

H B

366

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 15, 1990

FURTHER REFERRALS: FINANCE

Date of Committee Action: 2-2-90

The JUDICIARY Committee considered:

SSHB 366

SS HOUSE BILL NO. 366

TREATMENT OR REHABILITATION OF OFFENDERS

"An Act relating to the treatment and rehabilitation of a defendant convicted of an offense."

RECOMMENDATIONS:

be replaced with CSSSHB 366 (JUD) the same title a new title

have attached amendment(s)

do pass

do not pass

no recommendation

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Law Collections

zero fiscal note(s) _____

zero with analysis Court Sys.

zero fn/analysis _____

SIGNING DO PASS:

H. Ellis
John Kennedy
Peter Jan
Mike Deans

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Terry Mastor</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

Peter Jan / John Kennedy
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Treatment & Rehabilitation of BRU: Council on Domestic Violence
offenders and Sexual Assault
 Sponsor: Rep. Ulmer, et al Component: _____
 Requestor: House Judiciary

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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/PROG RCPT						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Barbara Miklos, Executive Director *Bgm* Phone: 465-4356
 Division: Council on Domestic Violence and Sexual Date: 1/22/90
Assault
 Approved by Commissioner: Arthur English
 Agency: Department of Public Safety Page 1 of 1

1/22/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: "An Act relating to the treatment and rehabilitation of a defendant convicted of an offense." BRU: Alcohol & Drug Abuse Services
 Sponsor: Ulmer Components: ASAP
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

FY 90 Fiscal Impact is "0".

Prepared by: Matthew C. Felix, Coordinator *Matthew Felix* Phone: 586-6201
 Division: Office of Alcoholism & Drug Abuse Date: 1/23/90

Approved by Commissioner: *Maria M. Thurman* Date: 1/23/90
 Agency: Health & Social Services

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to treatment and rehabilitation of a defendant."
Sponsor: Representative Ulmer
Requester: _____

Agency Affected: Department of Corrections
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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
 Division: Administrative Services Phone: 465-3376
 Date: 01/24/90
 Approved by Commissioner: S. H. ... Date: 01/24/90
 Agency: Department of Corrections

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

FISCAL NOTE

REQUEST:

Revision Date:		Agency Affected:	<u>Alaska Court System</u>
Title:	<u>An Act relating to the treatment and rehabilitation of a defendant</u>	BRU:	<u>Trial Courts</u>
Sponsor:	<u>Ulmer</u>	Components:	
Requestor:			

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. See attached analysis.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System

Phone: 284-8228
 Date: 01/22/90

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Date: 01/22/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor

Alaska Court System

HB 366

This proposed legislation may impact the Alaska Court System if a significant number of review hearings are held under sections 4 and 7. Because that number cannot be determined with any accuracy at this time, no present fiscal impact is indicated. If the court finds that it is holding an appreciable number of review hearings, a supplemental appropriation will be requested.

Original sponsor(s): REP. ULMER, Ellis, Goll

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 366 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the treatment and rehabilitation
7 of a defendant convicted of an offense; and providing
8 for an effective date."

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

10 * Section 1. AS 12.55.015(a) is amended to read:

11 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in
12 imposing sentence on a defendant convicted of an offense, may singly
13 or in combination

14 (1) impose a fine when authorized by law and as provided in
15 AS 12.55.035;

16 (2) order the defendant to be placed on probation under
17 conditions specified by the court that may include provision for
18 active supervision;

19 (3) impose a definite term of periodic imprisonment;

20 (4) impose a definite term of continuous imprisonment;

21 (5) order the defendant to make restitution under AS 12.-
22 55.045;

23 (6) order the defendant to carry out a continuous or peri-
24 odic program of community work under AS 12.55.055;

25 (7) suspend execution of all or a portion of the sentence
26 imposed under AS 12.55.080;

27 (8) suspend imposition of sentence under AS 12.55.085;

28 (9) order the forfeiture to the commissioner of public
29 safety of a deadly weapon that was in the actual possession of or used

1 by the defendant during the commission of an offense described in
2 AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

3 (10) order the defendant, while incarcerated, to participate
4 in or comply with the treatment plan of a rehabilitation program that
5 is related to the defendant's offense or to the defendant's reha-
6 ilitation, if the program is made available to the defendant by the
7 Department of Corrections.

8 * Sec. 2. AS 12.55.085(b) is amended to read:

9 (b) At any time during the probationary term of the person
10 released on probation, a probation officer may, without warrant or
11 other process, rearrest the person so placed in the officer's care and
12 bring the person before the court, or the court may, in its discre-
13 tion, issue a warrant for the rearrest of the person. The court [AND]
14 may revoke and terminate the probation [,] if the interests of justice
15 require, and if the court, in its judgment, has reason to believe that
16 the person placed upon probation is

17 (1) violating the conditions of probation;

18 (2) [, OR] engaging in criminal practices; or

19 (3) violating an order of the court to participate in or
20 comply with the treatment plan of a rehabilitation program under
21 AS 12.55.015(a)(10) [, OR HAS BECOME ABANDONED TO IMPROPER ASSOCIATES,
22 OR A VICIOUS LIFE].

23 * Sec. 3. AS 12.55.100(a) is amended to read:

24 (a) While on probation and among the conditions of probation,
25 the defendant may be required

26 (1) to pay a fine in one or several sums;

27 (2) to make restitution or reparation to aggrieved parties
28 for actual damages or loss caused by the crime for which conviction
29 was had;

1 (3) to provide for the support of any persons for whose
2 support the defendant is legally responsible; [AND]

3 (4) to perform community work in accordance with AS 12.-
4 55.055;

5 (5) to participate in or comply with the treatment plan of
6 an inpatient or outpatient rehabilitation program specified by either
7 the court or the defendant's probation officer that is related to the
8 defendant's offense or to the defendant's rehabilitation; and

9 (6) to satisfy the screening, evaluation, referral, and
10 program requirements of an agency authorized by the court to make
11 referrals for rehabilitative treatment or to provide rehabilitative
12 treatment.

13 * Sec. 4. AS 12.55.100 is amended by adding a new subsection to read:

14 (c) A program of inpatient treatment may be required by the
15 authorized agency under (a)(6) of this section only if authorized in
16 the judgment, and may not exceed the maximum term of inpatient treat-
17 ment specified in the judgment. A person who has been referred for
18 inpatient treatment may make a written request to the sentencing court
19 asking the court to review the referral. The request for review shall
20 be made within seven days of the agency's referral, and shall specif-
21 ically set out the grounds upon which the request for review is based.
22 The court may order a hearing on the request for review.

23 * Sec. 5. AS 12.55.110 is amended by adding a new subsection to read:

24 (b) Good cause justifying the revocation of a suspended sentence
25 is established if the defendant has violated an order of the court to
26 participate in or comply with the treatment plan of a rehabilitation
27 program under AS 12.55.015(a)(10).

28 * Sec. 6. AS 28.35.030(c) is amended to read:

29 (c) Upon conviction under this section the court shall impose a

1 minimum sentence of imprisonment of not less than 72 consecutive hours
2 and a fine of not less than \$250 if the person has not been previously
3 convicted in this or another jurisdiction of driving while intoxicated
4 under this or another law or ordinance with substantially similar
5 elements or refusal to submit to a chemical test under AS 28.35.032 or
6 another law or ordinance with substantially similar elements. Upon
7 conviction under this section the court shall impose a minimum sen-
8 tence of imprisonment of not less than 20 consecutive days and a fine
9 of not less than \$500 if, within the preceding 10 years, the person
10 has been previously convicted once in this or another jurisdiction of
11 driving while intoxicated under this or another law or ordinance with
12 substantially similar elements or refusal to submit to a chemical test
13 under AS 28.35.032 or another law or ordinance with substantially
14 similar elements. Upon conviction under this section the court shall
15 impose a minimum sentence of imprisonment of not less than 30 consecu-
16 tive days and a fine of not less than \$1,000 if, within the preceding
17 10 years, the person has been previously convicted in this or another
18 jurisdiction of more than one of the following offenses or has more
19 than once been previously convicted of one of the following offenses:
20 (1) driving while intoxicated under this or another law or ordinance
21 with substantially similar elements; (2) refusal to submit to a chemi-
22 cal test under AS 28.35.032 or another law or ordinance with substan-
23 tially similar elements. The execution of sentence may not be sus-
24 pended nor may probation be granted except on condition that the
25 minimum imprisonment provided in this section is served. Probation may
26 be conditioned as provided in AS 12.55.102. Imposition of sentence
27 may not be suspended. In addition, if the offense involved driving a
28 motor vehicle for which a driver's license is required, the person's
29 driver's license shall be revoked in accordance with AS 28.15.181 and

1 the vehicle used in commission of the offense may be forfeited under
2 AS 28.35.036. [IN ADDITION, THE COURT SHALL ORDER, AND A PERSON
3 CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPECIFIED BY
4 THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION THAT
5 THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (d)
6 OF THIS SECTION, FINDS APPROPRIATE.]

7 * Sec. 7. AS 28.35.030 is amended by adding new subsections to read:

8 (i) The court shall order a person convicted under this section
9 to satisfy the screening, evaluation, referral, and program require-
10 ments of an agency authorized by the court to make referrals for
11 rehabilitative treatment or to provide rehabilitative treatment.

12 (j) A program of inpatient treatment may be required by the
13 authorized agency under (i) of this section only if authorized in the
14 judgment, and may not exceed the maximum term of inpatient treatment
15 specified in the judgment. A person who has been referred for
16 inpatient treatment under this subsection may make a written request
17 to the sentencing court asking the court to review the referral. The
18 request for review shall be made within seven days of the agency's
19 referral, and shall specifically set out the grounds upon which the
20 request for review is based. The court may order a hearing on the
21 request for review.

22 (k) If a person fails to satisfy the requirements of an au-
23 thorized agency under (j) of this section, the court

24 (1) may impose any portion of a suspended sentence;

25 (2) may punish the failure as contempt of the authority of
26 the court under AS 09.50.010 or as a violation of a condition of
27 probation; and

28 (3) shall order the revocation or suspension of the per-
29 son's driver's license until the requirements are satisfied.

1 probation; and

2 (3) shall order the revocation or suspension of the per-
3 son's driver's license until the requirements are satisfied.

4 * Sec. 10. AS 33.16.220(a) is amended to read:

5 (a) The board may revoke parole if the parolee

6 (1) engages in [FOR] conduct in violation of AS 33.16.-
7 150(a) or (b); or

8 (2) has violated an order of the court to participate in or
9 comply with the treatment plan of a rehabilitation program under
10 AS 12.55.015(a)(10).

11 * Sec. 11. AS 33.30.011 is amended to read:

12 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

13 (1) establish, maintain, operate, and control correctional
14 facilities suitable for the custody, care, and discipline of persons
15 charged or convicted of offenses against the state or held under
16 authority of state law;

17 (2) classify prisoners;

18 (3) for persons committed to the custody of the commis-
19 sioner, establish programs, including furlough programs that are
20 reasonably calculated to

21 (A) protect the public;

22 (B) maintain health;

23 (C) create or improve occupational skills;

24 (D) enhance educational qualifications;

25 (E) support court-ordered restitution; and

26 (F) otherwise provide for the rehabilitation and
27 reformation of prisoners, facilitating their reintegration into
28 society;

29 (4) provide necessary medical services for prisoners in

1 * Sec. 8. AS 28.35.032(g) is amended to read:

2 (g) Upon conviction of a person under this section, the court
3 shall impose a minimum sentence of imprisonment of not less than 72
4 consecutive hours and a fine of not less than \$250 if the person has
5 not been previously convicted in this or another jurisdiction of
6 driving while intoxicated under AS 28.25.030 or another law or ordi-
7 nance with substantially similar elements or refusal to submit to a
8 chemical test under this section or another law or ordinance with
9 substantially similar elements. Upon conviction under this section the
10 court shall impose a minimum sentence of imprisonment of not less than
11 20 consecutive days and a fine of not less than \$500 if, within the
12 preceding 10 years, the person has been previously convicted once in
13 this or another jurisdiction of driving while intoxicated under
14 AS 28.35.030 or another law or ordinance with substantially similar
15 elements or refusal to submit to a chemical test under this section or
16 another law or ordinance with substantially similar elements. Upon
17 conviction under this section the court shall impose a minimum sen-
18 tence of imprisonment of not less than 30 consecutive days and a fine
19 of not less than \$1,000, if, within the previous 10 years, the person
20 has been previously convicted in this or another jurisdiction of more
21 than one of the following offenses or has more than once been previ-
22 ously convicted of one of the following offenses: (1) driving while
23 intoxicated under AS 28.35.030 or another law or ordinance with sub-
24 stantially similar elements; (2) refusal to submit to a chemical test
25 under this section or another law or ordinance with substantially
26 similar elements. The execution of sentence may not be suspended nor
27 may probation be granted except on condition that the minimum impris-
28 onment provided in this section is served. Probation may be condi-
29 tioned as provided in AS 12.55.102. Imposition of sentence may not be

1 suspended. If the offense involved driving a motor vehicle for which
2 a driver's license is required, the person's driver's license shall be
3 revoked under AS 28.15.181. [IN ADDITION, THE COURT SHALL ORDER, AND A
4 PERSON CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPEC-
5 IFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITA-
6 TION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED
7 UNDER (h) OF THIS SECTION, FINDS APPROPRIATE.] The sentence imposed
8 by the court under this subsection shall run consecutively with any
9 other sentence of imprisonment imposed on the committed person.

10 * Sec. 9. AS 28.35.032 is amended by adding new subsections to read:

11 (l) The court shall order a person convicted under this section
12 to satisfy the screening, evaluation, referral, and program require-
13 ments of an agency authorized by the court to make referrals for
14 rehabilitative treatment or to provide rehabilitative treatment.

15 (m) A program of inpatient treatment may be required by the
16 authorized agency under (l) of this section only if authorized in the
17 judgment, and may not exceed the maximum term of inpatient treatment
18 specified in the judgment. A person who has been referred for inpa-
19 tient treatment under this subsection may make a written request to
20 the sentencing court asking the court to review the referral. The
21 request for review shall be made within seven days of the agency's
22 referral, and shall specifically set out the grounds upon which the
23 request for review is based. The court may order a hearing on the
24 request for review.

25 (n) If a person fails to satisfy the requirements of an au-
26 thorized agency under (m) of this section, the court

27 (1) may impose any portion of a suspended sentence;

28 (2) may punish the failure as contempt of the authority of
29 the court under AS 09.50.010 or as a violation of a condition of

1 correctional facilities or who are committed by a court to the custody
2 of the commissioner, including examinations for communicable and
3 infectious diseases; and

4 (5) provide necessary psychological or psychiatric treat-
5 ment if a physician or other health care provider, exercising ordinary
6 skill and care at the time of observation, concludes that

7 (A) a prisoner exhibits symptoms of a serious disease
8 or injury that is curable or may be substantially alleviated; and

9 (B) the potential for harm to the prisoner by reason
10 of delay or denial of care is substantial;

11 (6) establish minimum standards for sex offender treatment
12 programs offered to persons who are committed to the custody of the
13 commissioner.

14 * Sec. 12. AS 12.55.015(d) is repealed.

15 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Alaska State Legislature

HOUSE OF REPRESENTATIVES



RECEIVED 12/5/89

REPRESENTATIVE FRAN ULMER

MEMORANDUM

TO: Democratic Caucus Members DATE: December 5, 1989

FROM: Representative Fran Ulmer

SUBJ: Problem Regarding Treatment for Criminal Offenders

When we met in Anchorage last week, I mentioned a problem regarding treatment for criminal offenders. Recent court decisions in Alaska limit the ability of judges to require treatment of any kind as a part of sentencing, probation or parole. These recent opinions have attracted the attention of many people who are interested in a progressive rehabilitative approach to incarceration in Alaska. It's really important that we change the statutes to clarify that it is appropriate for judges to require treatment for offenders. This includes drug and alcohol treatment, sex offender treatment and violence counseling.

I have attached, for your information, a memo from the Department of Law which describes the problem that we need to address statutorily. I want to clarify that the court opinion was not based on a constitutional interpretation, but rather on an alleged absence of statutory authority.

The second thing which is attached is a bill which I plan to introduce that would do two things. It would clarify the ability of the judge to require treatment and it would make "good time" conditional upon the successful completion of treatment, so that there is the necessary carrot for offenders to receive the treatment that they need.

I would really appreciate any comments that you might have on this and would welcome cosponsors of this legislation. Please call my office at 465-4947 if you are interested.

Also enclosed is a copy of a bill I have prefiled which requires information regarding fetal alcohol syndrome to be distributed with every marriage license issued by the State of Alaska. I welcome your support and co-sponsorship for this bill.

My best wishes to you and your families during this holiday season.

FU/bvh
Enclosure

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

STEVE COWPER, GOVERNOR

REPLY TO

DEPARTMENT OF LAW

CRIMINAL DIVISION

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

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

November 17, 1989

The Honorable Fran Ulmer
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

On September 8, 1989, you asked whether a sentencing court has the power to order mandatory treatment as a condition of probation, and if not, what legislative action is necessary in order to provide the courts with this authority. On November 8, 1989, you asked our opinion of an amendment to AS 33.20.010 proposed by the Juneau Child Sexual Abuse Taskforce relating to mandatory treatment for incarcerated prisoners. Since the two issues are related, both are addressed in this letter.

The short answers to your questions are:

1. Under current law, courts probably do not have the power to order in-patient treatment as a condition of probation. In order for courts to have this power, legislation is necessary.

2. Although we agree with the Juneau Child Sexual Abuse Taskforce that offenders should be required to participate in treatment while in custody, we suggest that this be accomplished by amending the sentencing statutes in Title 12 rather than the good time statutes in Title 33.

3. A discussion draft of legislation addressing a range of treatment issues that are currently causing significant problems for the criminal justice system is attached for your information. The draft will be considered during the Governor's Criminal Justice Working Group meeting on December 14, 1989.

Treatment as a Condition of Probation

The issue of ordering incarceration as a condition of probation was first addressed in Boyne v. State, 586 P.2d 1250 (Alaska 1978). After analyzing Alaska's probation statutes, the supreme court found that the court did not have the power to order incarceration as a probation condition. The supreme court adopted

the following reasoning from People v. Ledford, 477 P.2d 374 (Colo. 1970):

When an accused is granted probation, he is also granted his liberty and freedom from confinement in a jail or penitentiary. Unless there is specific statutory authority to the contrary, a trial court may not on the one hand grant probation and on the other hand impose institutional confinement or a jail sentence as a condition of that probation.

In fn. 3 of Boyne, the supreme court pointed to several jurisdictions with statutes specifically authorizing confinement as a condition of probation, including a federal statute permitting confinement in an alcohol or drug treatment center as a condition of probation.

The court in Boyne reversed a court order requiring incarceration as a condition of a suspended imposition of sentence. The legislature responded by passing AS 12.55.086. This statute allows a court, as a special condition of probation in cases where imposition of sentence is suspended, to require a defendant to serve a term of imprisonment. However, at the time AS 12.55.086 was passed, the legislature did not consider whether legislation was necessary to provide the courts with the power to order in-patient treatment as a condition of probation. Presumably this issue was not addressed because the court's power to order in-patient treatment for probationers had never been challenged.

Recently, however, the court in Hester v. State, 777 P.2d 217 (Alaska App. 1989) considered the propriety of revoking a defendant's probation for failing to participate in in-patient treatment based on a probation condition that the defendant "enroll in and satisfactorily complete a program to be designated by the Kodiak Alcohol Safety Action Program (KASAP)." The court pointed out that following the KASAP recommendation would mean that the defendant would need to serve, thirty days of "custodial confinement" in addition to his twenty day jail term. The court noted:

We recognize that a court may impose conditions of probation which are reasonably related to a person's rehabilitation. However, where, as here, these conditions severely restrict a defendant's freedom of movement, they shall be regarded as the functional equivalent of imprisonment.

Reading Boyne and Hester together, we believe that legislation is necessary for courts to have the power to order in-patient treatment as a condition of probation.

In Custody Treatment

As discussed in our memorandum to you of August 8, 1989, under current law defendants may not be required to participate in treatment while incarcerated. We agree with the Juneau Child Sexual Abuse Taskforce that it is important for offenders to receive treatment while in custody. However, we believe that this objective should be accomplished by authorizing sentencing courts to order in-custody treatment, and by allowing probation, or a suspended imposition of sentence, to be revoked for refusal to participate in treatment.

Although the regulation is not being enforced at the present time as a result of the decision in Benboe v. State, 738 P.2d 356 (Alaska App. 1987), the Department of Corrections has the authority to impose a wide range of disciplinary actions, including taking away good time, for failure to comply with court-ordered in-custody treatment. The regulation is set out in 22 AAC 05.40(c)(22), and reads as follows:

22 AAC 05.400. PROHIBITED CONDUCT FOR PRISONERS. (a) Prohibited conduct for prisoners in state facilities is governed by (b) - (e) of this section. A violation must be punished as either a major, high- or low-moderate, or minor infraction.

(c) High-moderate infractions include the following:

(22) refusal or failure to participate in a court-ordered treatment program, unless the conviction is being appealed and refusal is based upon advice of counsel;

If legislation reversed Benboe by giving courts the specific authority to order in-custody treatment, the Department could use 22 AAC 05.400 to help enforce the court's treatment order. As a result, if Title 12 is amended as suggested in our August 8, 1989 memorandum, the amendment to Title 33 suggested by the Juneau Sexual Assault Taskforce is unnecessary.

Conclusion and Recommendation

The criminal justice system is currently experiencing significant problems as a result of a series of recent court

The Honorable Fran Ulmer

November 17, 1989

Page 4

opinions limiting the court's authority to make treatment and rehabilitation part of a defendant's sentence. All of the opinions have been based on the interpretation of existing statutes. As a result, the Governor's Criminal Justice Working Group is currently in the process of developing draft legislation to alleviate the current situation. A discussion draft of the legislation is attached for your information. As soon as the draft legislation is in final form, we will provide you with a copy.

The problems and issues involved in developing legislation to deal with Benboe and Hester are complicated. It might be worthwhile for us to sit down and talk about your various proposals for legislation before a bill is introduced.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

Attachment

LHO:me-133

HK
FYI
AMW

HB 366

NY Times 12/31/89

New Growth in a Captive Market

More companies are making devices to monitor criminals under 'house arrest.'

By JOSH KURTZ

WITH prison systems strained by overcrowding and law-enforcement officials burdened by record numbers of drug-related arrests, states and municipalities throughout the United States are using electronic monitoring devices to turn an offender's home into a prison cell.

A handful of entrepreneurs have been making the systems since the mid-1980's. Analysts estimate that the business has now attracted well over a dozen companies. Some larger companies, like Mitsubishi Electric Sales of America, have entered the market.

"It's just a given that that business is going to grow," said John Westergaard, an analyst for Equity Research Associates in New York. "Every month, there are more new accounts."

In 1984 there were 3 "house arrest" programs in the United States, by 1988 there were 171. About 6,500 people were being watched with the devices in 41 states as of last February and the number has probably doubled since then, said Marc Renzema, an associate professor of criminal jus-

tice at Kutztown University, in Kutztown, Pa., who is conducting a study of electronic monitoring for the Justice Department.

Most of the systems employ a tamper-proof ankle that sends signals to a central computer at a law-enforcement agency if the detainee strays from the expected schedule. (Many detainees are allowed to travel to a job.)

Another system relies on voice verification. The detainee receives telephone calls at random times, and his or her voice is then compared to existing records. Some companies are developing a hybrid of the two systems and others are experimenting with video verification.

The systems are being used for offenders on parole or probation, as well as prisoners deemed nonviolent. Law-enforcement officials say the systems cut down on paperwork, alleviate the need for personal check-ins and are generally more reliable in keeping tabs on people.

By most accounts, the inspiration for the technology came from a Spiderman comic in which the villain attached a gadget to Spiderman's wrist to track his whereabouts.

A judge in New Mexico, Jack Love, read the comic in 1979 and then discussed the idea with computer companies. None were interested. But he eventually persuaded a Honeywell executive, Michael Goss, to set out on his own to develop the bracelets. That technology was sold in 1985 to B I Inc., based in Boulder, Colo., which now has about 60 percent of the monitoring contracts in the country.

DO NOT FORGET THE NEEDIEST!

Competition has developed rapidly since 1985. When Michigan, which has the largest monitoring program in the country, announced this fall that it was starting a second program for 100 to 150 people on parole or probation, 15 companies said they were interested in bidding for the contract — even though some did not even have working models.

"It's such a new area, a lot of the vendors can come in and explain what their system can do, but they can't show us what their equipment can do," said Laura Young, supervisor of electronic monitoring for the

States see the gadgets as a solution to prison overcrowding.

Michigan Department of Correction.

Analysts and vendors stress that the technology is evolving quickly and that players who survive will be those with the technical expertise to keep up the pace. "We are in our fourth or fifth generation of product," said Frank Bauer, vice president of Correctional Services Inc., of Fort Lauderdale, Fla., which was founded five years ago. "It's not a type of retail industry where anybody can come in and sell widgets."

It is clear that there are great rewards for the survivors. For example, B I won a three-year, \$2.8 million contract for Michigan's first monitoring program, which covers 1,300 pris-

oners, probationers and parolees. B I also holds the contract for North Carolina's program, which was expanded this year from 2 counties to 14. The number of detainees involved is expected to reach 1,400 in 1990. B I is charging \$150,000 per county and it also receives a small fee for the system's use, a fee which is based on the number of offenders under detention each day.

The industry's growth is reflected in B I's earnings. In 1987, it reported losses of \$800,000 on revenues of \$1.7 million. By 1988, it had \$400,000 in profits on revenues of \$5.5 million. Profits in 1989 should reach \$1 million, on revenues of \$5.6 million, said Mr. Westergaard, the analyst.

Although the technology is becoming more widely accepted, its merits are still debated by corrections experts. James R. Fullwood, director of North Carolina's Intensive and House Arrest Systems, called the concept a "winner" because it enables a person to maintain the semblance of a normal life style — even hold a job.

"He's got a parent or a spouse that he lives with," Mr. Fullwood said. "He's got to have a job. Anybody who works has got to pay taxes. He's back on the tax roll."

But Professor Renzema said claims that the systems would foster rehabilitation remain unrealized. For example, he said, the agencies often fail to provide parolees under "house arrest" with the kind of counseling they need to re-enter society.

The primary incentive for the agencies is simply to ease crowding and save money, Dr. Renzema said. "It's basically a response to, 'My God, where are we going to put all the bodies?'"

But debate has not dampened the



A paroled drug addict in West Covina, Calif., wears an ankle band that communicates with a monitoring computer.

industry's prospects for growth. "I call these the Resolution 2000 companies," said Mr. Westergaard. "These are companies working to solve a social problem in the 90's."

The success of monitoring companies is expected to attract more interest from larger companies. Mitsubishi, for example, which already makes voice verification systems, is planning a joint venture with C S I to make hybrid systems. C S I has a

joint venture with Marconi Electronic Devices Ltd., a British company, in which Marconi will design and produce new software for C S I's monitoring systems.

Some of the smaller entrepreneurs welcome their bigger rivals. As Mr. Bauer of C S I put it: "They are going to help develop the industry, and help develop the state-of-the-art equipment that is going to be necessary."

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

RECEIVED JAN 19 1990

MEMORANDUM

January 17, 1989

HAYDEN

TO: Rep. Peter Goll, Co-Chair
Rep. Max Gruenberg, Co-Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: SSHB 366, relating to offender treatment

In 1987, the Court of Appeals ruled in Benboe v State, 738 P.2d 356 (Alaska App. 1987), that a sentencing court cannot order an inmate to participate in a sex offender (or any other) treatment program while in prison because the statutes do not give the courts the authority to enter such an order. In addition, as a result of the combined effect of two other court decisions, Hester v. State, 777 p.2d 217 (Alaska App. 1989), and Boyne v. State, 586 p.2d 1250 (Alaska 1978), a court probably cannot order in-patient treatment as part of probation. Offenders who might otherwise be ordered to in-patient treatment in lieu of jail, will now simply receive jail time.

SSHB 366 addresses these limitations relating to sentencing courts. In brief, it does the following:

- (1) Authorizes a sentencing court to require a convicted defendant to participate in "an appropriate rehabilitation or treatment program" while incarcerated;
- (2) Makes the defendant's "participation in [and] successful completion of a rehabilitation [or treatment] program" a condition of probation; and
- (3) Makes the defendant's failure to "participate in or successfully complete" a rehabilitation or treatment program (a) grounds for revocation of probation, or (b) reason to revoke a suspended sentence.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99801-3100 • (907) 465-4947

- (4) Authorizes the Parole Board to revoke parole if the defendant fails to successfully complete a rehabilitation program ordered by the court.

Most offenders, regardless of offense, suffer from a variety of problems which require treatment in order for rehabilitation to occur. These problems include sexual disorders, alcohol and drug addictions, anger disorders, and others. If we are to reduce the offender recidivism rate, we must ensure that appropriate treatment does occur, either while a person is in custody or while they are on probation. This bill provides a mechanism for requiring offenders to receive necessary treatment, and a mechanism for enforcing court treatment orders.

FU/dl

REP. ULMER
1/19/90

SECTIONAL ANALYSIS OF SSHB 366, RELATING TO OFFENDER TREATMENT

SECTION 1: Authorizes the court to order the offender, while incarcerated, to participate in or successfully complete a rehabilitation program that is related to the defendant's offense. This order would apply only to those programs made available by the Department of Corrections.

SECTION 2: Authorizes the court to revoke and terminate probation if the person on probation fails to participate in or successfully complete a rehabilitation program.

SECTION 3: Authorizes the court to require an offender on probation to participate/complete inpatient treatment or to satisfy the screening, evaluation, referral, program, and fee requirements of a referral agency (e.g. Alcohol Safety Action Programs) for rehabilitative treatment.

SECTION 4: Requires that referrals for in-patient treatment first be authorized by the court; treatment may not exceed the maximum term of inpatient treatment specified in the judgment. A person referred for inpatient treatment may challenge the referral by requesting review within 7 days of the agency's referral. Court may order a hearing on the referral. A person challenging a referral must present clear and convincing evidence that the referral was "arbitrary or capricious."

SECTION 5: A suspended imposition of sentence may be revoked if the defendant does not complete a rehabilitation program ordered by the court.

SECTION 6: Amends DWI statutes to delete requirement regarding alcohol education or rehabilitation. This is a technical amendment necessitated by bill section 7.

Rep. Ulmer
SSHB 366

SECTION 7: Amends the drunk driving statutes: Authorizes the court to require the offender to satisfy the screening, evaluation, referral, program and fee requirements of a referral agency for rehabilitative treatment. Requires that referrals for in-patient treatment first be authorized by the court; treatment may not exceed the maximum term of inpatient treatment specified in the judgment. A person referred for inpatient treatment may challenge the referral by requesting review within 7 days of the agency's referral. Court may order a hearing on the referral. A person challenging a referral must present clear and convincing evidence that the referral was "arbitrary and capricious." If a person fails to satisfy the requirements of the referral agency, the court:

- may impose any portion of a suspended sentence;
- may punish the failure as contempt of court or as a violation of a condition of probation;
- shall order revocation or suspension of driver's license until the requirements are satisfied.

SECTION 8: Amends DWI statutes to delete requirement regarding alcohol education or treatment. This is a technical amendment necessitated by bill section 9.

SECTION 9: Amends the drunk driving statutes: Authorizes the court to require the offender to satisfy the screening, evaluation, referral, program and fee requirements of a referral agency for rehabilitative treatment. Requires that referrals for in-patient treatment first be authorized by the court; treatment may not exceed the maximum term of inpatient treatment specified in the judgment. A person referred for inpatient treatment may challenge the referral by requesting review within 7 days of the agency's referral. Court may order a hearing on the referral. A person challenging a referral must present clear and convincing evidence that the referral was "arbitrary and capricious." If a person fails to satisfy the requirements of the referral agency, the court:

- may impose any portion of a suspended sentence;
- may punish the failure as contempt of court or as a violation of a condition of probation;
- shall order revocation or suspension of driver's license until the requirements are satisfied.

SECTION 10: The Parole Board is given the discretion to revoke parole if the parolee does not participate in or complete a rehabilitation program ordered by the court. This authority applies ONLY to situations where an offender has received a presumptive sentence and is released on mandatory parole as a result of the accumulation of good time.

City of Fairbanks
Police Department

656 7th Avenue Fairbanks, Alaska 99701
(907) 459-6500

November 24, 1989

Representative Fran Ulmer
Alaska State Legislature
1700 Angus Way
Juneau, Ak 99801

Re: Offender treatment

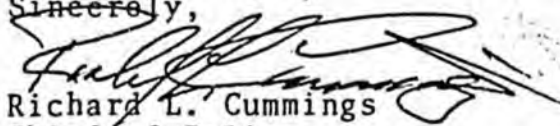
Dear Representative Ulmer:

Please accept my support for the bill you plan to introduce pertaining to an offender's mandatory participation and successful completion of treatment programs.

I hope you will find funding within Corrections budget to support treatment programs, that increase the defendant's possibilities of rehabilitation.

Please keep me informed on the progress of this bill and any assistance you need. Thank you very much for seeking Law Enforcement's opinion.

Sincerely,



Richard L. Cummings
Chief of Police

BILL NO: HB 366

DATE: January 22, 1990

TITLE: Treatment and rehabilitation
of offenders

CONTACT: Barbara Miklos
465-4356

P
U
B
L
I
C
S
E
C
U
R
I
T
Y
/

The Council on Domestic Violence and Sexual Assault supports HB 366, "An Act relating to the treatment and rehabilitation of a defendant convicted of an offense". Among other things, this legislation enables the Court to order the defendant, while incarcerated, to participate in or successfully complete an inpatient rehabilitation program; to participate in, or successively complete, an inpatient rehabilitation program while on probation, which could be revoked if the court order is violated; to satisfy screening, evaluation and other requirements to make referrals for rehabilitative treatment or to revoke parole if the parolee violates an order of the court to participate in or successfully complete a rehabilitation program.


Under current law, courts probably do not have the power to order inpatient treatment as a condition of probation or parole. Recent court cases have limited the courts authority to make treatment and rehabilitation part of a defendant's sentence. We believe it is important that the courts have the authority to do this.

It has been shown that many domestic violence offenders can learn new ways to deal with their anger if given information and treatment. Prison batterers programs have helped reduce aggression in many prisoners. Community batterers' programs have proved that court-mandated treatment programs can affect positive change.

Although the efficacy of sex offender programs is often controversial, it stands to reason that jail time alone will do nothing to change a sex offender's behavior. Other interventions must occur.

Since so much crime in Alaska is associated with alcohol, alcohol treatment is crucial. Alcohol treatment often must be provided before issues of violence can be addressed.

In order to protect victims, we must do all we can to stop crimes. Therefore, courts should have all the tools necessary to help offenders stop their violent or other crimes.


Arthur English
Commissioner

2.61.020;
185. (§ 3 ch 59 SLA

Sec. 12.55.005. Declaration of purpose.

NOTES TO DECISIONS

ence in Criminal

arrest or service of

Probation.

related offenses
eligibility for discretionary
at sentencing
s of imprisonment for felo-
n aggravation and mitiga-
ion of representative
ns

Chaney criteria incorporated, etc.
In accord with original. See *Schnecker v. State*, 739 P.2d 1310 (Alaska Ct. App. 1987).

Sentencing of "worst offender." — A "worst offender" designation, standing alone, permits imposition of the maximum term for the single most serious offense. The designation does not, however, automatically permit consecutive sentences exceeding the maximum for the single most serious crime. In order to impose such a sentence, the court must actually find, as a matter of fact, that the defendant will continue to pose a danger to the community during the extended term and that his continued isolation is actually necessary. Such a finding does not necessarily justify pyramiding consecutive maximum sentences; rather, such a finding permits only an incrementally more severe sentence based on the actual need for protection of the public under the totality of the circumstances of the prosecution's case. *Hancock v. State*, 741 P.2d 1210 (Alaska Ct. App. 1987).

Sentencing for extended term for deterrence and rehabilitation. — In order to make the determination that a defendant requires a period in excess of 15 years for deterrence and rehabilitation, it

is imperative that the trial court compare his background, experience, and offenses with those of others sentenced to extended terms, disregarding eligibility for parole. *Hancock v. State*, 741 P.2d 1210 (Alaska Ct. App. 1987).

Emphasis on isolation in sentencing. — Based on the trial judge's discretion under the Chaney criteria and the defendant's status as a repeat offender and a worst offender in his class, the original sentence of seven years' imprisonment, with five and one-half years suspended, for 14 fish and game violations was reinstated; the sentencing judge specifically emphasized the Chaney factor of isolation based on the defendant's extensive record of flagrant fish and game violations. *State v. Graybill*, 695 P.2d 725 (Alaska 1985).

Applied in *State v. Andrews*, 707 P.2d 900 (Alaska Ct. App. 1985).

Quoted in *Hancock v. State*, 706 P.2d 1164 (Alaska Ct. App. 1985); *Aveoganna v. State*, 757 P.2d 75 (Alaska Ct. App. 1988).

Cited in *Crouse v. State*, 736 P.2d 783 (Alaska Ct. App. 1987); *Kirby v. State*, 748 P.2d 757 (Alaska Ct. App. 1987); *State v. Ambrose*, 758 P.2d 639 (Alaska Ct. App. 1988).

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

- (1) impose a fine when authorized by law and as provided in AS 12.55.035;
- (2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;
- (3) impose a definite term of periodic imprisonment;
- (4) impose a definite term of continuous imprisonment;
- (5) order the defendant to make restitution under AS 12.55.045;
- (6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;
- (7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;
- (8) suspend imposition of sentence under AS 12.55.085;
- (9) order the forfeiture to the commissioner of public safety of a deadly weapon that was in the actual possession of or used by the

defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of the present offense and the defendant's prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty.

(d) A court, in imposing sentence on a defendant convicted of misconduct involving a controlled substance in the first, second, third, fourth, fifth, or sixth degree, may, in addition to any mandatory minimum sentence required by law, order the defendant to participate in a program for treatment of drug abusers if the court determines that the defendant is a drug abuser. Participation in such a program may be imposed as a condition of probation, a condition of suspended execution of sentence, or a condition of suspended imposition of sentence. Nothing in this subsection shall be construed to reduce any mandatory minimum sentence.

(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term in a correctional restitution center.

(f) In this section "deadly weapon" has the meaning given in AS 11.81.900. (§ 12 ch 166 SLA 1978; am § 37 ch 102 SLA 1980; am § 3 ch 45 SLA 1982; am § 3 ch 72 SLA 1985; am §§ 2, 3 ch 169 SLA 1988)

Effect of amendments. — The 1985 amendment added subsection (e).

The 1988 amendment, in subsection (a), substituted "that" for "which" in para-

graph (2) and "under" for "as provided in" in paragraphs (5) — (8), and added paragraph (9); and added subsection (f).

NOTES TO DECISIONS

Trial court exceeded scope of sentencing powers by ordering defendant to attend a sexual offender rehabilitation program while incarcerated, where the order was set out as a separate provision of the written judgment and not as a condition of probation, and any failure to abide by the order could not have served as a

predicate for a finding of criminal contempt. *Benboe v. State*, 738 P.2d 356 (Alaska Ct. App. 1987).

Quoted in *Hancock v. State*, 706 P.2d 1164 (Alaska Ct. App. 1985).

Cited in *Schnecker v. State*, 739 P.2d 1310 (Alaska Ct. App. 1987); *State v.*

stitution. (a) If the installment or of the defendant to nced to imprison- of the defendant's at the defendant n or has not made ss the defendant to pay the fine or . has made a good .inds by a prepon- able to an inten- o pay the fine or risoned until the t imposed under e unpaid portion rter. Credit shall t for every day a r restitution. rganization, the ssets of the orga- assets. A person ction who inten- ay is punishable

no has been sen- the court, upon a the fine or resti- riate. l the restitution against a defen- ent enforceable rity of the court : 12 ch 166 SLA

of court orders re- of fines or restitu- hether such orders is part of the origi- S 12.55.045, or indi- dition of probation, is section expressly

provides that imprisonment for failure to pay court-ordered restitution is permissible only if the failure to pay was intentional or the result of bad faith. *Lominac v. Municipality of Anchorage*, 658 P.2d 792 (Alaska Ct. App. 1983).

Legislative mandate of AS 12.55.045(a) is not replaced. — Opportunity provided by this section for the court to later modify a restitution order does not

replace the legislative mandate of AS 12.55.045(a). *Karr v. State*, 686 P.2d 1192 (Alaska 1984).

Refusal to pay a fine is like a contempt of the court, not an "offense against the state" within the meaning of AS 33.20.010, which provides for the computation of "good time" for prisoners. *Murphy v. City of Wrangell*, 763 P.2d 229 (Alaska 1988).

Sec. 12.55.080. Suspension of sentence and probation.

NOTES TO DECISIONS

Condition of probation vacated. — A probation condition that prohibited a defendant from part of the Anchorage downtown area, the city's "high crime district," effectively prohibited the defendant from maintaining his residence and employment and was vacated because he was no clear nexus between the area and the defendant's misconduct; the condition was unnecessarily severe and restrictive, encompassing an area of 45 blocks; and the condition was not reasonably related to the defendant's rehabilitation. *Jones v. State*, 727 P.2d 6 (Alaska Ct. App. 1986).

With suspended sentence probation is mandatory. — Under this section whenever a sentencing judge suspends a sentence of imprisonment, the judge is required to place the defendant on proba-

tion; while the initial decision whether to suspend a sentence of imprisonment is a discretionary one, once all or part of a sentence is suspended, the statute make probation mandatory. *Figueroa v. State*, 689 P.2d 512 (Alaska 1984).

Correction of oral sentence permissible. — Where an oral sentence as originally pronounced suspended two years of imprisonment without providing for any period of probation whatsoever, the oral sentence was obviously incomplete when first pronounced and therefore not meaningfully imposed; correction of the original sentence was permissible under the circumstances. *Figueroa v. State*, 689 P.2d 512 (Alaska 1984).

Applied in *Edwin v. State*, 760 P.2d 499 (Alaska Ct. App. 1988).

Sec. 12.55.085. Suspending imposition of sentence. (a) Except as provided in (f) of this section, if it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be served, the court may, in its discretion, suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence that may be imposed, and upon the terms and conditions that the court determines, and shall place the person on probation, under the charge and supervision of the probation officer of the court during the suspension.

(b) At any time during the probationary term of the person released on probation, a probation officer may, without warrant or other process, rearrest the person so placed in the officer's care and bring the person before the court, or the court may, in its discretion, issue a warrant for the rearrest of the person and may revoke and terminate the probation, if the interests of justice require, and if the court, in its judgment, has reason to believe that the person placed upon probation is violating the conditions of probation, or engaging in criminal prac-

tices, or has become abandoned to improper associates, or a vicious life.

(c) Upon the revocation and termination of the probation, the court may pronounce sentence at any time after the suspension of the sentence within the longest period for which the defendant might have been sentenced, subject to the limitation specified in AS 12.55.081 c).

(d) The court may at any time during the period of probation revoke or modify its order of suspension of imposition of sentence. It may at any time, when the ends of justice will be served, and when the good conduct and reform of the person held on probation warrants it, terminate the period of probation and discharge the person held. If the court has not revoked the order of probation and pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the court.

(e) Upon the discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect.

(f) The court may not suspend the imposition of sentence of a person who is convicted of a violation of AS 11.41.410 — 11.41.455. (§ 1 ch 50 SLA 1965; am § 2 ch 32 SLA 1979; am §§ 1, 2 ch 36 SLA 1988)

Effect of amendments. — The 1988 amendment added subsection (f) and, in subsection (a), added "Except as provided

in (f) of this section" at the beginning and substituted "that" for "which" twice.

NOTES TO DECISIONS

Notice of refusal to set aside conviction. — Before a sentencing court may refuse to set aside a conviction under subsection (e), the defendant must be given notice that there is reason to believe a set-aside should not be granted, with a precise statement of the reason or reasons, and must be afforded an opportunity for a hearing on the set-aside issue. *Mekiana v. State*, 707 P.2d 918 (Alaska Ct. App. 1985), rev'd on other grounds, 726 P.2d 189 (Alaska 1986).

Correct remedy where defendant discharged from probation and denied set-aside without prior notice and hearing was not an automatic set-aside but a delayed hearing on the set-aside issue. *State v. Mekiana*, 726 P.2d 189 (Alaska 1986).

When set-aside orders may be entered. — Set-aside orders may be entered only in cases where a sentence has never formally been imposed against the defendant. *Richey v. State*, 717 P.2d 407 (Alaska Ct. App. 1986).

Where the judge had already rescinded defendant's suspended imposition of sen-

tence and had formally imposed sentence and defendant was never discharged from probation under AS 12.55.085(d), the judge had no authority to set aside his conviction under AS 12.55.085(e). *Richey v. State*, 717 P.2d 407 (Alaska Ct. App. 1986).

Granting set-aside as matter of right. — No affirmative showing or finding of rehabilitation need be made before a set-aside is granted; rather, a set-aside should be granted as a matter of right unless some specific reason for denial is established. *Wickham v. State*, 770 P.2d 757 (Alaska Ct. App. 1989).

Belated set-aside hearing comporting with due process. — A belated set-aside hearing will not offend due process as long as the trial court (1) considers only those facts existing at the time the probationer was discharged and (2) explains on the record its reasons for denying a set-aside. In other words, the court must decide the set-aside question based upon an evaluation of the defendant's conduct and situation as of the date of discharge from

be notified, the copy of the motion this section, the ng date, and the

comments to the reduce or modify

ntence, the court ant, and any re- iling the motion.

the victim shall with the commis- the notice to the y not be disclosed h 166 SLA 1978; 389)

n probation for two a further offense period which is not ivision of corrections year period runs, the ke probation so long evoke probation was -year maximum pro- horized by statute ate, 733 P.2d 628 387).

tion already served. to revoke probation a probationer with tion is filed and the determines that the is in fact committed. imate justification for ioner to claim credit

for time served on probation during the State, 702 P.2d 645 (Alaska Ct. App. 1985). period between the filing of the petition and its ultimate adjudication. Gage v.

Sec. 12.55.100. Conditions of probation. (a) While on probation and among the conditions of probation, the defendant may be required

- (1) to pay a fine in one or several sums;
- (2) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had;
- (3) to provide for the support of any persons for whose support the defendant is legally responsible; and
- (4) to perform community work in accordance with AS 12.55.055.

(b) The defendant's liability for a fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation. (§ 8.10 ch 34 SLA 1962; am § 13 ch 166 SLA 1978; am § 3 ch 104 SLA 1984; am § 13 ch 138 SLA 1986; am § 1 ch 26 SLA 1989)

Effect of amendments. — The 1986 amendment added paragraph (5) of subsection (a) and made a related grammatical change.

The 1989 amendment, effective May 12, 1989, repealed former paragraph (a)(5), relating to payment of a periodic probation fee, and made related grammatical changes.

Editor's notes. — Section 5, ch. 26, SLA 1989 provides that the amendments to (a) of this section by § 1, ch. 26, SLA 1989 "do not affect the collection of probation fee payments ordered by a court under AS 12.55.105, repealed by § 4 of this Act, after June 30, 1986, and before May 12, 1989."

NOTES TO DECISIONS

Editor's notes. — The note under the catchline "Enforcement of court orders requiring payment of fines or restitution" in the main pamphlet should be disregarded. See the note below under the same catchline.

Limitation on authority to impose fine. — The existence of an express legislative limitation on the permissible amount of a fine effectively conflicts with the apparent open ended authority provided for under paragraph (a)(1), and in keeping with accepted principles of statutory construction, this conflict must be resolved in favor of the more specific of the two statutes. Stone v. State, 690 P.2d 22 (Alaska Ct. App. 1984).

The \$5,000 maximum fine provided for in former AS 17.10.010 constitutes an implied limitation on the court's authority to impose a fine as a condition of probation under paragraph (a)(1). Stone v. State, 690 P.2d 22 (Alaska Ct. App. 1984).

Remand for determination of earning capacity for restitution order. — Though a presentence report recom-

mended restitution, it did not discuss the defendant's earning capacity or the kinds of jobs that she could reasonably be expected to perform in the future; it was therefore necessary that the case be remanded to the trial court for further findings. Zimmerman v. State, 706 P.2d 343 (Alaska Ct. App. 1985).

Enforcement of court orders requiring payment of fines or restitution. — AS 12.55.051(a) prescribes a specific method for dealing with enforcement of court orders requiring the payment of fines or restitution, regardless of whether such orders are directly imposed as part of the original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under this section; AS 12.55.051 expressly provides that imprisonment for failure to pay court-ordered restitution is permissible only if the failure to pay was intentional or the result of bad faith. Lominac v. Municipality of Anchorage, 658 P.2d 792 (Alaska Ct. App. 1983).

Quoted in Hood v. Smedley, 498 P.2d

Jewelry taken. — A fine imposed in connection with a defendant's conviction for failing to pay \$200.00 for the return of jewelry that was improperly taken. *Hagberg v. State*, Sup. Ct. Op. No. 2013 (File No. 1980).

Property obtained from the state. — Property obtained from the state in the course of a restitution proceeding represented "actual" property of the state and restitution is required. *Conzales v. State*, Sup. Ct. Op. No. 4271, 608 P.2d 1066 (1980).

Restitution. — Since it was a condition of probation which defendant was required to pay as part of the sentence, the defendant's conviction of the crime of the victim's passenger negligence, both as a matter of public policy and as a matter of justice, requires restitution to the injured party, and recipient of restitution under this section. *Pena v. State*, Sup. Ct. Op. No. 245 (File No. 6174).

Revocation of court orders. — The revocation of fines or restitution orders prescribes specific procedures with enforcement of such orders. The fact that payment of fines or restitution is a condition of probation does not make the revocation of such orders a condition of probation; thus it was error to require probation in spite of the defendant's failure to pay restitution. *State v. Anchorage*, Ct. Op. No. 5960, 658 P.2d 1066 (1980).

Reasonable time as condition of probation. — A condition of probation is not a condition of probation if it is not a condition of probation. *State v. Municipality of Anchorage*, Ct. Op. No. 76 (File No. 1982).

Reasonable time as condition of probation. — A condition of probation is not a condition of probation if it is not a condition of probation. *State v. Municipality of Anchorage*, Ct. Op. No. 76 (File No. 1982).

Reasonable time as condition of probation. — A condition of probation is not a condition of probation if it is not a condition of probation. *State v. Municipality of Anchorage*, Ct. Op. No. 76 (File No. 1982).

Whittlesey v. State. — *Whittlesey v. State*, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980).

Schwing v. State. — *Schwing v. State*, Ct. App. Op. No. 44 (File No. 5695), 633 P.2d 311 (1981).

Hood v. Smedley. — *Hood v. Smedley*, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972); *Thibedeau v. State*, Sup. Ct. Op. No. 2182 (File No. 4325), 617 P.2d 759 (1980).

Leuch v. State. — *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Leuch v. State. — *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Collateral references. — Probation conditioned on restitution in connection with application for, or receipt of, public relief. 92 ALR3d 458.

Conditioning probation. — Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest or the like. 45 ALR3d 1022.

Ability to pay. — Ability to pay as necessary condition in conditioning probation or suspended sentence upon reparation or restitution. 73 ALR3d 1240.

Condition of probation. — Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim. 79 ALR3d 976.

Condition of probation. — Propriety of condition of probation upon defendant's posting of bond guaranteeing compliance with terms of probation. 79 ALR3d 1068.

Requirement of probation. — Validity of requirement that, as a condition of probation, defendant submit to warrantless searches. 79 ALR3d 1083.

Conditioning probation. — Propriety of conditioning probation on defendant's remaining childless or having no additional children during probationary period. 94 ALR3d 1218.

Conditioning probation. — Propriety of conditioning probation on defendant's not associating with particular person. 99 ALR3d 967.

Sec. 12.55.110. Notice and grounds for revocation of suspension. — When sentence has been suspended, it shall not be revoked except for good cause shown. In all proceedings for the revocation of a suspended sentence, the defendant is entitled to reasonable notice and the right to be represented by counsel. (§ 8.11 ch 34 SLA 1962)

NOTES TO DECISIONS

Constitutionality. — This section would be repugnant to the equal protection clause of both the federal and Alaska constitutions if it were construed as embodying an intended dichotomy between indigent probationers and those who could afford counsel. *Alex v. State*, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

Section applies to probation revocations. — In light of the provisions of AS 12.55.080, it is apparent that this section is applicable to probation revocations. *Hoffman v. State*, Sup. Ct. Op. No. 297 (File No. 562), 404 P.2d 644 (1965).

Section governs revocation of probation proceedings. — *Martin v. State*, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

Section governs revocation of probation proceedings. — The supreme court has explicitly applied the "good cause" requirement of this section to probation revocations. *Alexander v. State*, Sup. Ct. Op. No. 1622 (File No. 3505), 578 P.2d 591 (1978).

Section governs revocation of probation proceedings. — *Alex v. State*, Sup. Ct. Op. No. 329 (File No. 683), 411 P.2d 212 (1966).

Section governs revocation of probation proceedings. — *Alex v. State*, Sup. Ct. Op. No. 329 (File No. 683), 411 P.2d 212 (1966).

Section governs revocation of probation proceedings. — *Alex v. State*, Sup. Ct. Op. No. 329 (File No. 683), 411 P.2d 212 (1966).

Section governs revocation of probation proceedings. — The supreme court refuses to sanction discrimination between indigents and others in the application of the rights to counsel granted by this section. *Alex v. State*, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

Section governs revocation of probation proceedings. — A probation revocation is not technically a criminal appeal. *Alex v. State*, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Probation may be conditioned as provided in AS 12.55.102. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person

or watercraft
driving while
cle or operates

or any con-
; in four hours
percent or more
ms or more of
, 10 grams or
or
f intoxicating

inor.
impose a min-
secutive hours
n previously
e intoxicated
ially similar
28.35.032 or
nents. Upon
imum sen-
s and a fine
a person has
tion of driv-
nance with
hemical test
bstantially
court shall
han 30 con-
the preced-
this or an-
ises or has
llowing of-
aw or ordi-
submit to a
ance with
ay not be
n that the
Probation
on of sen-
lved driv-
l, the per-
28.15.181
forfeited
a person

convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) Notwithstanding (c) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (c) of this section by the cost of the ignition interlock device.

(h) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983; am §§ 4, 5 ch 57 SLA 1989)

Sec. 28.35.032. Refusal to submit to chemical test. (a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(a), after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test may not be given, except as provided by AS 28.35.035.

(b) *[Repealed, § 25 ch 77 SLA 1983.]*

(c) *[Repealed, § 25 ch 77 SLA 1983.]*

(d) *[Repealed, § 25 ch 77 SLA 1983.]*

(e) The refusal of a person to submit to a chemical test of breath under (a) of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or watercraft while intoxicated.

(f) Refusal to submit to the chemical test of breath authorized by AS 28.35.031(a) is a class A misdemeanor.

(g) Upon conviction of a person under this section, the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under AS 28.25.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000, if, within the previous 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. The

a) If a per-
t officer to
ng advised
sted while
s license is
or nonresi-
st the per-
t of an act-
ing or driv-
raft while
mical test

of breath
r criminal
n commit-
or operat-

horized by

court shall
an 72 con-
n has not
of driving
ordinance
chemical
stantially
ourt shall
in 20 con-
preceding
in this or
28.35.030
ements or
other law
conviction
nce of im-
of not less
has been
an one of
convicted
under AS
nilar ele-
section or
ents. The

execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Probation may be conditioned as provided in AS 12.55.102. Imposition of sentence may not be suspended. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked under AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate. The sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the committed person.

(h) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (g) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (g) of this section, or by an officer of the court in preparing a pre-sentence report for the use of the court in sentencing a person convicted under (g) of this section.

(i) A person who is sentenced to imprisonment for 72 consecutive hours under (g) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(j) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(k) Notwithstanding (g) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (g) of this section by the cost of the ignition interlock device. (§ 1 ch 83 SLA 1969; am § 28 ch 71 SLA 1972; am § 12 ch 129 SLA 1980, am § 17 ch 117 SLA 1982; am §§ 17 — 20, 25 ch 77 SLA 1983; am § 17 ch 60 SLA 1986; am §§ 6, 7 ch 57 SLA 1989)

Effect of amendments. — The 1986 amendment substituted "may" for "shall" following "chemical test" near the end of subsection (a).

The 1989 amendments, effective August

28, 1989, inserted "Probation may be conditioned as provided in AS 12.55.102" near the end of subsection (g) and added subsection (k).

Legislative history reports. — For re-

(5) notify the board and provide information on a prisoner 120 days before the prisoner's mandatory release date, if the prisoner is to be released to mandatory parole; and

(6) maintain records, files, and accounts as requested by the board.
(§ 2 ch 88 SLA 1985)

Sec. 33.16.190. Parole and probation officers. An officer appointed by the commissioner under AS 33.05.020(a) or under this chapter, may discharge duties under AS 33.05 or this chapter. (§ 2 ch 88 SLA 1985)

Sec. 33.16.200. Custody of parolee. Except as provided in AS 33.16.210, the board retains custody of discretionary and mandatory parolees until the expiration of the maximum term or terms of imprisonment to which the parolee is sentenced. (§ 2 ch 88 SLA 1985)

Sec. 33.16.210. Discharge of parolee. The board may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed two years of parole, if the sentence of the parolee does not include a residual period of probation. A parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation. (§ 2 ch 88 SLA 1985)

Sec. 33.16.220. Revocation of parole. (a) The board may revoke parole for conduct in violation of AS 33.16.150(a) or (b).

(b) Except as provided in (e) of this section, within 15 working days after the arrest and incarceration of a parolee for violation of a condition of parole, the board or its designee shall hold a preliminary hearing. At the preliminary hearing, the board or its designee shall determine if there is probable cause to believe that the parolee violated the conditions of parole and, when probable cause exists, whether the parolee should be released pending a final revocation hearing. A finding of probable cause at a preliminary hearing in a criminal case is conclusive proof of probable cause that a parole violation occurred.

(c) In determining whether a parole violator should be released pending a final revocation hearing, the board or its designee shall consider

(1) the likelihood of the parolee's appearance at a final revocation hearing;

(2) the seriousness of the alleged violation;

(3) whether the parolee presents a danger to the community; and

(4) whether the parolee is likely to further violate conditions of parole.

er 120 days
ner is to be

the board

officer ap-
under this
ter. (§ 2 ch

ded in AS
mandatory
s of impris-
LA 1985)

y uncondi-
ody of the
if the sen-
obation. A
o years of
erving the

ay revoke

king days
of a condi-
ary hear-
all deter-
olated the
ether the
g. A find-
al case is
occurred.
released
nee shall

evocation

nity; and
ditions of

(d) If the parole violator is released pending a final revocation hearing, the board or its designee may impose additional conditions necessary to ensure the parolee's appearance at the final revocation hearing, and to prevent further violation of conditions of parole.

(e) A preliminary hearing under (b) of this section is not required if the board holds a final revocation hearing within 20 working days after the parolee's arrest and incarceration.

(f) The board shall hold a final revocation hearing no later than 120 days after a parolee's arrest, subject to restrictions arising under AS 33.36.110 and (g) of this section.

(g) When the basis for the revocation proceeding is a criminal charge, the parolee may request, or the board upon its own motion may propose that further proceedings on the revocation be delayed. In making the determination to delay further proceedings, the board shall consider prejudice that may result to the parolee's and the state's interests in the pending criminal case and the parolee's decision to delay final revocation proceedings. If good cause to proceed is found, the board shall consult with the attorney general before continuing the final revocation proceeding.

(h) At a final revocation hearing, a violation of a condition of parole must be established by a preponderance of the evidence.

(i) If, after the final revocation hearing, the board finds that the parolee has violated a condition of parole imposed under AS 33.16.150(b), or a law or ordinance, the board may revoke all or a portion of the parole, or change any condition of parole. (§ 2 ch 88 SLA 1985)

NOTES TO DECISIONS

Right to impartial fact finder in proceedings. — Due process includes the right to an impartial fact finder in parole revocation proceedings. *Newell v. State*, Sup. Ct. Op. No. 2241 (File No. 4453), 620 P.2d 680 (1980), decided under former AS 33.15.090.

When a person sitting in on deliberations in a parole revocation hearing was the person who initially recommended revocation and whose reports and testimony form the bulk of the evidence supporting revocation, such a person was part of the prosecution, and his presence violated the

parolee's due process rights to an impartial fact finder. *Newell v. State*, Sup. Ct. Op. No. 2241 (File No. 4453), 620 P.2d 680 (1980), decided under former AS 33.15.090.

Use of illegally obtained evidence in revocation proceeding. — Ordinarily, neither the Alaska Constitution nor its criminal rules bar the use of illegally obtained evidence in parole revocation proceedings. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

Collateral references. — Right to notice and hearing before revocation of suspension of sentence, parole, conditional

pardon, or probation. 29 ALR2d 1074; 44 ALR3d 306.

Right to assistance of counsel at pro-

Original sponsor(s): REP. ULMER, Ellis, Goll

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 366 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the treatment and rehabilitation
7 of a defendant convicted of an offense; and providing
8 for an effective date."

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

10 * Section 1. AS 12.55.015(a) is amended to read:

11 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in
12 imposing sentence on a defendant convicted of an offense, may singly
13 or in combination

14 (1) impose a fine when authorized by law and as provided in
15 AS 12.55.035;

16 (2) order the defendant to be placed on probation under
17 conditions specified by the court that may include provision for
18 active supervision;

19 (3) impose a definite term of periodic imprisonment;

20 (4) impose a definite term of continuous imprisonment;

21 (5) order the defendant to make restitution under AS 12.-
22 55.045;

23 (6) order the defendant to carry out a continuous or peri-
24 odic program of community work under AS 12.55.055;

25 (7) suspend execution of all or a portion of the sentence
26 imposed under AS 12.55.080;

27 (8) suspend imposition of sentence under AS 12.55.085;

28 (9) order the forfeiture to the commissioner of public
29 safety of a deadly weapon that was in the actual possession of or used

1 by the defendant during the commission of an offense described in
2 AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

3 (10) order the defendant, while incarcerated, to participate
4 in or comply with the treatment plan of a rehabilitation program that
5 is related to the defendant's offense or to the defendant's reha-
6 bilitation, if the program is made available to the defendant by the
7 Department of Corrections.

8 * Sec. 2. AS 12.55.085(b) is amended to read:

9 (b) At any time during the probationary term of the person
10 released on probation, a probation officer may, without warrant or
11 other process, rearrest the person so placed in the officer's care and
12 bring the person before the court, or the court may, in its discre-
13 tion, issue a warrant for the rearrest of the person. The court [AND]
14 may revoke and terminate the probation [,] if the interests of justice
15 require, and if the court, in its judgment, has reason to believe that
16 the person placed upon probation is

17 (1) violating the conditions of probation;
18 (2) [, OR] engaging in criminal practices; or
19 (3) violating an order of the court to participate in or
20 comply with the treatment plan of a rehabilitation program under
21 AS 12.55.015(a)(10) [, OR HAS BECOME ABANDONED TO IMPROPER ASSOCIATES,
22 OR A VICIOUS LIFE].

23 * Sec. 3. AS 12.55.100(a) is amended to read:

24 (a) While on probation and among the conditions of probation,
25 the defendant may be required

26 (1) to pay a fine in one or several sums;
27 (2) to make restitution or reparation to aggrieved parties
28 for actual damages or loss caused by the crime for which conviction
29 was had;

1 (3) to provide for the support of any persons for whose
2 support the defendant is legally responsible; [AND]

3 (4) to perform community work in accordance with AS 12.-
4 55.055;

5 (5) to participate in or comply with the treatment plan of
6 an inpatient or outpatient rehabilitation program specified by either
7 the court or the defendant's probation officer that is related to the
8 defendant's offense or to the defendant's rehabilitation; and

9 (6) to satisfy the screening, evaluation, referral, pro-
10 gram, and fee requirements of an agency authorized by the court to
11 make referrals for rehabilitative treatment or to provide rehabilita-
12 tive treatment.

13 * Sec. 4. AS 12.55.100 is amended by adding a new subsection to read:

14 (c) A program of inpatient or outpatient treatment may be re-
15 quired by the authorized agency under (a)(6) of this section only if
16 authorized in the judgment, and may not exceed the maximum term of
17 inpatient or outpatient treatment specified in the judgment. A person
18 who has been referred for treatment may make a written request to the
19 sentencing court asking the court to review the referral. The request
20 for review shall be made within seven days of the agency's referral,
21 and shall specifically set out the grounds upon which the request for
22 review is based. The court may order a hearing on the request for
23 review.

24 * Sec. 5. AS 12.55.110 is amended by adding a new subsection to read:

25 (b) Good cause justifying the revocation of a suspended sentence
26 is established if the defendant has violated an order of the court to
27 participate in or comply with the treatment plan of a rehabilitation
28 program under AS 12.55.015(a)(10).

29 * Sec. 6. AS 28.35.030(c) is amended to read:

1 (c) Upon conviction under this section the court shall impose a
2 minimum sentence of imprisonment of not less than 72 consecutive hours
3 and a fine of not less than \$250 if the person has not been previously
4 convicted in this or another jurisdiction of driving while intoxicated
5 under this or another law or ordinance with substantially similar
6 elements or refusal to submit to a chemical test under AS 28.35.032 or
7 another law or ordinance with substantially similar elements. Upon
8 conviction under this section the court shall impose a minimum sen-
9 tence of imprisonment of not less than 20 consecutive days and a fine
10 of not less than \$500 if, within the preceding 10 years, the person
11 has been previously convicted once in this or another jurisdiction of
12 driving while intoxicated under this or another law or ordinance with
13 substantially similar elements or refusal to submit to a chemical test
14 under AS 28.35.032 or another law or ordinance with substantially
15 similar elements. Upon conviction under this section the court shall
16 impose a minimum sentence of imprisonment of not less than 30 consecu-
17 tive days and a fine of not less than \$1,000 if, within the preceding
18 10 years, the person has been previously convicted in this or another
19 jurisdiction of more than one of the following offenses or has more
20 than once been previously convicted of one of the following offenses:
21 (1) driving while intoxicated under this or another law or ordinance
22 with substantially similar elements; (2) refusal to submit to a chemi-
23 cal test under AS 28.35.032 or another law or ordinance with substan-
24 tially similar elements. The execution of sentence may not be sus-
25 pended nor may probation be granted except on condition that the
26 minimum imprisonment provided in this section is served. Probation may
27 be conditioned as provided in AS 12.55.102. Imposition of sentence
28 may not be suspended. In addition, if the offense involved driving a
29 motor vehicle for which a driver's license is required, the person's

1 driver's license shall be revoked in accordance with AS 28.15.181 and
2 the vehicle used in commission of the offense may be forfeited under
3 AS 28.35.036. [IN ADDITION, THE COURT SHALL ORDER, AND A PERSON
4 CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPECIFIED BY
5 THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION THAT
6 THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (d)
7 OF THIS SECTION, FINDS APPROPRIATE.]

8 * Sec. 7. AS 28.35.030 is amended by adding new subsections to read:

9 (i) The court shall order a person convicted under this section
10 to satisfy the screening, evaluation, referral, program, and fee
11 requirements of an agency authorized by the court to make referrals
12 for rehabilitative treatment or to provide rehabilitative treatment.

13 (j) A program of inpatient or outpatient treatment may be re-
14 quired by the authorized agency under (i) of this section only if au-
15 thorized in the judgment, and may not exceed the maximum term of
16 inpatient or outpatient treatment specified in the judgment. A person
17 who has been referred for treatment under this subsection may make a
18 written request to the sentencing court asking the court to review the
19 referral. The request for review shall be made within seven days of
20 the agency's referral, and shall specifically set out the grounds upon
21 which the request for review is based. The court may order a hearing
22 on the request for review.

23 (k) If a person fails to satisfy the requirements of an au-
24 thorized agency under (j) of this section, the court

25 (1) may impose any portion of a suspended sentence;

26 (2) may punish the failure as contempt of the authority of
27 the court under AS 09.50.010 or as a violation of a condition of
28 probation; and

29 (3) shall order the revocation or suspension of the

1 person's driver's license until the requirements are satisfied.

2 * Sec. 8. AS 28.35.032(g) is amended to read:

3 (g) Upon conviction of a person under this section, the court
4 shall impose a minimum sentence of imprisonment of not less than 72
5 consecutive hours and a fine of not less than \$250 if the person has
6 not been previously convicted in this or another jurisdiction of
7 driving while intoxicated under AS 28.25.030 or another law or ordi-
8 nance with substantially similar elements or refusal to submit to a
9 chemical test under this section or another law or ordinance with
10 substantially similar elements. Upon conviction under this section the
11 court shall impose a minimum sentence of imprisonment of not less than
12 20 consecutive days and a fine of not less than \$500 if, within the
13 preceding 10 years, the person has been previously convicted once in
14 this or another jurisdiction of driving while intoxicated under
15 AS 28.35.030 or another law or ordinance with substantially similar
16 elements or refusal to submit to a chemical test under this section or
17 another law or ordinance with substantially similar elements. Upon
18 conviction under this section the court shall impose a minimum sen-
19 tence of imprisonment of not less than 30 consecutive days and a fine
20 of not less than \$1,000, if, within the previous 10 years, the person
21 has been previously convicted in this or another jurisdiction of more
22 than one of the following offenses or has more than once been previ-
23 ously convicted of one of the following offenses: (1) driving while
24 intoxicated under AS 28.35.030 or another law or ordinance with sub-
25 stantially similar elements; (2) refusal to submit to a chemical test
26 under this section or another law or ordinance with substantially
27 similar elements. The execution of sentence may not be suspended nor
28 may probation be granted except on condition that the minimum impris-
29 onment provided in this section is served. Probation may be

1 conditioned as provided in AS 12.55.102. Imposition of sentence may
2 not be suspended. If the offense involved driving a motor vehicle for
3 which a driver's license is required, the person's driver's license
4 shall be revoked under AS 28.15.181. [IN ADDITION, THE COURT SHALL
5 ORDER, AND A PERSON CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR
6 A TERM SPECIFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR
7 REHABILITATION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION
8 COMPILED UNDER (h) OF THIS SECTION, FINDS APPROPRIATE.] The sentence
9 imposed by the court under this subsection shall run consecutively
10 with any other sentence of imprisonment imposed on the committed
11 person.

12 * Sec. 9. AS 28.35.032 is amended by adding new subsections to read:

13 (l) The court shall order a person convicted under this section
14 to satisfy the screening, evaluation, referral, program, and fee
15 requirements of an agency authorized by the court to make referrals
16 for rehabilitative treatment or to provide rehabilitative treatment.

17 (m) A program of inpatient or outpatient treatment may be re-
18 quired by the authorized agency under (l) of this section only if au-
19 thorized in the judgment, and may not exceed the maximum term of
20 inpatient or outpatient treatment specified in the judgment. A person
21 who has been referred for treatment under this subsection may make a
22 written request to the sentencing court asking the court to review the
23 referral. The request for review shall be made within seven days of
24 the agency's referral, and shall specifically set out the grounds upon
25 which the request for review is based. The court may order a hearing
26 on the request for review.

27 (n) If a person fails to satisfy the requirements of an au-
28 thorized agency under (m) of this section, the court

29 (l) may impose any portion of a suspended sentence;

1 (2) may punish the failure as contempt of the authority of
2 the court under AS 09.50.010 or as a violation of a condition of
3 probation; and

4 (3) shall order the revocation or suspension of the per-
5 son's driver's license until the requirements are satisfied.

6 * Sec. 10. AS 33.16.220(a) is amended to read:

7 (a) The board may revoke parole if the parolee

8 (1) engages in [FOR] conduct in violation of AS 33.16.-
9 150(a) or (b); or

10 (2) has violated an order of the court to participate in or
11 comply with the treatment plan of a rehabilitation program under
12 AS 12.55.015(a)(10).

13 * Sec. 11. AS 12.55.015(d) is repealed.

14 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29