

HB

255



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: March 11, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for HB255

Attached please find the following documents, which constitute the referral file for HB255.

- Sponsor Statement
- CSHB255(JUD) (25-LS0914\O)
- Analysis of the changes
- Flow chart of the dual sentencing process
- HB255 (25-LS0914\C)
- Sectional Analysis for version \C
- Fiscal Notes
 - COR
 - HSS
 - ADM- OPA
 - ADM - PDA
 - LAW
- Bill History
- Relevant Statutes
- *In the Matter of the Welfare of: J.L.P., Child*
- Support
- HJUD Committee Report

ALASKA STATE LEGISLATURE

REPRESENTATIVE

Craig Johnson

716 W 4th Avenue, Suite 640
Anchorage, Alaska 99501
(907) 269-0200
FAX (907) 269-0704



While in Juneau

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

House
District 28

Sponsor Statement Draft CS House Bill 255 ()

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.

About 50 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 12-24 juveniles a year would be referred for dual sentencing under the proposed bill.

H-4
G-4
D-2
C-2
S-2
R-2

2-5 FACTS

Concept. Amend #1

Gruenberg

~~P. 3~~
P. 3, line 28; Delete "and"

P. 3, line 29, following "sentence":

Insert "and a court ~~has app~~, ^{Following} after a hearing, has approved the ~~trans.~~ interim transfer of the minor, "

FACTORS OF MOVING TO DOC.

- 16 y/o
- Petition filed
- CT approve interim transfer (new step)
- Dept. transfer

Before hearing on Petition

Analysis of the changes in CS for HB 255 (Version L), from Version C of HB 255

Section 1: Version C enabled the Department of Health and Social Services to refer for dual sentencing a juvenile aged 12-15 who is alleged to have committed murder in the first or second degree or murder of an unborn child; manslaughter or manslaughter of an unborn child; or sexual assault in the first degree. Version L does not include expansion of dual sentencing to these youth.

Section 1 of Version L also adds arson in the second degree as one of the offenses that, when committed by a 16-17-year-old, would allow that juvenile to be eligible for dual sentencing.

Under both the C version and the L version, the use of dual sentencing is expanded so that a previous adjudication is not required when a 16-17-year-old commits a B felony against a person or misconduct involving weapons in the first or second degree.

Section 2: In the C version, this section sought to clarify, by adding a new subsection (l) to AS 47.12.120, the process under which an adult sentence that was pronounced would be imposed, suspended or dismissed; and to clarify that the court may place the minor on adult felony probation. The L version does not create any changes or attempt to clarify the existing process and does not add this new subsection.

Instead, the L version of this section makes changes to an existing subsection of statute, AS 47.12.120(j). This version of the bill states that when a juvenile who is dual sentenced receives their juvenile orders they also will be required to remain under the supervision of the department until they reach the 20th birthday. (Other juveniles are only required to remain under juvenile jurisdiction until their 19th birthday, and may be extended under juvenile jurisdiction to the 20th birthday only if they consent to the extension and it is specifically granted by a court.) Juveniles who are dual sentenced will remain under department jurisdiction until they reach the 20th birthday unless a court discharges them earlier.

Section 3: The C version added a new condition, violation of a condition of probation, to the list of factors in AS 47.12.160(d), which the department may petition a court to have the adult sentence previously pronounced imposed on a youth. The L version does not attempt to add probation violation to the list of activities that may prompt imposition of the adult sentence.

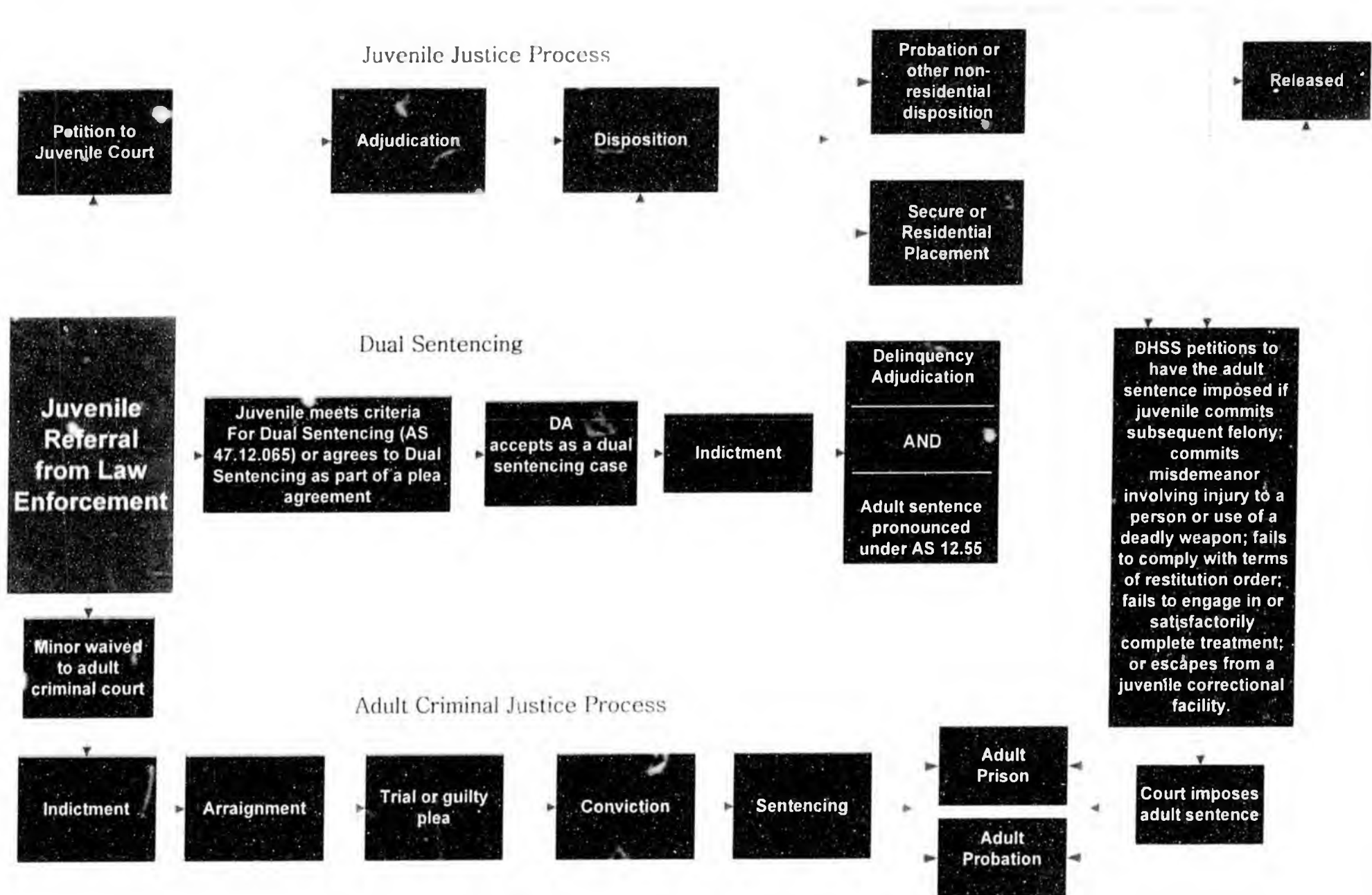
Instead, Section 3 of the L version amends a different subsection of statute, AS 47.12.160(a), to be consistent with the changes in Section 2 of the L version that allow the court to retain jurisdiction until the day the minor becomes 20 years of age. This section also now clarifies that the court may, at any time, modify or enlarge a judgment or order, or discharge the minor in the exercise of its power of protection over the minor and for the minor's best interest.

Section 4: The C version amended the burdens of proof necessary for imposition of the adult sentence in a dual sentencing case. The L version does not change the existing burdens of proof.

Instead, Section 4 in the L version here amends AS 47.12.240(c) to state that when a minor subject to dual sentencing is at least 16, and the department has filed a petition with the court to impose the adult sentence, the department may transfer custody of the minor to the Dept. of Corrections, and the minor may remain under DOC custody pending resolution of the petition.

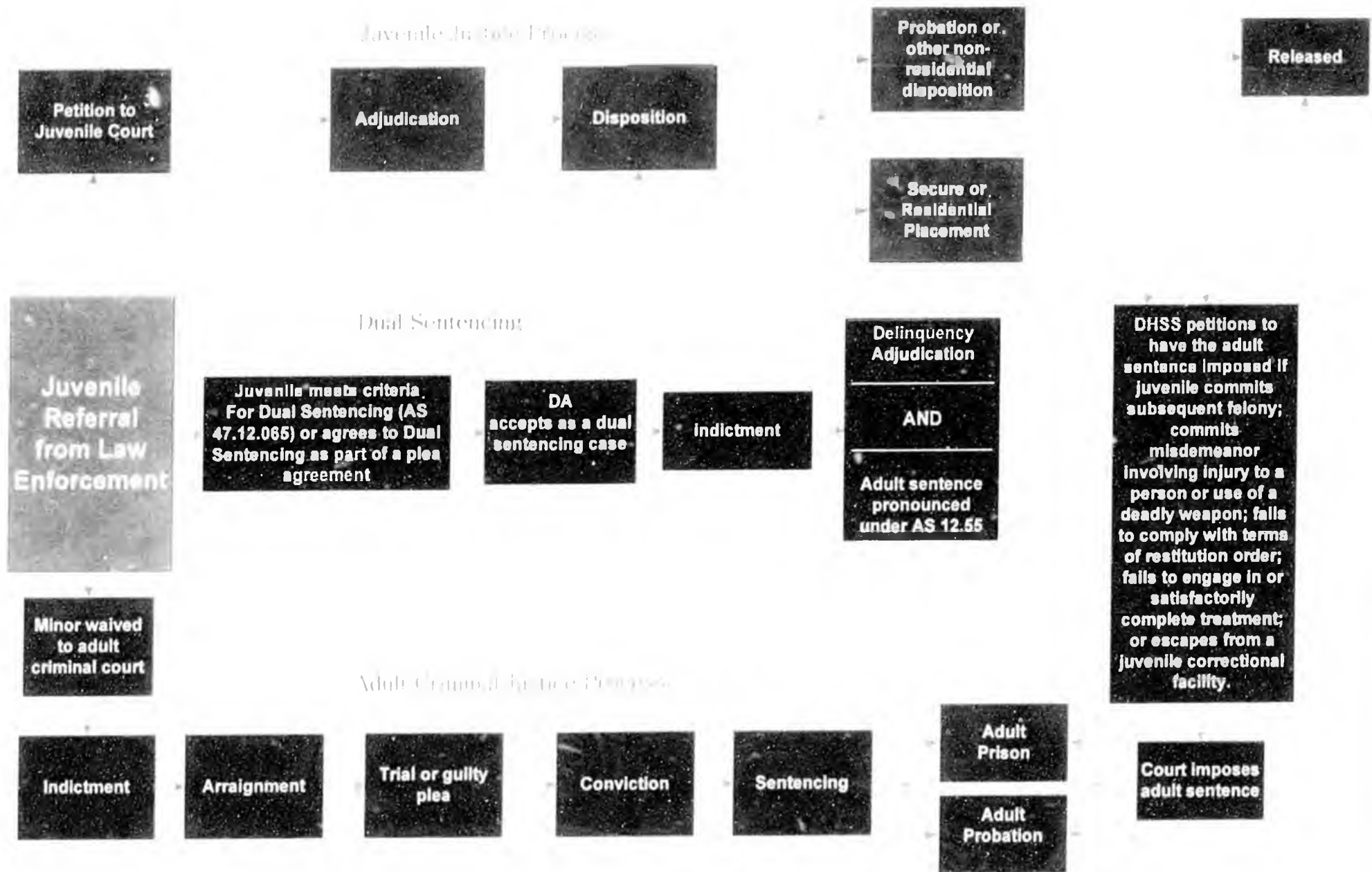
Juvenile Justice/Dual Sentencing Process

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



Juvenile Justice/Dual Sentencing Process

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



AMENDMENT

OFFERED IN THE HOUSE

TO: HB 255

- 1 Page 2, line 15, following "order":
- 2 Insert "or orders"
- 3
- 4 Page 2, line 16, following the first occurrence of "section":
- 5 Insert "or any extension to that order or those orders"
- 6
- 7 Page 2, line 17:
- 8 Delete "or the department, suspend"
- 9 Insert "and with the agreement of the department, suspend or dismiss"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 255

1 Page 2, line 14:

2 Delete "a new subsection"

3 Insert "new subsections"

4

5 Page 2, following line 20:

6 Insert a new subsection to read:

7 "(m) When a sentence pronounced under (j)(2) of this section is not imposed
8 under AS 47.12.160 or is suspended under (l) of this section, the minor is not
9 considered to have been convicted of a crime, and the effects of the adjudication are as
10 provided for others adjudicated under this chapter who were not subject to dual
11 sentencing under AS 47.12.065."

HOUSE BILL 255
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.

House Bill 255 (HB 255) would allow a minor 16 years of age and older alleged to have committed a class B felony against a person (for example, assault in the second degree) and misconduct involving weapons in the first or second degree to be referred to the district attorney for consideration of a request to impose 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).

HB 255 would also allow a minor 12 years or older but under 16 years of age to be referred to the district attorney for consideration of dual sentencing if the minor is alleged to have committed first or second degree murder, murder of an unborn child, manslaughter, manslaughter of an unborn child, or sexual assault in the first degree.

Section 2 adds a provision to AS 47.12.120 addressing the procedure for suspension of the adult part of a dual sentence if the minor has successfully completed the delinquency order under the dual sentence. If a minor successfully completes the delinquency order, the minor or the department may request that the adult portion of the sentence be dismissed or suspended. As a condition of suspension, the court may place the minor on adult felony probation under the conditions provided in AS 12.55.

The bill also provides that when juvenile succeeds with the juvenile part of the disposition, and the adult part of the dual sentence is not imposed, the juvenile is not considered to have been convicted of a crime.

Section 3 adds to the circumstances under which the department or the district attorney may request the court to impose the adult portion of a dual sentence. It allows a petition to be filed for imposition of the adult portion of the dual sentence if the offender is still subject to the jurisdiction of the court and the offender violates a condition of probation.

Section 4 would change the procedure for imposition of the adult portion of a dual sentence. HB 255 provides that if the court finds by a preponderance of evidence that the minor has committed a felony or a misdemeanor against a person that involves injury to the victim or the use of a deadly weapon, the court must impose the adult sentence.

If the court finds by a preponderance of evidence that the minor has failed to comply with a restitution order, failed to complete a rehabilitation program, escaped from a correctional facility, or violated a condition of probation, the court must impose the adult sentence unless the minor proves by clear and convincing evidence that mitigating circumstances justify a stay in imposing the adult sentence. Current law requires the minor to meet the lower preponderance evidentiary standard to establish mitigating circumstances that justify a stay in the adult sentence.

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								
-----------------------------	--	--	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

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 Peoples, 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: _____
 Bill Version: HB 255
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU: Juvenile Justice
 Component: Probation Services

ID(File name) HB255-DHSS-DJJ-12-21-07
 Title DUAL SENTENCING

Sponsor JOHNSON
 Requester HOUSE (JUD)

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							
-----------------------------	--	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

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

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"--receiving both a juvenile order and an adult prison sentence. The bill lowers the age for which this option may be considered for offenders to age 12-15 for offenders who have committed murder, manslaughter, and rape; and does not require that offenders 16-17 have a previous adjudication for a felony offense, as is current law, for B felonies against a person. The bill also allows 16-17-year-olds who have committed Misconduct Involving Weapons in the First and Second degree to be considered eligible for dual sentencing, and clarifies that adult sentences may be suspended for juveniles who successfully complete juvenile orders.

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

Phone: 907 261-4335
 Date/Time: 11/30/2007
 Date: 12/21/2007

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

BILL NO: HB 255

ANALYSIS CONTINUATION

The Division of Juvenile Justice anticipates that fewer than a dozen juveniles a year would be assessed as appropriate for dual sentencing. While an average of 55 juveniles a year that do not currently meet the eligibility criteria for dual sentencing would potentially be eligible under this bill (because they meet the new offense and age criteria), only a portion of these youth will be assessed as posing serious enough risks to public safety 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 youth 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.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

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

Identifier (file name): HB255-DOA-OPA-1-18-08 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
 Sponsor: Representative Johnson Component: Office of Public Advocacy
 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 2009	FY 2010	FY 2011	FY 2012	FY 2013
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							
-----------------------------	--	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill will expand the number of children eligible for dual sentencing (being given both a juvenile sentence and a stayed adult sentence) by increasing the types of offenses that make a child eligible for punishment through dual sentencing and by lowering the age to twelve (12) for consideration for punishment through dual sentencing. It will also increase the number of children eligible for imposition of the adult sentence by including probation violations as a basis for imposing the adult sentence. Probation violations may include failure to comply with curfew or failure to timely report to a probation officer. The bill will also increase the burden on a child to prove to the court by clear and convincing evidence that the adult sentence should not be imposed and that he should not be placed in an adult prison. This bill will likely result in additional litigation costs to the agency; however, at this time, it is not possible to predict what those will be. Consequently, the agency submits an indeterminate fiscal note.

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

Phone: 907-269-3501
 Date/Time: 1/18/08 12:00 AM
 Date: 1/18/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 255a
 () Publish Date: _____

Identifier (file name): HB255-DOA-PDA-1-18-08 Dept Affected: Administration
 Title: "An Act relating to dual sentencing of certain juvenile..." RDU: Legal and Advocacy Services
 Component: Public Defender Agency
 Sponsor: Rep Johnson
 Requester: (H) Judiciary Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)
 This bill will expand the number of children eligible for dual sentencing (being given both a juvenile sentence and a stayed adult sentence) by increasing the types of offenses that make a child eligible for punishment through dual sentencing and by lowering the age to twelve (12) for consideration for punishment through dual sentencing. It will also increase the number of children eligible for imposition of the adult sentence by including all probation violations as a basis for imposing the adult sentence. The bill will also increase the burden on a child to prove to the court by clear and convincing evidence that the adult sentence should not be imposed and that he should not be placed in an adult prison. This bill will likely result in additional litigation costs to the agency, however, at this time, it is not possible to predict what those will be. Consequently, the agency submits an indeterminate fiscal note.

Prepared by: Quinlan Steiner, Director Phone: 907-334-4414
 Division: Public Defender Agency Date/Time: 1/18/08 3 30 p.m.
 Approved by: Kevin Brooks, Deputy Commissioner Date: 1/18/2008
Department of Administration

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: HB255-LAW-CRIM-01-21-08
 Bill Version: HB255
 () Publish Date: _____

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

CAPITAL EXPENDITURES								
CHANGE IN REVENUES ()		0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

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).

Resources by jurisdiction

[FindLaw](#) > [State Resources](#) > [Minnesota](#) > [Primary Materials](#) > [Minnesota Court Opinions](#)

**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. JS-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.

Sponsored Links

FirmFinance™ provides revolving and term loans of up to \$25 million dollars, based on the collateral value of your firm's portfolio of active cases

U.S. Legal Forms, Inc. "Over 36,000 Legal Forms" Stop Reinventing the Wheel each time you draft a legal document. Save Time and Money! Visit USLegalForms.com Today!

Online Legal Document Services Let LegalZoom take care of your legal document preparation. Incorporations, LLCs, Trademark Searches, and more.

AbacusLaw Complete law office software for time, billing, accounting, calendars, clients and cases. Quick to learn, easy to use. Free demo!

Tab3 and PracticeMaster Reliable billing and practice management software for solo to mid-sized firms. Support satisfaction is over 95%

Sponsored Links

Jeanne Ostnes

From: Christina Lowther [grands@voaak.org]
Sent: Wednesday, October 24, 2007 12:10 PM
To: Rep. Craig Johnson
Subject: Expanding HB 255

I was unable to attend the Assembly's public hearing on the budget last night. However, this e-mail is to inform you that I support the expansion of using dual sentencing in juvenile cases.

Sincerely,
Christina Lowther

Grandfamilies Network Coordinator
Volunteers of America Alaska
1675 C St., Ste. 201
Anchorage, AK 99501
Toll-free Statewide 1-888-522-9866
Within Anchorage 522-9866
Fax 279-0148
grands@voaak.org

National Overview of Judicial Waiver

Judicial Waiver

	Discretionary	Presumptive	Mandatory	Direct File	Statutory Exclusion	Reverse Waiver	Once/ Always	Juvenile Blended	Criminal Blended
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			

© 2000 (original copyright); © 2006 (most recent copyright) National Center for Juvenile Justice

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

Municipality of Anchorage

Anti-Gang and Youth Violence Policy Team

Law Enforcement Sub-Committee

Legislation

Participants June to December 2007

Bachman, Adrienne (LAW-CRIM DIV)
Bernitz, John A (DOA-PDA);
Butler, Rex (Defense Attorney)
Carpeneti, R Anne D (LAW-CRIM DIV);
Goehring Harvey.L. (USDOJ);
Greeson, Marti (Alaska Monitoring Services)
Hastie, Brian (FBI)
Henjum, Barbara L (HSS-JUV);
Heun, Rob (APD)
Kopp, Chuc. (Kenai PD)
Levitt, Rachel E (DOA-OPA)
Little, Suzanne (Weed & Seed Program, Mt. View)
McComb, Stephen F (HSS-JUV DIV DIR)
Newman, Anthony (HSS-JUV);
Reed, Michael J (DOC-ADULT PROBATION)
Schroder, Bryan (US Attorney's Office)
Svobodny, Richard (LAW-CRIM DIV)
Tom Begich, (Community Plan Facilitator)
Wing, Deborah (Alaska Native Justice Center)
Wood, Leonard R (HSS-JUV PROBATION);

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.

