

H B

371

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

House Judiciary:

4-7-88

4-8-88

Original sponsors: Hanley, Barnes,
Pettyjohn, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 371 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to attempted murder in the first
7 degree."

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

9 * Section 1. AS 11.31.100(d) is amended to read:

10 (d) An attempt is [A]

11 (1) an unclassified felony if the crime attempted is murder
12 in the first degree;

13 (2) a class A felony if the crime attempted is an unclassi-
14 fied felony other than murder in the first degree;

15 (3) a [(2)] class B felony if the crime attempted is a
16 class A felony;

17 (4) a [(3)] class C felony if the crime attempted is a
18 class B felony;

19 (5) a [(4)] class A misdemeanor if the crime attempted is a
20 class C felony;

21 (6) a [(5)] class B misdemeanor if the crime attempted is a
22 class A or class B misdemeanor.

23 * Sec. 2. AS 11.81.250(a) is amended to read:

24 (a) For purposes of sentencing under AS 12.55, all offenses
25 defined in this title, except murder in the first and second degree,
26 attempted murder in the first degree, sexual assault in the first
27 degree, sexual abuse of a minor in the first degree, misconduct in-
28 volving a controlled substance in the first degree, and kidnapping,
29 are classified on the basis of their seriousness, according to the

1 type of injury characteristically caused or risked by commission of
2 the offense and the culpability of the offender. Except for murder in
3 the first and second degree, attempted murder in the first degree,
4 sexual assault in the first degree, sexual abuse of a minor in the
5 first degree, misconduct involving a controlled substance in the first
6 degree, and kidnapping, the offenses in this title are classified into
7 the following categories:

8 (1) class A felonies, which characteristically involve
9 conduct resulting in serious physical injury or a substantial risk of
10 serious physical injury to a person;

11 (2) class B felonies, which characteristically involve
12 conduct resulting in less severe violence against a person than class
13 A felonies, aggravated offenses against property interests, or aggra-
14 vated offenses against public administration or order;

15 (3) class C felonies, which characteristically involve
16 conduct serious enough to deserve felony classification but not seri-
17 ous enough to be classified as A or B felonies;

18 (4) class A misdemeanors, which characteristically involve
19 less severe violence against a person, less serious offenses against
20 property interests, less serious offenses against public administra-
21 tion or order, or less serious offenses against public health and
22 decency than felonies;

23 (5) class B misdemeanors, which characteristically involve
24 a minor risk or physical injury to a person, minor offenses against
25 property interests, minor offenses against public administration or
26 order, or minor offenses against public health and decency;

27 (6) violations, which characteristically involve conduct
28 inappropriate to an orderly society but which do not denote criminal-
29 ity in their commission.

1 * Sec. 3. AS 11.81.250(b) is amended to read:

2 (b) The classification of each felony defined in this title,
3 except murder in the first and second degree, attempted murder in the
4 first degree, sexual assault in the first degree, sexual abuse of a
5 minor in the first degree, misconduct involving a controlled substance
6 in the first degree, and kidnapping, is designated in the section
7 defining it. A felony under Alaska law defined outside this title for
8 which no penalty is specifically provided is a class C felony.

9 * Sec. 4. AS 12.55.035(b) is amended to read:

10 (b) Upon conviction of an offense, a defendant who is not an
11 organization may be sentenced to pay, unless otherwise specified in
12 the provision of law defining the offense, a fine of no more than

13 (1) \$75,000 for murder in the first or second degree,
14 attempted murder in the first degree, sexual assault in the first
15 degree, kidnapping, or misconduct involving a controlled substance in
16 the first degree;

17 (2) \$50,000 for a class A, B, or C felony;

18 (3) \$5,000 for a class A misdemeanor;

19 (4) \$1,000 for a class B misdemeanor;

20 (5) \$300 for a violation.

21 * Sec. 5. AS 12.55.125(b) is amended to read:

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

Adopted

5-1203X

Chenoweth
4/8/88

B

Original sponsors: Hanley, Barnes,
Pettyjohn, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 371 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to attempted murder in the first
7 degree."

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

9 * Section 1. AS 11.31.100(d) is amended to read:

10 (d) An attempt is [A]

11 (1) an unclassified felony if the crime attempted is murder
12 in the first degree;

13 (2) a class A felony if the crime attempted is an unclassi-
14 fied felony other than murder in the first degree;

15 (3) a [(2)] class B felony if the crime attempted is a
16 class A felony;

17 (4) a [(3)] class C felony if the crime attempted is a
18 class B felony;

19 (5) a [(4)] class A misdemeanor if the crime attempted is a
20 class C felony;

21 (6) a [(5)] class B misdemeanor if the crime attempted is a
22 class A or class B misdemeanor.

23 * Sec. 2. AS 11.81.250(a) is amended to read:

24 (a) For purposes of sentencing under AS 12.55, all offenses
25 defined in this title, except murder in the first and second degree,
26 attempted murder in the first degree, sexual assault in the first
27 degree, sexual abuse of a minor in the first degree, misconduct in-
28 volving a controlled substance in the first degree, and kidnapping,
29 are classified on the basis of their seriousness, according to the

1 type of injury characteristically caused or risked by commission of
2 the offense and the culpability of the offender. Except for murder in
3 the first and second degree, attempted murder in the first degree,
4 sexual assault in the first degree, sexual abuse of a minor in the
5 first degree, misconduct involving a controlled substance in the first
6 degree, and kidnapping, the offenses in this title are classified into
7 the following categories:

8 (1) class A felonies, which characteristically involve
9 conduct resulting in serious physical injury or a substantial risk of
10 serious physical injury to a person;

11 (2) class B felonies, which characteristically involve
12 conduct resulting in less severe violence against a person than class
13 A felonies, aggravated offenses against property interests, or aggra-
14 vated offenses against public administration or order;

15 (3) class C felonies, which characteristically involve
16 conduct serious enough to deserve felony classification but not seri-
17 ous enough to be classified as A or B felonies;

18 (4) class A misdemeanors, which characteristically involve
19 less severe violence against a person, less serious offenses against
20 property interests, less serious offenses against public administra-
21 tion or order, or less serious offenses against public health and
22 decency than felonies;

23 (5) class B misdemeanors, which characteristically involve
24 a minor risk or physical injury to a person, minor offenses against
25 property interests, minor offenses against public administration or
26 order, or minor offenses against public health and decency;

27 (6) violations, which characteristically involve conduct
28 inappropriate to an orderly society but which do not denote criminal-
29 ity in their commission.

1 * Sec. 3. AS 11.81.250(b) is amended to read:

2 (b) The classification of each felony defined in this title,
3 except murder in the first and second degree, attempted murder in the
4 first degree, sexual assault in the first degree, sexual abuse of a
5 minor in the first degree, misconduct involving a controlled substance
6 in the first degree, and kidnapping, is designated in the section
7 defining it. A felony under Alaska law defined outside this title for
8 which no penalty is specifically provided is a class C felony.

9 * Sec. 4. AS 12.55.035(b) is amended to read:

10 (b) Upon conviction of an offense, a defendant who is not an
11 organization may be sentenced to pay, unless otherwise specified in
12 the provision of law defining the offense, a fine of no more than

13 (1) \$75,000 for murder in the first or second degree,
14 attempted murder in the first degree, sexual assault in the first
15 degree, kidnapping, or misconduct involving a controlled substance in
16 the first degree;

17 (2) \$50,000 for a class A, B, or C felony;

18 (3) \$5,000 for a class A misdemeanor;

19 (4) \$1,000 for a class B misdemeanor;

20 (5) \$300 for a violation.

21 * Sec. 5. AS 12.55.125(b) is amended to read:

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

5-1203L
Chenoweth
4/8/88

(A)

Original sponsors: Hanley, Barnes,
Pettyjohn, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 371 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to attempted murder in the first
7 degree."

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

9 * Section 1. AS 11.31.100(d) is amended to read:

10 (d) An attempt is [A]

11 (1) an unclassified felony if the crime attempted is murder
12 in the first degree;

13 (2) a class A felony if the crime attempted is an unclassi-
14 fied felony other than murder in the first degree;

15 (3) a [(2)] class B felony if the crime attempted is a
16 class A felony;

17 (4) a [(3)] class C felony if the crime attempted is a
18 class B felony;

19 (5) a [(4)] class A misdemeanor if the crime attempted is a
20 class C felony;

21 (6) a [(5)] class B misdemeanor if the crime attempted is a
22 class A or class B misdemeanor.

23 * Sec. 2. AS 11.81.250(a) is amended to read:

24 (a) For purposes of sentencing under AS 12.55, all offenses
25 defined in this title, except murder in the first and second degree,
26 attempted murder in the first degree, sexual assault in the first
27 degree, sexual abuse of a minor in the first degree, misconduct in-
28 volving a controlled substance in the first degree, and kidnapping,
29 are classified on the basis of their seriousness, according to the

1 type of injury characteristically caused or risked by commission of
2 the offense and the culpability of the offender. Except for murder in
3 the first and second degree, attempted murder in the first degree,
4 sexual assault in the first degree, sexual abuse of a minor in the
5 first degree, misconduct involving a controlled substance in the first
6 degree, and kidnapping, the offenses in this title are classified into
7 the following categories:

8 (1) class A felonies, which characteristically involve
9 conduct resulting in serious physical injury or a substantial risk of
10 serious physical injury to a person;

11 (2) class B felonies, which characteristically involve
12 conduct resulting in less severe violence against a person than class
13 A felonies, aggravated offenses against property interests, or aggra-
14 vated offenses against public administration or order;

15 (3) class C felonies, which characteristically involve
16 conduct serious enough to deserve felony classification but not seri-
17 ous enough to be classified as A or B felonies;

18 (4) class A misdemeanors, which characteristically involve
19 less severe violence against a person, less serious offenses against
20 property interests, less serious offenses against public administra-
21 tion or order, or less serious offenses against public health and
22 decency than felonies;

23 (5) class B misdemeanors, which characteristically involve
24 a minor risk or physical injury to a person, minor offenses against
25 property interests, minor offenses against public administration or
26 order, or minor offenses against public health and decency;

27 (6) violations, which characteristically involve conduct
28 inappropriate to an orderly society but which do not denote criminal-
29 ity in their commission.

1 * Sec. 3. AS 11.81.250(b) is amended to read:

2 (b) The classification of each felony defined in this title,
3 except murder in the first and second degree, attempted murder in the
4 first degree, sexual assault in the first degree, sexual abuse of a
5 minor in the first degree, misconduct involving a controlled substance
6 in the first degree, and kidnapping, is designated in the section
7 defining it. A felony under Alaska law defined outside this title for
8 which no penalty is specifically provided is a class C felony.

9 * Sec. 4. AS 12.55.035(b) is amended to read:

10 (b) Upon conviction of an offense, a defendant who is not an
11 organization may be sentenced to pay, unless otherwise specified in
12 the provision of law defining the offense, a fine of no more than

13 (1) \$75,000 for murder in the first or second degree,
14 attempted murder in the first degree, sexual assault in the first
15 degree, kidnapping, or misconduct involving a controlled substance in
16 the first degree;

17 (2) \$50,000 for a class A, B, or C felony;

18 (3) \$5,000 for a class A misdemeanor;

19 (4) \$1,000 for a class B misdemeanor;

20 (5) \$300 for a violation.

21 * Sec. 5. AS 12.55.125(i) is amended to read:

22 (i) A defendant convicted of sexual assault in the first degree,
23 [OR] sexual abuse of a minor in the first degree, or attempted murder
24 in the first degree may be sentenced to a definite term of imprison-
25 ment of not more than 30 years, and shall be sentenced to the follow-
26 ing presumptive terms, subject to adjustment as provided in AS 12.55.-
27 155 - 12.55.175:

28 (1) if the offense is a first felony conviction and does
29 not involve circumstances described in (2) of this subsection, eight

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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.

Never offered

A M E N D M E N T

Offered in the HOUSE

By Hanley

TO: HB 371

Page 1, line 7, after "degree":

Insert "and solicitation to commit murder in the first degree"

Page 1, following line 22:

Insert new bill sections to read:

"* Sec. 2. AS 11.31.110(c) is amended to read:

(c) Unless otherwise provided in this section, solicitation

[SOLICITATION] is a

(1) class A felony if the crime solicited is an unclassified felony;

(2) class B felony if the crime solicited is a class A felony;

(3) class C felony if the crime solicited is a class B felony;

(4) class A misdemeanor if the crime solicited is a class C felony;

(5) class B misdemeanor if the crime solicited is a class A or class B misdemeanor.

* Sec. 3. AS 11.31.110 is amended by adding a new subsection to read:

(e) Solicitation to commit murder in the first degree is an unclassified felony and is punishable as provided in AS 12.55."

Renumber remaining bill sections accordingly.

Page 1, line 26, after "degree,":

Insert "solicitation to commit murder in the first degree,"

Page 2, line 3, after "degree,":

Insert "solicitation to commit murder in the first degree,"

Page 3, lines 3 - 6:

Delete "murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping"

Insert "unclassified felonies [MURDER IN THE FIRST AND SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, SEXUAL ABUSE OF A MINOR IN THE FIRST DEGREE, MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE, AND KIDNAPPING]"

Page 3, lines 13 - 16:

Delete "murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree"

Insert "an unclassified felony [MURDER IN THE FIRST OR SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, KIDNAPPING, OR MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE]"

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSSB 371(Finance)

Page 2, line 4:

Delete "two"

Insert "12"

Delete "48"

Insert "96"

Page 2, line 5:

Delete "12"

Insert "18"

Page 2, line 6:

Delete "seven-day"

Insert "30-day"

What difference
does it make

if the person died or not.

just because the defendant
wasn't successful
in completing the
act - - - why

should he be
rewarded?

So, if the bullet misses
by a mile, same penalty?

MAR 22 1988



Alaska State Legislature

House of Representatives

4007 BRENTWOOD CIRCLE
ANCHORAGE, ALASKA 99502
(907) 243-7574

REPRESENTATIVE
ALYCE HANLEY
DISTRICT 9, SEAT B

WHILE IN JUNEAU
BOX V
JUNEAU, ALASKA 99811
(907) 465-4939

MEMBER
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
REGULATION REVIEW COMMITTEE

March 21, 1988

MEMORANDUM

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Representative Alyce Hanley *A. Hanley*

SUBJECT: HB 371 - "An Act relating to attempted murder in the first degree."

I would like to formally request a hearing on HB 371 which I introduced this session. HB 371 relates to sentencing in that it increases the penalty for attempted murder in the first degree.

I have spoken to a representative from the Department of Law who informed me that a more comprehensive bill was introduced in the Senate in January, 1985, by request of Governor Sheffield. Attempted murder in the first degree presently has a maximum penalty of 20 years. Individuals without a prior felony conviction, could be out of prison in as little as seven years.

Senator Halford and I have introduced this legislation in response to situations in which the only reason the offender's charge was attempted murder was that the victim refused to die. The Robert Pfeil case is a good example. He would have been a paraplegic had a blood clot not killed him and attempted murder would have been the charge.

It is with this in mind that I respectfully request on behalf of myself as well as the cosponsors and the public that HB 371 be scheduled for a Judiciary public hearing at your earliest convenient date. Thank you in advance for your consideration and a prompt scheduling of HB-371.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to murder in the first degree."
Sponsor: House Judiciary
Requestor: House Finance

Agency Affected: Department of Law
BRU: Prosecution

Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: April 20, 1988

Approved by Commissioner: Richard I. Pegues / FOR / Grace Berg Schaible, Atty. Gen.

Date: April 20, 1988

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 352 (Jud.)

This bill amends existing statutes by raising the criminal penalty for attempted murder in the first degree, from a class A felony to an unclassified felony. This change in the sentencing law will not have a fiscal impact on the Department of Law because there are not many of these offenses, and because these offenses are already being prosecuted.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to attempted murder in the first degree."
Sponsor: Rep. Hanley, Barnes, etc.
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Susan E. Knighton, Director Phone: 465-3376
Division: Division of Administrative Services Date: 3-16-88
Approved by Commissioner: Susan Humphrey-Barneff Date: 3-16-88
Agency: Department of Corrections

Distribution (by preparer):

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

HB 371 Briefing Packet

TABLE OF CONTENTS

I. HB 371

II. Letters of Support

- * Lt. Shirley Warner, Vice President
Alaska Peace Officers Association
- * Lt. Mike Nielsen, Fairbanks Police Dept.
"Salgado seeks reduced sentence",
Fairbanks Daily News Miner

III. Newspaper and Magazine Articles

- * "Doctors tell grim story of child's
abuse", Anchorage Daily News
- * "Woman's children often hurt", Anchorage
Daily News
- * "Judge takes kids away from mom",
Anchorage Daily News
- * "Father gets 26 years", Anchorage Daily
News
- * "Couple charged with abuse of infant
who's left in coma", Anchorage Daily News

IV. Terms of Imprisonment and Authorized Fines
in Revised Criminal Code

V. Attorney General Memo and Analysis dated
January 8, 1985, addressing attempted murder
and solititation for murder

ALASKA PEACE OFFICERS ASSOCIATION

DDC Coordinator
P.O. Box 240106
Anchorage, AK
99524-0106
(907) 786-1807

State APOA Office
P.O. Box 240106
Anchorage, AK
99524-0106
(907) 786-1807



January 19, 1988

Representative Alyce Hanley
P.O. Box V
Juneau, Alaska 99811

Dear Alyce,

I enjoyed our conversation in your office while I was in Juneau. Thank you for taking the time to talk with me. I hope you find our position statement to be helpful.

Let me confirm that I know there is no one in Juneau more supportive of law enforcement than you and we appreciate that.

I spoke with the Board of Directors about the sentence for Attempted Murder. I can safely say that for the examples given (Pfeil, had he lived, and the little girl who is now basically a vegetable) they felt 20 years was not enough. There was no consensus on the ending time (50, 60, 99, open ended). I suppose whatever you develop from your research you can count on our support.

I am more than willing to contact the APOA Chapter Presidents for them to poll their memberships for cases where attempted murder were, or could have been charged. I will also ask them about cases involving a solicitation to commit murder.

If there is any more I can do to help the passage of the bills the "coalition" has outlined, or with the bills you sponsor please call.

Sincerely,

Lt. Shirley A. Warner
Vice President, APOA
786-8858

8 FEB 88

FEB 1988
RECEIVED

The Honorable Alyce Hanley
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Representative Hanley:

Lt. Shirley Warner of Anchorage Police Department has asked law enforcement officers to send you information concerning sentencing of attempted and solicitation of murder.

I worked the investigation concerning Dr. Salgado's hiring of a drug addict to kill Dr. Martino. The enclosed article from the Fairbanks Daily News Minor may be of some value to you. As you can see, this man who had a great deal of public trust and confidence, will once again prey on the unsuspecting public if released after serving only five years. That is a very short time for the heinous crime he committed.

Please call me if I can be of any further assistance. The complete case report (FPD C# 83-18178), is available if necessary.

Sincerely,

Mike A. Nielsen
Mike A. Nielsen, Lieutenant
Fairbanks Police Department
(907) 459-6500

656 7th Aven

Enclosure:

Fairbanks AK 99701

Fairbanks Daily News Miner

Salgado seeks reduced sentence

880116

By KRIS CAPPS
Staff Writer

Fernando Salgado, a former Fairbanks neurologist, incarcerated for nearly four years for trying to arrange the murder of a rival neurologist in 1983, asked this week to have his sentence of 10 years without parole reduced.

The judge agreed to allow him parole eligibility at the discretion of the parole board, based on a 1986 change in state law. The law, which went into effect after Salgado's sentencing but which can be legally applied to his case, allows for automatic parole eligibility for consecutive sentences.

Salgado, 48, was sentenced to two consecutive five-year sentences without parole. He must serve the first five years of his sentence before he can meet Parole Board guidelines.

Salgado, 48, who was also a neurologist here, was convicted in 1984 of hiring one of his drug-addict patients to kill Dr. Ronald Martino, the other neurologist in town. He was also convicted of giving the hit man prescription drugs as payoff for the intended murder.

The hit man never did kill Martino. Instead, he secretly recorded conversations of he and Salgado discussing the contract murder, and eventually notified authorities.

As a result of the conviction, Salgado's license to practice medicine was permanently revoked on April 19, 1985.

According to letters written to Superior Court Judge Jay Hodges, which are now part of Salgado's public court file, Salgado says he is anxious to return to Spain upon his release.

"I am very tired, almost exhausted, from being incarcerated for such a long time," Salgado wrote in a March 1987 letter.

He said authorities at Hiland Mountain Correctional Center gave him a little corner of the jail greenhouse as a painting studio and he has become a serious artist since his incarceration. He said he has painted 121 oil paintings and sold every one of them.

He said he keeps his own piano in one of the classrooms and is allowed to keep a pet cat, which he occasionally is also allowed to take to cat shows.

"Just last Sunday, I took him to a cat show held at the Armory in Anchorage where he won 10 ribbons, all first place," Salgado wrote.

He also worked as program assistant to inmates in the jail's sex-offender program.

"For over two years now, I have been longing to return to Spain to

see my family and to live there for the remainder of my life," Salgado wrote. "If for some reason I do not enjoy living in my Native land, I might relocate to Argentina where I have many friends."

At this week's hearing, Salgado was described as a model prisoner who is currently assigned to a half-way house.

Defense Attorney Bill Bryson said Salgado refers to his criminal offense as "his crazy period." He also said Salgado promised never to get in that delusional state again.

Larson to appear in benefit-concert

The Farthest North Chapter of the Alaska Peace Officers Association will present the Nitty Gritty Dirt Band and Nicolette Larson in concert May 7 for two shows at Hering Auditorium. Representatives of the association will be telephoning local businesses to sell advertising and tickets. Tickets can be ordered by calling 451-8577.

Proceeds from the shows will benefit area organizations such as youth hockey, basketball and football teams, the Boy and Girl Scouts, Women in Crisis Counseling and Assistance, and two college scholarships.

kay m. levine

SHOOTER

FROM WORTHINGTON FORD: I'm trying to get a vehicle worthington Ford, I feel compelled to expect. Here's what went up in for routine 6,000 mile service attendant that I also got new oil and air filters. Warranty work be performed on the truck, they located it — still the work was done and that bolts in the front end but on the warranty work the air filter had not been shown the vehicle had not the truck back to Worthington's service department. They then changed because I had not excuse for the lube job not done, they hadn't done the work on the truck so the job could be done. I was charged again for

complaint to Paul Cunningham, what had happened. To date, additionally, I don't know if my final inspection of brake fluid, that matter... a new oil filter I problem still is present. I want to be prepared when doing a Ford. You may REALLY get

didn't get to hear the dealership's 1 days and several phone calls me they wouldn't discuss your though you didn't ask for help or be interested to learn that Ford

ABUSED CHILD: Brain damage is permanent

Continued from Page C-1

head, apparently to stop her crying.

He also has admitted to burning her with the heating element of an electric frying pan.

But it was his holding her under water in the bathtub, it was the near drowning on March 6 that deprived her brain of oxygen for more than five minutes and did massive cerebral damage, the doctors explained Friday.

Lack of oxygen causes the brain to swell, said radiologist Richard Hill. But the brain is in an enclosed space. When it swells, blood vessels get crushed and "then the cells die because they don't get enough blood or oxygen." Tina's brain has shrunk to the size it would be if it had been used for 95 years, he said.

Sweetin told police he put Tina under water — not for very long — to clean her after she spit up on herself.

Tina will soon be 2, but she is less developed than an average 6-month-old, said Brand. She goes to physical therapy two or three times a week, but "I don't believe she would ever become toilet trained," he said. "I don't believe she will be able to feed herself. There is every possibility she'll be wearing diapers when she's 35." There is every possibility she'll have to spend her life in an institution.

It's hard to be certain exactly how damaged Tina is, the doctors said, and impossible to predict whether she will improve. For instance, it may be that her eyes can see, said Dr. Hill, but her damaged brain just can't recog-

nize the images being transmitted.

What Tina's eyes would have seen Friday, if they could, was her father, a former military man who was unemployed at the time of his arrest, slumped motionless in his chair at the defense table, seeming to move not an inch over the two hours the hearing lasted. She would have seen her 24-year-old mother, a small, attractive woman with long red hair, fussing over her newest child, 5-week-old Christopher, during the breaks.

Jimmy Sweetin is in jail. His wife is free on bail.

Margaret Sweetin has had four children in addition to Tina and was known to social workers long before Tina turned up in the emergency room at Humana Hospital last January. Two of her chil-

dren by another husband had been adopted or given to foster parents before Tina was hurt.

District Attorney Victor Krumm referred in court to a 4-year-old who was in the home when Tina was hurt but who has since been removed because of suspected abuse.

Christopher, the newest Sweetin, is officially a ward of the state. He hasn't turned up with any injuries and remains at home with his mother.

Margaret Sweetin pleaded no contest in May to a single misdemeanor count of criminal non-support, meaning she failed to get aid for Tina. She faces a maximum of one year in jail.

Jimmy Sweetin faces a possible maximum of 46 years in prison. The hearing will continue on Nov. 13.

MAT-SU ASSEMBLY: More favorable to development

Continued from Page C-1

ers legislation in the future, which would set up half-mile-wide corridors around selected streams such as Willow and Little Creeks.

The rivers legislation failed last year, but representatives Ron Larson and Katie Hurley have promised to support versions of the bills next time around.

Palmquist called the recreational rivers a lock up. Cypress called her stream across stance, part and parcel of an anti-government attitude.

"We don't come from the lock up philosophy, let's put it that would say we're pro-development."

— Rose Palmquist

separation distance between houses and Mat-Su lakes is included in the same ordinance as the stream easement change. The required distance now stands at 75 feet; under the new rules, it could be cut to 45 feet.

The previous assembly had

40-foot park down all the rivers and lakes, they ought to be able to pay for it," he said.

According to Gary Lipsitz of the state Department of Fish and Game, rivers set backs pose greater risks to fish spawning areas, water quality and shoreline wildlife corridors.

change from five years of overzealous planning and unneeded bureaucracy. For others, the statute represents a return to the long-range problems of unplanned development.

Now in the minority, Cypress said he's most concerned about the possibility of decision making outside the public eye.

When you have people who are in physical contact together, it's easy for them to share things with each other and start talking about the details of what's going on, he said.

NOV

C4 Anchor
KYOGERA
PARASOUND
CHNIGS

11/14/86

metro

Woman's children often hurt

Witnesses testify during sentencing hearing

By SHELA TOOMEY
Daily News reporter

Bad things happen to the children of Margaret Swartin.

At 6, Jimmy, had open welts from a belt buckle, up and down both legs, when the state finally took him in 1983. He always seemed to be hurt. Leroy was four and couldn't talk. When asked by a doctor to undress, he did so and automatically assumed a sexual position. The state took him in March.

And then there's Tina. She's almost 2 and not quite brain dead from being dropped on her head and held under water in the bathtub.

Margaret Swartin says she never hurt her kids. And, in fact, she has not been charged with child abuse. It seems that Margaret Ann, as everyone calls her, has a weakness for men who like to beat up babies.

She and her current husband, Jimmy Swartin, spent Thursday afternoon in an Anchorage courtroom for the second installment of a marathon sentencing hearing relating to Tina's injuries. Jimmy has pleaded no contest to three felony assault charges and a misdemeanor. He faces a maximum sentence of 46 years.

But Thursday's hearing focused mostly on Margaret Ann. She has been convicted of a single misdemeanor, of failing to get Tina's fractured skull medically treated. That's all she was indicted for.

District Attorney Victor Krumm said earlier in the case that Margaret Ann was charged in accordance with information available at the time her case went to the grand jury, in March.

Krumm has learned a lot more about Margaret Ann since then. Under his questioning, social workers, counselors, doctors and foster parents have been taking the witness stand and sharing that information with Judge Seaborn Buckalew. Buckalew can sentence her to a maximum of one year.

Margaret Ann is 25, but she's lived a lot in those years. She's been married three times and has borne five children. Three other pregnancies ended in miscarriage. Three of her children — Jimmy, Leroy and Tina — have been taken from her at different times. One, Valerie, she gave up voluntarily at birth.

The fifth, Christopher, 2 months old, remains in her care.

Listen to Virginia Sulesky, Leroy's foster mother, describe what the 4-year-old boy was like when she got him in March.

"He was like an uncaged little animal coming into the house. . . . We thought he was crippled or something. He held his arms funny and walked with a gait. . . . his skin

See Page B-3, CHILDREN

Shin master



Carol Frantz looks out her window on an island in Flat Lake as her hus-

When a hovercraf

By CHRIS GEJGER
Daily News reporter

BIG LAKE — In November, the ice sings to Art and Carol Frantz from all directions. Freezing water surrounds the couple's island home on Flat Lake, two lakes back from Big Lake and beyond the reach of roads. The shifting cracks perform a repertoire of mournful groans, bird-songs and occasional rifle shots.

But the Frantzes have paid a price for the winter symphony. With miles of water and four-wheel-drive roads between Art Frantz's home and his job in Anchorage, he has until recently faced an exceptional daily commute.

In the summer, Frantz boats about a mile across Flat Lake to his waiting car, then drives a back road to reach the highway. Winter is easy. He simply drives seven miles over Flat Lake, Mud Lake and Big Lake to the main road.

And in the isolating weeks of freeze-up and break-up, when the lakes are too solid to boat but too liquid to drive on, Frantz resorts to the only other alternative — a hovercraft.

"After about six months here, (Art) said, 'Whose idea was it to move up here?'" Carol Frantz said. "I said, 'It was yours.'"

On Aug. 1, Art Frantz retired from his job with Anchorage Municipal Light & Power. He doesn't miss rising at 4 a.m. every day to commute over ice, snow, water and dirt, he said. But thanks to their island location, the Frantzes' elaborate transportation set-up remains a necessity.

If not for the hovercraft, they'd now be spending their fourth week in a row trapped on the island.



Art Frantz idles his hov

Being stranded in the lake is not Carol Frantz's idea. Since the couple's 1980, she's suffered no other Big Lake per-

is said.
rectory
stomer,
nd true
Some
d then

about
ent in a
aid the
from a
Postal
estate,
taken
postal
in said
aid the
ness la
by the

to be a
e look
Insert
ication
printed
er that
mpany
ustom-
re pub-
Bureau

ou ran
mpany,
ss and

P'vd.

shooter,
include
I occur-

Continued from Page B-1

"But that's not the same"
She glanced at her husband
and laughed.

The Frantzes moved to
Alaska in 1959 from the Po-
cono region of Pennsylvania.
He was working as an assis-
tant foreman in a machine
shop there, and figured that
— 20 years from then — he'd
still be working in the ma-
chine shop.

"I didn't want to know
what I was going to be doing
in 20 years, so I came in

Alaska," he said.

After almost 20 years in
Anchorage, the Frantzes
found their island paradise
and made their move. Antici-
pating the transportation dif-
ficulties ahead, they bought
the hovercraft first, along
with several boats.

Not only did they have to
reach the island, they had to
 ferry construction materials
to remodel the A frame cabin
already there.

The hovercraft is not a
particularly fancy machine.
Originally built of plywood,

Ann has substituted alumi-
num for the body. Three peo-
ple can squeeze beneath its
canvas canopy in a crum-

A horizontal turbine cre-
ates a cushion of air between
the hovercraft's rubber skirt
and the ground. A vertical
propeller pushes it forward,
with airboat style fins for
steering. Two controls — a
throttle and steering wheel
control everything, although
in this case control is a rela-
tive concept.

Careening without friction

across the lake, the machine
turns from side to side like a
confused curling stone. If he
pressed his luck, Frantz said,
he could probably reach 100
miles an hour. But stopping
is another story, about half-
way home, he begins throt-
tling back periodically,
touching metal skids to the
ice to prevent an unhappy
landing.

You have to plan way
ahead when you want to
stop. Frantz said. "Last
year I hit the dock once."

CHILDREN: Mother charged with failure to get help

Continued from Page B-1

color was bad, almost ash-
en."

He couldn't feed himself
with utensils. His speech was
an unintelligible gabble ex-
cept for words like mama,
papa or doggie. His condition
could only have resulted
from long-term neglect or
worse, other witnesses testi-
fied.

Here's social worker Andy
Linn, his voice crackling as he
describes his first encounter
with Leroy before the Sweet-
lins were arrested.

"He came up to me. He
gripped on to my leg. He
grabbed my hand and he
started to kiss my hand.
We didn't have enough infor-

mation to take custody.
He didn't want us to leave
but we left anyway."

Leroy was desperate, said
Linn.

The Sweetlins were ar-
rested in March because of
what happened to Tina Jim-
my Sweetlin has admitted
holding his daughter there
about 14 months, their feet
off the ground and dropping
her on her head. He has
pleaded no contest to holding
her head under water in the
bathtub, although there is
some dispute about how long
he held her there.

Tina is not likely to im-
prove. She has massive brain
damage. She can't see, can't
stand, can't talk, can't think.
Leroy is doing better. He

lives in a nice house and goes
to counseling. When she in-
vites him to play, said his
counselor, Leroy always
picks the bathroom toys and
often has the daddy doll hold
the baby doll under water in
the bathtub. He freezes and
goes into a near trance when
anyone chastises him, even
mildly, his foster mother tes-
tified.

Still Leroy is doing bet-
ter. He has learned to speak
in sentences. He has used his
new skill to tell both his
counselor and his foster
mother that he doesn't want
to go home because "mummy
and daddy used to hurt me."

There hasn't been much
discussion about Jimmy
Sweetlin's background, but
Margaret Ann didn't invent
her parenting techniques.
She learned how to bring up
children from the people who
brought her up.

She was neglected as a
child and put for a while into
foster care. She returned to
her mother's home where,
when she has 13 or younger,
her stepfather began to sexu-
ally abuse her, according to
testimony. She was pregnant
at 15 by him, and again two
years later. Before he died,
he had fathered her first
three children, divorced her
mother and married her.

When the sexual abuse be-

gan, Margaret Ann told her
mother about it but her
mother refused to believe
her, said Rosalie Nadeau of
the Crisis Center. When the
truth became undeniable,
mum blamed Margaret Ann.

Over the years Margaret
Ann has gone from man to
man, from boyfriend to hus-
band, even back to her step-
father once when no one else
would take her in. And each
of the men mentioned in
court Thursday hurt Marg-
aret Ann's children, said
Krumm.

Many social agencies have
tried to help Margaret Ann
learn new ways but they
have been hampered by her
IQ of about 60 and by the
well-taught lessons of her
youth.

Regardless of whether her
children are abused by her or
"by the men she chooses to
live with," said Nadeau, "the
result is the children.
Margaret Ann has produced
have suffered pretty serious
injury and abuse."

"She is a tragic young
woman," Nadeau said. "She
has had a really unfortunate
life. I'm not sure that
justifies inflicting pain on
helpless children who didn't
ask to be here."

The sentencing hearing is
scheduled to continue next
Friday.

Considering bid for leadership job

A 100 sena-
gress
ranks of
ause some
commit-
tee Stevens
re ranking
nother ap-
pmittee
is Stevens
the mili-
subcommittee
his rank-
defense

appropriations subcommit-
tee. Stevens said this would
put him in the best possible
position to secure funding for
the new light infantry divi-
sion in Alaska.

In addition, Stevens said he
has a chance to become the
ranking Republican on the
Rules Committee, a powerful
panel which sets the proce-
dures for the Senate.

On the negative
side, Stevens admitted that

he may be forced to cut two
or three of his committee
staff aides.

He hopes the Democrats
will retain his staff on the
defense appropriations sub-
committee, saying "they are
professionals."

Stevens said he will try to
absorb his committee aides
onto his personal staff, but
said "there may be two or
three people that I have no
place for."

Alaska
Arctic Survival Equipment

UP TO 29% OFF

V

1
4

1

Street at about 1 1/2 p.m.

Weitz, 27, was in a pickup
truck that matched one want-
ed in connection with a Quid
Stop robbery.

When Officer Linda Mi-
tch sought clues from
Weitz's bullet, Weitz told
her car and sped off. But
her car and sped off. But
two blocks away. Police offi-
cers responding to Mitchell's
call for help chased Weitz,
ducking shots and containing
his fire.

Hanson and another offi-
cer arrived on the scene with
dogs to track the suspect.
Hanson, without his dog
caught up with Weitz on 9th
Avenue, off Main Street,
according to the prosecution.
Weitz was hiding in a dark
spot between a water tank and
a fence. Hanson was aiming
a bullet proof vest at the
shot struck him about its
protection.

Other officers chased Weitz
another half block, catching
him three times before tak-
ing him into custody.

Snowstorm hits Juneau

The Associated Press

JUNEAU — The first snow
of the season came in a bit
way to Juneau this week
throwing a wet white blan-
ket over the Alaska Moun-
tain League's annual confer-
ence and cutting road travel
off guard.

Juneau got 4.4 inches of
snow between Sunday and
Thursday according to the
National Weather Service.
Almost half of it fell Wednes-
day, leaving slushy streets
and roadside snowbanks
three and four feet high.
Skies cleared Thursday.

The weather service said
the average Juneau snowfall
for the entire month of No-
vember is 11.6 inches.

The heavy fall Wednesday
kept all major airline flight-
out of Juneau Municipal Air-
port and with them, many
people headed for the Moun-
tain League conference.

Its organizers were count-
ing on the diverted flights
arriving Thursday.

discussing the Challenger tragedy last January and the following investigation "was filled with doublespeak."

The seven-member shuttle crew, including teacher Christa McAuliffe, perished when Challenger exploded shortly after liftoff.

Lutz quoted a NASA official who said:

"The normal process during the countdown is that the countdown proceeds, assuming we are in a go posture, and at various points during the countdown we tug up the operational loops and face to be in the firing room to ascertain the facts that project elements that are monitoring the data and that are understanding the situation as we proceed are still in the go direction."

Morton Thiokol, the maker of the booster rocket, and Rockwell International, the main contractor to build the shuttle, also were cited by the committee.

"Officials of Morton Thiokol," Lutz said, "when asked why they reversed earlier decisions not to launch the shuttle

See Back Page, DOUBLESPEAK

upper teens with north wind to 18 mph. Cloudy tonight with a low near 18. Snow likely Sunday with a high in the lower 20s.

High Friday.....18
Low Friday morning.....13
Normal high Nov. 21.....28
Normal low Nov. 21.....13
Record high Nov. 21 (1949)....50
Record low Nov. 21 (1956)....-13

STATE, NATIONAL
WEATHER FORECASTS
PAGE A-2

Index

Ann Landers.....	D-8
Bridge.....	D-8
Business.....	B-8
Classified.....	E-1
Comics.....	D-14
Horoscope.....	D-15
Jeff Lowenthal.....	D-3
Letters.....	B-11
Obituaries.....	B-12
Opinion.....	B-10
Religion.....	D-7
Sports.....	C-1
Stocks.....	B-8
Television.....	D-10
Today in Anchorage.....	D-16
Troubleshooting.....	B-3

FOR HOME DELIVERY
CALL 267-4400
8 a.m. to 5 p.m.

By JIM ERICKSON
Daily News business reporter

The Alaska Housing Finance Corp., unwilling heir to nearly \$100 million worth of Alaska homes whose owners could not keep up the payments, may begin renting out some of its vacant houses and plans to initiate a "hardship" refinancing program that officials hope will slow the corporation's runaway foreclosure rate.

The steps will not cure the

problem of record number of homeowners falling behind on their monthly mortgage payments to AHFC, said Ron Lehr, the agency's executive director.

"It's one of those situations where you try to do a little bit here, and a little bit there, and a little bit there," Lehr said. "The panacea is \$40 a barrel oil... or some kind of major upturn in the economy."

Since the housing market

first spiraled into a nosedive in 1985, AHFC has seen its delinquency rate climb from less than 2 percent in mid-1983 to 12.2 percent in October. To cope, AHFC instituted a program allowing hard-pressed homeowners to rent their homes and created an assumable loan program, yet delinquencies continued unabated.

In October, about one of

See Back Page, AHFC

Judge takes kids away from mom

By SHEILA YOOMEY
Daily News reporter

A Superior Court judge reached through the back door of the criminal justice system Friday in an effort to save the children of Margaret Sweetin from a future filled with abuse and neglect.

Judge Seaborn Buckalew sentenced Sweetin to six months in jail for not helping her 14-month-old daughter, Tina, the day Sweetin's husband Jimmy deliberately dropped the baby on her head, fracturing her skull.

The "failure to support" charge is a misdemeanor and the maximum sentence is a year.

But, in an unusual move, Buckalew went on to effectively remove all three of Sweetin's children from her custody for at least five years — a move usually reserved to civil judges in proceedings held behind the closed doors of family court.

He did it by putting Sweetin on supervised probation for five years and ordering, as a condition of probation, that

she have no contact with any of her children unless a probation officer gives written permission.

He said he didn't think she should be allowed to visit the children because of testimony that the older ones became upset and fearful when she visits.

Buckalew also ordered that Sweetin not be allowed to live with any children for the next five years, a provision requested by Anchorage Dis-

See Back Page, NEGLECT

Anchorage Daily News 11/22/86

7
8
6

Library N.Y. J4 7
ADP/AN/CLD
America 84
83

Anchorage

How to call th

Art, Linda Blanton
Business news Bu-
Bus notebook Kath
City Editor W.P. Do
Community Andrew
Editorial page Suz
Homes Trish Brown
Jurassic Bureau Joh
Media Bureau Ronn
Letters Michael Car
Lifestyles City New
Met Su bureau

Classified adv

Anchorage
Wasita
• Anchorage hours
6 p.m. Monday 1
day 7:30 a.m. to
9 a.m. to 2 p.m. S.
• Wasita hours
p.m. Monday th

NEGLECT: Judge takes children away from mom

Continued from Page A 1

The Attorney General's office as a safeguard against a possible future marriage between Sweetin and a man with young children. She plans to divorce Jimmy.

"Painful, damaging evidence" left him with "absolutely no reservations" that any child in Sweetin's care was in physical danger, said Buckalew.

Sweetin's mother, sitting in the front row of the spectator section with a younger daughter, cried as Buckalew reviewed the damage done to Tina Jimmy Sweetin was not there. He has pleaded no contest to three felony counts and is awaiting sentencing.

Until Friday, when she was led out of Buckalew's third-floor courtroom in handcuffs, Margaret Sweetin was free and had custody of her newest baby, 3-month-old Christopher. Buckalew made clear his concern that state officials allowed this to happen and his belief that he had a special obligation to act because they had failed to.

"It seems like it would be negligence on my part not to prohibit contact with Christopher as part of probation," Buckalew said. "I think I have got a primary responsibility to protect that child."

"That action has not been taken by the Attorney General's office."

Buckalew said he didn't want another judge presiding over some future trial with Christopher as the victim.

Defense attorney Glenn Cravez said the legislature has specifically reserved child custody decisions to family court and cautioned Buckalew that his sentence might be illegal. Krumm, while applauding the decision, said he didn't know if it would survive an appeal.

So far there have been three court hearings to consider the evidence against Margaret and Jimmy Sweetin. At each of these hearings there has been angry grumbling from social workers, lawyers, witnesses and others about the minor charge brought against Margaret and the fact that she still had Christopher.

"I'm appalled that she was not charged with a felony," said Rosalie Nadeau, director of the Anchorage Crisis Center.

Assistant Attorney General Pat Kennedy, whose office made the decision to leave Christopher with his mother, said the state got limited legal rights to Christopher within a month of his birth.

"She still had the child because at the time we took custody she had only been charged with a misdemeanor," said Kennedy.

Krumm said the state took an abused child from Sweetin in 1983 and social workers knew before he did that she was more than an innocent bystander.

But Kennedy said Margaret Sweetin's "record all revolves around injury to her children by other people. The intention, if she moved in with any male, was to take physical



Defense attorney Glenn Cravez and defendant Margaret Sweetin listen to Judge Seaborn Buckalew during sentencing Friday.

custody of the child."

"Now that she's going to jail, I'm sure we're going to be taking custody."

Sweetin, 24, started life on the receiving end of abuse and neglect. As a child she was taken at least once from her home and placed in foster care. Her stepfather, now dead, sexually abused her and eventually fathered three children on her while she was in her early teens. Somewhere along the line, he divorced her mother and was allowed to marry Sweetin, a series of events Buckalew characterized as so bizarre it was like "taking a visit to another planet."

Sweetin has been married three times, had five children and three miscarriages. She will have no more children. She had a tubal ligation after

Except for one girl, given up for adoption at birth, all of her children have been abused or severely neglected, according to evidence presented in court. It appears from records compiled in Alaska, Illinois and other states, that the abuse — both physical and sexual — was committed by Sweetin's husbands and perhaps by some boyfriends along the way.

She has been accused only of neglecting her children, of not feeding them properly, of making them eat off the floor and spending their days in locked rooms until their physical and mental growth was stunted.

In March, her fourth child, Tina Sweetin, then about 14 months old, was rushed to the hospital by paramedics, a near drowning victim. Marga-

tin, was later charged with holding the baby's head under water for five minutes or more, causing severe and permanent brain damage. The child's fractured skull, an earlier injury, was discovered at that time, as was a bad burn.

Tina and Leroy, 4, the only other child then living with the Sweetins, were taken by the state and are now in foster homes, but Sweetin has not relinquished parental rights to them and Krumm expressed concern that they might someday be returned to her care.

In 1983, a 6-year-old was taken by the state and put up for adoption.

"The conduct is the worst I have ever seen," said Buckalew as he handed down the sentence. "Why you would let these things happen to these

ARM for m

Continued

Sen. Dan... N.Y., a former Intelligence... attended the... simply, "I ca... I heard, and

Congress... were presen... both the Ho... hearings as... but said Cas... testimony.

As he was... ing, Casey w... the law bad... and he said.

Casey and... nesses at t... House comm... is customary... under oath.

Sen. Mitch... Ky, said "tb... a technical... law" on not... "My counsel... tration woul... one a mistake.

The day be... bers of the H... mittees met... John Poindex... security advi... House. Then... gar at the C... House heard... two hours. T... met with him... hours, and... resumed its m... al more hours.

In Tehran... of the Iranian... Ayatollah M... said the contr... ington repres... ic government... tory in the v... arena."

The judge... ran. Univers... Reagan "cau... sion" and th... States was... stop the fire... skirt." The... reported.

Senate an... prohibit the p... of closed... members wen... their remark... ings. Severa... however, the... would be the... on the Iran p...

"The mem... she's shocked... a congression... further hear... pected.

Several me... gress said they... to learn from... testimony tha... cial in the... knew the ans... questions the... They suggest... indicate seno... in the mana... cover operati...

The adm... ings to mem... were said to... questions ove... shipping the... to a congres... Casey told C... first Israel's... in September... been authoriz...

Israel was... used for sen... the official c...

N
O
V

2
2

1

SWEETIN: Judge hands down 26-year prison sentence for child abuse



Jimmy Sweetin weeps during sentencing.

Continued from Page A-1

to details of the injuries suffered by his daughter, Tina, now nearly 2.

He had pleaded no contest to charges that he, on different occasions over a period of weeks, burned Tina with the electric element from a frying pan, deliberately dropped her on her head, causing a massive skull fracture, and, in March, held her head under water in the bathtub for five minutes or more.

He broke his court silence briefly Wednesday with tears, and with a plea that Buckalew take into consideration his spotless background and exemplary service as a petty officer in the Navy.

"Nobody wants to hear that I am sorry," Sweetin told the judge. "Nobody wants to hear that I love my daughter. I have never been in trouble with the law before. I don't have a violent background... I'm very thankful right now that I have the forgiveness of God... I'm very, very sorry. I do love my daughter. That's all."

Sweetin said he believes God will look after Tina.

Buckalew responded: "I think God is the only one that can cure her now. Miracles aren't performed by people on this planet."

In addition to the 26-year prison term, Buckalew effectively barred Sweetin from contact with his two children for the next 31 years without written permission from a probation officer and any agency involved in protecting the children. He also barred Sweetin from living in any "family-type situation" involving children under age 16. Tina, her baby brother Christopher and a step-brother, Leroy, are all now in foster homes.

Margaret Sweetin, Jimmy's wife, is now serving a six-month jail term for failing to get medical aid for Tina. She was not charged with abusing her children, but evidence at her sentencing last week indicated a history of child neglect dating back to before she met and married Sweetin.

District Attorney Victor Krumm had asked that Jimmy Sweetin be sentenced to 46 years for his assaults on Tina.

"He didn't do it to her on one occasion," Krumm said.

"This is a man who is in the process of killing that child. It's taking him weeks to do it."

Krumm called Sweetin's description to police of the near-drowning incident chilling. Sweetin said Tina spit up on herself and he held her

under water briefly to clean her.

"While she was under, her eyes were opened, her hands were straight up and it seemed like I seen her take a gasp for air."

Sweetin said he did not hold her under water for anywhere near five minutes, but doctors said it would have taken that long to account for the damage done.

Tina's brain damage is so severe "she would have been better off if they had just finished her," Krumm said. The child is blind, probably deaf and is unlikely ever to be able to care for herself, according to medical testimony presented at an earlier hearing.

"She won't be able to do anything," Krumm said. "She's dead... She doesn't even know we're out here any more."

Buckalew agreed that the offenses Sweetin committed were among the worst possible assaults — committed against someone who couldn't fight back, against a member of his family who had a right to be safe in her own home. Both circumstances justified increasing the normal seven-year presumptive sentences for the skull fracture and the near-drowning, he said.

But, Buckalew noted, Sweetin was himself an abused child, beaten severely by a stepfather from the time he was 4 until he was placed in a group home as a teenager. Battered children often grow into batterers, he said.

"I am pretty much persuaded that if he wasn't a battered child... he probably would not be sitting here in this courtroom," the judge said.

Buckalew sentenced Sweetin to 15 years for the near-drowning, 10 years for the skull fracture, five years suspended for the burning incident and one year for failing to get medical aid for his daughter, a misdemeanor. He is likely to serve about 17 years before being eligible for parole.

Defense attorney Lionel Riley said he would not ask for a general public trial in a stressful family situation. Sweetin was driven to the breaking point by his inability to get a decent job, Riley said, and by the fact that his wife, for the first time, was bringing in more money than he was.

"Tina is a member of the public," Buckalew said. "She's in this courtroom."

REAGAN: President orders investigation of NSC; Congress plans its own inquiries

President Ronald Reagan has ordered an investigation of the National Security Council (NSC) staff, following the resignation of a senior aide. The president's action comes in the wake of a report that the NSC staff had been involved in a cover-up of the CIA's activities in Iran. Congress is also planning its own inquiries into the matter.

MENTAL ILLNESS: Judge hands down 26-year prison sentence for child abuse

Mental illness, the kind associated with stress, is on the way up. People are worried about being about to lose their house, their job, their insurance," said Dr. Aron Wolf of the Langdon Clinic. As snow falls on the Chugach Mountains and the wind rushing through the passes brings another winter to the Anchorage bow, people whose job it is to deal with the fear and the anger, the frustration and despair, say things are going to get worse. Unemployment benefits are running out for workers who lost their jobs when the recent survey last year... every 10 business owners said they plan to reduce their staffs before the end of the year. People who haven't gotten sick yet will. People who made it through their last crisis thanks to a permanent fund dividend check won't get another until next winter. Those who didn't get out while the getting was good —

POVERTY: Judge hands down 26-year prison sentence for child abuse

Poverty in Anchorage doesn't stare out into the street like the empty windows of a tenement. It's bundled under parkas and watch caps. It's locked behind the doors of over-

THEY ARE A LOT OF PEOPLE OUT THERE

They are a lot of poor people out there," said Myrna Orme of Headstart. "But unlike the Lower to you don't see them. It's because they're indoors and not out on the street. But they're just as poor and they're just as sad." Listen over the next few weeks. Listen to the sound of the safety net tearing.

THEY ARE A LOT OF PEOPLE OUT THERE

They are a lot of poor people out there," said Myrna Orme of Headstart. "But unlike the Lower to you don't see them. It's because they're indoors and not out on the street. But they're just as poor and they're just as sad." Listen over the next few weeks. Listen to the sound of the safety net tearing.

REAGAN: President orders investigation of NSC; Congress plans its own inquiries

President Ronald Reagan has ordered an investigation of the National Security Council (NSC) staff, following the resignation of a senior aide. The president's action comes in the wake of a report that the NSC staff had been involved in a cover-up of the CIA's activities in Iran. Congress is also planning its own inquiries into the matter.

sses be r ct

Judge refuses 'liar' Rodriguez new trial

By KIM RICH
Daily News reporter

Convicted child pornographer Carlos "Chico" Rodriguez will not get a new trial, according to an Anchorage Superior Court judge who said Rodriguez is a liar.

"The court does not find

Chico Rodriguez a credible witness. The court does not believe Mr. Rodriguez," Judge Ralph Moody said in a written order handed down Tuesday.

Rodriguez had requested a new trial claiming that he received ineffective counsel

during his 1981 trial. Rodriguez, 48, was convicted of 25 felony counts, including rape, and operating a teen-age child pornography, prostitution and burglary ring.

He is currently serving an 83-year sentence in an Outside

Rodriguez was back before Moody last week in an Anchorage courtroom during a hearing held to determine if he received effective counsel during his trial. Moody is the same judge who had tried and sentenced Rodriguez.

In his ruling, Moody dismissed all of Rodriguez' claims that his court-appointed attorney, Mitch Schapira, failed to adequately represent him.

Specifically, Moody said there was no evidence that Schapira's ability to defend Rodriguez was impaired by prescription medication he was taking at the time for a back injury.

Moody also discounted Rodriguez' claim that Schapira failed to aggressively represent him because Rodriguez couldn't come up with up to \$50,000 to pay Schapira in addition to fees Schapira was receiving from the state.

Neither the existence of this fee contract or Rodriguez' failure to pay Schapira additional money affected the quality of Schapira's representation of Rodriguez, Rodriguez was satisfied with Schapira's representation until after he got convicted. He got the idea for filing this motion after the trial from other prisoners who were filing similar motions," Moody said.

Couple charged with abuse of infant who's left in coma

By KIM RICH
Daily News reporter

An Anchorage couple was arraigned on child abuse charges Tuesday in Superior Court as their year-old daughter lay in a coma at a local hospital.

Jimmy D Sweetin, 25, and Margaret A Sweetin, 24, each entered not guilty pleas before Judge Victor Carlson.

Jimmy Sweetin is charged with four counts of first-degree assault, one count of third-degree assault and one count of criminal nonsupport.

Margaret Sweetin is named only in the criminal nonsupport charge. That charge alleges that the couple failed to get medical care for a "seri-

ous" head injury to the child.

The incidents occurred between January and March, according to court records.

Jimmy Sweetin has been jailed on \$100,000 cash-only bail. Margaret Sweetin is not in custody.

According to court records, on March 6 paramedics responded to a possible drowning at 3911 E. 7th Ave. where they found the Sweetin's infant, Tina, unconscious. The child was taken to Humana Hospital-Alaska, where she has remained in a coma. She is on life-support systems.

According to police, Jimmy Sweetin told police that the child had been eating when she vomited on herself. Sweet-

in said he took the child into the bathroom where he attempted to wash the vomit off by placing her in a bathtub partially filled with water.

Police say Sweetin told them that he held the child's head "submerged with one hand while washing the vomit off the child's body with the other hand."

Police say that doctors at the hospital also found that the child had other, older injuries, including a skull fracture, a broken collarbone, a damaged ear drum and a burn on her left wrist.

Both Sweetins are scheduled for trial in June.

Officials want boundary settled

By SUE CROSS
The Associated Press

JUNEAU — Alaska officials want the United States government to step up efforts to settle a dispute with the Soviet Union over a 20,000-

square-mile area of the "people of the United States," said the resolution, which will be sent to President Reagan. Secretary of State George Shultz and a handful of other federal officials

is the boundary. Further complicating the dispute are \$108 million in leases for oil and gas drilling rights in the area that the United States sold in 1984.

The oil companies have not been able to explore the 17

Since 1937

Brownie

WHITEWINE

Spring

CLEARANCE SALE!

WHILE THEY LAST
FIRST COME, FIRST SERVED

82 BEHNZTRAMMER WOODEN WASHINGTON WINE REG. # 95	4.99
82 BEHNZTRAMMER FELTON EMPRE SANTA CRUZ MT. REG. # 95	4.49
83/81 WHITE BLESSING PAUL THOMAS WASHINGTON REG. # 95	4.99

A
P
R

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY	SECOND FELONY	THIRD FELONY
Sexual Assault in the First Degree; Sexual Abuse of a Minor in the First Degree	4-[8]-30 5-[10]*-30	7½-[15]-30	12½-[25]-30
"A" Felony	2½-[5]-20 3½-[7]**-20	5-[10]-20	7½-[15]-20
"B" Felony	0-10***	0-[4]-10	3-[6]-10
"C" Felony	0-5***	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder, Kidnapping,
Sexual Assault I,
Misconduct Invol-
ving Controlled
Substance I - \$75,000
A, B, or C Felony - \$50,000
A misdemeanor - \$ 5,000
B misdemeanor - \$ 1,000
Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or
3 X pecuniary gain -
whichever is greater

MAXIMUM TERM OF IMPRISONMENT
FOR MISDEMEANORS

A misdemeanor - 1 year
B misdemeanor - 90 days

SENTENCES FOR
UNCLASSIFIED FELONIES

Murder I: 20-99 years
Murder II, Kidnapping,
Misconduct Invol-
ving Controlled
Substance I: 5-99 years

KEY

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

* Ten year presumptive term applies if defendant possessed a firearm, used a dangerous instrument or caused serious physical injury.

** Seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm, used a dangerous instrument or caused serious physical injury or directed offense at peace officer or other emergency responder.

*** Presumptive sentencing may apply if offense directed at peace officer or other emergency responder.

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder in the First Degree
AS 11.41.100
20-99 years

Murder in the Second Degree
AS 11.41.110
5-99 years

Sexual Assault I
AS 11.41.410
Maximum of 30 years

Kidnapping
AS 11.41.300
5-99 years

Sexual Abuse of a Minor I
AS 11.41.434
Maximum of 30 years

Misconduct Involving a
Controlled Substance I
AS 11.71.010
5-99 years

CLASSIFIED FELONIES

5-2

A	B	C
Attempted Unclassified Felony AS 11.31.100(d) (1)	Attempted A Felony AS 11.31.100(d) (2)	Attempted B Felony AS 11.31.100(d) (3)
Solicitation of Unclassified Felony AS 11.31.110(c) (1)	Solicitation of A Felony AS 11.31.110(c) (2)	Solicitation of B Felony AS 11.31.110(c) (3)
Manslaughter AS 11.41.120	Assault II AS 11.41.210	Criminally Negligent Homicide AS 11.41.130
Assault I AS 11.41.200	Sexual Assault II AS 11.41.420	Assault III AS 11.41.220
	Sexual Abuse of a Minor II AS 11.41.436	Custodial Interference I AS 11.41.320
Robbery I AS 11.41.500	Unlawful Exploitation of a Minor AS 11.41.436	Sexual Abuse of a Minor III AS 11.41.220

	AS 11.41.436	AS 11.41.320
Robbery I AS 11.41.500	Unlawful Exploitation of a Minor AS 11.41.436	Sexual Abuse of a Minor III AS 11.41.220
Arson I AS 11.46.400	Robbery II AS 11.41.510	Incest AS 11.41.450
Escape I AS 11.56.300	Extortion AS 11.41.520	Coercion AS 11.41.530
Promoting Prostitution I AS 11.66.110(a)(2)	Theft I AS 11.46.120	Theft II AS 11.46.130
Criminal Possession of Explosives with Intent to Commit Murder or Kidnapping AS 11.61.240(b)(1)	Issuing a Bad Check, \$25,000 or more AS 11.46.280(d)(1)	Concealment of Merchandise, \$500 or more AS 11.46.220(c)(1)
Misconduct Involving Con- trolled Substance II AS 11.71.020	Burglary I AS 11.46.300	Removal of Identification Marks, \$500 or more AS 11.46.260(b)(1)
	Arson II AS 11.46.410	Unlawful Possession (of Altered Property), \$500 or more AS 11.46.270(b)(1)
	Criminal Mischief I AS 11.46.480	Issuing a Bad Check, \$500 or more AS 11.46.280(d)(2)
	Forgery I AS 11.46.500	Fraudulent Use of a Credit Card, \$500 or more AS 11.46.285(b)(1)
	Scheme to Defraud AS 11.46.600	Obtaining a Credit Card by Fraudulent Means AS 11.46.290(a)(1), (2)
	Defrauding Creditors, \$25,000 or more AS 11.46.730(c)(1)	Burglary II AS 11.46.310
	Bribery AS 11.56.100	Criminal Mischief II AS 11.46.482

Criminal Mischief I
AS 11.46.480

Issuing a Bad Check, \$500
or more
AS 11.46.280(d) (2)

Forgery I
AS 11.46.500

Fraudulent Use of a Credit
Card, \$500 or more
AS 11.46.285(b) (1)

A

Scheme to Defraud
AS 11.46.600

Obtaining a Credit Card
by Fraudulent Means
AS 11.46.290(a) (1), (2)

Defrauding Creditors,
\$25,000 or more
AS 11.46.730(c) (1)

Burglary II
AS 11.46.310

Bribery
AS 11.56.100

Criminal Mischief II
AS 11.46.482

Receiving a Bribe
AS 11.56.110

Forgery II
AS 11.46.505

Perjury
AS 11.56.200

Criminal Possession of Forgery
Device
AS 11.46.520

Escape II
AS 11.56.310

Criminal Simulation \$500
or more
AS 11.46.530(b) (1)

Interference with Official
Proceedings
AS 11.56.510

Tampering with a Witness I
AS 11.56.540

Receiving a Bribe by a
Witness or Juror
AS 11.56.520

Offering a False Instrument
for Recording
AS 11.46.550

Criminal Possession of
Explosives with Intent
to Commit a Felony
AS 11.61.240(b) (2)

Misapplication of Property
\$500 or more
AS 11.46.620

Promoting Prostitution I
AS 11.66.110(a) (1) and (3)

Falsifying Business Records
AS 11.46.630

Misconduct Involving Con-

Commercial Bribe Receiving

AS 11.56.310

Interference with Official
Proceedings

AS 11.56.510

Receiving a Bribe by a
Witness or Juror

AS 11.56.520

Criminal Possession of
Explosives with Intent
to Commit a Felony

AS 11.61.240 (b) (2)

Promoting Prostitution I

AS 11.66.110 (a) (1) and (3)

Misconduct Involving Con-
trolled Substance III

AS 11.71.030

or more

AS 11.46.530 (b) (1)

Tampering with a Witness I

AS 11.56.540

Offering a False Instrument
for Recording

AS 11.46.550

Misapplication of Property
\$500 or more

AS 11.46.620

Falsifying Business Records

AS 11.46.630

Commercial Bribe Receiving

AS 11.46.660

Commercial Bribery

AS 11.46.670

Defrauding Creditors, \$500-
\$25,000

AS 11.46.730 (c) (2)

Criminal Use of a Computer

AS 11.46.740

Endangering Welfare of Minor

AS 11.51.100

Perjury by Inconsistent
Statements

AS 11.56.230

Escape III

AS 11.56.320

Promoting Contraband I

AS 11.56.375

Jury Tampering

AS 11.56.590

AS 11.51.100

Perjury by Inconsistent
Statements

AS 11.56.230

Escape III

AS 11.56.320

Promoting Contraband I

AS 11.56.375

Jury Tampering

AS 11.56.590

Misconduct by a Juror

AS 11.56.600

Tampering with Physical
Evidence

AS 11.56.610

Harming a Police Dog I

AS 11.56.705

Hindering Prosecution I

AS 11.56.770

False Accusation

AS 11.56.805

Terroristic Threatening

AS 11.56.810

Riot

AS 11.61.100

Distribution of Child
Pornography

AS 11.61.125(a)(1), (2)

Promoting or Exhibition of
Fighting Animals

AS 11.61.145

Misconduct Involving Weapons I

AS 11.61.200

...ing of exhibition of
Fighting Animals
AS 11.61.145

Misconduct Involving Weapons I
AS 11.61.200

Criminal Possession of
Explosives with Intent to
Commit B Felony
AS 11.61.240(b)(3)

Unlawful Furnishing of
Explosives
AS 11.61.250

Promoting Prostitution II
AS 11.66.120

Promoting Gambling I
AS 11.66.210

Possession of Gambling
Records I
AS 11.66.230

Misconduct Involving Controlled
Substance IV
AS 11.71.040 .

REMOVING OR EXHIBITION OF
Fighting Animals
AS 11.61.145

Misconduct Involving Weapons I
AS 11.61.200

Criminal Possession of
Explosives with Intent to
Commit B Felony
AS 11.61.240(b)(3)

Unlawful Furnishing of
Explosives
AS 11.61.250

Promoting Prostitution II
AS 11.66.140

Promoting Gambling I
AS 11.66.210

Possession of Gambling
Records I
AS 11.66.230

Misconduct Involving Controlled
Substance IV
AS 11.71.040

JAN 9 1985

DEPT. OF LAW
GENERAL COUNSEL

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

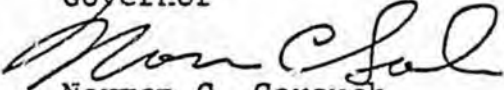
FOUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

January 8, 1985

M E M O R A N D U M

TO: Honorable Bill Sheffield
Governor

FROM: 
Norman C. Gorsuch
Attorney General

RE: Attached bill relating to
criminal sentences
Our file no. 377-129-85

Attached is a bill, requested by the criminal division of the Department of Law, which raises the criminal penalties for attempted murder, solicitation to commit murder, manslaughter, and criminally negligent homicide, and makes some badly needed "housekeeping" amendments to present sentencing laws.

As originally proposed, the focus of this bill was to raise the crimes of attempted murder and solicitation to commit murder to the "unclassified" level. This proposal was approved by John Shively on September 4, 1984. As the bill was being drafted, however, its scope was expanded to allow the correction of several other significant problems that exist in our present sentencing laws. Under current law, for example, a person convicted of manslaughter is subject to a presumptive term that is two years less than that imposed upon a person who assaults his victim, but does not kill him.

Although the bill is somewhat broader than originally planned, the amendments it contains are valuable ones that should receive legislative attention.

A draft transmittal letter to the legislature, containing a detailed explanation of the bill, is attached.

NCG:GAH:so

cc w/enc.: Hon. Robert Sundberg, Commissioner
Dept. of Public Safety


Daniel W. Hickey, Chief Prosecutor
Dept. of Law

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will increase the penalties for the crimes of attempted murder, solicitation to commit murder, manslaughter, and criminally negligent homicide. The bill also makes some badly needed "housekeeping" changes to existing sentencing laws.

Under present law, a person who attempts to commit or solicits another to commit murder, an unclassified felony, is guilty of only a class A felony. If it is the defendant's first felony conviction, he will be subject to a presumptive term of either five or seven years imprisonment, depending upon the facts of the offense. (AS 12.-55.125(c)(1), (c)(2).)

A deliberate, intentional attempt to kill another person, or the deliberate, intentional solicitation of someone else to commit a murder, are among the most heinous crimes that a person can commit. Only the completed murder itself could be more serious. The penalties prescribed under existing law do not reflect the seriousness of this conduct. Under present law, for example, a parent who improperly touches his eight-year-old child's genitals receives a more severe sentence than that imposed upon a person who deliberately, but unsuccessfully, attempted to kill the child. Sections 1 -- 4 and 10 of this bill cure



this anomaly by raising the crimes of attempted murder and solicitation to commit murder to the "unclassified" level. The crimes will carry a presumptive sentence equal to that now provided for the unclassified felonies of sexual assault in the first degree or sexual abuse of a minor in the first degree. (See AS 12.55.125(i).)

Manslaughter is a class A felony. Under current law, a person convicted of a first offense class A felony faces a presumptive term of seven years if the person knowingly directed his conduct to a uniformed police officer, possessed a firearm, used a dangerous instrument, or caused serious physical injury during the crime, unless the conviction was for manslaughter. AS 12.55.125(c)(2). A defendant convicted of manslaughter is subject to a presumptive term of only five years.

This sentencing "exception" for manslaughter has created an incredible anomaly in existing law. For example, an intoxicated driver who causes a traffic accident in which another person is seriously injured has committed assault in the first degree under AS 11.41.200(a)(1), a class A felony. The drunk driver, if convicted for the assault, faces a presumptive term of seven years. If, however, the victim dies, and the drunk driver is convicted of manslaughter, the defendant's presumptive sentence decreases to five years. This result is one that is difficult to

understand, and even more difficult to explain to a deceased victim's family. Section 8 of this bill removes this "exception", and treats manslaughter the same as any other class A felony.

Section 5 of the bill reclassifies the crime of criminally negligent homicide from a class C to a class B felony level. This raises the maximum possible penalty from five years to 10. (Before the new criminal code took effect in 1980, negligent homicide was considered a form of manslaughter, and carried a penalty of up to 20 years imprisonment). Under present law, the disparity between manslaughter (a class A felony with a maximum term of 20 years) and criminally negligent homicide (a C felony, five year maximum) is too great. The difference between the two crimes is the defendant's mental state at the time of the killing -- "reckless" for manslaughter, "criminally negligent" for criminally negligent homicide. These mental states are defined in AS 11.81.900(a), and the difference between them is not great. Criminally negligent homicide is the unlawful killing of another. Reclassification of this crime to the B felony level will bring the penalty level in line with the seriousness of the offense. In appropriate cases a sentencing court could decide not to impose any jail sentence at all, as a first offense B felony conviction does not carry a presumptive term.

Sections 6 and 7 make some badly needed "housekeeping" amendments to the sentencing laws. When the present criminal code was enacted in 1978, there were only three "unclassified" offenses: murder in the first degree, murder in the second degree, and kidnapping. These three crimes were originally listed, by name, in several places in the code as exceptions to the general classification and sentencing scheme. In the intervening years, other crimes have been raised to the unclassified level, including sexual assault in the first degree, sexual abuse of a minor in the first degree, and misconduct involving a controlled substance in the first degree. In addition, this bill raises attempted murder and solicitation to commit murder to the unclassified level.

It has become increasingly impractical to list all unclassified offenses by name whenever the statutory reference is to the group of offenses. The present system presents the danger that necessary conforming amendments will inadvertently be overlooked when a new crime is added to the unclassified group. This is exactly what happened when the legislature amended the criminal code in 1983 to strengthen the laws against sexual abuse of children. A new unclassified crime, sexual abuse of a minor in the first degree, was created (AS 11.41.434). Through a drafting oversight, however, a reference to this crime was not added to AS 12.55.035, the general provision that

specifies the fines authorized for given offenses. Thus, although a person convicted of sexual abuse in the first degree faces a presumptive term of eight years in prison under AS 12.55.125(i), existing penalty provisions do not include a fine for this offense.

To remedy this oversight, and to ensure that similar errors do not occur in the future, this bill substitutes a reference to unclassified crimes as a group wherever the offenses in this group are now specifically listed by name in the statutes.

The amendments contained in secs. 9, 11, 13, and 15 of the bill are needed for a similar reason. Presumptive terms under the new criminal code were originally imposed under a few subsections of AS 12.55.125. These few subsections were specifically cited in many general provisions that dealt with some aspect of presumptive sentencing (in, for example, the list of aggravating or mitigating factors and the section creating the three-judge sentencing panel). As the criminal code has been amended over the years, however, and presumptive penalties have been added or changed, necessary conforming amendments were not always made, or were not always made completely. This bill cures past discrepancies, and eliminates the problem for the future, by simply substituting a general reference to "presumptive terms" in statutes that now refer to specific

subsections under which a presumptive sentence is imposed.

In 1982 the language of AS 12.55.145(a) was amended to provide that a criminal conviction in another jurisdiction would be considered a "prior conviction" for presumptive sentencing purposes in this state if the out-of-state offense had elements "similar to" those of a crime defined as a felony in Alaska. As the result of a drafting oversight, the language of a companion subsection dealing with procedural matters was not amended. Section 12 of this bill cures this discrepancy by amending AS 12.55.145(c).

The amendments included in this bill are needed to improve existing sentencing laws, and to recognize the seriousness of taking a human life.

Sincerely,

Bill Sheffield
Governor

Introduced: 1/25/85
Referred: Health, Education & Social Services
Judiciary

Handwritten: AS 12.55.155(e) § 14
Handwritten: addition

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 102

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal sentences."

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

8 * Section 1. AS 11.31.100(d) is amended to read:

9 (d) Unless otherwise provided, an [AN] attempt is a

10 (1) class A felony if the crime attempted is an unclas-
11 sified felony;

12 (2) class B felony if the crime attempted is a class A
13 felony;

14 (3) class C felony if the crime attempted is a class B
15 felony;

16 (4) class A misdemeanor if the crime attempted is a class C
17 felony;

18 (5) class B misdemeanor if the crime attempted is a class A
19 or class B misdemeanor.

20 * Sec. 2. AS 11.31.100 is amended by adding a new subsection to read:

21 (e) An attempt to commit murder in the first degree is an un-
22 classified felony and is punishable as provided in AS 12.55.

23 * Sec. 3. AS 11.31.110(c) is amended to read:

24 (c) Unless otherwise provided, solicitation [SOLICITATION] is a

25 (1) class A felony if the crime solicited is an unclas-
26 sified felony;

27 (2) class B felony if the crime solicited is a class A
28 felony;

29 (3) class C felony if the crime solicited is a class B

1 felony;

2 (4) class A misdemeanor if the crime solicited is a class C
3 felony;

4 (5) class B misdemeanor if the crime solicited is a class A
5 or class B misdemeanor.

6 * Sec. 4. AS 11.31.110 is amended by adding a new subsection to read:

7 (e) Solicitation to commit murder in the first or second degree
8 is an unclassified felony and is punishable as provided in AS 12.55.

9 * Sec. 5. AS 11.41.130(b) is amended to read:

10 (b) Criminally negligent homicide is a class B [C] felony.

11 * Sec. 6. AS 11.81.250 is amended to read:

12 Sec. 11.81.250. CLASSIFICATION OF OFFENSES. (a) For purposes
13 of sentencing under AS 12.55, all offenses defined in this title,
14 except unclassified offenses [MURDER IN THE FIRST AND SECOND DEGREE,
15 SEXUAL ASSAULT IN THE FIRST DEGREE, AND KIDNAPPING], are classified on
16 the basis of their seriousness, according to the type of injury char-
17 acteristically caused or risked by commission of the offense and the
18 culpability of the offender. Except for unclassified offenses [MURDER
19 IN THE FIRST AND SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE,
20 AND KIDNAPPING], the offenses in this title are classified into the
21 following categories:

22 (1) class A felonies, which characteristically involve
23 conduct resulting in serious physical injury or a substantial risk of
24 serious physical injury to a person;

25 (2) class B felonies, which characteristically involve
26 conduct resulting in less severe violence against a person than class
27 A felonies, aggravated offenses against property interests, or ag-
28 gravated offenses against public administration or order;

29 (3) class C felonies, which characteristically involve

1 conduct serious enough to deserve felony classification but not seri-
2 ous enough to be classified as A or B felonies;

3 (4) class A misdemeanors, which characteristically involve
4 less severe violence against a person, less serious offenses against
5 property interests, less serious offenses against public adminis-
6 tration or order, or less serious offenses against public health and
7 decency than felonies;

8 (5) class B misdemeanors, which characteristically involve
9 a minor risk or physical injury to a person, minor offenses against
10 property interests, minor offenses against public administration or
11 order, or minor offenses against public health and decency;

12 (6) violations, which characteristically involve conduct
13 inappropriate to an orderly society but which do not denote criminal-
14 ity in their commission.

15 (b) The classification of each felony defined in this title,
16 except unclassified offenses [MURDER IN THE FIRST AND SECOND DEGREE,
17 SEXUAL ASSAULT IN THE FIRST DEGREE, AND KIDNAPPING], is designated in
18 the section defining it. A felony under Alaska law defined outside
19 this title for which no penalty is specifically provided is a class C
20 felony.

21 (c) The classification of each misdemeanor defined in this title
22 is designated in the section defining it. A misdemeanor under Alaska
23 law defined outside this title for which no penalty is provided is a
24 class A misdemeanor.

25 * Sec. 7. AS 12.55.035(b) is amended to read:

26 (b) Upon conviction of an offense, a defendant who is not an
27 organization may be sentenced to pay, unless otherwise specified in
28 the provision of law defining the offense, a fine of no more than

29 (1) \$75,000 for an unclassified felony [MURDER IN THE FIRST

1 OR SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, KIDNAPPING, OR
2 MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE];

3 (2) \$50,000 for a class A, B, or C felony;

4 (3) \$5,000 for a class A misdemeanor;

5 (4) \$1,000 for a class B misdemeanor;

6 (5) \$300 for a violation.

7 * Sec. 8. AS 12.55.125(c) is amended to read:

8 (c) A defendant convicted of a class A felony may be sentenced
9 to a definite term of imprisonment of not more than 20 years, and must
10 [SHALL] be sentenced to the following presumptive terms, subject to
11 adjustment as provided in AS 12.55.155 -- 12.55.175:

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

15 (2) if the offense is a first felony conviction, [OTHER
16 THAN FOR MANSLAUGHTER,] and the defendant possessed a firearm, used a
17 dangerous instrument, or caused serious physical injury during the
18 commission of the offense, or knowingly directed the conduct con-
19 stituting the offense at a uniformed or otherwise clearly identified
20 peace officer, fire fighter, correctional officer, emergency medical
21 technician, paramedic, ambulance attendant, or other emergency
22 responder who was engaged in the performance of official duties at the
23 time of the offense, seven years;

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

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

26 * Sec. 9. AS 12.55.125(g) is amended to read:

27 (g) If a defendant is sentenced to a presumptive term under
28 [(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i) OF] this section, except
29 to the extent permitted under AS 12.55.155 -- 12.55.175,

- 1 (1) imprisonment may not be suspended under AS 12.55.080;
2 (2) imposition of sentence may not be suspended under
3 AS 12.55.085;
4 (3) terms of imprisonment may not be otherwise reduced.

5 * Sec. 10. AS 12.55.125 is amended by adding a new subsection to read:

6 (j) A defendant convicted of attempted murder or solicitation to
7 commit murder may be sentenced to a definite term of imprisonment of
8 not more than 30 years, and must be sentenced to the following pre-
9 sumptive terms, subject to adjustment as provided in AS 12.55.155 --
10 12.55.175:

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

14 (2) if the offense is a first felony conviction, and the
15 defendant possessed a firearm, used a dangerous instrument, or caused
16 serious physical injury during the commission of the offense, 10
17 years;

18 (3) if the offense is a second felony conviction, 15 years;

19 (4) if the offense is a third felony conviction, 25 years.

20 * Sec. 11. AS 12.55.145(a) is amended to read:

21 (a) For purposes of considering prior convictions in imposing
22 sentence under AS 12.55.125 [12.55.125(c), (d)(1), (d)(2), (e)(1),
23 (e)(2), OR (i)]

24 (1) a prior conviction may not be considered if a period of
25 10 or more years has elapsed between the date of the defendant's
26 unconditional discharge on the immediately preceding offense and
27 commission of the present offense unless the prior conviction was for
28 an unclassified or class A felony;

29 (2) a conviction in this or another jurisdiction of an

may be added this

1 offense having elements similar to those of a felony defined as such
2 under Alaska law at the time the offense was committed is considered a
3 prior felony conviction;

4 (3) two or more convictions arising out of a single, con-
5 tinuous criminal episode during which there was no substantial change
6 in the nature of the criminal objective are considered a single con-
7 viction unless the defendant was sentenced to consecutive sentences
8 for the crimes; offenses committed while attempting to escape or avoid
9 detection or apprehension after the commission of another offense are
10 not part of the same criminal episode or objective.

11 * Sec. 12. AS 12.55.145(c) is amended to read:

12 (c) If the defendant denies the authenticity of a prior judgment
13 of conviction, that the defendant is the person named in the judgment,
14 that the elements of a prior offense committed in another jurisdiction
15 are similar [SUBSTANTIALLY IDENTICAL] to those of a felony defined as
16 such under Alaska law, or that a prior conviction occurred within the
17 period specified in (a)(1) of this section or if the defendant alleges
18 that two or more purportedly separate prior convictions should be
19 considered a single conviction under (a)(3) of this section, the
20 defendant shall file with the court and serve on the prosecuting
21 attorney notice of denial no later than 10 days before the date set
22 for imposition of sentence. The notice of denial must [SHALL] include
23 a concise statement of the grounds relied upon and may be supported by
24 affidavit or other documentary evidence.

25 * Sec. 13. AS 12.55.155(a) is amended to read:

26 (a) If a defendant is convicted of an offense and is subject to
27 a presumptive term [SENTENCING] under AS 12.55.125 [12.55.125(c),
28 (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and

29 (1) the presumptive term is four years or less, the court

AS 12.55.165(2)
(amended)

1 may decrease the presumptive term by an amount as great as the pre-
2 sumptive term for factors in mitigation or may increase the presump-
3 tive term up to the maximum term of imprisonment for factors in aggra-
4 vation;

5 (2) the presumptive term of imprisonment is more than four
6 years, the court may decrease the presumptive term by an amount as
7 great as 50 percent of the presumptive term for factors in mitigation
8 or may increase the presumptive term up to the maximum term of impris-
9 onment for factors in aggravation.

10 * Sec. 14. AS 12.55.165 is amended to read:

11 Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant
12 is subject to a presumptive term [SENTENCING] under AS 12.55.125
13 [12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and the court
14 finds by clear and convincing evidence that manifest injustice would
15 result from failure to consider relevant aggravating or mitigating
16 factors not specifically included in AS 12.55.155 or from imposition
17 of the presumptive term, whether or not adjusted for aggravating or
18 mitigating factors, the court shall enter findings and conclusions and
19 cause a record of the proceedings to be transmitted to a three-judge
20 panel for sentencing under AS 12.55.175.

Newcomb has violent history

By RONNIE CHAPPELL
Daily News reporter

Gary Frank Newcomb, 33, is a convicted killer who has eluded Alaska police dragnets three times in the past five months.

In October, he became the only man to break out of the Wildwood Correctional Facility in Kenai. He was being held in a maximum security cell at the pretrial building. He had been loose ever since.

Those who know Newcomb describe him as an intelligent, ruthless, violent sociopath who has spent most his life behind bars. He began using aliases as a juvenile. He stabbed a man to death in a fast food restaurant. Before coming to Alaska he shot a bystander in the chest following a traffic incident.

He may be responsible for the 1982 disappearance of a Soldotna man, according to

See Back Page NEWCOMB

THE ELUSIVE TRAIL OF GARY NEWCOMB

Oct. 1: Saws his way out of the Wildwood Correction Facility in Kenai, the only person to ever escape.

Oct. 5: Newcomb is spotted by Alaska State Troopers on the banks of the Kenai River trying to pry his Volkswagen out of the mud, but he manages to elude them.



OCTOBER NOVEMBER DECEMBER JANUARY FEBRUARY MARCH

Halloween: Troopers are tipped that Newcomb will try to leave the Kenai Peninsula in costume after a party. Officers staking out the party say Newcomb never shows.

Nov. 8: Troopers are told that Newcomb is hiding up somewhere in a group of cabins in North Kenai. Twenty-four Troopers carry out a cabin-by-cabin search, finding gear covered by Newcomb's fingerprints. The suspect is gone.

March 3: Acting on a tip, two Anchorage Police Department officers confront Newcomb in a Mountain View barber shop. He manages to grab an officer's gun, shoot both officers and flee. Several hours later he is captured.

Barber spotted escapee in chair

By DAVID POSTMAN
Daily News reporter

Magie Jackson said he was looking forward to cutting the customer's hair because the man said he was getting married and I was looking forward to doing him up real good."

But Jackson, a student at Anchorage Barber College, said he thought something was wrong when his instructor told him to give the man a shampoo he hadn't asked for.

"I took him over to the sink. I saw the police officers coming in and then she (the instructor) said, 'No, why don't we do a dry cut,'" Jackson said.

What Jackson couldn't see, but other barbers and customers could, were two Anchorage Police officers with guns drawn coming in the front and back doors. Jackson said later that one of his fellow students had recognized

See Page 7 BARBER

NEWCOMB: Captured convict has history of violence, elusive ways

Continued from Page A-1

courtroom testimony. And when he escaped from the Wildwood Correctional Facility in Kenai he was awaiting sentencing on what may be the biggest armed robbery in Alaska history.

According to police, Newcomb is a powerfully built man who is in excellent physical condition. He's the kind of fugitive who is not afraid to hide in a crowd, or make casual contact with members of the public.

The search for Newcomb began in early October when he sawed his way out of a maximum-security cell in Kenai. Prison officials don't know where he got the saw. And they didn't realize that he was gone until the next morning.

Forty Peninsula policemen and a tracking dog combed the surrounding countryside. The trail went cold in downtown Kenai where people later reported that they had seen a man matching Newcomb's description drinking a beer in a local bar and hitchhiking along the Spur Highway.

The sightings continued for four days. Most of the leads

were dead ends, but then a Ciechanski Road resident reported that Newcomb had come to his house to borrow an automobile jack. Troopers found Newcomb trying to pry a red Volkswagen out of the mud at Castaway Cove, a recreational subdivision on the banks of the Kenai River.

Two troopers closed to within 50 yards, and ordered Newcomb to stand up and move away from the vehicle. Instead, Newcomb moved behind the car, kicked off his rubber canner boots and fled across a narrow footbridge onto a small, heavily wooded island.

The troopers pursued Newcomb until they lost sight of him. Then they stopped and waited for assistance. During the five-hour search that ensued, Newcomb eluded a police dog, a helicopter and a dozen policemen.

A month later, police got another chance when they learned that Newcomb was holed up in a remote cabin in North Kenai. Twenty-four troopers, assisted by a helicopter, came up empty handed. They did find camping equipment and an off-road vehicle with Newcomb's fin-

ger prints all over it. That was the last police saw of Newcomb until he surfaced Tuesday in an Anchorage barber's chair.

Newcomb's criminal record is checkered with violent crimes.

In 1974, he was convicted of manslaughter after he and George Betzner — who would team with him nine years later in a Sterling fur robbery — killed a man during a knife fight in a Jack-in-the-Box restaurant.

When released from prison, he was involved in a traffic incident that escalated into bloodshed. Newcomb, a motorcyclist, claimed that a motorist had tried to sideswipe him. When the car finally stopped, Newcomb kicked in the window, climbed inside and beat up the driver. He then drove the car to a remote location where he continued the assault.

A passer-by answered the driver's call for help. While Newcomb beat the second man, the first fled. Newcomb pursued him, but was unable to catch him. He then returned to the car and shot the second man — who was conscious but unable to move

in the chest.

Newcomb fled to Alaska, where he was involved in what may be the biggest robbery in Alaska history. It occurred the night of Feb. 10, 1983 when Newcomb and two other armed men broke into the home of Sterling fur dealer Ed Whittaker. Newcomb and his accomplices made off with pelts, raw furs, coats and other finished goods valued at \$350,000.

A Kenai jury was unable to decide if Newcomb was guilty or innocent the first time he was tried. The second time, he fired his attorney and represented himself. The second jury found Newcomb guilty of armed robbery.

Before the trial, co-defendant Betzner reneged on a deal requiring him to testify against his longtime friend.

Fear that Newcomb would harm his wife and child probably prompted Betzner's decision to refuse to testify, a source close to the case said. Those who did testify said they were afraid of Newcomb because they believed him responsible for the 1982 disappearance of a Soldotna man known to them as "Joe Willy."

BARBER: Recognized escapee

Continued from Page A-1

the man as escaped convict Gary Newcomb and called police. But, at the time, Jackson didn't know who's hair he had been cutting.

The policemen put their guns away as they approached Jackson's customer.

They stood on either side of the man with shoulder-length, sandy blond hair, blue jeans and a red plaid shirt and said they needed to ask him a few questions. The man didn't seem concerned, Jackson said.

But when the officers tried to search the man, pulling up his shirt and reaching around his back, he jumped out of the chair and began fighting with them.

"They pulled him out of the chair and told him to go along with them and he wasn't about to," said Norman Rollness, who was waiting for a haircut a few chairs down.

As they fought, most of the 25 or so people in the barber shop dove for cover, some running out of the building.

"They were tussling on the floor. I was trying to get out of the way and I heard three shots," Jackson said. Witnesses said the man took one of the officers' revolvers dur-

ing the fight.

"I heard, 'Pow' 'Pow' and there was a pause and then 'Pow' again," Jackson said. "There was a lot of hollering and then things got quiet."

Both officers had been shot and could do nothing when the gunman turned and ran toward the back door.

"I heard the shots and saw this guy running toward me. At the door, he stopped, turned around, squatted and shot again for good measure," said Ron Farley, who was getting his hair cut in the back of the shop. He said the final shot seemed to go into the ceiling.

Officer Francis Patrick O'Brien slumped in a chair, trying to stop the bleeding from his left shoulder. Officer Preston "Jack" Chapman, who was shot in the neck, lay on the floor and seemed to fall in and out of consciousness.

Customers and barbers tried to give first aid "but there wasn't much we could do," Farley said.

At least one bullet was found in the Family Restaurant next door. Nick Nelson said he was drinking coffee when the bullet came screaming through the wall above his head. "It got plaster in my coffee," he said.

Officers shot; convict captured

Police capture long-sought fugitive after tense five-hour standoff

By RICHARD MAUER
Daily News reporter

The law caught up with escaped convict Gary Newcomb Tuesday night, but not before he stole a policeman's service revolver and shot the officer and his partner inside a crowded barber school in Mountain View Tuesday afternoon. Newcomb fled from there into a neighborhood of apartment houses and duplexes and for five hours eluded a huge force of officers cordoning off the neighborhood. He was finally captured in an alley at 10:10 p.m.

The two wounded officers were reported in stable condition at Humana Hospital-Alaska. Officer Preston "Jack" Chapman, 38, was shot once in the neck and once in the buttocks. He was critical but stable after undergoing surgery for an hour to remove the slug from his neck.

Officer Francis Patrick O'Brien, 42, was shot in the shoulder and was reported in stable condition. Police spokesman Joe Young said that the bullet that struck Chapman missed all his vital organs.

Newcomb's last hours of freedom were spent hiding in an apartment while a police tactical weapons squad surrounded and then attacked the house next door at 340 Price St., which is where a witness thought Newcomb was. After a tense standoff, the officers fired tear gas and concussion grenades into the house and searched it, only to come up empty.

It was not until police began an apartment-by-apartment search of the area that Newcomb leaped from the window of his hideout and ran into an alley. He was captured just north of Peterkin Avenue.

His arrest ended a five-hour blockade of a large section of Mountain View. Patrolmen with copies of Newcomb's mug shot blocked off every major intersection leading out of Mountain View and searched every vehicle that left, setting off huge traffic jams in the waning minutes of the afternoon rush hour and on into the frigid night. Many motorists traveling on the Glenn Highway, Mountain View Drive and Bragaw Street were directed to open the trunks of their cars.

No one, including residents, was being



See Back Page, CAUGHT

Anchorage police officers hold Gary Newcomb after his capture on Price Street late Tuesday night.

Anchorage Daily News/Jim Lavrakas

CAUGHT: Convict nabbed after shooting two officers

Continued from Page A-1

allowed into the area into which the suspect melted.

From the start, police were convinced that their suspect was master escape artist Newcomb, 33, who has successfully eluded police through a series of close calls with authorities since he escaped from Wildwood Correctional Facility in Kenai in October. He had killed a man in California and was under sentence for convictions of kidnapping, attempted murder and robbery.

The day's dramatic events began unfolding around 5 p.m. when a man with shoulder-length, sandy blond hair, blue jeans and a plaid shirt walked in to Anchorage Barber College at 2519 Mountain View Drive. The man said he was getting married and asked for haircut.

One of the student barbers, believed by his fellow students to have once been a corrections officer, looked at the customer and made the connection. It was Gary Newcomb.

Police were called at 5:05

p.m. One of the instructors tried to distract his most-wanted customer with the full treatment until they arrived. While Newcomb was being led to the shampooing sink, officers Chapman and O'Brien, guns drawn, popped in through the doors, one from the front, the other from the back.

According to witnesses at the school, the officers put their guns away, then stood on either side of Newcomb, who by this time was seated in a chair, and said they wanted to ask him some questions. When they tried to search him, Newcomb leaped from the chair, wrestled with the officers, and grabbed the service revolver from one of the officers. He fired at least three shots and ran out the back door.

The barber shop had been crowded with customers, including children, but it emptied quickly. One witness said that the gunman stopped at the rear door just before leaving, turned, and fired once more into the shop.

"One bullet pierced the wall of the Family Restaurant next door. A customer said it left a trail of plaster in his coffee.

Within moments of getting the call that two officers were down, squad cars raced to the area and roadblocks were set up. Motorists, on their way home from work were greeted at busy intersections by officers toting shotguns and drawn revolvers. Other policemen fanned out through the neighborhood north of the barber school, and dogs were called in to sniff out the suspect.

Anchorage police said it was one of their biggest man-hunts ever, with 75 to 100 officers participating.

Neighbors, alerted to the troubles outside their doors, called in reports or signaled to officers with sightings. Newcomb was tracked down to apartment 2B at 340 Price St. According to one neighbor, Newcomb had been liv-



Paramedics take police Officer Francis P. O'Brien to the hospital. O'Brien was shot in the shoulder Tuesday.

ing in the apartment in the maroon and brown single-story duplex for about three weeks.

Police surrounded the building around 6 p.m., taking vantage points from the apartment house next door and from an abandoned building across the alley at 331 Mumford St.

But while all that was going on in their midst, other neighbors, including children, were nonchalant about the danger in the midst. A few strolled the sidewalks as if nothing was going on, while a young boy played by the window of an apartment kitty-corner to the one under guard.

People coming home from work or shopping walked along Mumford Street as police with shotguns ducked up alleys, closing in on Newcomb's residence.

It is a poor neighborhood,

the sort of place a man on the run might find refuge, a place of cheap duplexes and fourplexes, chain link fences and barking dogs.

"What's going on?" asked a woman who left her apartment house without her coat on.

"They're after a guy who just shot two cops," she was told.

"You're kidding," she said. It was more than an hour before police made a concerted effort to clear the streets and neighboring apartments.

While a state trooper helicopter hovered overhead, the police Crisis Intervention Response Team arrived at the neighborhood at 7 p.m. and fanned out among the buildings. They began firing tear gas grenades and finally concussion bombs before entering the apartment.

No one was there.

He had apparently been

holed up in Apt. 12A in 340 N. Price St. next door.

About 10 p.m. after searching one apartment and the laundry room of 330 CIRT officers saw they saw movement in the apartment. Seconds later, a back window was broken and Newcomb was out.

He ran through an alley and tried to skirt in front of Price Street, saw Officer Ron Wade, but changed his mind when a trooper helicopter illuminated his movements.

"I think he saw the lights, and he cut back between the buildings," said officer Ron Wade.

Newcomb ran for cover between the buildings, and slipped underneath an orange van parked in front of 330 N. Price.

Khan, a Retriever tracking dog, ran to the van and

began to attack. K-9 officer Kelley Schunke pulled the dog back, and ran with him to the van's other side.

Newcomb was starting to slide out, with a weapon drawn, Wade said. The dog attacked again, knocking the gun from his hand, and Schunke made the arrest.

No shots were fired and there was no fight, Wade said.

Newcomb was hustled to a cruiser, handcuffed and surrounded by police. He had a bloody lip and there appeared to be blood coming from his right ear.

Daily News reporters Hal Bertton, Ronnie Chappell, Patti Epler, Jim Erickson, Nancy Montgomery, David Postman and Hal Spencer also contributed to this story.



Prosecution: Hatred fueled murder

Mackay defense argument scheduled next; case could go to jury Friday

By SHEILA TOOMEY

Daily News reporter

FAIRBANKS — Neil Mackay's hatred for Robert Pfeil consumed his life and spilled over into the life of his son, robbing the boy of love, attention and even space, prosecutor Peter Gruenstein told jurors Wednesday at Mackay's murder trial.

"There was one long, dark shadow over Bob Pfeil's otherwise sunshine-filled life," said Gruenstein. "Robert Pfeil had but one mortal enemy in the world and he sits before you, awaiting the justice he deserves."

Gruenstein took slightly more than three hours to summarize the state's case against Mackay, 63, a former Anchorage lawyer and businessman. Mackay is accused of paying strip club manager Gilbert Pauole \$10,000 to arrange Pfeil's death. Mackay was once married to Pfeil's sister and the two men were long-time enemies.

The defense will give its closing arguments today, with prosecution rebuttal scheduled for Friday, when the jury should get the case.

The evidence against Mackay is

straightforward, Gruenstein said, much of it coming from Mackay's own mouth. He urged jurors to listen carefully to a taped telephone conversation between Mackay and Pauole, made under police supervision just hours after Pauole was arrested on Nov. 8, 1985.

Pauole told Mackay police were closing in and asked for getaway money. "Imagine what the reaction of an innocent man would be," said Gruenstein. "Confusion, outrage, anger."

"Mr. Mackay's first reaction is, 'Well, where are you calling from?'"

"There are a hundred reactions that would be plausible and consistent with an innocent person," said Gruenstein. But not Mackay's response: "Don't say too much, you know. You're going to implicate yourself."

This tape, all by itself, is enough to erase any reasonable doubt about Mackay's guilt, he told jurors.

Gruenstein also pointed to a sheet of addresses relating to Bob Pfeil that was typed on Mackay's typewriter and found in Pauole's Seattle home, to the testimony of a jailhouse snitch who

said Mackay made incriminating statements to him, and to a phone call from Pauole's Anchorage home to Mackay's Honolulu apartment at 9:08 p.m. the night Pfeil was shot.

Pauole said he called Mackay and reported that the job was done. But, during the trial, Scotty Mackay, Neil's 14-year-old son, testified that he, not his dad, answered the phone that night and no one was on the line.

"Scotty's story is incredible," Gruenstein said. The boy was able to "remember the time and the date even though he wasn't asked about it for 15 months ... until January of this year."

Consider the likelihood that a young boy could do this, Gruenstein told jurors, "then ask yourself why the defense would present such evidence."

"So much of this case can be understood through Scotty because, as you know, in a very real sense, that's where it all began."

By "it," Gruenstein meant the alleged murder motive — Mackay's long abiding fear and hatred of Bob Pfeil and the rest of the Pfeil family. Using

See Page D-3, MACKAY

MACKAY: Trial nears end

Continued from Page D-1

a huge "hatred/fear/frustration" chart, Gruenstein traced the history of the Pfeil-Mackay feud, beginning in the late 1960s with Bob Pfeil's opposition to the marriage of Mackay and Pfeil's sister Muriel.

Animosity flamed in 1976, when Muriel died in a still unsolved car bombing and it burned brightly during years of court fights over Scotty and the management of Muriel's estate.

Mackay was obsessed, Gruenstein said, and the obsession got worse over the years, not better. He feared Pfeil would kidnap Scotty. He feared Pfeil would poison Scotty's mind against him with suspicions about who was responsible for Muriel Pfeil's death. Bob Pfeil believed Mackay was.

Mackay hated the fact that Pfeil controlled Scotty's inheritance and would one day be an influential person in Scotty's life because of it, said Gruenstein.

"It gnawed on him and gnawed on him."

Papers from 10 years of legal battles over all these fears littered every surface in the apartment Mackay and Scotty shared. Although the son of a millionaire, Scotty had no bed of his own because Mackay turned the boy's bedroom into an office, Gruenstein said. Scotty had nowhere to eat dinner, because Mackay's legal papers covered the dining room table.

Instead, Scotty "has to clear a corner of the coffee table in the living room to eat the food a neighbor has brought," he said.

Because of his father's obsession, Scotty "doesn't know whether his own grandmother is alive. ... It's a heart-rending image when you stop to think about it."

"The motive in this case is as powerful as evidence can ever be," Gruenstein said.

Anticipating a direct attack by the defense on the credibility of the state's main witness, Pauole, Gruenstein said Pauole was no friend to the state.

No one's asking jurors to believe Pauole "because he is



Farbanks Daily News Miner/Charles Mason

Peter Gruenstein



a fine human being," he said. Pauole came into court a confessed murderer. He should be believed because other evidence corroborates his story.

He dismissed defense suggestions that Pauole fingered Mackay in order to get a deal — 20 years maximum in prison. Pauole would have gotten the same deal no matter who he named as the principal in the conspiracy, as long as he had proof he was telling the truth, such as the phone tapes.

"The State of Alaska entered into an agreement with Junior Pauole because it had to," said Gruenstein. "Neil Mackay associated with Junior Pauole because he wanted to, because he chose to."

When the defense starts pounding on Pauole in their closing, said Gruenstein, jurors should remind themselves that Pauole was Mackay's friend, associate, tenant, a man Mackay sent his son's report card to.

The defense is trying to put Pauole on trial in place of their client, Gruenstein said. "Neil Mackay is the issue in this trial and all the evidence points in one direction. It points to Neil Mackay."

Anchorage Daily News 4/17/87

MARIANNE PFEIL: FACING HER FAMILY'S PAST



Anchorage Daily News/Erik Hill

Marianne Pfeil walks from the Anchorage airport terminal after returning from a day at the trial of Neil Mackay in Fairbanks.

Widow says she must see it through

By **SHEILA TOOMEY**
Daily News reporter

FAIRBANKS — Most mornings Marianne Pfeil leaves her home by 6:30 and drives to Anchorage International Airport, where she boards an Alaska Airlines flight for one more trip into the past.

Flight #89 takes her to Fairbanks, where her former brother-in-law is on trial, charged with murdering her husband. "This is my life on stage up there, my family. I have to finish it."

In Courtroom D, on the second floor of the state courthouse, she takes a seat in the darkened spectator section and settles down for another day of *The State of Alaska vs. Neil Mackay*.

Mackay is accused of paying an Anchorage nightclub owner \$10,000 to have her husband, Robert Pfeil, killed. Pfeil was shot by a gunman on Oct. 12, 1985 and died a month later.

Despite talk of gangsters and drug dealers, of strip joints and snitches, which has dominated large parts of the testimony so far, this trial is essentially a family affair.

In addition to the murder charged, Mackay is suspected by some, including Marianne, of arranging the death in 1976 of his ex-wife, Muriel Pfeil Mackay, Robert's sister. Both sides say the two killings are linked, so there has been testimony about Muriel's death, about her nasty divorce from Neil in

1975, about the bitter battle after her death over custody of her son, Scotty.

Bob and Muriel's mother has testified. She's 87 now. Mackay's sister has taken the stand. They became estranged during the custody fight. Scotty, now 14, has testified; the woman now reportedly taking care of him is Mackay's first wife, Barbara Homay.

It's a family affair. Marianne Pfeil sits and listens, five hours a day, to her family's bloody linen being washed in public. She says she cannot stay away. She says she can't step forward into her future until the past is done.

"There was one day I felt like

See Back Page, **MARIANNE**

MARIANNE PFEIL: She takes a daily flight to the trial so she can put the past to rest

Continued from Page A-1

screaming. . . There was a day when they talked about me. I thought, 'If they don't stop, I'm going to scream.'"

Using a pass given to her by Alaska Airlines, her husband's employer for nearly 30 years, Pfeil commutes to Fairbanks each day the trial is in session. She hasn't missed a day since opening statements began, on Feb. 10.

"Yes, I'm tired," she admits. "It's getting to me a little bit, the immenseness of it all. And springtime, I think, being alone in springtime. It just hits you all of a sudden. . . This is going to be over and I'm going to be alone for the rest of my life."

Most days Pfeil sits on a front row bench no more than 10 feet behind Mackay. They never speak, but she studies him during the long hours of repetitious questioning and mind-numbing legal arguments. She can describe his nervous mannerisms and tries to figure out what he's reading or writing.

"He smiled at me once," she said. "I wondered why."

She did not smile back.

The people who carried out the killing of her husband have all been tried and convicted. But this trial is different, said Pfeil. "This is the only one that matters to me. The others, they never wanted to hurt me. . . This is the one."

It some ways Mackay's trial, with all its unhappy memories, is easier than the ones that went before. Then she was hearing for the first time how killers stalked her family, watched her home, how her husband died.

"I'm not shocked any more," she said. "Last spring was worse."

Last spring, at the trial of Larry Gentry, Pfeil rarely spoke. She sat alone most of the time and sometimes reacted emotionally to what she heard. But another year has passed and mourning is not a natural state for her. Her ebullient personality is reasserting itself.

Now she asks questions and expresses definite opinions about the witnesses and what they say. She is a woman of definite opinions. She is also friendly, often chatting with witnesses and other spectators in and outside the courtroom. She brings extra copies of the morning paper up from Anchorage each day and shares candy bars. Once she baked Swedish almond tarts for the prosecutors and the people who sit nearby.

Right behind Pfeil, in the second row of seats, sits Norma Gentry, mother of Larry Gentry, who is now serving 25 years in prison for helping to plan Bob Pfeil's death. Mrs. Gentry is also in the courtroom every day.



A wedding day photo Marianne Pfeil carries in her purse: From left are Robert Pfeil, Marianne, Muriel Pfeil Mackay and Nell Mackay, and Muriel C. Pfeil.

Norma Gentry has moved to Fairbanks temporarily so she can attend the trial and listen for something that might help her son. She takes notes for his appeal.

At Larry Gentry's trial in Anchorage last year, Marianne and Norma kept their distance from each other, sitting across the aisle in a much larger courtroom, each wrapped in her own grief. But it's hard to get very far away from anyone in Courtroom D, so Norma and Marianne have struck up a friendly relationship. Both 53 years old and bereft of someone they love, the two women have accepted that neither is responsible for what happened.

"I understand why she's here," said Pfeil. "I can see her plight. . . I don't have any bad feelings toward her. She's a nice, friendly lady. I'm sure she tried the best she could. Don't you know how kids go out and find drugs? It can

happen to anyone. I feel sorry."

Norma Gentry believes her son was wrongfully convicted, so the two women avoid the subject when talking to each other.

Pfeil is Swedish and speaks with a Swedish accent. She is an attractive woman who is always well-coiffed and dressed in expensive clothes that she insists she buys on sale. She was a stewardess for SAS when she married Bob Pfeil, about six weeks after they met.

Pfeil looks a little sheepish admitting this.

"We didn't know each other very much," she said, "but I knew right away he was the one I wanted to marry. I always said that he bought a pig in a sack but. . . our marriage got better and better."

She carries a snapshot in her purse; it was taken outside the church the day she and Bob got married. In the picture Marianne hugs Bob's arm while he grins. Next to the happy couple stand the best man and the maid of honor, Nell Mackay and Muriel Pfeil. Grandma's there, too. Marianne takes the picture out once in a while and shows it to people.

The daily schedule is killing, but it's not the airborne commute that's tiring, just the length of the day.

"I used to make two, three trips a day like this when I was flying to Paris and London. I'm not more tired because I'm flying." The flight takes less than an hour.

In Fairbanks, the trial usually recesses by 1:30. Pfeil catches a 4 p.m. flight back to Anchorage. It gets in at about 5 and she goes directly from the airport to a two-hour aerobics class at the Captain Cook.

"That helps me. . . After that class, I feel refreshed. . . Then I sit in the Jacuzzi and listen to lawyers talk."

She is home by 3:30 p.m. and should be in bed by 11 but rarely makes it. It's hard to go to bed that early, she says, especially in the springtime.

Pfeil says she is not bitter and that seems to be true. But sitting through the trial every day is more than just an existential exercise, or a way to mourn or an effort to postpone the future. Pfeil believes Mackay is guilty and she wants to see him convicted.

"Of course it matters what the verdict is," she said in answer to a question. ". . . We can maybe see Scotty again. Wouldn't that be nice? Grandma, she says, 'I just hope I can see Scotty once before I die.'"

Yes, the verdict matters.

"However it goes," said Pfeil, it will be easier for her to accept "if I see how the system works. . . how hard the prosecution works."

"No," she says, "I couldn't possibly stay away."

Pathologist testifies at trial

The Associated Press

JUNEAU — An Oregon pathologist told a jury Wednesday that a woman accused of failing to get medical help for her dying son should have known something was seriously wrong with the child before his death.

Natalie Iris Pinkerton, 22, is charged with criminally negligent homicide in the death of her 20-month-old son, Richard A. Johnson. The boy died Easter Sunday 1986 after being hit.

Dr. William Brady, who performed an autopsy on the child, told the jury the injury that killed the boy is common in cases of child abuse. Peter Paulo, Pinkerton's live-in boyfriend, has pleaded no contest to a charge of criminally negligent homicide in the death.

Prosecutor Rick Svobodny has claimed Paulo hit the child in the abdomen hard enough to drive his intestine into the spine. The intestine

ruptured, causing a massive infection and the child's death, he said.

"A 20-month-old child would have been crying and wailing quite obviously" from the extreme pain caused by the developing internal infection, Brady said.

In addition, Brady said the youngster probably went into shock and became unconscious. The doctor said somebody who knew the child would be able to tell the difference between unconsciousness and sleep.

Brady told the jury the boy's life could have been saved had he been brought to a doctor earlier.

Prosecutors claim Paulo struck the boy while Pinkerton was out of the home at garage sales.

Brady described old bruises on the child's head. Svobodny during several court hearings has charged that Pinkerton lied about injuries Paulo inflicted on the child.

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/18/88

FURTHER REFERRALS: Judiciary
Finance

DATE: 3-16-88

The Health, Education and Social Services Committee has considered HB 371

"An Act relating to attempted murder in the first degree."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] no rec

[Signature] no rec

[Signature] no rec

[Signature]

 Chairman's signature
[Signature]