

SB

25

FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. SB 25

Revision Date/Time (Note if correction)		Dept. Affected	Law
Title	"An Act relating to sentences for misdemeanors."	BRU	Criminal Division
Sponsor	Senator Leman	Component	1st-4th Judicial Districts; Criminal Appeals/Special Lit
Requester	Senate Judiciary Committee	Component Serial No.	2198/99/2261/79/01/03

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	224.6	224.6	224.6	224.6	224.6	224.6
Travel	0.8	0.8	0.8	0.8	0.8	0.8
Contractual	39.0	39.0	39.0	39.0	39.0	39.0
Supplies	3.4	3.4	3.4	3.4	3.4	3.4
Equipment	19.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	287.3	267.8	267.8	267.8	267.8	267.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	287.3	267.8	267.8	267.8	267.8	267.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	287.3	267.8	267.8	267.8	267.8	267.8

Estimate of any current year (FY99) cost:

POSITIONS

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 25 would require that a third conviction for a violent misdemeanor within 10 years be sentenced as a class C felony. The misdemeanor would have to be prosecuted as if it were a felony in order for the enhanced sentence to apply. Felony prosecutions are much more difficult and costly than misdemeanor prosecutions. For example, felony charges require a grand jury indictment, which misdemeanors do not, and a 12 person jury rather than a six person jury.

Approximately 3,500 violent misdemeanor offenses are currently prosecuted in a calendar year. 1,200 of those prosecutions occur in rural areas, and 2,300 in urban areas. The department estimates that 10 percent of the rural cases would be a third violent misdemeanor offense, and 5 percent of the urban cases, for a total of 235 new felony prosecutions statewide.

Prepared by	Joan M. Kasson <i>Joan M. Kasson</i>	Phone	465-5370
Division	Attorney General's Office	Date/Time	3/8/99, 8:18 AM
Approved by Commissioner	<i>Kathryn...</i> <i>Brake M. Botelho</i> , Attorney General	Date	3/8/99
Agency	Department of Law		

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ANALYSIS CONTINUATION

In order to handle this new felony caseload, the department would need to add one new attorney position in Anchorage, and one in Bethel. (Bethel currently has more assault misdemeanor convictions than any other place in Alaska.)

Based on the Civil Division's FY00 standard full-time equivalent attorney cost schedule (\$133,926), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of 2 FTE attorneys is \$267,852. In addition, \$6,500 per position for one-time equipment purchases is added, as these costs are outside the rate.

While clerical support funding is included in the cost schedule, position authorization and one-time equipment costs are separate. The total PFT estimate thus includes one permanent full-time Legal Secretary I position, and the equipment line includes \$6,500 for the position's required new equipment.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 25

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to sentences for misdemeanors. BRU Administration and Operations
 Component All
 Sponsor Senator Leman
 Requester Senate Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	180.0	180.0	180.0	180.0	180.0	180.0
Travel						
Contractual	3.7	3.7	3.7	3.7	3.7	3.7
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	6.0					
Land & Structures						
Grants & Claims						
Miscellaneous	1,376.0	1,376.0	1,376.0	1,376.0	1,376.0	1,376.0
TOTAL OPERATING	1,567.2	1,561.2	1,561.2	1,561.2	1,561.2	1,561.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,567.2	1,561.2	1,561.2	1,561.2	1,561.2	1,561.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1,567.2	1,561.2	1,561.2	1,561.2	1,561.2	1,561.2

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date/Time 3/8/99 11:05 AM
 Approved by Con. Margaret M. Pugh *Margaret M. Pugh* Date 3/8/99
 Agency Department of Corrections

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. SB 25
PAGE 2 of 2
DATE 3/8/99

If passed Senate Bill 25 will amend the sentencing requirements for people who within the previous ten years are convicted of three or more violent misdemeanors as defined in section 2. If convicted the Court will be required to sentence the person as a class C felon.

The Dept. of Law is estimating 235 new felony cases per year. This will result in a substantial impact for the Dept. of Corrections. Being sentenced as a felon will not only result in longer sentences, it will also require probation supervision of misdemeanants, a service the DOC does not currently provide. In addition, DOC will be required to provide a pre-sentence investigation report (PSI) to the court for sentencing.

235 inmates X 60 days of incarceration X \$97.62 = \$1,376,442

3 New probation officers a year to handle the new caseload = \$180,000

3 Computers @ 2000 = \$6,000 (one time cost)

Office Supplies = \$500 each per year = \$1500 annually

Contractual Services (communication, postage, etc..) = \$1250 each per year = \$3,750 annually

Total cost per year = \$1,561,692

The Dept. of Corrections believes this to be conservative number of cases per year. The Anchorage Municipal Prosecutor has stated that he believes there will be 1000 new felony cases from Anchorage alone. DOC has not included this estimate in the fiscal note but may revise it upwards after further analysis.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 25

Revision Date: _____
Title: "An Act relating to sentences for misdemeanors..."

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

Sponsor: Senator Leman
Requestor: (S) JUD

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2 002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	572.3	572.3	572.3	572.3	572.3	572.3
TRAVEL	23.8	23.8	23.8	23.8	23.8	23.8
CONTRACTUAL	116.1	116.1	116.1	116.1	116.1	116.1
SUPPLIES	14.4	14.4	14.4	14.4	14.4	14.4
EQUIPMENT	58.5	5.8	5.8	5.8	5.8	5.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	785.1	732.4	732.4	732.4	732.4	732.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	785.1	732.4	732.4	732.4	732.4	732.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	785.1	732.4	732.4	732.4	732.4	732.4

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME	8	8	8	8	8	8
PART-TIME	1	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency
Approved by Commissioner: Robert Poe *Alison M. Ely*
Agency: Department of Administration

Phone: (907) 264-4414
Date: _____
Date: 3/8/99

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This bill would require a criminal defendant to be "sentenced as if convicted of a class C felony" if he or she has two prior "violent misdemeanors" within the last ten years.

There is no question that this bill would have a significant fiscal impact on the Public Defender Agency. However, it is difficult to accurately assess the exact impact because of the following factors.

First, although the Agency knows it had over 8,500 state misdemeanor cases in FY98, we are unable to tell how many of these clients had two qualifying misdemeanors in the past 10 years. We have to count on a significant portion of these 8,500 cases turning into more difficult and complex felony prosecutions, but the exact percentage is difficult to determine.

Second, there are many municipal misdemeanor prosecutions that would turn into state prosecutions if this bill is passed. The Anchorage municipal prosecutor's office estimates that there are probably 1,000 municipal prosecutions in Anchorage that would become felonies. Felony prosecutions would have to be handled by the Department of Law. The defendants, if they qualified, would be entitled to representation at state expense.

Third, the bill states that a defendant is sentenced "as if convicted" of a felony. However, the state would have to treat a prosecution under this bill as a felony from the beginning. If the defendant is deemed "convicted" of a felony and has a prior felony conviction, there will be a two-year presumptive sentence. If there are two prior felonies, the presumptive is four years. With an actual felony conviction and presumptive sentences at stake, the bill would have a greater impact.

The Public Defender Agency estimates that at least 20% of our 8,500 misdemeanors would qualify as "violent misdemeanors" under the bill. We further estimate that 20% of those defendants would have at least two prior violent misdemeanors within the past 10 years. Therefore, we estimate that in 340 cases we would be representing the defendants in felony rather than misdemeanor cases. Based on nationally recognized caseload standards, we would need an additional 1.5 attorneys to represent these clients. (This estimate takes into account the attorney that would have been able to handle this caseload as misdemeanors.) These attorneys would be placed outside of Anchorage. One attorney would be needed in Bethel. A half-time attorney would be hired in Palmer.

However, this only estimates the effect of current state prosecutions. In addition to these cases, the Public Defender Agency estimates that 1,000 cases currently prosecuted as municipal misdemeanors would be prosecuted as state felonies under this bill. If we are appointed in 75% of these cases, we will have 750 new felony cases. We will need an additional 5 attorneys to represent clients in these cases. (We would not have represented any of these defendants in our current misdemeanor caseload.) The 5 attorneys plus necessary clerical support (2 secretaries) would be in Anchorage.



SENATOR LOREN LEMAN

Northwest Anchorage

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Session: State Capitol, Juneau, AK 99801 (907) 465-2095
Email: Senator_Loren_Leman@legis.state.ak.us

Sponsor Statement - SB 25

"An Act relating to sentences for misdemeanors."

Senate Bill 25 requires a defendant convicted of a violent misdemeanor to be sentenced as if convicted of a class C felony, if the defendant has been previously convicted of two or more violent misdemeanors within the previous 10 years.

Violent misdemeanors involve threats of violence or offenses which by their nature lead to violence, including assault in the fourth degree, reckless endangerment, stalking in the second degree, sexual abuse of a minor in the fourth degree, resisting arrest, violating a protective order, misconduct involving weapons in the fourth and fifth degrees, respectively.

It is common for violent offenders to repeatedly commit misdemeanor offenses (maximum sentence of one year imprisonment) and thereby avoid the stiffer sentences associated with class C felonies (maximum sentence of five years). It is also common to have felonious offenses reduced to misdemeanor charges through the plea bargaining process. Senate Bill 25 sends a clear message to such offenders that the state will not tolerate violence as a means of settling disputes, especially in the area of domestic violence offenses. It will also give prosecutors an additional tool to keep truly dangerous offenders off the streets.

Prepared by Mike Pauley, Staff Aide to Senator Loren Lemman (465-3841)

Last updated: February 2, 1999

Alaska Association of Chiefs of Police



February 25, 1999

MAR 02 1999

Senator Loran Leman
State Capitol
Juneau, AK 99801

Dear Senator Leman:

This letter is written in support of SB 25, an Act relating to sentences for misdemeanors. It is time to address certain types of crime that, while misdemeanors, are no less traumatic to victims than felony crimes.

Law enforcement arrests defendants on a regular basis who have committed violent crimes that are classed as misdemeanors. A criminal history check will often reveal that the same defendant has been arrested in the past for other violent misdemeanors. We support this effort to increase the penalties for defendants convicted of two or more violent misdemeanors within the previous ten years. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script, reading "Duane S. Udland".

Duane S. Udland, President
Alaska Association of Chiefs of Police

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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Pres. Aleutian Islands Chapter

Senator Leman
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

Dear Senator Leman,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse SB 25.

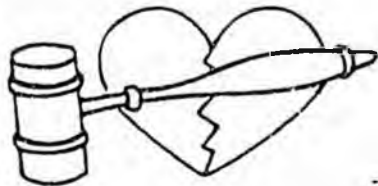
Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association

VICTIMS



for Justice 619 East Fifth Avenue • Anchorage, AK 99501
(907) 278-0977 • Fax: (907) 258-0740

MAR 02 1999

February 24, 1999

Loren Leman
State Capitol Suite 520
Juneau, Ak 99801

Dear Senator Leman:

Victims for Justice is writing in support of SB 25, which is an act relating to sentences for misdemeanors. A defendant who is repeatedly convicted of a violent misdemeanor should pay a stiffer penalty. In a domestic violence relationship this would create additional safety for the victim as the violator would be contained longer. In serious cases the prosecutors would have additional tools to keep truly dangerous offenders away from the victim and off the streets.

Sincerely,

A handwritten signature in cursive script that reads "Janice Lienhart".

Janice Lienhart

tempt. *Benboe v. State*, 738 P.2d 356 (Alaska Ct. App. 1987).

Test to be used in determining whether multiple offenses can be punished separately. — See *State v. Occhipinti*, 562 P.2d 348 (Alaska 1977).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. *State v. Occhipinti*, 562 P.2d 348 (Alaska 1977).

Power to suspend sentence. — While courts do not have the inherent power to suspend execution of a sentence, the legislature has given this power to the trial courts. *Curtis v. State*, 831 P.2d 359 (Alaska Ct. App. 1992).

When a statute of general application grants sentencing courts the power to suspend all or part of a

sentence, that statute will govern unless the legislature specifically provides otherwise. *Curtis v. State*, 831 P.2d 359 (Alaska Ct. App. 1992).

Applied in *Austin v. State*, 627 P.2d 657 (Alaska Ct. App. 1981).

Quoted in *Leuch v. State*, 633 P.2d 1006 (Alaska 1981); *Hancock v. State*, 706 P.2d 1164 (Alaska Ct. App. 1985); *State v. Wagner*, 835 P.2d 454 (Alaska Ct. App. 1992).

Stated in *Kimbrell v. State*, 647 P.2d 618 (Alaska Ct. App. 1982); *Erhart v. State*, 656 P.2d 1199 (Alaska Ct. App. 1982).

Cited in *Whittlesey v. State*, 626 P.2d 1066 (Alaska 1980); *Juneby v. State*, 641 P.2d 823 (Alaska Ct. App. 1982); *Lacquement v. State*, 644 P.2d 856 (Alaska Ct. App. 1982); *Schnecker v. State*, 739 P.2d 1310 (Alaska Ct. App. 1987); *State v. Ambrose*, 758 P.2d 639 (Alaska Ct. App. 1988).

Collateral references. — Permissibility of sentence to a fine only, under statutory provision for imprisonment or imprisonment and fine. 35 ALR4th 192.

Sec. 12.55.020. Enforcing judgment to pay money. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 12.55.025(f), AS 12.55.035(a), (d) and AS 12.55.051.]

Sec. 12.55.022. Victim impact statement. As part of the presentence report prepared on each felony offender, the probation officer shall prepare a victim impact statement reporting the following information:

- (1) the financial, emotional, and medical effects of the offense on the victim;
- (2) the need of the victim for restitution; and
- (3) any other information required by the court. (§ 1 ch 154 SLA 1984)

Cross references. — For effect of this section on Cr. R. 32(d)(2), see § 12, ch. 154, SLA 1984 in the Temporary and Special Acts.

Sec. 12.55.023. Participation by victim in sentencing. (a) If a victim requests, the prosecuting attorney shall provide the victim, before the sentencing hearing, with a copy of the following portions of the presentence report:

- (1) the summary of the offense prepared by the Department of Corrections;
- (2) the defendant's version of the offense;
- (3) all statements and summaries of statements of the victim; and
- (4) the sentence recommendation of the Department of Corrections.

(b) A victim may submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision, and may give sworn testimony or make an unsworn oral presentation to the court at the sentencing hearing. If there are numerous victims, the court may limit the number of victims who may give sworn testimony or make an unsworn oral presentation during the hearing. (§ 4 ch 59 SLA 1989; am § 6 ch 57 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 15, 1991, in subsection (b), added "and may give sworn testimony or make an unsworn oral presentation to the court at the sentencing hearing" to the end of the first sentence and added the second sentence.

Sec. 12.55.025. Sentencing procedures. (a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that includes the following:

ler the forfeiture to the agency of a deadly weapon luring the commission of

33.20, when a defendant's sentence consists of two less than two-thirds of the term of imprisonment; the defendant and on supervised

court shall order a person, oral sample, or both, under AS 44.41.035 to be tested by a health care or samples.

§ 11.81.900. (§ 12 ch 166 am § 3 ch 72 SLA 1985; § 1 ch 79 SLA 1994; am § 29 SLA 1996; am § 2 ch 17 m § 3 ch 116 SLA 1998)

and added the last two sentences, effective August 13, 1997,

amendment, effective June 13, 1998, and made a related stylistic

amendment, effective September 17,

added the paragraph (1) designating (2).

Section 15, ch. 95, SLA 1998 enactment of subsection (b) submitted before, on, or after

reports. — For report on ch. SSB 511, see 1980 Senate Journal, 44, (May 29, 1980) or 1980 Journal, No. 79, (May 29, 1980).

statutorily vested in either the executive branch of government. If the court lacks jurisdiction to hear a case after it has entered a judgment more than 60 days after it has reported v. State, 543 P.2d 1204 v. State, 572 P.2d 63 (Alaska

scope of sentencing power to attend a sexual offender while incarcerated, where the separate provision of the statute as a condition of probation, by the order could not have a finding of criminal con-

(1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed; if a term of imprisonment is imposed, the statement must include

(A) the approximate minimum term the defendant is expected to serve before being released or placed on mandatory parole if the defendant is eligible for and does not forfeit good conduct deductions under AS 33.20.010; and

(B) if applicable, the approximate minimum term of imprisonment the defendant must serve before becoming eligible for release on discretionary parole;

(4) any recommendations as to the place of confinement or the manner of treatment; and

(5) in the case of a conviction for a felony offense, information assessing

(A) the financial, emotional, and medical effects of the offense on the victim;

(B) the need of the victim for restitution; and

(C) any other information required by the court.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the Department of Corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, the term of confinement commences on the date of imposition of sentence. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Corrections shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

(e) Except as provided in (g) and (h) of this section, if the defendant has been convicted of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that the imprisonment commences at the expiration of the term imposed by the previous judgment. Nothing in AS 12.55.125(a) or (l) limits the court's ability to impose consecutive sentences.

(f) A sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

(g) If the defendant has been convicted of two or more crimes before the judgment on either has been entered, any sentences of imprisonment may run concurrently if

(1) the crimes violate similar societal interests;

(2) the crimes are part of a single, continuous criminal episode;

(3) there was not a substantial change in the objective of the criminal episode, including a change in the parties to the crime, the property or type of property right offended, or the persons offended;

(4) the crimes were not committed while the defendant attempted to escape or avoid detection or apprehension after the commission of another crime;

other in-court sentencing questions required to be imposed; for a term of imprisonment to serve before being eligible for and does not forfeit the defendant must be; the manner of treatment; in assessing the on the victim; shall be furnished within law, the defendant, the defendant will be eligible for defendant is to be sentenced for AS 04, or an ordinance defendant is sentenced to imposition of sentence. sentencing, or for which sentence was the actual time spent in which a defendant is been sentenced may not taken and the defendant not admitted to bail, the the defendant shall be defendant has been convicted n consecutively. If the or a crime, the judgment of the term imposed by the court's ability to in restitution or both, entered in a civil action. wise enforce payment of before the judgment on a concurrently if e; the criminal episode, type of property right pted to escape or avoid

- (5) the sentence is not for a violation of AS 11.41.100 — 11.41.470; or
- (6) the sentence is not for a violation of AS 11.41.500 — 11.41.530 that results in physical injury or serious physical injury as those terms are defined in AS 11.81.900.
- (h) If the defendant has been convicted of two or more crimes under AS 11.41.200 — 11.41.250 or 11.41.410 — 11.41.458 in which the victim or victims of the crimes were minors and the judgment on any of the convictions has not been entered, the court shall impose some consecutive period of imprisonment for each conviction.
- (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d), 12.55.155(f), and 12.55.165, the preponderance of the evidence standard of proof applies to sentencing proceedings.
- (j) The approximate minimum terms provided under (a)(3) of this section in the sentencing report are for information purposes only. The approximate minimum terms are not part of the sentence imposed and do not form a basis for review or appeal of the sentence imposed or provide a defendant with a right to any specific term of imprisonment or supervised release on mandatory parole. (§ 12 ch 166 SLA 1978; §§ 7, 8 ch 131 SLA 1980; am §§ 24, 25 ch 143 SLA 1982; am E.O. No. 55, §§ 6, 7 (1984); am § 2 ch 154 SLA 1984; am §§ 5, 6 ch 66 SLA 1988; am §§ 21, 22 ch 79 SLA 1992; am § 2 ch 7 SLA 1996; am §§ 3, 4 ch 37 SLA 1997; am § 13 ch 81 SLA 1998)

Cross references. — For the effect of the 1997 amendments on Rule 32.2, Alaska Rules of Criminal Procedure, see § 6, ch. 37, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1992 amendment, effective September 14, 1992, added the last sentence in subsection (e) and added subsection (i).

The 1996 amendment, effective June 27, 1996, inserted "or (l)" in the last sentence in subsection (e).

The 1997 amendment, effective August 13, 1997, in paragraph (a)(3), added "if a term of imprisonment is imposed, the statement must include" at the end of the introductory language and added subparagraphs (A) and (B); and added subsection (j).

The 1998 amendment, effective June 11, 1998, made a section reference substitution in subsection (h).

Legislative history reports. — For sectional analysis of CS SSSB 239, the predecessor of FCCSSB 239 (ch. 131, SLA 1980), see 1980 Senate Journal Supplement No. 23, April 1, 1980.

For House letter of intent on ch. 66, SLA 1988 (CSHB 237 (Jud)), which amended this section, see 1988 House Journal 2330-2337.

Opinions of attorney general. — Authority exists to both award and forfeit statutory good time for pretrial detainees. February 18, 1986 Op. Att'y Gen.

NOTES TO DECISIONS

- I. General Consideration.
- II. Computation of Term.
- III. Consecutive Sentences.
- IV. Concurrent Sentences.

I. GENERAL CONSIDERATION.

For cases construing former AS 12.55.075, relating to imposition of sentences, see *Perrin v. State*, 543 P.2d 413 (Alaska 1975); *Andrews v. State*, 552 P.2d 150 (Alaska 1976); *Morgan v. State*, 582 P.2d 1030 (Alaska 1978); *Rust v. State*, 582 P.2d 134 (Alaska 1978).

Consideration of totality of defendant's conduct. — Regardless of the trial court's decision to sentence consecutively or concurrently, the total sentence must reflect the totality of the defendant's conduct considered in light of his or her background and experience, and measured against the standards of rehabilitation, deterrence of self and others, and affirmation of community norms. *Comegys v. State*, 747 P.2d 554 (Alaska Ct. App. 1987).

Consideration of uncharged offenses or police contacts. — A sentencing court may properly consider uncharged offenses or police contacts where they are verified by supporting data or information and the defendant is given the opportunity to deny the allegations and offer rebuttal evidence. *Pascoe v. State*, 623 P.2d 547 (Alaska 1980).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. *Pascoe v. State*, 628 P.2d 547 (Alaska 1980).

Effect of perjury at trial. — It is improper to increase a sentence because a defendant has committed perjury at trial, but the fact of such perjury may be considered as relevant to the defendant's prospects for rehabilitation. *La Pierre v. State*, 626 P.2d 1065 (Alaska 1980).

Oral sentence controls. — The written judgment should conform to the oral sentence. The latter ordinarily controls. *Whittlesey v. State*, 626 P.2d 1066 (Alaska 1980).

Unsolicited letters. — Judges must make available to counsel for the state and the defendant any unsolicited letters received concerning sentencing of a particular defendant. *Bowlin v. State*, 643 P.2d 1 (Alaska Ct. App. 1982).

The sentencing record must affirmatively reflect whether unsolicited letters received by the court have

of composite sentence for first offender where defendant's separate offenses were not particularly mitigated, the court held that the sentence was not particularly mitigated. *Officer to potential harm and might have been characterized as a first offender.* *Jerrel v. State*, 851 P.2d 1101 (Alaska Ct. App. 1993), cert. denied, 510 U.S. 1077 (1994).
 An exception to the Austin rule regarding the evidence standard should be applied in the case of a first offender convicted of offenses where a sentence is specified should be more favorable than the second felony offenders case. *Moynihan v. State*, 818 P.2d 1165 (Alaska Ct. App. 1991).

ing to a probation violation is not an extraordinary circumstance and should be established by clear and convincing evidence, not merely a preponderance of the evidence. *Collateral references.* — Use of prior military conviction to establish repeat offender status, 11 ALR5th 218.

ing evidence" standard did not apply to a first offender where the standard governs a defendant's sentence regarding aggravating factors. *AS 12.55.135 and AS 12.55.136* govern the judge's exercise of discretion regarding the facts of the case. *Alaska Ct. App. 1996*.
 The Austin ceiling. — The defendant is entitled to advance notice of a sentence that should be imposed, including a plea bargain, a suspended sentence, a probation sentence, and stipulated to the defendant's notice that his sentence is subject to the Austin ceiling. *Reese v. State*, 835 P.2d 1251 (Alaska Ct. App. 1996).

proper. — The defendant's sexually assaultive conduct, his past failure to seek rehabilitation, the nature of the defendant's offense, and the fact that the defendant is a victim, qualified the defendant as an extraordinarily aggravated offender. *Carroll v. State*, 835 P.2d 1165 (Alaska Ct. App. 1993).

lished by preprobation violation or potential for rehabilitation, the Austin rule exception, that had to be factored into the evidence. Hence, the preponderance of the evidence would be factored into the defendant's sentence. *Moynihan v. State*, 818 P.2d 1165 (Alaska Ct. App. 1991).

tin rule. — Where a defendant convicted of a crime, and, had the

defendant been subject to presumptive sentencing, the circumstances would have been sufficiently extraordinary to warrant a substantial increase in the applicable presumptive term, the case qualified as an exceptional one under *Austin v. State*, 627 P.2d 657 (Alaska Ct. App. 1981); and the imposition of a sentence in excess of the four-year presumptive term for second offenders did not violate the Austin rule. *Skrepich v. State*, 740 P.2d 950 (Alaska Ct. App. 1987).

First felony offender's sentence of four years imprisonment, with three years suspended, was substantially more lenient than the two-year presumptive term that would have been applicable to a second felony offender, and therefore did not violate the Austin rule. *Long v. State*, 772 P.2d 1099 (Alaska Ct. App. 1989).

Sentence of defendant with no prior criminal convictions to consecutive terms of four years with one year suspended and one year with six months suspended for two second-degree assaults and to a concurrent term of one year with nine months suspended for a third-degree assault, a composite term of five years with one and one-half years suspended was more favorable than the corresponding second offense presumptive term for the individual offenses and was not excessive. *Splain v. State*, 924 P.2d 435 (Alaska Ct. App. 1996).

Applied in *Adams v. State*, 927 P.2d 751 (Alaska Ct. App. 1996).

Cited in *Howarth v. State*, Pub. Defender Agency, 925 P.2d 1330 (Alaska 1996).

Collateral references. — Use of prior military conviction to establish repeat offender status, 11 ALR5th 218.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence committed in violation of the provisions of an order issued or filed under AS 12.30.027 or AS 18.66.100 — 18.66.180 and not subject to sentencing under (g) of this section shall be sentenced to a minimum term of imprisonment of 20 days.

(d) A defendant convicted of assault in the fourth degree who knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, 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 shall be sentenced to a minimum term of imprisonment of

- (1) 60 days if the defendant violated AS 11.41.230(a)(1) or (2);
- (2) 30 days if the defendant violated AS 11.41.230(a)(3).

(e) [See delayed amendment note.] If a defendant is sentenced under (c), (d), or (h) of this section,

- (1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;
- (2) imposition of a sentence may not be suspended except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in the section; and
- (3) the minimum term of imprisonment may not otherwise be reduced.

(f) A defendant convicted of vehicle theft in the second degree in violation of AS 11.46.365(a)(1) shall be sentenced to a definite term of imprisonment of at least 72 hours but not more than one year.

(g) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence shall be sentenced to a minimum term of imprisonment of

- (1) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;
- (2) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

(h) [Effective January 1, 1999.] A defendant convicted of failure to register as a sex offender or child kidnapper in the second degree under AS 11.56.840 shall be sentenced to a minimum term of imprisonment of 35 days.

(i) If a defendant is sentenced under (g) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of sentence may not be suspended;

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

(j) In this section,

(1) "crime against a person" means a crime under AS 11.41, or a crime in this or another jurisdiction having elements similar to those of a crime under AS 11.41;

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980; am § 22 ch 59 SLA 1982; am § 13 ch 61 SLA 1982; am § 31 ch 143 SLA 1982; am §§ 4, 5 ch 92 SLA 1983; am §§ 5, 6 ch 53 SLA 1991; am § 3 ch 6 SLA 1996; am § 14 ch 64 SLA 1996; am §§ 5, 6 ch 71 SLA 1996; am §§ 8, 9 ch 86 SLA 1998; am §§ 3, 4 ch 106 SLA 1998)

Delayed amendment. — Before January 1, 1999, subsection (e) does not contain a reference to subsection (h).

Revisor's notes. — Subsection (h) was enacted as (g). Relettered in 1998, at which time the cross-reference in subsection (e) was conformed.

Subsections (i) and (j) were enacted as (h) and (i), respectively. Relettered in 1998.

Cross references. — For legislative findings and purpose in connection with the enactment of subsection (f), see §§ 1 and 2, ch. 53, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The 1991 amendment, effective September 13, 1991, rewrote subsection (e) and added subsection (f).

The first 1996 amendment, effective June 27, 1996, in subsection (d), substituted "who knowingly directed the conduct constituting the offense at" for "upon," "correctional employee" for "correctional officer," and paragraphs (1) and (2) for "30 days."

The second 1996 amendment, effective July 1, 1996, in subsection (c), inserted "or filed" and "or issued

under former" and inserted section references.

The third 1996 amendment, effective June 20, 1996, in the introductory language in subsection (e), deleted "Except as provided in AS 12.55.055(f)," from the beginning and ", or (f)" following "(d)" and made related stylistic changes and rewrote subsection (f).

The first 1998 amendment, effective June 13, 1998, rewrote subsection (c) and added subsections (g), (i), and (j).

The second 1998 amendment, effective January 1, 1999, inserted a subsection reference and made minor stylistic changes in subsection (e) and added subsection (h).

Editor's notes. — Section 7, ch. 6, SLA 1996 provides that the 1996 amendment to (d) of this section applies "to all offenses committed on or after June 27, 1996."

Section 22(c), ch. 86, SLA 1998 provides that with respect to the 1998 enactment of subsections (g), (i), and (j), "[r]eferences to previous convictions in this Act apply to all convictions occurring before, on, or after June 13, 1998."

NOTES TO DECISIONS

Constitutionality of presumptive sentencing provisions. — See notes under same heading, AS 12.55.125. *Nell v. State*, 642 P.2d 1361 (Alaska Ct. App. 1982).

Maximum sentence for joyriding justified. — The district court judge was not clearly mistaken in characterizing a defendant as a worst offender, and in imposing the maximum sentence of one year for third-degree criminal mischief (joyriding). Despite the limited period of time in which the defendant committed the offenses, the defendant's record, coupled with the especially serious nature of the particular joyriding offenses, i.e., that it was committed in order to perpetrate a felony, justifies the sentence imposed. *Plant v. State*, 724 P.2d 536 (Alaska Ct. App. 1986).

Sentence upheld. — Composite sentence of 24 months with six months suspended for refusal to submit to a chemical breath test and for driving with a suspended operator's license was affirmed where the defendant had five prior driving while intoxicated convictions and at least four prior driving with suspended license convictions and was on probation for a prior driving while intoxicated and driving with sus-

pended license conviction. *Witt v. State*, 692 P.2d 976 (Alaska Ct. App. 1984).

Consecutive sentencing by district court permissible under former law. — See *State v. Pete*, 420 P.2d 338 (Alaska 1966), decided under former AS 11.05.010.

Sentence disapproved. — Trial court's sentencing decision was clearly mistaken where the sentence fell near the bottom of the authorized range of sentences for fourth-degree assault and the evidence concerning defendant's background and personal characteristics provided little basis for characterizing his case as particularly mitigated, including two prior misdemeanor convictions. *State v. Huletz*, 838 P.2d 1257 (Alaska Ct. App. 1992).

The sentencing court did not find defendant's prospects for rehabilitation particularly favorable, or that her conduct was in any respect less serious than normal for a class B felony, or that insubstantial harm resulted, yet the total sentence received was palpably more lenient than the norm for similarly situated offenders. In the absence of actual conflict among the goals, emphasizing a single sentencing goal can never