training, counseling, and home visits,
- “(ii) special instruction,
- “(iii) speech pathology and audiology,
- “(iv) occupational therapy,
- “(v) physical therapy,
- “(vi) psychological services,
- “(vii) case management services,
- “(viii) medical services only for diagnostic or evaluation purposes,

“(ix) early identification, screening, and assessment services, and

“(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services,

“(F) are provided by qualified personnel, including—

- “(i) special educators,
- “(ii) speech and language pathologists and audiologists,
- “(iii) occupational therapists,
- “(iv) physical therapists,
- “(v) psychologists,

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- “(vi) social workers,
- “(vii) nurses, and
- “(viii) nutritionists, and

“(G) are provided in conformity with an individualized family service plan adopted in accordance with section 677.

“(3) The term ‘developmental delay’ has the meaning given such term by a State under section 676(b)(1).

“(4) The term ‘Council’ means the State Interagency Coordinating Council established under section 682.

“GENERAL AUTHORITY

“SEC. 673. The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 684) to assist each State to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for handicapped infants and toddlers and their families.

State and local governments.  
Grants.  
20 USC 1473.

“GENERAL ELIGIBILITY

“SEC. 674. In order to be eligible for a grant under section 673 for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 678) that the State has established a State Interagency Coordinating Council which meets the requirements of section 682.

State and local governments.  
Grants.  
20 USC 1474.

“CONTINUING ELIGIBILITY

“SEC. 675. (a) FIRST TWO YEARS.—In order to be eligible for a grant under section 673 for the first or second year of a State's participation under this part, a State shall include in its application under section 678 for that year assurances that funds received under section 673 shall be used to assist the State to plan, develop, and implement the statewide system required by section 676.

State and local governments.  
Grants.  
20 USC 1475.

“(b) THIRD AND FOURTH YEAR.—(1) In order to be eligible for a grant under section 673 for the third or fourth year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that—

“(A) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with section 676 or obtained a waiver from the Secretary under paragraph (2),

“(B) funds shall be used to plan, develop, and implement the statewide system required by section 676, and

“(C) such statewide system will be in effect no later than the beginning of the fourth year of the State's participation under section 673, except that with respect to section 676(b)(4), a State need only conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services.

“(2) Notwithstanding paragraph (1), the Secretary may permit a State to continue to receive assistance under section 673 during such third year even if the State has not adopted the policy required by paragraph (1)(A) before receiving assistance if the State demonstrates in its application—

“(A) that the State has made a good faith effort to adopt such a policy,

"(B) the reasons why it was unable to meet the timeline and the steps remaining before such a policy will be adopted, and  
"(C) an assurance that the policy will be adopted and go into effect before the fourth year of such assistance.

"(c) FIFTH AND SUCCEEDING YEARS.—In order to be eligible for a grant under section 673 for a fifth and any succeeding year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required by section 676 and a description of services to be provided under section 676(b)(2).

"(d) EXCEPTION.—Notwithstanding subsections (a) and (b), a State which has in effect a State law, enacted before September 1, 1986, that requires the provision of free appropriate public education to handicapped children from birth through age 2, inclusive, shall be eligible for a grant under section 673 for the first through fourth years of a State's participation under this part.

**"REQUIREMENTS FOR STATEWIDE SYSTEM**

20 USC 1476.

"Sec. 676. (a) IN GENERAL.—A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all handicapped infants and toddlers and their families shall include the minimum components under subsection (b).

"(b) MINIMUM COMPONENTS.—The statewide system required by subsection (a) shall include, at a minimum—

"(1) a definition of the term 'developmentally delayed' that will be used by the State in carrying out programs under this part,

"(2) timetables for ensuring that appropriate early intervention services will be available to all handicapped infants and toddlers in the State before the beginning of the fifth year of a State's participation under this part,

"(3) a timely, comprehensive, multidisciplinary evaluation of the functioning of each handicapped infant and toddler in the State and the needs of the families to appropriately assist in the development of the handicapped infant or toddler,

"(4) for each handicapped infant and toddler in the State, an individualized family service plan in accordance with section 677, including case management services in accordance with such service plan,

"(5) a comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for the participation by primary referral sources,

"(6) a public awareness program focusing on early identification of handicapped infants and toddlers,

"(7) a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State,

"(8) a comprehensive system of personnel development,

"(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out—

"(A) the general administration, supervision, and monitoring of programs and activities receiving assistance under section 673 to ensure compliance with this part,

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“(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

“(C) the assignment of financial responsibility to the appropriate agency,

“(D) the development of procedures to ensure that services are provided to handicapped infants and toddlers and their families in a timely manner pending the resolution of any disputes among public agencies or service providers,

“(E) the resolution of intra- and interagency disputes, and

“(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination,

“(10) a policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements,

“(11) a procedure for securing timely reimbursement of funds used under this part in accordance with section 681(a),

“(12) procedural safeguards with respect to programs under this part as required by section 680, and

“(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

“(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

“(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

“(14) a system for compiling data on the numbers of handicapped infants and toddlers and their families in the State in need of appropriate early intervention services (which may be based on a sampling of data), the numbers of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary.

“INDIVIDUALIZED FAMILY SERVICE PLAN

“SEC. 677. (a) ASSESSMENT AND PROGRAM DEVELOPMENT.—Each handicapped infant or toddler and the infant or toddler's family shall receive—

20 USC 1477.

“(1) a multidisciplinary assessment of unique needs and the identification of services appropriate to meet such needs, and

“(2) a written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d).

"(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6 month-intervals (or more often where appropriate based on infant and toddler and family needs).

"(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parent's consent, early intervention services may commence prior to the completion of such assessment.

"(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

"(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, language and speech development, psycho-social development, and self-help skills, based on acceptable objective criteria,

"(2) a statement of the family's strengths and needs relating to enhancing the development of the family's handicapped infant or toddler,

"(3) a statement of the major outcomes expected to be achieved for the infant and toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes are being made and whether modifications or revisions of the outcomes or services are necessary,

"(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,

"(5) the projected dates for initiation of services and the anticipated duration of such services,

"(6) the name of the case manager from the profession most immediately relevant to the infant's and toddler's or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons, and

"(7) the steps to be taken supporting the transition of the handicapped toddler to services provided under part B to the extent such services are considered appropriate.

20 USC 1411.

"STATE APPLICATION AND ASSURANCES

Grants.  
Regulations.  
20 USC 1478.

"SEC. 678. (a) APPLICATION.—Any State desiring to receive a grant under section 673 for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain—

"(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 673,

"(2) information demonstrating eligibility of the State under section 674,

"(3) the information or assurances required to demonstrate eligibility of the State for the particular year of participation under section 675, and

"(4)(A) information demonstrating that the State has provided (i) public hearings, (ii) adequate notice of such hearings, and (iii) an opportunity for comment to the general public before the submission of such application and before the adoption by the

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State of the policies described in such application, and (B) a summary of the public comments and the State's responses,

"(5) a description of the uses for which funds will be expended in accordance with this part and for the fifth and succeeding fiscal years a description of the services to be provided,

"(6) a description of the procedure used to ensure an equitable distribution of resources made available under this part among all geographic areas within the State, and

"(7) such other information and assurances as the Secretary may reasonably require by regulation.

"(b) STATEMENT OF ASSURANCES.—Any State desiring to receive a grant under section 673 shall file with the Secretary a statement at such time and in such manner as the Secretary may reasonably require by regulation. Such statement shall—

Regulations.

"(1) assure that funds paid to the State under section 673 will be expended in accordance with this part,

"(2) contain assurances that the State will comply with the requirements of section 681,

"(3) provide satisfactory assurance that the control of funds provided under section 673, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property,

"(4) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part,

"(5) provide satisfactory assurance that Federal funds made available under section 673 (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for handicapped infants and toddlers and their families and in no case to supplant such State and local funds,

"(6) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under section 673 to the State, and

"(7) such other information and assurances as the Secretary may reasonably require by regulation.

"(c) APPROVAL OF APPLICATION AND ASSURANCES REQUIRED.—No State may receive a grant under section 673 unless the Secretary has approved the application and statement of assurances of that State. The Secretary shall not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of this section.

"USES OF FUNDS

"Sec. 679. In addition to using funds provided under section 673 to plan, develop, and implement the statewide system required by section 676, a State may use such funds—

State and local governments.  
20 USC 1479.

"(1) for direct services for handicapped infants and toddlers that are not otherwise provided from other public or private sources, and

"(2) to expand and improve on services for handicapped infants and toddlers that are otherwise available.

**"PROCEDURAL SAFEGUARDS**

State and local  
governments.  
20 USC 1480.

**"SEC. 680. The procedural safeguards required to be included in a statewide system under section 676(b)(12) shall provide, at a minimum, the following:**

"(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

Confidentiality.

"(2) The right to confidentiality of personally identifiable information.

"(3) The opportunity for parents and a guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

"(4) Procedures to protect the rights of the handicapped infant and toddlers whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

"(5) Written prior notice to the parents or guardian of the handicapped infant or toddler whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the handicapped infant or toddler.

"(6) Procedures designed to assure that the notice required by paragraph (5) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

"(7) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided or if applying for initial services shall receive the services not in dispute.

**"PAYOR OF LAST RESORT**

20 USC 1481.

**"SEC. 681. (a) NONSUBSTITUTION.—Funds provided under section 673 may not be used to satisfy a financial commitment for services which would have been paid for from another public or private**

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Sec. 101

source but for the enactment of this part, except that whenever considered necessary to prevent the delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under section 673 may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

"(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for handicapped infants and toddlers) within the State.

42 USC 701.  
42 USC 1396.

"STATE INTERAGENCY COORDINATING COUNCIL

"Sec. 682. (a) ESTABLISHMENT.—(1) Any State which desires to receive financial assistance under section 673 shall establish a State Interagency Coordinating Council composed of 15 members.

20 USC 1482.

"(2) The Council and the chairperson of the Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

"(b) COMPOSITION.—The Council shall be composed of—

"(1) at least 3 parents of handicapped infants or toddlers or handicapped children aged 3 through 6, inclusive,

"(2) at least 3 public or private providers of early intervention services,

"(3) at least one representative from the State legislature,

"(4) at least one person involved in personnel preparation, and

"(5) other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to handicapped infants and toddlers and their families and others selected by the Governor.

"(c) MEETINGS.—The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the Council may prepare and approve a budget using funds under this part to hire staff, and obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

"(e) FUNCTIONS OF COUNCIL.—The Council shall—

"(1) advise and assist the lead agency designated or established under section 676(b)(9) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

"(2) advise and assist the lead agency in the preparation of applications and amendments thereto, and

"(3) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for handicapped infants and toddlers and their families operated within the State.

Report.

"(f) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

"(g) USE OF EXISTING COUNCILS.—To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with this section. Within 4 years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with this section.

"FEDERAL ADMINISTRATION

State and local  
governments.  
Education.  
20 USC 1483.  
20 USC 1416,  
1417, 1420.

"SEC. 683. Sections 616, 617, and 620 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

"(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 676(b)(9),

"(2) any reference to the education of handicapped children and the education of all handicapped children and the provision of free public education to all handicapped children shall be deemed to be a reference to the provision of services to handicapped infants and toddlers in accordance with this part, and

"(3) any reference to local educational agencies and intermediate educational agencies shall be deemed to be a reference to local service providers under this part.

"ALLOCATION OF FUNDS

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Islands.  
20 USC 1484.

"SEC. 684. (a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

"(b)(1) The Secretary shall make payments to the Secretary of the Interior according to the need for such assistance for the provision of early intervention services to handicapped infants and toddlers and their families on reservations serviced by the elementary and secondary schools operated for Indians by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for that fiscal year.

"(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which meets the requirements of section 678 and which is approved by the Secretary. Section 616 shall apply to any such application.

20 USC 1416.

"(c)(1) For each of the fiscal years 1987 through 1991 from the funds remaining after the reservation and payments under subsections (a) and (b), the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States, except that no State shall receive less than 0.5 percent of such remainder.

"(2) For the purpose of paragraph (1)—

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"(A) the terms 'infants' and 'toddlers' mean children from birth to age 2, inclusive, and

"(B) the term 'State' does not include the jurisdictions described in subsection (a).

"(d) If any State elects not to receive its allotment under subsection (c)(1), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 685. There are authorized to be appropriated to carry out this part \$50,000,000 for fiscal year 1987, \$75,000,000 for fiscal year 1988, and such sums as may be necessary for each of the 3 succeeding fiscal years."

20 USC 1485.

(b) STUDY OF SERVICES; COORDINATION OF ACTIONS.—(1) The Secretary of Education and the Secretary of Health and Human Services shall conduct a joint study of Federal funding sources and services for early intervention programs currently available and shall jointly act to facilitate interagency coordination of Federal resources for such programs and to ensure that funding available to handicapped infants, toddlers, children, and youth from Federal programs, other than programs under the Education of the Handicapped Act, is not being withdrawn or reduced.

20 USC 1485  
note.

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary of Education and the Secretary of Health and Human Services shall submit a joint report to the Congress describing the findings of the study conducted under paragraph (1) and describing the joint action taken under that paragraph.

20 USC 1400.  
Report.

TITLE II—HANDICAPPED CHILDREN AGED 3 TO 5

SEC. 201. PRE-SCHOOL GRANTS.

(a) AMENDMENT.—Section 619 of the Act (20 U.S.C. 1419) is amended to read as follows:

"PRE-SCHOOL GRANTS

"SEC. 619. (a)(1) For fiscal years 1987 through 1989 (or fiscal year 1990 if the Secretary makes a grant under this paragraph for such fiscal year) the Secretary shall make a grant to any State which—

State and local  
governments.

"(A) has met the eligibility requirements of section 612,

20 USC 1412.

"(B) has a State plan approved under section 613, and

20 USC 1413.

"(C) provides special education and related services to handicapped children aged three to five, inclusive.

"(2)(A) For fiscal year 1987 the amount of a grant to a State under paragraph (1) may not exceed—

"(i) \$300 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), or

20 USC 1411.

"(ii) if the amount appropriated under subsection (e) exceeds the product of \$300 and the total number of handicapped children aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3)—

"(I) \$300 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), plus

"(I) an amount equal to the portion of the appropriation available after allocating funds to all States under subclause (I) (the excess appropriation) divided by the estimated increase, from the preceding fiscal year, in the number of handicapped children aged three to five, inclusive, who will be receiving special education and related services in all States multiplied by the estimated number of such children in such State.

"(B) For fiscal year 1988, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be \$400 instead of \$300.

"(C) For fiscal year 1989, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be \$500 instead of \$300.

"(D) If the Secretary makes a grant under paragraph (1) for fiscal year 1990, the amount of a grant to a State under such paragraph may not exceed \$1,000 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3).

"(E) If the actual number of additional children served in a fiscal year differs from the estimate made under clause (ii)(II) of the applicable subparagraph, subparagraph (A)(ii)(II), the Secretary shall adjust (upwards or downwards) a State's allotment in the subsequent fiscal year.

"(F)(i) The amount of a grant under subparagraph (A), (B), or (C) to any State for a fiscal year may not exceed \$3,800 per estimated handicapped child aged three to five, inclusive, who will be receiving or handicapped child, age three to five, inclusive, who is receiving special education and related services in such State.

"(ii) If the amount appropriated under subsection (e) for any fiscal year exceeds the amount of grants which may be made to the States for such fiscal year, the excess amount appropriated shall remain available for obligation under this section for 2 succeeding fiscal years.

"(3) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(b)(1) For fiscal year 1990 (or fiscal year 1991 if required by paragraph (2)) and fiscal years thereafter the Secretary shall make a grant to any State which—

"(A) has met the eligibility requirements of section 612, and

"(B) has a State plan approved under section 613 which includes policies and procedures that assure the availability under the State law and practice of such State of a free appropriate public education for all handicapped children aged three to five, inclusive.

"(2) The Secretary may make a grant under paragraph (1) only for fiscal year 1990 and fiscal years thereafter, except that if—

"(A) the aggregate amount that was appropriated under subsection (e) for fiscal years 1987, 1988, and 1989 was less than \$656,000,000, and

"(B) the amount appropriated for fiscal year 1990 under subsection (e) is less than \$306,000,000,

the Secretary may not make a grant under paragraph (1) until fiscal year 1991 and shall make a grant under subsection (a)(1) for fiscal year 1990.

20 USC 1411.

*Post*, p. 1158.  
*Post*, pp. 1159,  
1174.

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Sec. 201

"(3) The amount of any grant to any State under paragraph (1) for any fiscal year may not exceed \$1,000 for each handicapped child in such State aged three to five, inclusive.

"(4) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(c)(1) For fiscal year 1987, a State which receives a grant under subsection (a)(1) shall—

"(A) distribute at least 70 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only handicapped children aged three to five, inclusive, shall be considered,

"(B) use not more than 25 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 623(b) in effect through fiscal year 1987 and for direct and support services for handicapped children, and

"(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

"(2) For fiscal years beginning after fiscal year 1987, a State which receives a grant under subsection (a)(1) or (b)(1) shall—

"(A) distribute at least 75 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only handicapped children aged three to five, inclusive, shall be considered,

"(B) use not more than 20 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 623(b) in effect through fiscal year 1987 and for direct and support services for handicapped children, and

"(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

"(3) From the amount of funds available to local educational agencies and intermediate educational units in any State under this section, each local educational agency or intermediate educational unit shall be entitled to—

"(A) an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(i) or subsection (a)(2)(A)(ii)(I), as the case may be, as the number of handicapped children aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3) in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to five, inclusive, who received special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section, and

"(B) to the extent funds are available under subsection (a)(2)(A)(ii)(II), an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(ii)(II) as the estimated number of additional handicapped children aged three to five, inclusive, who will be receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of

Post. p. 1161.

20 USC 1411.

handicapped children aged three to five, inclusive, who will be receiving special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section.

"(d) If the sums appropriated under subsection (e) for any fiscal year for making payments to States under subsection (a)(1) or (b)(1) are not sufficient to pay in full the maximum amounts which all States may receive under such subsection for such fiscal year, the maximum amounts which all States may receive under such subsection for such fiscal year shall be ratably reduced by first ratably reducing amounts computed under the excess appropriation provision of subsection (a)(2)(A)(ii)(II). If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, the reduced maximum amounts shall be increased on the same basis as they were reduced.

"(e) For grants under subsections (a)(1) and (b)(1) there are authorized to be appropriated such sums as may be necessary."

(b) CONFORMING AMENDMENTS.—

(1) Section 611(a)(1)(A) of the Act (20 U.S.C. 1411(a)(1)(A)) is amended to read as follows:

"(A) the number of handicapped children aged 3-5, inclusive, in a State who are receiving special education and related services as determined under paragraph (3) if the State is eligible for a grant under section 619 and the number of handicapped children aged 6-21, inclusive, in a State who are receiving special education and related services as so determined;"

(2)(A) Section 611(g)(1) of the Act is amended by striking out "this part" each place it occurs and inserting in lieu thereof "subsection (a)".

(B) Section 611(g)(1) of the Act is amended by inserting "under subsection (h)" after "appropriated".

(C) Section 611(g)(2) of the Act is amended by striking out "this part" the first place it occurs and inserting in lieu thereof "this section".

(3) Section 611 of the Act is amended by adding at the end the following:

"(h) For grants under subsection (a) there are authorized to be appropriated such sums as may be necessary."

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect with respect to the school year 1987-1988.

SEC. 202. ELIGIBILITY FOR FINANCIAL ASSISTANCE.

Part A of the Act is amended by adding at the end the following:

"ELIGIBILITY FOR FINANCIAL ASSISTANCE

"SEC. 609. Effective for fiscal years for which the Secretary may make grants under section 619(b)(1), no State or local educational agency or intermediate educational unit or other public institution or agency may receive a grant under parts C through G which relate exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 619(b)(1)."

SEC. 203. SHARING OF COSTS OF FREE APPROPRIATE PUBLIC EDUCATION.

(a) ELIGIBILITY FOR SECTION 611 GRANTS.—Section 612(6) of the Act (20 U.S.C. 1412(6)) is amended by adding at the end the following:

20 USC 1419.

20 USC 1419  
note.

20 USC 1400.

State and local  
governments.  
20 USC 1408.  
Ante, p. 1155.  
20 USC  
1421-1454;  
post, p. 1172.

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"This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided handicapped children in the State."

(b) STATE PLANS.—

(1) Section 613(a)(9) of the Act (20 U.S.C. 1413(a)(9)) is amended to read as follows:

"(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to handicapped children under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement of this clause if he concurs with the evidence provided by the State;"

(2) Section 613(a) of the Act is amended by striking out "and" at the end of paragraph (11), by striking out the period at the end of paragraph (12) and inserting in lieu thereof a semicolon, and by adding at the end the following:

"(13) set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and other appropriate State and local agencies to (A) define the financial responsibility of each agency for providing handicapped children and youth with free appropriate public education, and (B) resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement from other agencies or otherwise implement the provisions of the agreement."

(3) Section 613 of the Act is amended by adding at the end the following:

"(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for handicapped children within the State; and"

42 USC 701,  
1396.

TITLE III—DISCRETIONARY PROGRAMS

SEC. 301. REGIONAL RESOURCE CENTERS.

Section 621 of the Act (20 U.S.C. 1421) is amended to read as follows:

"REGIONAL RESOURCE AND FEDERAL CENTERS

"SEC. 621. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, public agencies, private nonprofit organizations, State educational agencies, or combinations of such agencies or institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of

Grants.  
Contracts.  
State and local  
governments.

regional resource centers. Each regional resource center shall provide consultation, technical assistance, and training to State educational agencies and through such State educational agencies to local educational agencies and to other appropriate State agencies providing early intervention services. The services provided by a regional resource center shall be consistent with the priority needs identified by the States served by the center and the findings of the Secretary in monitoring reports prepared by the Secretary under section 617 of the Act. Each regional resource center established or operated under this section shall—

20 USC 1417.

"(1) assist in identifying and solving persistent problems in providing quality special education and related services for handicapped children and youth and early intervention services to handicapped infants and toddlers and their families,

"(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families and early intervention services to handicapped infants and toddlers and their families,

"(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this subsection and other relevant projects conducted by the Department of Education,

"(4) assist in the improvement of information dissemination to and training activities for professionals and parents of handicapped infants, toddlers, children, and youth, and

"(5) provide information to and training for agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this part and parts D through G.

20 USC  
1422-1454;  
post, p. 1172.

"(b) In determining whether to approve an application for a project under subsection (a), the Secretary shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

Report.

"(c) Each regional resource center shall report a summary of materials produced or developed and the summaries reported shall be included in the annual report to Congress required under section 618.

20 USC 1418.

"(d) The Secretary may establish one coordinating technical assistance center focusing on national priorities established by the Secretary to assist the regional resource centers in the delivery of technical assistance, consistent with such national priorities.

"(e) Before using funds made available in any fiscal year to carry out this section for purposes of subsection (d), not less than the amount made available for this section in the previous fiscal year shall be made available for regional resource centers under subsection (a) and in no case shall more than \$500,000 be made available for the center under subsection (d)."

SEC. 302. SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH.

20 USC 1422.

Section 622 is amended by adding at the end thereof the following new subsections:

Grants.  
Contracts.

"(e) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public or nonprofit private agencies, institutions, or organizations for the development and operation of extended school year demonstration programs for se-

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verely handicapped children and youth, including deaf-blind chil-  
dren and youth.

"(f) The Secretary may make grants to, or enter into contracts or  
cooperative agreements with, the entities under section 624(a) for  
the purposes in such section."

Grants.  
Contracts.  
Post, p. 1162.

**SEC. 303. EARLY EDUCATION FOR HANDICAPPED CHILDREN.**

Section 623 of the Act (20 U.S.C. 1423) is amended to read as  
follows:

**"EARLY EDUCATION FOR HANDICAPPED CHILDREN**

"Sec. 623. (a)(1) The Secretary may arrange by contract, grant, or  
cooperative agreement with appropriate public agencies and private  
nonprofit organizations, for the development and operation of  
experimental, demonstration, and outreach preschool and early  
intervention programs for handicapped children which the Sec-  
retary determines show promise of promoting a comprehensive and  
strengthened approach to the special problems of such children.  
Such programs shall include activities and services designed to (1)  
facilitate the intellectual, emotional, physical, mental, social,  
speech, language development, and self-help skills of such children,  
(2) encourage the participation of the parents of such children in the  
development and operation of any such program, and (3) acquaint  
the community to be served by any such program with the problems  
and potentialities of such children, (4) offer training about exem-  
plary models and practices to State and local personnel who provide  
services to handicapped children from birth through eight, and (5)  
support the adaption of exemplary models and practices in States  
and local communities.

Contracts.  
Grants.  
State and local  
governments.

"(2) Programs authorized by paragraph (1) shall be coordinated  
with similar programs in the schools operated or supported by State  
or local educational agencies of the community to be served and  
with similar programs operated by other public agencies in such  
community.

"(3) As much as is feasible, programs assisted under paragraph (1)  
shall be geographically dispersed throughout the Nation in urban as  
well as rural areas.

Urban areas.  
Rural areas.

"(4)(A) Except as provided in subparagraph (B), no arrangement  
under paragraph (1) shall provide for the payment of more than 90  
percent of the total annual costs of development, operation, and  
evaluation of any program. Non-Federal contributions may be in  
cash or in kind, fairly evaluated, including plant, equipment, and  
services.

"(B) The Secretary may waive the requirement of subparagraph  
(A) in the case of an arrangement entered into under paragraph (1)  
with governing bodies of Indian tribes located on Federal or State  
reservations and with consortia of such bodies.

Indians.

"(b) The Secretary shall arrange by contract, grant, or cooperative  
agreement with appropriate public agencies and private nonprofit  
organizations for the establishment of a technical assistance devel-  
opment system to assist entities operating experimental, demonstra-  
tion, and outreach programs and to assist State agencies to expand  
and improve services provided to handicapped children.

Contracts.  
Grants.  
State and local  
governments.

"(c) The Secretary shall arrange by contract, grant, or cooperative  
agreement with appropriate public agencies and private nonprofit  
organizations for the establishment of early childhood research  
institutes to carry on sustained research to generate and dissemi-

Grants.  
Contracts.

nate new information on preschool and early intervention for handicapped children and their families.

"(d) The Secretary may make grants to, enter into contracts or cooperative agreements under this section with, such organizations or institutions, as are determined by the Secretary to be appropriate, for research to identify and meet the full range of special needs of handicapped children and for training of personnel for programs specifically designed for handicapped children.

Federal  
Register,  
publication.

"(e) At least one year before the termination of a grant, contract, or cooperative agreement made or entered into under subsections (b) and (c), the Secretary shall publish in the Federal Register a notice of intent to accept application for such a grant, contract, or cooperative agreement contingent on the appropriation of sufficient funds by Congress.

"(f) For purposes of this section the term 'handicapped children' includes children from birth through eight years of age."

**SEC. 304. PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN.**

Section 624 of the Act (20 U.S.C. 1424) is amended to read as follows:

**"PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN**

Grants.  
Contracts.

"Sec. 624. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, such organizations or institutions, as are determined by the Secretary to be appropriate, to address the needs of severely handicapped children and youth, for—

"(1) research to identify and meet the full range of special needs of such handicapped children and youth,

"(2) the development or demonstration of new, or improvements in, existing, methods, approaches, or techniques which would contribute to the adjustment and education of such handicapped children and youth,

"(3) training of personnel for programs specifically designed for such children, and

"(4) dissemination of materials and information about practices found effective in working with such children and youth.

"(b) In making grants and contracts under subsection (a), the Secretary shall ensure that the activities funded under such grants and contracts will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

Urban areas.  
Rural areas.

"(c) To the extent feasible, programs, authorized by subsection (a) shall be geographically dispersed throughout the nation in urban and rural areas."

**SEC. 305. POSTSECONDARY EDUCATION PROGRAMS.**

20 USC 1424a.

Section 625 is amended to read as follows:

**"POSTSECONDARY EDUCATION**

Grants.  
Contracts.

"Sec. 625. (a)(1) The Secretary may make grants to, or enter into contracts with, State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

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"(2) In making grants or contracts on a competitive basis under paragraph (1), the Secretary shall give priority consideration to 4 regional centers for the deaf and to model programs for individuals with handicapping conditions other than deafness—

"(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of handicapped individuals, and

"(B) for programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers.

"(3) Persons operating programs for handicapped persons under a grant or contract under paragraph (1) must coordinate their efforts with and disseminate information about their activities to the clearinghouse on postsecondary programs established under section 633(b).

"(4) At least one year before the termination of a grant or contract with any of the 4 regional centers for the deaf, the Secretary shall publish in the Federal Register a notice of intent to accept application for such grant or contract, contingent on the appropriation of sufficient funds by Congress.

"(5) To the extent feasible, programs authorized by paragraph (1) shall be geographically dispensed throughout the nation in urban and rural areas.

"(6) Of the sums made available for programs under paragraph (1), not less than \$2,000,000 shall first be available for the 4 regional centers for the deaf.

"(b) For the purposes of subsection (a) the term 'handicapped individuals' means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services."

SEC. 306. SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH.

Section 626 of the Act is amended to read as follows:

"SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH

"Sec. 626. (a) The Secretary may make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (Public Law 97-300)) to—

"(1) strengthen and coordinate special education and related services for handicapped youth currently in school or who recently left school to assist them in the transition to postsecondary education, vocational training, competitive employment (including supported employment), continuing education, or adult services,

"(2) stimulate the improvement and development of programs for secondary special education, and

20 USC 1433.  
Federal Register.  
publication.

20 USC 1425.

Grants.  
Contracts.  
State and local governments.

29 USC 1501  
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"(e) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, such organizations or institutions as are determined by the Secretary to be appropriate for the development or demonstration of new or improvements in existing methods, approaches, or techniques which will contribute to the adjustment and education of handicapped children and youth and the dissemination of materials and information concerning practices found effective in working with such children and youth.

"(f) The Secretary, as appropriate, shall coordinate programs described under subsection (a) with projects developed under section 311 of the Rehabilitation Act of 1973."

SEC. 307. AUTHORIZATION.

Section 628 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 628. (a) There are authorized to be appropriated to carry out section 621, \$6,700,000 for fiscal year 1987, \$7,100,000 for fiscal year 1988, and \$7,500,000 for fiscal year 1989.

"(b) There are authorized to be appropriated to carry out section 622, \$15,900,000 for fiscal year 1987, \$16,800,000 for fiscal year 1988, and \$17,800,000 for fiscal year 1989.

"(c) There are authorized to be appropriated to carry out section 623, \$24,470,000 for fiscal year 1987, \$25,870,000 for fiscal year 1988, and \$27,410,000 for fiscal year 1989.

"(d) There are authorized to be appropriated to carry out section 624, \$5,300,000 for fiscal year 1987, \$5,600,000 for fiscal year 1988, and \$5,900,000 for fiscal year 1989.

"(e) There are authorized to be appropriated to carry out section 625, \$5,900,000 for fiscal year 1987, \$6,200,000 for fiscal year 1988, and \$6,600,000 for fiscal year 1989.

"(f) There are authorized to be appropriated to carry out section 626, \$7,300,000 for fiscal year 1987, \$7,700,000 for fiscal year 1988, and \$8,100,000 for fiscal year 1989."

SEC. 308. GRANTS FOR PERSONNEL TRAINING.

Section 631 of the Act (20 U.S.C. 1431) is amended to read as follows:

"GRANTS FOR PERSONNEL TRAINING

"Sec. 631. (a)(1) The Secretary may make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including the university-affiliated facilities program under the Rehabilitation Act of 1973 and satellite network of the developmental disabilities program) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education and early intervention, including—

"(A) special education teaching, including speech-language pathology and audiology, and adaptive physical education,

"(B) related services to handicapped children and youth in educational settings,

"(C) special education supervision and administration,

"(D) special education research, and

Grants.  
Contracts.

29 USC 777a.

20 USC 1427.

29 USC 701 note.

“(E) training of special education personnel and other personnel providing special services and pre-school and early intervention services for handicapped children.

State and local governments.

“(2)(A) In making grants under paragraph (1), the Secretary shall base the determination of such grants on information relating to the present and projected need for the personnel to be trained based on identified State, regional, or national shortages, and the capacity of the institution or agency to train qualified personnel, and other information considered appropriate by the Secretary.

“(B) The Secretary shall ensure that grants are only made under paragraph (1) to applicant agencies and institutions that meet State and professionally recognized standards for the preparation of special education and related services personnel unless the grant is for the purpose of assisting the applicant agency or institution to meet such standards.

Fellowships.

“(3) Grants under paragraph (1) may be used by institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary.

“(4) The Secretary in carrying out paragraph (1) may reserve a sum not to exceed 5 percent of the amount available for paragraph (1) in each fiscal year for contracts to prepare personnel in areas where shortages exist when a response to that need has not been adequately addressed by the grant process.

“(b) The Secretary may make grants to institutions of higher education and other appropriate nonprofit agencies to conduct special projects to develop and demonstrate new approaches (including the application of new technology) for the preservice training purposes set forth in subsection (a), for regular educators, for the training of teachers to work in community and school settings with handicapped secondary school students, and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children and personnel providing early intervention services.

“(c)(1) The Secretary may make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of handicapped children and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children. Such grants shall be designed to meet the unique training and information needs of parents of handicapped children living in the area to be served by the grant, particularly those who are members of groups that have been traditionally underrepresented.

“(2) In order to receive a grant under paragraph (1) a private nonprofit organization shall—

“(A) be governed by a board of directors on which a majority of the members are parents of handicapped children and which includes members who are professionals in the field of special education and related services who serve handicapped children and youth, or if the nonprofit private organization does not have such a board, such organization shall have a membership which represents the interests of individuals with handicapping conditions, and shall establish a special governing committee on which a majority of the members are parents of handicapped

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children and which includes members who are professionals in the fields of special education and related services, to operate the training and information program under paragraph (1).

"(B) serve the parents of children with the full range of handicapping conditions under such grant program, and

"(C) demonstrate the capacity and expertise to conduct effectively the training and information activities for which a grant may be made under paragraph (1).

"(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under paragraph (1) shall meet at least once in each calendar quarter to review the parent training and information activities for which the grant is made, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under paragraph (1) for a fiscal year, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

"(4) The Secretary shall ensure that grants under paragraph (1) will—

"(A) be distributed geographically to the greatest extent possible throughout all the States and give priority to grants which involve unserved areas, and

"(B) be targeted to parents of handicapped children in both urban and rural areas or on a State or regional basis.

"(5) Parent training and information programs assisted under paragraph (1) shall assist parents to—

"(A) better understand the nature and needs of the handicapping conditions of children,

"(B) provide followup support for handicapped children's educational programs,

"(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals,

"(D) participate in educational decisionmaking processes including the development of a handicapped child's individualized educational program,

"(E) obtain information about the programs, services, and resources available to handicapped children and the degree to which the programs, services, and resources are appropriate, and

"(F) understand the provisions for the education of handicapped children as specified under part B of this Act.

"(6) Parent training and information programs may, at a grant recipient's discretion, include State or local educational personnel where such participation will further an objective of the program assisted by the grant.

"(7) Each private nonprofit organization operating a program receiving a grant under paragraph (1) shall consult with appropriate agencies which serve or assist handicapped children and youth and are located in the jurisdictions served by the program.

"(8) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs."

Urban areas.  
Rural areas.  
State and local  
governments.

20 USC 1411.

State and local  
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**SEC. 309. GRANTS FOR STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS.**

Section 632 of the Act (20 U.S.C. 1432) is amended to read as follows:

**"GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS**

**"SEC. 632.** The Secretary shall make grants to each State educational agency and may make grants to institutions of higher education to assist in establishing and maintaining preservice and inservice programs to prepare personnel to meet the needs of handicapped infants, toddlers, children, and youth or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613."

*Ante*, p. 1159;  
*post*, p. 1174.

**SEC. 310. CLEARINGHOUSES.**

State and local  
governments.

(a) **IN GENERAL.**—Subsection (a) of section 633 of the Act (20 U.S.C. 1433) is amended by striking out "to achieve" and all that follows in that subsection and inserting in lieu thereof the following: "to disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning—

"(1) programs relating to the education of the handicapped under this Act and under other Federal laws, and

"(2) participation in such programs, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance."

(b) **ADDITIONAL CLEARINGHOUSE.**—Section 633 of the Act is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following:

Grants.  
Contracts.

"(c) The Secretary shall make a grant or enter into a contract for a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of handicapped children and youth through the following:

"(1) Collection and dissemination of information on current and future national, regional, and State needs for special education and related services personnel.

"(2) Dissemination to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

"(3) Identification of training programs available around the country.

"(4) Establishment of a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

"(5) Technical assistance to institutions seeking to meet State and professionally recognized standards."

(c) **TECHNICAL AMENDMENT.**—The heading for section 633 of the Act is amended to read as follows:

**"CLEARINGHOUSES".**

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P.L. 99-457  
Sec. 312

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SEC. 311. AUTHORIZATION.

Section 635 of the Act (20 U.S.C. 1435) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 635. (a) There are authorized to be appropriated to carry out this part (other than section 633) \$70,400,000 for fiscal year 1987, \$74,500,000 for fiscal year 1988, and \$79,000,000 for fiscal year 1989. There are authorized to be appropriated to carry out section 633, \$1,200,000 for fiscal year 1987, \$1,900,000 for fiscal year 1988, and \$2,000,000 for fiscal year 1989.

"(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve not less than 65 per centum for activities described in subparagraphs (A) through (E) of section 631(a)(1).

"(c) Of the funds appropriated under subsection (a) for any fiscal year, the Secretary shall reserve 10 percent for activities under section 631(c)."

SEC. 312. RESEARCH AND DEMONSTRATION PROJECTS IN EDUCATION OF HANDICAPPED CHILDREN.

Section 641 of the Act (20 U.S.C. 1441) is amended to read as follows:

"RESEARCH AND DEMONSTRATION PROJECTS IN EDUCATION OF HANDICAPPED CHILDREN

"SEC. 641. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for research and related activities to assist special education personnel, related services personnel, early intervention personnel, and other appropriate persons, including parents, in improving the special education and related services and early intervention services for handicapped infants, toddlers, children, and youth, and to conduct research, surveys, or demonstrations relating to the provision of services to handicapped infants, toddlers, children, and youth. Research and related activities shall be designed to increase knowledge and understanding of handicapping conditions, and teaching, learning, and education-related developmental practices and services for handicapped infants, toddlers, children and youth. Research and related activities assisted under this section shall include the following:

Grants.  
Contracts.

"(1) The development of new and improved techniques and devices for teaching handicapped infants, toddlers, children and youth.

"(2) The development of curricula which meet the unique educational and developmental needs of handicapped infants, toddlers, children and youth.

"(3) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped infants, toddlers, children and youth.

"(4) The development of program models and exemplary practices in areas of special education and early intervention.

"(5) The dissemination of information on research and related activities conducted under this part to regional resource centers and interested individuals and organizations.

"(6) The development of instruments, including tests, inventories, and scales for measuring progress of handicapped infants, toddlers, children and youth across a number of developmental domains.

"(b) In carrying out subsection (a), the Secretary shall consider the special education or early intervention experience of applicants under such subsection.

Federal  
Register,  
publication.

"(c) The Secretary shall publish proposed research priorities in the Federal Register every 2 years, not later than July 1, and shall allow a period of 60 days for public comments and suggestions. After analyzing and considering the public comments, the Secretary shall publish final research priorities in the Federal Register not later than 30 days after the close of the comment period.

Reports.

"(d) The Secretary shall provide an index (including the title of each research project and the name and address of the researching organization) of all research projects conducted in the prior fiscal year in the annual report described under section 618. The Secretary shall make reports of research projects available to the education community at large and to other interested parties.

Post, p. 1174.

"(e) The Secretary shall coordinate the research priorities established under subsection (c) with research priorities established by the National Institute of Handicapped Research and shall provide information concerning research priorities established under such subsection to the National Council on the Handicapped, and to the Bureau of Indian Affairs Advisory Committee for Exceptional Children."

#### SEC. 313. PANELS AND EXPERTS.

Section 643 of the Act (20 U.S.C. 1443) is amended to read as follows:

##### "PANELS OF EXPERTS

"SEC. 643. (a) The Secretary shall convene, in accordance with subsection (b), panels of experts who are competent to evaluate proposals for projects under parts C through G. The panels shall be composed of—

20 USC  
1421-1454;  
post, p. 1172.

"(1) individuals from the field of special education for the handicapped and other relevant disciplines who have significant expertise and experience in the content areas and age levels addressed in the proposals, and

"(2) handicapped individuals and parents of handicapped individuals when appropriate.

"(b)(1) The Secretary shall convene panels under subsection (a) for any application which includes a total funding request exceeding \$60,000 and may convene or otherwise appoint panels for applications which include funding requests that are less than such amount.

"(2) Such panels shall include a majority of non-Federal members. Such non-Federal members shall be provided travel and per diem not to exceed the rate provided to other educational consultants used by the Department and shall be provided consultant fees at such a rate.

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Oct. 8 EDUC. OF HANDICAPPED ACT AMEND.

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Sec. 317

"(c) The Secretary may use funds available under parts C through G to pay expenses and fees of non-Federal members under subsection (b)."

20 USC  
1421-1454;  
post, p. 1172.

SEC. 314. AUTHORIZATION.

Section 644 of the Act (20 U.S.C. 1444) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 644. For purposes of carrying out this part, there are authorized to be appropriated \$18,000,000 for fiscal year 1987, \$19,000,000 for fiscal year 1988, and \$20,100,000 for fiscal year 1989."

SEC. 315. CAPTIONED FILMS AND EDUCATIONAL MEDIA FOR HANDICAPPED PERSONS.

(a) ILLITERACY.—Subsection (a) of section 652 of the Act (20 U.S.C. 1452) is amended—

(1) by striking out "in accordance with regulations" and inserting in lieu thereof "including for the purpose of addressing problems of illiteracy among the handicapped",

(2) by inserting after "available" the following: "in accordance with regulations,"

(b) AUTHORIZED USES.—(1) Subsection (b)(4) of section 652 of the Act is amended by inserting after "handicapped" the following: "public libraries,"

(2) Subsection (b)(7) is amended by striking the period and inserting in lieu thereof "; and", and by adding the following:

"(8) provide by grant or contract for educational media and materials for the deaf."

(c) NATIONAL THEATRE OF THE DEAF.—Section 652 of the Act is amended by adding at the end the following:

"(c) The Secretary may make grants to or enter into contracts or cooperative agreements with the National Theatre of the Deaf, Inc. for the purpose of providing theatrical experiences to—

Grants.  
Contracts.

"(1) enrich the lives of deaf children and adults,

"(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf people, and

"(3) promote the integration of hearing and deaf people through shared cultural experiences."

SEC. 316. AUTHORIZATION.

Section 653 of the Act (20 U.S.C. 1453) is repealed and section 654 of the Act (20 U.S.C. 1454) is redesignated as section 653 and amended to read as follows:

"AUTHORIZATION

"SEC. 653. For the purposes of carrying out this part, there are authorized to be appropriated \$15,000,000 for fiscal year 1987, \$15,750,000 for fiscal year 1988, and \$16,540,000 for fiscal year 1989."

20 USC 1454.

SEC. 317. TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR THE HANDICAPPED.

The Act is amended by adding after part F the following:

20 USC 1451.

**"PART G—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR  
THE HANDICAPPED**

**"FINANCIAL ASSISTANCE**

Contracts.  
20 USC 1461.

**SEC. 661.** The Secretary may make grants or enter into contracts or cooperative agreements with institutions of higher education, State and local educational agencies, or other appropriate agencies and organizations for the purpose of advancing the use of new technology, media, and materials in the education of handicapped students and the provision of early intervention to handicapped infants and toddlers. In carrying out this subsection, the Secretary may fund projects or centers for the purposes of—

"(1) determining how technology, media, and materials are being used in the education of the handicapped and how they can be used more effectively,

"(2) designing and adapting new technology, media, and materials to improve the education of handicapped students,

"(3) assisting the public and private sectors in the development and marketing of new technology, media, and materials for the education of the handicapped, and

"(4) disseminating information on the availability and use of new technology, media, and materials for the education of the handicapped.

**"AUTHORIZATION OF APPROPRIATIONS**

20 USC 1462.

**"SEC. 662.** For the purposes of carrying out this part, there are authorized to be appropriated \$10,000,000 for fiscal year 1987, \$10,500,000 for fiscal year 1988, and \$11,025,000 for fiscal year 1989."

**TITLE IV—MISCELLANEOUS**

**SEC. 401. REMOVAL OF ARCHITECTURAL BARRIERS.**

Section 607(a) of the Act (20 U.S.C. 1406) is amended by inserting "with the Secretary of the Interior and" after "cooperative agreements".

**SEC. 402. DEFINITIONS.**

Section 602(a) of the Act (20 U.S.C. 1401(a)) is amended—

(1) in paragraph (11), by striking out "and" at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; and", and by adding at the end the following:

"(F) The term includes community colleges receiving funding from the Secretary of the Interior under Public Law 95-471.",  
and

(2) by adding at the end the following:

"(23)(A) The term 'public or private nonprofit agency or organization' includes an Indian tribe.

"(B) The terms 'Indian', 'American Indian', and 'Indian American' mean an individual who is a member of an Indian tribe.

"(C) The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act)."

25 USC 1801  
note.

43 USC 1601  
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P.L. 99-457  
Sec. 404

SEC. 403. ALLOCATION: STATE ADMINISTRATION.

(a) ALLOCATION.—Section 611(a)(5)(A) of the Act (20 U.S.C. 1411(a)(5)(A)) is amended to read as follows:

"(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

"(i) handicapped children aged three to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged three to seventeen, inclusive, in such State and the State serves all handicapped children aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court,

"(ii) handicapped children aged five to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, in such State and the State does not serve all handicapped children aged three to five, inclusive, in the State pursuant to State law or practice on the order of any court; and

"(iii) handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965."

20 USC 2731.

(b) STATE ADMINISTRATION.—Section 611(c)(2)(A)(ii) of the Act (20 U.S.C. 1411(c)(2)(A)(ii)) is amended to read as follows:

"(ii) the part remaining after use in accordance with clause (i) shall be used by the State (I) to provide support services and direct services in accordance with the priorities established under section 612(3), and (II) for the administrative costs of monitoring and complaint investigation but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985."

20 USC 1412.

SEC. 404. INDIANS.

Subsection (f) of section 611 of such Act (20 U.S.C. 1411) is amended to read as follows:

"(f)(1) The Secretary shall make payments to the Secretary of the Interior according to the need for assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate amounts available to all States under this section for that fiscal year.

"(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which—

"(A) meets the applicable requirements of sections 612, 613, and 614(a),

"(B) includes satisfactory assurance that all handicapped children aged 3 to 5, inclusive receive a free appropriate public education by or before the 1987-1988 school year,

"(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and designated local school boards before adoption of the policies, programs, and procedures required under sections 612, 613, and 614(a), and

"(D) is approved by the Secretary. Section 616 shall apply to any such application."

20 USC 1412;  
post, p. 1174.  
20 USC 1414.

20 USC 1416.

State and local  
governments.  
*Ante*, p. 1159.

**SEC. 405. QUALIFIED PERSONNEL.**

Section 613(a) of the Act (20 U.S.C. 1413) is amended by inserting at the end thereof the following:

"(14) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including—

"(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, and

"(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State."

**SEC. 406. EVALUATION.**

Section 618 of the Act (20 U.S.C. 1418) is amended to read as follows:

**"EVALUATION**

Grants.  
Contracts.  
State and local  
governments.

"SEC. 618. (a) The Secretary shall directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations—

"(1) to assess progress in the implementation of this Act, the impact, and the effectiveness of State and local efforts and efforts by the Secretary of Interior to provide free appropriate public education to all handicapped children and youth and early intervention services to handicapped infants and toddlers, and

"(2) to provide—

"(A) Congress with information relevant to policymaking, and

"(B) Federal, State, and local agencies and the Secretary of Interior with information relevant to program management, administration, and effectiveness with respect to such education and early intervention services.

"(b) In carrying out subsection (a), the Secretary, on at least an annual basis, shall obtain data concerning programs and projects assisted under this Act and under other Federal laws relating to handicapped infants, toddlers, children, and youth, and such additional information, from State and local educational agencies, the Secretary of Interior, and other appropriate sources, as is necessary for the implementation of this Act including—

"(1) the number of handicapped infants, toddlers, children, and youth in each State receiving a free appropriate public education or early intervention services (A) in age groups 0-2 and 3-5, and (B) in age groups 6-11, 12-17, and 18-21 by disability category,

"(2) the number of handicapped children and youth in each State who are participating in regular educational programs (consistent with the requirements of sections 612(5)(B) and 614(a)(1)(C)(iv)) by disability category, and the number of handicapped children and youth in separate classes, separate schools or facilities, or public or private residential facilities, or who

20 USC 1412,  
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have been otherwise removed from the regular education environment,

"(3) the number of handicapped children and youth exiting the educational system each year through program completion or otherwise (A) in age group 3-5, and (B) in age groups 6-11, 12-17, and 18-21 by disability category and anticipated services for the next year,

"(4) the amount of Federal, State, and local funds expended in each State specifically for special education and related services and for early intervention services (which may be based upon a sampling of data from State agencies including State and local educational agencies),

"(5) the number and type of personnel that are employed in the provision of special education and related services to handicapped children and youth and early intervention services to handicapped infants and toddlers by disability category served, and the estimated number and type of additional personnel by disability category needed to adequately carry out the policy established by this Act, and

"(6) a description of the special education and related services and early intervention services needed to fully implement this Act throughout each State, including estimates of the number of handicapped infants and toddlers in the 0-2 age group and estimates of the number of handicapped children and youth (A) in age group 3-5 and (B) in age groups 6-11, 12-17, and 18-21 and by disability category.

"(c) The Secretary shall, by grant, contract, or cooperative agreement, provide for evaluation studies to determine the impact of this Act. Each such evaluation shall include recommendations for improvement of the programs under this Act. The Secretary shall, not later than July 1 of each year, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed evaluation priorities for review and comment.

Federal  
Register,  
publication.

"(d)(1) The Secretary may enter into cooperative agreements with State educational agencies and other State agencies to carry out studies to assess the impact and effectiveness of programs assisted under this Act.

"(2) An agreement under paragraph (1) shall—

"(A) provide for the payment of not to exceed 60 percent of the total cost of studies conducted by a participating State agency to assess the impact and effectiveness of programs assisted under this Act, and

"(B) be developed in consultation with the State Advisory Panel established under this Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth and the provision of early intervention services to handicapped infants and toddlers.

"(3) The Secretary shall provide technical assistance to participating State agencies in the implementation of the study design, analysis, and reporting procedures.

"(4) In addition, the Secretary shall disseminate information from such studies to State agencies, regional resources centers, and clearinghouses established by this Act, and, as appropriate, to others involved in, or concerned with, the education of handicapped children and youth and the provision of early intervention services to handicapped infants and toddlers.

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"(e)(1) At least one study shall be a longitudinal study of a sample of handicapped students, encompassing the full range of handicapping conditions, examining their educational progress while in special education and their occupational, educational, and independent living status after graduating from secondary school or otherwise leaving special education.

"(2) At least one study shall focus on obtaining and compiling current information available, through State educational agencies and local educational agencies and other service providers, regarding State and local expenditures for educational services for handicapped students (including special education and related services) and shall gather information needed in order to calculate a range of per pupil expenditures by handicapping condition.

Report.

"(f)(1) Not later than 120 days after the close of each fiscal year, the Secretary shall publish and disseminate an annual report on the progress being made toward the provision of a free appropriate public education to all handicapped children and youth and early intervention services for handicapped infants and toddlers. The annual report shall be transmitted to the appropriate committees of each House of Congress and published and disseminated in sufficient quantities to the education community at large and to other interested parties.

"(2) The Secretary shall include in each annual report under paragraph (1)—

"(A) a compilation and analysis of data gathered under subsection (b),

"(B) an index and summary of each evaluation activity and results of studies conducted under subsection (c),

"(C) a description of findings and determinations resulting from monitoring reviews of State implementation of part B of this Act,

20 USC 1411.

"(D) an analysis and evaluation of the participation of handicapped children and youth in vocational education programs and services,

"(E) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to ensure that handicapped children and youth receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children and youth in day or residential facilities, and

"(F) any recommendation for change in the provisions of this Act or any other Federal law providing support for the education of handicapped children and youth.

"(3) In the annual report under paragraph (1) for fiscal year 1985 which is published in 1986 and for every third year thereafter, the Secretary shall include in the annual report—

"(A) an index of all current projects funded under parts C through G of this title, and

"(B) data reported under sections 621, 622, 623, 627, 634, 641, and 661.

"(4) In the annual report under paragraph (1) for fiscal year 1988 which is published in 1989, the Secretary shall include special sections addressing the provision of a free appropriate public education to handicapped infants, toddlers, children, and youth in rural areas and to handicapped migrants, handicapped Indians (particu-

20 USC  
1421-1454;  
Ante, p. 1172.  
Ante, pp. 1159-  
1161; 20 USC  
1426, 1434.  
Ante, p. 1169.  
Ante, p. 1172.

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P.L. 99-457  
Sec. 407

*Ante.* p. 1173.

larly programs operated under section 611(f), handicapped Native Hawaiian, and other native Pacific basin children and youth, handicapped infants, toddlers, children and youth of limited English proficiency.

"(5) Beginning in 1986, in consultation with the National Council for the Handicapped and the Bureau of Indian Affairs Advisory Committee for Exceptional Children, a description of the status of early intervention services for handicapped infants and toddlers from birth through age two, inclusive, and special education and related services to handicapped children from 3 through 5 years of age (including those receiving services through Head Start, Developmental Disabilities Programs, Crippled Children's Services, Mental Health/Mental Retardation Agency, and State child-development centers and private agencies under contract with local schools).

"(g) There are authorized to be appropriated \$3,800,000 for fiscal year 1987, \$4,000,000 for fiscal year 1988, and \$4,200,000 for fiscal year 1989 to carry out this section."

SEC. 407. REPEAL.

Section 604 of the Act (20 U.S.C. 1403) is repealed.

Approved October 8, 1986.

LEGISLATIVE HISTORY—S. 2294 (H.R. 5520):

HOUSE REPORTS: No. 99-860 accompanying H.R. 5520 (Comm. on Education and Labor).

SENATE REPORTS: No. 99-315 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD, Vol. 132 (1986):

June 6, considered and passed Senate.

Sept. 22, H.R. 5520 considered and passed House; proceedings vacated and S. 2294, amended, passed in lieu.

Sept. 24, Senate concurred in House amendments.

THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL FILE

THE LAST ORDER OF BUSINESS TO COME BEFORE THE SENATE HESS COMMITTEE MEMBERS WAS SB 52, RELATING TO THE COUNCIL ON THE HANDICAPPED AND GIFTED AND THE DEFINITIONS OF THE DEVELOPMENTALLY DISABLED. SENATOR STURGULEWSKI NOTED THAT IN THE COMMITTEE MEMBER'S PACKETS THERE IS A SECTIONAL ANALYSIS BY SENATOR DUNCAN, A LETTER FROM DEBORAH TREAGER, THE FEDERAL AND STATE DEFINITION OF 'DEVELOPMENTAL DISABILITY,' AND RELATED STATUTES.

NUMBER 300

SENATOR DUNCAN, SPONSOR OF THE MEASURE, READ A STATEMENT INTO THE RECORD: "THE BILL INCREASES THE NUMBER OF MEMBERS ON THE GOVERNOR'S COUNCIL ON THE HANDICAPPED AND GIFTED FROM TWENTY-THREE TO TWENTY-SIX. THIS CHANGE WAS NECESSITATED BECAUSE THE GOVERNOR'S COUNCIL WAS ALSO DESIGNATED TO SERVE AS THE INTERAGENCY COORDINATING COMMITTEE (I.C.C.) FOR PUBLIC LAW 99-457, THE 1986 EDUCATION AND HANDICAPPED ACT AMENDMENTS THAT AFFECT CHILDREN FROM BIRTH TO THREE YEARS OF AGE. IN OTHER STATES, THE I.C.C. HAS BEEN ESTABLISHED AS A SEPARATE FIFTEEN MEMBER BOARD CHARGED WITH PLANNING SERVICES FOR HANDICAPPED CHILDREN BETWEEN THESE AGES. IN ORDER TO BLEND THE COUNCIL AND THE I.C.C. INTO ONE BODY, A TWENTY-SIX MEMBER BODY IS NECESSARY WITH THE FOLLOWING COMPOSITION:

FIVE REPRESENTATIVES OF SPECIFIC AGENCIES OR CONSUMER GROUPS;

EIGHT AGENCY REPRESENTATIVES, INCLUDING THOSE ADMINISTERING FUNDS;

FOUR REPRESENTATIVES FROM DEPARTMENTS PROVIDING SERVICES TO PEOPLE WITH DISABILITIES; AND

THIRTEEN PRIMARY AND SECONDARY CONSUMERS.

"THEREFORE, BY INCREASING THE MEMBERSHIP OF THE GOVERNOR'S COUNCIL ON THE HANDICAPPED AND GIFTED BY ONLY THREE, WE CAN ACCOMPLISH THE ADDITIONAL PLANNING REQUIRED BY THE FEDERAL LEGISLATION WITHOUT ADDING AN ENTIRELY NEW BOARD.

"SECTION 2 PROVIDES FOR SELECTION OF THE EXECUTIVE DIRECTOR OF THE COUNCIL BY THE COUNCIL PURSUANT TO NEW FEDERAL REGULATIONS. PUBLIC LAW 101-496 STATES THAT 'EACH STATE PLANNING COUNCIL SHALL, CONSIST WITH STATE LAW, HIRE A DIRECTOR OF THE STATE PLANNING COUNCIL WHO SHALL BE SUPERVISED AND EVALUATED BY THE STATE PLANNING COUNCIL AND WHO SHALL HIRE AND SUPERVISE THE STAFF.

"SECTION 3 AMENDS THE STATE DEFINITION OF DEVELOPMENTAL DISABILITY TO COMPLY WITH THE FEDERAL DEFINITION. THIS AMENDMENT WILL ALLOW SEVERELY PHYSICALLY HANDICAPPED INDIVIDUALS TO RECEIVE SERVICES SUCH AS RESPITE CARE, DAY CARE, HOMEMAKER AND COMMUNITY LIVING SERVICES. CURRENT STATE LAW PROVIDES FOR SUCH SERVICES ONLY FOR MENTALLY HANDICAPPED INDIVIDUALS.

NUMBER 330

SENATOR STURGULEWSKI NOTED THERE WAS A FISCAL NOTE RECEIVED FROM THE DEPARTMENT OF EDUCATION, BUT NOT FROM THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

SENATOR COTTEN ASKED WHO PRESENTLY HIRES THE EXECUTIVE DIRECTOR. SENATOR DUNCAN RESPONDED THAT THE EXECUTIVE DIRECTOR IS HIRED BY THE DEPARTMENT, BUT TO BE IN CONFORMANCE WITH PUBLIC LAW, THE EXECUTIVE DIRECTOR WOULD BE HIRED BY THE COUNCIL.

SENATOR HOFFMAN REFERRED TO PUBLIC LAW 101-496, REGARDING THE HIRING OF THE INDIVIDUAL TO BE CONSISTENT WITH FEDERAL LAW, AND PUBLIC LAW 99-457, AND ASKED IF COPIES OF THOSE LAWS WERE AVAILABLE.

SENATOR DUNCAN SAID PUBLIC LAW 99-457 DEALS WITH INCREASING THE SIZE OF THE COUNCIL. PUBLIC LAW 101-496 DEALS WITH HIRING THE EXECUTIVE DIRECTOR. SENATOR STURGULEWSKI NOTED THAT A COPY OF PUBLIC LAW 101-496 WAS IN COMMITTEE MEMBER'S PACKETS.

NUMBER 396

STEVE LESCO, PRESIDENT, ALASKA STATE ASSOCIATION ON DEVELOPMENTAL DISABILITIES, EXPLAINED A SITUATION INVOLVING HIS DAUGHTER WHO HAD A RARE CHILDHOOD BLOOD AND KIDNEY

DISEASE. HE REFERRED TO SB 52 AND SAID ALASKA HAS A STATE DEFINITION OF "DEVELOPMENTAL DISABILITIES." HE SAID IT IS A LABEL THAT WOULD FACILITATE SERVICES FOR ALASKANS. "HOWEVER IT DOES NOT," MR. LESCO CONTINUED. HE SAID TO ACCEPT THE FEDERAL DEFINITION, AS PUT FORTH IN SB 52, IS TO EXPAND SERVICE DELIVERY FOR THOSE WHO HAVEN'T A METHOD OF ACHIEVING ELIGIBILITY FOR SERVICE DELIVERY. HE CONTINUED TO DISCUSS THE STATE AND FEDERAL DEFINITIONS FOR "DEVELOPMENTAL DISABILITIES." MR. LESCO INFORMED COMMITTEE MEMBERS OF THE HARDSHIP IN RECEIVING HELP DUE TO WAIT LISTS AND FUNDS.

NUMBER 515

MIKE RENFRO, PROGRAM ADMINISTRATOR, DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, SAID THE DEPARTMENT SUPPORTS THE FEDERAL DEFINITION AND HAS SUBMITTED A ZERO FISCAL NOTE. SENATOR STURGULEWSKI NOTED HER FRUSTRATION IN NOT RECEIVING WRITTEN POSITION PAPERS FROM THE DEPARTMENT. SHE ASKED IF MR. RENFRO COULD ONLY SPEAK TO SECTION 3. MR. RENFRO SAID, "THAT IS CORRECT." SENATOR DUNCAN ASKED WHY MR. RENFRO COULDN'T SPEAK TO SECTIONS 1 AND 2. MR. RENFRO EXPLAINED THERE ISN'T AN APPROVED POSITION PAPER ON THE BILL AS HE DOESN'T HAVE A SIGNED DOCUMENT BY THE COMMISSIONER. SENATOR STURGULEWSKI ASKED WHEN MR. RENFRO ANTICIPATES HAVING A POSITION PAPER WITH THE COMMISSIONER'S SIGNATURE. MR. RENFRO INDICATED THE FOLLOWING WEEK AS THE COMMISSIONER IS

THERE ISN'T AN APPROVED POSITION PAPER ON THE BILL AS HE DOESN'T HAVE A SIGNED DOCUMENT BY THE COMMISSIONER. SENATOR STURGULEWSKI ASKED WHEN MR. RENFRO ANTICIPATES HAVING A POSITION PAPER WITH THE COMMISSIONER'S SIGNATURE. MR. RENFRO INDICATED THE FOLLOWING WEEK AS THE COMMISSIONER IS NOT IN TOWN.

SENATOR COTTEN NOTED HIS CONCERN WITH ADDING AN ADDITIONAL FOUR PEOPLE TO THE COUNCIL AS THERE ARE ALREADY TWENTY-THREE PEOPLE SERVING. DUANE FRENCH EXPLAINED THAT IN PUBLIC LAW 99-457 THERE ARE SPECIFIC REQUIREMENTS FOR CERTAIN MEMBERS ON THE INTER AGENCY COORDINATING COUNCIL AND THAT IS WHY THE THREE ADDITIONAL MEMBERS HAVE TO BE ADDED.

TAPE 2, SIDE 1  
NUMBER 001

SENATOR STURGULEWSKI SAID IT IS HER INTENTION TO REQUEST A SPECIFIC POSITION PAPER FROM THE DEPARTMENT AND BRING THE LEGISLATION BEFORE THE COMMITTEE AS THE FIRST ORDER OF BUSINESS THE FOLLOWING TUESDAY.

KATHLEEN MAULDIN, JUNEAU, WAS NEXT TO TESTIFY. SHE INFORMED COMMITTEE MEMBERS OF HER 6 YEAR OLD DAUGHTER'S HANDICAP WHICH IS A BIRTH DEFECT OF THE SPINAL CORD RESULTING IN PARTIAL PARALYSIS. MS. MAULDIN SAID IN NOVEMBER, SHE APPLIED FOR RESPITE CARE THROUGH THE REACH PROGRAM AND AFTER TWO MONTHS SHE WAS INFORMED THAT HER DAUGHTER WAS NOT ELIGIBLE FOR RESPITE SERVICES. IT WAS EXPLAINED THAT HER DAUGHTER DIDN'T HAVE A MENTAL DISABILITY, THEREFORE, DIDN'T MEET THE STATE REQUIREMENT FOR RECEIVING RESPITE SERVICES. MS. MAULDIN SAID SHE REVIEWED THE FEDERAL STATUTE FOR RESPITE CARE ELIGIBILITY AND FOUND THAT IT WOULD INCLUDE HER

FAMILY. SHE SAID THE SCHOOL SYSTEMS ARE MAKING GREAT STRIDES IN ACCOMMODATING THE DIVERSE POPULATION OF CHILDREN. SHE URGED THAT EVERYBODY BE SUPPORTIVE OF THE STATE CHANGING ITS DIRECTION IN THE AREA OF RELIEF SERVICES.

NUMBER 078

SHERRI GOLL, KIDPAC, SAID SHE VERY MUCH SUPPORTS SB 52. MS. GOLL SAID THE DEFINITION IN THE LEGISLATION IS MUCH MORE APPROPRIATE THAN THE NARROW DEFINITION CURRENTLY IN STATUTE.

TIM WEISS, VICE PRESIDENT, ALASKA ALLIANCE FOR DEAF CHILDREN, DISCUSSED A PROBLEM HIS ORGANIZATION ENCOUNTERED WITH A YOUNG DEAF CHILD IN THE BUSH. MR. WEISS SAID HIS THE ALLIANCE IS SUPPORTIVE OF THE BILL.

SHARON LOBAUGH SAID SHE SUPPORTS REDEFINING "DEVELOPMENTAL DISABILITIES." SHE NOTED THAT IT DOESN'T NECESSARILY MEAN THAT ALL THE NEW CATEGORIES ARE WITHIN THE MENTAL HEALTH TRUST PROGRAM.

NUMBER 135

THERE BEING NO FURTHER TESTIMONY ON SB 52, SENATOR STURGULEWSKI CLOSED THE PUBLIC HEARING. SHE ANNOUNCED THE BILL WOULD BE BACK BEFORE THE COMMITTEE THE FOLLOWING TUESDAY.

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# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

THEODORE A. MALA, COMMISSIONER

P.O. BOX H  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-2030

*Payam  
Where's the  
Bill*

Senator Jim Duncan  
Alaska State Legislature  
P.O. V  
Juneau, Alaska 99811-3100

December 6, 1991

Dear Senator Duncan,

Thank you for your letter regarding SB 55 relating to the detention and incarceration of minors. The Department supports any effort to improve the juvenile justice system in Alaska.

It is my understanding that this bill and its proposed CS are a result of the legislative process last session. The development of this legislation has been a cooperative effort involving Alaska's Juvenile Justice Advisory Committee, other Departments, and your office. The continuation of these efforts during the upcoming session will result in a law that is workable for Alaska.

The Department supports SB 55 in its CS form as it will assist us tremendously towards our goal of compliance with the federal JJDP Act.

At the end of last session the CS work draft had the conceptual support of the other effected Departments. A meeting will be planned to review the CS in its current form prior to the beginning of the upcoming session.

Thank you for the support in our efforts to improve juvenile justice in Alaska.

Sincerely yours,



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



# Alaska State Legislature

SENATOR JIM DUNCAN

P.O. BOX V JUNEAU, ALASKA 99811-3100

(907) 465-4766

## MEMORANDUM

### COMMITTEES:

- VICE CHAIR — FINANCE
- VICE CHAIR — STATE AFFAIRS
- RULES
- BUDGET & AUDIT
- ETHICS REFORM

MAR - 6 REC'D

**Date:** March 4, 1992

**To:** Representative Georgianna Lincoln, Co-Chair  
 Representative Pat Carney, Co-Chair  
 House Health, Education, & Social Service Committee

**From:** Senator Jim Duncan

**Re:** CS SB 55 (Judiciary), Relating to Detention and Incarceration of minors.

Please schedule SB 55 for a hearing at your earliest convenience. SB 55 amends state law to comply with U.S. Department of Justice requirements which prohibit incarceration of juvenile offenders in adult jails or lockup facilities.

Currently attempts are made to separate juvenile prisoners from adults, however, in village jails they are not always successful. The potential for mental and physical harm to juveniles is great in such situations. This bill will show our good faith effort, given the problems we experience in this state with isolation and associated transportation problems, provide other options besides adult facilities for holding minors.

One option which has proven particularly successful in small communities had been the use of "attendant care shelters" where juveniles can be detained temporarily until released to their parents or transported to one of the five regional youth corrections facilities; Bethel Youth Facility, McLaughlin in Anchorage, Johnson Youth Facility in Juneau, Nome Youth Facility, or the Fairbanks Youth Facility.

The funding for Attendant Care Shelters is provided through a \$325,000 Federal Juvenile Justice Formula Grant. In FY 91 grants were made for Attendant Care Shelters in Barrow (\$25,000), Juneau (\$20,000), Ketchikan (\$24,200), Kotzebue (\$17,000), Homer, Kenai, and Seward (\$48,150), Kodiak (\$9,987), Petersburg (\$5,000), Sitka (\$11,972), Valdez (\$15,000), and Wrangell (\$5,000). A portion of the funding also goes to the UAA, Justice Center for data collection and analysis. In addition, in FY 91, \$22,392 was earmarked for Alaska Native non-profit organizations. During FY 91, 443 youths were served at 12 Attendant Care Shelters.

If we do not show a good faith effort to comply with the federal law in removing juveniles from adult jails and lockups, we will become ineligible for this continuing grant. Therefore, if we wish to keep our attendant care shelters open and use federal funds to do so, it is important to pass SB 55.

I urge your support for SB 55.

*Sponsor's Statement*

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

MEMORANDUM

April 7, 1992

**SUBJECT:** CS Senate Bill 55 (Judiciary), sectional analysis  
(Work Order No. 7-LS0216\M)

**TO:** Senator Jim Duncan  
ATTN: Roxanne Stewart

**FROM:** Jack Chenoweth  
Legislative Counsel

CSSB 55 (Judiciary), the version approved by the state Senate, was prepared on the basis of a model intended to conform Alaska law generally to limitations imposed by key provisions of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended. Those paragraphs of the federal Act, 42 U.S.C. 5633(a)(13) and (14), provide as follows:

(a) [To qualify the state for a formula grant under the Juvenile Justice and Delinquency Prevention Act, a state plan submitted to the federal government shall]

...  
(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) [of this subsection] shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;

(14) provide that, [after December 8, 1985,] no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1993, promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which

(A) are outside a Standard Metropolitan Statistical Area,

*Sectional Analysis*

(B) have no existing acceptable alternative placement available, and

(C) are in compliance with the provisions of paragraph (13);

....

Bill section 1, an uncodified provision, summarizes the general purposes of the measure, citing both the requirements of the pertinent federal Act and conditions specific to the state.

Bill section 2 substantially revises and extends the key juvenile detention/incarceration provision of current statutory law, AS 47.10.130 <sup>1/</sup>:

Proposed AS 47.10.130(a) establishes an explicit prohibition against incarceration of a minor in a correctional facility. <sup>2/</sup>

Proposed AS 47.10.130(b) carries forward without change language of the current statute assigning responsibility for notification of the minor's parent(s), guardian(s), or custodian(s) of the minor's detention.

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<sup>1/</sup> Current AS 47.10.130 dates from the last session of the Territorial Legislature (1957) and, in its entirety, reads as follows:

Sec. 47.10.130. DETENTION. A minor under 18 years of age who is detained pending hearing may not be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately.

<sup>2/</sup> Please appreciate that this measure depends on the cross-referenced definition of "correctional facility" as defined by AS 33.30.901, a definition of the statutes that are applicable to prison facility management. The term "correctional facility" is defined, in pertinent part, as follows:

"correctional facility" or "facility" means a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners; . . . .

The reference to "prisoners" in the definition set out in that paragraph, generally applicable to AS 33.30, is to adult persons held in custody, for AS 33.30.901(11) defines "prisoner" as follows:

"prisoner" means a person, other than a juvenile, held under authority of state law in official detention . . . .

(Emphasis added.)

Proposed AS 47.10.130(c) sets out three exceptions to the general prohibition against a minor's incarceration in a correctional facility:

- (1) minors adjudicated delinquent or held in official detention <sup>3/</sup> pending filing of a delinquency adjudication petition, the incarceration not to exceed six hours or the time necessary to arrange other transportation, whichever is shorter;
- (2) minors held pending prosecution as an adult; and
- (3) minors held in protective custody, that is, held because they are intoxicated or incapacitated by alcohol.

Proposed AS 47.10.130(d) places conditions and limitations on the holding of minors who are placed in correctional facilities under the exceptions of sec. 130(c)(1) (temporary detention pending transportation) or 130(c)(3) (protective custody detention). Those conditions and limitations include assignment to quarters separate from adults and provision of necessary services separate from the services that are provided to adults held in the correctional facility.

Proposed AS 47.10.130(e) recognizes weather related and similar delays beyond the control of the custodian by allowing an extension of the holding of a minor in temporary detention pending transportation beyond the six hour maximum in limited circumstances. At the same time, the subsection imposes specific duties on the person having responsibility for the minor's detention to document the reason for the extension and to advise the pertinent parties of the delay in transportation.

Proposed AS 47.10.130(f) authorizes extension of the holding of the minor in temporary detention pending transportation only so long as necessary to complete the necessary transportation arrangements for the minor.

For minors held in protective custody, <sup>4/</sup> proposed AS 47.10.130(g) directs that the parameters of treatment and detention that are set out in AS 47.37.170(i) are made applicable to minors so held.

Proposed AS 47.10.130(h) adds relevant definitions.

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<sup>3/</sup> Under another cross-referenced definition, "official detention" includes custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release. See AS 11.81.900(35).

<sup>4/</sup> By law, protective custody does not constitute an arrest and no entry or other record may be made to indicate that the minor detained has been arrested or charged with a crime. However, a confidential record may be made for the administrative purposes of the facility to which the minor has been taken or which is necessary for statistical purposes. In the latter instance, the minor's name may not be disclosed. See AS 47.37.170(i).

Senator Jim Duncan  
April 7, 1992  
Page 4

Bill section 3 makes correlative changes to a related juvenile detention statute,  
AS 47.10.190.

\*

Because no effective date clause is included, the measure would take effect in accordance with the first sentence of article II, section 18 of the state constitution, that is, 90 days after the measure's signature into law or after its becoming law without signature.

JBC:pl  
92-248.plm

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill Version: CSSB 55 (JUD)

(S) Publish Date: 2-10-92

Revision Date: 02/06/92 Department Affected: Department of Corrections  
 Title: "An Act relating to the... incarceration of minors." BRU: Statewide Operations  
 Component: Various  
 Sponsor: Senator Duncan  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

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|--|--|--|--|
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|--|--|--|--|

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| CAPITAL           |       |       |       |       |       |       |
| REVENUE           |       |       |       |       |       |       |
| FUND SOURCE:      |       |       |       |       |       |       |

FUNDING: (Thousands of Dollars)

|                    |     |     |     |     |     |     |
|--------------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND       |     |     |     |     |     |     |
| FEDERAL FUNDS      |     |     |     |     |     |     |
| OTHER FUND SOURCE: |     |     |     |     |     |     |
| TOTAL              | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

The Committee Substitute has no fiscal impact on the Department, since separation of minors waived to adult status would not be required.

Prepared By: Carl Nickel, Director *Carl Nickel* Phone: 465-3376  
 Division: Administrative Services Date: 02/07/92  
 Approved by Commissioner: Lloyd Hames, Commissioner *Lloyd Hames*  
 Agency: Department of Corrections Date: 02/07/92

# FISCAL NOTE

176  
 Bill Version: SB 55  
 (S) Publish Date: 2-21-92

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected Health and Social Services  
 Title: "An act relating to the detention and incarceration of minors" BRU: Purchased Services  
 Component: Preventive Services  
 Sponsor: Senator Duncan  
 Requestor: Senator Duncan COMPONENT SERIAL NO. 0248

**Expenditures/Revenues**

(Thousands of Dollars)

| OPERATING              | FY93       | FY94       | FY95       | FY96       | FY97       | FY98       |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      |            |            |            |            |            |            |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS, CLAIMS         |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

**FUNDING:**

(Thousands of Dollars)

| GENERAL FUND  | FY93       | FY94       | FY95       | FY96       | FY97       | FY98       |
|---------------|------------|------------|------------|------------|------------|------------|
| FEDERAL FUNDS |            |            |            |            |            |            |
| OTHER         |            |            |            |            |            |            |
| <b>TOTAL</b>  | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**POSITIONS:**

| FULL-TIME | FY93 | FY94 | FY95 | FY96 | FY97 | FY98 |
|-----------|------|------|------|------|------|------|
| PART-TIME |      |      |      |      |      |      |
| TEMPORARY |      |      |      |      |      |      |

Changes in SSB 55 (JD) have no fiscal impact. This fiscal note is appropriate.

Estimate of current year impact: None

2-19-92 Richard MR  
 date Comptroller (initial)

**ANALYSIS:** (Attach a separate page if necessary)

SSB 55 prohibits the confinement of youth in an adult correctional facility, jail, or lockup, except under special circumstances.

This is an attempt to comply with the jail removal mandate of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, which limits or prohibits the confinement of youth in adult correctional facilities.

Prepared by: Brian Saylor, Deputy Commissioner, DHSS BS Phone: 465-3030  
 Division: Family and Youth Services Date: February 4, 1993

Approved by Commissioner: Theodore A. Hale Theodore A. Hale Date: 12 Feb 92  
 Agency: Department of Health and Social Services

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

**ANALYSIS (cont.):**

Enactment of this legislation would demonstrate Alaska's intent to meet the requirements of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, which requires total and enforceable separation of youth from adults when confined in the same facility and limits the placement of youth in adult confinement facilities.

Alaska annually receives a federal formula grant of \$325,000 to make improvements in the juvenile justice system, including better practices for the detention of youth. Placing youth in adult correctional facilities, jails or lockups is not a good child care practice. Further, such practice jeopardizes this funding. Without this grant revenue of \$325,000, it would be necessary to use state general funds to continue funding to support fourteen (14) shelters that provide alternatives to placing youth in facilities designed for the incarceration of adults.

FISCAL NOTE

No. 7

Bill Version: CSSA 55 (JUD)

(S) Publish Date: 2-21-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: February 18, 1992 Department Affected: Department of Law

Title: "An Act relating to detention and incarceration of minors." BRU: Prosecution, Legal Services

Sponsor: Senator Duncan Component: All, Legal Services - Ops.

Requestor: Senator Pourchot

COMPONENT SERIAL NO. 

|  |  |  |  |
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|  |  |  |  |
|--|--|--|--|

85 through 91, 93

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|              |  |  |  |  |  |  |
|--------------|--|--|--|--|--|--|
| REVENUE      |  |  |  |  |  |  |
| FUND SOURCE: |  |  |  |  |  |  |

FUNDING: (Thousands of Dollars)

|               |     |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND  | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS |     |     |     |     |     |     |
| OTHER         |     |     |     |     |     |     |
| FUND SOURCE:  |     |     |     |     |     |     |
| 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.

*Richard I. Peques*

Prepared By: Richard I. Peques, Director Phone: 465-3672

Division: Administrative/Services Date: February 18, 1992

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: February 18, 1992

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 55 (JUD)

The Judiciary Committee substitute for SB 55 adopts additional provisions that recognize weather caused transportation delays that can arise <sup>while</sup> moving minors during temporary detention, and that allow detention in a correctional facility for protective custody and allow detention in a correctional facility of a minor held pending prosecution as an adult, provided in all cases that there is sight and sound separation from adult prisoners. These changes should eliminate most of the impact for the Department of Corrections and the Department of Public Safety that would have been caused by the original version of the bill.

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill Version: CSSB 55(JUD)

(S) Publish Date: 2-21-92

Revision Date: 02/05/92 Department Affected: Public Safety  
 Title: An act relating to the detention and incarceration of minors. BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Senator Duncan  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

|   |   |   |
|---|---|---|
| 7 | 9 | 9 |
|---|---|---|

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING         | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

|                         |     |     |     |     |     |     |
|-------------------------|-----|-----|-----|-----|-----|-----|
| REVENUE<br>FUND SOURCE: | -0- | -0- | -0- | -0- | -0- | -0- |
|-------------------------|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

|                       |     |     |     |     |     |     |
|-----------------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND          |     |     |     |     |     |     |
| FEDERAL FUNDS         |     |     |     |     |     |     |
| OTHER<br>FUND SOURCE: |     |     |     |     |     |     |
| 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.)

See attached analysis.

Prepared By: Gayle A. Horetski Phone: 465-4322  
 Division: Commissioner's Office Date: 2/5/92  
 Approved by Commissioner: Gayle A. Horetski Richard L. Burton  
 Agency: Department of Public Safety Date: 2/5/92

Department of Public Safety  
Fiscal Note Analysis - CSSB 55(JUD)  
Page 2

The Department of Public Safety shares with the Division of Family and Youth Services the responsibility to transport juvenile prisoners prior to their acceptance into an appropriate juvenile facility. Approximately 100 juvenile transports are conducted by the Alaska State Troopers annually, funded through the prisoner transport budget. This bill is not expected to result in any increase in the number of juvenile transports, so there should be no additional fiscal impact to the Department.

(7)

Date Referred: March 6, 1992

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4/16/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: CSSB 55(JUD)

CS FOR SENATE BILL NO. 55 (JUD) INCARCERATION OF MINORS IN ADULT INST.

"An Act relating to the detention and incarceration of minors."

- RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  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 \_\_\_\_\_  zero fiscal note(s) Corrections, DHSS, LAW  
Public Safety

| SIGNING DO PASS         | DP | OTHER RECOMMENDATIONS | DNP | NR | AM |
|-------------------------|----|-----------------------|-----|----|----|
| <i>Robert W. Carrey</i> | ✓  |                       |     |    |    |
| <i>Henry B. ...</i>     | ✓  |                       |     |    |    |
| <i>Mary Miller</i>      | ✓  |                       |     |    |    |
| <i>Betty Davis</i>      | ✓  |                       |     |    |    |
| <i>J. C. Bonnyales</i>  | ✓  |                       |     |    |    |
| <i>Cheri Harris</i>     | ✓  |                       |     |    |    |
|                         |    |                       |     |    |    |
|                         |    |                       |     |    |    |
|                         |    |                       |     |    |    |
|                         |    |                       |     |    |    |

*Robert W. Carrey*  
CO-CHAIRMAN'S SIGNATURE

SENATOR STURGULEWSKI ANNOUNCED THE NEXT ORDER OF BUSINESS WOULD BE SB 55, RELATING TO INCARCERATION OF MINORS IN ADULT INSTITUTIONS. SENATOR DUNCAN, SPONSOR OF SB 55, READ A STATEMENT INTO THE RECORD: "SB 55 AMENDS STATE LAW TO COMPLY WITH U.S. DEPARTMENT OF JUSTICE REQUIREMENTS FOR COMPLETE SIGHT AND SOUND SEPARATION OF JUVENILE OFFENDERS FROM ADULT PRISONERS WHEN HOUSED IN THE SAME SECURE FACILITY. CURRENTLY, ATTEMPTS ARE MADE TO SEPARATE JUVENILE PRISONERS FROM ADULTS, HOWEVER, IN VILLAGE JAILS THEY MAY NOT ALWAYS BE SUCCESSFUL. THE POTENTIAL FOR MENTAL AND

PHYSICAL HARM TO THE JUVENILES IS GREAT IN SUCH SITUATIONS WHERE THEY ARE NOT SEPARATED.

"ONE OPTION WHICH HAS PROVED SUCCESSFUL IN SMALL COMMUNITIES HAS BEEN THE USE OF 'ATTENDANT CARE SHELTERS' WHERE JUVENILES CAN BE DETAINED TEMPORARILY UNTIL THEY CAN BE TRANSPORTED TO REGIONAL YOUTH CORRECTIONAL FACILITIES SUCH AS MCLAUGHLIN IN ANCHORAGE AND THE JOHNSON YOUTH FACILITY IN JUNEAU. ATTENDANT CARE SHELTERS HAVE BEEN ESTABLISHED IN BARROW, JUNEAU, KETCHIKAN, KOTZEBUE, HOMER, KENAI, KODIAK, PETERSBURG, SEWARD, SITKA, VALDEZ AND IN WRANGELL.

"SB 55 PROVIDES THAT IF A MINOR IS DETAINED, THE RESPONSIBLE PERSON AT THE FACILITY SHALL IMMEDIATELY NOTIFY THE MINOR'S PARENTS OR OTHER RESPONSIBLE PARTIES. THE ONLY SITUATIONS IN WHICH A MINOR MAY BE HELD IN AN ADULT FACILITY ARE ENUMERATED IN THE LEGISLATION BEGINNING ON PAGE 2, LINE 3, WHICH PROVIDES THAT IF THE MINOR IS THE SUBJECT OF A PETITION FILED WITH THE COURT SEEKING ADJUDICATION AS A DELINQUENT, OR IS IN OFFICIAL DETENTION FOR THAT PURPOSE, THE MINOR CAN BE DETAINED IN THE ADULT FACILITY FOR THE LESSER OF SIX HOURS OR THE TIME IT TAKES TO ARRANGE FOR THE MINOR'S TRANSPORTATION TO A JUVENILE FACILITY.

"UNDER THESE CIRCUMSTANCES, THE MINOR MUST BE ASSIGNED TO QUARTERS SEPARATED BY SIGHT AND SOUND FROM ADULTS AND PROVIDED WITH ADMISSION, HEALTH CARE, HYGIENE, FOOD SERVICE, RECREATION, AND VISITATION, ALSO SEPARATED BY SIGHT AND SOUND FROM ADULT PRISONERS.

"AS STATED IN INFORMATION PROVIDED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, THERE ARE COMPELLING REASONS TO SEPARATE JUVENILE DELINQUENTS FROM ADULTS. THE NATIONAL SUICIDE RATE OF CHILDREN HELD IN ADULT JAILS IS EIGHT TIMES HIGHER OF THAT OF CHILDREN PLACED IN JUVENILE FACILITIES. THE RISK OF EMOTIONAL, PHYSICAL, AND SEXUAL ABUSE IS ALSO GREAT."

SENATOR DUNCAN EXPLAINED THAT ACCORDING TO INFORMATION HE HAS, ALASKA STANDS TO LOOSE \$300.0 IN FEDERAL GRANT FUNDS IF WE DO NOT MAKE PROGRESS IN EFFORTS TO FIND ALTERNATIVES TO DEAL WITH CHILDREN IN ADULT FACILITIES. HE NOTED HE HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF CORRECTIONS. SENATOR DUNCAN ALSO NOTED THAT THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES WAS SUPPOSED TO HAVE SUBMITTED A POSITION PAPER.

SENATOR STURGULEWSKI SAID THERE IS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES AND A BILL ANALYSIS FROM THE DIVISION OF FAMILY AND YOUTH SERVICES (DFYS), WHICH SEEMS TO SHOW SUPPORT.

MARYANNE MILLS, ALASKA JUVENILE JUSTICE ADVISORY COMMITTEE, EXPLAINED THE MISSION OF THE COMMITTEE IS TO ADVISE THE GOVERNOR AND DFYS IN AN EFFORT TO STRENGTHEN AND IMPROVE THE

JUVENILE JUSTICE SYSTEM IN ALASKA. SHE SAID THE MOST IMMEDIATE CHALLENGE OF THE COMMITTEE IS HELPING THE STATE TO END THE DESTRUCTIVE PRACTICE OF DETAINING CHILDREN IN ADULT JAILS AND LOCK-UPS. SHE CONTINUED TO DISCUSS THE PROBLEMS THAT CAN BE CAUSED BY PUTTING CHILDREN IN ADULT JAILS SUCH AS SUICIDE, DEPRESSION, EMOTIONAL, PHYSICAL, OR SEXUAL ABUSE. SHE NOTED JAIL STAFF ARE SELDOM TRAINED TO HANDLE THE EMOTIONAL AND FAMILY PROBLEMS OF CHILDREN IN CRISES. MS. MILLS EXPLAINED THAT BEGINNING IN 1988, DFYS BEGAN TO DEVELOP AND IMPLEMENT SOME CREATIVE AND MODERATE SOLUTIONS. SHE DISCUSSED THE ATTENDANT CARE SHELTER MODEL WHICH HAS BEEN THE MOST SUCCESSFUL ALTERNATIVE USE BY OTHER STATES AND INFORMED COMMITTEE MEMBERS OF THE PROGRESS THAT HAS BEEN MADE IN ENDING THE PRACTICE OF DETAINING CHILDREN IN ADULT JAILS.

MS. MILLS SAID IN 1987, ALASKA REPORTED OVER 800 JAIL AND LOCK-UP REMOVAL VIOLATIONS. IN 1988, ALASKA BEGAN RECEIVING \$325.0 EACH YEAR FROM THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO USE SPECIFICALLY TOWARDS STOPPING THE PRACTICE OF LOCKING CHILDREN IN ADULT JAILS. SINCE DFYS BEGAN USING THE GRANT MONIES TO DEVELOP ALTERNATIVES, THE NUMBER OF VIOLATIONS WAS CUT IN HALF. THERE WERE 409 CHILDREN JAILED IN 1988, COMPARED TO 864 THE PREVIOUS YEAR. DFYS ASSISTED ADDITIONAL COMMUNITIES IN DEVELOPING A TENANT CARE SHELTER PROGRAM. IN 1989, THE NUMBER OF VIOLATIONS WAS AGAIN CUT IN HALF. HOWEVER, IN 1990, THE NUMBER OF VIOLATIONS REMAIN AT ABOUT 200. THE FACT THAT 200 CHILDREN ARE HELD ILLEGALLY IN ADULT JAILS IS UNSATISFACTORY NOT ONLY TO THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, BUT TO ANYONE WHO CARES ABOUT ALASKA'S CHILDREN. MS. MILLS STATED A STRONG MESSAGE MUST BE SENT TO COMMUNITIES THAT THEY NEED TO DEVELOP ALTERNATIVES NOW TO END THE PRACTICE OF JAILING CHILDREN. SHE SAID SB 55 WOULD DO THAT. SHE DISCUSSED THE LEGISLATION AND SAID THE REASON THE BILL NEEDS TO BE PASSED IS THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION HAS GIVEN THE STATE UNTIL SEPTEMBER, 1991, TO PROVE THAT IT IS COMMITTED TO ENDING THE PRACTICE OF JAILING CHILDREN IN ADULT FACILITIES. SB 55, IF PASSED, WOULD CLEARLY DEMONSTRATE ALASKA'S COMMITMENT. IN TURN, ALASKA WILL CONTINUE TO RECEIVE \$325.0 TO ASSIST IN MAINTAINING AND DEVELOPING ATTENDANT CARE SHELTERS AND OTHER ALTERNATIVES. IF SB 55 ISN'T PASSED AND ALASKA IS CUT-OFF FROM THE OJJDP MONIES, THE ALTERNATIVES WILL NO LONGER BE ABLE TO BE FUNDED. SHE CONTINUED TO EXPLAIN THE CONSEQUENCES THAT WOULD BE ENCOUNTERED IF THE BILL ISN'T PASSED.

ADULT FACILITIES. MR. HINES SAID HE DIDN'T KNOW THE EXACT NUMBER BUT ESTIMATED IT TO BE UNDER FIVE.

SENATOR STURGULEWSKI ASKED IF THE LEGISLATION PROVIDES AN ADEQUATE ABILITY TO HANDLE THOSE KIDS THAT ARE CHARGED WITH A VIOLENT CRIME OR COME IN SERIOUSLY UNDER THE INFLUENCE OF ALCOHOL OR DRUGS. SHE ASKED IF THERE IS A METHOD BY WHICH THEY CAN BE HANDLED IN A FACILITY UNTIL THEY ARE PUT INTO A PLACE THAT WOULD SEE TO THEIR SAFETY AND TO THE SAFETY OF THOSE AROUND THEM.

MR. HINES REFERRED TO PAGE 2, LINE 3 OF THE LEGISLATION AND SAID THE SECTION ALLOWS FOR THE PLACEMENT OF A MINOR INTO AN ADULT CORRECTIONAL FACILITY FOR LESS THAN SIX HOURS IF THEY ARE CHARGED WITH A CRIMINAL DELINQUENT OFFENSE. SENATOR STURGULEWSKI REFERRED TO THE LEGISLATION, "(A) SIX HOURS; OR (B) THE TIME NECESSARY TO ARRANGE THE MINOR'S TRANSPORTATION TO A JUVENILE DETENTION HOME OR COMPARABLE FACILITY FOR THE DETENTION OF MINORS;" MR. HINES POINTED OUT THAT THE LEGISLATION SAYS, "MAY NOT EXCEED THE LESSER OF..." SENATOR STURGULEWSKI NOTED HER CONCERN WITH REMOTE AREAS OF THE STATE. MR. HINES SAID IT WILL REQUIRE A CHANGE OF PRACTICE IN THE WAY BUSINESS IS CURRENTLY DONE IN SOME OF THE REMOTE AREAS. THERE WAS CONTINUED DISCUSSION REGARDING THE RURAL AREAS.

MR. HINES INFORMED COMMITTEE MEMBERS THAT THE FEDERAL GOVERNMENT WILL GRANT A CERTAIN AMOUNT OF VIOLATIONS PER YOUTH POPULATION IN THE STATE.

NUMBER 437

SENATOR HOFFMAN ASKED IF ANY OF THE \$325.0 IS EARMARKED TO TRY TO ALLEVIATE SOME OF THE PROBLEMS THAT EXIST IN SOME OF THE MUNICIPAL AND RURAL JAILS THROUGHOUT ALASKA SO THAT THEY BECOME IN COMPLIANCE. MR. HINES EXPLAINED THAT ALL OF THE MONEY GOES TOWARDS THE EFFORT. THE NON-SECURE TENANT SHELTERS WERE ESTABLISHED TO THE SPECIFIC GROUP OF THE STATUS OFFENDERS TO BRING THEM OUT OF ADULT JAILS.

SENATOR FISCHER ASKED WHY THE FIGURE OF SIX HOURS WAS USED ON PAGE 2, LINE 9. MR. HINES SAID THE SIX HOUR REQUIREMENT CAME FROM THE FEDERAL GOVERNMENT REGULATIONS FOR THE OJJDP ACT. MR. HINES EXPLAINED THAT THE DEPARTMENT HAS DISCUSSED THE SIX HOURS WITH THE FEDERAL GOVERNMENT AND THEY ARE NOT WILLING TO AMEND THE RULE FOR ALASKA. HE NOTED THE DEPARTMENT IS CONTINUING TO TRY TO GET AN EXCEPTION TO THE PROVISION.

NUMBER 481

MR. HINES EXPLAINED THAT THE BILL DEMONSTRATES A COMMITMENT ON THE STATE OF ALASKA AND THE SPECIFIC LANGUAGE OF THE SIX HOURS WAS PLACED IN THE BILL TO DEMONSTRATE THAT INTENT. SENATOR FISCHER NOTED HIS CONCERN WITH THE SIX HOUR TIME

SENATOR STURGULEWSKI ASKED WHAT AGE IS USED IN STATUTE TO DEFINE A MINOR. MS. MILLS SAID SEVENTEEN AND BELOW. SENATOR STURGULEWSKI REFERRED TO THERE BEING 200 CHILDREN IN ADULT JAILS AND ASKED IF THAT IS BASED ON KIND OF CRIME OR LACK OF FACILITIES. MS. MILLS EXPLAINED ABOUT HALF OF THE

CRIMES ARE NON-OFFENSES OR STATUS OFFENSES SUCH AS CURFEW VIOLATIONS, CONSUMING ALCOHOL, ETC. SHE SAID THEY ARE HOUSED IN THE ADULT JAILS DUE TO LACK OF ALTERNATIVE FACILITIES AND LACK OF EDUCATION OF PEOPLE AND LAW ENFORCEMENT IN THE COMMUNITIES.

SENATOR STURGULEWSKI REFERRED TO MAJOR OR SERIOUS CRIMES AND ASKED IF THERE IS FLEXIBILITY IN THE LAW THAT ALLOWS FOR THE OFFENDERS TO BE KEPT IN A REGULAR JAIL FACILITY. MS. MILLS SAID ONE OF THE EXCEPTIONS STATED IN THE BILL IS IF THE CHILD WAS WAIVED TO AN ADULT STATUS. SENATOR STURGULEWSKI SAID THAT WOULD TAKE A JUDICIAL PROCESS TO MAKE THE DETERMINATION AS TO WHETHER A CHILD IS TREATED AS AN ADULT OR A MINOR. MS. MILLS EXPLAINED A FEW OF THE ATTENDANT CARE SHELTER FACILITIES DO HAVE THE ABILITY TO DETAIN VIOLENT PRISONS AND THOSE PEOPLE WOULD BE TOP PRIORITY FOR TRANSPORT TO ONE OF THE YOUTH FACILITIES. SHE NOTED THERE ARE FIVE YOUTH FACILITIES THROUGHOUT ALASKA IN NOME, BETHEL, FAIRBANKS, JUNEAU, AND ANCHORAGE.

NUMBER 343

SENATOR HOFFMAN REFERRED TO THE ZERO FISCAL NOTE FROM THE DEPARTMENT OF CORRECTIONS AND SAID ONE OF THE REQUIREMENTS OF THE LEGISLATION IS THAT THE MINORS BE SEPARATED BY SIGHT AND SOUND. HE ASKED HOW THAT WOULD BE ACCOMPLISHED IN THE CORRECTIONAL SYSTEM GIVEN THE ZERO FISCAL NOTE. MS. MILLS EXPLAINED THAT THE \$325.0 RECEIVED FROM THE FEDERAL GOVERNMENT GOES TO YOUTH CORRECTIONS WHICH IS THE PART OF DFYS THAT RECEIVES THE MONEY AND HAS STAFF TO DO WHAT NEEDS TO BE DONE.

NUMBER 369

SHERRIE GOLL, REPRESENTING ALASKA WOMEN'S LOBBY AND KIDFAC, SAID SHE IS INTERESTED IN SEEING IMPROVEMENT IN THE JUVENILE JUSTICE SYSTEM AND SEEING THAT CHILDREN BE KEPT OUT OF ADULT FACILITIES. SHE NOTED THAT THE SOCIAL ACTION COMMITTEE OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS ALSO FEELS VERY STRONGLY IN FAVOR OF THE LEGISLATION.

NUMBER 376

RANDALL HINES, DIVISION OF FAMILY AND YOUTH SERVICES, YOUTH CORRECTIONS SECTION, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, INFORMED COMMITTEE MEMBERS HE IS IN SUPPORT OF THE LEGISLATION. SENATOR FISCHER REFERRED TO WHEN A JUVENILE IS PUT INTO AN ADULT FACILITY AND ASKED IF DEPARTMENT OF HEALTH AND SOCIAL SERVICES REIMBURSES DEPARTMENT OF CORRECTIONS OR DOES THE DEPARTMENT OF CORRECTIONS PICK UP THE COST. MR. HINES SAID THE DEPARTMENT OF CORRECTIONS PICKS UP THE COST OF MINORS BROUGHT TO THEIR FACILITIES FOR STATE CRIMES. HE ALSO NOTED THAT THE INCARCERATION RATE OF KIDS IN ADULT FACILITIES OPERATED BY THE DEPARTMENT OF CORRECTIONS IS VERY LOW. SENATOR FISCHER ASKED HOW MANY KIDS ARE PRESENTLY IN

LIMIT. HE SAID HE WOULD LIKE TO KNOW IF IT IS MANDATORY BY THE FEDERAL GOVERNMENT THAT THE SIX HOURS BE INCLUDED AND SAID HE WOULD LIKE TO SEE A BREAKDOWN OF \$325 THOUSAND. MR. HINES SAID IF ALASKA DOESN'T KEEP WITHIN THE SIX HOUR TIME LIMIT, IT WOULD BE COUNTED AS A VIOLATION FOR MONITORING.

NUMBER 500

SENATOR STURGULEWSKI SAID THE LEGISLATION WOULD BE BACK BEFORE THE COMMITTEE AT A LATER DATE. SHE ALSO NOTED SHE WOULD LIKE TO SEE A BREAKDOWN AS TO HOW THE \$325.0 WAS SPENT, THE PRESENT PROPOSED BUDGET FOR THE \$325.0 AND DISCUSSION ON WHAT THE PROFILE IS.

**JAILING OF CHILDREN IN ALASKA - AN UNSOLVED PROBLEM  
ISSUES FOR THE CRIMINAL JUSTICE WORKING GROUP  
NOVEMBER 3, 1989**

In Alaska, there is a historical and pervasive practice of confining children under conditions which violate both state and federal law, increasing the risk of harm and potentially violating the civil rights of children.

**BACKGROUND:**

Since 1976, Alaska has received formula grants from the U.S. Department of Justice under the Juvenile Justice and Delinquency Prevention (JJDP) Act. The former state Criminal Justice Planning Agency and the Division of Corrections administered these funds until 1982 when responsibility was transferred to the Division of Family and Youth Services of the Department of Health and Social Services. Acceptance of these funds has obligated the state to improve its juvenile justice system and comply with the requirements of the Act which calls for:

Deinstitutionalization - a termination of the practice of securely detaining non-offenders or status offenders;

Separation - complete separation of juvenile offenders from adult prisoners when housed in the same secure facility;

Jail Removal - termination of the practice of holding any juvenile in an adult jail or lockup facility; and

Annual Monitoring - regular inspection of facilities which detain children along with collection, analysis and reporting of admission or booking data to assess compliance.

These requirements were to be achieved incrementally with deinstitutionalization to be achieved within three years of submission of the state's first grant application.

Separation and jail removal were to be achieved by December 1985, but subsequent extensions allowed exceptions to full compliance until December 1988.

Based on action to date, Alaska is now in substantial but not full compliance with the deinstitutionalization and separation mandates. Compliance with the mandate for total removal is far from being achieved. Until full compliance with all of the mandates is achieved, Alaska risks termination of the federal juvenile justice grant and faces the possible threat of litigation.

Federal requirements compliment Alaska laws contained in Title 47. Alaska statutes do not permit secure detention of any juvenile status offenders except for an allowable 24-hour period for runaways already under court jurisdiction when there is specific prior court approval.

Further, Alaska statutes require that children be separated by sight and sound from adult prisoners when both are held in the same facility. Because virtually none of Alaska's over one hundred (100) adult jails, lockups or correctional facilities are physically designed or operated to prevent contact between children and adults, children cannot lawfully be confined in those facilities.

As recently as 1987, over eight hundred (800) children continued to be detained in municipal adult jails and rural lockups throughout Alaska. Most of these juveniles were detained following their arrest for minor crimes and status offenses. Some of the minor crimes, such as Consumption of Alcohol By A Person Under Age 21, are even defined as status offenses by the U.S. Department of Justice.

In most cases, children are detained in physically separate cells from adult prisoners, but not with complete sight and sound separation as required by law. None of Alaska's adult jails and lockups have separate booking, food service, exercise or visitation areas for children and few have the ability to provide much more than token separation. When separation efforts are made, they often result in solitary confinement for children.

The practice of inappropriately confining children in adult jails is not only against the law, it is also contrary to the safe treatment of children. The national suicide rate of children placed in adult jails is eight times greater than that of children placed in separate juvenile detention centers. When a child is housed in an adult jail, rural lockup or adult correctional facility, their risk of becoming depressed, suicidal, or chance of experiencing emotional, physical and

sexual abuse increases significantly. Jail staff are seldom trained to handle the emotional and family problems of children in crisis. A child often leaves the jail angry and defiant, to act out their rage on the community.

A number of recent cases have been brought before other state and federal courts on the jailing of children. In several of those cases the court has determined that an aggrieved individual has a private right to civil rights action for deprivation caused by a violation of the Juvenile Justice and Delinquency Prevention Act. Litigation against one or more municipal jail or rural lockup and the state for failure to comply with the requirements of the JJDP Act is currently being considered by groups such as Alaska Legal Services Corporation and the American Civil Liberties Union.

#### **WHAT HAS BEEN DONE ABOUT THIS PROBLEM?**

From the time Alaska began participation in the JJDP Act grant program in 1976, federal grant funds have been used for a variety of projects to improve Alaska's juvenile justice system including community work service, restitution, and case management programs. However, until 1988 only two significant JJDP Act compliance strategies were implemented.

The initial strategy was statutory change to Title 47 which redefined acts such as runaway, truancy, and curfew violation so they were no longer delinquent acts which could result in secure detention. The second was to develop a network of secure regional juvenile detention facilities constructed and operated with state general funds. Five facilities are now in operation. They are located at Juneau, Fairbanks, Nome, Bethel and Anchorage. These facilities were costly to build and are expensive to operate. It is not likely this network of juvenile detention facilities will be expanded in the foreseeable future.

Until recently it was believed that the initial and subsequent statutory changes had brought Alaska into full compliance with the requirement to deinstitutionalize status offenders. In 1987 we were informed by federal officials that Alaska's misdemeanor offense of Possession or Consumption By Persons Under The Age Of 21 is defined as a status offense for the purpose of the JJDP Act. At the same time, annual monitoring data showed that a significant number of children were being detained at both adult facilities and regional juvenile detention centers on this offense. The Division of Family and Youth Services immediately stopped these admissions at the regional juvenile detention

centers except when the conditions for the protective custody of an intoxicated person are met. Many adult jails and lockups have continued to book children for drinking alcohol and other status offenses.

The overuse of detention as a mechanism for dealing with juveniles who violate alcohol laws is a continuing problem and one of the primary obstacles in achieving compliance with the JJDP Act. Nearly all of Alaska's violations of the JJDP provision requiring deinstitutionalization of status offenders result from the detention/jailing of youth charged with possession or consumption of alcohol. The vast majority of these youth do not meet the standards for detention required by the Rules of Court or the criteria established by DFYS.

As recently as 1980 only the Anchorage area had a separate juvenile detention center. Children from all other areas of the state were being confined at adult correctional facilities, municipal jails and rural lockups. The five DFYS-operated regional juvenile detention centers now account for about 70% of all juvenile detention admissions and over 95% of juvenile detentions which exceed 48 hours.

Despite significant expenditures to build and operate separate juvenile detention centers, many Alaskan children continue to be jailed in adult facilities. While the majority of the incidents have regularly taken place in only ten or twelve communities, there are over ninety (90) communities with a jail or lockup which may occasionally detain a juvenile. In many cases transporting the juvenile to a regional juvenile detention facility is not practical for the arresting law enforcement agency. In other cases, detention of a juvenile is a short term convenience but not a necessity to protect either the child or the public.

Construction of costly juvenile detention centers in every Alaska community with a history of jailing children is not a realistic solution to this problem. If Alaska is to stop putting its children in jails, other alternatives must be created.

Beginning in 1988 the Division of Family and Youth Services began to develop and implement some creative and moderately priced solutions. However, the efforts of only one participating agency of the Alaska juvenile justice system will not be sufficient to overcome decades of past practice by it and the many other state and community agencies which make up the system.

**PROMISING NEW STRATEGIES:**

In the fall of 1987 the Division of Family and Youth Services made a decision to focus 100% of its JJDP grant receipts on activities directly related to meeting JJDP Act mandates rather than on any other juvenile justice system improvements. Additionally, a full time central office program position was assigned to the compliance effort.

A comprehensive review of successful program models used in other states has been completed. Several proven strategies have been adapted to Alaskan conditions in addition to the ongoing development of home grown ideas. The following components are part of the DFYS plan to end the jailing of children in Alaska.

**Improved Monitoring and Data Collection** - For the first ten years of JJDP Act participation the identified universe of municipal jails, rural lockups, adult correctional facilities, and juvenile detention facilities for monitoring and data collection only identified 14 facilities. While it was clearly obvious that more such facilities existed in Alaska, no effort had been made to identify their location. For years, Alaska had under reported both the number of secure facilities and the number of children detained in those facilities.

In 1988 the Division of Family and Youth Services negotiated an RSA with the University of Alaska Justice Center to develop a comprehensive monitoring plan and prepare monitoring reports for calendar years 1987 and 1988. **Over 100 secure facilities have now been identified.** One-third of these facilities will be inspected each year to verify sight and sound separation of children from adult prisoners. Booking and admission data is collected from each facility, where available, to complete a comprehensive monitoring report. Data from the 1987 report is currently been used for program planning.

Two major data recording deficiencies have surfaced during this monitoring effort. First, many of the 75 rural lockups do not maintain sufficient records to determine age, offense, and duration of confinement. Second, many of the records for 17 municipal jails (those under contract to the Department of Public Safety) do not separate booking records from admission records. On site inspection has revealed that children are often booked at arrest but never placed in the secure area of the jail. These jails keep booking records but not admission records. This

results in over reporting of JJDP Act violations. Efforts are underway to assist these adult facilities in maintaining more accurate records and DFYS anticipates the development of regulations to standardize reporting procedures.

**Non-secure Attendant Care Shelter** - Analysis of the data on juvenile confinement in adult facilities revealed that most children who are jailed could be safely placed in alternative facilities, if they were available. The attendant care shelter concept has been the most successful alternative used by other states. A child placed in an attendant care shelter is supervised on a one-to-one basis by a trained adult attendant until the child can be released to a parent or guardian, taken to court, or transported to a regional juvenile detention facility. Attendant care shelter sites are only operated on an as needed basis with a roster of available on-call attendants. The site itself may be an administrative office, a room in a public building, a foster home, or an apartment, with access to a restroom and minimal accommodations.

Since September 1988 ten (10) non-secure attendant care shelter sites have been established to serve the following 12 communities:

|           |            |          |
|-----------|------------|----------|
| Barrow    | Homer      | Seward   |
| Juneau    | Kenai      | Sitka    |
| Ketchikan | Kodiak     | Valdez   |
| Kotzebue  | Petersburg | Wrangell |

These programs are funded by pass-thru grants using JJDP Act grant revenue. The average cost per program is \$20,000 per year. Four of the programs are operated by local government, five by non-profit social service or mental health agencies and one by a native association. DFYS expects to be able to fund one or two more sites in FY90.

**Secure Modular Holdover** - The availability of a previous capital reappropriation for juvenile detention alternatives in Ketchikan permits DFYS to fund a model secure detention program in that community. A small modular building with two secure rooms is being designed and constructed. The modular unit will be placed at the new Ketchikan health facility and will contain two secure rooms. DFYS will contract with the City of Ketchikan for its operation on an on-call basis similar to a non-secure attendant

care shelter. JJDP grant funds cannot be used to fund secure facilities and this will be the only secure program operated under contract with DFYS. Cost of the modular unit is approximately \$100,000 and annual operating costs are expected to be less than \$50,000. This is significantly less than the cost of a regular regional juvenile detention center. This Ketchikan program will serve as a model for other municipalities who may wish to exercise their statutory authority to operate juvenile detention homes.

**24-Hour Intake** - Since 1984 the Division of Family and Youth Services has used the concept of 24-hour intake screening to reduce unnecessary and inappropriate detentions at the regional juvenile detention centers. Intake probation officers review all requests for detention to determine if secure pre-adjudicatory confinement is necessary. If secure confinement is not necessary, the on-call probation/intake officers arrange for alternative placement. In the DFYS FY91 budget request the Division is seeking funds to expand on-call services to all 13 areas of the state where DFYS has an established local office. These on-call staff will be available to assist local law enforcement agencies in determining if detention or placement is necessary following the arrest of a juvenile and to provide help in obtaining the services of alternative programs. DFYS staff may not, however, authorize placement of a child in any municipal jail or local lockup which does not meet the separation requirements of state statutes or the JJDP Act.

**Transportation and Guard Hire Service** - Some of the children who have historically been placed in adult jails and lockups may require secure custody pending completion of court action. In some cases, the arresting law enforcement agency may not have the ability to promptly transport such a child to a regional juvenile detention center. The Department of Public Safety, DFYS, and local law enforcement agencies have not resolved the issue of providing temporary secure custody and escort services for this group of children. DFYS has proposed an increment in the FY91 budget request to fund contract guard hire and transportation services for those children from rural communities who are already in DFYS custody and in need of secure services. Unarmed guards will supervise these children following arrest and escort them as soon as possible to a regional juvenile detention facility. A mechanism to provide similar services for children who have not already been committed to DFYS custody is yet to be developed. Such a mechanism will require a coordinated agreement

between DFYS, Department of Public Safety, and local law enforcement agencies.

**Incentive Grants** - Unlike many of the other 49 states, juvenile corrections in Alaska is the responsibility of a single state agency rather than a local government responsibility. Local governments in Alaska have been reluctant to assume responsibility to provide care for children other than in a jail or lockup. Most communities look to state government for both the solution and the funding. The solutions proposed by DFYS may not address the unique needs of every community. DFYS has proposed a FY91 general fund increment to establish incentive grants to assist up to seven communities in developing their own unique, appropriate and practical solutions to this problem.

**Public and Targeted Education Campaign** - Few Alaskans are aware of the pervasive problem of jailing Alaska's children. Many members of the juvenile justice system do not understand the legal implications of jailing children or the potential harm from that practice. Developing a more wide-spread awareness of the problem is critical to its eventual solution. In the summer of 1989, DFYS sponsored a workshop on jail removal issues which was attended by 12 local law enforcement representatives as well as attendant care shelter grantees, DFYS staff, and members of the State Juvenile Justice Advisory Committee. That workshop included a presentation of the JJDP Act, sessions on the legal liabilities of jailing children presented by a children's rights attorney, and information concerning available alternatives. Following the workshop, several local law enforcement agencies discontinued the practice of detaining children in their local jails.

DFYS is currently contracting with a media consultant to design a multi-media education campaign for presentation throughout Alaska. Products of the campaign will separately target juvenile justice system participants, community leaders, and the general public. Members of the Criminal Justice Working Group will be invited to review the draft materials and offer suggestions prior to completion of the final products. The presentation by the media consultant is scheduled in Juneau for mid-November 1988.

**Regulation in Monitoring of Adult Facilities Which Detain Children** - The Department of Health and Social Services has statutory authority to inspect and regulate all facilities where

juveniles are detained, including municipal jails and local lockups. That authority has never been exercised. During the next 12 to 18 months the Division of Family and Youth Services plans to develop a set of proposed regulations which will address record keeping and conditions of confinement at non-state operated facilities which securely confine children. During the drafting process DFYS will work closely with the Department of Public Safety, Department of Corrections and local government entities which operate jails and lockups.

**Statutory Change** - While strongly recommended by the federal Office of Juvenile Justice and Delinquency Prevention, the Department of Health and Social Services and the Division of Family and Youth Services have been reluctant to propose changes to the Alaska Statutes which would prohibit the confinement of any child in an adult facility. Until a variety of alternatives are available throughout Alaska, such a prohibition would be impractical to enforce. While no such legislation has been proposed, DFYS would support a change to the jurisdictional section of Title 47 which would place alcohol offenses committed by minors under the jurisdiction of the district court and eliminate the penalty of incarceration. Such a change would not only give local communities more control to address the problem of juvenile drinking behavior but would also improve compliance with the JJDP Act.

**Policy Issues** - Successfully resolving the inappropriate confinement of children is beyond the capability of a single state agency such as the Division of Family and Youth Services. Other state agencies as well as local communities must share in the resolution.

*Is state government solely responsible for providing detention services to children? What is the role and responsibility of local government in providing safe secure services for children in crisis? Several communities such as Wrangell and Petersburg have stepped forward to develop local alternatives with the combination of local and state funding. Other communities such as Kodiak and Kotzebue have discontinued placing children in the local jail but have not accepted any local responsibility to create and support alternatives. Without state level policy guidance, local communities will continue to arrive at different conclusions. Should we seek to develop a high-level state policy consensus decision on the issue?*

As various local communities around the state begin to close their jails to the admission of children the question is being raised as to what agency is responsible for the temporary secure custody and transportation of children following arrest. This is a longstanding, unresolved issue. Currently, local law enforcement agencies and local staff of the Department of Public Safety and the Division of Family and Youth Services are floundering for an immediate solution. The Division of Family and Youth Services recommends that discussions be initiated to resolve this issue with the development of an interagency policy consensus.

On April 14, 1989, Governor Steve Cowper issued an executive proclamation acknowledging the dangers of confining children in adult jails and pledging support of executive branch agencies in bringing this practice to a halt.

We urge the Criminal Justice Working Group to take a lead role in this endeavor.

# STATE OF ALASKA



## Executive Proclamation

by  
Steve Cowper, Governor

Confining children in adult jails is not in the best interest of Alaska's children or the public. In 1986 as many as 427 children were detained in adult jails and lockups throughout the state. Alaska statutes prohibit confinement of children in adult jails and lockups unless they are assigned to separate quarters so that they not view or communicate with adult prisoners.

The practice of jailing children with adults often leads to depression or suicide attempts. The risk of those children experiencing emotional, physical and sexual abuse is also increased.

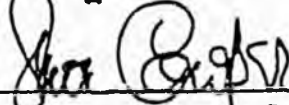
The federal Juvenile Justice Delinquency Prevention Act mandates that states improve their juvenile justice systems by:

1. eliminating the practice of detaining children charged with status offenses;
2. separating children from adults by sight and sound when both are detained in the same jail, lockup, or other correctional facility;
3. identifying and monitoring all facilities which detain children;
4. eliminating the practice of detaining children in any adult jail, lockup, or correctional facility.

NOW, THEREFORE, I, Steve Cowper, Governor of the State of Alaska, do hereby proclaim my support for the Department of Health and Social Services to work with the Departments of Corrections and Public Safety, the public, and municipalities to develop regulations which reduce detention of children in adult facilities, ensure safe and appropriate conditions for children who are detained, and provide for collection and maintenance of accurate records on each youth admitted, detained and released.

DATED: April 14, 1989

Done by —

  
Steve Cowper, Governor,  
who has also authorized  
the seal of the State of  
Alaska to be affixed to  
this proclamation.



**1990 JUVENILE JUSTICE  
AND DELINQUENCY PREVENTION ACT  
COMPLIANCE MONITORING REPORT**



**JUSTICE CENTER**



**University of Alaska Anchorage**

*Juvenile Justice Report*

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# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**