

HB

288

SENATE COMMITTEE REPORT

DATE: 3/2/00

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 288(JUD)

"An Act relating to the creation of an aggravating factor for the commission of domestic violence in the physical presence or hearing of a child."

and recommends:

- be replaced with S CS CSHB 288 (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 title
 - new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>			
<i>[Signature]</i>	✓				
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

COURT	3/25/00	✓	
CORRECTIONS	3/25/00	✓	
LAW	3/4/00	✓	
PUBLIC SAFETY	3/4/00	✓	
ADMINISTRATION	3/4/00	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No: 6

STATE OF ALASKA
2000 Legislative Session

Bill Version: CSHB 288 (JUD)
(H) Publish Date: 2/25/00

Revision Date		Dept. Affected	<u>Alaska Court System</u>
Title	<u>Aggravating Factor for Domestic Violence</u>	BRU	<u>Alaska Court System</u>
	<u>Committed In the Presence of a Child</u>	Component	<u>Trial Courts</u>
Sponsor	<u>Representative Kott</u>		
Requester	<u>House Judiciary</u>	Component Serial No.	<u>769</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
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	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

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

House Bill 288 adds an aggravating factor to a felony domestic violence crime if the crime was committed in the physical presence or hearing of a child. Although this bill may result in more lengthy sentencing hearings in some cases, the number of cases is too speculative to support a fiscal note.

Prepared by:	<u>Doug Wooliver, Administrative Attorney</u>	Phone:	<u>284-8265</u>
Agency:	<u>Alaska Court System</u>	Date/Time:	<u>2/16/00 11:40 AM</u>
Approved by:	<u>Stephanie J. Cole, Administrative Director</u>	Date:	<u>2/16/00</u>
Agency:	<u>Alaska Court System</u>		

FISCAL NOTE

Bill Version: CSHB 288 (JUD)
 (H) Publish Date: 2/25/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) Feb. 19, 2000 Dept. Affected Department of Corrections
 Title An act relating to the creation of an aggravating BRU Administration and Operations
factor for the commission of domestic violence Component All
 Sponsor Representative Kott
 Requester House Finance Committee Component No. #C694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous		24.0	24.0	24.0	24.0	24.0
TOTAL OPERATING	0.0	24.0	24.0	24.0	24.0	24.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		24.0	24.0	24.0	24.0	24.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	24.0	24.0	24.0	24.0	24.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Candace Brnwer Phone 465-3307
 Division Commissioner's Office Date/Time 2/21/00 11:01 AM
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2-21-00
 Agency Dept. of Corrections

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. CS HB 288 (HFIN)
PAGE 2 of 2
DATE 2/21/00

Assumptions:

1. The Department of Corrections' data show that in 1999 approximately 2365 prisoners were admitted to correctional facilities on domestic violence charges. Of those admissions, 268 were charged with felony assault and 2097 with misdemeanor assault. The Department of Law reports that they anticipate 75 convictions for felony domestic violence assault in calendar year 1999. This number is based on convictions over the past 3 years.
2. Assuming 65% of those incidents occurred in the physical presence of children, this bill would affect 49 cases.
3. Assuming that perhaps one-half of those 49 would be presumptive cases affected by aggravating factors, that impacts 25 defendants.
4. Assuming 20% of those would result in increased sentences of approximately three months, (60 days to serve) the final number actually being impacted would be approximately 5. Since these cases are felony domestic violence, some may be ineligible to furlough into the community because of their risk factor, so the cost of incarceration for those inmates would be at the institutional rate which is currently \$110.73 per day. Three out of the five will possibly be furloughed to a CRC at a cost of \$59.61 per day. The cost of care for the two inmates, serving 60 days each at a cost of \$110.73/day is \$13,288. The cost of care for the three inmates serving 60 days each at a cost of \$59.61/day is \$10,730. The total fiscal impact to the Department of Corrections will be approximately \$24,000 per year beginning in FY 02, since the aggravator would not be served until after FY01.

FISCAL NOTE

Bill Version: HB 288

(H) Publish Date: 2/4/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title *... to the creation of an aggravating factor for ... BRU Criminal Division
... domestic violence in the physical presence of a child.* Component 1st-4th Judicial Districts; Criminal
 Sponsor Representative Kott Appeals/Special Litigation
 Requester House HESS Commrtee Component No. 2198-99;2201;03;61;79

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 288 creates an aggravating factor for the commission of domestic violence in the physical presence of a child.

This new aggravator would apply to felony domestic violence cases. Felony domestic violence cases are already taken very seriously by the Department of Law's prosecutors, and many have other aggravating factors. While a new aggravating factor will require putting forward additional evidence to prove it, the department anticipates any fiscal impact from passage of this bill to be minimal.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date/Time 1/31/00, 10:32 AM
 Approved by Commissioner *Bruce M. Botelho* Bruce M. Botelho, Attorney General Date 1/31/00
 Agency Department of Law

COMMITTEE COPY PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

LAW

FISCAL NOTE

Bill version: HB 288

(H) Publish Date: 2/4/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date 1/27/00 Dept. Affected Public Safety
 Title Children Witnessing Domestic Violence BRU CDVSA
 Component: CDVSA
 Sponsor Representative Kott
 Requester H. HES Component No. 521

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	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 (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not impact our budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
 Approved by: [Signature] Date 1-31-00
 Agency Commissioner Ronald L. Otte, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

COMMITTEE COPY

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

Bill Version: HB 288
(H) Publish Date: 2/4/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to the creation of an aggravating factor for the commission of domestic violence in presence of child"
Sponsor: Representative Kott
Requestor: (H) HESS

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL EXPENDITURES	**	**	**	**	**	**
----------------------	----	----	----	----	----	----

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

FUND SOURCE:

(Thousands of Dollars)

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

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe, Jr.
Agency: Department of Administration

Date: 1/31/00

COMMITTEE COPY
Rev 10/97

DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

NOA

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 288

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill would add another aggravating factor to the list of aggravating factors used in sentencing in felony cases. The aggravating factor would provide for increased sentences if the crime involved domestic violence and was committed in the presence of a child under 16. The child would have to be a member of the household at the time of the offense.

The Public Defender Agency will need to do more work in many of its felony sentencing cases if this aggravating factor is established. The prosecution will have to prove the aggravating factor by clear and convincing evidence. Where the facts are at issue, Public Defender attorneys will have to prepare for and conduct evidentiary hearings. If the aggravating factor is established, the court will need to hear argument concerning the weight to be given to the factor in the case before the court.

However, the amount of additional work is difficult to quantify. Although more work will need to be done, we do not anticipate more criminal cases being brought or sentencings conducted as a result of this bill. In addition, it is not possible to say how many felony sentencings this aggravating factor would affect. Because of these uncertainties, we are submitting an indeterminate fiscal note.

CS FOR HOUSE BILL NO. 23(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/11/00

Referred: Finance

Sponsor(s): REPRESENTATIVES KOTT, Dyson, Green, Coghill, Murkowski, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the creation of an aggravating factor for the commission of
2 domestic violence in the physical presence or hearing of a child."

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

4 * Section 1. AS 12.55.155(c)(18) is amended to read:

5 (18) the offense was a felony

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

9 (B) specified in AS 11.41.410 - 11.41.458 and the defendant has
10 engaged in the same or other conduct prohibited by a provision of
11 AS 11.41.410 - 11.41.460 involving the same or another victim; or

12 (C) specified in AS 11.41 that is a crime involving domestic
13 violence and was committed in the physical presence or hearing of a child

14 under 16 years of age who was, at the time of the offense, (a household
within the household.

1 member of the victim; in this paragraph, "household member" has the
2 meaning given in AS 18.66.990;)

Alaska State Legislature

House of Representatives

COMMITTEES
JUDICIARY COMMITTEE, CHAIR
RULES
MILITARY & VETERANS AFFAIRS
UTILITY RESTRUCTURING
ETHICS



INTERIM:
10928 EAGLE RIVER RD., SUITE 141
EAGLE RIVER, AK 99577

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Sponsor Statement

HB 288

"An Act relating to the creation of an aggravating factor for the commission of domestic violence in the physical presence or hearing of a child"

This bill lets the courts be tougher on those having been convicted of domestic violence if they committed that crime with their children present. If passed, the criminal justice system would have a new tool to further Alaska's fight against domestic violence and child abuse.

HB 288 creates an aggravated factor when domestic violence is committed in the presence of children who are also household members of the perpetrator. Under current law, a person convicted on domestic violence charges is subject to Alaska's presumptive sentencing rules found in AS 12.55.125. Although the count is given guidelines, under AS 12.55.155, it may also consider factors that can mitigate or aggravate the severity of the crime and resulting sentence. Considering the totality of the factors, the court may adjust the sentence up to the maximum or down to the minimum term of imprisonment prescribed by presumptive sentencing laws.

What is an aggravating factor? It is an act or circumstances characterized by some unique feature that enhance the severity of crime. For example that may be what the intentions of the criminal were or it may be the special vulnerability of the victim. This bill would expand the list of aggravating circumstances to include the special vulnerability of children.

Domestic violence is a scourge all over our state and Alaskans are fighting back to protect the lives of the victims and the children involved. HB 288 takes us a step further by recognizing that even if a child is not on the receiving end of the violence, they are profoundly damaged when they become witnesses to parents and caregivers engaging in this abhorrent behavior.



Representative Pete Kott

JUNEAU OFFICE (907) 465-3777 TOLL FREE 1-800-861-KOTT(5688) FAX (907) 465-2819
EAGLE RIVER OFFICE (907) 694-8944 FAX (907) 694-8945 E-MAIL: representative_pete_kott@legis.state.ak.us



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), (e)(4), 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 felony

(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 - 11.41.455 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim;

(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 that would be considered a prior felony conviction under AS 12.55.145 (a)(1)(B);

(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;

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

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

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

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang.

(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 - 11.41.220, 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, sec. 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;

(17) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior.

(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), 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).

Sec. 12.55.165. Extraordinary circumstances.

(a) If the defendant is subject to sentencing under AS 12.55.125 (c), (d)(1),

(d)(2), (e)(1), (e)(2), (e)(4), or (i) and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175 .