

HB

255

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 11, 2008

FURTHER REFERRALS:

Date of Committee Action: 3/18/08

The FINANCE Committee considered:

HB 255

HOUSE BILL NO. 255

DUAL SENTENCING

"An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DOC			✓	
DOA				✓
DOA				✓
CRT				✓
HSS				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	2			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Gara	✓			
	CRAWFORD			✓	
	Hawker	*			
	Joule			✓	
	Thomas KELLY	X			
Chair:	Meyer	X			

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB255CS-DOC-PM-03-03-08
() Publish Date: _____

Identifier (file name): HB255-DOC-SPP-01-21-08 Dept. Affected: Corrections
Title: "An act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency" RDU: Population Management
Sponsor: Representative Johnson Component: _____
Requester: House Judiciary Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	*	*	*	*	*	*	*
Travel	0.0	*	*	*	*	*	*	*
Contractual	0.0	*	*	*	*	*	*	*
Supplies	0.0	*	*	*	*	*	*	*
Equipment	0.0	*	*	*	*	*	*	*
Land & Structures	0.0	*	*	*	*	*	*	*
Grants & Claims	0.0	*	*	*	*	*	*	*
Miscellaneous	0.0	*	*	*	*	*	*	*
TOTAL OPERATING	0.0	*	*	*	*	*	*	*

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

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	0.0	*	*	*	*	*	*
1003 GF Match	0.0	*	*	*	*	*	*
1004 GF	0.0	*	*	*	*	*	*
1005 GF/Program Receipts	0.0	*	*	*	*	*	*
1037 GF/Mental Health	0.0	*	*	*	*	*	*
Other Interagency Receipts	0.0	*	*	*	*	*	*
TOTAL	0.0	*	*	*	*	*	*

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time	0	*	*	*	*	*	*
Part-time	0	*	*	*	*	*	*
Temporary	0	*	*	*	*	*	*

ANALYSIS: (Attach a separate page if necessary)

At this time Department of Corrections is unable to estimate the number of individuals who would be committed to the custody of the department as a result of this legislation. The Department of Health and Social Services, Division of Juvenile Justice reports this legislation will increase juveniles referred for dual sentencing by 12 - 24 per year. Under dual sentencing if the minor unsuccessfully completes their sentence in the juvenile system they will be placed on adult felony probation under DOC supervision or may be transferred to the DOC's custody if the minor violates AS 41 12 160(d). These juveniles will initially enter the juvenile system. One additional Adult Probation Officer position with support costs will be necessary when these cases increase by 50. The estimated cost for each required position is \$85,600. The department will track and evaluate the change in caseloads due to passage of this legislation for future operating requests.

Prepared by: Sharleen Griffin, Director
Division: Administrative Services
Approved by: Dwayne Peeples, Deputy Commissioner
Department of Corrections

Phone: (907) 465-3339
Date/Time: 3/3/08 7 00 AM
Date: 3/3/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 255(JUD)
(H) Publish Date: 3/11/08

Identifier (file name): _____ Dept. Affected: LAW
Title An Act relating to dual sentencing of certain juvenile offenders RDU Criminal
Component 2nd Judicial District
Sponsor REP JOHNSON
Requester JUDICIARY Component Number 2199

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

HB 255 would expand eligibility for dual sentencing of minors who commit crimes that are not subject to automatic waiver to the adult system. The department does not expect a significant fiscal impact from this bill.

Prepared by: Betty Martin, Director
Division: Administrative Services Division
Approved by: Talis Colberg, Attorney General
Department of Law

Phone: (907) 465-3673
Date/Time: 1/21/08 7:30 AM
Date: 1/21/08 7:30 AM

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB(JUD)255
() Publish Date: _____

Identifier (file name): HB255CS(JUD)-DOA-PDA-3-13-08 Dept. Affected: Administration
Title: "An Act relating to dual sentencing of certain juvenile..." RDU: Legal and Advocacy Services
offenders; amending Pula 24.1 Component: Public Defender Agency
Sponsor: Representative Johnson
Requester: Governor Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill will expand the number of minors eligible for dual sentencing (being given both a juvenile sentence and a stayed adult sentence) by increasing the types of offenses that make a juvenile eligible for punishment through dual sentencing procedures. There may be as many as 40 additional juvenile cases that will be subject to dual sentencing proceedings. This will not likely result in additional cases assigned to the Agency, but will likely increase the complexity of those cases subject to dual sentencing. Due to the limited number of cases involved and the unpredictable nature of the impact of the increased complexity, the Agency submits a zero fiscal note. The bill could have a fiscal impact if the number or complexity of cases exceeds expectations.

Prepared by: Quinlan Steiner, Director
Division: Public Defender Agency
Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone: 907-334-4414
Date/Time: 3/13/08, 1:00 p.m.
Date: 3/13/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB(JUD) 255
() Publish Date: _____

Identifier (file name): HB255CS(JUD)-DOA-OPA-2-25-08 Dept. Affected: Administration
Title: "An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules..." RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor: Representative Johnson
Requester: Governor Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
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	0.0

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

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
This bill will expand the number of minors eligible for dual sentencing (being given both a juvenile sentence and a stayed adult sentence) by increasing the types of offenses that make a juvenile eligible for punishment through dual sentencing procedures. However, unlike earlier versions of the bill, it would not lower the age of eligibility for dual sentencing. It will, however, greatly increase DJJ's ability to maintain jurisdiction over a young offender. Although there may be some additional juvenile cases that will be subject to additional dual sentencing proceedings, we expect the affect on the agency to be de minimus. Therefore, the agency submits a zero fiscal note.

Prepared by: Joshua P. Fink, Director
Division: Office of Public Advocacy
Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-269-3501
Date/Time 2/25/08, 11:00 a.m.
Date 3/12/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 255(JUD)
() Publish Date: _____

Identifier (file name): _____ Dept. Affected: Alaska Court System
Title: Dual Sentencing RDU: Trial Courts
Component: Trial Courts
Sponsor: Representative Johnson
Requester: House Finance Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0	0.0

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

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
CSHB 255(JUD) expands the existing dual sentencing provisions for minors charged with certain offenses. The Division of Juvenile Justice estimates that it will refer to the district attorneys an average of 10 to 20 cases a year with a recommendation that the DA seek a dual sentence. Because of the small number of cases involved, the court system will be able to handle these cases without the need for any additional funds.

Prepared by: Doug Wooliver, Administrative Attorney Phone 907-463-4750
Division: Alaska Court System Date/Time 3/12/08 @ 2:30 pm
Approved by: Stephanie Cole, Administrative Director by Doug Wooliver Date 3/12/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
E-File Version: CS HB 255 (JUD)

ID (File name) HB255CS(JUD)-DHSS-PS-03-11-08
Title DUAL SENTENCING

() Publish Date: _____
Dept. Affected: Health & Social Services
RDU Juvenile Justice
Component Probation Services

Sponsor JOHNSON
Requester HOUSE FIN

Component No. 2134

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation		Information				
	Required						
OPERATING EXPENDITURES	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
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	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES (0)							
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FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1037 GF/Mental Health							
Other (Specify Type-do not abbreviate)							
Other (Specify Type-do not abbreviate)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill broadens the criteria under which a juvenile may be "dual sentenced" with both a juvenile order and a criminal adult sentence. Currently, juvenile offenders may be dual sentenced if they are 16 to 17 years old and have either: 1) committed a felony offense against a person, and have also been previously adjudicated for a felony offense against a person; or 2) have committed sex abuse of a minor in the second degree. CS HB 255 (JUD) removes the requirement that offenders 16 to 17 have a previous adjudication for a B felony offense to be considered eligible for dual sentencing. This version of the bill adds Misconduct Involving Weapons I and II, and Arson II to the offenses that may allow a juvenile offender to be considered for dual sentencing. (Continued on Page 2)

Prepared by: Stephen F. McComb, Director
Division: Juvenile Justice
Approved by: Karleen Jackson, Commissioner
Agency: Department of Health and Social Services

Phone: 907-261-4335
Date/Time: 03/11/2008
Date: 03/11/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO: CS HB 255 (JUD)

ANALYSIS CONTINUATION

CSHB 255(JUD) also extends juvenile jurisdiction for dual-sentenced juveniles through the age of 19 (up to the 20th birthday), and allows the Department to transfer dual-sentenced juveniles to the adult system once a petition has been filed to impose the adult sentence.

The Division of Juvenile Justice anticipates that 10 to 20 juveniles a year would be assessed as appropriate for dual sentencing under this committee substitute. An average of 38 juveniles a year who do not currently meet the eligibility criteria for dual sentencing would potentially be eligible under this version of the bill. However, only a portion of these youth will be assessed as enough of a public safety risk to merit receiving a dual sentence. The number of youth that are actually dual sentenced will likely be further reduced because district attorneys may be unwilling to process the case through a dual sentence, or a grand jury will be unwilling to indict the youth through the adult system. Moreover, most youth who are dual sentenced would be expected to complete their juvenile orders successfully and not proceed on to an adult sentence. Because the Division of Juvenile Justice will still manage these youths to the best of its ability whether or not they receive a dual sentence, this bill will not have a fiscal impact on the division.

A
3/18/08

25-LS0914:0.3
Luckhaupt
3.14.08

AMENDMENT |

Rep Meyer by
Request

OFFERED IN THE HOUSE
TO: CSHB 255(JUD)

- 1 Page 3, lines 28 - 31;
- 2 Delete all material and insert:
- 3 "(4) if
- 4 (A) a petition has been filed under AS 47.12.160(d) to
- 5 impose an adult sentence;
- 6 (B) a court, at a hearing held within 48 hours of the filing of
- 7 the petition, finds that there is probable cause to support the allegations in
- 8 the petition; and
- 9 (C) the department transfers custody of the minor to the
- 10 Department of Corrections pending the resolution of the petition."

ALASKA STATE LEGISLATURE

REPRESENTATIVE
Craig Johnson
716 W 4th Avenue, Suite 640
Anchorage, Alaska 99501
(907) 269-0200
FAX (907) 269-0200



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4993
FAX (907) 465-3872

House
District 28

Sponsor Statement CS House Bill 255 (JUD)

Currently, Alaska's dual sentencing law provides that a juvenile can receive both a juvenile system order and have an adult sentence pronounced only for a very narrow range of offenses. A youth must be at least 16 years old and either have committed a felony against a person and also been previously adjudicated for a felony against a person; or have committed Sex Abuse of a Minor in the Second Degree. This narrow range of eligibility has led to Alaska's dual sentencing law being used very rarely. The Alaska Division of Juvenile Justice has recorded only five cases of the dual sentencing law being used in the past 10 years.

CS HB 255 broadens the kinds of offenses that can allow a juvenile to be eligible for dual sentencing, and does not require that the juvenile be previously adjudicated for a serious offense, as is current law. This bill also creates the ability to hold dual-sentenced juveniles under supervision or custody longer than is currently allowed. Requiring these juveniles to remain on probation or under custody for an additional year will help improve public safety and will serve to motivate these juveniles to remain crime-free—or else risk having an adult sentence imposed.

The new proposal allows for a dual-sentenced youth to be placed on supervised probation up to their 20th birthday, instead of up to their 19th birthday. Other juveniles can be maintained under juvenile jurisdiction to age 20 only if the DHSS request this of a court, and both the court and the juvenile agree to the extended jurisdiction.

The new proposal also clarifies the process under which a dual-sentenced juvenile who fails in the juvenile system can be transferred to an adult facility. Under the CS, the transfer can be made once the Department files a petition to impose the adult sentence, and the juvenile can be maintained in the adult facility pending resolution of this petition. This will help ensure that recalcitrant, dangerous juveniles are not being maintained in a juvenile facility alongside younger, less dangerous juveniles.

Ultimately, this CS creates a safe expansion of the dual sentencing law by removing the requirement that a juvenile who commits certain B felonies must have been previously adjudicated for a serious felony charge before they can be eligible. The bill creates a means through which juveniles who commit serious assaults, sex offenses, arson, drugs and weapons crimes can be held accountable longer and more effectively than is currently allowed, and motivates them to change their law-breaking behavior before they become adults.

Approximately 40 more juveniles a year would become eligible for dual sentencing under this change. Use of dual sentencing would remain up to the discretion of the DHSS and the District Attorney. The Division of Juvenile Justice estimates that 10- 20 juveniles a year would be referred for dual sentencing under the proposed bill.

CS FOR HOUSE BILL 255 (JUD)
SECTIONAL ANALYSIS

Section 1 amends AS 47.12.065(a) by expanding the authority of the Department of Health and Social Services (department) or other entity selected by the department to refer minors alleged to have committed delinquent acts to the district attorney to pursue dual sentencing of the minor.

CSHB 255 (HB 255) would allow a minor 16 years of age and older alleged to have committed (1) a class B felony against a person (for example, assault in the second degree); (2) arson in the second degree; (3) certain acts of misconduct involving weapons in the first or second degree; or (4) a class C felony against a person if the minor has been previously adjudicated delinquent for a crime against a person to be referred to the district attorney for consideration of pursuing a dual sentence. This provision would not apply if the minor is subject to automatic waiver to adult court under AS 47.12.030(a).

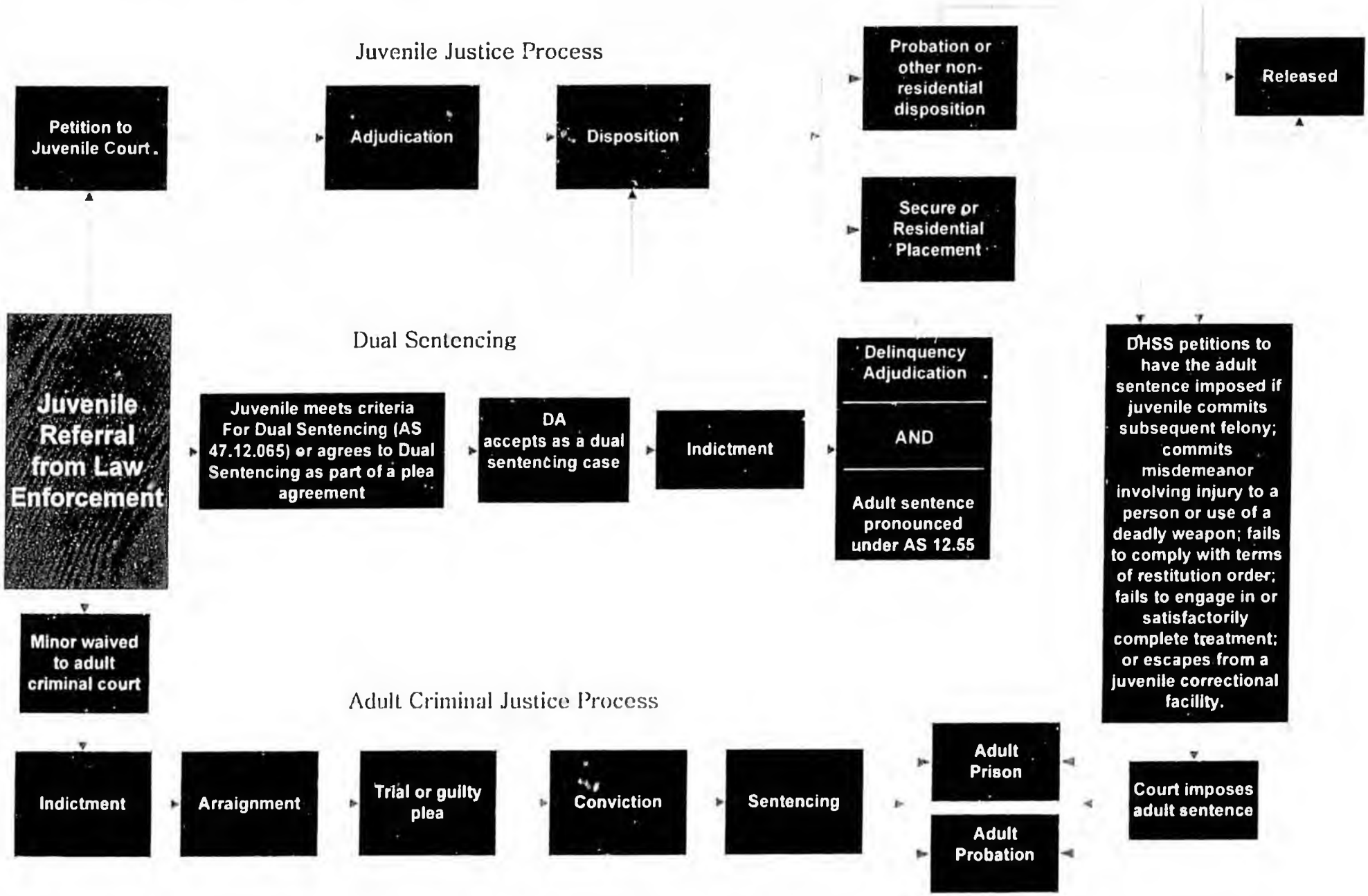
Section 2 allows for the retention of jurisdiction over a minor who has been given a dual sentence by the juvenile court and by the department until the minor is 20 years old.

Section 3 amends AS 47.12.160(a) to clarify that the court retains jurisdiction over minors who have a dual sentence until the person is 20 years old.

Section 4 allows for a minor 16 years of age or older who is subject to a dual sentence to be incarcerated in a correctional facility after the department files a petition to impose the adult sentence.

Juvenile Justice/Dual Sentencing Process

Prepared by DH&SS, Juvenile Justice - 02/22/2008



National Overview of Judicial Waiver

	<u>Judicial Waiver</u>			Direct File	Statutory Exclusion	Reverse Waiver	Once/ Always	Juvenile Blended	Criminal Blended
	Discretionary	Presumptive	Mandatory						
Total States	45	15	15	15	29	25	34	15	17
<u>Alabama</u>	x				x		x		
<u>Alaska</u>	x	x			x			x	
<u>Arizona</u>	x			x	x	x	x		
<u>Arkansas</u>	x			x		x		x	x
<u>California</u>	x	x		x	x	x	x		x
<u>Colorado</u>	x	x		x		x		x	x
<u>Connecticut</u>			x			x		x	
<u>Delaware</u>	x		x		x	x	x		
<u>District of Columbia</u>	x	x		x			x		
<u>Florida</u>	x			x	x		x		x
<u>Georgia</u>	x		x	x	x	x			
<u>Hawaii</u>	x						x		
<u>Idaho</u>	x				x		x		x
<u>Illinois</u>	x	x	x		x	x	x	x	x
<u>Indiana</u>	x		x		x		x		
<u>Iowa</u>	x				x	x	x		x
<u>Kansas</u>	x	x					x	x	
<u>Kentucky</u>	x		x			x			x
<u>Louisiana</u>	x		x	x	x				
<u>Maine</u>	x	x					x		
<u>Maryland</u>	x				x	x	x		
<u>Massachusetts</u>					x			x	x
<u>Michigan</u>	x			x			x	x	x
<u>Minnesota</u>	x	x			x		x	x	
<u>Mississippi</u>	x				x	x	x		
<u>Missouri</u>	x						x		x
<u>Montana</u>				x	x	x		x	
<u>Nebraska</u>				x		x			x
<u>Nevada</u>	x	x			x	x	x		

National Overview of Judicial Waiver

Judicial Waiver

	Discretionary	Presumptive	Mandatory	Direct File	Statutory Exclusion	Reverse Waiver	Once/ Always	Juvenile Blended	Criminal Blended
<u>New Hampshire</u>	x	x					x		
<u>New Jersey</u>	x	x	x						
<u>New Mexico</u>					x			x	x
<u>New York</u>					x	x			
<u>North Carolina</u>	x		x				x		
<u>North Dakota</u>	x	x	x				x		
<u>Ohio</u>	x		x				x	x	
<u>Oklahoma</u>	x			x	x	x	x		x
<u>Oregon</u>	x				x	x	x		
<u>Pennsylvania</u>	x	x			x	x	x		
<u>Rhode Island</u>	x	x	x				x	x	
<u>South Carolina</u>	x		x		x				
<u>South Dakota</u>	x				x	x	x		
<u>Tennessee</u>	x					x	x		
<u>Texas</u>	x						x	x	
<u>Utah</u>	x	x			x		x		
<u>Vermont</u>	x			x	x	x		x	
<u>Virginia</u>	x		x	x		x	x		x
<u>Washington</u>	x				x		x		
<u>West Virginia</u>	x		x						x
<u>Wisconsin</u>	x				x	x	x		x
<u>Wyoming</u>	x			x		x			

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Citation: Griffin, Patrick. 2006. "National Overviews." *State Juvenile Justice Profiles*. Pittsburgh, PA: National Center for Juvenile Justice. Online. Available: <http://www.ncjj.org/stateprofiles/>.

Rule 24.1 Imposition of Adult Portion of Dual Sentence.

(a) **Petition to Impose Adult Portion of Dual Sentence.** The district attorney may petition the court for imposition of the adult portion of a dual sentence pronounced under AS 47.12.120(j)(2). The petition must be supported by an affidavit stating the particulars of the alleged violations.

(b) **Detention Pending Hearing.** If the juvenile has been arrested, the provisions of Delinquency Rule 12 apply to continued detention or placement pending a hearing on the petition.

(c) **Hearing.** The provisions of Delinquency Rule 24(c) apply to hearings on the petition to impose the adult portion of a dual sentence.

(d) **Sentence.** If the district attorney demonstrates by a preponderance of the evidence that the juvenile has committed a subsequent felony offense that is a crime against a person or the crime of arson, the adult sentence previously pronounced under AS 47.12.120(j)(2) shall be imposed and custody transferred to the Department of Corrections. If the district attorney demonstrates by a preponderance of the evidence that the juvenile has committed any of the other circumstances set out in AS 47.12.160(d)(1) -- (5), the adult sentence shall be imposed and custody transferred to the Department of Corrections, unless the juvenile proves by a preponderance of the evidence that mitigating circumstances exist that justify a continuance of the stay of the adult sentence and the juvenile is amenable to further treatment in the juvenile system. The court shall make written findings to support its order.

(SCO 1349 effective December 1, 1998)

Cross References

CROSS REFERENCE: AS 47.12.065; AS 47.12.120(j)(2); AS 47.12.160(d) and (e).

Municipality of Anchorage

Anti-Gang and Youth Violence Policy Team

Law Enforcement Sub-Committee

Legislation

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Legislation - This group leads an ongoing priority to review pending and existing crime legislation, and to develop new legislation for consideration by the Policy Team. Staff: Catherine Curtis at 343-7130, or email CurtisCR@muni.org.

Law Enforcement: Legislation

Statement by the Legislation Sub-Group:

Fulfilling the Criminal Justice System's goals of protecting public safety and providing fair and equal access to justice requires a balanced system with adequate resources for each participating agency. The adequacy of agency resources and the fiscal impact of legislation should be reviewed independently and comprehensively to ensure that a balance is promoted and maintained as communities work to improve our Criminal Justice System. A balanced system also requires that criminal legislation be reviewed through a lens of competency, accountability, and public safety.

Goal: To evaluate existing statutes, legislative proposals, and new initiatives to ensure appropriate statutory authority exists to effectively address youth violence.

Objective 1: Review and develop legislative proposals for recommendation for passage

Step 1: Identify 3-5 moving pieces of legislation for review and recommendation (budgets, bail statute, ankle monitoring for gang-related violent young adults 18-24, dual/blended sentencing)

Step 2: Identify new initiatives necessary (ex: bail matrix, public service attorney bar due reimbursement, etc.)

- a. Scope of problems
- b. Proposed solution
- c. How it addresses principles

Step 3: Develop recommendations on current and new legislation and budgets

Future objectives could include reviewing existing statutes to ensure they are effective.



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STATE OF MINNESOTA
IN COURT OF APPEALS
A05-67

In the Matter of the Welfare of: J.L.P., Child.

Filed January 31, 2006
Affirmed
Peterson, Judge

Anoka County District Court
File No. J5-00-55340/K5-03-8948

Felix J. Sahlin, Lakes & Plains Building, Suite 200, 842 Raymond Avenue, St. Paul, MN 55114 (for appellant J.L.P.)

Mike Hatch, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robert M.A. Johnson, Anoka County Attorney, Kristin C. Larson, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, Seventh Floor, Anoka, MN 55303 (for respondent State of Minnesota)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.

SYLLABUS

1. The imposition of a juvenile disposition and an adult sentence under Minn. Stat. § 260B.130, subd. 4 (a) (2004), is a single sentence that does not violate the constitutional prohibition against double jeopardy.
2. An equal-protection challenge to the length of a sentence imposed under Minn. Stat. § 260B.130, subd. 4(a), is reviewed under a rational-basis test.

OPINION

PETERSON, Judge

Appellant was charged with three felony offenses, and the prosecutor designated that the case should be an extended jurisdiction juvenile (EJJ) prosecution. Appellant pleaded guilty to two felony charges, and the district court sentenced appellant to a juvenile disposition and two stayed adult sentences subject to the terms of appellant's juvenile disposition. Appellant violated a disposition condition, and the district court revoked appellant's EJJ status, continued the stay of the adult sentences, placed appellant on probation for ten years, and as a condition of probation, ordered appellant to serve 180 days in jail. Appellant violated his probation, and the district court revoked the stay and executed the adult sentences. On appeal from the sentence, appellant argues that the imposition and execution of both a juvenile disposition and an adult criminal sentence, as required by Minn. Stat. § 260B.130, subd. 4 (2004), constitutes double punishment for the same offense and, therefore, violates the Double

Jeopardy and Equal Protection clauses of the state and federal constitutions. We affirm.

FACTS

A delinquency petition was filed in Goodhue County alleging that appellant J.L.P. committed one count each of criminal vehicular operation resulting in death, criminal vehicular operation resulting in great bodily harm, and criminal vehicular operation resulting in substantial bodily harm. Because appellant was 17 years old at the time of the offenses and because criminal vehicular operation resulting in death is a felony offense for which commitment to prison is presumed under the Minnesota Sentencing Guidelines, the prosecutor designated that the case should be an EJJ prosecution. Appellant pleaded guilty to criminal vehicular operation resulting in death and criminal vehicular operation resulting in great bodily harm. The plea agreement provided that a juvenile disposition would be imposed, along with two stayed adult felony sentences. By order filed July 5, 2001, the district court accepted the plea and adjudicated appellant an EJJ delinquent.

Venue was transferred to Anoka County for disposition. The juvenile disposition granted custody of appellant to Anoka County Juvenile Corrections, under conditions prescribed by the court, until appellant's 21st birthday and placed appellant in the Juvenile Center. The district court also imposed two stayed adult felony sentences of 48 and 18 months to run consecutively.

At a hearing on August 20, 2003, appellant admitted violating a disposition condition by entering a liquor store and trying to buy alcohol using false identification. Based on findings that appellant willfully violated probation and was no longer amenable to treatment in the juvenile system, the district court revoked appellant's EJJ status. The district court continued the stay of execution of the adult sentences and placed appellant on probation for ten years. As a probation condition, appellant was required to serve 180 days in the Anoka County adult correctional facility, with work-release privileges.

A March 8, 2004 Anoka County corrections department report alleged that appellant had violated probation; the violations included failing to complete chemical-dependency treatment. An addendum filed October 7, 2004 alleged additional violations, including that appellant had used alcohol and failed to remain law abiding. Appellant appeared before the district court and admitted the violations, but the hearing was continued to give appellant an opportunity to challenge the constitutionality of the EJJ prosecution statute, Minn. Stat. § 260B.130 (2004). The district court rejected appellant's constitutional challenge and executed the adult sentences. The district court gave appellant credit for a total of 360 days served in juvenile and adult detention facilities.

This appeal followed. By special term order, this court denied the state's motion to dismiss the appeal as untimely. *In re Welfare of J.L.P.*, 701 N.W.2d 282, 285 (Minn. App. 2005).

ISSUES

1. Do the dual-sentencing provisions of Minn. Stat. § 260B.130 violate state and federal constitutional prohibitions against double jeopardy?
2. Does Minn. Stat. § 260B.130 violate the equal-protection clauses of the state and federal constitutions?

ANALYSIS

1. Whether a district court correctly applied the law of double jeopardy is a question of law, which this court reviews de novo. *Freeman v. Residence Located at 1215 East 21st St.*, 552 N.W.2d 275, 276 (Minn. App.

1996), *review denied* (Minn. Oct. 15, 1996).

A person may not be put twice in jeopardy for the same offense. U.S. Const. amend. V; Minn. Const. art. I, § 7. "The double jeopardy clauses of both constitutions protect criminal defendants from three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense." *State v. Calmes*, 632 N.W.2d 641, 649 (Minn. 2001) (footnote and quotation omitted). The prohibition against double jeopardy applies to delinquency proceedings that are based on violations of criminal statutes. *In re Welfare of E.R.D.*, 551 N.W.2d 238, 240 (Minn. App. 1996). When a defendant pleads guilty, jeopardy attaches, at the latest, when sentencing occurs. *State v. Shellito*, 456 N.W.2d 470, 472 (Minn. App. 1990), *review denied* (Minn. Aug. 23, 1990).

Minn. Stat. § 260B.130, subd. 4(a) (2004), states:

If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:

- (1) impose one or more juvenile dispositions under section 260B.198;
- and
- (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.

Citing *Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779 (1975), appellant argues that imposing a juvenile disposition and an adult criminal sentence as required under Minn. Stat. § 260B.130, subd. 4(a), violates the prohibition against double jeopardy. In *Breed*, following an adjudicatory hearing at which the juvenile court heard witness testimony, the juvenile court sustained the petition alleging respondent delinquent based on its findings that respondent violated a criminal statute and was subject to the juvenile court's jurisdiction. *Breed*, 421 U.S. at 521-22, 95 S. Ct. at 1781-82. At the dispositional stage of the proceeding, the juvenile court found respondent unamenable to treatment as a juvenile and ordered that he be prosecuted as an adult. *Id.* at 523-24, 95 S. Ct. at 1782-83. Respondent was then tried as an adult and convicted of robbery. *Id.* at 525, 95 S. Ct. at 1783. Respondent filed a petition for a writ of habeas corpus alleging that his transfer to adult court and his subsequent trial placed him in double jeopardy. *Id.* at 525-26, 95 S. Ct. at 1783-84.

The Supreme Court concluded:

We cannot agree with petitioner that the trial of respondent in Superior Court on an information charging the same offense as that for which he had been tried in Juvenile Court violated none of the policies of the Double Jeopardy Clause. For, even accepting petitioner's premise that respondent never faced the risk of more than one punishment, we have pointed out that the Double Jeopardy Clause . . . is written in terms of potential or risk of trial and conviction, not punishment. . . . The policy of avoiding multiple trials has been regarded as so important that exceptions to the principle have been only grudgingly allowed. . . .

Respondent was subjected to the burden of two trials for the same offense; he was twice put to the task of marshaling his resources against those of the State, twice subjected to the heavy personal strain which such an experience represents. We turn, therefore, to inquire whether either traditional principles or the juvenile court's assumed ability to function in a unique manner supports an exception to the constitutional policy of finality to which respondent would otherwise be entitled.

Id. at 532-33, 95 S. Ct. at 1787-88 (quotations and citations omitted). The Court then rejected the argument "that giving respondent the constitutional protection against multiple trials in this context will diminish flexibility and informality to the extent that those qualities relate uniquely to the goals of the juvenile-court system" and agreed that granting constitutional protection to respondent would require, in most cases, that a transfer decision be made

before an adjudicatory hearing and concluded that this would not impose an undue burden on the juvenile-court system. *Id.* at 535-39, 95 S. Ct. at 1789-90. The Court held "that the prosecution of respondent in Superior Court, after an adjudicatory proceeding in Juvenile Court, violated the Double Jeopardy Clause[.]" *Id.* at 541, 95 S. Ct. at 1791.

Appellant argues that it follows from *Breed* "that once a youth has been adjudicated a delinquent, imposing an adult sentence (or transferring to adult court) violates the double jeopardy clause." Appellant contends that he is being subjected to multiple punishments because he was given a single juvenile disposition for both offenses that he admitted committing, and he was also given consecutive adult sentences for the same two offenses. But appellant's argument ignores the fact that the concern in *Breed* was multiple trials. Here, the state designated appellant's case as an EJJ prosecution when the delinquency petition was filed, which meets the requirement that a transfer decision be made before an adjudicatory hearing; and there was a single adjudication of delinquency upon the district court's acceptance of appellant's guilty plea.

The issue in this case is whether imposing a juvenile disposition and adult sentences at the same time, as required under Minn. Stat. § 260B.130, subd. 4(a), constitutes multiple punishments. We conclude that it does not. We agree with the district court's description of the juvenile disposition and the adult sentences as "all part of one integrated statutory framework," which is consistent with the supreme court's explanation of the EJJ prosecution statute in *State v. Garcia*, 683 N.W.2d 294 (Minn. 2004). In *Garcia*, the supreme court explained:

The EJJ designation was conceived to provide a more graduated juvenile justice system based on age and offense with a new transitional component between the juvenile and adult systems. The intent of the EJJ designation is to give juveniles one last chance at success in the juvenile system, with the threat of adult sanctions as an incentive not to reoffend. An initial juvenile disposition reinforced by the possibility of adult sanctions gives juveniles a certainty of punishment combined with an opportunity to be successful in the juvenile system. Thus, unlike certified juveniles, EJJ's are given one last chance at rehabilitation in the juvenile system before being subjected to adult sanctions.

Id. at 300 (citations and quotations omitted).

The juvenile disposition and the adult sentence imposed under Minn. Stat. § 260B.130, subd. 4(a), following delinquency adjudication in an EJJ prosecution are not separate, independently imposed punishments. They are a single punishment that has multiple components, with the juvenile disposition being essentially a probation condition of the stayed adult sentence. The actual consequences that a juvenile experiences may increase as a result of the juvenile's failure to comply with the juvenile disposition, but any additional consequences are set forth as a component of the single EJJ disposition. Because the juvenile disposition and the adult sentence are components of a single EJJ disposition, they do not violate the multiple-punishment prong of the prohibition against double jeopardy.

2. Appellant argues that the EJJ disposition imposed under Minn. Stat. § 260B.130, subd. 4(a), violates his right to equal protection because it is a longer sentence than would have been imposed if he had been an adult or a juvenile certified as an adult. Statutes are presumed constitutional and may only be declared unconstitutional when "the challenger bears the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *State v. Merrill*, 450 N.W.2d 318, 321 (Minn. 1990). The "power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." *Id.* (quotation omitted).

The Equal Protection Clause of the Fourteenth Amendment provides, in relevant part, "No state shall . . . deny to any person within its jurisdiction equal protection of the laws." U.S. Const. amend. XIV, § 1. Article 1, Section 2, of the Minnesota Constitution provides, "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Both clauses have been analyzed under the same principles and begin with the mandate that all similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive. This court reviews an equal protection challenge to a statute under a rational basis standard unless the challenge involves a suspect classification or a fundamental right.

Garcia, 683 N.W.2d at 298 (quotation omitted).

Appellant argues that the deprivation of his liberty involves a fundamental right, and, therefore, a strict-scrutiny standard applies to his equal-protection challenge. But in addressing an equal-protection challenge to the EJJ prosecution statute's disparate treatment of juveniles who are designated as EJJ's by different means, this court applied a rational-basis standard because the fundamental right to liberty is not affected when a stayed adult sentence is imposed concurrently with a juvenile disposition that requires commitment to a juvenile facility. *In re Welfare of T.C.J.*, 689 N.W.2d 787, 795 (Minn. App. 2004), *review denied* (Minn. Jan. 26, 2005).

As in *T.C.J.*, which also involved an EJJ disposition imposed under Minn. Stat. § 260B.130, subd. 4(a), appellant is challenging the length of his sentence rather than the deprivation of his liberty. Appellant does not argue that he has the right to be free from any commitment to a juvenile or correctional facility. He argues that his sentence violates his right to equal protection because it is a longer sentence than would have been imposed if he had been an adult or a juvenile certified as an adult. Because appellant's challenge goes to the length of his sentence, the rational-basis test applies to determine the constitutionality of the sentence.

Appellant does not argue that no rational basis exists for sentencing EJJ's differently than adults or juveniles certified as adults. Accordingly, appellant has failed to meet his burden of showing beyond a reasonable doubt that Minn. Stat. § 260B.130, subd. 4(a), is unconstitutional.

DECISION

Because an EJJ disposition imposed under Minn. Stat. § 260B.130, subd. 4(a) (2004), that includes a juvenile disposition and an adult sentence is a single punishment, imposing a juvenile disposition and an adult sentence under Minn. Stat. § 260B.130, subd. 4(a), does not violate state or federal constitutional prohibitions against double jeopardy. Appellant has not shown that Minn. Stat. § 260B.130, subd. 4(a), violates the Equal Protection Clause of the federal or state constitutions.

Affirmed.

Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10

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