

S B

9 8

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 98

Sponsor: GOVERNOR

Date referred to committee: 1/25/85

Synopsis completed: 1/28

Fiscal note: Dept. of Corrections zero ✓ Dept. of Law zero ✓

Further referrals: Judiciary

CONTACTS:

✓ A.G. - Patrick Conheady 3677

Karla Forsythe, Courts 264-0634

Dana Tate, Public Defender 279-7541

Cindy Nelson, Corrections 3376



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

DL 98

January 25, 1985

The Honorable Don Bennett  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to effects of certain criminal convictions. This bill addresses the uses of prior convictions that have been either set aside by a court under AS 12.55.085, or for which a pardon has been granted by the governor under art. III, sec. 21, of the Alaska Constitution and AS 33.20.070. The bill focuses on three distinct areas: the uses of a conviction that is set aside under the suspended-imposition-of-sentence statute; the uses of a pardoned conviction; and the effects of a pardoned or set-aside conviction on the records of the conviction.

Under current court interpretation of the suspended-imposition-of-sentence statute (AS 12.55.085), a conviction that has been set aside is not considered a prior conviction under AS 12.55.125 for purposes of presumptive sentencing. This interpretation belies the purposes underlying this statute. Theoretically, setting aside a conviction under this statute is intended to reward an offender who reforms subsequent to the conviction and after that leads a blameless life. It is presumed that, due to the nature of the offense and the likelihood of the offender's complete rehabilitation, further criminal conduct on the part of the offender is unlikely. Therefore, by setting aside the conviction, the offender will not be prejudiced in later life by collateral consequences that flow from the criminal conviction.

However, in those instances in which subsequent criminal conduct occurs, it is evident that the offender has not reformed and thus should not benefit from this provision in the law. Rather, in spite of being given this second chance, the offender has demonstrated an habituation to criminal conduct. New AS 12.55.085(f), added in sec. 2 of

298

the bill, makes clear that a set-aside conviction is a prior conviction if a sentence is being imposed for subsequent criminal conduct.

In sec. 2, this legislation also makes clear that a prior, set-aside conviction may be used in three other instances. First, it may be employed as a factor in aggravation under AS 12.55.155(c)(8) (a criminal history of assaultive behavior). Also, it may be used when an agency is called upon to determine how dangerous an offender is or to predict the offender's future criminal behavior, or when determining the offender's conditions of release from incarceration. Finally, in a licensing proceeding, the licensing authority may review the conduct involved in the prior offense when determining whether an individual is of good character. These three uses mirror existing court interpretations and common law applications of the law but are not currently codified.

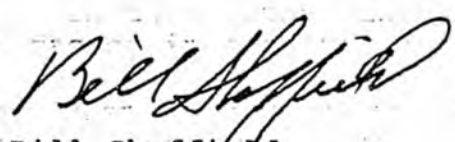
On the other hand, under this bill a pardoned conviction, although premised on the same factors as the suspended imposition of sentence, would not be considered a prior conviction for purposes of presumptive sentencing. This is due to the fact that a pardon is an extraordinary remedy, rarely granted, and generally employed after a significant period has elapsed since the prior offense. Because of the elapsed time, the pardoning authority has the benefit of not only the nature of the offense and the likelihood of the offender to rehabilitate, but also a demonstrable record of the offender's post-conviction conduct. The pardoning authority's decision is thus given greater effect, which, under new AS 33.20.090(b), may be specifically either limited or further extended. (Section 3 of the bill.) This latter ability to limit or extend the effects of the pardon enables the pardoning authority to fashion the pardon to the circumstances of the individual case. However, unless otherwise specified, a pardoned offense may still be used in the three other instances in which a set-aside conviction may be used.

Finally, the bill clarifies the effect of a pardoned or set-aside conviction upon the records of the criminal conviction. In that there are subsequent uses for the prior conviction, even under existing law, expunction or sealing the records is inappropriate. Naturally, when granting a pardon there may be reason to have the records expunged (e.g., uncontroverted evidence that the offender was erroneously convicted). Therefore, in new AS 33.20.090(b), the pardoning authority is granted the latitude to specifically order expunction of the records.

298

This bill makes much-needed clarifications of the law, and I urge its passage.

Sincerely,



Bill Sheffield  
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

**REQUEST:**

Bill/Resolution No.: \_\_\_\_\_  
 Title: "An Act related to the effects of  
 criminal convictions."  
 Sponsor: Governor  
 Requestor: Governor  
 Date of Request: 12-12-84

**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	*	*	*	*	*	*

CAPITAL	*	*	*	*	*	*
---------	---	---	---	---	---	---

REVENUE	*	*	*	*	*	*
---------	---	---	---	---	---	---

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	*	*	*	*	*	*

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary.

Allowing a conviction previously set aside to be considered as a prior conviction at sentencing would create some fiscal impact. This impact should be negligible; however, no statistical data is available for an accurate analysis.

Prepared By: Robert Brown Budget Analyst

Phone: 465-3376

Division: Administration & Support

Date: 12-12-84

Approved by Commissioner: [Signature]

Date: 12-12-84

Agency: DEPARTMENT OF CORRECTIONS

Distribution (by Agency preparing fiscal note):

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

Fiscal Note  
Analysis

December 12, 1984

This bill sets out the uses of prior convictions that have been set aside by a court under AS 12.55.085 (suspended impositions of sentence) or for which a pardon has been granted. Under this bill, a conviction set aside by the court may be used as a prior conviction under presumptive sentencing, as an aggravating factor if the set aside conviction involved assaultive behavior, as a factor in predicting behavior in the correctional classification or parole decision process, and as an indicator of questionable character in a state licensing proceeding. If the conviction has been pardoned, it would not be considered a prior conviction under presumptive sentencing but the other uses applicable to a set aside conviction would apply. However, when granting a pardon, the governor would be permitted to specifically expand or limit these uses. Finally, the bill specifies that the records of a conviction that has been set aside or pardoned would not be sealed or expunged. Enactment of the bill will not result in a fiscal impact for the Department of Law because it clarifies how an offender's criminal record may be applied in sentencing after an offender has been convicted.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: SB 98  
 Title: "An Act relating to the effects of criminal convictions."  
 Sponsor: Sen. Rules/by req. of Gov.  
 Requirer: Governor's Office/OMB  
 Date of Request: 12/11/84

FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Richard I. Pequeo, Director Phone: 465-3672  
 Division: Administrative Services Date: 12/12/84  
 Approved by Commissioner: Richard I. Pequeo / Norman C. Gorsuch Date: 12/12/84  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

7/1/84

1A11

Fiscal Note  
Analysis

December 12, 1984

..... This bill sets out the uses of prior convictions that have been set aside by a court under AS 12.55.085 (suspended impositions of sentence, or for which a pardon has been granted. Under this bill, a conviction set aside by the court may be used as a prior conviction under presumptive sentencing, as an aggravating factor if the set aside conviction involved assaultive behavior, as a factor in predicting behavior in the correctional classification or parole decision process, and as an indicator of questionable character in a state licensing proceeding. If the conviction has been pardoned, it would not be considered a prior conviction under presumptive sentencing but the other uses applicable to a set aside conviction would apply. However, when granting a pardon, the governor would be permitted to specifically expand or limit these uses. Finally, the bill specifies that the records of a conviction that has been set aside or pardoned would not be sealed or expunged. Enactment of the bill will not result in a fiscal impact for the Department of Law because it clarifies how an offender's criminal record may be applied in sentencing after an offender has been convicted.

.....

.....

.....

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1988

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

Mary Van Nimwegen

*HESS 2-19-85 1:33pm*