

LEGAL SERVICES

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MEMORANDUM

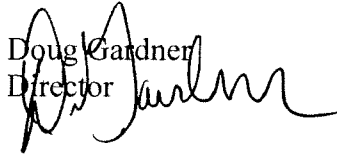
February 1, 2012

SUBJECT: Suspending Imposition of Sentence Under AS 12.55.085;
Excluded Offenses and Exclusions (HB 303; Work Order No. 27-
LS1192\M)

TO: Representative Les Gara
Attn: Toby Smith

FROM:

Doug Gardner
Director



The question you asked is which crimes qualify for a suspended imposition of sentence (SIS) under AS 12.55.085, and which offenses are excluded.

The answer to your question may be found by reading AS 12.55.085(f), which provides:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, or AS 11.61.125 - 11.61.128;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction.

As you can see from reviewing the statute, policy decisions have been made by the legislature to exclude the granting of an SIS to offenders convicted of all offenses in the range from murder (AS 11.41.100) through assault in the third degree (AS 11.41.220), which is a C felony. Note that assault in the fourth degree (AS 11.41.230) is an offense eligible for an SIS unless otherwise excluded by the statute because it involved a firearm, or the offender's record otherwise precluded the offender from being eligible for an SIS.

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Continuing through the list of offenses not eligible for an SIS are stalking, assault on an unborn child, kidnapping and custodial interference in the first degree (AS 11.41.260 - 11.41.320) (note custodial interference in the second degree is an offense eligible for an SIS; AS 11.41.330), and human trafficking (AS 11.41.360 - 11.41.370). The statute continues to exempt all sexual offenses from sexual assault in the first degree (AS 11.41.410) through coercion (AS 11.41.530), arson in the first degree (AS 11.46.400), and distribution of child pornography (AS 11.61.125) through distribution of indecent materials to minors (AS 11.61.128).

You indicated in your request for advice that you intended that only "non-serious" crimes be eligible for an SIS. Previous legislatures have exercised judgment on what offenses should and should not be eligible for an SIS. Please review the offenses discussed above, and referred to in AS 12.55.085(f) the type of conduct the offense involved (using a firearm, etc.), to determine if an SIS only applies to your view of what constitutes a "non-serious" offense.

DDG:ljw
12-077.ljw