

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7856 HOUSE JUDICIARY

12



Northern Alaska Environmental Center

218 DRIVEWAY
FAIRBANKS, ALASKA 99701
(907) 452 5021

January 29, 1993

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Member of the Legislature:

The Northern Alaska Environmental Center supports the proposed amendment to HB 567 which would repeal AS 46.04.030(p). This draft legislation would delete the requirement for the Alaska Department of Environmental Conservation to approve or disapprove a proposed oil spill contingency plan within 65 days. Deleting this statutory provision would result in improved efficiency of the review process identified in the implementing regulations of 18 AAC 75, and would extend the public comment if needed.

Because of the sensitive nature of this legislation, our support is conditional: if substantive changes or amendments are made to this legislation, we will withdraw our support.

Sincerely,

A handwritten signature in black ink that reads "David van den Berg". The signature is written in a cursive style with a large, sweeping flourish at the end.

David van den Berg
Arctic Issues Director





Resource Development Council

for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
Phone 907/278-0700 Fax 276-3887

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Becky L. Gay

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Senator Ted Stevens

Senator Frank Murkowski

Congressman Don Young

January 22, 1993

Dear Members of the Alaska Legislature:

The Resource Development Council for Alaska, Inc. (RDC) supports the attached draft legislation that would repeal AS 46.04.030(p). This legislation relates to the time period for approval or disapproval of oil discharge prevention and contingency plans. Specifically, it would delete the requirement for the Alaska Department of Environmental Conservation to approve or disapprove a proposed contingency plan within 65 days.

The deletion would allow necessary regulatory changes to be made to resolve the conflicting review requirements which now exist in 18 AAC 75 and 6 AAC 50. This action would result in the improved efficiency of the review process.

RDC urges prompt passage of this legislation as worded. Because of the sensitive nature of the legislation, RDC requests that no substantive changes or amendments be made.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.


Becky Gay
Executive Director



Southeast Alaska Petroleum Resource Organization, Inc.

548 Water Street Suite 202 • Ketchikan, Alaska 99101
(907) 225-7002 • fax (907) 247-1117

January 20, 1983

Steven B. Porter
ARCO Alaska, Inc.
P.O. Box 100360
Anchorage, AK 99516-0360

Dear Mr. Porter,

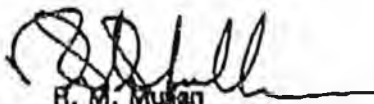
Pursuant to our conversation, and the proposed legislation which you faxed this afternoon, I have polled my Board of Directors and established that SEAPRO supports this legislative proposal as offered.

Many of our member companies have serious concerns regarding ACMP review, especially the extraordinary costs associated with document submission to the numerous coastal jurisdictions where our transient operations may take us. However, the inefficiency of the current plan review process, or lack of process, being utilized by ADEC has been clearly demonstrated to many of our members since August 1982. Clearly, adoption of a more efficient and reasonable review process is necessary.

As offered, the proposed legislation would repeal AS 48.04.030(p). This legislation, if passed, would delete the requirement for the Alaska Department of Environmental Conservation to approve or disapprove oil spill prevention and response contingency plans within 65 days. This deletion will result in the improved efficiency of the implementing regulations in 18AAC75. We urge prompt passage of this legislation. Because of the sensitive nature of the legislation, we request that no substantive changes or amendments be made. If changes are made we will withdraw our support for the legislation.

Please contact me if I can provide any further assistance.

Respectfully,


R. M. Mullan
Manager



Southwest Alaska Municipal Conference

Putting Resources to Work For People

3300 Arctic Blvd., Suite 203 • Anchorage, Alaska 99503 • (907) 562-7380 • FAX (907) 562-0438

RESOLUTION 93 - 01

A RESOLUTION OF THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE IN SUPPORT OF DELETING THE TIME PERIOD FOR APPROVAL OR DISAPPROVAL OF OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS FROM THE OIL AND HAZARDOUS POLLUTION CONTROL STATUTE

WHEREAS, in 1990 the Alaska State Legislature enacted House Bill 567 relating to Oil and Hazardous Pollution Control; and

WHEREAS, one of the provisions of HB 567, AS 46.04.030(p), requires that the Department of Environmental Conservation approve or disapprove a proposed oil discharge prevention and contingency plan within 65 days after it receives a complete application for approval; and

WHEREAS, the Department of Environmental Conservation (DEC) promulgated regulatory revisions pursuant to HB 567; and

WHEREAS, proposed oil discharge prevention and contingency plans must also be reviewed under the Alaska Coastal Management Program (ACMP) regulations; and

WHEREAS, the review provisions of the ACMP regulations and the review provisions of the DEC regulations are in conflict and cannot be reconciled without deleting the 65-day statutory review provision.

NOW, THEREFORE, BE IT RESOLVED, that the Southwest Alaska Municipal Conference supports repealing the 65-day review provision found at AS 46.04.030(p) in order to allow the DEC the opportunity to resolve its regulatory conflicts with the ACMP.

PASSED AND APPROVED BY THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE THIS 24th DAY OF JANUARY, 1993.


Richard G. Wilson, President


Marjeth Sandler, Executive Director

Working for the Nature of Tomorrow.

**NATIONAL WILDLIFE FEDERATION**

750 W. Second Ave., Suite 200, Anchorage, AK 99501 (907) 258-4800

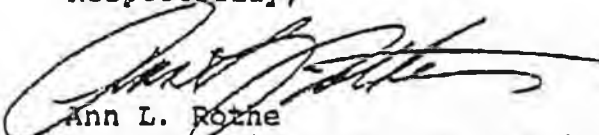
January 26, 1993

Members of the Alaska State Legislature:

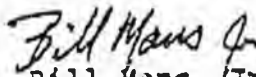
The National Wildlife Federation and the Wildlife Federation of Alaska urge prompt passage of House Bill 99. This bill repeals AS 46.04.030(p) which requires the Alaska Department of Environmental Conservation to approve or disapprove a proposed oil spill contingency plan within 65 days of receipt. Repeal of this statutory requirement would eliminate the conflict that presently exists between this requirement and the review process mandated under the Alaska Coastal Management Program (18 AAC 75 and 6 AAC 50.)

Please be aware that we support passage of this bill only so long as no substantive changes or amendments are made.

Respectfully,



Ann L. Rothe
Alaska Regional Representative
National Wildlife Federation



Bill Mans, Jr.
President
Wildlife Federation of Alaska



"The mission of the Council is to ensure the safe operation of the oil terminals, tankers, and facilities in Cook Inlet so that environmental impacts associated with the oil industry are minimized."

RECEIVED
FEB 16 1993

Jeff

February 8, 1993

The Honorable Ramona Barnes
Speaker of the House
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Barnes:

Cook Inlet Regional Citizens' Advisory Council (Cook Inlet RCAC) recommends the legislature seriously consider enactment of HB99, Repealing 65 Day Time Limit Approval/Disapproval of Contingency Plans, which would repeal AS 46.04.030(p). This legislation, if passed, would delete the requirement for the Alaska Department of Environmental Conservation to approve or disapprove a proposed contingency plan within 65 days. This deletion will result in the improved efficiency of the review process identified in the implementing regulations (18 AAC 75).

Cook Inlet RCAC would recommend prompt passage of this legislation. If the Alaska State Legislature feels there is a need for substantive modifications to the proposed legislation then Cook Inlet RCAC would withdraw the recommendation for adoption of this legislation.

Should you have any questions please feel free to contact me or Lisa Parker, Executive Director, at 907-283-7222.

Sincerely yours,

Jack Brown
Jack Brown
President

cc: Representative Joe Green, Chair, House Special Committee on Oil & Gas
Cook Inlet RCAC Board of Directors
Charter Funding Companies
Mr. Larry Smith

Cook Inlet Regional Citizens Advisory Council

11355 Frontage Rd. • Suite 228 • Kenai, Alaska 99611 • (907) 283-7222 • FAX (907) 283-6102



A HARBOR ENTERPRISES COMPANY

1800 A Street, Suite 307 • Anchorage, Alaska 99503 • (907) 278-7686

Seeward
224-8150

January 26, 1993

The Honorable Rick Halford
President, Alaska State Senate
Alaska State Capitol
Juneau, AK 99811-1182

Milinski
778-8809

Dear Senator Halford:

Petro Marine Services supports the attached draft legislation which repeals AS 46.04.030(p). This legislation, if passed would delete the requirement for the Alaska Department of Environmental Conservation to approve or disapprove a proposed contingency plan within 65 days. This deletion will result in the improved efficiency of the review process identified in the implementing regulations in 18AAC75 which we support. We urge prompt passage of this legislation. Because of the sensitive nature of the legislation, we request that no substantive changes or amendments be made. If changes are made we will withdraw our support for the legislation.

Koullak
488-3421

Sincerely,

W.B. Schouphorst
Manager Projects and Planning

WBS:ng

Dutch Harbor
581-4250

A Pioneer Alaskan Company Specializing in Petroleum Marketing to the Marine Industry.



Regional Citizens' Advisory Council / 601 West Fifth Avenue, Suite 500 / Anchorage, Alaska 99501-2254 / (907) 277-7222 / FAX (907) 277-4533

February 5, 1993

Representative Cliff Davidson
Alaska State Legislature
State Capitol, Rm #400
Juneau, AK 99801

Cliff

Dear Representative Davidson:

The Prince William Sound Regional Citizens' Advisory Council supports HB 99, the legislation drafted to repeal AS 46.04.030(p). AS 46.04.030(p), stipulates that the Department of Environmental Conservation approve or disapprove a proposed contingency plan within 85 days. Repeal of this requirement is needed to allow regulatory changes to be made to eliminate the conflict between HB 567 regulations - 18AAC75, and ACMP regulations - 6AAC50.

The council's support of HB 99 is for the legislation strictly as written. If there are any changes or amendments to the legislation the council will withdraw its support. We appreciate the diversity of the groups that have come together to support this legislation and request that the legislature take quick action on the bill as drafted. Please contact our Executive director, Sheila Gottehrer, if you have any questions.

Sincerely,

Scott A. Sterling, Sr.

Scott A. Sterling, President
Prince William Sound Regional Citizens' Advisory Council

cc:
Sheila K. Gottehrer, RCAC Executive Director
RCAC Directors
Gary Bader, Alyeska Citizens Liaison Manager

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 5, 1993

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2/15/93

The RESOURCES Committee considered:

HB 99

HOUSE BILL NO. 99

REPEAL 65-DAY DEADLINE: OIL SPILL PLANS

"An Act repealing the 65-day time limit for approval or disapproval of a proposed oil discharge contingency plan by the Department of Environmental Conservation; and providing for an effective date."

- RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) DEC / 2-5-93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Anderson</i>	✓				
<i>Carl ...</i>	✓				
<i>Robert ...</i>	✓				
<i>Ed ...</i>	✓				
<i>Car ...</i>	✓				
<i>W.K. Williams</i>	✓				

W.K. Williams
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 99

Revision Date: _____
Title: Repeal of 65 day limit to approve or
disapprove contingency plans
Sponsor: House Oil & Gas
Requestor: Senate Oil & Gas

Department Affected: Environmental
Conservation
BRU: Spill Prevention & Response
Component: Prevention & Planning Management

COMPONENT SERIAL NO. 1430

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING:

1002 FEDERAL RECEIPTS	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF MATCH	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECPT	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS: NONE

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ NONE

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
Division: Commissioner's Office

Phone: 465-5010
Date: 2/3/93

Approved by Commissioner: *Janice Adair*
Agency: Department of Environmental Conservation

Date: 2/3/93

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

HB

100

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

P.O. BOX 110630
JUNEAU, ALASKA 99801-0630
PHONE: (907) 465-3170

Date: February 25, 1993

Honorable Con Bunde, Representative
Alaska State Legislature

Subject: Statistical Request HB 100

Dear Representative Bunde,

Your staff requested additional information from DFYS concerning the number of juveniles that would be affected under HB 100. Please find attached the information for FY 1991 FY 1992 and the first six months of FY 1993.

Sincerely yours,

for *Deborah R. Wing*
Deborah R. Wing
Director

cc. Representative Brian Porter, Chairman
House Judiciary Committee

DHSS Youth Offender Statistics

Category (e) (1)

FY 1991 - 1 of the 2 cases referred were formally charged with murder 1st, murder 2nd or attempted or solicited murder. One case was waived into adult court.

FY 1992 - 9 of the 10 cases referred were formally charged with murder 1st, murder 2nd or attempted or solicited murder. Six cases were waived into adult court.

FY 1993 - (7/1/92-12/31/92) 0 of the 1 cases referred were formally charged with murder 1st, murder 2nd or attempted or solicited murder. No cases were waived into adult court.

Total referrals 13, with 10 formally charged and adjudicated or convicted in adult court.

Category (e) (2)

FY 1991 - 4 of the 6 cases referred were formally charged with an unclassified or class A felony and had a previous adjudication anywhere for a felony. One case was waived into adult court.

FY 1992 - 2 of the 6 cases referred were formally charged with an unclassified or class A felony and had a previous adjudication anywhere for a felony. One case was waived into adult court.

FY 1993 - (7/1/92-12/31/92) 2 of the 3 cases referred were formally charged with an unclassified or class A felony and had a previous adjudication anywhere for a felony. One case was waived into adult court.

Total referrals 15, with 8 formally charged and adjudicated or convicted in adult court.

Category (e) (3)

FY 1991 - There were 0 cases referred in this category.

FY 1992 - There were 0 cases were referred in this category.

FY 1993 - (7/1/92-12/31/92) There were 0 cases referred in this category.

8-LS0498K
Chenoweth
2/22/93

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

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act providing that juveniles 16 years and older who commit unclassified or
2 class A felonies shall be charged, prosecuted, and sentenced in the same manner
3 as adults."

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

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

6 (e) The procedure prescribed in AS 47.10.020 - 47.10.090 and the Alaska
7 Delinquency Rules does not apply when a minor is 16 years of age and older and is
8 charged with an unclassified felony or a class A felony.

9 (f) If a minor is charged with an offense specified in (e) of this section, the
10 procedure prescribed in AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules
11 does not apply with regard to a charge that is properly joined to the offense described
12 in (e) of this section.

13 (g) A minor accused of an offense specified in (e) or (f) of this section shall
14 be charged, prosecuted, and sentenced in the superior court in the same manner as an

1
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adult.

(h) Nothing in (e) - (g) of this section limits the right of a party to an action under this chapter to seek closure of a case under AS 47.10.060(a) and prosecution of the minor as an adult.

* Sec. 2. APPLICABILITY. This Act applies to offenses committed after the effective date of this Act.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2108

MEMORANDUM

February 10, 1993

SUBJECT: Do the amendments made by House Bill 100, relating to the disposition of certain criminal offenses committed by minors, change a rule of court, Delinquency Rule 20, so that the proposed changes required acknowledge the change in court rule and adoption by a two-thirds vote?

TO: Representative Con Bunde
ATTN: Jenny Murray

FROM: Jack Chenoweth
Legislative Counsel

Under article IV, section 15, of the Alaska Constitution:

RULE-MAKING POWER. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Additionally, our current bill drafting rules require that court rule changes be identified in the bill title, and that the measure contain some provision under which a proposed court procedural rule change is identified in order to present the opportunity for a two-thirds vote. See Manual of Legislative Drafting, pp. 12, 13; 37.^{1/}

^{1/} The drafting manual provision follows from and must be read in tandem with the applicable Uniform Legislative Rule, Rule 39(e), by which:

(e) If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the full membership of each house. If the section effecting a change in the court rule fails to receive the required two-thirds vote, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which

(continued...)

In its consideration of the handling of bill material affecting court rules, the drafting manual notes an important distinction applicable to court rule drafting and sets out the obligation of the responsible drafting attorney:

The basic problem for a drafter is two-fold. First, the drafter must determine if a provision of the draft would have the effect of amending a rule of court. Secondly, if a rule is affected, the drafter must then determine whether the change is

(1) a matter of substance (subject to legislative change with no special requirements);

(2) a matter of practice or procedure (subject to legislative change with a two-thirds vote and a special notation in the title and body of the bill); or

(3) a matter of judicial administration (not subject to legislative change).

Matters of substance include limitation of actions, burden of proof, presumption, creation of courts, and matters of jurisdiction.

Rules of practice and procedure are usually considered to include such matters as forms of action, how an action is commenced, the manner of notice, pleading and motion practice, joinder of causes, parties, pre-trial practice and discovery, calendars, the conduct of the trial, stay of proceedings, the procedures by which a judgment is enforced, post-trial proceedings such as motions for new trial, the assessment of costs, the time of appeal, venue, evidence, and procedures involved in special proceedings such as adoption and probate.

Rules of administration of courts include the traditional areas of court internal administration protected by the doctrine of separation of powers and those rules enacted for the administration of a unified court system.

Manual of Legislative Drafting, pp. 37, 38.

1/ (...continued)

changes a court rule shall also be noted in the title of the bill. The section or sections relating to the effective dates must be approved by an affirmative vote of two-thirds of the full membership of each house. If a section setting out an effective date fails to receive the required two-thirds vote in either house, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which sets out an effective date shall also be noted in the title of the bill.

Thus, not all changes affecting matter set out in court rules that are the subject of pending legislation trigger the formalities of adoption required by article IV, section 15 and Uniform Rule 39(e). The legislature is free to change a matter of substance without the necessity of meeting those requirements.

In conjunction with House Bill 100, of which you are principal sponsor, someone has contended that, because the proposed changes impact Delinquency Rule 20, the bill must be redrafted to meet the requirements of Uniform Rule 39(e) and may only be adopted with a 2/3 vote.

For the reasons set out below, I think not.

Delinquency Rule 20, which cross-references AS 47.10.060, one of the sections being amended by this measure, contains five subsections. Four of the five are not affected by the bill --

-- subsection (b) of the court rule, setting out permission to file a waiver petition, does not appear to be changed by the proposed amendments made by the measure;

-- subsection (c) of the rule, addressing the hearing on the waiver petition, is unchanged by the measure;

-- subsection (d) of the rule, speaking to the content and effect of any waiver order entered by the court, is unaffected by the measure; and

-- subsection (e) of the rule, authorizing the holding of a minor waived for trial as an adult, is unaltered by the measure.

The contention, then, must be that the changes proposed by House Bill 100 affected Delinquency Rule 20(a). Rule 20(a) provides:

Persons Subject to Trial as Adults. A person may not be tried as an adult for a delinquent act committed while the person was under the age of 18 unless the court has waived juvenile jurisdiction.

But isn't this court rule no more than a restatement of the substantive state law? Note that AS 47.10.010(a) already sets out the jurisdiction of the trial courts as it relates to juveniles or minors:

(a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor
(1) to be a delinquent minor as a result of violating a

criminal law of the state or a municipality of the state; . . .

In the same provision, the legislature has arguably reserved to itself ("except as otherwise provided in this chapter") the opportunity to change by law the statement of the court's juvenile jurisdiction. The waiver provisions themselves, set out in AS 47.10.060 and addressing, as they do, the question of whether a juvenile shall be subject to the delinquency provisions or the juvenile procedures, are both procedural and substantive. The procedural elements of the existing waiver statute, as applied to juveniles, are not changed. What is changed is the manner of the court's handling of juveniles, that is, of the rights that juveniles enjoy, and that alteration in the form of proceeding is, in my view, a substantive change that is arguably either a restatement of the scope of the trial court's juvenile jurisdiction or a further limitation on the presumption that the juvenile who commits a serious offense, or who is caught up in a series of serious offenses, does not enjoy the benefit of the presumption given all other juveniles as to the treatment he or she will receive by the courts. Both involve substantive law; neither affects the requirements of article IV, section 15. ^{2/}

I suggest further that Delinquency Rule 20(a) adds nothing to the existing legislative enactments. Read together, AS 47.10.010(a)(1) and AS 47.10.060 reach the same end as the one sentence statement of Rule 20(a). The court rule may be more succinct--

^{2/} The Alaska Supreme Court, in Ware v. Anchorage, 439 P.2d 793 (Alaska 1968), offers this terse distinction:

The authorities generally agree that substantive law creates, defines, and regulates rights, while procedural law prescribes the method of enforcing the rights.

493 P.2d 793, at 794 (footnote omitted). See also Main v. State, 668 P.2d 868 (Alaska App. 1983), at 872.

As regards juvenile jurisdiction, the rights of a juvenile that are defined and regulated by AS 47.10--and that are altered as to certain juveniles by the changes proposed by HB 100--include those identified by the court in a note appended to its opinion in P.H. v. State, 405 P.2d 837 (Alaska 1972):

The list of substantial statutory benefits flowing from disposition through children's court proceedings includes the following: no criminal conviction or the attendant employment prejudice and loss of civil rights [AS 47.10.080(g)]; minimal publicity concerning an adjudication [AS 47.10.090]; a maximum period of commitment which cannot exceed the child's twentieth birthday [AS 47.10.080(c)(1)]; and perhaps conceptually most important, a benevolent attitude [AS 47.10.280--now AS 47.05.060] dictating specialized rehabilitative treatment [AS 47.10.150 - 260].

504 P.2d 837, at 842 (note 12).

indeed, more artful in its expression--but the court's jurisdiction over juveniles is actually defined by the statutes, not the rule. The court rule may be procedural, but it flows from the legislature's determination of the divided jurisdiction and where the line of that division shall be drawn. ^{3/}

Finally, any hesitancy on my part to treat this as a substantive matter evaporated when I reviewed an early Alaska Supreme Court case in which the court itself seemed to reach the conclusion that the matter of how a child ought to be handled should be treated as jurisdictional. The case was P.H. v. State, 504 P.2d 837 (Alaska 1972). A threshold question examined in the court's decision involved whether jurisdiction of the children's court--the court itself spoke of "jurisdiction"--was dependent on the age of the child at the time of the alleged delinquent acts or at the time the proceedings were commenced under AS 47.10. It concluded:

We hold that from the moment a child commits an offense he is exempt from criminal prosecution until the children's court properly waives its jurisdiction.

504 P.2d 837, at 842 (emphasis added). Thus the courts, like the legislature, have come to view AS 47.10.010 and the companion waiver provisions, AS 47.10.060(a), as fundamentally jurisdictional. And matters of jurisdiction, the legislative drafting manual concludes, are substantive, not subject to the court rule change constitutional requirements.

*

This is my assessment of whether reference to a court rule change is required by House Bill 100. If you disagree with my contention--if you are of the view that Delinquency Rule 20(a) is more than substantive and does, in fact, add a dimension that should be considered as falling within the rule change requirement--then of

^{3/} The test is laid down in Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981):

For the court to invalidate a statute as "procedural" requires us to find, first, that the statute indeed conflicts with a rule promulgated by the court, Matanuska Maid, Inc. v. State, 620 P.2d 180, 188 (Alaska 1980), second, that the main subject of the statute is not substantive with only an incidental effect on procedure, Winegardner v. Greater Anchorage Area Borough, 534 P.2d 541, 547 (Alaska 1975), Channel Flying, Inc. v. Bernhard, 451 P.2d 570, 576 (Alaska 1969), and finally, that the legislature has not changed the rule with the stated intention of doing so, Leege v. Martin, 379 P.2d 447, 451 (Alaska 1963).

Representative Con Bunde
February 10, 1993
Page 6

course the necessary court rule change provisions should be added to the title and body of the bill, and you should direct me to do so. My own reading was to the contrary, and because of that I have not included any reference to court rule changes to the drafts of the bill that were provided to you. Additionally, it is not generally of advantage to the legislature to treat a substantive change as a court rule change simply because this creates the need of a two-thirds vote, which can be difficult to obtain.

JBC:pl:gc
93-076.plm

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature



House of Representatives

DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

MEMORANDUM

To: Representative Brian Porter
Chair, House Judiciary Committee

From: Representative Con Bunde

Date: February 8, 1993

Re: House Bill 100- Prosecuting Juvenile Felons

House Bill 100 has successfully passed through the House Health, Education and Social Services Committee. I respectfully request that HB 100 be scheduled for a hearing at your earliest convenience.

The bill provides that juvenile murderers and serious habitual juvenile offenders, rather than the state, have the burden of proving to the that the juvenile can be rehabilitated by staying in the juvenile system.

Although the bill will essentially apply only to a small number of juveniles (six minors would have been affected by the bill in 1990), by targeting the offenders who pose the greatest risk to society, the bill makes an important improvement in the juvenile justice system.

If you have any questions regarding HB 100 please do not hesitate to contact my office at x4843. Thank you in advance for your assistance and early scheduling of this legislation.

REQUEST FOR SCHEDULING

Alaska State Legislature



DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

House of Representatives

Sponsor Statement

House Bill 100

Relating to Criminal Charges Brought Against Minors

The current juvenile justice system does not deal effectively with violent or chronic juvenile offenders. House Bill 100 reforms the juvenile justice system allowing for the very small number of serious or habitual juvenile offenders to be treated as adults. In doing so, 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 person must be released even if it is clear that the person continues to present a serious threat to the public safety. 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 teenagers who commit murders, or who commit other serious felonies and have 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.

House Bill 100 requires a very 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 100, the burden of proof is shifted only when the minor is 15 years of age or older and (1) is charged with murder or attempted or solicited murder; (2) is charged with an unclassified (e.g. forcible rape) or class A felony (e.g. first degree assault) and has previously been adjudicated as a delinquent for a prior felony offense; or (3) has previously been prosecuted as an adult.

Sponsor Statement

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 1, 1993

SUBJECT: House Bill 100, criminal charges against minor--sectional analysis

TO: Representative Con Bunde

FROM: Jack Chenoweth
Legislative Counsel

The measure provides for automatic treatment of certain juveniles 15 years of age and older as adults for purposes of disposition of certain criminal offenses.

Section 1 of the bill provides that a minor under 18, but at least 15, must be tried as an adult if the minor is charged with 1) murder or attempted or solicited 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).

Under the other changes made by section 1, the minor may 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.

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, adding a new subsection to AS 47.10.060, introduces the opportunity for a minor to present the evidence of a professional that the minor is amenable to

Sectional Analysis

Representative Con Bunde

February 1, 1993

Page 2

treatment before reaching the age of 20, the threshold requirement to consideration of whether the minor shall be treated as a juvenile or tried as an adult.

Section 3 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 4 provides that the bill, if enacted, would apply only to offenses committed after the effective date of the enactment.

JBG:pl

93-053.plm

February 5, 1993

Rep. Con Bunde
State Capital Building
Juneau, AK

Dear Rep. Bunde:

Thank you for introducing HB100 into the House this session. It will be instrumental in helping to expedite the prosecution of violent juvenile criminals in our justice system. Presently, because of unrealistic burdens put on both the police and prosecution, waiving violent juvenile offenders from juvenile status to adult court can take years. In the mean time, the violent offenders are housed in youth facilities, such as McGlaughlin Youth Center, along side youths whose crimes are non-violent and are excellent chances at rehabilitation. The management at the youth centers then has to deal with "inmates" whose violence has elevated them to hero status among the other juveniles. Obviously, this has a detrimental effect on the youth center as a whole.

The reason that I am both familiar and concerned about the juvenile justice system is that my family was victimized by a violent juvenile. In October of 1989, several members of my family, including myself and my father, found my murdered brother's body shoved in a closet in his suburban Anchorage home. He had been shot three times at close range, the last shot coming at point blank range to the head. The only thing missing from the home was a sports car. The next day, a sixteen year old man was arrested driving Duane's car. He was taken to the police station, and the police, under the advisement of the District Attorney, asked if he wanted his parents called. He declined to have his parents notified, was read his rights in accordance with Miranda, and proceeding to tell in horrifying detail how he had gone to Duane's home for the explicit reason of stealing the car. He had brought with him a stolen .357 magnum. Before the young man left Duane's home he had fired three rounds into Duane, grabbed a 7-up out of the refrigerator and taken the car. He returned to the house twice after the shooting, once to show off the body to a friend, and once to take some beer. The juvenile confessed to all of this on videotape, and then took the police to Service High School, where he had hidden the murder weapon in the woods.

It seemed to everyone involved that this case would come to a relatively speedy conclusion. The DA went as far as to assign the case to an assistant DA that had never tried a murder case before, because this one seemed so easy. In the first actual series of hearings held on the case, Judge Peter Michalski ruled that the juvenile could not be rehabilitated by his twentieth birthday, and should therefore stand trial in an adult court. Because of the fact that the State had

Letters of Support

the burden of proof in the waiver proceeding, the juvenile did not have to offer any information whatsoever. It did not come out that the defense had examined the juvenile with their own psychiatrist and had chosen not to make their findings known to the court. It did not come out that the offenders own counselors advised that he not be released. It did not come out that three months prior to the murder, the juvenile had gone through a psychological treatment program at Charter North Hospital. The reason that none of these things came out is because the juvenile did not have to show that he could be rehabilitated, he merely had to hope that the Judge would think he was a nice young man. Even without all of the truth being told at the hearing, Michalaki ruled that the youth be waived to adult court, mostly on the evidence of the videotaped confession.

In the summer of 1991, the appellate court overturned the decision of Michalaki, because, they say, the parents should have been called before the police questioned the suspect. This ruling was made despite the fact that the police CALLED THE DA'S OFFICE PRIOR TO THE QUESTIONING TO BE SURE OF PROCEDURES. The appellate court ruled that the case should go back to Superior Court for another waiver hearing, this time without the confession or any of its "fruits" (i.e. the murder weapon as well as other evidence). By now, two years had passed since the confession.

In late 1991, the Supreme Court agreed to hear the case of the parental notification issue, and in February 1992, held oral arguments on the case. As of February, 1993, they have still not made a ruling on the case. The juvenile is approaching the age of twenty, at which time he is supposed to either be released, if he is a juvenile, or triad, if he is an adult.

My family has been forced to listen to the court while they worry about dotted i's and crossed t's for almost four years now, and do not have much hope that this issue will be resolved before its fifth year. All of this for a murderer that was caught and confessed within one day after we found the body. If there had been legislation forcing the sixteen year old to be responsible for his actions, or at least have to prove that he is worthy of another chance, in place at the time of my brothers murder, my family would not have to sit back, month after month, year after year, and wait for justice to take place. It is time that we made violent people of any age responsible to their victims and to society. It only seems fair to give the victims of crimes at least as many rights as the criminals themselves.

Sincerely,



Ralph Samuela
8220 Frank St.
Anchorage, AK 99518-

Paula Lindstam
4431 Riverton Avenue
Anchorage, AK 99518-3857

Representative Con Bunde
State Capitol
Juneau, AK 99801-1182

January 25, 1993

Dear Representative Bunde,

You may remember me. Early in the campaign you stopped at my house to chat. I'm probably one of the few women with a baby on their hip who had a prepared list of questions for you. The questions included abortion, juvenile crime, Native alcoholism, and subsistence.

A particular issue which concerns me is the way crimes committed by juveniles are handled by the State of Alaska. Juveniles who commit violent crimes should not be treated any differently than adults. Juveniles who repeatedly commit misdemeanor crimes should be treated the same as adult offenders.

Someone has sold us a bill of goods which says that juveniles can be "treated" for their social deviancy. There is little evidence that it works. McLaughlin Youth Center keeps no records on which of their charges, when released, go on to commit crimes as adults. Since the records of juvenile offenders are sealed it is impossible to know. It is lamentable that we assume our system is working, but we do not know for sure. Indications are that it does not.

Why does Paula Lindstam care so much about this issue? My brother, Duane Samuels, was murdered October 4, 1989. He woke up one morning and answered his doorbell to find sixteen-year-old Jonathan Norton standing on his doorstep with a .357 in hand. End of story (maybe I should say beginning of story). The case has been in court over three years! Three years! The issue? Whether Norton can be prosecuted. How ridiculous!

Last month in unrelated incidences our church's van and two cars belonging to members of our congregation were stolen. I belong to a very small church. The police suspect juveniles of the thefts. Not much effort is going into apprehension. Cost is the major factor, but there is another

consideration. Why should the police go to any trouble apprehending a juvenile? So they can be "treated" at McLaughlin?

I was approached a few days ago by a friend whose husband is serving a 10+ year sentence for assault. My friend had read a letter to the editor which I wrote on this subject. She feels quite strongly that had her husband not gotten the kid glove treatment as a juvenile he would not have gone on to commit more serious crimes.

My letter to the editor was published January 18 in the Anchorage Daily News. Several people have approached me about supporting a bill on this issue. My brother, Ralph Samuels, was recently interviewed on television regarding our case. Paul Jenkins has written two editorials in The Voice of the Times within the past two months about juvenile crime. We need a bill. Last year's juvenile crime bill died in the House Finance Committee. Please sponsor a juvenile crime package addressing the aforementioned issues. There is a lot of momentum building now, but your help and support is needed.

Thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Paula Lindstam". The signature is written in dark ink and is positioned above the printed name.

Paula Lindstam

Johnny needs discipline

I've always been perplexed by the media, lawmakers and bureaucrats harping about escalating youth crime and violence. It makes for good headlines. But why sensationalize a problem that we are little prepared to correct?

Many elected officials consider themselves to be motivated, committed and forward thinking. These dynamos need to tell us why our 16-year-old murderers have their records wiped clean at 18, leaving an unsuspecting public at risk. I would like to know why lawmakers ignored HB101 last year that would have made it more expeditious to get a teen murderer into adult court where he belongs.

Juvenile law is embodied in Title 47. Its premise is that teen delinquents aren't cognizant of their actions. They don't commit crime, but "crime-like" acts. They can't be punished, only "rehabilitated." Oftentimes, youth violence results from dysfunctional upbringing. Yet 48 percent don't respond to "rehabilitation," re-offend and are returned to McLaughlin. Could it be that you can't "psycho-instruct" a kid to develop self-esteem?

Maybe Johnny needs to know that regardless of his background, he is to pay consequences for his "crime-like" behavior. We would be doing him a favor. But our legislators failed to consider passage of SB366, for a juvenile boot camp that would expose these kids to discipline, compassion and a sense of accomplishment. This bill was favored by 87 percent polled in the bill sponsor's district.

So what will the Juneau gang do this time around? Health care and budget cuts will be priorities. But if all we get again is lip service to juvenile waivers, boot camp,

parental responsibility, and other Title 47 revisions, then other legislation will be inconsequential to a society interested most in one's personal "rights" to do whatever they please at anyone's expense but their own.

— Jay D. Page, chair
Anchorage Chamber
Crime Prevention Committee

Anch. Daily News 2/4/93

Newspaper - Letters

CORRECTION

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

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Anch. Daily News 2/4/93

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- Jay D. Page, chair
Anchorage Chamber
Crime Prevention Committee

Newspaper - Letters

THE VOICE OF THE TIMES

Some kids need more punishment than slap on hand

By PAUL JENKINS

Remember Alex Felker? He was the guy clubbed and beaten by five punks as he walked along Spenard Road just before Christmas. Guess what? Three of those same little darlings went on an even more violent spree just days later. This time, the bunch had a gun. This time they hurt someone else.

In the most recent episode, it's alleged they — and a few new buddies — rolled a drunk, tried to carjack a pizza delivery guy, stole a woman's car at gunpoint, shot at a cab driver and attacked and seriously injured a 15-year-old boy waiting in a car for his parents to come out of the Fred Meyer store on Northern Lights.

What else they were up to that night is anybody's guess. But what they did during those two nights could have happened to any of us unfortunate to be in the wrong place at the wrong time.

All these thugs are between 15 and 17 years old. At least two of them are known to juvenile authorities for past property crimes. They have fallen into the category of being the usual suspects when things like this happen. And you wonder why cops get a little cranky.

If there is a recent case that graphically shows why kids involved in violent crimes should automatically be charged and treated as adults, here it is.

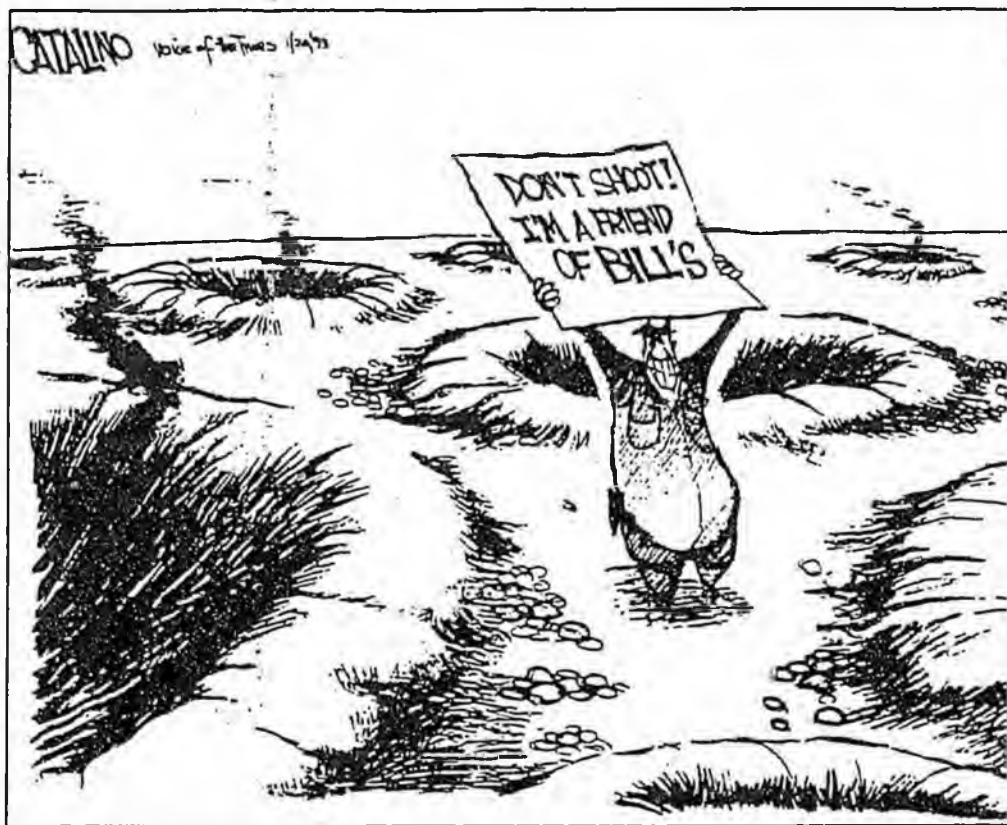
If the three clowns involved in beating Mr. Felker — and who were involved in the crime spree a few days later — had been charged as adults to begin with, they likely would not have been on the street to be involved in the second round of fun. And the knowledge that the law was coming down hard on them may have kept their buddies off the street as well.



Jenkins

As it is now, they have the protection of the juvenile justice system. We don't know who they are. For all we know, they're living next door. We likely won't know what happens to them. But in comparison to what they would have gotten in adult court, they'll just get their little hands slapped. All of this, of course, is designed to let the little dears grow up and become responsible adults without the onus of a criminal record.

That's great. Those same protections saved my butt when I was a punk kid and



went over the line. But then, my friends and I didn't try to shoot anybody or club them or hit them in the head with hockey sticks. We were stupid and insensitive, but we weren't violent.

And teen-agers have not changed. Kids, good kids who will grow up to be good citizens, do crazy, non-violent things. Get them together and the lowest-common-denominator thing goes to work. They become hormones with ears. But, hopefully, it passes. They should be allowed to grow up, get into college, get jobs and proceed with their lives when their brains actually begin to function.

But violent kids can grow up to be violent adults. If they have a career track leading to more and more violence, we should be trying to derail them now, before some poor soul has to deal with them in the middle of the night.

I think when you're 15, 16, 17 years old you should have a vague notion that hurting someone else is wrong, and when you step over the line, you should pay. About 99.5 percent of the kids know that. It's time to deal with those who haven't gotten the word.

This bunch has been lucky twice. They didn't kill anybody, despite their being armed and shooting a gun. Nobody killed them, despite this being a city where any

number of people could, and would love to, shoot back. That kind of luck is not going to hold forever.

It's well past time for a slap on the hand for these kids and others like them who haven't gotten the word that such behavior is wrong.

The Alaska Peace Officers Association is drafting legislation that would be a big step in the right direction.

Among other things, it would:

- Prosecute 16- and 17-year-olds as adults when they are charged with committing a felonious violent crime against a person.

- Retain confidentiality for juveniles charged with misdemeanors for the first crime only. One freebie for dummies like me. After that, it's tell-all and show-all.

- Change the law to make judges consider juvenile records as aggravating circumstances when sentencing a person as an adult.

- Ensure that juvenile court-ordered restitution continues after an offender's 19th birthday. Now, when junior hits 19, such orders cannot be enforced.

It's a start. It's a darned good start.

One thing is certain. Something needs to be done — soon. The system as it stands now is just not working.

Paul Jenkins is an editor of *The Anchorage Times*.

Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

February 8, 1993

MEMORANDUM

TO: Representative Con Bunde

FROM: Maureen Weeks *MW*
Legislative Analyst

RE: **Juvenile Waivers under House Bill 100**
Research Request 93.125

You asked how many Alaska juveniles charged with offenses committed in 1990 and 1991 would have been tried in adult court (waived to adult court) if House Bill 100 had been law at the time.

BACKGROUND

Any Alaskan under 18 has a right to be heard in juvenile court, where proceedings are secret, rather than in adult court, where they are public. This right to "juvenile jurisdiction" must be waived before a minor can be tried in adult court.

In Alaska, waiver takes place through a formal court process under AS 47.10.060. A minor can be tried in adult court if the judge finds a preponderance of evidence that the minor cannot be rehabilitated before the age of 20. When determining if a youth is "amenable to treatment," the court must consider the seriousness of the offense, the history of the youth's delinquency, the cause of the delinquent behavior and facilities for treatment.¹

Under current law, no juvenile offender in Alaska is automatically tried in adult court (waived to adult court). Under proposed House Bill 100, juveniles would be presumed waived to adult court if:

¹"DFYS Juvenile Waiver," March 1989, Division of Family and Youth Services, Alaska Department of Health and Social Services, Juneau, p. 1.

- they were charged with murder (first degree, second degree, attempted or solicited);
- they were charged with an unclassified or class A felony *and* had previously been adjudicated delinquent; or
- they were charged with a felony of any degree *and* had previously been convicted as an adult for another felony.²

We use the words "presumed waived" because under the bill, the juvenile has the right to attempt to prove to a judge that he or she would be amenable to treatment before turning 20, or that the allegations were not true. It shifts the burden of proof from the prosecution to the defense.

JUVENILES WHO WOULD HAVE BEEN WAIVED: 1990 AND 1991

A total of 20 juveniles would have been tried in adult court in 1990 and 1991, if they were unable to prove to a judge that they should remain in juvenile court. These 20 cases include:

- six first-degree murder charges;
- one second-degree murder charge;
- three first-degree sexual assault charges;
- two first-degree sexual abuse charges;
- three arson charges;
- three robbery charges;
- one first-degree assault charge; and
- one first-degree escape charge.

²An adjudication as a delinquent is a finding by a court that the minor has committed acts that would be crimes if they had been committed by an adult. It is tantamount to a conviction.

Representative Bunde
February 8, 1993
Page 3

The attached chart lists the juveniles presumed waived under HB 100.

A NOTE OF CAUTION ABOUT THIS DATA

The Department of Health and Social Services provided us with a database for the years 1990 and 1991. We worked from this database and the Youth Corrections administrator later checked the database by hand to make certain that it included all prior adjudications. That search showed that it did not. For this reason, it is possible that we have missed some juveniles who would have been presumed waived.

I hope this information is useful. If you have any questions, or want additional information, please contact this agency.

Attachment

**JUVENILE FELONY OFFENDERS PRESUMED WAIVED TO ADULT COURT IN 1990 AND 1991
UNDER HOUSE BILL 100 OF THE 18TH ALASKA LEGISLATURE**

Identification		Offense for Which the Minor is Presumed Waived			Prior Adjudication as a Delinquent		
Date of Birth - Sex	Age at Referral	Referral Charge	Class of Offense	Date Referred	Date of Prior Adjudication	Charge Adjudicated	Class of Adjudicated Offense
1990							
08/13/73 - Male	17	Murder 1	Unclassified	12/06/90			
06/05/73 - Male	16	Murder 1	Unclassified	05/24/90			
01/24/74 - Male	16	Murder 2	Unclassified	03/17/90			
04/12/74 - Male	15	Sexual Assault 1	Unclassified	03/16/90	02/21/90	Burglary 1	"B" Felony
06/04/72 - Male	17	Robbery 1	"A" Felony	05/24/89	05/11/90	Criminal Mischief 2	"C" Felony
06/08/73 - Male	16	Arson	"A" Felony	02/10/90	01/09/90	Burglary 2	"C" Felony
1991							
12/21/73 - Male	17	Murder 1	Unclassified	09/20/91			
02/03/74 - Male	17	Murder 1	Unclassified	04/18/91			
10/24/76 - Male	15	Murder 1	Unclassified	12/10/91 & 12/13/91			
06/15/74 - Male	17	Murder 1	Unclassified	12/13/91			
06/05/74 - Male	16	Sexual Assault 1	Unclassified	01/08/91	06/05/90	Theft 2 (02/05/90) Burglary 1 (04/22/90)	"C" Felony "B" Felony
11/18/75 - Male	15	Sexual Assault 1	Unclassified	02/02/91	07/26/90	Burglary 1	"B" Felony
11/15/73 - Male	17	Sexual Abuse 1	Unclassified	08/30/91	07/25/91	Robbery 1	"A" Felony
01/19/74 - Male	17	Sexual Abuse 1	Unclassified	04/23/91	12/04/89	Sexual Assault 1	Unclassified
10/13/75 - Male	15	Arson 1	"A" Felony	08/02/91	11/02/89	Theft 2	"C" Felony
03/06/74 - Male	17	Escape 1	"A" Felony	10/13/91	02/13/91 10/12/89	Escape 2 Burglary 2	"B" Felony "C" Felony
10/03/74 - Male	17	Robbery 1	"A" Felony	04/23/91	03/05/90	Criminal Mischief 2	"C" Felony
05/20/73 - Male	17	Arson 1	"A" Felony	03/07/91	10/26/90	Arson 1	"A" Felony
06/19/74 - Male	17	Assault 1	"A" Felony	10/28/91	09/21/89	Burglary 1	"B" Felony
08/17/76 - Male	15	Robbery 1	"A" Felony	11/29/91	10/08/91	Burglary 1	"B" Felony

Note: Under CSHB 100, a juvenile offender aged 15 through 17 would be waived to adult court if charged with the following offenses:

- * first-degree murder, second-degree murder or attempted or solicited murder;
- * an unclassified felony or a class A felony and the juvenile had previously been adjudicated delinquent for a felony offense; and
- * a felony of any degree and the juvenile previously had been convicted of a felony.

The juvenile would have the right to attempt to prove that he or she would be amenable to treatment before age 20.

Data provided by the Department of Health and Social Services.

Prepared by the Legislative Research Agency, February 1993 (93.125).

FISCAL NOTE SUMMARY--HB 100, Charges Against Minors

Agency	Amount
Dept. of Public Safety	-0-
Office of Public Advocacy	52.2
Public Defender Agency	89.3
Dept. of Health & Soc. Ser.	-0-

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: HB 100

Revision Date: _____ Dept. Affected: Public Safety
 Title: " An act relating to criminal charges
brought against minors " BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Bunde
 Requestor: Representative Bunde COMPONENT SERIAL NO. 799

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

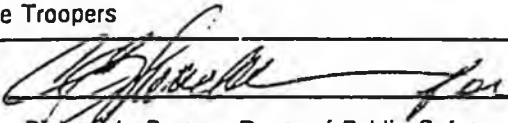
POSITIONS:

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

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

No significant fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 02/05/93
 Approved by Commissioner:  Date: 2/5/93
 Agency: Richard L. Burton, Dept. of Public Safety

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⊕ Fiscal Note - Public Safety

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

Revision Date: _____
Title: "An Act relating to criminal charges brought against minors."
Sponsor: Representative Bunde
Requestor: House HESS

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	4.0	4.1	4.2	4.3	4.4	4.5
CONTRACTUAL	48.2	49.6	51.1	52.6	54.2	55.8
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	52.2	53.7	55.3	56.9	58.6	60.3

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	52.2	53.7	55.3	56.9	58.6	60.3
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	52.2	53.7	55.3	56.9	58.6	60.3

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 (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)
See Attached Analysis

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usera
Agency: Administration

Date: 2/8/93

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 100

Passage of HB100 will cause fundamental changes in the way that many juvenile cases are now processed through the justice system. In several important classes of cases the bill would create a presumption that the juvenile is not amenable to treatment and should therefore be waived into adult court. This section of the law will generate many more waiver hearings at which it will be necessary for both the state and the defense to call experts in psychology and psychiatry to provide evidence to the court regarding amenability to treatment.

During calendar 1992 OPA provided representation to approximately 20 juveniles who were subject to current waiver proceedings. It is anticipated that passage of HB100 would generate at least 10 more cases statewide that would involve both waiver proceedings and subsequent proceedings in adult court. Average contractor costs for these cases during calendar 1992 in Anchorage was \$3,820.00. Expert costs are estimated at \$1.0 per case. The contractual costs reflected on the attached fiscal note are therefore \$48.2 for FY94.

The automatic waiver provisions of HB100 are also triggered whenever a juvenile charged with a Class A or Unclassified felony has been previously adjudicated on a felony. This provision is likely to generate many more contested adjudications in juvenile court because any admission to a felony would create the necessary predicate for an automatic waiver if the juvenile was later charged with a serious felony. There is little doubt that HB100 will generate more contested adjudications, but because we are unable to provide any estimate of the cost of such a trend it is not included in the fiscal note.

It should also be noted that one recent waiver case, not yet completed, has already cost this agency \$8,755.00.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

Revision Date: _____

Department Affected: Administration

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

BRU: Public Defender Agency

Sponsor: Representative Bunde

Component: Public Defender Agency

Requestor: _____

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	62.3	64.2	66.1	68.1	70.1	72.2
TRAVEL	6.0	6.2	6.4	6.4	.8	7.0
CONTRACTUAL	15.0	15.5	16.0	16.5	17.0	17.5
SUPPLIES	2.0	0	0	0	0	0
EQUIPMENT	4.0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	89.3	85.9	88.5	91.2	93.7	96.7

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	89.3	85.9	88.5	91.2	93.7	96.7
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	89.3	85.9	88.5	91.2	93.7	96.7

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)
See Attached

Prepared by: John Salemi, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: _____

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 2/8/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

ANALYSIS: (continued)

Fiscal Impact

It is the Public Defender's position that there will be a distinct fiscal impact on this agency if HB 100 passes into law. In prior years when similar legislative proposals were being promoted the Department of Law had suggested that ten (10) or less children would be affected statewide by this type of legislation. The Public Defender Agency is very skeptical of those estimates. The changes proposed provide for automatic waiver of juveniles 15 years of age and older accused of murder, attempted murder and/or solicited murder. This bill also provides for waiver for any 15-year old or above charged with an unclassified or class A felony under certain circumstances. Those circumstances involve the prior criminal/juvenile history of the child in that where a minor has previously been adjudicated as a delinquent in this or another jurisdiction for felony level conduct the case will go to adult court. The Public Defender Agency estimates suggest that there will be at least ten cases in Anchorage which will trigger waiver into adult court under this new proposal. Other areas of the state will generate additional cases.

Other juvenile cases will also be affected by this law in that it will be very important for lawyers representing minors accused of delinquent acts to advise them of the effect of admitting felony level conduct. The minor will be advised that a serious subsequent charge following admission to felony level conduct in a petition of delinquency will result in likely waiver into adult court concomitant with the serious penalties which are available and regularly imposed. The result will be that many more original petitions against minors will be contested in juvenile court. Under the current system most kids 'fess up' and little court wrangling occurs as a guilt or innocence. The court and the parties can then focus on therapy and rehabilitation. The new system will undermine this focus and will create a labor intensive adjudicative stage for both prosecution and defense.

In FY 92 the Public Defender Agency processed 17,094 cases with only 54 staff attorneys spread out over 12 office locations. Of these 17,000+ case, 500 were juvenile delinquency matters. Because juvenile proceedings in the past have been less adversarial than adult court case proceedings, resources were not focused in that arena. If this bill becomes law more resources will be required. Currently in the Anchorage office, for example, one lawyer handles all juvenile matters. In FY 92 she processed 226 cases. (It should be noted that national caseload standards indicate that an attorney handling juvenile delinquency matters should not handle more than 200 cases per year.) This proposal will intensify the litigation in all juvenile cases wherein felony conduct is alleged, will increase the number of waiver cases and will generally change the character of the juvenile justice system, not necessarily for the good.

Given the above the Public Defender Agency will require an additional one-half time attorney with felony level experience as well as a half-time paralegal. This team will work both in Anchorage and Fairbanks to handle waiver petitions and to give support to the general juvenile caseloads at those locations. Some Bush travel may also be required in that juvenile cases are filed all over the state. One final note with respect to fiscal impact--resources for special kinds of cases cannot be evaluated in a vacuum. In the last five years the Alaska Public Defender Agency has experienced a 45 percent increase in its overall caseload. Much of the increase is due to beefed up criminal prosecution efforts on the part of the state. Additionally, Child in Need of Aid cases are skyrocketing, which directly affects the ability of family law lawyers, especially in Anchorage, to devote time to juvenile cases. Given these circumstances, the fiscal note herein is seen as a very modest reaction to the effects of HB 100.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

ANALYSIS: (continued)

Budget Analysis

100	Personal Services	
	1/2 Attorney III (Anchorage)	36.5
	1/2 Paralegal Assistant II (Anchorage)	6.0
200	Travel:	
	Professional and Experts	15.0
300	Contractual:	
	Expert Witnesses, office space	15.0
400	Supplies:	2.0
500	Equipment (one-time):	<u>4.0</u>
	TOTAL	89.3

Position Title Attorney III		No. of Positions 1	Range / Step 22/A	Barg. Unit PX
Time Status PPT	Staff Months 6.0	Location Anchorage		Election District 7
TYPE OF EXPENDITURE		AMOUNT		
Salary	26,652.0	Justification Considering the fiscal impact on the Public Defender Agency, it appears that 1/2 attorney with felony level experience will be required as well as the commitment of a half-time paralegal. This attorney and half-time paralegal will likely be sited in the Anchorage office but will be called on to handle waiver petitions in Anchorage, Fairbanks, and certain bush areas.		
Benefits	9,897.0			
Premium Pay				
Other				
Total Personal Services	36,549.0			
Travel	3,000.0			
Contractual	15,000.0			
Commodities	1,000.0			
Equipment	2,000.0			
Other				
Total Cost	57,549.0			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	57,549.0		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

9/LEG93/03626.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 94

Page 4 of 5
 Revised Date: _____

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16/A	Barg. Unit GGU
Time Status PPT	Staff Months 6.0	Location Anchorage		Election District 7
TYPE OF EXPENDITURE		AMOUNT		Justification Considering the fiscal impact on the Public Defender, it appears that 1/2 attorney with felony level experience will be required as well as the commitment of a half-time paralegal. This attorney and half-time paralegal will likely be sited in the Anchorage office but will be called on to handle waiver petitions in Anchorage, Fairbanks, and certain bush areas.
Salary	18,222.0			
Benefits	7,534.0			
Premium Pay				
Other				
Total Personal Services	25,756.0	25,756.0		
Travel		3,000.0		
Contractual		0.0		
Commodities		1,000.0		
Equipment		2,000.0		
Other				
Total Cost		31,756.0		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	31,756.0		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

9/LEC93/03626.kp

Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 94

Page 5 of 5
Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: "An act relating to criminal charges
brought against minors." BRU: Youth Facilities Services
 Component: MYC,FYF,NYF,JYC & BYF
 Sponsor: Representative C. Bunde
 Requestor: _____ COMPONENT SERIAL NO. 0264,0265,0266,0267 & 0268

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE FUND SOURCE						
---------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

See attached for Fiscal Note Analysis

Prepared by: Deborah R. Wing, Director
 Division: Department of Health & Social Services

Phone: 465-3191
 Date: 02/05/93

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

Date: 2/8/93

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Fiscal Note
HB 100

ANALYSIS:

This bill would require the charging, prosecuting, and sentencing in adult court juveniles age 15 and older who are alleged to have committed the following crimes:

- murder, attempted murder, or solicited murder;
- an unclassified or A felony and the youth has been previously adjudicated as a delinquent for a felony offense;
- or for a felony of any degree if the minor has been previously convicted as an adult for a felony offense.

Although the bill states that such minors will be charged, prosecuted and sentenced in adult court for the crimes mentioned above, it is unclear where such a minor will be "housed" during each stage of the process. The Department of Health & Social Services assumes that youth convicted and sentenced under the adult system would be incarcerated in adult facilities.

Based on this assumption, there would be no additional costs to the Department resulting from this bill.

FISCAL NOTE SUMMARY--HB 100, Charges Against Minors

Agency	Amount
Alaska Court System	?
Dept. of Corrections	-0-
Dept. of Law	-0-
Dept. of Public Safety	-0-
Office of Public Advocacy	52.2
Public Defender Agency	89.3
Dept. of Health & Soc. Ser.	-0-

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

Revision Date: 2-5-93 Dept. Affected: Department of Corrections
 Title: "An Act relating to criminal charges brought against minors." BRU: Institutions
 Component: Institutions
 Sponsor: Rep. Bunde
 Requestor: Rep. Bunde COMPONENT SERIAL NO. 1860

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary)

The fiscal impact of this legislation is minimal since the Department of Corrections already receives a number of adjudicated delinquents.

Prepared by: Dana LaTour, Special Assistant
 Division: Commissioner's Office
 Approved by Commissioner: Lloyd G. Rupp, Commissioner
 Agency: Department of Corrections

Phone: 465-3376
 Date: 2-5-93
 Date: 2-5-93

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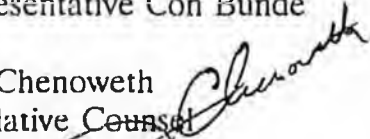
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 10, 1993

SUBJECT: House Bill 100, criminal charges against minor--sectional analysis

TO: Representative Con Bunde

FROM: Jack Chenoweth
Legislative Counsel 

The measure provides for automatic treatment of certain juveniles 15 years of age and older as adults for purposes of disposition of certain criminal offenses.

Section 1 of the bill provides that a minor under 18, but at least 15, must be tried as an adult if the minor is charged with 1) murder or attempted or solicited 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 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).

Under the other changes made by section 1, the minor may 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.

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, adding a new subsection to AS 47.10.060, introduces the opportunity for a minor to present the evidence of a professional that the minor is amenable to

treatment before reaching the age of 20, the threshold requirement to consideration of whether the minor shall be treated as a juvenile or tried as an adult.

Section 3 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 4 provides that the bill, if enacted, would apply only to offenses committed after the effective date of the enactment.

JBG:pl
93-077.plm



SPONSOR STATEMENT

HB 100

"AN ACT RELATING TO CRIMINAL CHARGES BROUGHT AGAINST MINORS"

The juvenile justice system does not deal effectively with violent or chronic juvenile offenders. The most significant problem with keeping offenders in the juvenile system whose traits and behavior are more like those of adult criminals is the threat these offenders pose to the rehabilitation of other juveniles and to the public safety. HB 100 resolves this problem, and does so in a way that balances the needs of society to be protected from dangerous offenders against the importance of keeping the vast majority of minors in the juvenile justice system.

HB 100 requires the most dangerous classes of juvenile offenders to prove that they are amenable to treatment before they can be kept within the juvenile justice system. Under HB 100, the burden of proof is satisfied only when the minor is 15 years of age or older and (1) is charged with murder or attempted or solicited murder; (2) is charged with an unclassified (e.g. forcible rape) or class A felony (e.g. first degree assault) and has previously been adjudicated as a delinquent for a prior felony offense; or (3) has previously been prosecuted as an adult.

Under present law, offenders who clearly meet the standard for waiver, who clearly will be prosecuted as adults, and who clearly face decades of incarceration, are housed in youth correctional facilities during the period of months or years while a waive decision is pending. Presence of these offenders in youth facilities is detrimental to the rehabilitation of those minors who are effectively being treated with the juvenile system. Under HB 100, these offenders would be placed in adult correctional facilities immediately upon arrest. As a result, the ability to successfully treat other minors will be enhanced.

Under current law, 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.

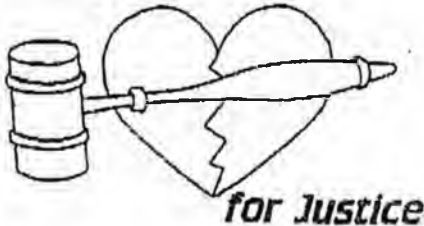
HB 100
Sponsor Statement

The person must be released even if it is clear that the person continues to present a serious threat to the public safety. This is a definite threat to public safety. Particularly in light of the rising violent crime rate, laws that allow the knowing release of violent offenders into the community, as is the case with Alaska's existing juvenile delinquency laws, must be changed.

Under present law, a dangerous minor can be supervised beyond age 20 only if the minor is waived into adult court. And, waiver is permissible only if the state proves that the minor cannot be rehabilitated before juvenile jurisdiction ends. The typical basis for waiver was describe in a March 1989 DFYS report: "In most cases, the decision to waive depends on the belief of psychologist and psychiatrists that a youth cannot be rehabilitated before juvenile jurisdiction expires. If these 'expert' witnesses do not provide overwhelming testimony that the youth is not amenable to treatment, then the statutory framework presumes the the juvenile with be tried in juvenile court. The court can give little or no consideration to community interests requiring restraint or discipline."

In 1989, the Court of Appeals ruled that requiring minors to be examined by psychiatrists and psychologists to determine amenability to treatment is unconstitutional, *R.H. v. State*, 777 P.2d 204 (Alaska App. 1989). Since then, courts have been forced to decide whether a minor is or is not amenable to treatment without the benefit of expert psychiatric or psychological testimony. Because the level of potential dangerousness of minors who commit first degree murders or with a record of committing felony offenses is so high, it is critically important that courts have access to this type of information before deciding whether the minor should be treated as an adult or a juvenile. The only way it is constitutionally possible for the courts to get this information is to switch the burden of proving amenability to treatment from the state to the minor.

Note on Constitutionality: HB 101 is a valid exercise of legislative power under the Alaska Constitution. The Alaska Court of Appeals in *W.M.F. v State*, 723 P.2d 1298, 1300 (Alaska App. 1986) specifically held 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."

VICTIMS

February 5, 1993

Representative Con Bunde
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Bunde,

This letter is in support of HB 100, "An Act - relating to criminal charges brought against minors."

As a co-founder of Victims for Justice in Anchorage, I have seen, personally and professionally, how violent and brutal crimes by minors can be. We need HB 100 to pass to show minors that they will not be tried in the juvenile court system when they commit a serious felony or murder. In the past, juveniles have been segregated in the adult prisons rather than utilizing juvenile detention centers, as in the Winona Fletcher case. She was housed in Cook Inlet prior to trial.

I urge you and the House of Representatives to pass HB 100.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Nahorney". The signature is fluid and somewhat stylized, with the first name being particularly prominent.

Sharon Nahorney

THE VOICE OF THE TIMES

Some kids need more punishment than slap on hand

By PAUL JENKINS

Remember Alex Felker? He was the guy clubbed and beaten by five punks as he walked along Spenard Road just before Christmas. Guess what? Three of those same little darlings went on an even more violent spree just days later. This time, the bunch had a gun. This time they hurt someone else.

In the most recent episode, it's alleged they — and a few new buddies — rolled a drunk, tried to carjack a pizza delivery guy, stole a woman's car at gunpoint, shot at a cab driver and attacked and seriously injured a 15-year-old boy waiting in a car for his parents to come out of the Fred Meyer store on Northern Lights.

What else they were up to that night is anybody's guess. But what they did during those two nights could have happened to any of us unfortunate to be in the wrong place at the wrong time.

All these thugs are between 15 and 17 years old. At least two of them are known to juvenile authorities for past property crimes. They have fallen into the category of being the usual suspects when things like this happen. And you wonder why cops get a little cranky.

If there is a recent case that radically shows why this involved in violent crimes should automatically be charged and treated as adults here in Alaska.

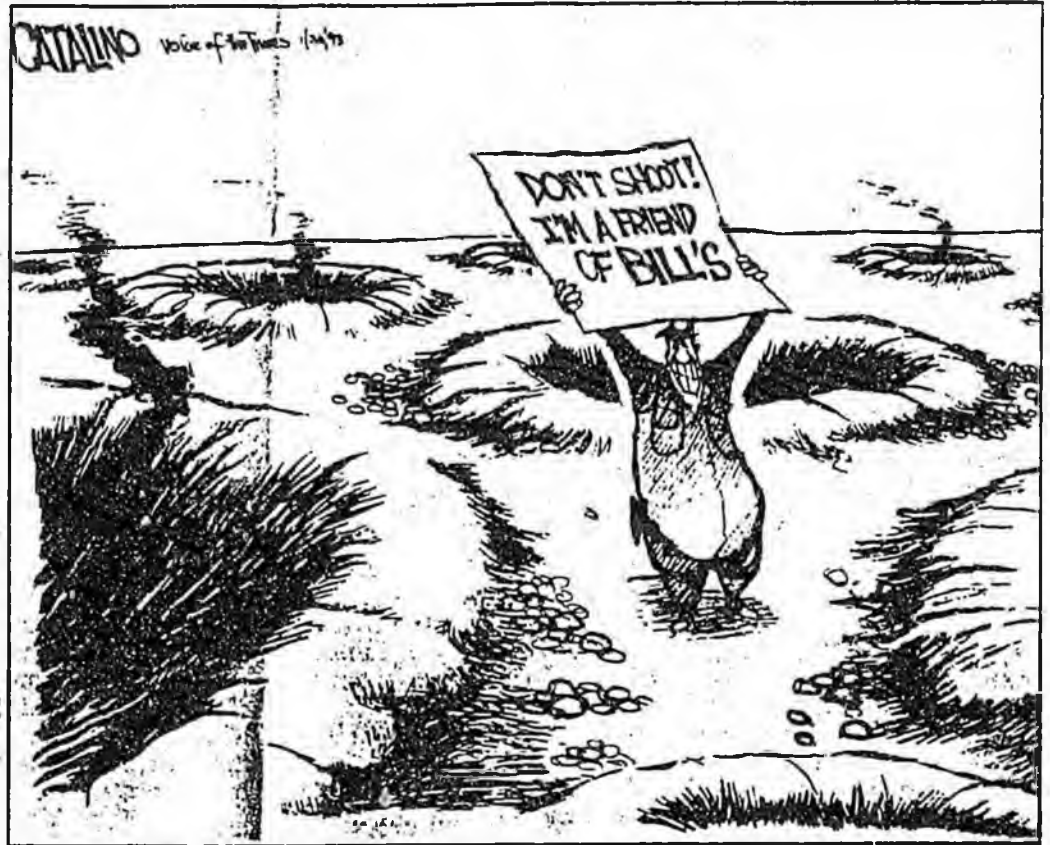
If the three clowns involved in beating Mr. Felker — and who were involved in the crime spree a few days later — had been charged as adults to begin with, they likely would not have been on the street to be involved in the second round of fun. And the knowledge that the law was coming down hard on them may have kept their buddies off the street as well.



Jenkins

As it is now, they have the protection of the juvenile justice system. We don't know who they are. For all we know, they're living next door. We likely won't know what happens to them. But in comparison to what they would have gotten in adult court, they'll just get their little hands slapped. All of this, of course, is designed to let the little dears grow up and become responsible adults without the onus of a criminal record.

That's great. Those same protections



went over the line. But then, my friends and I didn't try to shoot anybody or club them or hit them in the head with hockey sticks. We were stupid and insensitive, but we weren't violent.

And teen-agers have not changed. Kids, good kids who will grow up to be good citizens, do crazy, non-violent things. Get them together and the lowest-common-denominator thing goes to work. They become hormones with ears. But, hopefully, it passes. They should be allowed to grow up, get into college, get jobs and proceed with their lives when their brains actually begin to function.

But violent kids can grow up to be violent adults. If they have a career track leading to more and more violence, we should be trying to derail them now, before some poor soul has to deal with them in the middle of the night.

I think when you're 15, 16, 17 years old you should have a vague notion that hurting someone else is wrong, and when you step over the line, you should pay. About 99.5 percent of the kids know that. It's time to deal with those who haven't gotten the word.

This bunch has been lucky twice. They didn't kill anybody, despite their being armed and shooting a gun. Nobody killed

number of people could, and would love to, shoot back. That kind of luck is not going to hold forever.

It's well past time for a slap on the hand for these kids and others like them who haven't gotten the word that such behavior is wrong.

The Alaska Peace Officers Association is waiting legislation that would be a big step in the right direction.

Among other things, it would:

- Prosecute 16- and 17-year-olds as adults when they are charged with committing a felonious violent crime against a person.

- Retain confidentiality for juveniles charged with misdemeanors for the first crime only. One freebie for dummies like me. After that, it's tell-all and show-all.

- Change the law to make judges consider juvenile records as aggravating circumstances when sentencing a person as an adult.

- Ensure that juvenile court-ordered restitution continues after an offender's 19th birthday. Now, when junior hits 19, such orders cannot be enforced.

It's a start. It's a darned good start.

One thing is certain. Something needs to be done — soon: The system as it stands now is just not working.

Paul Jenkins is an editor of The Anchorage Times.

FY 1991

Age at Referral	Referral Charge	Class of Offense	Date of Referral	Prior Adjudicated Charge	Class of Offense	Date of Referral
17	Murder 1st	Unclass.	April 1991			
17	Murder 1st	Unclass.	Dec 1990			
16	Robbery 1st	A-Felony	April 1991	Crim Mischief 2nd	C-Felony	Jan 1990
17	Arson 1st	A-Felony	March 1991	Arson 1st	A-Felony	Sept 1990
16	Sexual Assault 1st	Unclass.	Jan 1991	Burglary 1st	B-Felony	April 1990
16	Sexual Assault 1st	Unclass.	Oct 1990	Burglary 2nd	C-Felony	Oct 1990
15	Sexual Assault 1st	Unclass.	Feb 1991	Burglary 1st	B-Felony	June 1990
17	Sexual Abuse 1st	Unclass.	July 1990	Robbery 1st	A-Felony	April 1991

Of the above for FY 1991, 3 were petitioned for waiver and 2 were actually waived to adult court.

FY 1992

Age at Referral	Referral Charge	Class of Offense	Date of Referral	Prior Adjudicated Charge	Class of Offense	Date of Referral
17	Murder 1st	Unclass.	Feb 1992			
17	Murder 1st	Unclass.	Sept 1991			
15	Murder 1st	Unclass.	April 1992			
15	Murder 1st	Unclass.	Dec 1991			
15	Murder 1st	Unclass.	May 1992			
17	Murder 1st	Unclass.	Dec 1991			
17	Murder 1st	Unclass.	Jan 1992			
17	Murder 1st	Unclass.	Jan 1992			
18	Murder 2nd	Unclass.	Sept 1991			
18	Sexual Abuse 1st	Unclass.	Aug 1991	Assault 1st	A-Felony	Aug 1989
17	Escape 1st	A-Felony	Oct 1991	Escape 2nd	B-Felony	Nov 1990
16	Assault 1st	A-Felony	Jan 1992	Assault 2nd	B-Felony	Nov 1991
17	Assault 1st	A-Felony	Oct 1991	Burglary 1st	B-Felony	Sept 1989
17	Sexual Abuse 1st	Unclass.	Aug 1991	Robbery 1st	A-Felony	April 1991
15	Escape 1st	A-Felony	Oct 1991	Burglary 2nd	C-Felony	Oct 1991

Of the above for FY 1992, 6 were petitioned for waiver and all were actually waived to adult court.

In favor of youth waiver bill

Our society is becoming much more violent and it starts with our youth. The juveniles who were committing violent acts in the past are only turning around to commit even greater offenses today. It is time to realize that our youth cannot be reformed until they understand that there are consequences for their actions. We cannot just slap repeat offenders on the hand and place them back on the streets.

Prosecuting certain youth repeat offenders of felonious crimes as adults and stating to the public who they are is a step in the right direction. It is time to start punishing those with violent tendencies by expressing your support for the youth waiver bill.

— John Bruce

ADN 2/14/93

Support youth waiver bill

Laws put into place 30 years ago to protect youths from ruining their lives when committing minor crimes are out of date. Today's youths are much more sophisticated, commit more violent crimes and commit them more frequently.

The 16- and 17-year-old repeat violent criminals need to know that there are consequences for their actions. Our police are frustrated, and the victims can't find out the name of criminal involved. The burden of proof needs to be shifted to the youth to prove that he should be tried as a youth. If

he cannot make that proof, 16- and 17-year-olds should be tried as adults for certain crimes.

Call your legislator and ask for support for the youth waiver bill.

— Marty Miller

ADN - 2/12/93

BOYKO & FLANSBURG

LAW OFFICES

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(907) 279-1000 • FAX (907) 279-8944EDGAR PAUL BOYKO, JD, ILM
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February 16, 1993

VIA FAXHon. Con Bunde
House of Representatives
Capitol Building, Room 112
Juneau, AK 99811Re: HB 79, SSHB 86 & HB 100

Dear Representative Bunde:

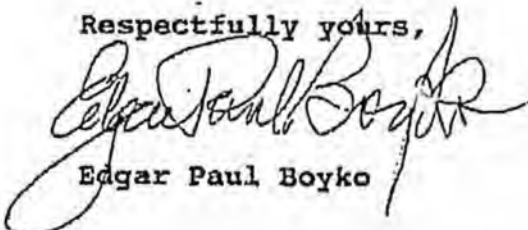
Previous to your appearance on my radio program, I had an opportunity to review the proposed legislation you are sponsoring in an effort to strengthen the criminal laws pertaining to juvenile offenders, particularly in the area of property related offense, such as malicious mischief. You are also seeking to change the current legal presumptions which place the burden upon the State to show that a juvenile, who has committed a serious felony offense, should appropriately be treated as an adult.

As you know, I have taught subjects relating to the administration of criminal justice at the college and graduate levels and I have spent many years in the practice of criminal law, the major portion of which was in the area of criminal defense.

Drawing on that background, allow me to suggest that your proposed changes in the law are not only desirable, but are long overdue. The age level at which persons commit serious crimes has been steadily lowered over the years. Youngsters of the ages 14, 15 or 16, who 40 or 50 years ago could have properly been considered as inexperienced and unsophisticated, today show a frightening level of exposure to experiences involving drugs, sexual promiscuity and anti-social behavior. Some of the most shocking reported crimes are being committed by teenagers. Under the present system these offenders are encouraged to believe that nothing will happen to them and when they are incarcerated, they are prematurely returned to society to become hardened adult criminals.

While your proposed bills do not yet fully address these problems, they make a worthwhile start in the right direction. Please feel free to use this endorsement when these matters come up for hearing in the legislature.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Edgar Paul Boyko". The signature is written in dark ink and is positioned above the printed name.

Edgar Paul Boyko

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

Revision Date: February 16, 1993

Department Affected: Administration

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

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Representative Bunde

Requestor: _____

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	62.3	64.2	66.1	68.1	70.1	72.2
TRAVEL	6.0	6.2	6.4	6.4	6.8	7.0
CONTRACTUAL	15.0	15.5	16.0	16.5	17.0	17.5
SUPPLIES	2.0	0	0	0	0	0
EQUIPMENT	4.0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	89.3	85.9	88.5	91.2	93.7	96.7

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	89.3	85.9	88.5	91.2	93.7	96.7
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	89.3	85.9	88.5	91.2	93.7	96.7

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)
See Attached

Prepared by: John Salemi, Public Defender

Phone: 279-7541

Division: Public Defender Agency

Date: _____

Approved by Commissioner: Nancy Bear Usara *NBE*

Date: 2/16/93

Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

ANALYSIS: (continued)

Fiscal Impact

It is the Public Defender's position that there will be a distinct fiscal impact on this agency if HB 100 passes into law. In prior years when similar legislative proposals were being promoted the Department of Law had suggested that ten (10) or less children would be affected statewide by this type of legislation. The Public Defender Agency is very skeptical of those estimates. The changes proposed provide for automatic waiver of juveniles 15 years of age and older accused of murder, attempted murder and/or solicited murder. This bill also provides for waiver for any 15-year old or above charged with an unclassified or class A felony under certain circumstances. Those circumstances involve the prior criminal/juvenile history of the child in that where a minor has previously been adjudicated as a delinquent in this or another jurisdiction for felony level conduct the case will go to adult court. The Public Defender Agency estimates suggest that there will be at least ten cases in Anchorage which will trigger waiver into adult court under this new proposal. Other areas of the state will generate additional cases.

Other juvenile cases will also be affected by this law in that it will be very important for lawyers representing minors accused of delinquent acts to advise them of the effect of admitting felony level conduct. The minor will be advised that a serious subsequent charge following admission to felony level conduct in a petition of delinquency will result in likely waiver into adult court concomitant with the serious penalties which are available and regularly imposed. The result will be that many more original petitions against minors will be contested in juvenile court. Under the current system most kids 'fess up' and little court wrangling occurs as a guilt or innocence. The court and the parties can then focus on therapy and rehabilitation. The new system will undermine this focus and will create a labor intensive adjudicative stage for both prosecution and defense.

In FY 92 the Public Defender Agency processed 17,094 cases with only 54 staff attorneys spread out over 12 office locations. Of these 17,000+ cases, 500 were juvenile delinquency matters. Because juvenile proceedings in the past have been less adversarial than adult court case proceedings, resources were not focused in that arena. If this bill becomes law more resources will be required. Currently in the Anchorage office, for example, one lawyer handles all juvenile matters. In FY 92 she processed 226 cases. (It should be noted that national caseload standards indicate that an attorney handling juvenile delinquency matters should not handle more than 200 cases per year.) This proposal will intensify the litigation in all juvenile cases wherein felony conduct is alleged, will increase the number of waiver cases and will generally change the character of the juvenile justice system, not necessarily for the good.

Given the above the Public Defender Agency will require an additional one-half time attorney with felony level experience as well as a half-time paralegal. This team will work both in Anchorage and Fairbanks to handle waiver petitions and to give support to the general juvenile caseloads at those locations. Some Bush travel may also be required in that juvenile cases are filed all over the state. One final note with respect to fiscal impact--resources for special kinds of cases cannot be evaluated in a vacuum. In the last five years the Alaska Public Defender Agency has experienced a 45 percent increase in its overall caseload. Much of the increase is due to beefed up criminal prosecution efforts on the part of the state. Additionally, Child in Need of Aid cases are skyrocketing, which directly affects the ability of family law lawyers, especially in Anchorage, to devote time to juvenile cases. Given these circumstances, the fiscal note herein is seen as a very modest reaction to the effects of HB 100.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 100

ANALYSIS: (continued)

Budget Analysis

100	Personal Services	
	1/2 Attorney III (Anchorage)	36.5
	1/2 Paralegal Assistant II (Anchorage)	6.0
200	Travel:	
	Professional and Experts	15.0
300	Contractual:	
	Expert Witnesses, office space	15.0
400	Supplies:	2.0
500	Equipment (one-time):	<u>4.0</u>
	TOTAL	89.3

Position Title Attorney III		No. of Positions 1	Range / Step 22/A	Barg. Unit PX
Time Status PPT	Staff Months 6.0	Location Anchorage		Election District 7
TYPE OF EXPENDITURE		AMOUNT		Justification Considering the fiscal impact on the Public Defender Agency, it appears that 1/2 attorney with felony level experience will be required as well as the commitment of a half-time paralegal. This attorney and half-time paralegal will likely be sited in the Anchorage office but will be called on to handle waiver petitions in Anchorage, Fairbanks, and certain bush areas.
Salary	26,652.0			
Benefits	9,897.0			
Premium Pay				
Other				
Total Personal Services	36,549.0	36,549.0		
Travel		3,000.0		
Contractual		15,000.0		
Commodities		1,000.0		
Equipment		2,000.0		
Other				
Total Cost		57,549.0		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	57,549.0		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

9/LEG93/03626.kp

Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 94

Page 4 of 5
Revised Date: _____

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16/A	Barg. Unit GGU
Time Status PPT	Staff Months 6.0	Location Anchorage		Election District 7
TYPE OF EXPENDITURE		AMOUNT		
Salary	18,222.0	Justification Considering the fiscal impact on the Public Defender, it appears that 1/2 attorney with felony level experience will be required as well as the commitment of a half-time paralegal. This attorney and half-time paralegal will likely be sited in the Anchorage office but will be called on to handle waiver petitions in Anchorage, Fairbanks, and certain bush areas.		
Benefits	7,534.0			
Premium Pay				
Other				
Total Personal Services	25,756.0			
Travel	3,000.0			
Contractual	0.0			
Commodities	1,000.0			
Equipment	2,000.0			
Other				
Total Cost	31,756.0			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004	31,756.0			
I-A Receipts 1007				
CIP Receipts 1061				
Other				

9/LEG93/03626.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 94

Page 5 of 5
 Revised Date: _____

HB

109

(7)

Date Referred: February 17, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-17-93

The JUDICIARY Committee considered:

HB 109

HOUSE BILL NO. 109

BLOOD TESTS ON SEX CRIME PERPETRATORS

"An Act relating to blood tests for persons charged with sex offenses; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CSHB109 (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 ⁽²⁷⁾ HESS, _____

fiscal note(s) _____

zero fiscal note LAW, Corrections, Public Safety zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Pete Faust</i>	<input checked="" type="checkbox"/>	<i>Same word used</i>		<input checked="" type="checkbox"/>	
<i>Neil Phillips</i>	<input checked="" type="checkbox"/>				
<i>Philip [unclear]</i>	<input checked="" type="checkbox"/>				
<i>Brian V. Porter</i>	<input checked="" type="checkbox"/>				
<i>Summit James</i>	<input checked="" type="checkbox"/>				

Brian V. Porter
CHAIRMAN'S SIGNATURE

Rep. Brian Porter, Chairman

House Judiciary Committee

Date: March 17, 1993

Place: Capitol Room 120

HB 86 Sanctions for Property-Related Offenses

Subject of Meeting: HB 109 Blood Tests/Sex Offenders
HB 127 Presumptive Terms/Firearms Offenders

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
Margaret Knuth	Law - Crim	Box 110300	99811		4089	(Y) N	HB 86 / HB 127
Randall Hines	HSS	Box 110630	99811		3187	(Y) N	HB 86
✓ Elmer Lindstrom	DHSS	Box 110630 419 645	99811		3030	(Y) N	HB 109
Cindy Smith	Network on Domestic Violence	Sex Assault	99801		63650	(Y) N	HB 109
Jack Phelps	Rep. Kott	Room 409			3777	Y N	HB 109 / 127
Joanne Lopez	CDUSA	P.O. Box 111200	99811			Y N	If questions
Lee Ann Lucas	DPS				4322	Y N	If questions
Uma Murphy	ASJ	5700 Tudor Ave			269-5641	Y N	" "
Sandy Peron		PO Box 87175 ^{Wendy}		373610	792920	(Y) N	
						Y N	
						Y N	
						Y N	

DIVISION OF LEGAL SERVICES

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STATE OF ALASKA**

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FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 17, 1993

SUBJECT: Blood Testing of Sex Offenders - CSHB 109(HES) (Work Order No. 8-LS0462(K))

TO: Representative Cynthia Toohey
Attn: Lynne Smith

FROM: Jerry Luckhaupt *JL*
Legislative Counsel

1993 FEB 17 10 37

Enclosed is the final committee substitute you requested for the above-referenced bill. I have a few comments about the changes that were made.

1. On page 2, line 1, of the committee substitute, the committee added that "the parent or guardian" may file a petition for a blood test of a defendant. The language the committee adopted would seemingly permit a parent to seek a petition for a test even if the victim of the offense, their child, has reached the age of majority. It would probably be better to use language similar to that used on page 2, lines 16 - 17, such as "or if the alleged victim is a minor or incompetent, the alleged victim's parents or guardian."

2. On page 2, lines 3 - 9, the court is required to make a determination that probable cause exists to believe that a crime for which a test may be ordered was committed and that sexual penetration took place. The committee added language that in making this determination the court may rely on evidence presented before the grand jury or at any preliminary hearing. My concern is that the present language could be interpreted so as to not give a court the authority to hold a hearing if it chose to do so. While the language in the CS uses the permissive term "may" in allowing the court to rely on the evidence adduced at earlier proceedings, and this could be regarded as implicitly giving the court the authority to hold a hearing, it would be better to explicitly state that the court may hold a hearing or may rely on previously presented evidence, or that the court may rely on previously presented evidence or if that evidence is insufficient the court may hold a hearing.

3. On page 5, lines 8 - 12, of the bill draft. the committee removed the criminal penalty for unauthorized disclosure of the results of a test conducted under the bill,

and substituted in that any unauthorized disclosure may be punished as contempt of court. Contempt of court is provided for in AS 09.50.010 - 09.50.060.^{1/} Presumably, this contempt would be criminal contempt, as opposed to civil contempt, as one who has disclosed test results is being punished for past conduct and to vindicate the order and authority of the court, and any contempt order would not be conditioned on any future or remedial action of the person facing the contempt charge - that is a civil contempt order usually tries to coerce compliance with a court order and a person found in civil contempt is given the opportunity to purge the contempt charge by doing something the court was commanding the person to do.^{2/} See Stadler v. State, 813 P.2d 270 (Alaska 1991); Johansen v. State, 491 P.2d 759 (Alaska 1971).

Further, though the committee was advised that contempt only carries a possible punishment of a fine of \$300 or less, actually the potential punishment could be substantially greater than \$300. An unauthorized disclosure of test results would be a violation of a court order which is provided for in AS 09.50.010(5). The penalty for most forms of contempt, including AS 09.50.010(5), is only \$100. AS 09.50.020. But if by the contempt the "right or remedy of a party to an action or proceeding was defeated or prejudiced by the contempt" the penalty is "by fine of not more than \$300 or by imprisonment for not more than six months." AS 09.50.020. It would appear that the unauthorized disclosure of the test results of the person whose blood was tested would result in the person's right or privilege in not having those results disclosed being defeated or prejudiced. Consequently, I believe a person that discloses test results in an unauthorized manner would be subject to a \$300 fine or six months in jail.^{3/} Since the committee's rationale for adopting this change appeared to be based upon the concerns of the Department of Law that an alleged victim could be subjected to a jail sentence this change does not accomplish that goal.

^{1/} Criminal contempt is punishable as provided for in civil contempt proceedings. AS 12.80.010.

^{2/} In a sense the contempt could be considered to be civil, in that any unauthorized disclosure could be considered to have occurred to the detriment of the person whose blood was tested and the person who made the disclosure could be ordered to compensate the person whose blood was tested for any damage sustained by the unauthorized disclosure. See AS 09.50.040 and Stadler, infra, at 272 - 273. But since there is no way the person making the disclosure can purge the contempt - the person cannot take back the unauthorized disclosure - it seems reasonable to assume that any contempt proceeding in this situation would be criminal contempt.

^{3/} In Siggelkow v. State, 731 P.2d 57 (Alaska 1987), the Alaska Supreme Court found that a woman's right to be "left alone" by her ex-husband who constantly harassed her in violation of a no-contact order issued as part of the parties' divorce decree was such a right that authorized the increased penalty provisions of AS 09.50.020. I do not believe that it is a great reach from that decision to say that a person's right, under the bill, not to have their test results disclosed is such a right or privilege that the defeat or prejudice of that right by unauthorized disclosure would authorize the increased penalty provision of AS 09.50.020.

Representative Cynthia Toohey

February 17, 1993

Page 3

I am also concerned about the removal of the criminal penalty for unauthorized disclosures and how it may affect a court's review of the constitutionality of the entire blood testing scheme. It must be remembered that the Alaska Constitution contains an explicit right of privacy provision that does not exist under the United States Constitution or most other state constitutions. Providing for a certain level of confidentiality of the identifiable test data as is done in the bill and a provision that unauthorized disclosure is a crime provides a court at least some support in finding that this testing scheme is constitutional. While punishment of unauthorized disclosures as criminal contempt does not harm the bill vis-a-vis a constitutional challenge, the removal of any criminal sanction would weaken the bill if its constitutionality were under attack.

Finally, I am concerned about how someone not a party to the petition for testing could be prosecuted for contempt. How would the person have received notice that the test results could not be disclosed if they were not served with the original court order? If a person were aware that testing might be ordered and they might want to disclose the results for whatever personal reason they might have, if they were able to obtain the results by hook or crook, how could the person intervene in the criminal proceeding if they were not the victim or the state? I don't have answers to these questions, but if a criminal penalty is provided for unauthorized disclosure I don't believe that these questions would be implicated.

If you have any questions, please contact me at your convenience.

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Enclosure

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A I D S

HIV Testing of Rapists Raises New Ethical Questions

BY VICTORIA BROWN WORTH

W

hen Susan was raped last summer in Washington, D.C., AIDS was the last thing on her mind. She had

been badly beaten, and her leg had been broken, when she was pushed from her attacker's car. Additional trauma for her was that she knew her attacker—he had been her date for the evening. For Susan (not her real name), the emotional trauma of the rape by a man she knew as a friend weighed more heavily than any of her physical



Rep. Lynn Martin

Injuries. Sexually transmitted diseases (STDs) and even pregnancy never entered her thoughts.

That is, not until her attorney visited her at the hospital, Susan says, and told her the man who raped her wanted to plea bargain: He would voluntarily take an HIV test in exchange for a reduced charge.

Susan began to worry. Did this mean she had been exposed to HIV, the suspected AIDS virus? After consulting with her attorney, her family, a rape-crisis counselor, and a few close friends, Susan agreed to the plea bargain. She wanted to know her rapist's HIV status because her own status could not be accurately tested until at least six months after the assault. Her attacker

had his charge reduced from felonious sexual assault to misdemeanor statutory rape and a simple assault charge. He received a year's probation in exchange for taking the HIV test and revealing the results to Susan. His results were negative in the first of two tests.

The threat of AIDS has changed the stakes in rape cases across the nation. Weiss's story is not an isolated tale but is the beginning of a nationwide trend that has civil libertarians, AIDS activists, and women's rights advocates at odds. And many involved believe that at the core of the conflict is AIDS hysteria.

THE COMPREHENSIVE CRIME ACT

In late September, Rep. Lynn Martin (R-



Robert Bray

Ill.) introduced an amendment to the Comprehensive Crime Act of 1990. The amendment stipulates that all states must establish laws allowing rape victims to request HIV test results from convicted rapists. The amendment passed the House of Representatives with a vote of 409-3. The act, with Martin's amendment intact, passed both chambers of Congress in late October.

Martin's press secretary, David Fox, explains, "Representative Martin felt it was unconscionable that so few states had provisions to protect rape victims. She felt that it was essential that there be consistency and uniformity throughout the United States" in releasing information on the HIV

status of rapists to victims.

According to the State AIDS Policy Center of the Intergovernmental Health Policy Project, a program at George Washington University in Washington, D.C., which maintains a data base of AIDS laws throughout the nation, 16 states already allow rape victims to have access to the HIV test results of their rapists. An six of those states permit victims to request that rapists take HIV tests and reveal the results. Currently Illinois, Oregon, Washington, Indiana, Georgia, South Carolina, Texas, and Colorado enforce mandatory HIV testing of convicted rapists. In New York, a bill mandating testing of convicted rapists was defeated this fall, and a similar bill is pending in the Pennsylvania legis-



Sally Goldfarb

lature. Representatives of the American Civil Liberties Union (ACLU), Lambda Legal Defense and Education Fund (LLDEF), the National Gay and Lesbian Task Force (NGLTF), and other civil liberties advocates believe the trend toward HIV plea bargaining will be a detriment to both rape victims and prisoners alike. The added fallout of the amendment, note gay rights advocates, is that mandatory testing is now sanctioned and legally enforceable for yet another group.

Scott Burria, executive director of the ACLU in Philadelphia, points out that the average time between the arrest of a rapist and conviction is two to five years. Testing a rapist upon conviction, as the Mar-

"Any forced testing drives the disease further underground."

amendment requires, offers the victim information much too late to be pertinent, Burris says.

Robert Bray, public information director at NGLTF, contends that the Martin amendment is a "calculated political move in an election year." He says that such legislation makes the general population believe that some attention is being paid to AIDS, when in fact, legislation does nothing for anyone in that area. Neither the victim nor the public is being aided by such a law. "It ignores the realities of the epidemic," says Bray. "We aren't, for example, allocating funds for rape victims to receive AZT treatment if they want it or for the government to pay for any kind of counseling or other services the victim might need or want. And such legislation has the added effect of stigmatization, which drives the disease further underground. Any kind of forced testing does that. But the way this legislation is phrased, who could oppose it?"

One congressional aide states that his

perpetrators in reported rapes are charged and of those, only 5% are convicted.

In addition to Susan's case, similar cases have been tried in New York, Pennsylvania, California, Oregon, Washington, and the District of Columbia, and there are other cases pending in Illinois and Colorado. What concerns many legal scholars and feminists is the possibility that in rape cases, HIV plea bargains will significantly diminish actual sentencing for the crime.

The National Organization for Women Legal Defense and Education Fund, which presented testimony at the Senate hearings convened in June on crimes against women, says requests for HIV testing will increase in rape cases because of the combined psychological and emotional traumas related to rape and the fact that HIV is sexually transmitted. Sally Goldfarb, staff attorney for the fund, intoned in an interview in the *New York Times*, "AIDS has turned the horror of rape - which is a brutal and damaging crime under any circumstances - into a crime that

evaluate every few weeks. It's a true legal quandary for everyone because you want to provide for the rape victim."

"But when you look at it? So often, times, the test has to be the availability of treatment. Does mandatory testing of rapists avail the victim of treatment she would otherwise not receive? The answer, unfortunately, is no. If testing a perpetrator would genuinely assist in either helping a woman make an informed choice or as a barrier of treatment, then we would have to weigh the issue more. But there is no cure for AIDS, there is no treatment available to use as a morning after pill for AIDS. The damage done through mandatory testing laws is bad, very bad. Any opportunity for mandatory testing of a group of people for AIDS encourages additional testing scenarios."

Bray states NGLTF's policy succinctly: "We're opposed to all mandatory testing unless it can have a proven benefit to the public health, which to date it has not."



Tom Stoddard

representative voted for the amendment for just that reason. "Who's going to be seen in an election year voting for rapists against rape victims? That's just not good politics," the aide says.

IMPACT ON RAPE CONVICTIONS

According to Department of Justice statistics, rape is at an all-time high, occurring once every six minutes. The department also notes that rape is among the most underreported crimes in the nation with only one in three rapes reported. Arguing that government figures are conservative, rape-crisis counselors often assert that only one in 50 rapes is ever reported. The justice department also states that only 40% of



Roberta L. Hacker

is potentially fatal."

Other experts in the field suggest that rapists will more easily escape punishment under such legislation. One Philadelphia attorney notes, "This is a legal windfall for defense attorneys. Defendants can conceivably get off just by waiving their own rights to confidentiality. But they are also throwing away confidentiality for the nation."

And that is the issue plaguing gay rights advocates. Tom Stoddard, executive director of LLDEF, agrees that HIV plea bargaining pits the rights of women and the rights of prisoners and people with AIDS against each other. "This is an issue I've anguished over and that LLDEF has to re-



Chezia Carraway

says. "Mandatory testing of prisoners convicted of rape would have no effect whatsoever on the public health. The focus of attention should rather be on caring and supporting the victim. If anyone should be tested, it is the victim, so that she is most able to make decisions for herself on what modes of treatment she might want to access."

THE RIGHTS OF RAPE VICTIMS

But the issue is not so straightforward for those working in the area of rape crisis. According to Roberta L. Hacker, executive director of Women in Transition, a Philadelphia-based service organization for women victims of domestic abuse and other

The low level of HIV transmission in rape adds to the controversy.

violence, the issue of mandatory testing for HIV in rape cases is complex. "My knee-jerk reaction is test these perpetrators right away," Hacker says. "But then I am truly alarmed by the implications of mandatory testing of everyone that this precedent would set. A rape victim should be allowed to access whatever information would facilitate her recovery. When sexual violation includes the possible passing on of a fatal disease, then steps need to be taken legally to prosecute on that level."

"Perhaps a more viable approach would be the inclusion of HIV testing in the data collection at the time of the trauma and ensuing trial," Hacker continues. "Alleged rapists are routinely given blood tests and semen tests as part of the gathering of data. Why can't the HIV information be collected as well? Then testing would become part of the prosecution procedure rather than an after-the-fact violation of confidentiality. The bartering of HIV status for reduced sentencing or other plea bargaining is reprehensible and once again trades on AIDS hysteria at the expense of the victim of a sexual assault."

But what do rape victims themselves want? Susan was willing to plea-bargain her case, she says, "because I felt so violated. I felt that I had to know everything I possibly could about this guy so that I could cope, so that I could put my life back together. As soon as the issue of AIDS was raised, I felt hysterical—absolutely terrified. I just had to know."

The right to know is compelling for many women, who, like Susan, argue that they have been victimized and violated and so should have all possible information on their attacker so as best to approach their own recovery and healing process.

Chezia Carraway, coordinator of the New York City Task Force on Sexual Assault, believes that most women who have been raped want the information. A participant in the New York Governor's Task Force on Sexual Assault, Carraway conducted a national study of service providers and rape victims. "Overwhelmingly, the victims requested information on the HIV status of the rapist," Carraway reports. "So speaking as an advocate for survivors who have been

forced and violated, I believe that upon conviction of the rapist, victims should have access to that information."

But Carraway also notes that a disproportionate number of men of color are convicted in rape cases. She argues that because of racism in the legal system, "HIV testing becomes a punitive measure. There is the right of the victim to know, and then there are the rights of the prisoners. This is a complex issue that has innumerable aspects."

Carraway believes that mandatory testing in rape cases brings up a host of related issues that are not being addressed. "When we talk about HIV and women, we are still talking about a relatively unknown quantity," she argues. "There is a failure to diagnose women and a failure to test AZT on women. What are the prospects for a rape survivor with AIDS? There isn't even any attention paid to the special needs of lesbian rape victims."

"Also women tend to know their rapists more often than not," Carraway adds. "But the legislators who are making these laws are thinking that a rapist is some anonymous guy out there, a stranger. That's not the most likely case. If a woman is raped once by someone, the likelihood of single-incident transmission is low. But in cases such as incest, [the probability of transmission of HIV] is much higher because the rapes occur regularly over time. The same might be true in marital rapes."

Carraway points out that testing only convicted rapists does not effectively address the issue of HIV transmission through rape—both because so few rapists are convicted and because rapes such as those that occur through incest or marriage or even a long-term dating relationship are least likely to get convictions (if there are even arrests) but most likely to cause transmission.

Her theory is bolstered by a study released in the medical journal *Reviews of Infectious Diseases*. In the July-August 1990 issue, a study explores the relationship between STDs and rape. The article indicates that only 12% of victims of reported rapes contract STDs other than HIV from the attack. According to the Centers for Disease

Control (CDC), the transmission rate for HIV versus other STDs such as syphilis, gonorrhea, and chlamydia is about 50%. Extrapolation of this information would put HIV transmission at about 6% for all rapes, since the correlation between the amount of HIV in the U.S. population and the amount of syphilis is about equal, according to the CDC.

UPHOLDING CONFIDENTIALITY

The low level of HIV transmission in rape fuels the fire of civil libertarians arguing against mandatory testing of rapists. Burris has been involved in several mandatory testing cases. He notes that the issue is volatile because "there is simply no compelling legal reason to damage the laws of confidentiality where there is absolutely no proven benefit to the victim. We're talking about only a psychological benefit for the victim in knowing the rapist's sero status," he asserts.

Burris says the ACLU has opposed such mandatory HIV testing of prisoners in the past and would also oppose testing of rapists. As for the lowering of sentences in exchange for HIV results, he says, "Using test results as a bargaining chip in rape sentencing is an ugly side effect of the whole HIV and confidentiality issue. This is a tragic dilemma and a horrible situation for the victim. But nothing should be different based on HIV status. And if it is allowed to be used as a chip, if these cases come up repeatedly, and they will, you're going to find a general weakening of confidentiality all around," he contends. "There's simply not a whole lot of argument for the release of confidentiality. It's irresponsible. The benefit to the victim or to the public is just not great enough."

But victims clearly feel there is more at stake for them than just the public good or the rights of prisoners. "This is the most personal crime there is," says Hacker. "And as much as we in the advocacy movement may be able to look at the larger picture, women who have been raped are looking at a much more defined picture—their own lives. And none of us is in a position to judge what best will serve their individual needs in recovery and healing." ▼

Portion debate, there may be no middle ground

Gay-rights proponents hope that more heterosexuals will support their rights as they become more visible in public life. Whites came to accept civil rights for blacks after being confronted with the issue in the 1950s and 1960s. But the more comparable debate may be the one over abortion. Like homosexuali-

ty, abortion is seen as a constitutional right by some and morally wrong by others. Polls suggest that many Americans are willing to tolerate homosexuality in some situations, but are uncomfortable with encouraging it. "For the ordinary human being, when you have a different color of skin, they know you're not of my

tribe," Colorado Gov. Roy Romer said. "But when you have a different sexual practice, that is even a more radical chasm than for race to bridge over. I think it will be more difficult in the long term." Conflicts will be unavoidable. Gay and lesbian advocates intend to push for a federal civil rights bill bar-

ring discrimination against homosexuals, legalization of gay marriages and laws including the partners of gay and lesbian workers to receive spousal benefits. "We're not going to go away," said William Wayborn, executive director of the Gay and Lesbian Victory Fund, which makes cam-

aign contributions to openly gay and lesbian political candidates. "If anyone thinks we're going to go away, they're in for the ride of their lives." Gary Bauer, head of the conservative Family Research Council, predicts the tension over gay rights will Please see Back Page. DEBATE

FRIDAY



SNOW SHOWERS

High 25, low 5 to 10
Details, Page A-7
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Beating, rape net 1-year sentence

By LIZ RUSKIN
Daily News reporter

Troy Woodworth was worried that his girlfriend would get in trouble if she stayed out late drinking at downtown bars, so he decided one night last month to teach her a lesson.

He took her home, beat her with his fists and then anally raped her.

Woodworth, 32, told police he intended the beating and rape "to show her what it's like for it to happen to her out on the street with somebody she don't know."

Woodworth, for reasons police couldn't explain, was charged with misdemeanor assault, not rape. He pleaded guilty and was sentenced Thursday to 360 days in jail.

His court-appointed attorney, Stuart Ross, told Dis-



PAUL SOUDERS / Associated Press

Troy Woodworth, right, talks with lawyer Stuart Ross after the sentencing.

Please see Back Page. ASSAULT

for jobs and taxes and has watched its tax base erode over past the two years as oil-support companies left. Chevron closed its refinery and production from existing fields declined.

that it would further develop some previous Inlet fields had made it seem "a little like Christmas in January."

But just how good the news for the Peninsula is depends in good part on the

information, that would be good, but not great news. If however, the companies found the oil by testing new ideas about the location of the Inlet's riches, that might start a stampede of oil com-

panies doing is correct. More tests are done. Arco and Phillips' 1991 discovery at the Sunfish well was the first in the Cook Inlet in more than 25 years.

In addition, the proposal calls for a "partial moratorium on proceeding with procedures to remove people from the service while it is further studied by the Chiefs of Staff and further studied in the hearings."

However, in a nod to the Pentagon, the compromise would also allow a commander to temporarily transfer a homosexual.

Clinton had been expected to make an announcement Thursday or the next day, but it was postponed to a second straight day.

Whatever their sexual orientation, Clinton said Thursday. "Americans who are willing to conform to requirements of conduct in the military service, in my judg-

ASSAULT: Man gets year for attack on girlfriend

Continued from Page A-1

district Court Judge John Lohff that Woodworth was only trying to help his girlfriend overcome her drinking problem.

"He loved her extremely much. . . . Whatever happened that day, I think he did it out of love," Ross said. He likened the situation to a parent who physically punishes a child.

"It's not illegal as long as it's reasonable," Ross said.

Assistant Municipal Prosecutor Carmen Clark-Weeks said Woodworth had a "Neanderthal mentality." He believed, she said, that the woman was his property and that he had the right to brutalize her to get her to behave the way he wanted her to.

The woman, who was not identified at the sentencing hearing, lived with Woodworth in a van. On Dec. 27, after she had been out drinking, Woodworth found her at the home of another man. He took her back to the van and assaulted her for an hour or two, the prosecutor said.

After the assault, she went to the emergency room at Alaska Native Medical Center. A doctor there called the police.

The victim refused to cooperate with the investigation, but Woodworth repeatedly confessed to the crime in a tape-recorded interview with police. Clark-Weeks read from the transcript at the sentencing hearing, noting that he blamed her for provoking him.

"I beat her. I assaulted her. I sexually used her," he told police. "If this is what I've got to do to get this woman out of my life and get her to stop doing this to me, then this is what I'm going to do. I'll go to jail. Screw it."

He told police he had assaulted her every second or third time that she went out drinking. He was convicted for assaulting her early last year, for which he was fined \$200 and ordered to perform community-service work.

Anchorage Police Lt. Bill Gifford, supervisor of the department's sexual assault unit, said Thursday he

didn't know why Woodworth was never charged with rape for the Dec. 27 assault. He said the case was never referred to the district attorney's office, which prosecutes rape and other serious crimes. Instead, police presented the case to the municipal prosecutors' office, which only has the power to prosecute misdemeanors.

Gifford said he believes a police officer may have informally discussed the case with someone at the district attorney's office and reached the conclusion that a rape case couldn't be brought because of the victim's refusal to cooperate. When that happens, "we're in a situation where it's almost impossible to get a conviction," he said.

Susan Wibkor, the prosecutor in charge of the sexual crimes unit at the district attorney's office, said her office has no record of the case.

Jim Wolf, head of the municipal prosecutor's office, said just because a victim refuses to help investigators does not mean the case

against her assailant has to be dropped.

"We deal with that problem on domestic violence cases" all the time," Wolf said.

They can be successfully prosecuted if there is enough other evidence that an assault occurred, Wolf said.

In Woodworth's case, prosecutors had photographs of the woman's injuries, as well as his confession.

After Judge Lohff imposed the 360-day sentence and a \$1,000 fine, defense attorney Ross argued that the sentence was too stiff.

"I really don't think it's going to accomplish what you want it to accomplish," Ross said. He urged the judge to suspend part of the jail time as an incentive to keep Woodworth on the straight and narrow after his release.

Lohff declined to change his sentence, saying he wished he had the authority to impose a longer sentence.

Had Woodworth been convicted of rape, he would have faced a jail term of eight years.

DEBATE: No

Continued from Page A-1

be "the defining issue of the '90s."

"The battleground is the whole attempt to elevate homosexuality as being socially and morally equivalent to the heterosexual family," said Bauer, who served as President Ronald Reagan's domestic policy adviser.

"It's part of what a lot of people see as cultural decay. . . . It's a sense that culture is out of control, and somewhere people have to take a stand."

Romer has felt the emotional intensity of the issue in Colorado. Over his opposition, Colorado voters last November approved a measure barring civil rights protections for gays and lesbians. But, if anything, he says passions are higher now in Colorado with efforts under way to repeal the amendment.

CHINA: It's the time of year to show up for work and do nothing

Continued from Page A-1

Cabinet, has finally bowed to reality. In a recent circular, it acknowledged that

Kong are famous for their intense work ethic.

When people here manage to escape the grip of communism, they work ferociously

cakes.

Overstaffing also means many people slack off with official approval. At a Beijing television factory,

or more people. Gas-meter readers usually come in pairs. Newspaper articles often have double or triple bylines on straightforward