

H B

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# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907.465.3800

## LEGISLATIVE AFFAIRS AGENCY

### LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2/21/85	1:30 pm
" "	2/22/85	1:30 pm
" "	2/25/85	1:30 pm
" "	2/26/85	1:00 pm
" "	2/27/85	1:30 pm
" "	2/28/85	1:30 pm
" "	3/1/85	1:30 pm
" "	3/20/85	3:30 pm



# Alaska State Legislature



## House of Representatives House Judiciary Committee

Hon. Pat Rodey, Chairman  
Senate Judiciary Committee  
Anchorage Legislative Information Office #308  
1024 W. Sixth  
Anchorage, Ak. 99501

Sept. 15, 1985

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

ATTN: Ann Plunkett

RE. HB 104

Dear Sen. Rodey:

You requested backup from the House Judiciary Committee regarding HB 104, having to do with statutory good time.

Enclosed you will find the contents of the House Judiciary Committee file on HB 104.

In addition, I am sending you a copy of a letter recently sent to us by Rep. Max Gruenberg as an informational copy, regarding an unpublished appellate court opinion in the case of Suiter v. Benson.

For further information on that correspondence, you may want to contact Rep. Gruenberg.

Sincerely,

A handwritten signature in cursive script that reads "Bob Speed".

Bob Speed, A.A.  
for Rep. Mike Miller, Chairman  
House Judiciary Committee

cc: Rep. Max Gruenberg

# State of Alaska

## COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
(Co-Chairman)  
HOUSE JUDICIARY  
HOUSE COMMUNITY AND  
REGIONAL AFFAIRS



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4968

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

30 July 1985

David Lampen  
Clerk of the Appellate Courts  
303 K Street  
Anchorage, Alaska 99501

Re: Suiter v. Benson, MD&J #734 (Alaska, App. 1984)  
(Unpublished opinion)

Dear Mr. Lampen,

I would like to request that the above opinion be published. The portion at pages 3 and 4 stating that the trial court has no authority to restrict the prisoner's ability to receive credit for good time because the awarding of good time is automatic under AS 33.20.010 is of considerable importance statewide. This portion of the opinion appears to be a decision on an issue of first impression in this state as no previous opinion is cited and my brief research through the Michie statutes annotation reveals none.

**HB 104, revising the good time statutes,** has passed the state House and now reposes in the state Senate.

I am presently considering whether to amend HB 104 to include a provision allowing trial courts the discretion to reduce or eliminate a prisoner's eligibility for good time. It will thus be important to the legislature to have a published opinion on the issue definitively setting forth that under present law the trial courts possess no such authority.

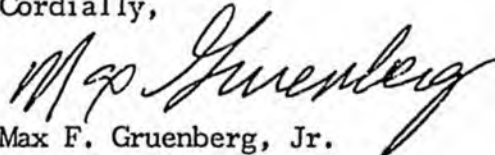
I would be most grateful if you would transmit this communication to the judges of the Court of Appeals as an official request to publish the opinion.

If you have any additional questions or if you or the judges have any comments on this or any other aspect of HB 104, please let me know.

For the record, this law office, through my partner, Jo Ann Clover, represented appellee Cynthia Benson in the underlying divorce. As far as I know, we had no involvement in the appeal, however. I have not spoken with my partner directly on this as she is presently out of the state. I came across the opinion when reviewing this Benson's file on an unrelated matter

and this letter was written strictly from my point of view as a legislator, not in any matter as Ms. Benson's counsel. It is not intended to be utilized in any matter in the underlying litigation between the parties nor is my request intended to have any effect on the actual case of Suiter v. Benson.

Cordially,



Max F. Gruenberg, Jr.

cc: The Honorable Mike M. Miller, Chairman  
House Judiciary Committee

The Honorable Victor Carlson  
Superior Court Justice

Mary Ann Foley  
Carla Huntington

# Alaska State Legislature



## House of Representatives House Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

Contents - HB 104  
March 20, 1985

CSHB 104 (HESS)

HB 104

1/23/85 letter from Governor, with 0 fiscal note for  
Corrections

AS 12.55.125 Sentences of imprisonment for felonies

4/12/84 AG opinion re forfeiture of good time during  
consecutive sentences

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the computation, forfeiture, and restoration of statutory good time for state prisoners.

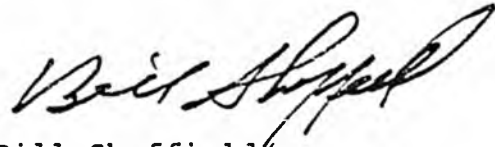
Good time accounting for state prisoners is currently being computed under three different systems dependent upon when a prisoner committed a criminal offense. Because of the complexities, an inordinate amount of staff time and frequent computational errors.

This bill will greatly simplify basic time accounting, and bring all Alaskan prisons under one time accounting system. For those prisoners already incarcerated on the date this bill becomes law, this bill will have the effect of changing the time accounting method from one of accruing good time at a set rate per month to one of a grant of good time in a block, the amount of which is dependent on the time remaining to be served on their sentences.

Additionally, although the primary purpose of the bill is to simplify the good time computation process, it will result in a minor reduction in the time prisoners will serve (one-twelfth of the sentence), if they observe all the rules of the institution while incarcerated.

Finally, the bill will assist in the statewide uniform application of restoration of forfeited good time for prisoners who demonstrate good conduct during their incarceration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield  
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Page 1 of 2

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

REQUEST:  
 Bill/Resolution No.: HB 104  
 Title: "An Act relating to computation, forfeiture and restoration of statutory good time."  
 Sponsor: Governor  
 Requestor: Governor  
 Date of Request: 12-11-84

FISCAL DETAIL:  
 Agency Affected: DEPARTMENT OF CORRECTIONS  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation and Supervision

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

See Attachment.

Prepared By: Cynthia Nelson  
 Special Assistant: Cynthia Nelson

Phone: 465-3376  
 Date: 1-3-85

Approved by Commissioner: William W. Lewis for Roger V. Emsell  
 Agency: DEPARTMENT OF CORRECTIONS

Date: 1-3-85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency (ies)

7/1/84

Attachment

This change in the award of statutory good time from one-fourth to one-third would affect only those prisoners sentenced since 1980. Prisoners sentenced prior to 1980 are currently eligible to receive one-third of their sentence awarded as good time.

Projections indicate that this legislation would create a gain of 22 beds per month over the next five years. This has been calculated by applying the revised amount of good time towards the portion of the current population having five years or less remaining to serve.

Projecting from the 640 prisoners meeting this criteria, a gain of 56,000 man days of good time over a five year period were identified. Calculated below this would average a gain of 31.1 beds per month if all inmates were to earn the maximum amount of statutory good time. Approximately 72% of prisoners serve their sentences without any loss of statutory good time, which results in a total projected gain of 22 beds per month.

56,000 man days over five years  
 $56,000 \div 5 = 11,200$  man days per year  
 $11,200 \div 12 = 933$  man days per month  
 $933 \div 30 = 31.1$  beds per month  
 $72\% \times 31.1 = 22$  beds per month

Assuming that 22 additional beds per month become available over the next five years, the inmate population which is consistently raising at the rate of 25 per month would begin to stabilize.

# MEMORANDUM

State of Alaska

TO: Roger Endell  
Commissioner  
Department of Corrections

DATE: April 12, 1984

FILE NO: 366-496-84

TELEPHONE NO: 465-3428

FROM: NORMAN C. GORSUCH  
ATTORNEY GENERAL

SUBJECT: Forfeiture of good time  
during consecutive -  
sentences

By: Michael J. Stark *MJS*  
Assistant Attorney General

You have asked our opinion<sup>1/</sup> whether it is legally permissible for a disciplinary committee to forfeit a prisoner's statutory good time for a disciplinary infraction when at least part of the good time was earned during the first of two consecutive sentences and the infraction was committed during the second sentence.

As long as the amount of forfeited statutory good time does not exceed that set out in 7 AAC 60.470(a)(5), it is legally permissible to forfeit statutory good time earned during the first of two consecutive sentences for a disciplinary infraction committed during the second sentence.

### Legal Analysis

The purpose of statutory good time is to provide an incentive for good behavior by prisoners and to concomitantly aid in the rehabilitative process. See, e.g. DeSimone v. Norton, 404 F. Supp. 964, 967 (D. Conn. 1975). This is accomplished by mitigating the severity of punishment by rewarding a prisoner for good conduct.

This principle is embodied in Alaska in AS 33.20.010, which provides:

Computation of good time. Notwithstanding AS 12.55.125(f)(3) and (g)(3), each prisoner convicted of an offense against the state and sentenced to imprisonment, whose record of conduct shows that the prisoner has faithfully observed the rules of the institution in which

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1/ The request for advice came from a superintendent; however, the question and our response has application systemwide.

the prisoner is confined, is entitled to a deduction from the term of imprisonment of one day for every three days of good conduct served.

Before this statute was adopted in its present form in 1978, former AS 33.20.010 provided for an award of statutory good time based on the length of the term of imprisonment.<sup>2/</sup>

Because the amount of good time awarded was dependent on the length of sentence, former AS 33.20.010(b) provided that consecutive sentences should be aggregated for purposes of computing the amount of good time a prisoner was entitled to receive. When AS 33.20.010 was amended, this subsection was dropped as it would have been superfluous given the fact that "good time" is earned at a rate of one day for every three days served, irrespective of sentence length.

Former AS 33.20.010 was substantially similar to 18 U.S.C. § 4161, the federal statute relating to the award of good time for federal prisoners. Cases interpreting that statute have consistently held that the expiration of the first of two consecutive sentences does not prevent the subsequent forfeiture of good time earned during that sentence. See e.g. Williams v. Daggett, 377 F. Supp. 1110, 1112 (D. Kansas 1974); Hoover v. Taylor, 334 F.2d 281 (10th Cir. 1964). The basis for these rulings has been that no authority exists for the proposition that consecutive sentences "expire" independently of one another. Rather, consecutive sentences are treated as a single term, the expiration of which, less the time deducted for good conduct, results in the prisoner's release.<sup>3/</sup> E.g., McCray v. United States Board of Parole, 542 F.2d 558, 560 (10th Cir. 1976) and cases cited therein.

It is our understanding that the Department of Corrections has continued as a policy the mandate of former

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2/ The amount of statutory good time a prisoner was entitled to receive ranged from five days per month for a sentence of six months to one year to 10 days per month for a sentence of 10 years or longer.

3/ In Alaska, a prisoner earning more than 180 days of good time is mandatorily released as if on parole and remains in the custody of the parole board. AS 33.20.040; AS 33.15.190.

AS 33.20.010 to aggregate consecutive sentences for purposes of time accounting and calculation of earned statutory good time.

The question thus becomes whether the 1978 amendments to AS 33.20.010 have the effect of precluding the department from forfeiting statutory good time earned during the first of two consecutive sentences when the disciplinary infraction triggering this sanction occurred during the second sentence.

As indicated earlier in this memorandum, the answer to this question is no. Both AS 33.20.050, which authorizes the forfeiture of a prisoner's earned statutory good time "during the term of imprisonment" and AS 33.20.030, which provides that "[A] prisoner shall be released at the expiration of the term of sentence less the time deducted for good conduct," are nearly identical to their federal counterparts (18 U.S.C. §§ 4165, 4163) and have not been amended since their original adoption in 1960. In addition, there has been no indication given by the legislature, either in its amendments to AS 33.20.010 or elsewhere, that the well-settled rule that consecutive sentences are to be treated as a single term for purposes of awarding and forfeiting statutory good time, should be abandoned.<sup>4/</sup>

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4/ See Lambert v. U.S. Penitentiary, 591 F.2d 4, 8 (5th Cir. 1979), where the court, in an analogous situation dealing with a parole violator's loss of good time and credit for time spent on conditional release, stated:

Under the pre-1976 law, it is clear that a parole violator could lose both good time credit and credit for time spent on conditional release. 18 U.S.C. §§ 4205, 4207 (1970) [citations omitted]. Under the Parole Commission and Reorganization Act, sections 4205 and 4207 were substantially changed and include no similar forfeiture provisions. Nonetheless, absent some legislative indication to the contrary, we will not upset the well-settled rule that once the appellant's release was revoked because of his violation of its conditions, the U.S.P.C. had the authority to forfeit the appellant's good-time credit as well as credit for time spent on conditional release. [Citations omitted.]

Roger Endell, Commissioner  
Department of Corrections  
366-496-84

April 12, 1984  
Page 4

If you have any questions regarding this memorandum of advice, please contact us at your convenience.

MJS/so-03

cc: Kevin Bruce  
Deputy Commissioner for Operations

Art Schmidt  
Superintendent, Palmer Correctional Center

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

March 21, 1985

BILL SHEFFIELD, GOVERNOR

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428

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

The Honorable Don Clocksin  
Majority Leader of the House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: CS for HB 104 (Jud)  
Good Time for Prisoners

Dear Representative Clocksin:

This letter is a response to some concerns raised at the hearing before the House Judiciary Committee on March 20, 1985, to the effect that section 1 of CS for HB 104 (Jud) would result in the wholesale amnesty and general release of a large number of prisoners upon its effective date.

These concerns are groundless as the bill will not be applied retrospectively. AS 01.10.090 precludes the retrospective application of a statute unless expressly declared therein. What will occur to the sentences of prisoners incarcerated on the effective date of this bill (assuming it is enacted into law) is that the portion of the sentences remaining to be served will be reduced by one third rather than reducing them by one day for each three served on an accrual basis. No prisoners will be released on the effective date of this bill who would not otherwise have been released for other reasons.

If you have any questions regarding the information provided above, please contact me at your convenience.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By: Michael J. Stark  
Michael J. Stark  
Assistant Attorney General

MJS/gb-52

cc: Mike Miller, Chairman ✓  
House Judiciary Committee

Roger Endeli, Commissioner  
Department of Corrections

3691), 578 P.2d 971 (1978); Putnam v. State, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980); State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984); Cleary v. State, Sup. Ct. Op. No. 1257 (File No. 2623), 548 P.2d 952 (1976); Salazar v. State, Sup. Ct. Op. No. 1404 (File No. 2567), 562 P.2d 694 (1977); Cleary v. State, Sup. Ct. Op. No. 1431 (File No. 3059), 564 P.2d 374 (1977); Amidon v. State, Sup. Ct. Op. No. 1434 (File Nos. 2511, 2512), 565 P.2d 1248 (1977); Black v. State, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977); Sumabat v. State, Sup. Ct. Op. No. 1648 (File No. 3739), 580 P.2d 323 (1978); Hansen v. State, Sup. Ct. Op. No. 1689 (File No. 3412), 582 P.2d 1041 (1978); Kanipe v. State, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981).

Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge. — See Parks v. State, Sup. Ct. Op. No. 1529 (File No. 3209), 571 P.2d 1003 (1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record

indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. Pascoe v. State, Sup. Ct. Op. No. 2249 (File No. 4290), 628 P.2d 547 (1980).

Case remanded for resentencing. — See Neal v. State, Sup. Ct. Op. No. 2341 (File No. 4787), 628 P.2d 19 (1981).

Case remanded for sentence review. — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence it imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

**Sec. 12.55.125. Sentences of imprisonment for felonies.** (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years.

(b) A defendant convicted of murder in the second degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction, other than for manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction, 15 years.

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, two years.

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum term may not be otherwise reduced.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided.

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

- (1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;
- (2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;
- (3) if the offense is a second felony conviction, 15 years;
- (4) if the offense is a third felony conviction, 25 years. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28-30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1-3 ch 92 SLA 1983)

**Cross references.** — For classification of felonies and misdemeanors, see AS 11 31.250; for authorized fines, see AS 12 55.035; for reduction of sentence for good behavior, see AS 33.20.010.

**Effect of amendments.** — The first 1982 amendment in subsection (b), deleted "or" preceding "kidnapping" and inserted "or misconduct involving a controlled substance in the first degree."

The second 1982 amendment in subsection (c), redesignated former paragraphs (1)-(3) as present paragraphs (2)-(4), added present paragraph (1), and substituted "possessed a firearm, used a dangerous instrument" for "possessed or used a firearm" and "seven years" for "six years" in present paragraph (2). The amendment also substituted "under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section" for

"under (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) of this section" in the introductory language of subsection (g), corrected the section number set out in paragraphs (1) and (2) of subsection (g), and added subsection (i).

The first 1983 amendment inserted "or sexual abuse of a minor in the first degree" in the introductory language of subsection (i).

The second 1983 amendment in (c)(2) added "or knowingly directed . . . at the time of the offense," added paragraph (3) of subsection (d), added paragraph (3) of subsection (e), and made other minor punctuation changes.

**Editor's notes.** — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

#### NOTES TO DECISIONS

- I. General Consideration.
- II. Presumptive Sentencing.

##### I. GENERAL CONSIDERATION.

**Limited use of both suspended jail time and probation is permitted under AS 12.55.155.** *Lacquement v. State*, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982). See also *Friedberg v. State*, Ct. App. Op. No. 258 (File No. 7015), 663 P.2d 558 (1983).

**Probationary sentences.** — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for rehabilitation through probationary supervision. *State v. Coats*, Ct. App. Op. No. 291 (File No. 7102), 669 P.2d 1329 (1983).

Under former law where statutory

mitigating factors warrant a sentence of 90 days to three years, extraordinary circumstances might justify a sentence of straight probation. *State v. Brinkley*, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

**Placement of offenders.** — It is within the sentencing judge's authority to make a recommendation to the commissioner regarding the appropriate placement of the offender. Under AS 33.30.100, the commissioner has the power to effectuate such a recommendation by placing the offender in the appropriate facility and although the commissioner is not bound by the sentencing court's recommendation, a demonstrated failure to provide an appropriate rehabilitation program or to further the purposes of the sentence may justify judicial intervention. *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).