

S B

202

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 6, 1989

FURTHER REFERRALS:

Date of Committee Action: 1-17-90

The JUDICIARY Committee considered:

CSSB 202 (Jud)

CS FOR SENATE BILL NO. 202 (Judiciary)

[SENTENCE ENHANCEMENT IF MINOR IS INVOLVED]

"An Act relating to factors in aggravation of the presumptive term of a criminal sentence."

**RECOMMENDATIONS:**

- be replaced with HCS CSSB 202 (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 \_\_\_\_\_
- zero fiscal note LAW, CORRECTIONS COURT SYSTEM
- zero with analysis \_\_\_\_\_
- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

[Signature]  
[Signature]  
[Signature]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING:**

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		✓	
<u>Mike Miller</u>		✓	
<u>Terry Martin</u>	✓		without amendment
<u>[Signature]</u>			
_____			
_____			
_____			
_____			

[Signature]  
Chairman's Signature

**FISCAL NOTE**

RECEIVED JAN 12 1990

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act relating to factors in  
aggravation... presumptive sentence."  
Sponsor: Senate Judiciary  
Requestor: House 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						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
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REVENUE						
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**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

This bill amends sentencing provisions in AS 12.55. Because this is a procedure that takes place after conviction, the bill will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
Division: Administrative Services Date: January 11, 1990  
Approved by Commissioner: Douglas B. Baily, Attorney General Date: January 11, 1990  
Agency: Department of Law

**Distribution (by preparer):**

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

# FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Alaska Court System  
 Title: An Act relating to factors in aggravation...presumptive...sentence BRU: Trial Courts  
 Sponsor: Binkley, Sturgulewski, Fischer... Components: \_\_\_\_\_  
 Requestor: House Judiciary

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>*CAPITAL*</b>						
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<b>REVENUE</b>						
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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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

Full-time						
Part-time						
Temporary						

**ANALYSIS: (Attach a separate page if necessary)**

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel

Phone: 284-8228

Division: Alaska Court System

Date: 01/12/90

Approved by: Arthur H. Snowden, II, Administrative Director

Date: 01/12/90

Agency: Alaska Court System

**Distribution (by preparer):**

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

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to factor in  
 aggravation."  
 Sponsor: Senator Binkley  
 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						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING:** (Thousands of Dollars)

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

This legislation would have minimal, if any, impact on the Department of Corrections.

*Susan E. Knighton*

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

Phone: 465-3376  
 Date: 1-12-90

Approved by Commissioner: [Signature]  
 Agency: Department of Corrections

Date: 1-12-90

**Distribution (by preparer):**

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

Original sponsor(s): SEN. BINKLEY, Sturgulewski, Fischer, Coghill, Faiks, Halford, Frank, Kelly, Szymanski, Uehling

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 202 (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 factors in aggravation of the  
7 presumptive term of a criminal sentence."

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

9 \* Section 1. AS 12.55.155(c) is amended by adding a new paragraph to  
10 read:

11 (27) the defendant, being 18 years of age or older,

12 (A) is legally accountable under AS 11.16.110(2) for  
13 the conduct of a person who, at the time the offense was com-  
14 mitted, was under 18 years of age and at least three years  
15 younger than the defendant; or

16 (B) is aided or abetted in planning or committing the  
17 offense by a person who, at the time the offense was committed,  
18 was under 18 years of age and at least three years younger than  
19 the defendant.

# Senator John Binkley

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Senate Finance Committee  
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee  
Co-Chairman

## MEMORANDUM

March 15, 1989

TO: Senator Jan Faiks, Chairman  
Senate Judiciary Committee

FROM: Senator John Binkley 

RE: SB 202/Factors in Aggravation

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Thank you for so promptly scheduling the above-referenced bill. It is very short, having one section only which would add a new aggravating factor to the list of 26 factors in current law. Aggravating factors serve to increase the term of imprisonment for felony convictions. If the felony is a Class A felony, aggravating factors are considered on the first offense. For Class B and C felonies, they are considered on the second and subsequent convictions.

SB 202 states that if a defendant in a felony criminal trial was found to have knowingly induced, caused or permitted a person under 18 years of age to participate in the crime, he could be sentenced to jail for the full presumptive term set out in statute (AS 12.55.125).

Your joining me as a co-sponsor on this legislation shows you also believe adding to the presumptive term for those people who use minors in felony criminal activities should be penalized accordingly. I am looking forward to appearing before your committee on Thursday, March 16 to urge prompt and favorable consideration of SB 202.

# YUKON KUSKOKWIM DELTA MAYOR'S CONFERENCE



BETHEL, ALASKA  
November 9, 10, 11, 1988

RESOLUTION 88-02

A RESOLUTION OF THE 1988 YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE, SECOND SESSION, CALLING ON THE ALASKA STATE LEGISLATURE TO LEGISLATE FELONY PENALTIES FOR THE EMPLOYMENT OF MINORS IN CRIMINAL ACTIVITIES, PARTICULARLY BOOTLEGGING AND DRUG DEALING.

WHEREAS, the 1988 Legislature made Bootlegging a Felony; and

WHEREAS, to protect themselves from arrest many bootleggers and drug dealers in Bethel and other Western Alaska communities use minor children as "runners" to deliver illegal liquor sales and drugs; and

WHEREAS, this use of children for carrying out illegal activities constitutes child exploitation and, in a sense, child abuse, and also contributes to delinquency; and

WHEREAS, our children represent a priceless resource.

NOW THEREFORE BE IT RESOLVED THAT the Yukon-Kuskokwim Delta Mayor's Conference, Second Session, hereby calls upon the Alaska State Legislature to enact Felony penalties for the employment of Minors in Criminal Activities, particularly Bootlegging and Drug Dealing.

PASSED and APPROVED BY THE TENTH ANNUAL YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE this 11th day of November, 1988.

Thomas Church  
President

Clara Kees  
Secretary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uni-

formed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) if the offense is a third felony conviction, 25 years. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28-30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1-3 ch 92 SLA 1983; am § 5 ch 59 SLA 1988)

**Effect of amendments.** — The 1988 amendment inserted "attempted murder in the first degree" in subsection (b).

#### NOTES TO DECISIONS

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

consider the previous conviction a felony even though the defendant was sentenced under an Oregon statute providing for the reduction of certain felonies to misdemeanors. *Wells v. State*, Ct. App. Op. No. 401 (File Nos. 7479, 7663), 687 P.2d 917 (1984) (decided prior to the 1982 amendment).

**Prior conviction out of state.**

A 1983 Oklahoma conviction for a felony escape while on work release from a Department of Corrections treatment facility was a prior conviction for purposes of presumptive sentencing. for the Oklahoma escape statute had elements "substantially similar" to AS 11.56.310, a

class B felony. *Martin v. State*, Ct. App. Op. No. 508 (File No. A-722), 704 P.2d 1341 (1985).

**Sufficient evidence of prior conviction.** — An authenticated copy of a foreign docket abstract constituted sufficient evidence of a prior conviction. *Gant v. State*, Ct. App. Op. No. 576 (File No. A-1059), 712 P.2d 906 (1986).

Quoted in *Ortherg v. State*, Ct. App. Op. No. 792 (File No. A-1863), 751 P.2d 1368 (1988).

Cited in *McCombs v. State*, Ct. App. Op. No. 812 (File No. A-2306), P.2d (1988).

**Sec. 12.55.155. Factors in aggravation and mitigation.** (a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

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

(b) Sentence increments and decrements under this section shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense pursuant to an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense was a crime

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant; or

(B) specified in AS 11.41.410 — 11.41.460 and was committed against a minor, and the defendant has engaged in the same or similar conduct involving the same or another victim who was a minor;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction;

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or

misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance.

(d) The following factors shall be considered by the sentencing court and may mitigate the presumptive terms set out in AS 12.55.125:

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 — 11.41.230, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 — 11.41.470, the victim provoked the crime to a significant degree;

(8) *[Repealed, § 42 ch 143 SLA 1982.]*

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(11) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(12) the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(13) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(16) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a presumptive term under AS 12.55.125(c)(2), (d)(3) or (e)(3), that factor may not be used to aggravate the presumptive term. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to mitigate the presumptive term.

(f) If the state seeks to establish a factor in aggravation at sentencing or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence. Factors in aggravation and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury. All findings must be set out with specificity.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) In this section, "serious provocation" has the meaning given in AS 11.41.115(f). (§ 12 ch 166 SLA 1978; am §§ 39-41 ch 102 SLA 1980; am §§ 19, 20 ch 45 SLA 1982; am §§ 36, 38, 39, 42 ch 143 SLA 1982; am §§ 6, 7 ch 92 SLA 1983; am § 1 ch 37 SLA 1987; am § 4 ch 69 SLA 1987; am § 1 ch 83 SLA 1987; am § 7 ch 66 SLA 1988)

**Effect of amendments.** — The first 1987 amendment in subsection (c)(22) inserted "physical or mental disability."

The second 1987 amendment substituted the present language of subsection (d)(12) for "the defendant assisted authorities to detect or apprehend other persons who committed the offense with the defendant."

The 1988 amendment, effective May 28,

1988, in subsection (c)(18), divided the formerly undivided language into an introductory paragraph and subparagraph (A), added "or" at the end of subparagraph (A), and added subparagraph (B).

**Legislative history reports.** — For House letter of intent on ch. 66, SLA 1988 (CSHB 237 G.L.D.), which amended this section, see 1988 House Journal 2330-2337.

Criminal responsibility of one who furnishes instrumentality of a kind ordinarily used for legitimate purposes, with knowledge that it is to be used by another for criminal purposes, 108 ALR 331.

Coercion, compulsion or duress as defense to criminal prosecution, 40 ALR2d 903.

Accessory before fact in manslaughter, 95 ALR2d 175.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony, 34 ALR3d 858.

Criminal responsibility under 18 USCS § 2(b) of one who lacks capacity to commit an offense but causes another to do so, 52 ALR Fed. 769.

**Sec. 11.16.100. Legal accountability based upon conduct.** A person is guilty of an offense if it is committed by the person's own conduct or by the conduct of another for which the person is legally accountable under AS 11.16.110, or by both. (§ 1 ch 166 SLA 1978)

NOTES TO DECISIONS

Former law construed. — See *Tarner v. State*, Sup. Ct. Op. No. 911 (File No. 1486), 512 P.2d 923 (1973), decided under former AS 11.10.010.



**Sec. 11.16.110. Legal accountability based upon the conduct of another: Complicity.** A person is legally accountable for the conduct of another constituting an offense if

(1) the person is made legally accountable by a provision of law defining the offense;

(2) with intent to promote or facilitate the commission of the offense, the person

(A) solicits the other to commit the offense; or

(B) aids or abets the other in planning or committing the offense; or

(3) acting with the culpable mental state that is sufficient for the commission of the offense, the person causes an innocent person or a person who lacks criminal responsibility to engage in the proscribed conduct. (§ 1 ch 166 SLA 1978)

Cross references. — For solicitation, see AS 11.31.110.

NOTES TO DECISIONS

Distinction between principals and accessories abrogated. — Former AS 12.15.010 abrogated the distinction between principals and accessories, *Tarner v. State*, Sup. Ct. Op. No. 758 (File No. 1297), 492 P.2d 109 (1971).

By former AS 12.15.010, Alaska abolished the common-law distinction between accessories and principals to a crime. *Rice*

*v. State*, Sup. Ct. Op. No. 1785 (File No. 3531), 589 P.2d 419 (1979).

Abrogation did not apply only to punishment. — The abrogation of the distinction between accessories and principals mandated by former AS 12.15.010 did not apply only to punishment. *Scharver v. State*, Sup. Ct. Op. No. 1397 (File No. 2526), 561 P.2d 300 (1977).

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to factors in  
 aggravation...presumptive...sentence."  
 Sponsor: Sen. Binkley  
 Requestor: Senate Judiciary

Agency Affected: Department of Law  
 BRU: Prosecution  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

Please see the attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services

Phone: 465-3672  
 Date: March 16, 1989

Approved by Commissioner: Douglas B. Bailey, Attorney Gen.  
 Agency: Department of Law

Date: March 16, 1989

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 202

This bill amends AS 12.55.155(c) by changing the factors in aggravation to the state's presumptive sentencing policy, to add a new factor that the defendant knowingly included, caused, or permitted a person under 18 years of age to participate in the conduct constituting the offense. This is a sentencing procedure that takes place after conviction and, therefore, it will not have a fiscal impact on the Department of Law.

6-0906J

Chenoweth  
1/16/90

Original sponsor(s): SEN. BINKLEY, Sturgulewski, Fischer, Cogh. ll, Faiks,  
Halford, Frank, Kelly, Szymanski, Uehling

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 202 (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 factors in aggravation of the  
7 presumptive term of a criminal sentence."

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

9 \* Section 1. AS 12.55.155(c) is amended by adding a new paragraph to  
10 read:

11 (27) the defendant, being 18 years of age or older,

12 (A) is legally accountable under AS 11.16.110(2) for  
13 the conduct of a person who, at the time the offense was com-  
14 mitted, was under 18 years of age and at least three years  
15 younger than the defendant; or

16 (B) is aided or abetted in planning or committing the  
17 offense by a person who, at the time the offense was committed,  
18 was under 18 years of age and at least three years younger than  
19 the defendant.

Original sponsors: Binkley, Sturgulewski,  
Fischer, et al.

RECEIVED JAN 14 1990

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 202 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to factors in aggravation of the  
7 presumptive term of a criminal sentence."

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

9 \* Section 1. AS 12.55.155(c) is amended by adding a new paragraph to  
10 read:

11 (27) the defendant, being 18 years of age or older, know-  
12 ingly induced, caused, or permitted a person who at the time the  
13 offense was committed was under 18 years of age and at least three  
14 years younger than the defendant to participate in planning or commit-  
15 ting the offense.