

HB

127

9-LS0501AU
Luckhaupt
1/24/96

SENATE CS FOR CS FOR HOUSE BILL NO. 127(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,
3 ambulance attendant, or other emergency responders."

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

5 * Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or
11 otherwise clearly identified peace officer, fire fighter, or correctional employee
12 [OFFICER] who was engaged in the performance of official duties at the time of the
13 murder;

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the
6 offense of which the defendant was convicted contains elements similar to first
7 degree murder under AS 11.41.100 or second degree murder under
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant
10 subjected the murder victim to substantial physical torture.

11 * Sec. 2. AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite
13 term of imprisonment of not more than 20 years, and shall be sentenced to the
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
15 12.55.175:

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

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

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

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

28 * Sec. 3. AS 12.55.135(d) is amended to read:

29 (d) A defendant convicted of assault in the fourth degree upon a uniformed or
30 otherwise clearly identified peace officer, fire fighter, correctional employee
31 [OFFICER], emergency medical technician, paramedic, ambulance attendant, or other

1 emergency responder who was engaged in the performance of official duties at the
2 time of the assault shall be sentenced to a minimum term of imprisonment of

3 (1) 120 [30] days if the defendant violated AS 11.41.230(a)(1) or (2);

4 (2) 30 days if the defendant violated AS 11.41.230(a)(3).

5 * Sec. 4. AS 12.55.155(e) is amended to read:

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

11 * Sec. 5. AS 12.55.185 is amended by adding a new paragraph to read:

12 (14) "peace officer" has the meaning given in AS 11.81.900.

13 * Sec. 6. AS 12.55.125(d)(3) and 12.55.125(e)(3) are repealed.

14 * Sec. 7. This Act applies to all offenses committed on or after the effective date of this
15 Act.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 127

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act increasing the minimum termassult on BRU: Statewide Operations
...peace officers.... Component: All Institutions
 Sponsor: Rep. Kelly
 Requester: Rep. Kelly COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	64.2	64.2	64.2	64.2	64.2	64.2
TOTAL OPERATING	64.2	64.2	64.2	64.2	64.2	64.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	64.2	64.2	64.2	64.2	64.2	64.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	64.2	64.2	64.2	64.2	64.2	64.2

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the minimum sentence for assault defined in AS 12.55.135 (d) from 30 to 120 days imprisonment.

Because this offense involves assault on a clearly identified peace officer, fire fighter or other justice or emergency personnel, these individuals would serve their enhanced sentence in a correctional facility at a cost of \$107.00 per day. Allowing for good time accounting, each inmate affected would serve an additional 60 days at \$107 per day or \$6,420.00. Data concerning assaults on this group are not kept separate from other assaults, however, contacts with the Dept. of Law and Dept. of Public Safety indicate the number is small; perhaps 10 to 12.

$60 \times 10 \times \$107 = \$64,200.00$ annual cost of increase in minimum sentence.

Prepared by: Jerry Shiner
 Division: Commissioner's Office
 Approved by Commissioner: Margaret M. Pugh
 Agency: Department of Corrections

Phone: 485-4640
 Date: 2/8/95
 Date: 2/8/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 127

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...assaults in the fourth degree committed against BRU: Prosecution
a peace officer, fire fighter, correctional officer..." Component: All
 Sponsor: Representative Kelly
 Requester: Representative Kelly COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.55.135(d) to increase the minimum term of imprisonment from 30 days to 120 days for a person convicted of assault in the fourth degree for assaulting a 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 assault. This is a sentencing provision that will not have a fiscal impact on the Department of Law.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: *Richard I. Pegues*
 Agency: Department of Law
 Attorney General: Bruce M. Botelho

Phone: 465-3672
 Date: 2/13/95
 Date: 2/13/95

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FISCAL NOTE

STATE OF ALASKA

BILL NO: HB 127

1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act increasing the minimum term of imprisonment for assaults against a peace officer..." Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Kelly
 Requestor: (H) State Affairs COMPONENT SERIAL NO. 0799

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ 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 significant fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 289-5691
 Division: Alaska State Troopers Date: 02/02/95
 Approved by Commissioner: *Del Smith* Date: 2/10/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127 (JUD)

Revision Date: 1/24/96 Dept. Affected: Department of Law
 Title: "...penalties for certain offenses committed against a peace officer, fire fighter, corrections employee..." BRU: Criminal Division
 Component: Criminal Division
 Sponsor: Representative Kelly
 Requester: Senate Judiciary COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends various criminal statutes prescribing mandatory terms of imprisonment for crimes committed against emergency personnel (peace officers, fire fighters, correctional officers, and other emergency responders) to change the term "correctional officer" to "correctional employee." The bill has the effect of extending the state's deterrent mandatory sentencing provisions to help deter crimes against non-uniform correctional employees, such as cooks and maintenance workers, who also work in the state's correctional institutions. There will not be a fiscal impact for the Department of Law.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/24/96
 Date: 1/24/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 127 (JUD)

Revision Date: 1/24/96 Dept. Affected: Public Safety
 Title: "An Act increasing the minimum term of imprisonment for assault against a peace officer" BRU: Alaska State Troopers
 Sponsor: Representative Kelly Component: Detachments
 Requestor: (S) Judiciary COMPONENT SERIAL NO. 0799

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

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ _____

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 significant fiscal impact is anticipated.

Prepared By: Sandy Perry-Prevost, Special Assistant to the Commissioner Phone: 465-4322
 Division: Commissioner's Office Date: 01/24/96
 Approved by Commissioner: *Ronald L. Otto* Date: 1/24/96
 Agency: Ronald L. Otto, Dept. of Public Safety

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SENATE COMMITTEE REPORT

DATE: 4/18/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 2/13/96

Judiciary Committee considered CS FOR HOUSE BILL NO. 127(JUD)

Penalties for certain offenses committed against a peace officer³/fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responders.

Q15N15N

and recommends:

- be replaced with S CS CS HB 127 (JUD)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical change
 - new: SCR^o

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Hill</i>		<i>Bill Adams</i>	<input checked="" type="checkbox"/>		
<i>Lynda Green</i>		<i>H. Ellis</i>	<input checked="" type="checkbox"/>		
CHMR: <i>Adrian Taylor</i>					

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>SCS</i>	<i>Dept. of Law</i>	<i>2/9/96</i>	<input checked="" type="checkbox"/>	
<i>SG</i>	<i>Dept. of Corrections</i>	<i>2/8/96</i>		<i>214</i>

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203

Fairbanks, Alaska 99701

(907) 456-8161

Write to Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

November 14 , 1995

The Honorable Judge Robin Taylor
Chairman, Senate Judiciary Committee
P.O. Box 1441
Wrangell, Alaska 99929-1441

Dear Senator Taylor, *Robin*

I have been working on juvenile crime issues with local Police, Troopers, Juvenile Officers, and Judges. I asked Presiding Judge Richard Savell to explain the present sentencing process and learned that HB 127 needs at least one other section dealing with aggravating factors in sentencing, and that there are problems with the existing presumptive sentencing guidelines.

In our discussion of HB 127 last session, I believe you alluded to this problem, but it is frankly more complex than my understanding of the judicial process. I have enclosed Judge Savell's letter on this issues and I hope that we can solve this problem by amending HB 127.

Apparently it is not now possible for a judge to sentence an individual as severely for assaulting a police officer as for assaulting other citizens. As I understand it, the circumstances in which aggravating factors may be applied under AS 12.55.155(a) do not include the assault against a police officer sentencing requirements of AS 12.55.125(d), and (e)(1)-(3). The court is treating this as a drafting error. Unfortunately, it is too serious for a fix by our revisor. I have added a new Section 6 to HB 127 which I believe addresses this issue.

Additionally, the presumptive sentencing for assault against a police officer, et al, in AS 12.55.125(a),(b), and (c) appears to limit the sentencing options. It seems the interplay between the sentencing requirements under presumptive sentencing and "aggravators" creates a situation that reduces the sentencing options of a judge, rather than increasing them.

I believe this is a constructional artifact. I am open to suggestions. Perhaps we should modify AS 12.55.125 (a), (b) and (c), to make an offense against a peace officer a minimum sentence rather than a presumptive sentence?

AS 12.55.155(c)(13) makes conduct knowingly committed against a peace officer an aggravating factor, so I do not exactly know how to improve the aggravating factors. Perhaps, Senator, you can make a suggestion in this matter.

The Honorable Robin Taylor
October 13, 1995
Page 2.

HB 127 now includes several valuable clarification's to the original statutes. I hope you will feel free to provide an amendment setting the appropriate minimum sentencing term, be it 30, 45, 60, or 120 days, as well as other amendments needed.

Sincerely Yours,

Representative Pete Kelly

A handwritten signature in cursive script, appearing to read "Pete Kelly", written in dark ink.

Attachment: Draft CS for HB 127.
Letter from Presiding Judge R. Savell



Superior Court

State of Alaska

FOURTH JUDICIAL DISTRICT

604 BARNETTE STREET

FAIRBANKS, ALASKA

99701

Chambers of
RICHARD D. SAVELL, Judge

September 28, 1995

The Honorable Peter Kelly
Alaska State Legislature
House of Representatives
119 N. Cushman Street, Suite 203
Fairbanks, Alaska 99701

Dear Representative Kelly:

Thank you for sending me your new draft of HB 127 for review. Section 6 appears to correct the legislature's oversight as found in Edwin v. State, 762 P.2d 499 (Alaska App. 1988).

I have encountered what I believe to be a more basic problem with the sentencing scheme for first time felony offenders who are convicted of third degree assault for conduct "knowingly directed at a police officer." While the inclusion of a presumptive sentence of one year was undoubtedly intended to elevate the seriousness with which this offense is treated for sentencing, in some respects it has the opposite effect. Let me give you an example.

Consider what might be a typical third degree assault. The defendant, who has been convicted of DWI and/or disorderly conduct in the past (both misdemeanors) is a first felony offender. His Assault 3^o conviction arises from him firing or otherwise using a gun in a dangerous and threatening manner. The offense and the offender's history suggest the need for alcohol abuse evaluation and treatment and anger management counseling.

If the victim is a civilian neighbor, a judge can sentence the defendant to more than one year, requiring the offender to serve some time and suspend other time (e.g., 18 months with 12

The Honorable Peter Kelly
September 28, 1995
Page 2

months suspended.) The suspended time allows for probation supervision. The offender can then be monitored for a period of years. The judge can also require that the person attend anger management and alcohol treatment as conditions of probation. If the person violates the law or fails to get the treatment, the judge can impose the suspended year of imprisonment. This sentence can thus be used to monitor, require treatment to aid rehabilitation, and give the additional year of jail time if the defendant does not comply with the treatment requirement.

The possibility of a sentence in excess of one year and treatment and suspended time does not exist if the victim is a law enforcement officer. Under the same facts, the offender would have to be given a presumptive sentence of one year. Because no aggravators are found by "clear and convincing evidence" to apply, the sentence cannot be enhanced nor may any portion of the time be suspended. This also means that the court may not order probation. This means the defendant will not be supervised after the year is served. Without probation, the court may not require the defendant to get any treatment after being released from jail.

Under this analysis, there are less "teeth" and less protection in the case with the presumptive sentence than with the other. This has been a source of frustration for me in my sentencing role.

My purpose is to identify a problem, not to endorse any particular solution. Among other possible solutions would be converting "knowing conduct directed at a peace officer" into an aggravating factor in presumptive and non-presumptive cases [see Wylie v. State, 797 P.2d 651 (Alaska App. 1970)] or converting the presumptive sentence into a mandatory minimum sentence.

I hope you find this information helpful. Thank you for seeking my input. I am sorry for the delay in responding. My trial schedule has been particularly taxing of late.

Sincerely,



RICHARD D. SAVELL
Presiding Judge

RDS:bj0

9-LS0501AK ✓
Chenoweth
7/26/95

SENATE CS FOR CS FOR HOUSE BILL NO. 127()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,
3 ambulance attendant, or other emergency responders."

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

5 * Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or
11 otherwise clearly identified peace officer, fire fighter, or correctional employee
12 [OFFICER] who was engaged in the performance of official duties at the time of the
13 murder:

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the
6 offense of which the defendant was convicted contains elements similar to first
7 degree murder under AS 11.41.100 or second degree murder under
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant
10 subjected the murder victim to substantial physical torture.

11 * Sec. 2. AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite
13 term of imprisonment of not more than 20 years, and shall be sentenced to the
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
15 12.55.175:

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

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

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

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

28 * Sec. 3. AS 12.55.125(d) is amended to read:

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

1 12.55.175:

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

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

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

10 * Sec. 4. AS 12.55.125(e) is amended to read:

11 (e) A defendant convicted of a class C felony may be sentenced to a definite
12 term of imprisonment of not more than five years, and shall be sentenced to the
13 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
14 12.55.175:

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

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

17 (3) if the offense is a first felony conviction, and the defendant
18 knowingly directed the conduct constituting the offense at a uniformed or otherwise
19 clearly identified peace officer, fire fighter, correctional employee [OFFICER],
20 emergency medical technician, paramedic, ambulance attendant, or other emergency
21 responder who was engaged in the performance of official duties at the time of the
22 offense, one year;

23 (4) if the offense is a first felony conviction, and the defendant violated
24 AS 08.54.520(a)(7) - (10), one year.

25 * Sec. 5. AS 12.55.135(d) is amended to read:

26 (d) A defendant convicted of assault in the fourth degree upon a uniformed or
27 otherwise clearly identified peace officer, fire fighter, correctional employee
28 [OFFICER], emergency medical technician, paramedic, ambulance attendant, or other
29 emergency responder who was engaged in the performance of official duties at the
30 time of the assault shall be sentenced to a minimum term of imprisonment of 120 [30]
31 days.

1 * Sec. 6. AS 12.55.155(a) is amended to read:

2 (a) If a defendant is convicted of an offense and is subject to sentencing under
3 AS 12.55.125(c), (d), (e)(1) - (3) [(d)(1), (d)(2), (e)(1), (e)(2)], or (i) and

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

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

12 * Sec. 7. AS 12.55.185 is amended by adding a new paragraph to read:

13 (14) "peace officer" has the meaning given in AS 11.81.900.

14 * Sec. 8. This Act applies to all offenses committed on or after the effective date of this

15 Act.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Revision Date: _____
Title: Capital Punishment for Murder

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____

Sponsor: Sens. Taylor, Pearco
Requestor: _____

COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		375.9	375.9	375.9	375.9	375.9
TRAVEL		142.2	142.2	142.2	142.2	142.2
CONTRACTUAL		511.8	511.8	511.8	511.8	511.8
SUPPLIES		7.0	7.0	7.0	7.0	7.0
EQUIPMENT		31.7				
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	1,068.6	1,036.9	1,036.9	1,036.9	1,036.9

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,068.6	1,036.9	1,036.9	1,036.9	1,036.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL		1,068.6	1,036.9	1,036.9	1,036.9	1,036.9

Estimate of any current year (FY 96) cost \$ None

Positions

Full-Time		40	40	40	40	40
Part-Time		30	30	30	30	30
Temporary		10	10	10	10	10

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Phone: 264-8228
Date: 02/06/96

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

Date: 02/06/96

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Alaska Court System

Fiscal Analysis

SSSB 52

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	\$48,300	\$29,779	\$78,079
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	48,300	29,779	78,079
Pro Tem Judge, Fairbanks Trial Courts, 50% vested, PPT, 6 months	24,501	14,933	39,434
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Fairbanks Trial Courts, range 13D, PFT, 12 months	36,672	14,835	51,507
Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months	36,672	14,835	51,507
Bailiff, Statewide, range 6A, NPP, 24 months	38,184	3,647	41,831
			431,183

Offset cost of existing caseload -

Currently, first degree murder cases experience a 50% trial rate and last approximately one month. Using this experience, the court could expect five trials and to incur approximately 5 months of trial. The proposed legislation will result in approximately 39 months of trial activity (see jury fees in the contractual section below). Therefore, the cost offset is computed at 5/39 of the expected personnel costs.

	(55,300)
Net personal services	375,883

Based on the fiscal note submitted by the Department of Law, the court system anticipates needing additional judicial staff to carry the workload of active judges assigned to capital offense cases. The court will use 50% vested pro tem judges, which are among the least-costly judicial positions available. Additional law clerks are required for extensive legal research of motions and other legal questions. Funding is requested for two non-permanent bailiffs, which will serve in the designated trial site.

Travel

Jury sequestration costs - transportation, meals and lodging	126,000
10 innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day	

Offset cost of existing caseload -

See offset note in personal services.

	(16,200)
Net travel	142,200

Death penalty cases are often subject to intense media exposure, which may initiate changes in venue. High jury sequestration costs are anticipated due to lengthy deliberations.

Contractual

Jury fees - 10 innocence/guilt trial @ 66 days each (3 month), 18 jurors @ \$25 a day	386,100
and 9 sentencing trials @ 22 day each (1 month), 18 jurors @ \$25 a day	
Contractual security guard to staff metal detectors	10,000
Transcription fees - 19 transcripts, 5,000 pages each at \$2.00 a page	190,000
Freight for high security equipment kit	1,000
Total contractual services	587,100

Offset cost of existing caseload -

See offset note in personal services.

	(75,300)
Net contractual services	511,800

See additional note on contractual costs on the next page.

Alaska Court System
Fiscal Analysis (continued)
SSSB 52

The Department of Law expects to prosecute 10 capital offences each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.

Supplies

Office and courtroom supplies for new positions and trials. 7,000

Equipment (one-time cost)

Standard office equipment and reference materials for law clerks 6,720

Portable high security equipment kit, consisting of a walk-through metal detector, temporary building card key system and video monitoring system. Will be shipped to trial site. 25,000

31,720

Total estimated costs \$1,068,603



ALASKA STATE EMPLOYEES ASSOCIATION

AFSCME Local 52, AFL-CIO

February 27, 1995

The Honorable Representative Pete Kelly
State Capital Building
Juneau, Alaska 99801

Dear Representative Kelly,


As the prime sponsor of House Bill 127, I am writing to request your consideration of an Amendment to this legislation that would include Adult Probation Officers, Juvenile Probation Officers, Fish and Wildlife Protection Officers and Nurses who work in Correctional Institutions.

It is my opinion that these state employees are at risk of assault from persons that they serve in their professional capacities. As the President of Alaska State Employees Association, I want to ensure that members of ASEA who are at risk as a result of their employment, are protected under this statute. That protection will come in the form of deterrence of criminal behavior directed against them and prosecution when an assault does occur.

The amendment I am requesting could be added during hearings on this legislation before either the House Judiciary Committee or the House Finance Committee. Additionally, I would welcome the opportunity to discuss with you the specific language contained in this proposed amendment.

Thank you for your consideration of this legislative amendment request to House Bill 127. I can be reached at the number above at your earliest convenience.

Sincerely,


Kelly E. Brown, President
Alaska State Employees Association
American Federation of State, County
and Municipal Employees, Local 52

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Fairbanks, AK 99701
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TOLL free 800 478-ASEA

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 30, 1995

SUBJECT: Sectional Summary of HB 127. (Work Order No. 9-LS0501\A)

TO: Representative Pete Kelly

FROM: Gerald P. Luckhaupt *JPL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill increase the mandatory minimum jail term for assault in the fourth degree committed against a "peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder" from 30 days to 120 days

Section 2 of the bill provides an applicability section.

GPL glc
95-098 glc

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

NORTHERN REGIONAL OFFICE

315 Barnette Street #207

Fairbanks, Alaska 99701



Fax Number: 452-3539

Telephone Number: 451-7762

Fax Number: _____ # of Pages: 0 + C

TO: Rep. Peter Kelly DATE: 2/28/95

LOCATION: Juneau / State House

FROM: Steve Widmer, Chief P.O., No. Region

COMMENTS:

Peter: Thank you for the response. We appreciate the support -- I'm sending your HB 127 info. out to the "field", to my district offices in the region. Take care, and visit when in town?

Steve Widmer

The information contained in this fax is confidential and/or privileged. This fax is intended to be reviewed by only the individual named above. If the reader of the TRANSMITTAL PAGE is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of the fax or the information contained herein is prohibited. If you received this fax in error, please immediately notify the sender by telephone and return this fax to the sender at the above address. Thank you.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address
119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161



Write in JUNEAU
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

February 14, 1995

House State Affairs Committee
The Honorable
Jeannette James, Chairman

HB 127

Fiscal Note Summary:

<u>Department</u>	<u>Dollars</u>
Corrections	64.2
Law	0
Public Safety	0
Total	64.2

9-LS0501R
Luckhaupt
1/19/96

SENATE CS FOR CS FOR HOUSE BILL NO. 127()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,
3 ambulance attendant, or other emergency responders."

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

5 * Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or
11 otherwise clearly identified peace officer, fire fighter, or correctional employee
12 [OFFICER] who was engaged in the performance of official duties at the time of the
13 murder;

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the
6 offense of which the defendant was convicted contains elements similar to first
7 degree murder under AS 11.41.100 or second degree murder under
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant
10 subjected the murder victim to substantial physical torture.

11 * Sec. 2: AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite
13 term of imprisonment of not more than 20 years, and shall be sentenced to the
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
15 12.55.175:

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

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

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

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

28 * Sec. 3: AS 12.55.125(d) is amended to read:

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

1 12.55.175:

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

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

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

10 * Sec. 4. AS 12.55.125(e) is amended to read:

11 (e) A defendant convicted of a class C felony may be sentenced to a definite
12 term of imprisonment of not more than five years, and shall be sentenced to the
13 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
14 12.55.175:

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

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

17 (3) if the offense is a first felony conviction, and the defendant
18 knowingly directed the conduct constituting the offense at a uniformed or otherwise
19 clearly identified peace officer, fire fighter, correctional employee [OFFICER],
20 emergency medical technician, paramedic, ambulance attendant, or other emergency
21 responder who was engaged in the performance of official duties at the time of the
22 offense, one year;

23 (4) if the offense is a first felony conviction, and the defendant violated
24 AS 08.54.520(a)(7) - (10), one year.

25 * Sec. 5. AS 12.55.135(d) is amended to read:

26 (d) A defendant convicted of assault in the fourth degree upon a uniformed or
27 otherwise clearly identified peace officer, fire fighter, correctional employee
28 [OFFICER], emergency medical technician, paramedic, ambulance attendant, or other
29 emergency responder who was engaged in the performance of official duties at the
30 time of the assault shall be sentenced to a minimum term of imprisonment of

31 (1) 120 [30] days if the defendant violated AS 11.41.230(a)(1) or (2);

1
2
3
4
5

(2) 30 days if the defendant violated AS 11.41.230(a)(3).

* Sec. 6. AS 12.55.185 is amended by adding a new paragraph to read:

(14) "peace officer" has the meaning given in AS 11.81.900.

* Sec. 7. This Act applies to all offenses committed on or after the effective date of this Act.

9-LS0501NM ✓
Luckhaupt
1/22/96

SENATE CS FOR CS FOR HOUSE BILL NO. 127()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsors: REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,
3 ambulance attendant, or other emergency responders."

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

5 = Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or
11 otherwise clearly identified peace officer, fire fighter, or correctional employee
12 [OFFICER] who was engaged in the performance of official duties at the time of the
13 murder;

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the
6 offense of which the defendant was convicted contains elements similar to first
7 degree murder under AS 11.41.100 or second degree murder under
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant
10 subjected the murder victim to substantial physical torture.

11 * Sec. 2. AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite
13 term of imprisonment of not more than 20 years, and shall be sentenced to the
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
15 12.55.175:

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

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

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

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

28 * Sec. 3. AS 12.55.135(d) is amended to read:

29 (d) A defendant convicted of assault in the fourth degree upon a uniformed or
30 otherwise clearly identified peace officer, fire fighter, correctional employee
31 [OFFICER], emergency medical technician, paramedic, ambulance attendant, or other

1 emergency responder who was engaged in the performance of official duties at the
2 time of the assault shall be sentenced to a minimum term of imprisonment of 120 [30]
3 days.

4 * Sec. 4. AS 12.55.155(e) is amended to read:

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

10 * Sec. 5. AS 12.55.185 is amended by adding a new paragraph to read:

11 (14) "peace officer" has the meaning given in AS 11.81.900.

12 * Sec. 6. AS 12.55.125(d)(3) and 12.55.125(e)(3) are repealed.

13 * Sec. 7. This Act applies to all offenses committed on or after the effective date of this
14 Act.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

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Fairbanks, Alaska 99701
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White in Juneau
State Capitol
Juneau, Alaska
99801-1182
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House District 31

House Of Representatives

Sectional

HB 127\U

Section 1. Adds correctional employee. Correctional employees include nurses and others employed at our correctional institutions and exposed to some of our hardest offenders. This provision is for the murder of one of a police officer, et al.

Section 2. Same change, for class A felonies committed against a police officer, et al.

Section 3. The original bill, modified. Raises the minimum penalty for physical assault against a police officer from 30 days to 120 days. Modified to leave the verbal assault sentencing at 30 days.

Section 4. Technical change in numbering.


Section 5. Adds a "peace officer" definition to Title 12, the same definition as used in Title 11. This is a broad definition including parole officers, juvenile parole officers, VPSO's, all officers with arrest authority.

Section 6. Gets rid of a presumptive sentencing flaw. As drafted the current presumptive sentencing provision for class C and B felony assault against a peace officer could result in a lower sentence than for another first time offense. This change allows the sentence to be increased with the aggravating factor in AS 12.55.155(c) (13) if the offense was directed against a peace officer.

The aggravating factor expands the coverage further to include judicial officers. Yes, it gives the judge the option of increasing sentencing, not the mandate to increase sentencing, but the current presumptive sentencing structure precluded this option.

DEPARTMENT OF CORRECTIONS

MEMORANDUM

to: Representative Pete Kelly
from: Jerry Shriner 
re: HB 127
date: January 31, 1996

The Department of Corrections supports the efforts to enhance the safety and security the departments employees as well as the other groups covered by this bill.

While there is a cost as indicated on our fiscal note, it seems minimal in pursuit of this the goals of this bill.

cc:

from the desk of...

Jerry Shriner
Special Assistant
Department of Corrections
240 Main, Suite 100
Juneau, AK 99801

(907) 465-4640
Fax: (907) 465-3100

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127(JUD)

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act increasing the minimum term...assault on BRU: Statewide Operations
...peace officers... Component: All Institutions
 Sponsor: Rep. Kelly
 Requester: Senate Judiciary COMPONENT SERIAL NO. 1381

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	64.2	64.2	64.2	64.2	64.2	64.2
TOTAL OPERATING	64.2	64.2	64.2	64.2	64.2	64.2

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF	64.2	64.2	64.2	64.2	64.2	64.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	64.2	64.2	64.2	64.2	64.2	64.2

Estimate of any current year (FY96) cost: \$ 00

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the mandatory minimum sentence for assault defined in AS 12.55.135 (d) from 30 to 120 days imprisonment. The bill also expands the coverage to correctional employees.

Because this offense involves assault on a clearly identified peace officer, fire fighter, correctional employee or other justice or emergency personnel, these individuals would serve their sentence in a correctional facility rather than a CRC ; at a cost of \$107.00 per day. Allowing for good time, each inmate affected would serve an additional 60 days at \$107 per day or \$6,420.00. Data concerning assault on this group are not kept separate from other assaults, however, contacts with the Dept. of Law and Dept. of Public Safety indicate the number of convictions will be 10 to 12 per year.

$60 \times 10 \times \$107 = \$64,200.00$ annual cost of increase in minimum sentence.

Prepared by: Jerry Shiner Phone: 465-4640
 Division: Commissioner's Office Date: 1/29/96
 Approved by Commissioner: Margaret H. Hugh Date: 1/29/96
 Agency: Department of Corrections

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FISCAL NOTE

Work Draft
1/24/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCSHB 127 (JUD)

Revision Date: 1/28/96 Dept. Affected: Department of Law
 Title: ...penalties for certain offenses committed against BRU: Criminal Division
a peace officer, fire fighter, corrections employee... Component: Criminal Division
 Sponsor: Representative Kelly
 Requester: Senate Judiciary COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends various criminal statutes prescribing mandatory terms of imprisonment for crimes committed against emergency personnel (peace officers, fire fighters, correctional officers, and other emergency responders) to change the term "correctional officer" to "correctional employee." The bill has the effect of extending these mandatory sentencing provisions to crimes against non-uniform correctional employees, such as nurses, cooks and maintenance workers, who also work in the state's correctional institutions. The bill also raises the minimum penalty for physical assault against a peace officer or emergency responder from 30 days to 120 days of incarceration. Finally, the bill changes a presumptive sentencing law for class C and B felonies against a peace officer. This change clarifies that a sentence may be increased with the aggravating factor in AS 12.55.155(c)(13) if the offense is directed against a judicial officer or peace officer or other emergency responder. These changes will not cause a fiscal impact for the Department of Law.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/28/96
 Date: 1/28/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127 (Jud)

Revision Date: January 29, 1996
 Title: "An Act increasing the minimum term of imprisonment
 for assaults in the fourth degree..."
 Sponsor: Rep. Kelly
 Requestor: (S)Jud

Dept. Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO: 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00

CAPITAL EXPENDITURES	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
-------------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY 96) cost: \$ 0.

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to the Public Defender Agency.

Prepared by John Salem, Director
 Division Public Defender Agency

Phone 264-4400
 Date _____

Approved by Commissioner Mark Borer
 Agency Department of Administration

Date _____

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Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address

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(907) 456-8161



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Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

Sponsor Statement

House Bill 127

"An Act increasing the minimum term of imprisonment for assaults in the fourth degree committed against a peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responders."

It is the intent of this bill to enhance a serious tool for police officers and others on the front line. It will increase the severity of punishment for acts committed against a police officer while in the performance of official duties.

This bill sends a clear message to individuals that once the police arrive the fight must stop. Alaska is not sending in our "tag team blue" for the next round. Expanding the fracas to include a police officer will result in jail time.

Although initially intended as a tool for police, it has even more meaning when applied to individuals with even less training or expectation of dealing with persons physically. Volunteers responding to a medical emergency, or fire are neither equipped nor trained to handle assault or violence directed against their persons.

Correctional employees are now included in this bill, within the confines of their official duties. The inclusion of correctional employees provides an opportunity for the "message" this bill sends to spread among those offenders currently in prison, before they return to the streets.



Superior Court

State of Alaska

FOURTH JUDICIAL DISTRICT

604 BARNETTE STREET

FAIRBANKS, ALASKA

99701

Chambers of
RICHARD D. SAVELL, Judge

September 28, 1995

The Honorable Peter Kelly
Alaska State Legislature
House of Representatives
119 N. Cushman Street, Suite 203
Fairbanks, Alaska 99701

Dear Representative Kelly:

Thank you for sending me your new draft of HB 127 for review. Section 6 appears to correct the legislature's oversight as found in Edwin v. State, 762 P.2d 499 (Alaska App. 1988).

I have encountered what I believe to be a more basic problem with the sentencing scheme for first time felony offenders who are convicted of third degree assault for conduct "knowingly directed at a police officer." While the inclusion of a presumptive sentence of one year was undoubtedly intended to elevate the seriousness with which this offense is treated for sentencing, in some respects it has the opposite effect. Let me give you an example.

Consider what might be a typical third degree assault. The defendant, who has been convicted of DWI and/or disorderly conduct in the past (both misdemeanors) is a first felony offender. His Assault 3^o conviction arises from him firing or otherwise using a gun in a dangerous and threatening manner. The offense and the offender's history suggest the need for alcohol abuse evaluation and treatment and anger management counseling.

If the victim is a civilian neighbor, a judge can sentence the defendant to more than one year, requiring the offender to serve some time and suspend other time (e.g., 18 months with 12

The Honorable Peter Kelly
September 28, 1995
Page 2

months suspended.) The suspended time allows for probation supervision. The offender can then be monitored for a period of years. The judge can also require that the person attend anger management and alcohol treatment as conditions of probation. If the person violates the law or fails to get the treatment, the judge can impose the suspended year of imprisonment. This sentence can thus be used to monitor, require treatment to aid rehabilitation, and give the additional year of jail time if the defendant does not comply with the treatment requirement.

The possibility of a sentence in excess of one year and treatment and suspended time does not exist if the victim is a law enforcement officer. Under the same facts, the offender would have to be given a presumptive sentence of one year. Because no aggravators are found by "clear and convincing evidence" to apply, the sentence cannot be enhanced nor may any portion of the time be suspended. This also means that the court may not order probation. This means the defendant will not be supervised after the year is served. Without probation, the court may not require the defendant to get any treatment after being released from jail.

Under this analysis, there are less "teeth" and less protection in the case with the presumptive sentence than with the other. This has been a source of frustration for me in my sentencing role.

My purpose is to identify a problem, not to endorse any particular solution. Among other possible solutions would be converting "knowing conduct directed at a peace officer" into an aggravating factor in presumptive and non-presumptive cases [see Wylie v. State, 797 P.2d 651 (Alaska App. 1970)] or converting the presumptive sentence into a mandatory minimum sentence.

I hope you find this information helpful. Thank you for seeking my input. I am sorry for the delay in responding. My trial schedule has been particularly taxing of late.

Sincerely,



RICHARD D. SAVELL
Presiding Judge

RDS:bj0