

HB

488

BILL NO: SSB 488

DATE: March 13, 1990

TITLE: An Act relating to
suspended imposition
of sentence

CONTACT: Barbara Miklos
465-4356

DEPARTMENT OF
PUBLIC SAFETY

The Council on Domestic Violence and Sexual Assault supports the provisions in SSB 488, which will prohibit suspended impositions of sentence for assaults if the person has had a conviction of a crime with substantially similar elements. Most domestic violence assaults are charged as misdemeanors, yet they are serious crimes which often escalate in number and severity and can lead to serious injury or death. When a person has had a suspended imposition of sentence, the conviction can be removed from the record. Given the often increasing severity of domestic violence assaults, it is not appropriate that these crimes be subject to suspended imposition of sentence.

Wayne A. Hoetzel

for Arthur English
Commissioner

RECEIVED
MARCH 13 1990
COMMUNICATIONS SECTION

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An Act relating to suspended BRU: Council on Domestic Violence
imposition of sentence and Sexual Assault
 Sponsor: Rep. Donley, et al Component: _____
 Requestor: _____

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 -
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REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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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
 Division: Council on Domestic Violence and Sexual Assault
 Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Phone: 465-4356
 Date: March 13, 1990
 Date: 3-13-90
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3/13/90

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376




March 13, 1990

CHAIRMAN
LABOR AND COMMERCE COMMITTEE

VICE CHAIRMAN
ANCHORAGE CAUCUS

MEMBER
RULES COMMITTEE
STATE AFFAIRS COMMITTEE

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Representative Dave Donley 
RE: SSHB 488, Suspended Imposition of Sentence

SSHB 488 would limit the courts discretion to order suspension of imposition of sentence (SIS) in criminal cases. SIS is a sentence whereby persons convicted of crimes, either felonies or misdemeanors, can avoid having the conviction permanently on their records if they successfully complete a probationary period.

Currently, SIS is not allowed for convictions of DWI, sexual assault, and the most serious felonies. Under SS2HB 488, SIS would also be prohibited in all case where the offense involves a firearm, and in second offenses of crimes "against a person", such as assault, reckless endangerment, extortion, coercion or unarmed robbery.

I feel that barring these three additional crimes from the suspension of imposition of sentence supports the public's right to know of such serious convictions and sends a strong message that these are especially serious crimes.

I would appreciate your support of this legislation. If you have any questions, please don't hesitate to contact me or my aide, Michael Ward at 3892.



STATE OF ALASKA
THE LEGISLATURE

HOUSE OF STATE CAPITOL
NEAR ALASKA 99511
1970-1980

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 15, 1990

SUBJECT: Suspended imposition of sentence
TO: Representative Dave Donley
FROM: John B. Gaguine ⁸⁶
Legislative Counsel

Under AS 12.55.015(a)(8), a judge may suspend imposition of sentence on the person following the person's conviction unless another statute precludes suspending imposition. You have asked for a brief synopsis of the statutes that preclude a judge from suspending imposition.

AS 12.55.125(f)(2) forbids suspended imposition of sentence for a person convicted of any of five unclassified felonies - first-degree murder, second-degree murder, attempted first-degree murder, kidnapping, and misconduct involving a controlled substance in the first degree (the most serious drug offenses, such as giving heroin to a minor). AS 12.55.125(g)(2) forbids suspended imposition of sentence for a person convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree (both unclassified felonies) or convicted of any class A felony. Subsection (g)(2) also forbids suspending imposition of sentence for a person convicted of a class B or a class C felony if the person has a prior felony conviction. Note, however, that if the person, following the prior felony conviction, had imposition of sentence suspended, and the person subsequently had that prior conviction set aside under AS 12.55.085(e), the person would still be eligible for suspended imposition of sentence following the second class B or class C felony.

Elsewhere, AS 12.55.085(f) forbids the suspended imposition of sentence for a person convicted of sexual assault or sexual abuse of a minor in any degree, incest, or unlawful exploitation of a minor (the child pornography statute). In addition, several statutes found outside of Titles 11 and 12

Representative Dave Donley
Page 2
February 15, 1990

forbid the suspended imposition of sentence following conviction of certain misdemeanors: driving while intoxicated (AS 28.35.030(c)), refusing a chemical breath test (AS 28.-35.032(g)), driving with a suspended or revoked license (AS 28.15.291(a) and (?)), commercial guiding offenses (AS 08.54.520(f)), and wanton waste of big game (AS 16.-30.010(c)).

Other than these, there are no restrictions on a judge's ability to suspend imposition of sentence following a conviction, although a couple of statutes provide that some jail time must be imposed as a condition of a suspended imposition of sentence. Please let me know if I can assist you further on this matter.

JBG:gc
G13/094

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Relating to suspended BRU: Alaska State Troopers
imposition of a sentence
 Sponsor: Representative Donley, etc. Component: Detachments
 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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
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)

No fiscal impact anticipated.

Prepared by: Francis C. Allan
 Division: Alaska State Troopers
 Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Phone: 269-5691
 Date: 02/14/90
 Date: 2-20-90
 Page 1 of 1

12/14/90

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	<u>Alaska Court System</u>
Title: <u>An Act relating to suspended</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Donley, Larson, Ulmer...</u>	Components:	
Requestor: <u>Judiciary</u>		

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

Phone: 264-8228
 Date: 03/12/90
 Date: 03/12/90

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

Fiscal Analysis--HB 488

This proposed legislation may impact the Alaska Court System if a significant number of cases that would have resulted in suspended impositions of sentences will now proceed to trial. If the courts find that an appreciable number of pre-trial hearings and trials result from this proposed legislation, a supplemental appropriation will be requested. Because this number cannot be determined with any accuracy at this time, no present fiscal impact is indicated.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to suspended
imposition of sentence."
Sponsor: Rep. Donlev
Requestor: Justice Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: All

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						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 12, 1990
Approved by Commissioner: Richard I. Pegues / FOR /
Douglas B. Bailly, Attorney General Date: March 12, 1990
Agency: Department of Law

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
1 page(s)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 488

The sponsor substitute for HB 488 amends AS 12.55.085(f), which specifies those crimes where a court may not suspend imposition of sentence, to include assault, robbery, extortion, and coercion. This is a sentencing provision and, therefore, it will not have a fiscal impact on the Department of Law.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 23, 1989

SUBJECT: Suspended imposition of sentence and
criminal records (Work Order No. 6-1347)

TO: Representative Dave Donley

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have asked several questions about suspended imposition of sentence (SIS) and how it works. This memorandum will try to answer those questions.

Suspended imposition of sentence, statutorily authorized by AS 12.55.085, is a device whereby persons convicted of crimes - either felonies or misdemeanors - can avoid having the convictions permanently on their records if they successfully complete a probationary period. Most states and the federal government have similar sentencing provisions; they go under a variety of names.

After a person is convicted of an offense, either through a plea or after a trial, the court refrains from imposing a sentence for a period of time, set at the court's discretion. AS 12.55.085(a) limits the period of time that the sentence can be withheld to the maximum period of imprisonment that could be imposed for the crime (but not more than five years), and requires the court to place the person on probation for this period. The conditions of probation are generally the same as if a suspended sentence were imposed - regular contact with a probation officer, no further criminal violations, no drug or alcohol use (in appropriate cases), community work service, restitution to the victim. In addition, under AS 12.55.085, the court can require the defendant to serve jail time as a condition of the SIS.

If the person successfully completes the period of probation, the court may set aside the conviction, so that it

no longer appears on the person's record. The court has the discretion not to set it aside, but must, before it makes that decision, explain to the defendant why the court believes a set-aside is not appropriate, and then hold a hearing at which the defendant can present the case for the set-aside. Generally convictions are routinely set aside if the probationary period is successfully completed.

At any time during the probationary period, the court may vacate the SIS and sentence the defendant if the defendant violates the conditions of probation. Alleged violations are generally brought to the court's attention by a petition by the district attorney; the alleged violations may be reported to the district attorney or the court by the defendant's probation officer, or may arise as a result of the defendant's arrest on some new charge. The defendant is entitled to a hearing - less formal than a trial - on the probation violation charges. If the court finds the charges proven, it has two options. If the violations are minor, the court may continue the SIS, often lengthening the probationary period or adding new conditions of probation, including jail time. If the court considers the violations serious, it may sentence the defendant to whatever he could have been sentenced to originally. When imposing such a sentence the court may consider the defendant's conduct during the probationary period.

SIS is probably used more frequently in felony cases than in misdemeanors, because the consequences of a felony conviction are so much greater. They are rarely used in violent crimes - more typically they will be used in connection with property crimes such as theft or burglary, and small drug offenses (simple possession, or transfer of small amounts). Generally only a first offender will get an SIS, although a record of non-serious misdemeanors might not preclude an SIS for a first-time felony defendant.

However, by statute imposition of sentence may not be suspended in connection with certain offenses. These are offenses where society's interest in maintaining a record of convictions outweighs the individual's interest in having a clean record if his behavior is good. Thus, AS 12.55.125(f) and (g) prohibits SIS's following convictions for unclassified and Class A felonies (the most serious offenses), and for all other felonies when the person convicted has a prior felony conviction. On the misdemeanor level, the court may not order an SIS after a drunk driving conviction,

Representative Dave Donley

Page 3

June 23, 1989

AS 28.35.030(c), because of the need to identify repeat offenders and keep them off the roads. Most pertinent to your inquiry, the SIS statute was amended in 1988 to provide that no one could receive an SIS following a conviction for violating AS 11.41.410 - 11.41.455 (all degrees of sexual assault, all degrees of sexual abuse of a minor, incest and unlawful exploitation of a minor).

Laurie Otto in the Criminal Division of the Department of Law says that even when an SIS is set aside, the Department of Public Safety's printout of the person's criminal record still reflects the conviction. In other words, the record is not purged. Thus, while the state cannot use the earlier conviction to support a presumptive sentence as a multiple felon, the state can still use it to argue for a greater sentence than would otherwise be the case. And the record of the set aside conviction will be available to those persons entitled to see criminal records under AS 12.62.035. Currently under that statute a person's employer (or would-be employer, if the person is applying for a job) is entitled to see the person's conviction records for sex crimes and contributing to the delinquency of a minor, if the person has or would have a position, paid or unpaid, giving him supervisory or disciplinary power over minors.

Two bills currently pending in the legislature, HB 52 and SB 225, would significantly expand AS 12.62.035. These bills would expand the statute to cover all felonies, not just those relating to sex crimes. (Misdemeanor conviction records would still be limited to sex crimes and contributing to the delinquency of a minor.) The bills also would authorize the Department of Education to obtain access to these records for any person seeking certification as a teacher or a school administrator.

If I may be of further assistance, please advise.

JBG:gc
G10/125

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to suspended
 imposition of sentence."
 Sponsor: Rep. Donley, et al
 Requestor: _____

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)

The Department of Corrections predicts minimal impact due to proposed passage of this legislation.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
 Division: Administrative Services

Phone: 465-3376
 Date: 03/13/90

Approved by Commissioner Humphrey-Barnett
 Agency: Department of Corrections

Date: 03/13/90

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

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 20, 1990

FURTHER REFERRALS:

Date of Committee Action: 4-19-90

The JUDICIARY Committee considered:

SSHB 488

SS HOUSE BILL NO. 488

SUSPENDED IMPOSITION OF SENTENCE

"An Act relating to suspended imposition of sentence."

RECOMMENDATIONS:

- be replaced with CS HB 488 (JUD) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS:

_____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

3/13/90 Dept. of Corr.
2/17/90 Public Safety - Troopers
(Date/Dept)
2/20/90 Alk Court System
3/12/90 Dept of Law - Pros.

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass No Rec Amend

Peter Goll Peter Goll
Johnny Ellis Johnny Ellis
Max Gruenberg Max Gruenberg

Name	Do Not Pass	No Rec	Amend
<u>Mike Miller</u> Mike Miller		<input checked="" type="checkbox"/>	
<u>Mike De...</u>		<input checked="" type="checkbox"/>	

Chairman's Signature
Gruenberg / Goll

Original sponsor(s): REP. DONLEY, Larson, Ulmer, Swackhammer, Barnes, Boucher, Collins, Foster, Hudson, Menard, Miller, Zawacki, Sharp, Phillips

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 488 (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 prohibiting the suspended imposition of sen-
7 tence for a person convicted of using a firearm in
8 the commission of a crime."

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

10 * Section 1. AS 12.55.085(f) is amended to read:

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

13 (1) is convicted of a violation of AS 11.41.410 - 11.-
14 41.455; or

15 (2) uses a firearm in the commission of the offense for
16 which the person is convicted.