

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
6921 HOUSE JUDICIARY

Representative Donley  
March 1, 1991  
Page 3

Nevada--A victim of sexual assault may move to exclude evidence of victim's address and telephone number if the danger to the victim is greater than the value of the evidence. This does not limit the defendant's right to discover or investigate such evidence.

New Mexico--A victim or witness need not testify to personal information such as telephone number, place of employment, residence, or other personal information unless such information is needed to identify the place of the crime. Motions regarding this information shall be held in camera (and, therefore, not disclosed as public information absent a court order). Communications between victims and victim counselors are confidential, and neither a victim counselor nor a victim may be compelled to provide testimony that would identify the name, address, location or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim.

North Dakota--A victim or witness may not be compelled to testify for purposes of identifying an address, telephone number, place of employment, or other personal identification except for name, without that person's consent, unless there is a showing of good cause as determined by the court. For child victims, names and identifying biographical information may not appear in any public record. Sealed confidential records containing such information must be kept in order to ensure that no defendant is charged twice.

Ohio--At the request of a victim or witness, the names and details of alleged offenses may be suppressed until the preliminary hearing, the accused is arraigned in the court of common pleas, the charge is dismissed, or the case is otherwise concluded, whichever occurs first. This does not intend to deny the name and address of either party to the other.

Oregon--At the request of a victim or witness, the court will order that an address and phone number shall not be given to the defendant without good cause shown to the court. The identity and biographical information concerning both complaining party and the victim is exempt from disclosure while there is a clear need to delay disclosure. Personal information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, may be permanently exempt from disclosure unless the public interest by clear and convincing evidence requires such disclosure. The burden of proof is on the party seeking disclosure.

South Carolina--Publishing the name of a victim of criminal sexual conduct is unlawful. This does not apply to publications made by order of court.

South Dakota--Witnesses need not provide addresses in open court unless required by due process or in the interest of justice. Also, at the request of either party, the court shall order that the names of victim and accused and the details of an alleged rape, incest, or other sexual offense be suppressed

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until the accused is arraigned, the charge is dismissed, or the case is otherwise concluded, whichever occurs first.

Texas--The name or address of a victim may not be disclosed by the division of pardons and paroles or the department of corrections without the victim's approval.

Wisconsin--Parties may not elicit addresses or names and addresses of places of employment of victims or victims' family members unless such information is relevant to the action. The news media is urged to use restraint in revealing the identify of child victims or witnesses, especially in sensitive cases.

Wyoming--Prior to the filing of an information or indictment, the names and other identifying information of an alleged perpetrator and victim of a sexual assault shall not be released or negligently allowed to be released to the public (except as authorized by the judge or justice with jurisdiction over the criminal charges). After the filing and upon the request of a minor victim or representative of a minor victim, the trial court may restrict the disclosure or publication of identifying information.

Copies of these statutes are included in Attachment B. Attachment C is "Victim and Witness Address Confidentiality," a chapter from *Victims of Crime: Proposed Model Legislation*, developed by the National Association of Attorneys General (Crime Victims Project) and the American Bar Association (Criminal Justice Section, Victim Witness Project) with funding by the U.S. Department of Justice following recommendations of the President's Task Force on Victims of Crime. Along with the model legislation is an extensive commentary on the issue in all of its parts.

I hope that you find this information useful for your purposes. If you have questions or need further information, please call.

Attachments

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

RECEIVED ... 1991

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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

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

March 5, 1991

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

Re: HB 100 (Rights of Victims of Crimes)

Dear Representative Donley:

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

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

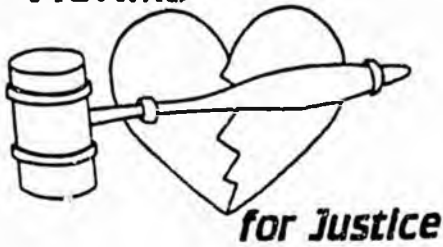
Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By: \_\_\_\_\_

*Margot O. Khuth*  
Margot O. Khuth  
Assistant Attorney General

MOK:ma

**VICTIMS**

March 19, 1991

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

Dear Representative Donley,

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

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

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

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

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

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

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

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

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

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

Thank you for your hard work.

Sincerely,

*Janice Lienhart*

*Sharon Nahorney*  
Janice Lienhart  
Sharon Nahorney

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2629

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

### MEMORANDUM

March 20, 1991

**SUBJECT:** Sectional analysis of CSHB 100 ( )

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

**FROM:** John B. Gaguine *JBG*  
Legislative Counsel

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

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

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

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

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

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

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

*Sectional Analysis*

Representative Dave Donley  
March 20, 1991  
Page 2

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

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

Section 15 makes a technical change, relocating a definition.

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

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

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

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

JBG:lmb:pl  
91-090.lmb

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

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


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

## MEMORANDUM

TO: All Members  
HESS Committee

FROM: Representative Dave Donley 

RE: /HB 101 - Public Support

DATE: March 20, 1991

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

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

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

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

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

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

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

DD:lc



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

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

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

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LABOR AND COMMERCE COMMITTEE

## MEMORANDUM

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

FROM: Representative Dave Donley *D*

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

DATE: March 21, 1991

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

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

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

DD:lc



# Alaska Association Chiefs of Police



March 21, 1991

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

Dear Representative Donley,

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

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

Sincerely,

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

LETTERS OF SUPPORT

**COPY**

M E M O R A N D U M

TO: Gayle Horetski, Department of Public Safety  
Carl Nickel, Department of Corrections

FROM: Representative Dave Donley

DATE: March 13, 1991

RE: Providing Victims with Photos of Violent Offenders  
After Release from Custody

---

The Sentencing Commission recently made a presentation to a joint meeting of the Senate and House Judiciary Committees. During the meeting, I raised several questions related to the concerns of victims. One of my questions was whether it would be a good idea to allow victims of violent crime to obtain a photograph of the defendant who injured them at the time that the defendant is released from custody. Because a defendant's appearance may change during incarceration, providing victims with a recent photograph would allow them to more easily avoid contact with the defendant.

Please advise me as to whether you would support legislation that required the Department of Corrections to provide a victim, upon request, with a recent photograph of a defendant who is being released from custody. If you would not support this type of legislation, please provide me with a written explanation of the reasons that you would object to the legislation.

Thank you in advance for your attention to this matter.

DD:lc

# STATE OF ALASKA

## DEPARTMENT OF CORRECTIONS

RECEIVED MAR 21 1991

WALTER J. HICKEL, GOVERNOR

REPLY TO:

P.O. BOX 7  
JUNEAU, ALASKA 99811-2000  
PHONE (907) 465-3376

March 19, 1991

The Honorable Rep. Dave Donley  
Chair, House Judiciary Committee  
PO Box V, Juneau, AK 99811

Dear Rep. Donley:

Thank you for the opportunity to comment on proposed legislation regarding the provision of photographs to victims. I think it has merit.

I would, however, suggest a formal application be a part of the victim receiving a current photo. This gives them an option. It is conceivable a victim has moved and/or changed identity and the receipt of an unwanted photo may needlessly trigger thoughts that he or she has been able to suppress through the passage of time.

I think you should also know that there is a potential fiscal impact upon Corrections. Not all facilities are equipped with cameras suitable for taking current photos because some do not have "booking" responsibilities.

Again, thank you for the opportunity to comment.

Sincerely,

*Lloyd Hames*  
by *LED*

Lloyd Hames  
Commissioner

# MEMORANDUM

# State of Alaska

TO: Representative Dave Donley  
Alaska State Legislature

DATE: March 19, 1991

FILE NO:

TELEPHONE NO: 465-4322

*G.A.H.*  
FROM: Gayle A. Horetski  
Deputy Commissioner  
Department of Public Safety

SUBJECT: Providing Victims  
with Photos of  
Violent Offenders

In your memorandum of March 13, you asked the Department of Public Safety's position on legislation you are considering that would require the Department of Corrections to provide to victims of violent crime, upon request, a recent photograph of the convicted assailant upon release from custody. You noted that "because a defendant's appearance may change during incarceration, providing victims with a recent photograph would allow them to more easily avoid contact with the defendant."

I have discussed your suggestion with Commissioner Richard Burton, and he has asked me to advise you that the department would be supportive of such legislation, for the reasons stated in your memo. It may be that many, perhaps most, victims would not care to be reminded of the assault by receiving a photo of the convicted offender. But if such an option would be useful, or provide an added sense of security for even a few victims, it would probably be worth whatever administrative burdens the new law would impose.

cc: Carl Nickel  
Department of Corrections

Dean Guaneli  
Department of Law

Lori Nottingham  
Legislative Staff Assistant  
Office of the Governor

BILL NO: HB 100

DATE: 3/22/91

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

CONTACT: Gayle A. Horetski  
Deputy Commissioner  
465-4322

DEPARTMENT OF  
PUBLIC SAFETY  
POSITION PAPER

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

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

AS 11.41.455 Unlawful Exploitation of a Minor (using a child under 18 to produce pornography);

AS 11.46.300-310 Burglary in any degree;

AS 11.46.400-410 Arson in any degree;

AS 11.46.480-484 Felony Criminal Mischief (includes intentional damage to an oil pipeline, airplane, or helicopter, and tampering with food or drugs);

AS 11.51.100 Endangering the Welfare of a Minor (intentionally deserting a young child under circumstances creating a substantial risk of physical injury to the child);

AS 11.56.300-320 Felony Escape;

AS 11.56.510 Interference with Official Proceedings (includes using force to influence or retaliate against a witness or juror); and

AS 11.66.110 Promoting Prostitution in the First Degree (includes using force to induce a person to engage in prostitution).

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

Richard L. Burton  
Commissioner

D.O. P.S. Position PAPER

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

3111 "C" STREET, SUITE 450  
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## SPONSOR STATEMENT


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

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

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

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



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

*SPONSOR STATEMENT*

**POSITION PAPER**

**HOUSE BILL NO. 100**

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

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

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

**BACKGROUND**

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

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

HB100  
Rights of Victims  
Page 2

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

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

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

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

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

HB100  
Rights of Victims  
Page 3

**BILL ANALYSIS**

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

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

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

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

**DEPARTMENTS POSITION**

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

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

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

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

HB100  
Rights of Victims  
Page 4

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

Date: 3/22/91

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

Date: 23 March 1991

# CRIMINAL RULES

## Rule 32

shall appoint one of the administrative head of his or her office shall serve as repository for all papers and cases submitted to the sen-

ating attorney and the in a timely fashion a challenge if not the judge on the sentencing AS 22.20.022 and Rule 25 Criminal Procedure. In the sentencing panel is the finding under subsection ge shall be automatically

nel shall either sentence the case to the court within 60 the case was transmitted to sentencing panel shall pro- of its findings and conclu- sion remanding a case to the

panel elects to take testi- mony under AS 12.55.175 and the defendant present in court during the trial shall have the right to appear personally before sen- tencing proceedings shall be held in a convenient place for the parties and by the sentencing panel.

sentencing panel imposes a sentence, proceedings relating to a sentence under Criminal Rule 35(a) shall be heard by a three-judge panel sitting in open court for decision. All other matters shall be assigned to the referring judge. The referring judge may refer the matter to the three-judge panel. The referring judge may refer the matter to the three-judge panel to impose, except that the referring judge may reduce a sentence imposed

8) The right to bail of a convicted defendant is neither conferred nor enlarged by this rule.

(f) **Transcript of Sentencing Proceeding.** A transcript of any sentencing proceeding at which the defendant is committed to serve in excess of 6 months on one or more charges shall be prepared and furnished to the state attorney, defendant, and the Alaska Parole Board.

(g) **Written Statement Submitted by Victim or Victim's Representative.** If a written statement is prepared and submitted by the victim of a felony offense or a domestic violence assault under AS 12.55.023, the trial court:

(1) shall take the content of the written statement into consideration:

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

(B) when considering the need for restitution under AS 12.55.045; and

(2) may take the content of the written statement into consideration in any other circumstances that the court believes necessary.

(h) In (g) of this rule,

(1) "domestic violence assault" has the meaning given in AS 12.61.900; and

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

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by Amendment No. 5 to SCO 157 effective July 1, 1974; by SCO 330 effective January 1, 1979; by SCO 418 effective August 1, 1980; by SCO 436 effective October 21, 1980; by SCO 437 effective October 21, 1980; by SCO 550 effective February 1, 1983; by SCO 554 effective April 4, 1983; by SCO 603 effective September 14, 1984; by SCO 976 effective January 15, 1990; by SCO 979 effective August 28, 1989; by SCO 1028 effective July 15, 1990; and by SCO 1049 effective January 15, 1991)

NOTE: Paragraphs (g) and (h) were added by ch. 59, § 27, SLA 1989. Subparagraph (d)(1) was amended by ch. 59 § 26, SLA 1989.

(p) "Probation" means releasing the juvenile into the community subject to conditions set by the court and under the supervision of a probation officer.

(q) "Temporary Detention Hearing" is a proceeding in which the court determines the conditions concerning placement of the juvenile pending the adjudication and disposition hearings.

(SCO 845 effective August 15, 1987)

#### Cross References

CROSS REFERENCES: AS 47.10.080(b), AS 47.10.084, AS 47.10.110, AS 47.20.290, AS 25.20.010.

### Rule 3. Hearings.

(a) **Notice.** Notice of each hearing must be given to all parties within a reasonable time before the hearing.

(b) **Presence of Juvenile and Other Parties.** The presence of the juvenile is required unless the juvenile:

(1) waives the right to be present and the juvenile's presence is excused by the court; or

(2) engages in conduct which justifies exclusion from the courtroom.

The presence of the parent or guardian is preferred, but not required unless the court so orders.

(c) **General Public Excluded.** Hearings are not open to the public unless requested by the juvenile. However, the court may, after due consideration for the welfare of the juvenile and the interests of the public, admit specific individuals to a hearing.

(d) **Exclusion of Witnesses.** Witnesses may be excluded from a hearing pursuant to Evidence Rule 615.

(e) **Telephonic Participation.**

(1) The juvenile has the right to be physically present in court. However, the court has discretion to allow telephonic participation by other parties.

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(g) **Representation by Non-Attorney.** A pro se ad litem need not be represented by an attorney unless the court, for good cause, requires representation by an attorney.

(SCO 845 effective August 15, 1987; amended SCO 998 effective January 15, 1990)

#### Cross References

CROSS REFERENCE: AS 47.10.070.

#### Annotations

##### Cases

This annotation construes former Children's Rule 12. Following criminal proceedings, collateral legal disabilities from the sentence, an appeal is not mooted even though the sentence has already been served. *E.J. v. State*, Op. No. 628, 471 P2d 367 (Alaska 1970).

This annotation construes former Children's Rule 12. If a child has been declared delinquent without the necessary compliance with statutory and constitutional procedural requirements, such child has been deprived of his constitutional rights. If attendant collateral disabilities remain, the proceedings are infected with those disabilities cannot stand. *E. J. v. State*, Op. No. 628, 471 P2d 367 (Alaska 1970).

This annotation construes former Children's Rule 12. The provision of this rule providing for closed proceedings is interpreted and applied in a manner consistent with the right to a public trial. *RLR v. State*, Op. No. 706, 487 P2d 27 (Alaska 1971).

This annotation construes former Children's Rule 12. If a child or his guardian ad litem wants the press, friends or others to attend juvenile proceedings, the hearing must be open. The court's areas of discretion within which it may refuse to hold a hearing involves persons whose presence is not desired by the court. *RLR v. State*, Op. No. 706, 487 P2d 27 (Alaska 1971).

This annotation construes former Children's Rule 12. The court did not abuse its discretion in permitting two juvenile murder victims to attend a juvenile waiver hearing. It is not to be determined whether juvenile could be tried as an adult for the same offense. *W.M.F. v. Jonstone*, Op. No. 571, 711 P2d 1187 (Alaska 1971).

This annotation construes former Children's Rule 12. In a hearing in which a chemist testifies that a tablet sent to him for analysis contains LSD should not be conducted in the absence of the chemist involved after the attorney explicitly refuses to waive the right to be present. Conducting a hearing in the absence of the chemist under such circumstances is reversible error. *RLR v. State*, Op. No. 706, 487 P2d 27 (Alaska 1971).

This annotation construes former Children's Rule 12. The court's application of benevolent protective policies for children cannot

may consider only the specific situations set out in the petition. In re S. D. Jr., Op. No. 1255, 549 P2d 1190 (Alaska 1976).

This annotation construes former Children's Rule 12. Court committed error when it commenced the adjudicative phase of the parental rights termination hearing in the absence of the child's counsel and guardian ad litem. Matter of C.L.T., Op. No. 1866, 597 P2d 518 (Alaska 1979).

This annotation construes former Children's Rule 12. Superior court did not abuse its discretion in permitting two relatives of murder victims to attend a juvenile waiver hearing held to determine whether juvenile could be tried as an adult for the murders. W.M.F. v. Jonstone, Op. No. 571, 711 P2d 1187 (Alaska App. 1986).

## PART VIII. DISPOSITION

### Rule 22. Reports in Aid of Disposition.

#### (a) Predisposition Report.

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

(2) The predisposition report must be made available to the persons entitled to it at least ten days before the disposition hearing unless the parties agree to a different period and this agreement is approved by the court. A predisposition report which is submitted to the court prior to the adjudication hearing must be kept sealed until the adjudication hearing is completed.

(b) **Supplementary Material.** The court may order mental and physical examinations of the juvenile, studies of the home of any person with whom the juvenile might be placed by the court, and may provide for any other reports to aid in disposition. Parties may prepare and submit their own reports in aid of disposition. All such materials must be made available to the persons entitled to receive them at a reasonable time prior to disposition.

(c) **Disclosure of Reports.** Unless otherwise ordered, copies of predisposition reports and supplementary materials must be given to all parties. Any party may move to withhold all or part of a report from the juvenile or the juvenile's parents or guardian if disclosure would be likely to cause serious psychological harm to the juvenile or the family relationship. The court shall inspect the reports in camera prior to entering such a limitation on disclosure and a limitation does not bar an attorney's access to the material withheld. The court may

the attorney to his or her client.

(SCO 845 effective August 15, 1987)

### Rule 23. Disposition.

(a) **Nature and Timing of the Hearing.** The purpose of a disposition hearing is to determine the appropriate disposition of a juvenile who has been adjudicated a delinquent. The disposition hearing may not be held before adequate information is available upon which to enter an informed disposition order. If the disposition is not held immediately following the adjudication, the court shall set a time for the disposition hearing, which will be held without unreasonable delay, and shall order a predisposition report and other studies, examinations or reports under Delinquency Rule 22 which are necessary for an informed disposition. The juvenile, with approval of the court, may waive the preparation and submission of a predisposition report.

(b) **Statements.** The court shall allow the parties an opportunity to make a statement and to offer evidence in aid of disposition before entering a disposition order.

(c) **Findings.** A disposition order must be accompanied by findings of fact supporting the disposition ordered.

(d) **Order.** In its disposition order, the court shall order the least restrictive alternative disposition under AS 47.10.080(b) that addresses the juvenile's treatment needs and protects the public.

(e) **Release by Department.** The Department shall notify the court in writing when the Department releases a juvenile from institutionalization without court order.

(SCO 845 effective August 15, 1987)

#### Annotations

##### Cases

Findings of fact contained in nonfinal "Order of termination", which findings were not later changed satisfied the requirement of former Children's Rule 22(d) that court provide written findings of fact supporting the judgment. Matter of C.L.T., Op. No. 1366, 597 P2d 518 (Alaska 1979).

This annotation construes former Children's Rule 12. Trial judge's discretion in not holding a disposition hearing under this rule must be narrowly defined. I.C. v. State, Op. No. 2277, 625 P2d 839 (Alaska 1981).

The trial judge must consider and reject less restrictive alternatives using a preponderance standard prior to imposing more restrictive treatment alternatives. P.R.J. v. State, Op. No. 1015, 787 P2d 123 (Alaska App. 1989).

Placement of juvenile who had a history of running away, in a detention facility was the least restrictive placement alternative available. P.R.J. v. State, Op. No. 1015, 787 P2d 123 (Alaska App. 1989).

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amendment).

As children are guaranteed the right to a public trial by the Alaska Constitution. *RLR v. State*, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

Due process requires that children have the right to a public trial by jury where they are charged with acts which would be a crime if committed by an adult. *Doe v. State*, 487 P.2d 47 (Alaska 1971) (decided prior to 1972 amendment).

The fundamental constitutional right of public trial by jury must be afforded children in delinquency adjudication proceed-

1972 amendment).

Delinquency must be proved beyond a reasonable doubt under the due process clause of the 14th amendment. *RLR v. State*, 487 P.2d 27 (Alaska 1971) (decided prior to 1972 amendment).

"Compatible". — In the absence of contrary authority, it is appropriate to accord the word "compatible" its usual meaning. *W.M.F. v. Johnstone*, 711 P.2d 1187 (Alaska Ct. App. 1986).

Cited in *In re P.N.*, 533 P.2d 13 (Alaska 1975); *M.O.W. v. State*, 645 P.2d 1229 (Alaska Ct. App. 1982).

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Collateral references. — Power of juvenile court to require testimony by children. 151 ALR 1229.

Applicability of rules of evidence in ju-

venile delinquency proceedings. 43 ALR2d 1128.

Degree of proof in juvenile delinquency proceedings. 43 ALR2d 1138.

**Sec. 47.10.072. Access to hearing by victim.** (a) If a crime was committed by a minor who is scheduled for a hearing under AS 47.10.070, the victim may request from the court permission to attend the hearing. If the victim requests, the department shall provide technical assistance to the victim in preparing a written submission to the court requesting access to the hearing. The department shall make reasonable efforts to inform victims of the availability of this assistance.

(b) If more than one person who qualifies as a victim under AS 12.55.185 makes a request, the commissioner of health and social services shall designate one person for purposes of receiving the notice and exercising the rights granted by this section.

(c) In this section, "victim" has the meaning given in AS 12.55.185. (§ 24 ch 59 SLA 1989)

**Sec. 47.10.075. Young adult advisory panels.** (a) Unless the minor objects, the court may select a young adult advisory panel to hear the case and advise the court of a recommended judgment and order. The court may consider any of the panel recommendations in making its judgment and order in the case.

## More rights for victims

On Oct. 5, 1989, the lives of both my family and myself drastically and irreparably changed. That was the day my father, my brother-in-law and I found my murdered brother's body in a closet in his south Anchorage home. Since that time, we have had one agonizing lesson after another regarding our judicial and legislative systems. The man (and I refuse to use the word "boy") who murdered my brother was a juvenile. He was 16 years old when he forced his way into my brother's house to steal his car keys. He ended up shooting Duane three times with a .357 Magnum.

Current laws say that the prosecution (the DA) must prove that a juvenile cannot be rehabilitated before his 20th birthday. If the DA cannot prove this, the offender is sent to McLaughlin Youth Center until he turns 20, at which time he is released. In our case, the DA won the case, and the murderer should have to stand trial as an adult. The public defenders, however, appealed this decision to the Court of Appeals by saying that when the young man confessed to police, his parents weren't there, so the confession should not be allowed as evidence. The Court of Appeals has not made a ruling yet on this motion.

Currently, there is legislation being introduced to the House of Representatives that would, among other things, put the burden of proof in juvenile crimes such as murder on the side of the defense. The accused criminals would automatically be tried as adults unless they could prove that they could be rehabilitated by age 20. This gives more rights to the victims of crimes, where they belong, and



less to the criminals.

Please send a Public Opinion Message (POM) to the legislators from your district and to the Health and Social Services committee. To send a POM, call the Legislative Information Office at 561-7007. Tell the committees that you support House Bills ~~101, 102, 103~~. These bills all deal with victims' rights and work on giving more rights to the victims. Please call; you can make a difference.

— Ralph Samuels

HB 100  
101  
103

## Advocate victims' rights

Dear Editor:

My life and the lives of my family members were drastically and irreparably changed on Oct. 5, 1989 — the day my father, my brother-in-law and I found my murdered brother's body in a closet in his South Anchorage home. Duane had been shot three times with a .357-caliber magnum.

Since that time, we have had one agonizing lesson after another on our judicial and legislative systems. The man — and I refuse to use the word "boy" — who is accused of murdering my brother was 16 years old at the time of the murder.

Current laws say the prosecution — the district attorney — must prove that a juvenile cannot be rehabilitated before his 20th birthday. If the district attorney cannot prove this, the offender is sent to McLaughlin Youth Center until he turns 20, at which time he is released. In our case, the district attorney won the case and the accused should have had to stand trial as an adult. The public defenders, however, appealed this decision to the Court of Appeals, saying that when the young man confessed to police his parents weren't there, so the confession should not be allowed as evidence. The Court of Appeals has not made a ruling yet on this motion.

Currently, there is legislation being introduced to the House of Representatives that would, among other things, put the burden of proof in juvenile crimes such as murder on the side of the defense. The criminals would automatically be tried as adults unless they could prove that they could be rehabilitated by age 20. This gives more rights to the victims of crimes, where they belong, and less to the criminals.

If anyone has ever said to a crime victim, "If there is anything I can do, just call" — I am calling. Please send a "public opinion message" to the legislators from your district and to the Health and Social Services Committee. To send a message, you need only call the Legislative Information Office at 551-7007 for further instructions. In the message, tell the committee that you support House Bills 100, 101 and 103. These bills all deal with victims' rights and work on giving more rights to the victims. Please call. You can make a difference.

Ralph Samuels  
Anchorage

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



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# Children in Custody, 1975-85

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

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

Reason held	Number of juveniles in:								
	All facilities			Public facilities			Private facilities		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Total	83,402	66,393	17,009	49,322	42,549	6,773	34,080	23,844	10,236
Juveniles detained or committed for:									
Delinquent acts <sup>a</sup>	57,743	51,001	6,742	46,086	40,929	5,157	11,657	10,072	1,585
Violent offenses	14,093	12,858	1,235	12,245	11,214	1,031	1,848	1,844	204
Murder, nonnegligent manslaughter, forcible rape, robbery, and aggravated assault	9,466	8,840	626	8,656	8,096	560	810	744	66
Negligent manslaughter, simple assault, and sexual assault	4,627	4,018	609	3,589	3,118	471	1,038	900	138
Property offenses	27,918	25,230	2,688	22,020	19,978	2,042	5,898	5,252	646
Burglary, arson, larceny-theft, and motor vehicle theft	19,312	17,882	1,430	16,129	14,948	1,181	3,183	2,934	249
Vandalism, forgery, counterfeiting, fraud, stolen property, and unauthorized use of a motor vehicle	8,606	7,348	1,258	5,891	5,030	861	2,715	2,318	397
Alcohol/drug offenses	3,358	2,902	454	2,660	2,319	341	696	583	113
Public-order offenses and probation violations	7,147	5,651	1,496	6,493	5,157	1,336	654	494	160
All other offenses <sup>b</sup>	5,229	4,360	869	2,668	2,261	407	2,561	2,099	462
Nondelinquent reasons	25,451	15,248	10,203	3,104	1,519	1,585	22,347	13,729	8,618
Status offenders <sup>c</sup>	9,019	5,092	3,927	2,293	1,096	1,197	6,726	3,996	2,730
Nonoffenders <sup>d</sup>	9,280	5,646	3,634	512	263	249	8,768	5,383	3,385
Voluntary admissions	7,152	4,510	2,642	399	160	139	6,853	4,350	2,503
Other <sup>e</sup>	208	144	64	132	101	31	76	43	33

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

<sup>a</sup>Acts that would be criminal if committed by adults.

<sup>b</sup>Includes unknown and unspecified

delinquent offenses.

<sup>c</sup>Acts that would not be criminal for adults, such as running away, truancy, and incorrigibility.

<sup>d</sup>Those held for dependency, neglect,

abuse, emotional disturbance, or mental retardation.

<sup>e</sup>Includes all other unspecified acts.

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

Type of crime and race and age of victims	Total	Percent of victimizations involving:				Race not known not ascertained
		All white offenders	All black offenders	All other race offenders	Offenders of different races	
<b>White victims</b>						
Crimes of violence*	100%	78%	15%	4%	3%	2%
12-19 years old	108	71	20	4	2	4
20 and older						
Robbery						
12-19 years old	100	49	38	5	6	—
20 and older	100	41	46	5	4	4
Aggravated assault						
12-19 years old	100	76	12	6	2	4
20 and older	100	75	15	3	2	5
Simple assault						
12-19 years old	100	83	10	3	2	2
20 and older	100	79	14	3	1	3
<b>Black victims</b>						
Crimes of violence*						
12-19 years old	100	11	83	2	2	3
20 and older	100	13	78	2	3	5
Robbery						
12-19 years old	100	8	86	—	—	—
20 and older	100	9	80	—	4	6
Aggravated assault						
12-19 years old	100	9	86	—	—	—
20 and older	100	14	76	2	3	5
Simple assault						
12-19 years old	100	14	79	—	—	—
20 and older	100	14	78	—	—	4

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

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

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

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

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

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

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

## Introduction

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

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

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

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

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

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

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

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

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

## Victimization rates

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

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

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

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

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

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

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

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

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

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

## HB 100 VICTIM'S RIGHTS

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

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

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

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

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

AK Network on Dom. Violence Position Paper

HB100  
Page Two

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

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

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

COMPONENT SERIAL NO. 

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact None

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

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

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

STATE OF ALASKA  
 1991 LEGISLATIVE SESSION

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

		8	9
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9 3

Expenditures/Revenues: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

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

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 100

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

First, AS 09.55 would be amended to add a new section that allows a victim to recover treble damages in a civil action against an offender for injury or damage resulting from a violent crime. In addition to the usual definitions of violent crimes, the bill also includes driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is intoxicated, within the meaning of violent crime. A victim who prevails under this section would be entitled to recover full reasonable attorney fees. These provisions deal with litigation between private parties and will not have a fiscal impact on the Department of Law.

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

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

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

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 100

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "An Act relating to the rights of victims of crime..." BRU: Prosecution/Legal Services  
 Sponsor: Representative Donley Component: Prosecution/Criminal Justice Litigation  
 Requestor: House Judiciary Legal Services/Operations

COMPONENT SERIAL NO. 

		8	9
		9	3

Expenditures/Revenues: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

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

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

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 100

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

First, AS 09.55 would be amended to add a new section that allows a victim to recover treble damages in a civil action against an offender for injury or damage resulting from a violent crime. In addition to the usual definitions of violent crimes, the bill also includes driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is intoxicated, within the meaning of violent crime. A victim who prevails under this section would be entitled to recover full reasonable attorney fees. These provisions deal with litigation between private parties and will not have a fiscal impact on the Department of Law.

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

# FISCAL NOTE

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO. CSHB100**

Revision Date: \_\_\_\_\_ Dept. Affected Health and Social Services  
 Title: An Act relating to the rights of victims... BRU: Youth Services  
 Component: Probation Services  
 Sponsor: Representative Donley  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0269

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
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>
<b>CAPITAL</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>
<b>REVENUE</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>

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
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	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)

This bill would make amendments to the code of civil procedure and code of criminal procedure, none of which would impact this department. It also would amend Title 47 to enlarge the opportunities for victims to attend delinquency hearings and to require that victim impact statements be included in predisposition reports prepared by juvenile probation officers. Unless the Department is required to provide for some special form of notice of hearings to victims the Department would incur no additional cost as a result of

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

Phone: 465-3170  
 Date: 4/3/91  
 Date: 4/3/91

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

**ANALYSIS (cont.):**

this legislation. Procedures have already been established to inform victims of the opportunity to submit victim impact statements and to include those statements in predisposition reports. This bill would not add responsibilities or cost to those the Department has already assumed.

# FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSHB101

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

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES						
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>
<b>CAPITAL</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>
<b>REVENUE</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>

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
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	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:

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

The zero fiscal note assumes that waived minors will be housed in secure facilities operated by the Department of Corrections

Prepared by: Michael L. Price, Director *M. L. Price* Phone: 465-3170  
 Division: Division of Family and Youth Services Date: \_\_\_\_\_

Approved by Commissioner: Theodore A. Mala, MD, MPH *Tom Berger* Date: 4-5-91  
 Agency: Department of Health and Social Services

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

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 4, 1991

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 3-25-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 100

HOUSE BILL NO. 100

VICTIMS' RIGHTS

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

**RECOMMENDATIONS:**

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

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

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

zero fiscal note(s) \_\_\_\_\_

**SIGNING D PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

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

*[Signature]*  
Chairman's Signature

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 26, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-5-91

The JUDICIARY Committee considered:

HB 100

HOUSE BILL NO. 100

VICTIMS' RIGHTS

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

RECOMMENDATIONS:

be replaced with CSHB 100 (Jud)  the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note H 155

zero fiscal note(s) Dept. Law 3-26-91  
Public Safety 3-26-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Terry Martin</i>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Kevin Pad Parnell</i>	<input checked="" type="checkbox"/>				
<i>Doreen Donley</i>	<input checked="" type="checkbox"/>				
<i>Mark Hanley</i>	<input checked="" type="checkbox"/>				

*Doreen Donley*  
CHAIRMAN'S SIGNATURE

HB

101

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO

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

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

February 26, 1991

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

Re: HB 101 (Criminal Charges Brought Against Minors)

Dear Representative Donley:

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

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

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

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

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

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

Add at page 2, line 13:

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

....

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

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

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

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

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

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

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

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

At page 2, line 31:

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

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

At page 3, lines 1 and 2:

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

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

Add at page 1, line 14:

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

Add at page 2, line 14:

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

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

The Honorable Dave Donley

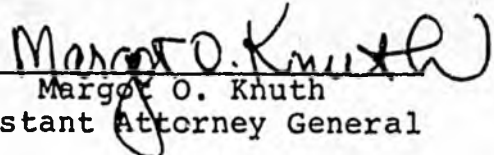
February 26, 1991  
Page 5

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

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By: \_\_\_\_\_

  
Margot O. Knuth  
Assistant Attorney General

MOK:mm-025

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO

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

March 19, 1991

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

Re: HB 101 (Criminal Charges Brought Against Minors)

Dear Representative Donley:

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

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

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By: \_\_\_\_\_

*Margot Knuth*  
Margot O. Knuth  
Assistant Attorney General

MOK:mm-033

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
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JUDICIARY COMMITTEE

VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE

MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

## MEMORANDUM

TO: All Members  
HESS Committee

FROM: Representative Dave Donley 

RE: HB 100/~~101~~ - Public Support

DATE: March 20, 1991

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

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

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

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

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

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

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

DD:lc



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

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

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

### MEMORANDUM

March 20, 1991

**SUBJECT:** Sectional analysis of CSHB 101

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

**FROM:** John B. Gaguine <sup>JBG</sup>  
Legislative Counsel

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

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

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

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

Sectional Analysis of CSHB 101

Representative Dave Donley  
March 20, 1991  
Page 2

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

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

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

JBG:mi:pl  
91-057.mai

# Alaska Association Chiefs of Police



March 21, 1991

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

Dear Representative Donley,

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

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

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

Sincerely,

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

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

Letters of Support

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
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CHAIRMAN  
JUDICIARY COMMITTEE  
VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE  
MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

## MEMORANDUM

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

FROM: Representative Dave Donley *DD*

RE: HB 101 - Prosecution of Juvenile Felons

DATE: March 21, 1991

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

The differences in the two versions of the bill are:

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

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



P.O. BOX

*Summary of changes to CS*

FAX) 463-5661 • 775C

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

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

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

DD:lc

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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

April 4, 1991

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

Re: Position of the Executive Branch on CSHB 101 (HES)  
(Criminal Charges Brought Against Minors)

Dear Representative Donley:

Members of the Departments of Law, Corrections, Public Safety, and Health & Social Services, met yesterday to discuss HB 101. All departments support the concepts addressed by this bill because they make important reforms in the juvenile justice system. We believe, however, that the following amendments should be made to the bill:

First, we suggest that the offense of solicitation to commit murder be added to the offenses of murder in the first degree and attempted murder in the first degree as grounds for shifting the burden of proof on the issue of amenability to treatment to the minor. Unfortunately, minors do commit this offense and it should be addressed.

Second, we recommend that proposed AS 47.10.010(e)(3)(A) be removed from the bill. This is the subsection relating to juveniles "twice adjudicated as a delinquent in this or another jurisdiction as a result of violating a criminal law that would have been a felony under the laws of this state if committed by an adult." We note that the additional number of minors likely to be waived under this subsection would have a significant financial impact on the department of corrections.

Third, we recommend that section 2 be revised to clarify what happens when a minor who was treated as adult under AS 47.10.010(e)-(g) is convicted of a lesser offense than that with which they were originally charged. A minor who was charged with murder in the first degree and who tried and failed to establish amenability to treatment before reaching the age of 20 should continue to be treated as an adult offender even if only convicted of murder in the second degree. On the other hand, a minor who did

The Honorable Dave Donley

April 4, 1991

Page 2

not petition the court for treatment under the delinquency laws when first charged and who is ultimately convicted of a lesser felony offense should be given the opportunity to establish amenability to treatment as a juvenile before being sentenced. Finally, we believe that a minor who is ultimately convicted of only a misdemeanor offense should be treated as a juvenile, rather than as an adult offender.

Fourth, we suggest that the procedures for psychological evaluations made in proposed AS 47.10.010(j) be extended to waiver hearings held under AS 47.10.060. We believe that this type of provision was contemplated by the court in R.H. v. State, 777 P.2d 204, 211 (Alaska App. 1989).

Attached, please find a copy of our proposed amendments to the bill. We appreciate this opportunity for comment.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

LLOYD HAMES,  
COMMISSIONER

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

By: Carl F. Nickel  
Carl Nickel, Special Ass't  
Department of Corrections

Richard L. Burton  
RICHARD L. BURTON,  
COMMISSIONER  
DEP'T OF PUBLIC SAFETY

Theodore A. Mala  
THEODORE A. MALA, MD, MPH,  
COMMISSIONER  
DEP'T HEALTH & SOC. SERVS.

MOK:mm-036

# Alaska State Legislature

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 463-3991  
Fax: (907) 463-3351

May 6, 1991

**DRAFT**

TO: Representative Dave Donley  
FROM: Maureen Weeks <sup>MW</sup>  
Legislative Analyst  
RE: Juvenile Waivers under HB101  
Research Request 91.168(A)

You asked how many juveniles who were charged with unclassified or Class A felonies in Alaska in 1990 would be tried as adult offenders under HB 101 if they could not prove they should be treated as minors.<sup>1</sup>

Computer data from the Division of Family and Youth Services, Alaska Department of Health and Social Services, for 1990 shows a total of 1,374 felony cases, of which 46 are for unclassified or Class A felonies.<sup>2</sup> Six of these fall under the conditions of HB 101.

The six pertinent cases include:

- two first-degree murder charges,
- one second-degree murder charge,
- one first-degree robbery with a prior adjudication for second-degree criminal mischief,
- one first-degree arson with a prior adjudication for first-degree arson, and
- one first-degree sexual assault with prior adjudications for first-degree burglary.

I hope this answers your question. If I can be of further help, please call me.

---

<sup>1</sup>Under HB 101, any juvenile charged with murder or with an unclassified or class A felony who had previously been adjudicated as a delinquent (for an offense which would be a felony if it were committed by an adult) would be tried as an adult, unless the juvenile could prove that he or she would respond sufficiently to treatment to be prosecuted as a minor.

<sup>2</sup>Dan Ashby, Division of Family and Youth Services, draft memorandum, April 29, 1991; and DFYS Youth Corrections Annual Data for CY 1990, March 3, 1991.

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
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REGULATION REVIEW COMMITTEE

MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

## SPONSOR STATEMENT

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

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

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

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

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

DD:lc



P.O. BOX

SPONSOR STATEMENT

FAX) 463-5661



# Alaska State Legislature



## House of Representatives House Judiciary Committee

CHAIRMAN DAVE DONLEY

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990  
(907) 465-4712

### JUDICIARY LETTER OF INTENT

#### CSHB 101 (Judiciary)

It is the intent of the legislature that the Department of Corrections, to the maximum extent possible, take steps to protect juveniles that are in its custody under the provisions of CSHB 101 (Judiciary) and under current law. The legislature further intends that the Department of Corrections consider creating a special unit for sentenced juvenile felons, staffed by officers trained in dealing with adolescent behavior.

  
Chairman Dave Donley

May 6, 1991  
Date

JUDICIARY LETTER OF INTENT

CSHB 101 (Judiciary)

It is the intent of the legislature that the Department of Corrections, to the maximum extent possible, take steps to protect juveniles that are in its custody, ~~both~~ under the provisions of CSHB 101 (Judiciary) and under current law. The legislature further intends that the Department of Corrections consider creating a special unit for sentenced juvenile felons, staffed by officers trained in dealing with adolescent behavior.

M.  
PP

BILL NO: HB 101

DATE: 3/22/91

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

CONTACT: Gayle A. Horetski  
Deputy Commissioner  
465-4322

DEPARTMENT OF  
PUBLIC SAFETY  
POSITION PAPER

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



Richard L. Burton  
Commissioner

DOPS Position Paper

POSITION PAPER

HOUSE BILL 101

Background

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

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

Analysis/Program Impact

The critical issues in structuring a waiver law are:

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

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

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

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

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

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

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

In part, HB 101 attempts to;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENTS POSITION

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

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

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

Micheal L. Price 3/22/91

Micheal L. Price  
Director

Theodore A. Mala, MD, MPH  
Commissioner

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

P.O. Box 'T', Juneau, AK 99801-2000 (907) 466-2070

Carl Nisbel, Legislative Liaison

**HOUSE BILL 101**

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

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

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

The Department does not have a position on this legislation.

FISCAL NOTE:

ZERO  
ATTACHED



APPROVED:

L. H. by Carl F. Nisbel  
Commissioner

DATE:

3-21-91

# FISCAL NOTE

No. 1

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

Bill Version: CSHB 101(HES)

(H) Publish Date: 3/26/91

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

**Expenditures/Revenues**

(Thousands of Dollars)

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

**FUNDING:**

(Thousands of Dollars)

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

**POSITIONS:**

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

Estimate of current year impact:

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

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

Prepared by: Michael L. Price, Director *Michael L. Price*  
 Division: Division of Family and Youth Services

Phone: 465-3170

Date: 3/22/91

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

Date: 3/22/91

Distribution (by preparer):

- Legislative Finance            OMB
- Legislative Sponsor        Impacted Agency(ies)
- Requestor

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**ANALYSIS (cont.):**

Assumptions

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

Program Summary

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

FY 92

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

FY 93

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

Personal Services \$811,00

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

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

**ANALYSIS (cont.):**

Travel \$ 14,200

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

Contractual \$145,000

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

Supplies \$137,000

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

Grants/Claims \$ 50,000

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

FISCAL NOTE  
HB 101  
(page 2 of 3)

Analysis:

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

Assumptions

1. An analysis of arrest data indicates that 40 youth could be arrested annually for offenses subject to presumptive waiver under HB 101.
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Waived minors cannot be housed with other juvenile offenders for two reasons. First, waived minors who have long sentences pose a greater security risk. The physical design and arrangement of a secure facility must meet the needs of this higher risk population. Secondly this population has no incentive to meet behavioral expectations in the same manner as other detained minors, thus dictating completely different programs for each group.

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FISCAL NOTE

No. 2

Bill Version: CSHB 101(HES)

(H) Publish Date: 3/26/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Department Affected: Corrections

Title: "An Act relating to criminal charges brought against minors..."

BRU: \_\_\_\_\_

Component: \_\_\_\_\_

Sponsor: Rep. Donley

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

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

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director *Tom Sutton* Phone: 465-3376

Division: Administrative Services Date: 03-21-91

Approved by Commissioner: \_\_\_\_\_

Agency: Department of Corrections Date: 03-21-91

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

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

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

		8	9
		9	3

Expenditures/Revenues: (Thousands of Dollars)

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

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

REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)  
  
Please see the attached analysis.

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

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

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FN  D.C.L.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 101

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

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

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

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

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

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

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

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