SB

246

23-LS1387\H
Luckhaupt
5/4/04

CS FOR SENATE BILL NO. 246( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS LINCOLN, Davis, Ellis

A BILL

FOR AN ACT ENTITLED

"An Act relating to the commission of an offense or a juvenile delinquency act involving the victim's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin; relating to sentencing, informal adjustment, and adjudication for those offenses and acts; relating to a diversity tolerance program for certain juvenile delinquency acts; relating to a civil cause of action for certain acts involving discriminatory harassment; and providing for an effective date."

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

* **Section 1.** AS 09.55 is amended by adding a new section to read:

Sec. 09.55.670. Discriminatory harassment action. (a) An individual may maintain a civil action for discriminatory harassment against another, or against the parent or legal guardian of a minor, who has caused physical injury to the individual, or damage to the property of the individual, with the intent to intimidate or harass the

individual because of the individual's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

(b) An action may not be maintained under this section against

(1) the state, an agency or instrumentality of the state, or a political subdivision of the state;

(2) an agent, officer, or employee of an entity described in (1) of this subsection;

(3) an individual working in or responsible for the operation under AS 47 of a foster, receiving, or detention home or children's institution, regarding the acts of an unemancipated minor in the charge or custody of the home or institution; or

(4) an employee of or a volunteer with a nonprofit corporation that designates shelters for runaways under AS 47.10.392 - 47.10.399, regarding the acts of a minor sheltered in a shelter for runaways, as defined in AS 47.10.399.

(c) Compensatory and punitive damages may be awarded to a prevailing claimant in an action brought under this section. An award of damages against the parent or legal guardian of a minor under this section must be based upon the reckless conduct of the parent or legal guardian having actual care and custody of the minor.

(d) An award of damages under this section does not preclude an individual from seeking other remedies available under other law.

* **Sec. 2.** AS 12.55.085(f) is amended to read:

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

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.410 - 11.41.530, or AS 11.46.400;

(2) uses a firearm in the commission of the offense for which the person is convicted; [OR]

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having substantially similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside

under (e) of this section or under the equivalent provision of the laws of another jurisdiction; or

(4) is convicted of an offense and knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

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

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

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

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant

(i) possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, **seven years;**

(ii) [OR] 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 offense, seven years; or

(iii) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

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

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (*l*) of this section, 15 years.

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

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

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

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

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, four years.

*** Sec. 5.** AS 12.55.125(e) is amended to read:

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

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

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

(3) if the offense is a first felony conviction, and the defendant

(A) violated AS 08.54.720(a)(15), one year; **or**

(B) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, two years.

*** Sec. 6.** AS 12.55.125(g) is amended to read:

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), **(d)(3),** (e)(1), (e)(2), (e)(3), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

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

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

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

* **Sec. 7.** AS 12.55.135(d) is amended to read:

(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 **or knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,** 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).

* **Sec. 8.** AS 12.55.135 is amended by adding a new subsection to read:

(k) A defendant is convicted of a misdemeanor in AS 11 shall be sentenced as a worst offender if the court finds by clear and convincing evidence that the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

* **Sec. 9.** AS 12.55.155(c)(22) is amended to read:

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

* **Sec. 10.** AS 12.55.165 is amended to read:

Sec. 12.55.165. Extraordinary circumstances. (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), **(d)(3),** (e)(1), (e)(2),

(e)(3), 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.

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21), (22), or (28) is present.

* **Sec. 11.** AS 47.12.060(b) is amended to read:

(b) When the department or the entity selected by it decides to make an informal adjustment of a matter under (a)(2) of this section, that informal adjustment

(1) must be made with the agreement or consent of the minor and the minor's parents or guardian to the terms and conditions of the adjustment;

(2) must give the minor's foster parent an opportunity to be heard before the informal adjustment is made;

(3) must include notice that informal action to adjust a matter is not successfully completed unless, among other factors that the department or the entity selected by it considers, as to the victim of the act of the minor that is the basis of the delinquency allegation, the minor pays restitution in the amount set by the department or the entity selected by it or agrees as a term or condition set by the department or the entity selected by it to pay the restitution;

(4) for a violation of habitual minor consuming or in possession or control under AS 04.16.050(d) must include an agreement that the minor perform 96 hours of community work, provide that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for six months, and provide that the driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for an additional six months if the informal adjustment is not successful because the minor has failed to perform community work as ordered, or has failed to submit to evaluation or successfully complete the education or treatment

recommended; the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph or of an unsuccessful adjustment described in this paragraph;

(5) of an offense described in AS 28.15.185(a)(1) must include an agreement that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked as provided in AS 28.15.185(b); the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph;

(6) must, if there is reason to believe that the minor knowingly directed the conduct constituting a delinquent act at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,

(A) require the minor to perform a minimum of 100 hours of community work service; and

(B) include a referral to a diversity tolerance program or otherwise provide the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal diversity of all persons of the state.

*** Sec. 12.** AS 47.12.120(b) is amended to read:

(b) If the minor is not subject to (j) of this section and the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or

detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the custody of the department and placed on probation, to be supervised by the department and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as with a relative or in a foster home or residential child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, the minor's foster parent, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if

the continued supervision is in the best interests of the person and the person consents to it;

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution;

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent; and

(C) at the request of the department, the Department of Law, the victims' advocate, or on its own motion, the court shall, at any time, order the minor and the minor's parent, if applicable, to submit financial information on a form approved by the Alaska Court System to the court, the department, and the Department of Law for the purpose of establishing the amount of restitution or enforcing an order of restitution under AS 47.12.170; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification under AS 11.56.210;

(5) order the minor committed to the department for placement in an

adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed;

(6) in addition to an order under (1) - (5) of this subsection, order the minor to perform community service; for purposes of this paragraph, "community service" includes work

(A) on a project identified in AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1)**;**

(8) in addition to an order under (1) - (5) and (7) of this subsection, if the court finds by clear and convincing evidence that the minor knowingly directed the conduct constituting a delinquent act at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,

(A) order the minor to perform a minimum of 100 hours of community work service; and

(B) carefully assess the plan proposed by the department under AS 47.12.130 to ensure that the plan adequately provides the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal diversity of all persons of the state.

*** Sec. 13.** AS 47.12 is amended by adding a new section to article 5 to read:

Sec. 47.12.970. Diversity tolerance program. The department shall develop and implement, or designate, in cooperation with other state, local, tribal, and nonprofit public service agencies, a diversity tolerance program that provides resources for developing respect for ethnic, cultural, and personal diversity, and that is

designed for persons under 18 years of age who have been referred to the program under this chapter in connection with conduct by a minor that was directed at a person because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses or acts committed on or after the effective date of this Act.

* **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).

23-LS1387\Q
Luckhaupt
5/6/04

CS FOR SENATE BILL NO. 246( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS LINCOLN, Davis, Ellis

A BILL

FOR AN ACT ENTITLED

"An Act relating to sentencing for the commission of offenses or a juvenile delinquency act directed against peace officers, fire fighters, and other emergency responders or involving the victim's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin; relating to probation, informal adjustment, and adjudication for those offenses and acts; relating to a diversity tolerance program for certain juvenile delinquency acts; and providing for an effective date."

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

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

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

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.410 - 11.41.530, or AS 11.46.400;

(2) uses a firearm in the commission of the offense for which the

person is convicted; [OR]

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having substantially similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction; **or**

(4) is convicted of an offense and knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

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

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

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

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant

(i) possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, **seven years;**

(ii) [OR] 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 offense, seven years; **or**

(iii) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

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

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (*l*) of this section, 15 years.

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

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

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

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

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, four years.

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

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

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

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

(3) if the offense is a first felony conviction, and the defendant

(A) violated AS 08.54.720(a)(15), one year; or

(B) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, two years.

* **Sec. 5.** AS 12.55.125(g) is amended to read:

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), **(d)(3),** (e)(1), (e)(2), (e)(3), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

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

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

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

* **Sec. 6.** AS 12.55.135(d) is amended to read:

(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 **or knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,** 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).

* **Sec. 7.** AS 12.55.135 is amended by adding a new subsection to read:

(k) A defendant is convicted of a misdemeanor in AS 11 shall be sentenced as a worst offender if the court finds by clear and convincing evidence that the defendant knowingly directed the conduct constituting the offense at a

(1) victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin; or

(2) 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 offense.

* **Sec. 8.** AS 12.55.155(c)(22) is amended to read:

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

* **Sec. 9.** AS 12.55.165 is amended to read:

Sec. 12.55.165. Extraordinary circumstances. (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3), 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.

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (13), (15), (17), (18)(B), (20), (21), (22), or (28) is present.

* **Sec. 10.** AS 47.12.060(b) is amended to read:

(b) When the department or the entity selected by it decides to make an informal adjustment of a matter under (a)(2) of this section, that informal adjustment

(1) must be made with the agreement or consent of the minor and the minor's parents or guardian to the terms and conditions of the adjustment;

(2) must give the minor's foster parent an opportunity to be heard before the informal adjustment is made;

(3) must include notice that informal action to adjust a matter is not successfully completed unless, among other factors that the department or the entity selected by it considers, as to the victim of the act of the minor that is the basis of the

delinquency allegation, the minor pays restitution in the amount set by the department or the entity selected by it or agrees as a term or condition set by the department or the entity selected by it to pay the restitution;

(4) for a violation of habitual minor consuming or in possession or control under AS 04.16.050(d) must include an agreement that the minor perform 96 hours of community work, provide that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for six months, and provide that the driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for an additional six months if the informal adjustment is not successful because the minor has failed to perform community work as ordered, or has failed to submit to evaluation or successfully complete the education or treatment recommended; the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph or of an unsuccessful adjustment described in this paragraph;

(5) of an offense described in AS 28.15.185(a)(1) must include an agreement that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked as provided in AS 28.15.185(b); the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph;

(6) must, if there is reason to believe that the minor knowingly directed the conduct constituting the delinquent act 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 act, require the minor to perform a minimum of 100 hours of community work service;

(7) must, if there is reason to believe that the minor knowingly directed the conduct constituting a delinquent act at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,

(A) require the minor to perform a minimum of 100 hours

of community work service; and

(B) include a referral to a diversity tolerance program or otherwise provide the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal diversity of all persons of the state.

* **Sec. 11.** AS 47.12.120(b) is amended to read:

(b) If the minor is not subject to (j) of this section and the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person

consents to it;

(3) order the minor committed to the custody of the department and placed on probation, to be supervised by the department and released to the minor's parents, guardian, other suitable person, or suitable nondetention setti' g such as with a relative or in a foster home or residential child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, the minor's foster parent, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution;

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent; and

(C) at the request of the department, the Department of Law, the victims' advocate, or on its own motion, the court shall, at any time, order the minor and the minor's parent, if applicable, to submit financial information on a form approved by the Alaska Court System to the court, the department, and the Department of Law for the purpose of establishing the amount of restitution or enforcing an order of restitution under AS 47.12.170; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification under AS 11.56.210;

(5) order the minor committed to the department for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed;

(6) in addition to an order under (1) - (5) of this subsection, order the minor to perform community service; for purposes of this paragraph, "community service" includes work

(A) on a project identified in AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including

participation in treatment under AS 47.12.155(b)(1)**;**

(8) in addition to an order under (1) - (5) and (7) of this subsection, if the court finds by clear and convincing evidence that the minor knowingly directed the conduct constituting a delinquent act 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 act, require the minor to perform a minimum of 100 hours of community work service;

(9) in addition to an order under (1) - (5) and (7) of this subsection, if the court finds by clear and convincing evidence that the minor knowingly directed the conduct constituting a delinquent act at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,

(A) order the minor to perform a minimum of 100 hours of community work service; and

(B) carefully assess the plan proposed by the department under AS 47.12.130 to ensure that the plan adequately provides the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal diversity of all persons of the state.

*** Sec. 12.** AS 47.12 is amended by adding a new section to article 5 to read:

Sec. 47.12.970. Diversity tolerance program. The department shall develop and implement, or designate, in cooperation with other state, local, tribal, and nonprofit public service agencies, a diversity tolerance program that provides resources for developing respect for ethnic, cultural, and personal diversity, and that is designed for persons under 18 years of age who have been referred to the program under this chapter in connection with conduct by a minor that was directed at a person because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

*** Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to

read:

APPLICABILITY. (a) This Act applies to offenses or acts committed on or after the effective date of this Act.

(b) Notwithstanding AS 47.12.060(b)(7)(B), added by sec. 10 of this Act, and AS 47.12.120(b)(9)(B), added by sec. 11 of this Act, a court may not refer a minor to a diversity tolerance program under AS 47.12.970, added by sec. 12 of this Act, until the Department of Health and Social Services has developed, implemented, or designated diversity tolerance programs.

*** Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).

23-LS1387\S
Luckhaupt
5/6/04

CS FOR SENATE BILL NO. 246(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS LINCOLN, Davis, Ellis

A BILL

FOR AN ACT ENTITLED

"An Act relating to sentencing for the commission of offenses or a juvenile delinquency act directed against peace officers, fire fighters, and other emergency responders or involving the victim's actual or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin; relating to probation, informal adjustment, and adjudication for those offenses and acts; relating to a diversity tolerance program for certain juvenile delinquency acts; and providing for an effective date."

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

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

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

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.410 - 11.41.530, or AS 11.46.400;

(2) uses a firearm in the commission of the offense for which the person is convicted; [OR]

L

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having substantially similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction; **or**

(4) is convicted of an offense and knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin.

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

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

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

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant

(i) possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, **seven years;**

(ii) [OR] 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 offense, seven years; **or**

(iii) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual

or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

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

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (*l*) of this section, 15 years.

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

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

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

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

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin, four years.

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

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

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

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

(3) if the offense is a first felony conviction, and the defendant

(A) violated AS 08.54.720(a)(15), one year**; or**

(B) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin, two years.

* **Sec. 5.** AS 12.55.125(g) is amended to read:

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), **(d)(3),** (e)(1), (e)(2), (e)(3), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

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

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

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

* **Sec. 6.** AS 12.55.135(d) is amended to read:

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

* **Sec. 7.** AS 12.55.135 is amended by adding a new subsection to read:

(k) A defendant is convicted of a misdemeanor in AS 11 shall be sentenced as a worst offender if the court finds by clear and convincing evidence that the defendant knowingly directed the conduct constituting the offense at a

(1) victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin; or

(2) 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 offense.

* **Sec. 8.** AS 12.55.155(c)(22) is amended to read:

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

* **Sec. 9.** AS 12.55.165 is amended to read:

Sec. 12.55.165. Extraordinary circumstances. (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), **(d)(3),** (e)(1), (e)(2), (e)(3), 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.

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), **(13),** (15), (17), (18)(B), (20), (21), **(22),** or (28) is present.

* **Sec. 10.** AS 47.12.060(b) is amended to read:

(b) When the department or the entity selected by it decides to make an informal adjustment of a matter under (a)(2) of this section, that informal adjustment

(1) must be made with the agreement or consent of the minor and the minor's parents or guardian to the terms and conditions of the adjustment;

(2) must give the minor's foster parent an opportunity to be heard before the informal adjustment is made;

(3) must include notice that informal action to adjust a matter is not successfully completed unless, among other factors that the department or the entity selected by it considers, as to the victim of the act of the minor that is the basis of the delinquency allegation, the minor pays restitution in the amount set by the department or the entity selected by it or agrees as a term or condition set by the department or the entity selected by it to pay the restitution;

(4) for a violation of habitual minor consuming or in possession or control under AS 04.16.050(d) must include an agreement that the minor perform 96 hours of community work, provide that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for six months, and provide that the driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for an additional six months if the informal adjustment is not successful because the minor has failed to perform community work as ordered, or has failed to submit to evaluation or successfully complete the education or treatment recommended; the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph or of an unsuccessful adjustment described in this paragraph;

(5) of an offense described in AS 28.15.185(a)(1) must include an agreement that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked as provided in AS 28.15.185(b); the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph;

(6) must, if there is reason to believe that the minor knowingly directed the conduct constituting the delinquent act 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 act, require the minor to perform 60 - 80 hours of community work service;

(7) must, if there is reason to believe that the minor knowingly directed the conduct constituting a delinquent act at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin,

(A) require the minor to perform 60 - 80 hours of community work service; and

(B) include a referral to a diversity tolerance program or otherwise provide the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal

diversity of all persons of the state; the court may allow the minor's successful participation in a diversity tolerance program to count towards the minimum hours of community work service.

* **Sec. 11.** AS 47.12.120(b) is amended to read:

(b) If the minor is not subject to (j) of this section and the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the custody of the department and

placed on probation, to be supervised by the department and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as with a relative or in a foster home or residential child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, the minor's foster parent, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution;

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was

committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent; and

(C) at the request of the department, the Department of Law, the victims' advocate, or on its own motion, the court shall, at any time, order the minor and the minor's parent, if applicable, to submit financial information on a form approved by the Alaska Court System to the court, the department, and the Department of Law for the purpose of establishing the amount of restitution or enforcing an order of restitution under AS 47.12.170; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification under AS 11.56.210;

(5) order the minor committed to the department for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed;

(6) in addition to an order under (1) - (5) of this subsection, order the minor to perform community service; for purposes of this paragraph, "community service" includes work

(A) on a project identified in AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1);

(8) in addition to an order under (1) - (5) and (7) of this subsection,

if the court finds by clear and convincing evidence that the minor knowingly directed the conduct constituting a delinquent act 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 act, require the minor to perform 60 - 80 hours of community work service;

(9) in addition to an order under (1) - (5) and (7) of this subsection, if the court finds by clear and convincing evidence that the minor knowingly directed the conduct constituting a delinquent act at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin,

(A) order the minor to perform 60 - 80 hours of community work service: and

(B) carefully assess the plan proposed by the department under AS 47.12.130 to ensure that the plan adequately provides the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal diversity of all persons of the state; the court may allow the minor's successful participation in a diversity tolerance program to count toward the minimum hours of community work service.

* **Sec. 12.** AS 47.12 is amended by adding a new section to article 5 to read:

Sec. 47.12.970. Diversity tolerance program. The department shall develop and implement, or designate, in cooperation with other state, local, tribal, and nonprofit public service agencies, a diversity tolerance program that provides resources for developing respect for ethnic, cultural, and personal diversity, and that is designed for persons under 18 years of age who have been referred to the program under this chapter in connection with conduct by a minor that was directed at a person because of that person's actual or perceived race, sex, color, creed, physical or mental disability, ancestry, or national origin. The program shall be designed to be completed in four hours or less.

* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to

read:

APPLICABILITY. (a) This Act applies to offenses or acts committed on or after the effective date of this Act.

(b) Notwithstanding AS 47.12.060(b)(7)(B), added by sec. 10 of this Act, and AS 47.12.120(b)(9)(B), added by sec. 11 of this Act, a court may not refer a minor to a diversity tolerance program under AS 47.12.970, added by sec. 12 of this Act, until the Department of Health and Social Services has developed, implemented, or designated diversity tolerance programs.

*** Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).

23-LS1387\H
Luckhaupt
5/4/04

CS FOR SENATE BILL NO. 246( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS LINCOLN, Davis, Ellis

A BILL

FOR AN ACT ENTITLED

"An Act relating to the commission of an offense or a juvenile delinquency act involving the victim's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin; relating to sentencing, informal adjustment, and adjudication for those offenses and acts; relating to a diversity tolerance program for certain juvenile delinquency acts; relating to a civil cause of action for certain acts involving discriminatory harassment; and providing for an effective date."

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

*** Section 1.** AS 09.55 is amended by adding a new section to read:

Sec. 09.55.670. Discriminatory harassment action. (a) An individual may maintain a civil action for discriminatory harassment against another, or against the parent or legal guardian of a minor, who has caused physical injury to the individual, or damage to the property of the individual, with the intent to intimidate or harass the

individual because of the individual's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

(b) An action may not be maintained under this section against

(1) the state, an agency or instrumentality of the state, or a political subdivision of the state;

(2) an agent, officer, or employee of an entity described in (1) of this subsection;

(3) an individual working in or responsible for the operation under AS 47 of a foster, receiving, or detention home or children's institution, regarding the acts of an unemancipated minor in the charge or custody of the home or institution; or

(4) an employee of or a volunteer with a nonprofit corporation that designates shelters for runaways under AS 47.10.392 - 47.10.399, regarding the acts of a minor sheltered in a shelter for runaways, as defined in AS 47.10.399.

(c) Compensatory and punitive damages may be awarded to a prevailing claimant in an action brought under this section. An award of damages against the parent or legal guardian of a minor under this section must be based upon the reckless conduct of the parent or legal guardian having actual care and custody of the minor.

(d) An award of damages under this section does not preclude an individual from seeking other remedies available under other law.

* **Sec. 2.** AS 12.55.085(f) is amended to read:

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

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.410 - 11.41.530, or AS 11.46.400;

(2) uses a firearm in the commission of the offense for which the person is convicted; [OR]

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having substantially similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside

under (e) of this section or under the equivalent provision of the laws of another jurisdiction; **or**

(4) is convicted of an offense and knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

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

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

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

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant

(i) possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, **seven years;**

(ii) [OR] 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 offense, seven years; **or**

(iii) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

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

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (*l*) of this section, 15 years.

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

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

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

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

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, four years.

*** Sec. 5.** AS 12.55.125(e) is amended to read:

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

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

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

(3) if the offense is a first felony conviction, and the defendant

(A) violated AS 08.54.720(a)(15), one year; **or**

(B) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, two years.

*** Sec. 6.** AS 12.55.125(g) is amended to read:

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), **(d)(3),** (e)(1), (e)(2), (e)(3), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

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

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

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

*** Sec. 7.** AS 12.55.135(d) is amended to read:

(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 **or knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,** 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).

*** Sec. 8.** AS 12.55.135 is amended by adding a new subsection to read:

(k) A defendant is convicted of a misdemeanor in AS 11 shall be sentenced as a worst offender if the court finds by clear and convincing evidence that the defendant knowingly directed the conduct constituting the offense at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

*** Sec. 9.** AS 12.55.155(c)(22) is amended to read:

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

*** Sec. 10.** AS 12.55.165 is amended to read:

Sec. 12.55.165. Extraordinary circumstances. (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), **(d)(3),** (e)(1), (e)(2),

(e)(3), 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.

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21), (22), or (28) is present.

* **Sec. 11.** AS 47.12.060(b) is amended to read:

(b) When the department or the entity selected by it decides to make an informal adjustment of a matter under (a)(2) of this section, that informal adjustment

(1) must be made with the agreement or consent of the minor and the minor's parents or guardian to the terms and conditions of the adjustment;

(2) must give the minor's foster parent an opportunity to be heard before the informal adjustment is made;

(3) must include notice that informal action to adjust a matter is not successfully completed unless, among other factors that the department or the entity selected by it considers, as to the victim of the act of the minor that is the basis of the delinquency allegation, the minor pays restitution in the amount set by the department or the entity selected by it or agrees as a term or condition set by the department or the entity selected by it to pay the restitution;

(4) for a violation of habitual minor consuming or in possession or control under AS 04.16.050(d) must include an agreement that the minor perform 96 hours of community work, provide that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for six months, and provide that the driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for an additional six months if the informal adjustment is not successful because the minor has failed to perform community work as ordered, or has failed to submit to evaluation or successfully complete the education or treatment

recommended; the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph or of an unsuccessful adjustment described in this paragraph;

(5) of an offense described in AS 28.15.185(a)(1) must include an agreement that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked as provided in AS 28.15.185(b); the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph;

(6) must, if there is reason to believe that the minor knowingly directed the conduct constituting a delinquent act at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,

(A) require the minor to perform a minimum of 100 hours of community work service; and

(B) include a referral to a diversity tolerance program or otherwise provide the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal diversity of all persons of the state.

*** Sec. 12.** AS 47.12.120(b) is amended to read:

(b) If the minor is not subject to (j) of this section and the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or

detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time not to exceed two years and in no event to extend past thc day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the custody of the department and placed on probation, to be supervised by the department and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as with a relative or in a foster home or residential child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, the minor's foster parent, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if

the continued supervision is in the best interests of the person and the person consents to it;

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution;

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent; and

(C) at the request of the department, the Department of Law, the victims' advocate, or on its own motion, the court shall, at any time, order the minor and the minor's parent, if applicable, to submit financial information on a form approved by the Alaska Court System to the court, the department, and the Department of Law for the purpose of establishing the amount of restitution or enforcing an order of restitution under AS 47.12.170; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification under AS 11.56.210;

(5) order the minor committed to the department for placement in an

adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed;

(6) in addition to an order under (1) - (5) of this subsection, order the minor to perform community service; for purposes of this paragraph, "community service" includes work

(A) on a project identified in AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1)**;**

(8) in addition to an order under (1) - (5) and (7) of this subsection, if the court finds by clear and convincing evidence that the minor knowingly directed the conduct constituting a delinquent act at a victim because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin,

(A) order the minor to perform a minimum of 100 hours of community work service; and

(B) carefully assess the plan proposed by the department under AS 47.12.130 to ensure that the plan adequately provides the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal diversity of all persons of the state.

* **Sec. 13.** AS 47.12 is amended by adding a new section to article 5 to read:

Sec. 47.12.970. Diversity tolerance program. The department shall develop and implement, or designate, in cooperation with other state, local, tribal, and nonprofit public service agencies, a diversity tolerance program that provides resources for developing respect for ethnic, cultural, and personal diversity, and that is

designed for persons under 18 years of age who have been referred to the program under this chapter in connection with conduct by a minor that was directed at a person because of that person's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

*** Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses or acts committed on or after the effective date of this Act.

*** Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE
Senator Georgianna Lincoln

[redacted]tate Capitol
[redacted]neau, Alaska 99801-1182

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Standing Committees:
Resources
Transportation
Community & Regional Affairs

Joint Committee:
Legislative Council

Budget Subcommittees:
Administration
Transportation

DISTICT C

Alatna
Allakaket
Aniak
Angoon
Anvik
Arctic Village
Beaver
Beluga
Bettles
Big Delta
Birch Creek
Boundary
Cape Pole
Central
Chalkvitsik
Chandalar Lake
Chenega Bay
Chicken
Chisana
Chistochina
Chitina
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Coffman Cove
Cordova
Cube Cove
Coldfoot
Copper Center
Craig
Crooked Creek
Delta Junction
Deltana
Dot Lake
Dry Creek
Eagle
Eagle Village
Edna Bay
Ellamar
Ernestine
Excursion Inlet
Eureka
Evansville
Eyak
Flat
Fort Greely
Fort Yukon
Fortuna Ledge
Funter Bay
Gakona
Galena
Grayling
Gulkana
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Haines
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Kenny Lake
Klawock
Klukwan
Koyukuk
Labouchere Bay
Lake Minchumina
Lime Village
Livengood
Long Island
Manokomen Lake
Manley Hot Springs
Marshall
McCarthy
McGrath
Medfra
Metlakatla
Mentasta
Minto
Nabesna
Naukati Bay
Nenana
Nikolai
Northway
Nulato
Ophir
Point Baker
Polk Inlet
Port Alice
Port Protection
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Skagway
Slana
Sleetmute
Stevens Village
Stony River
Strelna
Takotna
Tanacross
Tanana
Tatitlek
Tazlina
Telida
Tenakee Springs
Tetlin Junction
Tok
Toksina
Tyonek
Utopia Creek
Venetie
View Cove
Waterfall
Whale Pass
Wiseman
Yakutat

MEMORANDUM

TO: Senator Ralph Seekins
Senate Judiciary Committee

FROM: Senator Georgianna Lincoln

RE: Committee Hearing for SB246

DATE: March 24, 2004

At your earliest convenience, please schedule SB246 "An Act relating to Hate Crimes..." This bill passed out of the Senate State Affairs Committee on March 23.

Attached please find my sponsor statement. Letters of support and backup will be forthcoming. There are no fiscal notes. If you have any questions, please contact my staff, Shari Paul, who will be working on this legislation.

Senator Georgianna Lincoln

Alaska State Legislature, District C
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Sponsor Statement
SB 246
"Relating to the Hate Crimes"

Senate Bill 246 is being introduced to address the abomination of hate crimes in Alaska. This bill is not new. I introduced similar legislation (SB 163) during the 21st legislative session, which did not make it through the process before end of session.

Crimes motivated by prejudice, bias, or hatred continue to make the headlines in our newspapers. It is inherent in our duties as leaders to take a substantive role in eliminating discrimination and fostering a climate of tolerance.

Senate Bill 246 alone cannot eliminate bias/hate –motivated crimes, but Senate Bill 246 sends the message that Alaskans will not tolerate bias/hate-motivated crime in any form.

This bill does the following:

Provides that a person may bring a civil lawsuit for both compensatory and punitive damages against another who has caused physical injury or damage to property, with the intent to harass the person because of the individual's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin. A lawsuit may be brought against the parent or legal guardian of a minor who has caused physical injury or damage if it is based on reckless conduct by the parent or legal guardian.

Adopts a new crime, **motivation by prejudice, bias, or hatred**, AS11.76.200. It provides that any crime in Title 11 that is knowingly directed toward a victim because of the victim's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin, is elevated to the next higher level of offense. For example, a class B felony, such as assault in the second degree, would be a class A felony if motivated by prejudice, bias, or hatred.

A sentencing court *may not* suspend imposition of sentence for a person convicted of motivation by prejudice, bias, or hatred, or convicted of any offense that is knowingly directed at a victim.

A person convicted of a class A felony, may be sentenced to a term of imprisonment of at least five years but not more than 99 years.

Establishes mandatory minimum terms of imprisonment for certain misdemeanor hate crimes that are not prosecuted under AS 11.76.200, but where the court finds clear and convincing evidence that the offense is a hate crime. If a person is sentenced to these mandatory minimums,

the sentence may not be suspended or reduced, and imposition of sentence may not be suspended.

Amends the aggravating factor in sentencing felony cases directed at a victim because of crimes motivated by bias, prejudice or hatred.

Requires the Department of Health and Social Services, when taking informal action in a delinquency case based on prejudice, bias, or hatred, to require the minor to perform a minimum of 100 hours of community work, and to participate in a diversity tolerance program or otherwise provide the minor and the minor's parents or guardian with the opportunity to develop respect for the ethnic, cultural, and personal diversity of all persons of the state.

This bill reflects our values and signals that crimes motivated by hate are especially reprehensible.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 246
(S) Publish Date: 3/24/04

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: An Act relating to the commission of an offense involving victim's race..
BRU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: Senators Lincoln, Davis
Requester: (S) State Affairs
Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill will have a fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Creating a new "motivation by prejudice" or "hate crime" offense seeking to raise the classification and penalties for the underlying crime, will result in more serious prosecutions and trials involving Agency appointments, but it is not possible to predict how many new prosecutions or more trials this legislation will generate if enacted. Furthermore increasing mandatory minimum prison sentences for misdemeanors if circumstances indicate these offenses are hate crimes, and prohibiting SIS's will result in more misdemeanor trials because of these greater penalties, but once again, it is not possible to predict this increased number. For all of the above reasons, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director
Phone (907)-334-4416
Division: Public Defender Agency
Date/Time March 19,2004
Approved by: Mike Miller, Commissioner
Date 3/19/2004
Agency: Administration

(Revised 9/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 246
(S) Publish Date: 3/24/04

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: Act Relating to Hate Crimes
RDU: Alaska State Troopers
Component: AST Detachments
Sponsor: Sen. Lincoln
Requester: (S) State Affairs
Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

If enacted, this bill will address several issues in law regarding charging a person with a criminal offense, sentencing that person if convicted, and establishing the capabilities of a complainant to bring a civil lawsuit against another if the action of the other person is driven by prejudice, bias, or hatred.

Section 1 amends AS 09.55 by adding a paragraph (09.55.670) that allows an individual to bring civil action against another or against the parents or legal guardian of a minor who has caused physical injury to the individual or damage to the property of the individual with the intent to intimidate or harass the individual because of the individual's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin.

Prepared by: Lt. Al Storey
Phone 269-4532
Division: Alaska State Troopers
Date/Time 3/22/04 10:55 AM
Approved by: Commissioner William Tandeske
Date 3/22/2004
Agency: Department of Public Safety

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 246

ANALYSIS CONTINUATION

Section 2 amends AS 11.76 by adding a new section that in essence establishes the law of "motivation by prejudice, bias, or hatred" if a person commits a crime in this title and the person knowingly directed the conduct constituting the crime at the victim of the crime because of the victim's actual or perceived race, sex, color, etc. The classifications of these hate based crimes would be one category up from what the core offense would normally be, i.e.. a class A misdemeanor would become a class C felony.

Section 3 through 12 of this bill address issues related to charging and sentencing those who perpetrate "hate crimes". Contained within these provisions are mandatory minimum sentences, non-suspension of sentences, and language to deal with minor offenders.

Section 13 requires Health and Social Services to develop and implement a diversity training program for minors who have been referred to the program because of "hate crime" conduct.

The Alaska State Troopers do not anticipate any fiscal impact if this proposed bill were to become law.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 246
(S) Publish Date: 3/24/04

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to the commission of an offense or a juvenile delinquency act involving the victim's race, sex, color...."
RDU CRIMINAL
Component Criminal Justice Litigation
Sponsor Senator Lincoln
Requester Senate State Affairs
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill describes the circumstances under which an individual may maintain a civil action for discriminatory harassment and allows for the award of compensatory or punitive damages by the prevailing party. The bill also adds the crime of committing an act motivated by prejudice, bias, or hatred to the criminal code and provides for classification and sentencing for such offenses. The bill also adds a requirement to attend diversity tolerance training for juvenile delinquents who commit delinquent acts based on discrimination.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhetee, Director
Phone 465-3673
Division Administrative Services
Date/Time 3/22/04 2:03 PM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 3/22/2004
Agency Department of Law

(Revised 12/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: SB 246
(S) Publish Date: 3/24/04

Revision Date/Time (Note if correction):
Dept. Affected:

Title: Hate Crimes/Discrimination/ Tolerance Programs
BRU: Alaska Court System
Component: Trial Courts

Sponsor: Senator Lincoln
Requester:
Component No.:

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Senate Bill 246 makes several changes to the criminal and delinquency laws that increase the penalties for crimes that are motivated by prejudice, bias or hatred toward the victim because of the victim's actual or perceived race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin. These changes will impact the court system because stiffer penalties will result in defendants more vigorously defending against the charges against them. This leads to longer and more frequent hearings and increases the chances that a case will go to trial. This is particularly likely when the stiffer penalties are tied to the proof elements associated with hate crimes. However, the extent of this impact is too speculative to support a fiscal note at this time. Should the impact prove to be significant, the court system may return to the legislature with a request for additional resources.

Prepared by: Doug Wooliver Administrative Attorney
Phone 463-4750
Division: Alaska Court System
Date/Time 3/23/04 9:22 AM

Approved by: Stephanie Cole Administrative Director by Doug Wooliver
Date 3/23/2004
Agency: Alaska Court System

(Revised 9/2003 OMB)

ANCHORAGE POLICE DEPARTMENT

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http://www.muni.org

Mark Begich
Mayor

March 25, 2004

Senator Georgianna Lincoln
State of Alaska
State Capitol Room 11
Juneau, AK 99801-1182

MAR 2 9 2004

Dear Senator Lincoln:

I am writing in support of a bill introduced by you: SB 246, Hate Crimes Prevention Legislation. This bill is not new; similar legislation (SB163) was introduced during the 21st legislative session, but did not make it through the process before the session expired.

Hate crimes perpetrated against a person or group of persons based on the actual or perceived gender, disability or sexual orientation of that person or group of persons is a significant concern.

Hate crimes are not merely crimes against an individual, but rather crimes against the entire community because such bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on victims and incite community unrest. Hate crimes are also troubling because they can strike fear in people who have done nothing illegal and are only members of an identifiable group. Thus, hate crime laws are appropriate as part of a government's responsibility to ensure equal protection is afforded to everyone.

I fully support this legislation and hope that Alaska's existing hate crimes bill is expanded to include hate crimes motivated by the victim's disability, gender or sexual orientation.

Sincerely,

Walt Monegan
Chief of Police

WM/ta

Written Testimony of the Anti-Defamation League
in Support of SB 246, "Relating to the Hate Crimes."

Submitted on March 22, 2004 by Robert Jacobs,
Pacific Northwest Regional Director of the Anti-Defamation League

My name is Robert Jacobs. I am the Regional Director for the Pacific Northwest for the Anti-Defamation League. I am submitting this testimony on behalf of the Anti-Defamation League to urge your support for SB 246.

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike." Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, defending democratic ideals, and promoting civil rights, ADL is proud of its leadership role in the development of innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

The Anti-Defamation League is proud to support SB 246, which would take an important step toward providing appropriate civil remedies and criminal penalties for hate crimes in Alaska. SB 246 would provide for additional and specific penalties for crimes committed against persons or property because of that person or the owner or owners' race, color, religion, nationality, county of origin, disability, gender, and sexual orientation. Legislation such as SB 246 has been passed with strong bi-partisan support and has become law in over 42 states and the District of Columbia.

All Americans have a stake in an effective response to violent bigotry. These crimes demand a priority response because of their special emotional and psychological impact on the victim and the victim's community. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. Hate crimes may effectively intimidate other

members of the victim's community, leaving them feeling isolated, vulnerable and unprotected by the law. By making members of minority communities fearful, angry and suspicious of other groups - and of the power structure that is supposed to protect them - these incidents can damage the fabric of our society and fragment communities.

Some people ask why a crime committed against an African-American, a gay person, or a Jew – because that person is African-American, gay, or Jewish – is worse than a "random" robbery, assault, or vandalism. Aren't we all terribly violated whenever we are the victim of physical attack? The answer is, yes, from the victim's perspective, all crimes create a sense of violation. But there is a difference. A random crime is committed not because of one's identity, but because of one's misfortune. A random robbery is committed not because of who one is but what one has (money, for example). In a random crime, if <u>that</u> property hadn't been robbed or vandalized, it would have been that of some other unfortunate victim. It may <u>feel</u> personal while it's happening, but it should not be taken personally.

The opposite is true of hate crime; **hate crimes are personal.** They are committed specifically against another because of some innate and unique personal characteristic that is immutable: skin color, sexual orientation, religious background, and ethnic origin. Walking a different, less dangerous route won't stop a hate crime perpetrator because he or she can always find you – or your kind – later.

The randomness of the crime motivated by greed, need, drug addiction, and the like is absent from hate crimes. Therein lies the difference: as a hate crime target, one is not randomly selected, or in the wrong place at the wrong time. Victims can avoid bad neighborhoods, but they cannot, and should not, escape who they are.

Hate crimes based on a victim's race, religion, gender, sexual orientation, and disability, like other hate crimes, have a special psychological and emotional impact which extends beyond

the original victim. Alaska's failure to treat a "gay-bashing," for example, as severely as it would a non-bias related assault and battery leaves members of the victim's community feeling isolated, vulnerable, and unprotected by the law. While bigotry cannot be outlawed, passage of this bill, providing Alaskans with both civil and criminal hate crime protection and remedies demonstrates an important commitment to confront criminal activity motivated by prejudice.

The fundamental cause of bias-motivated violence is the persistence of racism, bigotry, and anti-Semitism. Unfortunately, there are no quick, complete solutions to these problems. Ultimately, the impact of all bias crime initiatives will be measured in the response of the civil judicial and the criminal justice systems to the individual act of hate violence. Enactment of SB 246, along with implementation of other hate crime training, prevention, and anti-bias education initiatives, is, in the words of ADL's mandate, is a step toward "justice and fair treatment for all citizens alike."

We applaud the leadership of Senator Lincoln on this measure and urge the committee to approve this important legislation.

SB246 - addresses the end product of a process.

Supporting Comment of SB 246

By: Don Bremner
463-7341

Good Afternoon;

On behalf of my Tlingit ancestors and many of my Elders who could not be here today I come to throw our ancestors voices behind SB 246, and to stand by the side of Senator Lincoln in putting this long over due Bill forward.

Our Nation and State has a poor track record of implementing the U.S. and Alaska State Constitutional Rights of equality, fairness and justice towards minority people. In this brief moment I will present samples and a snapshot of western society's unjust treatment of our people and this will reflect again, and again, why we support SB 246.

At the end of the presentation, you will realize like many of us that western citizenship, and the assimilation of Alaska Natives was not and is not succeeding like the hoped for American Dream.

You will see, there is pre-existing leadership and a mindset about Alaskan Natives within the U.S. Government bureaucracy and educational institutions. You will realize that my parents, grandparents, and great grandparents generation suffered greatly at the hands of the U.S. Government; Territory of Alaska; and State of Alaska. Many of you are probably aware that their grandchildren and great grandchildren continue to suffer through western systems today as a result of discriminatory systems and people in our society. We are experiencing this today in our own community.

Samples of Key Government laws and policy regarding Native education:

- Columbus on Indians: " they were "creatures," potential servants, with no religious convictions"

Source: http://rvcc2.raritanval.edu/~bseater/nativea.htm

- 1779- The Only Good Indian is a Dead Indian- Major James Norris

"In 1779, one Major James Norris wrote in his journal, "Civilization or death to all American savages." He meant that any Native Americans who didn't become "civilized" should be killed. Andrew Jackson (1767-1845), a famous frontiersman and Indian fighter who became president allegedly said, "Better dead than red." (Indians were sometimes called "redskins.")

Source: http://www.geobop.com/Symbols/world/na/us/history/5/

- 1869- new directions in Government Policy- Board of Indian Commissioners

"The payment of money annuities to the Indians should be abandoned, for the reason that such payments encourage idleness and vice, to the injury of those whom it is intended to benefit. Schools should be established, and teachers employed by the government to introduce the English language in every tribe. It is believed that many of the difficulties with Indians occur from misunderstanding as to the meaning and intention of either party. The teachers employed should be nominated by some religious body having a mission nearest to the location of the school. The establishment of Christian missions should be encouraged, and their schools fostered. The pupils should at least receive the rations and clothing they would get if remaining with their families. The religion of our blessed Saviour is believed to be the most effective agent for the civilization of any people."

Source: *Annual Report of the Board of Indian Commissioners (Washington, 1869), 5-11.*

- 1880's- Charles Lummis: Indian Rights Crusader

"In the 1880s virtually everyone agreed that the only way to educate Indian children was to take them away from their homes and cut them off from their families for at least four years. At first, Charles Lummis was a believer in that approach, exemplified by the famous Carlisle Indian School in Pennsylvania. He wrote approvingly of the Carlisle School's "kill the Indian, save the child" theory of Indian education when he toured two Indian schools during his tramp across the continent in 1884. But within a year of his move to the Pueblo of Isleta, New Mexico, in late 1888, Lummis had changed his mind. Surrounded by grief-stricken parents whose children were being held against their will at the Albuquerque Indian School, cut off from their families, prevented from returning home even during summer vacations, Lummis came to regard the U.S. government's Indian education policies as an abomination."

"The first newspaper article that Lummis wrote about Indian education policy ran in the Los Angeles Times in April 1890. It was entitled "Poor Pedro, the Fate of the Indian Who Was Educated," and it began with an anecdote written in the style of a folk tale about an Isleta boy who had gone off to a government school for years and had returned to lead a tragic life as an outcast among his own people. The damage inflicted on the students was just part of the problem with the government Indian schools, Lummis asserted. "Of course the fundamental objection is the very same one that we or any other decent people would have if a superior race (self-asserted) were to come from Mars, overrun the land and force us to send our children away from home to be rid of our silly superstitions, religion and customs, and instructed in the better ways of the people of Mars," he wrote. "When I have the time and brains to do justice to so difficult a subject as this really is, you may hear from me about it."

Source: http://www.charleslummis.com/indianrights.htm

- Sept 21, 1887- Use of English in Indian Schools- Commissioner J.D.C. Atkins in his Annual report of 1887

". . . Longer and closer consideration of the subject has only deepened my conviction that it is a matter not only of importance, but of necessity that the Indians acquire the English language as rapidly as possible. The Government has entered upon the great work of educating and citizenizing the Indians and establishing them upon homesteads. The adults are expected to assume the role of citizens, and of course the rising generation will be expected and required more nearly to fill the measure of citizenship, and the main purpose of educating them is to enable them to read, write, and speak the English language and to transact business with English-speaking people. When they take upon themselves the responsibilities and privileges of citizenship their vernacular will be of no advantage. Only through the medium of the English tongue can they acquire a knowledge of the Constitution of the country and their rights and duties thereunder."

"Deeming it for the very best interest of the Indian, both as an individual and as an embryo citizen, to have this policy strictly enforced among the various schools on Indian reservations, orders have been issued

accordingly to Indian agents, and the texts of the orders and of some explanations made thereof are given below:

DECEMBER 14, 1886.

In all schools conducted by missionary organizations it is required that all instructions shall be given in the English language.

FEBRUARY 2, 1887.

In reply I have to advise you that the rule applies to all schools on Indian reservations, whether they be Government or mission Schools. The instruction of the Indians in the vernacular is not only of no use to them, but is detrimental to the cause of their education and civilization, and no school will be permitted on the reservation in which the English language is not exclusively taught."

Source: http://www.alaskool.org/native_ed/historicdocs/use_of_english/prucha.htm

- 1898- "Carlisle Indian Industrial School newspaper, the "Indian Helper," printed a letter by Richard Henry Pratt"

"...in which he said, "Carlisle's mission is to kill THIS Indian, as we build up the better man. We give the rising Indian something nobler and higher to think about and do, and he comes out a young man with the ambitions and aspirations of his more favored white brother. We do not like to keep alive the stories of his past, hence deal more with his present and his future."

"What he meant is that teachers should "kill" Indian children's culture and make them more similar to white children, which were considered superior. Pratt's words were condensed into the motto, "Kill the Indian, save the man."

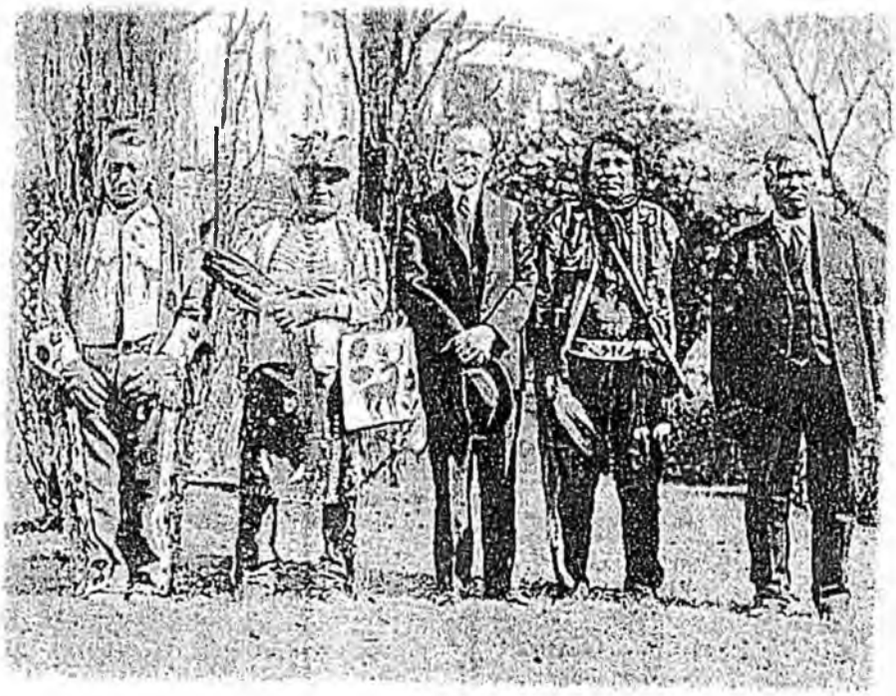
Source: http://www.geobop.com/Symbols/world/na/us/history/5/

We can see the pattern of how these government laws, policies, and themes were applied to the lower 48 Indian tribes. By the time education programs came to Alaska the same mindset was applied to Alaskan Natives. However, for Alaskan Natives we should begin our review by following key events that took place in my ancestor's lives;

- Alaskan Natives were allowed to be recognized citizens if they gave up all rights and practice of their Native language and culture and learned to read and write.
- 1924 Indian Citizenship Act

"Until the Indian Citizenship Act of 1924, Indians occupied an unusual status under federal law. Some had acquired citizenship by marrying white men. Others received citizenship through military service, by receipt of allotments, or through special treaties or special statutes. But many were still not citizens, and they were barred from the ordinary processes of naturalization open to

foreigners. Congress took what some saw as the final step on June 2, 1924 and granted citizenship to all Native Americans born in the United States.



President Calvin Coolidge with four Osage Indians after Coolidge signed the bill granting Indians full citizenship. Source - LOC, LC-USZ62-111409 DLC

The granting of citizenship was not a response to some universal petition by American Indian groups. Rather, it was a move by the federal government to absorb Indians into the mainstream of American life. No doubt Indian participation in World War I accelerated the granting of citizenship to all Indians, but it seems more likely to have been the logical extension and culmination of the assimilation policy. After all, Native Americans had demonstrated their ability to assimilate into the general military society. There were no segregated Indian units as there were for African Americans. Some members of the white society declared that the Indians had successfully passed the assimilation test during wartime, and thus they deserved the rewards of citizenship.

Dr. Joseph K. Dixon, an active proponent of assimilating the "vanishing race" into white society, wrote --

"The Indian, though a man without a country, the Indian who has suffered a thousand wrongs considered the white man's burden and from mountains, plains and divides, the Indian threw himself into the struggle to help throttle the unthinkable tyranny of the Hun. The Indian helped to free Belgium, helped to free all the small nations, helped to give victory to the Stars and Stripes. The Indian went to France to help avenge the ravages of autocracy. Now, shall we not redeem ourselves by redeeming all the tribes?"

So, the Indian Citizenship Act of 1924 proclaimed --

"BE IT ENACTED by the Senate and house of Representatives of the United States of America in Congress assembled, That all non citizen Indians born within the territorial limits of the United

States be, and they are hereby, declared to be citizens of the United States: Provided That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property. (Approved June 2, 1924)"

What Citizenship Meant

Not all Native Americans viewed citizenship as something wonderful. Their experiences in dealing with Washington and the states did not give them much confidence in the government or desire to participate in it. Some tribes feared they would have to give up their own sovereignty and the federal government would deny its treaty obligations. In the words of one Native American --

"United States citizenship was just another way of absorbing us and destroying our customs and our government. How could these Europeans come over and tell us we were citizens in our country? We had our own citizenship. By its [the Citizenship Act of 1924] provisions all Indians were automatically made United States citizens whether they wanted to be so or not. This was a violation of our sovereignty. Our citizenship was in our nations."

On the other hand, there were Native Americans who saw voting as a right that had been denied to them too long. Maine was one of the last states to overturn state legal barriers to Indian voting. That rankled Henry Mitchell, an Indian canoe maker.

"The Indians aren't allowed to have a voice in state affairs because they aren't voters. All they [the politicians] have to do out there is to look out for the interests of the Indians. Just why the Indians shouldn't vote is something I can't understand. One of the Indians went over to Old Town once to see some official in the city hall about voting. I don't know just what postion that official had over there, but he said to the Indian, 'We don't want you people over here. You have your own elections over on the island, and if you want to vote, go over there.' "

Did the 1924 Act really mean the end of the journey in the Native American's march to equality or was it merely a rest stop? By the time the 1924 Citizenship Act was passed, two-thirds of all Indians had already gained citizenship. And while all Native Americans were now citizens, not all states were prepared to allow them to vote. Western states, in particular, engaged in all sorts of legal ruses to deny Indians the ballot. It was not until almost the middle of the 20th century that the last three states, Maine, Arizona and New Mexico, finally granted the right to vote to Indians in their states. And the policies of the federal government towards American Indians continued to change and evolve."

Source:
http://www.nebraskastudies.org/0700/frameset_reset.html?http://www.nebraskastudies.org/0700/stories/0701_0146.html

Under normal circumstances citizenship and the right to vote would mean access and opportunity to things like a good education. But here in Alaska the Native education system was still managed from Washington, DC. and by the Commissioner of Education in Juneau.

It's amazing that schools were even built in Native communities such as Yakutat. For example, thanks to the local minister and commissioner, E.M. Axelson a small school for Natives was completed in Yakutat on Sept 20, 1929. I was surprised to find in my research that the location of the school activated the Yakutat Tlingits to petition the Commissioner of Education with a petition.

We can research and read the Governor of Alaska Reports to the Secretary of Interior from early as 1925 and we will see that regardless of having schools in Rural Alaska for Natives there was always insufficient management of the schools from Washington, DC; the Territorial Education Commissioner avoided getting involved; and there was always a shortage of operations funds and regular teachers.

In addition to issues which affected the operation of schools for Alaskan Natives there was widespread racial discrimination towards Natives which affected their acceptance and participation in the communities of which they lived. This hindered the quality of education they received.

It wasn't until 1945 the Anti-discrimination Act was passed. Prior to 1945 and even to date, our Native people were stereo-typed.

"A few lexicographers and paremiographers have also put together small lists of these invectives, and what follows is a selective number of phrases from these different sources with dates of earliest occurrence where they are available. Frequently found proverbial expressions are "To go Indian file" (1754, i.e., to walk in a single line), "To be an Indian giver (gift)" (1764), "To sing Indian" (1829, i.e., to act as one who defies death), "To do (play) the sober Indian" (1832, i.e., to remain sober or drink only very little to get the knives), "To play Indian" (1840, i.e. to not show any emotions), "To see Indians" (1850, i.e., to be in a delirium), "To turn Indian" (1862, i.e., to revert to a state of nature), "To be a regular Indian" (1925, i.e. to be an habitual drunkard), and "To be on the Indian list" (1925, i.e. to not be allowed to purchase liquor). The many proverbial comparisons repeat this negative image of the Native Americans as being of questionable ethical value: "As dirty as an Indian" (1803), "As mean as an Indian" (1843), "To yell and holler like Indians" (1844), "As wild (untameable) as an Indian" (1855), "As superstitious as an Indian" (1858), "To run like a wild Indian" (1860), "To spend money like a drunken Indian" (this text and all others stem from the late 19th century), "To stare (stand) like a wooden Indian", "Straight as an Indian's hair", "Red as an Indian", "Silent as a cigar-store Indian", "Drunker than an Indian", and "Sly as an Indian".[1]"

Source: http://www.utas.edu.au/docs/flonta/DP,1,1,95/INDIAN.html

Stereo-typing acted as an accepted way to prevent Natives from being accepted in school and getting good jobs. Imagine that the 1945 Act was passed only 58 years ago. The grandchildren of these people are going through the school system today.

Mt. Edgecumbe High School was opened by the Government in 1946. A good description of why the school was built can be presented as;

"Boarding Schools: Tools of Acculturation"

" Boarding schools were introduced as a means to acculturate all Native American groups, including Alaska Natives. The schools in fact attempted to destroy Native village life and motivate the Native population to put an end to dispersed and isolated communities based on subsistence. The relocation of Native youth was intended to break down old village patterns, patterns that could retard the development of Natives into a "disciplined reliable workforce." (Training Corporation of America, 1966)

Alaska Native students wanting to further their education were required to attend school in one of four Indian boarding schools in the lower 48: Chemawa, OR, Chilloco, OK, Carlisle, PA, and Riverside, CA"

Source: http://transition.alaska.edu/pt3/projects/ED478/boarderline/pastmain.html#T3

Even though schools like Mt. Edgecumbe High School were being built there was still a lack of funding for village Territorial schools as can be seen from a resolution adopted by The ANB & ANS Grand Camp Convention in Hydaburg on Nov 15, 1947.

Titled: Resolution No. 20 Entitled: " Territorial School Subsidies"

"Whereas, native children have the right to attend public schools in the territory of Alaska as one of the paramount attributes of citizenship, and ...

"Whereas, the requested subsidy to Territorial schools can be justified on grounds not involving discrimination; namely, that the territory has not developed sufficiently to assume full financial responsibility for its school system, therefore

BE IT RESOLVED, that this convention support the request for a Federal subsidy to Alaskan Territorial schools on the grounds last stated."

Not many people today know that funding for schools in the territory came from alcohol and tobacco taxes. Establishments that sold alcohol and tobacco fought the taxes so there was always a shortage of school operating funds, especially in and for rural Alaska.

Even when Alaska became a State in 1959 much of the debate surrounding Natives by delegates at the Fairbanks convention concluded with, "The Natives were the Governments problem." So it's not surprising that 11 years after Alaska Statehood president Nixon adopted new Indian policy on July 8, 1970 condemning forced

termination of Indian tribes, including Alaska Natives. This was a new direction from the government that was previously avoiding helping Native Americans.

President Nixon stated, " ..we have turned from the question of *whether* the Federal government has a responsibility to Indians to the question of *how* that responsibility can best be furthered.."The Indians of America need Federal assistance- this much has long been clear. What has not always been clear, however, is that the Federal government needs Indian energies and Indian leadership if its assistance is to be effective in improving the conditions of Indian life."

Source: Public papers of the President of the United States; Richard Nixon, 1970, pp. 564-567, 576-76.

Native education programs in Alaska have followed the same path as the lower 48 Indian education programs. So, it shouldn't have been any surprise that Alaskan Natives pressed for control and input to education programs in Alaska. John Collier, Jr. published an article in, "Cultural Influences in Alaska Native Education, Center for Northern educational Research, 1974."

In his article he stated, "The challenge of Indian education is that we generally agree on why it has failed, but remain confused on its practical solution. Its failure is in the destructive impact of white education on Native children.."Many observers, both Indian and white, feel that removing the white teacher from the school and allowing Native culture to dominate the curriculum will solve many of the basic faults of Indian education."

As we all know the Molly Hootch case was filed in 1972. "In August 1972, Cooke filed suit in Superior Court in Anchorage on behalf of native children and their parents in three villages in the Bethel area of Southwest Alaska *(Hootch v. Alaska State-Operated School System*, 1972). The first name on the list of 27 plaintiffs was 16-year-old Molly Hootch, from the Yukon River village of Emmonak.

Cooke filed the suit as a class action on behalf of all similarly situated native children in villages without high schools." The case was settled out of court in 1976. "in May 1975, the Alaska Supreme Court affirmed this holding in a 4-1 decision *(Hootch,* 1975). The first claim was dead. But the state's highest court remanded the case for trial on the second claim put forward by the plaintiffs. This second claim was that the state's failure to provide local high schools in native villages constituted a pattern and practice of racial discrimination against natives in violation of the United States Constitution, federal non-discrimination laws, and the Alaska Constitution.

Attorneys for the plaintiffs, anticipating the likelihood of a remand, had already begun the laborious task of assembling evidence on the discrimination claim. While the decision

on the first claim was still pending in the State Supreme Court, I was taking sworn testimony from state officials and sifting through thousands of pages of state and federal documents. And, most importantly, I was traveling to the villages to meet with parents and children to talk about their experiences with the boarding programs.

State and territorial records from years earlier to the present suggested a simple pattern. In predominantly white communities and in native communities with more than a handful of white inhabitants, if white parents wanted their children to stay home for high school, a local program was provided. In native communities, the idea of a local high school was rarely a matter open to consideration by officials. Even the tiniest white communities, with one or two or five children of high school age, had historically been provided local high school programs. Dozens of larger native communities had not. In all, over 95% of the children coming from villages without high schools were natives; fewer than 5% were whites.

At every turn, evidence mounted of discriminatory policies and actions." "In August 1975, as the plaintiffs' lawyers began to step up trial preparations, Alaska Attorney General Avrum Gross advised Governor Jay Hammond to consider an expanded program of rural high school construction — the purpose, to help defend the *Hootch* case. Gross wrote that a $20-million bond issue might help "counterbalance what a court may view as past transgressions by the State in rural education" and facilitate a settlement of *Hootch* "and thereby avoid a long and costly trial of this matter." *(Memorandum to Gov.,* 1975, p. 3). Shortly thereafter, lawyers for the state asked the plaintiffs' attorneys to suspend trial preparations and talk about a. settlement. We agreed."

"*October 1976:* court approves consent decree; the Molly Hootch case, now entitled *Tobeluk v. Lind,* is settled *(Agreement of Settlement,* 1976*)."*

Source: http://www.alaskool.org/native_ed/law/mhootch_erq.html

With all of this history a person might ask, "What does all this mean?"

It means what President Lyndon Johnson said in his State of the Union Address, Proposing the "Great Society" Program, on Jan 4, 1965.

- "I propose that we begin a program in education to ensure every American child the fullest development of his mind and skills. "
- "Every child must have the best education that this Nation can provide."

It means what Theodore Roosevelt said in his "The man with the Muck Rake Speech," on April 1906.

"The foundation stone of national life is, and ever must be, the high individual character of the average citizen."

We can only ask that you help give our youth a first class education; to be fair-minded about their background and abilities; that you be fair in your communication with them; help them be responsible for their own lives and education; so that when they go out into society it can be said, "They are impressive!"