ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4557 HHES HB 371 - HB 372

129

HB

371

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: H.B. 371
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to attempted murder in the first degree."
Sponsor: Rep. Hanley, Barnes, etc.
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Division of Administrative Services
Date: 3-16-88

Approved by Commissioner: Susan Humphrey-Barnett
Date: 3-16-88
Agency: Department of Corrections

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HHESS 3-15-88 8:30 a.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 1/18/88

FURTHER REFERRALS: Judiciary
Finance

DATE: 3-16-88

The Health, Education and Social Services Committee has considered HB 371

"An Act relating to attempted murder in the first degree."

RECOMMENDS:

[ ] replace with _____ [ ] the same title
[ ] attached amendment(s) [ ] a new title

- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [X] individual recommendations
- [ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[X] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published _____
[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Bill Hudson
Dave Worley
Royce Hensley

SIGNING OTHER RECOMMENDATIONS:

Max Thurmond no rec
Vic Kingston no rec
J. E. Ellis no rec

J. E. Ellis
Chairman's signature
Fred Hoffman

HB 371 Briefing Packet

TABLE OF CONTENTS

ALASKA PEACE OFFICERS ASSOCIATION

DDC Coordinator
P.O. Box 240106
Anchorage, AK
99524-0106
(907) 786-1807

State APOA Office
P.O. Box 240106
Anchorage, AK
99524-0106
(907) 786-1807

January 19, 1988

Representative Alyce Hanley
P.O. Box V
Juneau, Alaska 99811

Dear Alyce,

I enjoyed our conversation in your office while I was in Juneau. Thank you for taking the time to talk with me. I hope you find our position statement to be helpful.

Let me confirm that I know there is no one in Juneau more supportive of law enforcement than you and we appreciate that.

I spoke with the Board of Directors about the sentence for Attempted Murder. I can safely say that for the examples given (Pfeil, had he lived, and the little girl who is now basically a vegetable) they felt 20 years was not enough. There was no consensus on the ending time (50, 60, 99, open ended). I suppose whatever you develop from your research you can count on our support.

I am more than willing to contact the APOA Chapter Presidents for them to poll their memberships for cases where attempted murder were, or could have been charged. I will also ask them about cases involving a solicitation to commit murder.

If there is any more I can do to help the passage of the bills the 'coalition" has outlined, or with the bills you sponsor please call.

Sincerely,

Shirley

Lt. Shirley A. Warner
Vice President, APOA
786-6656

8 FEB 88

The Honorable Alyce Hanley
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Representative Hanley:

Lt. Shirley Warner of Anchorage Police Department has asked law enforcement officers to send you inform... concerning sentencings of attempted and solicitation of murder.

I worked the investigation concerning Dr. Salgado's hiring of a drug addict to kill Dr. Martino. The enclosed article from the Fairbanks Daily News Minor may be of some value to you. As you can see, this man who had a great deal of public trust and confidence, will once again prey on the unsuspecting public if released after serving only five years. That is a very short time for the heinous crime he committed.

Please call me if I can be of any further assistance. The complete case report (FPD C# 83-18178), is available if necessary.

Sincerely,

Mike A. Nielsen

Mike A. Nielsen, Lieutenant
Fairbanks Police Department
(907) 459-3500
656 7th Aven
Fairbanks AK 99701

Enclosure:

83-18178

Fairbanks Daily News Miner

Salgado seeks reduced sentence

8/01/16

By KRIS CAPPS
Staff Writer

Fernando Salgado, a former Fairbanks neurologist, incarcerated for nearly four years for trying to arrange the murder of a rival neurologist in 1983, asked this week to have his sentence of 10 years without parole reduced.

The judge agreed to allow him parole eligibility at the discretion of the parole board, based on a 1986 change in state law. The law, which went into effect after Salgado's sentencing but which can be legally applied to his case, allows for automatic parole eligibility for consecutive sentences.

Salgado, 48, was sentenced to two consecutive five-year sentences without parole. He must serve the first five years of his sentence before he can meet Parole Board guidelines.

Salgado, 48, who was also a neurologist here, was convicted in 1984 of hiring one of his drug-addict patients to kill Dr. Ronald Martino, the other neurologist in town. He was also convicted of giving the hit man prescription drugs as payoff for the intended murder.

The hit man never did kill Martino. Instead, he secretly recorded conversations of he and Salgado discussing the contract murder, and eventually notified authorities.

As a result of the conviction, Salgado's license to practice medicine was permanently revoked on April 19, 1985.

According to letters written to Superior Court Judge Jay Hodges, which are now part of Salgado's public court file, Salgado says he is anxious to return to Spain upon his release.

"I am very tired, almost exhausted, from being incarcerated for such a long time," Salgado wrote in a March 1987 letter.

He said authorities at Hiland Mountain Correctional Center gave him a little corner of the jail greenhouse as a painting studio and he has become a serious artist since his incarceration. He said he has painted 121 oil paintings and sold every one of them.

He said he keeps his own piano in one of the classrooms and is allowed to keep a pet cat, which he occasionally is also allowed to take to cat shows.

"Just last Sunday, I took him to a cat show held at the Armory in Anchorage where he won 10 ribbons, all first place," Salgado wrote.

He also worked as program assistant to inmates in the jail's sex-offender program.

"For over two years now, I have been longing to return to Spain to see my family and to live there for the remainder of my life," Salgado wrote. "If for some reason I do not enjoy living in my Native land, I might relocate to Argentina where I have many friends."

At this week's hearing, Salgado was described as a model prisoner who is currently assigned to a halfway house.

Defense Attorney Bill Bryson said Salgado refers to his criminal offense as "his crazy period." He also said Salgado promised never to get in that delusional state again.

Larson to appear in benefit-concert

The Farthest North Chapter of the Alaska Peace Officers Association will present the Nitty Gritty Dirt Band and Nicolette Larson in concert May 7 for two shows at Hering Auditorium. Representatives of the association will be telephoning local businesses to sell advertising and tickets. Tickets can be ordered by calling 451-8577.

Proceeds from the shows will benefit area organizations such as youth hockey, basketball and football teams, the Boy and Girl Scouts, Women in Crisis Counseling and Assistance, and two college scholarships.

Metro Saturday

SECTION C

Anchorage Daily News Saturday, November 1, 1986

Doctors tell grim story of child's abuse

by SHERA TOOMEY
Daily News reporter

Tina Sweetin's brain is shrunken and blunted, like the brain of a 95-year-old woman who never learned to talk or talk or feed herself or control her bladder.

Tina will be 2 in January. Her father, Jimmy, has been convicted of fracturing her skull, of nearly drowning her, of turning her from an ordinary baby into a twilight being — blind, retarded, permanently brain damaged, unlikely to ever be able to take care of herself.

Tina was Exhibit A Friday at the first of three court hearings to consider how much time Jimmy Sweetin should spend in jail for what he did. And whether the child's mother, Margaret Sweetin, should do any time at all for not taking the baby to a doctor.

Tina squalled and fretted as pediatrician Jeff Brand inventoried for Superior Court Judge Seaborn Buckalew the outward signs of her inner damage — sightless eyes, permanently clenched thumbs, abnormal reflexes. Buckalew, a tall, distinguished looking grandfather, came down from the bench and watched with arms folded across his black robe as the prosecution table became an impromptu examining table.

Brand told the judge that Tina is probably also deaf, but her foster mother says she can tell voices apart, so maybe not.

The demonstration didn't last very long. "I think I've seen enough," said Buckalew, looking grim, as he has every time this case has come before him.

Of three particularly horrible child abuse cases taken before a grand jury in March by Anchorage District Attorney Victor Krumm, Tina is the only victim not expected to heal. The two other children had broken bones and burns, but escaped brain damage. Their abusers have also been convicted and are awaiting sentencing.

On June 20, Jimmy Sweetin, 25, pleaded no contest to three counts of assault and one count of failing to get medical aid for his child. The complaint against him says he admitted holding Tina by her ankles when she was about a year old and dropping her two feet to the floor on her

See Page C-3 ABUSED

Mat-Su assembly turns to the right after fall elections

By CHRIS OEIGER
Daily News reporter

PALMER — The Matanuska-Susitna Borough Assembly has veered onto a new course since this fall's elections, setting sail under a more pro-development, anti-regulation philosophy, according to some members of the new assembly majority.

Some effects of the change

Steve Cypra and John Musgrove have generally made up the opposition. Both neither Strawn nor Musgrove ran for re-election this season, and the two new assemblymen — Fred Lloyd and Gary Silvers — seem to fall in step with Palmquist and Holmes.

At last week's assembly meeting, the first with the new majority, Palmquist asked the borough staff to

NOV

kay m. levine

'SHOOTER

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ABUSED CHILD: Brain damage is permanent

Continued from Page C-1

head, apparently to stop her crying

He also has admitted to burning her with the heating element of an electric frying pan.

But it was his holding her under water in the bathtub, it was the near drowning on March 6 that deprived her brain of oxygen for more than five minutes and did massive cerebral damage, the doctors explained Friday

Lack of oxygen causes the brain to swell, said radiologist Richard Hill But the brain is in an enclosed space When it swells, blood vessels get crushed and "then the cells die because they don't get enough blood or oxygen " Tina's brain has shrunk to the size it would be if it had been used for 95 years, he said

Sweetin told police he put Tina under water - not for very long – to clean her after she spit up on herself

Tina will soon be 2, but she is less developed than an average 6-month old, said Brand She goes to physical therapy two or three times a week, but "I don't believe she would ever become toilet trained," he said "I don't believe she will be able to feed herself There is every possibility she'll be wearing diapers when she's 35 " There is every possibility she'll have to spend her life in an institution.

It's hard to be certain exactly how damaged Tina is, the doctors said, and impossible to predict whether she will improve For instance, it may be that her eyes can see, said Dr Hill, but her damaged brain just can't recognize the images being transmitted

What Tina's eyes would have seen Friday, if they could, was her father, a former military man who was unemployed at the time of his arrest, slumped motionless in his chair at the defense table, seeming to move not an inch over the two hours the hearing lasted She would have seen her 24-year-old mother, a small, attractive woman with long red hair, fussing over her newest child, 6-week old Christopher, during the breaks

Jimmy Sweetin is in jail His wife is free on bail

Margaret Sweetin has had four children in addition to Tina and was known to social workers long before Tina turned up in the emergency room at Humana Hospital last January Two of her children by another husband had been adopted or given to foster parents before Tina was hurt

District Attorney Victor Krumm referred in court to a 4-year-old who was in the home when Tina was hurt but who has since been removed because of suspected abuse

Christopher, the newest Sweetin, is officially a ward of the state He hasn't turned up with any injuries and remains at home with his mother

Margaret Sweetin pleaded no contest in May to a single misdemeanor count of criminal non-support, meaning she failed to get aid for Tina She faces a maximum of one year in jail

Jimmy Sweetin faces a possible maximum of 46 years in prison The hearing will continue on Nov 13

MAT-SU ASSEMBLY: More favorable to development

Continued from Page C-1

ers legislation in the future, which would set up half-mile-wide corridors around selected streams such as Willow and Little Creeks

The rivers legislation failed last year, but representatives Ron Larson and Katie Hurley have promised to support versions of the bills next time around

Palmquist called the scenic rivers a lock-up Cypra called her stream access stance "part and parcel of an anti-government attitude

> *"We don't come from the lock-up philosophy, let's put it that way. I would say we're pro-development."*
>
> — Rose Palmquist

separation distance between houses and Mat-Su lakes is included in the same ordinance as the stream easement change The required distance now stands at 75 feet under the new rules it would be cut to 45 feet

The previous assembly had 50 feet park down all the rivers and lakes they ought to be able to pay for it, he said

According to Gary Liepitz of the state Department of Fish and Game, rivers set backs pose greater risks to fish spawning areas, water quality and shoreline wildlife corridors

change from five years of overzealous planning and unwieldly bureaucracy For others, the election represents a return to the long range problems of unplanned development

Now in the minority Cypra said he's most concerned about the possibility of decision making outside the public eye

"When you have people who are so philosophically close together it's easy for them to share ideas with each other and start talking about the direction a local government should be going

Anchorage Daily News
11/14/86

metro/

Woman's children often hurt

Witnesses testify during sentencing hearing

By SHEILA TOOMEY
Daily News reporter

Bad things happen to the children of Margaret Sweetin.

At 6, Jimmy had open welts from a belt buckle, up and down both legs, when the state finally took him in 1983. He always seemed to be hungry. Leroy was four and couldn't talk. When asked by a doctor to undress, he did so and automatically assumed a sexual position. The state took him in March.

And then there's Tina. She's almost 2 and not quite brain dead from being dropped on her head and held under water in the bathtub.

Margaret Sweetin says she never hurt her kids. And, in fact, she has not been charged with child abuse. It seems that Margaret Ann, as everyone calls her, has a weakness for men who like to beat up babies.

She and her current husband, Jimmy Sweetin, spent Thursday afternoon in an Anchorage courtroom for the second installment of a marathon sentencing hearing relating to Tina's injuries. Jimmy has pleaded no contest to three felony assault charges and a misdemeanor. He faces a maximum sentence of 45 years.

But Thursday's hearing focused mostly on Margaret Ann. She has been convicted of a single misdemeanor, of failing to get Tina's fractured skull medically treated. That's all she was indicted for.

District Attorney Victor Krumm said earlier in the case that Margaret Ann was charged in accordance with information available at the time her case went to the grand jury, in March.

Krumm has learned a lot more about Margaret Ann since then. Under his questioning, social workers, counselors, doctors and foster parents have been taking the witness stand and sharing that information with Judge Seaborn Buckalew. Buckalew can sentence her to a maximum of one year.

Margaret Ann is 25, but she's lived a lot in those years. She's been married three times and has borne five children. Three other pregnancies ended in miscarriage. Three of her children — Jimmy, Leroy and Tina — have been taken from her at different times. One, Valerie, she gave up voluntarily at birth.

The fifth, Christopher, 2 months old, remains in her care.

Listen to Virginia Sulesky, Leroy's foster mother, describe what the 4-year-old boy was like when she got him in March.

"He was like an uncaged little animal coming into the house . . . We thought he was crippled or something. He held his arms funny and walked with a gait . . . his skin

See Page B-3, CHILDREN

Ship master

Carol Frantz looks out her window on an island in Flat Lake as he

When a hovercra

By CHRIS GEIGER
Daily News reporter

BIG LAKE — In November, the ice sings to Art and Carol Frantz from all directions. Freezing water surrounds the couple's island home on Flat Lake, two lakes back from Big Lake and beyond the reach of roads. The shifting cracks perform a repertoire of mournful groans, bird-songs and occasional rifle shots.

But the Frantzes have paid a price for the winter symphony. With miles of water and four-wheel-drive roads between Art Frantz's home and his job in Anchorage, he has until recently faced an exceptional daily commute.

In the summer, Frantz boats about a mile across Flat Lake to his waiting car, then drives a back road to reach the highway. Winter is easy. He simply drives seven miles over Flat Lake, Mud Lake and Big Lake to the main road.

And in the isolating weeks of freeze-up and break-up, when the lakes are too solid to boat but too liquid to drive on, Frantz resorts to the only other alternative — a hovercraft.

"After about six months here, (Art) said, 'Whose idea was it to move up here?'" Carol Frantz said. "I said, 'It was yours.'"

On Aug. 1, Art Frantz retired from his job with Anchorage Municipal Light & Power. He doesn't miss rising at 4 a.m. every day to commute over ice, snow, water and dirt, he said. But thanks to their island location, the Frantzes' elaborate transportation set-up remains a necessity.

If not for the hovercraft, they'd now be spending their fourth week in a row trapped on the island by uncertain ice.

Art Frantz idles hi

Being stranded
zen lake is not Ca
time. Since the co
1980, she's suffere
Other Big Lake
winter malady, sh

HOVER: Craft provides island home's link to land

Continued from Page B-1

"But that's not the same." She glanced at her husband and laughed.

The Frantzes moved to Alaska in 1959 from the Pocono region of Pennsylvania. He was working as an assistant foreman in a machine shop there, and figured that — 20 years from then — he'd still be working in the machine shop.

"I didn't want to know what I was going to be doing in 20 years, so I came to Alaska," he said.

After almost 20 years in Anchorage, the Frantzes found their island paradise and made their move. Anticipating the transportation difficulties ahead, they bought the hovercraft first, along with several boats.

Not only did they have to reach the island, they had to ferry construction materials to remodel the A-frame cabin already there.

The hovercraft is not a particularly fancy machine. Originally built of plywood, Art has substituted aluminum for the body. Three people can squeeze beneath its canvas canopy in a crunch.

A horizontal turbine creates a cushion of air between the hovercraft's rubber skirt and the ground. A vertical propeller pushes it forward, with airboat style fins for steering. Two controls — a throttle and steering wheel — control everything, although in this case control is a relative concept.

Careening without friction across the lake, the machine turns from side to side like a confused curling stone. If he pressed his luck, Frantz said, he could probably reach 100 miles an hour. But stopping is another story, about halfway home he begins throttling back periodically, touching metal skids to the ice to prevent an unhappy landing.

You have to plan way ahead when you want to stop, Frantz said. "Last year I hit the dock once."

CHILDREN: Mother charged with failure to get help

Continued from Page B-1

color was bad, almost ashen."

He couldn't feed himself with utensils. He speech was an unintelligible garble except for words like mama, papa or doggie. His condition could only have resulted from long-term neglect or worse, other witnesses testified.

Here's social worker Andy Linn, his voice cracking as he describes his first encounter with Leroy before the Sweetins were arrested.

"He came up to me. He gripped on to my leg. He grabbed my hand and he started to kiss my hand. We didn't have enough information to take custody. He didn't want us to leave but we left anyway."

Leroy was desperate, said Linn.

The Sweetins were arrested in March because of what happened to Tina. Jimmy Sweetin has admitted holding his daughter, then about 14 months, three feet off the ground and dropping her on her head. He has pleaded no contest to holding her head under water in the bathtub, although there is some dispute about how long he held her there.

Tina is not likely to improve. She has massive brain damage. She can't see, can't stand, can't talk, can't think.

Leroy is doing better. He lives in a nice house and goes to counseling. When she invites him to play, said his counselor, Leroy always picks the bathroom toys and often has the daddy doll hold the baby doll under water in the bathtub. He freezes and goes into a near trance when anyone chastises him, even mildly, his foster mother testified.

Still, Leroy is doing better. He has learned to speak in sentences. He has used his new skill to tell both his counselor and his foster mother that he doesn't want to go home because "mommy and daddy used to hurt me."

There hasn't been much discussion about Jimmy Sweetin's background, but Margaret Ann didn't invent her parenting techniques. She learned how to bring up children from the people who brought her up.

She was neglected as a child and put for a while into foster care. She returned to her mother's home where, when she has 13 or younger, her stepfather began to sexually abuse her, according to testimony. She was pregnant at 15 by him, and again two years later. Before he died, he had fathered her first three children, divorced her mother and married her.

When the sexual abuse began, Margaret Ann told her mother about it, but her mother refused to believe her, said Rosalie Nadeau of the Crisis Center. When the truth became undeniable, mom blamed Margaret Ann.

Over the years, Margaret Ann has gone from man to man, from boyfriend to husband, even back to her stepfather once when no one else would take her in. And each of the men mentioned in court Thursday hurt Margaret Ann's children, said Krumm.

Many social agencies have tried to help Margaret Ann learn new ways, but they have been hampered by her IQ of about 80 and and by the well-taught lessons of her youth.

Regardless of whether her children are abused by her or "by the men she chooses to live with," said Nadeau, "the result is ... the children Margaret Ann has produced have suffered pretty serious injury and abuse."

"She is a tragic young woman," Nadeau said. "She has had a really unfortunate life. ... I'm not sure that justifies inflicting pain on helpless children who didn't ask to be here."

The sentencing hearing is scheduled to continue next Friday.

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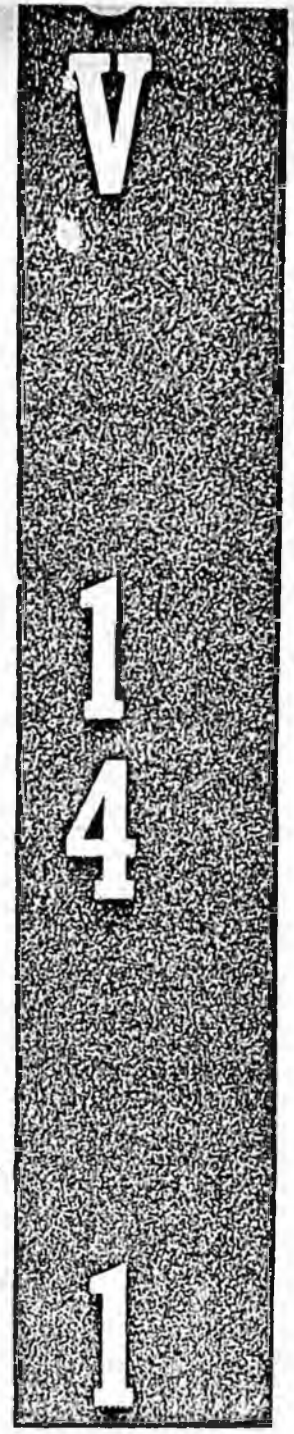
appropriations subcommittee, Stevens said this would put him in the best possible position to secure funding for the new light infantry division in Alaska.

In addition, Stevens said he has a chance to become the ranking Republican on the Rules Committee, a powerful panel which sets the procedures for the Senate.

On the negative side, Stevens admitted that he may be forced to cut two or three of his committee staff aides.

He hopes the Democrats will retain his staff on the defense appropriations subcommittee, saying "they are professionals."

Stevens said he will try to absorb his committee aides onto his personal staff but said "there may be two or three people that I have no place for."



at Sixth Avenue and James Street at about 1:30 a.m.

Weitz, 27, was in a pickup truck that matched one used in connection with a Quick Stop robbery.

When Officer Cindy Mitarch sought cover from Weitz's bullets, Weitz rammed her car and sped off, but rammed into a concrete wall two blocks away. Police officers responding to Mitarch's call for help chased Weitz, ducking shots and returning his fire.

Hanson and another officer arrived on the scene with dogs to track the suspect. Hanson, without his dog, caught up with Weitz on 2nd Avenue off Yandina Street, according to the police report. Weitz was hiding in a dark spot between a carport and a fence. Hanson was wearing a bullet proof vest, but the shot struck him at the top of the protection.

Other officers chased Weitz another half block, surrounding him three times before taking him into custody.

Snowstorm hits Juneau

The Associated Press

JUNEAU — The first snow of the season came in a big way to Juneau this week, throwing a wet white blanket over the Alaska Municipal League's annual conference and catching road crews off-guard.

Juneau got 14 inches of snow between Sunday and Thursday, according to the National Weather Service. Almost half of it fell Wednesday, leaving slushy streets and roadside snowbanks three and four feet high. Skies cleared Thursday.

The weather service said the average Juneau snowfall for the entire month of November is 11.6 inches.

The heavy fall Wednesday kept all major airline flights out of Juneau Municipal Airport and with them, many people headed for the Municipal League conference.

Its organizers were counting on the diverted flights arriving Thursday.

space agency

discussing the Challenger tragedy last January and the following investigation "was filled with doublespeak."

The seven-member shuttle crew, including teacher Christa McAuliffe, perished when Challenger exploded shortly after liftoff.

Lutz quoted a NASA official who said:

"The normal process during the countdown is that the countdown proceeds, assuming we are in a go posture, and at various points during the countdown we tag up the operational loops and face to make in the firing room to ascertain the facts that project elements that are monitoring the data and that are understanding the situation as we proceed are still in the go direction."

Morton Thiokol, the maker of the booster rocket, and Rockwell International, the main contractor to build the shuttle, also were cited by the committee.

"Officials of Morton Thiokol," Lutz said, "when asked why they reversed earlier decisions not to launch the shut-

See Back Page, DOUBLESPEAK

High in the upper teens with north wind to 15 mph. Cloudy tonight with a low near 18. Snow likely Sunday with a high in the lower 20s.

High Friday	18
Low Friday morning	13
Normal high Nov. 21	28
Normal low Nov. 21	13
Record high Nov. 21 (1940)	50
Record low Nov. 21 (1958)	-13

STATE, NATIONAL WEATHER FORECASTS PAGE A-2

index

FOR HOME DELIVERY CALL 267-4400 8 a.m. to 5 p.m.

By JIM ERICKSON
Daily News business reporter

The Alaska Housing Finance Corp., unwilling heir to nearly $100 million worth of Alaska homes whose owners could not keep up the payments, may begin renting out some of its vacant houses and plans to initiate a "hardship" refinancing program that officials hope will slow the corporation's runaway foreclosure rate.

The steps will not cure the problem of record number of homeowners falling behind on their monthly mortgage payments to AHFC, said Ron Lehr, the agency's executive director.

"It's one of those situations where you try to do a little bit here, and a little bit there, and a little bit there," Lehr said. "The panacea is $40 a barrel oil . . . or some kind of major upturn in the economy."

Since the housing market first spiraled into a nosedive in 1985, AHFC has seen its delinquency rate climb from less than 2 percent in mid 1983 to 12.2 percent in October. To cope, AHFC instituted a program allowing hard-pressed homeowners to rent their homes and created an assumable loan program, yet delinquencies continued unabated.

In October, about one of

See Back Page, AHFC

Judge takes kids away from mom

By SHEILA TOOMEY
Daily News reporter

A Superior Court judge reached through the back door of the criminal justice system Friday in an effort to save the children of Margaret Sweetin from a future filled with abuse and neglect.

Judge Seaborn Buckalew sentenced Sweetin to six months in jail for not helping her 14-month-old daughter, Tina, the day Sweetin's husband Jimmy deliberately dropped the baby on her head, fracturing her skull.

The "failure to support" charge is a misdemeanor and the maximum sentence is a year.

But, in an unusual move, Buckalew went on to effectively remove all three of Sweetin's children from her custody for at least five years — a move usually reserved to civil judges in proceedings held behind the closed doors of family court.

He did it by putting Sweetin on supervised probation for five years and ordering, as a condition of probation, that she have no contact with any of her children unless a probation officer gives written permission.

He said he didn't think she should be allowed to visit the children because of testimony that the older ones become upset and fearful when she visits.

Buckalew also ordered that Sweetin not be allowed to live with any children for the next five years, a provision requested by Anchorage Dis-

See Back Page, NEGLECT

Anchorage Daily News 11/22/86

NEGLECT: Judge takes children away from mom

Continued from Page A-1

...ttorney ... Krumm as a safeguard against a possible future marriage between Sweetin and a man with young children. She plans to divorce Jimmy.

"Painful ... damaging evidence" left him with "absolutely no reservations" that any child in Sweetin's care was in physical danger, said Buckalew.

Sweetin's mother, sitting in the front row of the spectator section with a younger daughter, cried as Buckalew reviewed the damage done to Tina. Jimmy Sweetin was not there. He has pleaded no contest to three felony counts and is awaiting sentencing.

Until Friday, when she was led out of Buckalew's third-floor courtroom in handcuffs, Margaret Sweetin was free and had custody of her newest baby, 3-month-old Christoper. Buckalew made clear his concern that state officials allowed this to happen and his belief that he had a special obligation to act because they had failed to.

"It ... seems like it would be negligence on my part not to prohibit contact with Christopher as part of probation," Buckalew said. "I think I have got a primary responsibility to protect that child.

"That action has not been taken by the Attorney General's office."

Buckalew said he didn't want another judge presiding over some future trial with Christopher as the victim.

Defense attorney Glenn Craver said the legislature has specifically reserved child custody decisions to family court and cautioned Buckalew that his sentence might be illegal. Krumm, while applauding the decision, said he didn't know if it would survive an appeal.

So far there have been three court hearings to consider the evidence against Margaret and Jimmy Sweetin. At each of these hearings there has been angry grumbling from social workers, lawyers, witnesses and others about the minor charge brought against Margaret and the fact that she still had Christopher.

"I'm appalled that she was not charged with a felony," said Rosalie Nadeau, director of the Anchorage Crisis Center.

Assistant Attorney General Pat Kennedy, whose office made the decision to leave Christopher with his mother, said the state got limited legal rights to Christopher within a month of his birth.

"She still had the child because at the time we took custody she had only been charged with a misdemeanor," said Kennedy.

Krumm said the state took an abused child from Sweetin in 1983 and social workers knew before he did that she was more than an innocent bystander.

But Kennedy said Margaret Sweetin's "record all revolves around injury to her children by other people. The intention, if she moved in with any male, was to take physical custody of the child."

Anchorage Daily News/Eric Hi...

Defense attorney Glenn Cravez and defendant Margaret Sweetin listen to Judge Seaborn Buckalew during sentencing Friday.

"Now that she's going to jail, I'm sure we're going to be taking custody."

Sweetin, 24, started life on the receiving end of abuse and neglect. As a child she was taken at least once from her home and placed in foster care. Her stepfather, now dead, sexually abused her and eventually fathered three children on her while she was in her early teens. Somewhere along the line, he divorced her mother and was allowed to marry Sweetin, a series of events Buckalew characterized as so bizarre it was like "taking a visit to another planet."

Sweetin has been married three times, had five children and three miscarriages. She will have no more children. She had a tubal ligation after Christopher's birth.

Except for one girl, given up for adoption at birth, all of her children have been abused or severely neglected, according to evidence presented in court. It appears from records compiled in Alaska, Illinois and other states, that the abuse — both physical and sexual — was committed by Sweetin's husbands and perhaps by some boyfriends along the way.

She has been accused only of neglecting her children, of not feeding them properly, of making them eat off the floor and spending their days in locked rooms until their physical and mental growth was stunted.

In March, her fourth child, Tina Sweetin, then about 14 months old, was rushed to the hospital by paramedics, a near drowning victim. Margaret's husband, Jimmy Sweetin, was later charged with holding the baby's head under water for five minutes or more, causing severe and permanent brain damage. The child's fractured skull, an earlier injury, was discovered at that time, as was a bad burn.

Tina and Leroy, 4, the only other child then living with the Sweetins, were taken by the state and are now in foster homes, but Sweetin has not relinquished parental rights to them and Krumm expressed concern that they might someday be returned to her care.

In 1983, a 6-year-old was taken by the state and put up for adoption.

"The conduct is the worst I have ever seen," said Buckalew as he handed down the sentence. "Why you would let these things happen to these children, I don't know."

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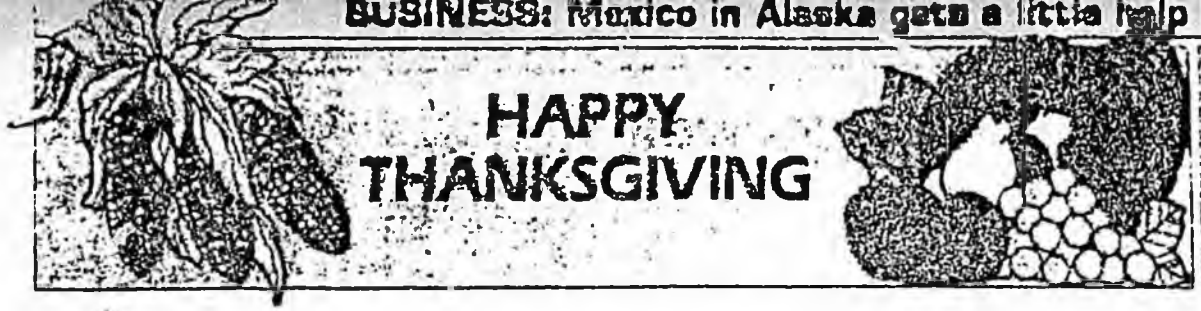
BUSINESS: Mexico in Alaska gets a little help from its



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Anchorage Daily N

VOL XLI, NO 330 304 PAGES ANCHORAGE ALASKA, THURSDAY NOVEMBER 27 1986

Reagan orders investigation of National Security Council

By BERNARD WEINRAUB
The New York Times

WASHINGTON — Amid the crisis over secret dealings with Iran and the Nicaraguan rebels, President Reagan appointed a three-member panel Wednesday to investigate the role of his own National Security Council.

■ **STAYING ON:** A spokesman said Secretary of State George P. Shultz does not intend to quit. A-3

■ **DENIAL:** Israel's foreign minister insists his country did not profit from the arms deal with Iran A-9

Nonetheless, on Capitol Hill several Democratic committee chairmen in the House and the Senate made it clear that they intended to press forward with their own inquiries on the disclosures about the affair. Some Democrats called for the resignation of Donald Regan, the White House chief of staff.

The president's action, announced shortly before he left for Thanksgiving at his ranch in California, came as the Justice Department broadened its investigation into the secret arms shipments to Iran

See Back Page, REAGAN

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By EDWARD W
The Washington P

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Father gets 26 years

Judge: Sweetin's acts 'barbarous'

By SHEILA TOOMEY
Daily News reporter

A father who committed "multiple barbarous acts" against his infant daughter has already separated himself from normal society, a Superior Court judge concluded Wednesday. But to make the separation complete, Judge Seaborn Buckalew sentenced Jimmy Sweetin to 26 years in prison.

"He has effectively excommunicated himself from humankind," Buckalew said during a 2½-hour sentencing hearing. "...That's why he can't lift his head up here in the courtroom."

And indeed, Sweetin, 26, sat at the defense table with his head bowed, as he has each time he has been brought into court and forced to listen

See Back Page, SWEETIN

weather

Increasing clouds today with north winds to 15 mph. High 10 to 15. Snow likely tonight with rising temperatures. Chance of

CHARTING HARD TIMES IN ANCHORAGE

Poverty has a

This year, more folks in Anc

By ELIZABETH PULLIAM
and SHEILA TOOMEY
Daily News reporters

A car door slams in the parking lot of a deserted shopping center. A woman, panting and disheveled, rushes into a storefront food bank. She emerges with bread and milk in a small paper sack. And, since it's a good day, there's also an onion and a fresh green pepper.

Listen.

A machine blip-blips in the intensive care unit at a local hospital, broadcasting the failing heartbeat of a baby born too soon. Every blip plunges her parents deeper and deeper into debt. Their health insurance disappeared with dad's job.

Listen.

A wracking cough shatters the pre-dawn stillness outside the welfare office at Fourth Avenue and Gambell Street. The lineup snakes along the sidewalk, around the corner and down the alley. Budget cuts mean there are fewer caseworkers and the word is out. Get there early or wait all day.

Listen.

"Now is the toughest time I've ever seen," said Judy Sharpe, a social worker at Providence Hospital.

Almost 30,000 Alaskans are out

NEIGHB

NEIGHB

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styles, Page D-1.

men, said Maj. Katrina Cleveland of the Salvation Army. "... Some were making $40,000 or $50,000 a year and are reduced to standing in line."

Mental illness, the kind associated with stress, is on the way up. "People are worried about being about to lose their house, their job, their insurance," said Dr. Aron Wolf of the Langdon Clinic.

from last time last year.

As snow falls on the Chugach Mountains and the wind roaring through the passes brings another winter to the Anchorage bowl, people whose job it is to deal with the fear and the anger, the frustration and despair say things are going to get worse.

Unemployment benefits are running out for workers who lost their jobs when the

recent survey, four out of every 10 business owners said they plan to reduce their staffs before the end of the year.

People who haven't gotten sick yet will. People who made it through their last crisis thanks to a permanent fund dividend check won't get another until next winter.

Those who didn't get out while the getting was good —

"I don't even think about leaving — this is my home," says Al Horton, 35, an out-of-work meatcutter from Hoonah. "I'll make it through somehow."

Poverty in Anchorage doesn't stare out into the street like the empty windows of a tenement.

It's bundled under parkas and watch caps. It's locked behind the doors of over-

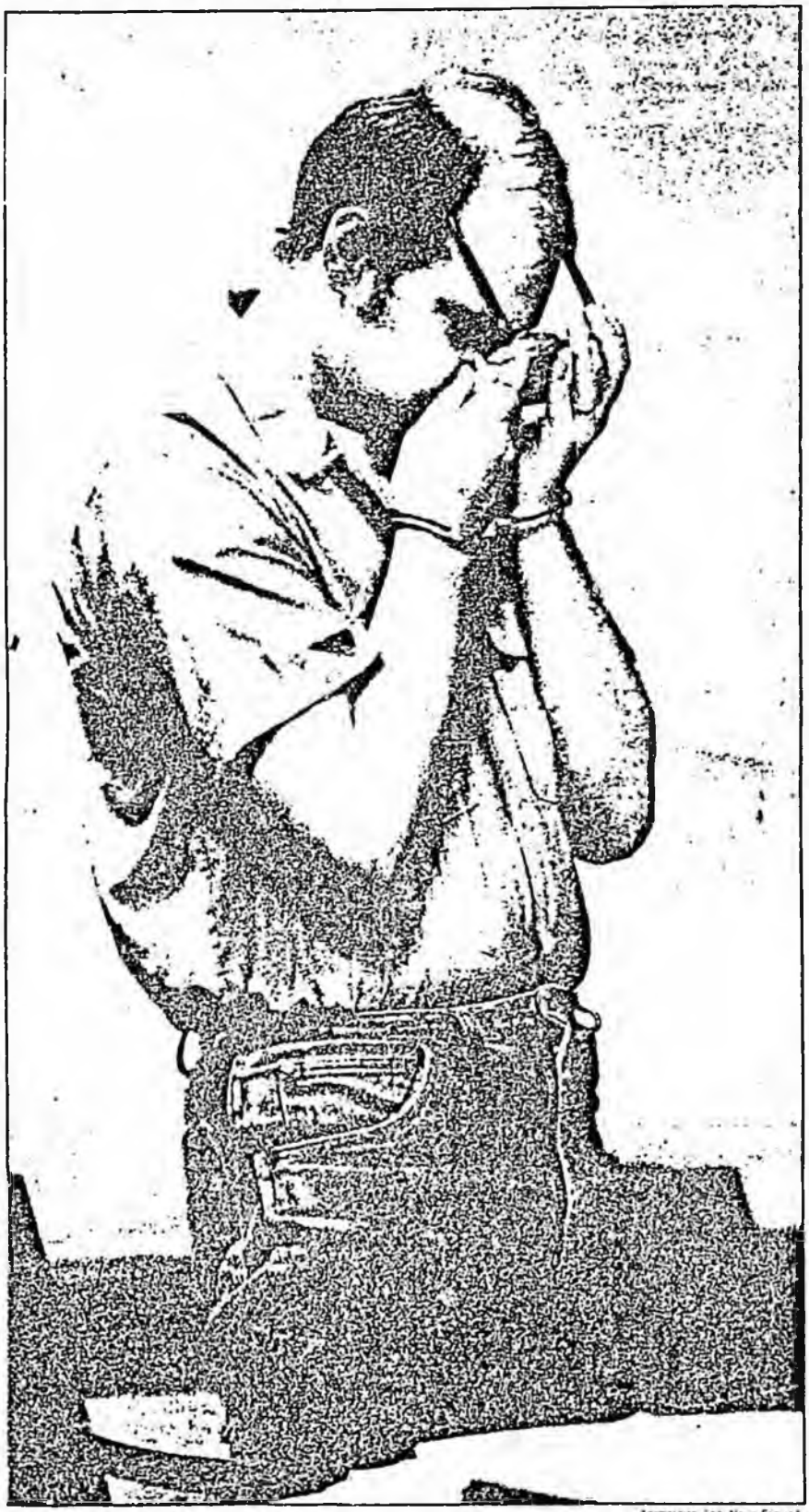
them to a doctor.

"There are a lot of poor people out there," said Myrna Orme of Headstart. "But unlike the Lower 48 you don't see them. It's because they're indoors and not out on the street. But they're just as poor and they're just as sad."

Listen over the next few weeks.

Listen to the sound of the safety net tearing.

SWEETIN: Judge hands down 26-year prison sentence for child abuse



Anchorage Daily News/Erik Hill

Jimmy Sweetin weeps during sentencing.

Continued from Page A-1

to details of the injuries suffered by his daughter, Tina, now nearly 2.

He had pleaded no contest to charges that he, on different occasions over a period of weeks, burned Tina with the electric element from a frying pan, deliberately dropped her on her head, causing a massive skull fracture, and, in March, held her head under water in the bathtub for five minutes or more.

He broke his court silence briefly Wednesday with tears, and with a plea that Buckalew take into consideration his spotless background and exemplary service as a petty officer in the Navy.

"Nobody wants to hear that I am sorry," Sweetin told the judge. "Nobody wants to hear that I love my daughter. I have never been in trouble with the law before. I don't have a violent background ... I'm very thankful right now that I have the forgiveness of God ... I'm very, very sorry. I do love my daughter. That's all."

Sweetin said he believes God will look after Tina.

Buckalew responded: "I think God is the only one that can cure her now. Miracles aren't performed by people on this planet."

In addition to the 26-year prison term, Buckalew effectively barred Sweetin from contact with his two children for the next 31 years without written permission from a probation officer and any agency involved in protecting the children. He also barred Sweetin from living in any "family-type situation" involving children under age 16. Tina, her baby brother Christopher and a step-brother, Leroy, are all now in foster homes.

Margaret Sweetin, Jimmy's wife, is now serving a six-month jail term for failing to get medical aid for Tina. She was not charged with abusing her children, but evidence at her sentencing last week indicated a history of child neglect dating back to before she met and married Sweetin.

District Attorney Victor Krumm had asked that Jimmy Sweetin be sentenced to 46 years for his assaults on Tina.

"He didn't do it to her on one occasion," Krumm said. "...This is a man who is in the process of killing that child. It's taking him weeks to do it."

Krumm called Sweetin's description to police of the near-drowning incident chilling. Sweetin said Tina spit up on herself and he held her under water briefly to clean her.

"While she was under, her eyes were opened, her hands were straight up and it seemed like I seen her take a gasp for air."

Sweetin said he did not hold her under water for anywhere near five minutes, but doctors said it would have taken that long to account for the damage done.

Tina's brain damage is so severe "she would have been better off if they had just finished her," Krumm said. The child is blind, probably deaf and is unlikely ever to be able to care for herself, according to medical testimony presented at an earlier hearing.

"She won't be able to do anything," Krumm said. "She's dead ... She doesn't even know we're out here any more."

Buckalew agreed that the offenses Sweetin committed were among the worst possible assaults — committed against someone who couldn't fight back, against a member of his family who had a right to be safe in her own home. Both circumstances justified increasing the normal seven-year presumptive sentences for the skull fracture and the near-drowning, he said.

But, Buckalew noted, Sweetin was himself an abused child, beaten severely by a stepfather from the time he was 4 until he was placed in a group home as a teen-ager. Battered children often grow into batterers, he said.

"I am pretty much persuaded that if he wasn't a battered child ... he probably would not be sitting here in this courtroom," the judge said.

Buckalew sentenced Sweetin to 15 years for the near drowning, 10 years for the skull fracture, five years suspended for the burning incident and one year for failing to get medical aid for his daughter, a misdemeanor. He is likely to serve about 17 years before being eligible for parole.

Defense attorney Lionel Riley urged Buckalew to consider that Sweetin was not a danger to the general public, only to children in a stressful family situation. Sweetin was driven to the breaking point by his inability to get a decent job, Riley said, and by the fact that his wife, for the first time, was bringing in more money than he was.

"Tina is a member of the public," Buckalew said. "She's as important as anyone in this courtroom."

REAGAN: President orders investigation of NSC; Congress plans its own inquiries

sending Vice President ... the appointment of Tower "I ... about it. Regan is sick about ... tration officials.

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Judge refuses 'liar' Rodriguez new trial

By KIM RICH
Daily News reporter

Convicted child pornographer Carlos "Chico" Rodriguez will not get a new trial, according to an Anchorage Superior Court judge who said Rodriguez is a liar.

"The court does not find Chico Rodriguez a credible witness. The court does not believe Mr. Rodriguez," Judge Ralph Moody said in a written order handed down Tuesday.

Rodriguez had requested a new trial claiming that he received ineffective counsel during his 1981 trial. Rodriguez, 48, was convicted of 26 felony counts, including rape, and operating a teen-age child pornography, prostitution and burglary ring.

He is currently serving an 83-year sentence in an Outside prison.

Rodriguez was back before Moody last week in an Anchorage courtroom during a hearing held to determine if he received effective counsel during his trial. Moody is the same judge who had tried and sentenced Rodriguez.

In his ruling, Moody dismissed all of Rodriguez' claims that his court-appointed attorney, Mitch Schapira, failed to adequately represent him.

Specifically, Moody said there was no evidence that Schapira's ability to defend Rodriguez was impaired by prescription medication he was taking at the time for a back injury.

Moody also discounted Rodriguez' claim that Schapira failed to aggressively represent him because Rodriguez couldn't come up with up to $50,000 to pay Schapira in addition to fees Schapira was receiving from the state.

Neither the existence of this fee contract or Rodriguez' failure to pay Schapira additional money affected the quality of Schapira's representation of Rodriguez, Rodriguez was satisfied with Schapira's representation until after he got convicted. He got the idea for filing this motion after the trial from other prisoners who were filing similar motions," Moody said.

Couple charged with abuse of infant who's left in coma

By KIM RICH
Daily News reporter

An Anchorage couple was arraigned on child abuse charges Tuesday in Superior Court as their year-old daughter lay in a coma at a local hospital.

Jimmy D. Sweetin, 25, and Margaret A. Sweetin, 24, each entered not guilty pleas before Judge Victor Carlson.

Jimmy Sweetin is charged with four counts of first-degree assault, one count of third-degree assault and one count of criminal nonsupport.

Margaret Sweetin is named only in the criminal nonsupport charge. That charge alleges that the couple failed to get medical care for a "serious" head injury to the child.

The incidents occurred between January and March, according to court records.

Jimmy Sweetin has been jailed on $100,000 cash-only bail. Margaret Sweetin is not in custody.

According to court records, on March 6, paramedics responded to a possible drowning at 3911 E. 7th Ave. where they found the Sweetin's infant, Tina, unconscious. The child was taken to Humana Hospital-Alaska, where she has remained in a coma. She is on life-support systems.

According to police, Jimmy Sweetin told police that the child had been eating when she vomited on herself. Sweetin said he took the child into the bathroom where he attempted to wash the vomit off by placing her in a bathtub partially filled with water.

Police say Sweetin told them that he held the child's head "submerged with one hand while washing the vomit off the child's body with the other hand."

Police say that doctors at the hospital also found that the child had other, older injuries, including a skull fracture, a broken collarbone, a damaged ear drum and a burn on her left wrist.

Both Sweetins are scheduled for trial in June.

Officials want boundary settled

By SUE CROSS
The Associated Press

JUNEAU — Alaska officials want the United States government to step up efforts to settle a dispute with the Soviet Union over a 20,000-square-mile area in the Bering Sea.

"The people of Alaska and the people of the United States," said the resolution, which will be sent to President Reagan, Secretary of State George Shultz and a handful of other federal officials.

[illegible] is the boundary.

Further complicating the dispute are $108 million in leases for oil and gas drilling rights in the area that the United States sold in 1984.

The oil companies have not been able to explore the 17

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY	SECOND FELONY	THIRD FELONY
Sexual Assault in the First Degree; Sexual Abuse of a Minor in the First Degree	4-[8]-30 5-[10]*-30	7½-[15]-30	12½-[25]-30
"A" Felony	2½-[5]-20 3½-[7]**-20	5-[10]-20	7½-[15]-20
"B" Felony	0-10***	0-[4]-10	3-[6]-10
"C" Felony	0-5***	0-[2]-5	0-[3]-5

KEY

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

* Ten year presumptive term applies if defendant possessed a firearm, used a dangerous instrument or caused serious physical injury.

** Seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm, used a dangerous instrument or caused serious physical injury or directed offense at peace officer or other emergency responder.

*** Presumptive sentencing may apply if offense directed at peace officer or other emergency responder.

MAXIMUM FINES - PERSONS

Murder, Kidnapping, Sexual Assault I, Misconduct Involving Controlled Substance I	- $75,000
A, B, or C Felony	- $50,000
A misdemeanor	- $ 5,000
B misdemeanor	- $ 1,000
Violation	- $ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - $100,000 or 3 X pecuniary gain - whichever is greater

MAXIMUM TERM OF IMPRISONMENT FOR MISDEMEANORS

A misdemeanor - 1 year
B misdemeanor - 90 days

SENTENCES FOR UNCLASSIFIED FELONIES

Murder I: 20-99 years
Murder II, Kidnapping, Misconduct Involving Controlled Substance I: 5-99 years

5-1

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder in the First Degree
AS 11.41.100
20-99 years

Murder in the Second Degree
AS 11.41.110
5-99 years

Kidnapping
AS 11.41.300
5-99 years

Misconduct Involving a Controlled Substance I
AS 11.71.010
5-99 years

Sexual Assault I
AS 11.41.410
Maximum of 30 years

Sexual Abuse of a Minor I
AS 11.41.434
Maximum of 30 years

CLASSIFIED FELONIES

A	B	C
Attempted Unclassified Felony AS 11.31.100(d)(1)	Attempted A Felony AS 11.31.100(d)(2)	Attempted B Felony AS 11.31.100(d)(3)
Solicitation of Unclassified Felony AS 11.31.110(c)(1)	Solicitation of A Felony AS 11.31.110(c)(2)	Solicitation of B Felony AS 11.31.110(c)(3)
Manslaughter AS 11.41.120	Assault II AS 11.41.210	Criminally Negligent Homicide AS 11.41.130
Assault I AS 11.41.200	Sexual Assault II AS 11.41.420	Assault III AS 11.41.220
	Sexual Abuse of a Minor II AS 11.41.436	Custodial Interference I AS 11.41.320
Robbery I AS 11.41.500	Unlawful Exploitation of a Minor AS 11.41.436	Sexual Abuse of a Minor III AS 11.41.220

A	B	C
	Sexual Abuse of a Minor -- AS 11.41.436	AS 11.41.320
Robbery I AS 11.41.500	Unlawful Exploitation of a Minor AS 11.41.436	Sexual Abuse of a Minor III AS 11.41.220
Arson I AS 11.46.400	Robbery II AS 11.41.510	Incest AS 11.41.450
Escape I AS 11.56.300	Extortion AS 11.41.520	Coercion AS 11.41.530
Promoting Prostitution I AS 11.66.110(a)(2)	Theft I AS 11.46.120	Theft II AS 11.46.130
Criminal Possession of Explosives with Intent to Commit Murder or Kidnapping AS 11.61.240(b)(1)	Issuing a Bad Check, $25,000 or more AS 11.46.280(d)(1)	Concealment of Merchandise, $500 or more AS 11.46.220(c)(1)
Misconduct Involving Controlled Substance II AS 11.71.020	Burglary I AS 11.46.300	Removal of Identification Marks, $500 or more AS 11.46.260(b)(1)
	Arson II AS 11.46.410	Unlawful Possession (of Altered Property), $500 or more AS 11.46.270(b)(1)
	Criminal Mischief I AS 11.46.480	Issuing a Bad Check, $500 or more AS 11.46.280(d)(2)
	Forgery I AS 11.46.500	Fraudulent Use of a Credit Card, $500 or more AS 11.46.285(b)(1)
	Scheme to Defraud AS 11.46.600	Obtaining a Credit Card by Fraudulent Means AS 11.46.290(a)(1), (2)
	Defrauding Creditors, $25,000 or more AS 11.46.730(c)(1)	Burglary II AS 11.46.310
	Bribery AS 11.56.100	Criminal Mischief II AS 11.46.482

		AS 11.46.270(b)(1)
	Criminal Mischief I AS 11.46.480	Issuing a Bad Check, $500 or more AS 11.46.280(d)(2)
	Forgery I AS 11.46.500	Fraudulent Use of a Credit Card, $500 or more AS 11.46.285(b)(1)
A		
	Scheme to Defraud AS 11.46.600	Obtaining a Credit Card by Fraudulent Means AS 11.46.290(a)(1), (2)
	Defrauding Creditors, $25,000 or more AS 11.46.730(c)(1)	Burglary II AS 11.46.310
	Bribery AS 11.56.100	Criminal Mischief II AS 11.46.482
	Receiving a Bribe AS 11.56.110	Forgery II AS 11.46.505
	Perjury AS 11.56.200	Criminal Possession of Forgery Device AS 11.46.520
	Escape II AS 11.56.310	Criminal Simulation $500 or more AS 11.46.530(b)(1)
	Interference with Official Proceedings AS 11.56.510	Tampering with a Witness I AS 11.56.540
	Receiving a Bribe by a Witness or Juror AS 11.56.520	Offering a False Instrument for Recording AS 11.46.550
	Criminal Possession of Explosives with Intent to Commit a Felony AS 11.61.240(b)(2)	Misapplication of Property $500 or more AS 11.46.620
	Promoting Prostitution I AS 11.66.110(a)(1) and (3)	Falsifying Business Records AS 11.46.630
	Misconduct Involving Con-	Commercial Bribe Receiving

Escape II
AS 11.56.310

Interference with Official Proceedings
AS 11.56.510

Receiving a Bribe by a Witness or Juror
AS 11.56.520

Criminal Possession of Explosives with Intent to Commit a Felony
AS 11.61.240(b)(2)

Promoting Prostitution I
AS 11.66.110(a)(2) and (3)

Misconduct Involving Controlled Substance III
AS 11.71.030

Criminal Simulation $500 or more
AS 11.46.530(b)(1)

Tampering with a Witness I
AS 11.56.540

Offering a False Instrument for Recording
AS 11.46.550

Misapplication of Property $500 or more
AS 11.46.620

Falsifying Business Records
AS 11.46.630

Commercial Bribe Receiving
AS 11.46.660

Commercial Bribery
AS 11.46.670

Defrauding Creditors, $500-$25,000
AS 11.46.730(c)(2)

Criminal Use of a Computer
AS 11.46.740

Endangering Welfare of Minor
AS 11.51.100

Perjury by Inconsistent Statements
AS 11.56.230

Escape III
AS 11.56.320

Promoting Contraband I
AS 11.56.375

Jury Tampering
AS 11.56.590

AS 11.51.100

Perjury by Inconsistent Statements
AS 11.56.230

Escape III
AS 11.56.320

Promoting Contraband I
AS 11.56.375

Jury Tampering
AS 11.56.590

Misconduct by a Juror
AS 11.56.600

Tampering with Physical Evidence
AS 11.56.610

Harming a Police Dog I
AS 11.56.705

Hindering Prosecution I
AS 11.56.770

False Accusation
AS 11.56.805

Terroristic Threatening
AS 11.56.810

Riot
AS 11.61.100

Distribution of Child Pornography
AS 11.61.125(a)(1), (2)

Promoting or Exhibition of Fighting Animals
AS 11.61.145

Misconduct Involving Weapons I
AS 11.61.200

Promoting or Exhibition of Fighting Animals
AS 11.61.145

Misconduct Involving Weapons I
AS 11.61.200

Criminal Possession of Explosives with Intent to Commit B Felony
AS 11.61.240(b)(3)

Unlawful Furnishing of Explosives
AS 11.61.250

Promoting Prostitution II
AS 11.66.120

Promoting Gambling I
AS 11.66.210

Possession of Gambling Records I
AS 11.66.230

Misconduct Involving Controlled Substance IV
AS 11.71.040

5-7

Promoting or Exhibition of Fighting Animals
AS 11.61.145

Misconduct Involving Weapons I
AS 11.61.200

Criminal Possession of Explosives with Intent to Commit B Felony
AS 11.61.240(b)(3)

Unlawful Furnishing of Explosives
AS 11.61.250

Promoting Prostitution II
AS 11.66.120

Promoting Gambling I
AS 11.66.210

Possession of Gambling Records I
AS 11.66.230

Misconduct Involving Controlled Substance IV
AS 11.71.040

5-7

JAN 0 1985

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

January 8, 1985

M E M O R A N D U M

TO: Honorable Bill Sheffield
Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill relating to
criminal sentences
file no. 377-129-85

Attached is a bill, requested by the criminal division of the Department of Law, which raises the criminal penalties for attempted murder, solicitation to commit murder, manslaughter, and criminally negligent homicide, and makes some badly needed "housekeeping" amendments to present sentencing laws.

As originally proposed, the focus of this bill was to raise the crimes of attempted murder and solicitation to commit murder to the "unclassified" level. This proposal was approved by John Shively on September 4, 1984. As the bill was being drafted, however, its scope was expanded to allow the correction of several other significant problems that exist in our present sentencing laws. Under current law, for example, a person convicted of manslaughter is subject to a presumptive term that is two years less than that imposed upon a person who assaults his victim, but does not kill him.

Although the bill is somewhat broader than originally planned, the amendments it contains are valuable ones that should receive legislative attention.

A draft transmittal letter to the legislature, containing a detailed explanation of the bill, is attached.

NCG:GAH:so

cc w/enc.: Hon. Robert Sundberg, Commissioner
Dept. of Public Safety

Daniel W. Hickey, Chief Prosecutor
Dept. of Law

03 – 0221 H

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will increase the penalties for the crimes of attempted murder, solicitation to commit murder, manslaughter, and criminally negligent homicide. The bill also makes some badly needed "housekeeping" changes to existing sentencing laws.

Under present law, a person who attempts to commit or solicits another to commit murder, an unclassified felony, is guilty of only a class A felony. If it is the defendant's first felony conviction, he will be subject to a presumptive term of either five or seven years imprisonment, depending upon the facts of the offense. (AS 12.-55.125(c)(1), (c)(2).)

A deliberate, intentional attempt to kill another person, or the deliberate, intentional solicitation of someone else to commit a murder, are among the most heinous crimes that a person can commit. Only the completed murder itself could be more serious. The penalties prescribed under existing law do not reflect the seriousness of this conduct. Under present law, for example, a parent who improperly touches his eight-year-old child's genitals receives a more severe sentence than that imposed upon a person who deliberately, but unsuccessfully, attempted to kill the child. Sections 1 -- 4 and 10 of this bill cure

this anomoly by raising the crimes of attempted murder and solicitation to commit murder to the "unclassified" level. The crimes will carry a presumptive sentence equal to that now provided for the unclassified felonies of sexual assault in the first degree or sexual abuse of a minor in the first degree. (See AS 12.55.125(i).)

Manslaughter is a class A felony. Under current law, a person convicted of a first offense class A felony faces a presumptive term of seven years if the person knowingly directed his conduct to a uniformed police officer, possessed a firearm, used a dangerous instrument, or caused serious physical injury during the crime, unless the conviction was for manslaughter. AS 12.55.125(c)(2). A defendant convicted of manslaughter is subject to a presumptive term of only five years.

This sentencing "exception" for manslaughter has created an incredible anomoly in existing law. For example, an intoxicated driver who causes a traffic accident in which another person is seriously injured has committed assault in the first degree under AS 11.41.200(a)(1), a class A felony. The drunk driver, if convicted for the assault, faces a presumptive term of seven years. If, however, the victim dies, and the drunk driver is convicted of manslaughter, the defendant's presumptive sentence decreases to five years. This result is one that is difficult to

understand, and even more difficult to explain to a deceased victim's family. Section 8 of this bill removes this "exception", and treats manslaughter the same as any other class A felony.

Section 5 of the bill reclassifies the crime of criminally negligent homicide from a class C to a class B felony level. This raises the maximum possible penalty from five years to 10. (Before the new criminal code took effect in 1980, negligent homicide was considered a form of manslaughter, and carried a penalty of up to 20 years imprisonment). Under present law, the disparity between manslaughter (a class A felony with a maximum term of 20 years) and criminally negligent homicide (a C felony, five year maximum) is too great. The difference between the two crimes is the defendant's mental state at the time of the killing -- "reckless" for manslaughter, "criminally negligent" for criminally negligent homicide. These mental states are defined in AS 11.81.900(a), and the difference between them is not great. Criminally negligent homicide is the unlawful killing of another. Reclassification of this crime to the B felony level will bring the penalty level in line with the seriousness of the offense. In appropriate cases a sentencing court could decide not to impose any jail sentence at all, as a first offense B felony conviction does not carry a presumptive term.

Sections 6 and 7 make some badly needed "housekeeping" amendments to the sentencing laws. When the present criminal code was enacted in 1978, there were only three "unclassified" offenses: murder in the first degree, murder in the second degree, and kidnapping. These three crimes were originally listed, by name, in several places in the code as exceptions to the general classification and sentencing scheme. In the intervening years, other crimes have been raised to the unclassified level, including sexual assault in the first degree, sexual abuse of a minor in the first degree, and misconduct involving a controlled substance in the first degree. In addition, this bill raises attempted murder and solicitation to commit murder to the unclassified level.

It has become increasingly impractical to list all unclassified offenses by name whenever the statutory reference is to the group of offenses. The present system presents the danger that necessary conforming amendments will inadvertently be overlooked when a new crime is added to the unclassified group. This is exactly what happened when the legislature amended the criminal code in 1983 to strengthen the laws against sexual abuse of children. A new unclassified crime, sexual abuse of a minor in the first degree, was created (AS 11.41.434). Through a drafting oversight, however, a reference to this crime was not added to AS 12.55.035, the general provision that

specifies the fines authorized for given offenses. Thus, although a person convicted of sexual abuse in the first degree faces a presumptive term of eight years in prison under AS 12.55.125(i), existing penalty provisions do not include a fine for this offense.

To remedy this oversight, and to ensure that similar errors do not occur in the future, this bill substitutes a reference to unclassified crimes as a group wherever the offenses in this group are now specifically listed by name in the statutes.

The amendments contained in secs. 9, 11, 13, and 15 of the bill are needed for a similar reason. Presumptive terms under the new criminal code were originally imposed under a few subsections of AS 12.55.125. These few subsections were specifically cited in many general provisions that dealt with some aspect of presumptive sentencing (in, for example, the list of aggravating or mitigating factors and the section creating the three-judge sentencing panel). As the criminal code has been amended over the years, however, and presumptive penalties have been added or changed, necessary conforming amendments were not always made, or were not always made completely. This bill cures past discrepancies, and eliminates the problem for the future, by simply substituting a general reference to "presumptive terms" in statutes that now refer to specific

subsections under which a presumptive sentence is imposed.

In 1982 the language of AS 12.55.145(a) was amended to provide that a criminal conviction in another jurisdiction would be considered a "prior conviction" for presumptive sentencing purposes in this state if the out-of-state offense had elements "similar to" those of a crime defined as a felony in Alaska. As the result of a drafting oversight, the language of a companion subsection dealing with procedural matters was not amended. Section 12 of this bill cures this discrepancy by amending AS 12.55.145(c).

The amendments included in this bill are needed to improve existing sentencing laws, and to recognize the seriousness of taking a human life.

Sincerely,

Bill Sheffield
Governor

Introduced: 1/25/85
Referred: Health, Education & Social Services
Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 102

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to criminal sentences."

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

* Section 1. AS 11.31.100(d) is amended to read:

(d) Unless otherwise provided, an [AN] attempt is a

(1) class A felony if the crime attempted is an unclassified felony;

(2) class B felony if the crime attempted is a class A felony;

(3) class C felony if the crime attempted is a class B felony;

(4) class A misdemeanor if the crime attempted is a class C felony;

(5) class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

* Sec. 2. AS 11.31.100 is amended by adding a new subsection to read:

(e) An attempt to commit murder in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

* Sec. 3. AS 11.31.110(c) is amended to read:

(c) Unless otherwise provided, solicitation [SOLICITATION] is a

(1) class A felony if the crime solicited is an unclassified felony;

(2) class B felony if the crime solicited is a class A felony;

(3) class C felony if the crime solicited is a class B

conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk or physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except unclassified offenses [MURDER IN THE FIRST AND SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, AND KIDNAPPING], is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor.

* Sec. 7. AS 12.55.035(b) is amended to read:

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $75,000 for an unclassified felony [MURDER IN THE FIRST

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Introduced: 1/25/85
Referred: Health, Education & Social Services
Judiciary

addition

§ 14
(AS 12.55.155(e))

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 102

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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(2) class B felony if the crime attempted is a class A felony;

(3) class C felony if the crime attempted is a class B felony;

(4) class A misdemeanor if the crime attempted is a class C felony;

(5) class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

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(e) An attempt to commit murder in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

* Sec. 3. AS 11.31.110(c) is amended to read:

(c) Unless otherwise provided, solicitation [SOLICITATION] is a

(1) class A felony if the crime solicited is an unclassified felony;

(2) class B felony if the crime solicited is a class A felony;

(3) class C felony if the crime solicited is a class B

felony;

(4) class A misdemeanor if the crime solicited is a class C felony;

(5) class B misdemeanor if the crime solicited is a class A or class B misdemeanor.

* Sec. 4. AS 11.31.110 is amended by adding a new subsection to read:

(e) Solicitation to commit murder in the first or second degree is an unclassified felony and is punishable as provided in AS 12.55.

* Sec. 5. AS 11.41.130(b) is amended to read:

(b) Criminally negligent homicide is a class B [C] felony.

* Sec. 6. AS 11.81.250 is amended to read:

Sec. 11.81.250. CLASSIFICATION OF OFFENSES. (a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except unclassified offenses [MURDER IN THE FIRST AND SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, AND KIDNAPPING], are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for unclassified offenses [MURDER IN THE FIRST AND SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, AND KIDNAPPING], the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve

conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk or physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except unclassified offenses [MURDER IN THE FIRST AND SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, AND KIDNAPPING], is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor.

* Sec. 7. AS 12.55.035(b) is amended to read:

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $75,000 for an unclassified felony [MURDER IN THE FIRST

OR SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, KIDNAPPING, OR MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE];

(2) $50,000 for a class A, B, or C felony;

(3) $5,000 for a class A misdemeanor;

(4) $1,000 for a class B misdemeanor;

(5) $300 for a violation.

* Sec. 8. AS 12.55.125(c) is amended to read:

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

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

(2) if the offense is a first felony conviction, [OTHER THAN FOR MANSLAUGHTER,] and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace office, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

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

(4) if the offense is a third felony conviction, 15 years.

* Sec. 9. AS 12.55.125(g) is amended to read:

(g) If a defendant is sentenced to a presumptive term under [(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i) OF] this section, except to the extent permitted under AS 12.55.155 -- 12.55.175,

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

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

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

* Sec. 10. AS 12.55.125 is amended by adding a new subsection to read:

(j) A defendant convicted of attempted murder or solicitation to commit murder may be sentenced to a definite term of imprisonment of not more than 30 years, and must be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

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

(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(3) if the offense is a second felony conviction, 15 years;

(4) if the offense is a third felony conviction, 25 years.

* Sec. 11. AS 12.55.145(a) is amended to read:

(a) For purposes of considering prior convictions in imposing sentence under AS <u>12.55.125</u> [12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)]

(1) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(2) a conviction in this or another jurisdiction of an

offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(3) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective.

* Sec. 12. AS 12.55.145(c) is amended to read:

(c) If the defendant denies the authenticity of a prior judgment of conviction, that the defendant is the person named in the judgment, that the elements of a prior offense committed in another jurisdiction are similar [SUBSTANTIALLY IDENTICAL] to those of a felony defined as such under Alaska law, or that a prior conviction occurred within the period specified in (a)(1) of this section or if the defendant alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(3) of this section, the defendant shall file with the court and serve on the prosecuting attorney notice of denial no later than 10 days before the date set for imposition of sentence. The notice of denial must [SHALL] include a concise statement of the grounds relied upon and may be supported by affidavit or other documentary evidence.

* Sec. 13. AS 12.55.155(a) is amended to read:

(a) If a defendant is convicted of an offense and is subject to a presumptive term [SENTENCING] under AS 12.55.125 [12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and

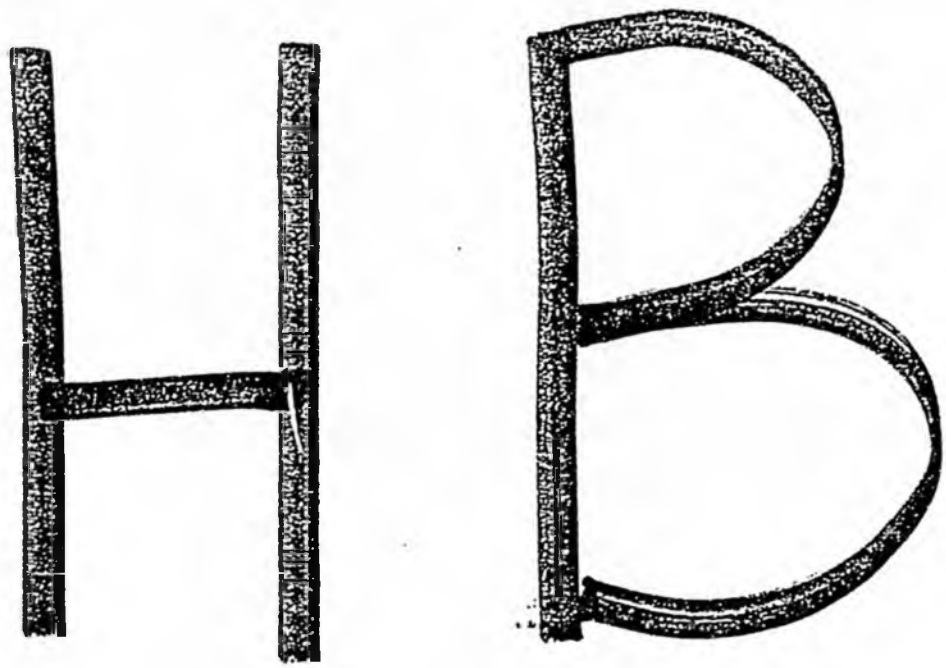
(1) the presumptive term is four years or less, the court

may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

* Sec. 14. AS 12.55.165 is amended to read:

Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant is subject to a presumptive term [SENTENCING] under AS 12.55.125 [12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.



372

Official Business

COMMITTEE: HOUSE HESS

DATE: 2-9-88

SIGN-IN

Subject of meeting:
CSSB 330 - Approp: DOE for K-12
HB 372 - Suspended Imposition of Sentence
CSSB 67 - Health ins. for Mental Conditions

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY? if yes, whichone?	
Sharon Young	316 W 11th St	6-1083	AASB	No	
Guy Gilly	"	"	"	"	
BB Manners	705 Municipal Way #302	586-3090	NEA	Yes 330	
Joanne Clark	Div. of Mental Health + D.D.	465-3370	Div. of Mental Health + D.D	yes	
DAVE Williams	Div. of Budget & Finance	465-3015	PHS	No	
Nina Keeler Kinney	Dept of Public Safety PO Box N, 99811	465-4356	Council on Domestic Violence & Sexual Assault	HB 372	
Gordon Evans	318 4th St.	586-3210	HIAA	CSSB 67 YES	1
Mike Miller				CSSB 67	2
Clark Gruening	328 Coleman St	586-5110	AFT	CSSB 67	3
Karen Rehfeld		3795	Leg Finance	NO	
Stephanie Joannides	P.O Box KC JUN 99811	5-3428	Dept of Law	only if there are questions - HB372	

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907·465·3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HHESS	1-27-88	8:30 a.m.
HHESS	2-9-88	8:30 a.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 1/18/88 FURTHER REFERRALS: Judiciary

DATE: 2-9-88

The Health, Education and Social Services Committee has considered HB 372

"An Act prohibiting suspended imposition of the sentence of a person convicted of a sexual offense."

RECOMMENDS:

[ ] replace with _____ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact [ ] same as previous fiscal note published _____

[X] zero fiscal note

[X] zero with analysis [ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Bill Bell

Bruce Simpson

Mike Greenberg

Dave Donley

SIGNING OTHER RECOMMENDATIONS:

Mike Kopp no rec.

Bill Hudson - no rec

John Ellis - no rec.

John Ellis

Co-Chairman's signature

Mike Kopp

Alaska State Legislature

House, Health

Please enter into the record my testimony to the Education and Social Services committee name

committee on HB 372 bill/subject, dated January 27, 1988.

On behalf of the NANA Region and Manilaq Association, I would like to testify on HB372. We have a high rate of sexual abused children from the "CINA" cases (Children In Need of Aid) that is handled by our ICWA (Indian Child Welfare Act) Coordinators within Kotzebue and few other villages. Some offenders are first time offenders, some are repeaters.

I feel that if something is done about these offenders, that we can help our children live a better and safer life and they do not have to be afraid of the person(s) that abuse them. Please take my testimony in to consideration.

Thank you,

Signed: Emma Snyder, Tribal Affairs Assistant
Testifier

Manilaq Association, Tribal Govt Program
Representing (Optional)

PO Box 256 Kotzebue
Address

(907) 442-2911
Phone No.

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

January 28, 1988

Mr. Floyd H. Richmond, Executive Director
Women in Safe Homes
P. O. Box 6552
Ketchikan, Alaska 99901

Dear Mr. Richmond:

Thank you for your letter of January 27. Since you were on teleconference you did not have the complete committee file available. You did have the bill and Rep. Ulmer's statement. I do not believe anyone on the committee, least of all myself, disagree with Rep. Ulmer's stated purpose: i.e. to prevent the expunging of a record of an individual convicted of sexual assault, but for whom the imposition of sentence was suspended. The questions that arise are: 1) does the language of the bill achieve the stated purpose of the bill? 2) what other effects flow from the language of the bill? 3) in this case does it mean automatic imprisonment?

These questions were raised with the bill sponsor when she requested an expedited hearing, jumping the bill ahead of the normal order of scheduling. It was expected that written responses plus adequate fiscal information would be provided as "back-up", as required by the rules and as needed by the courts for interpretation of legislative intent. Justice is served to the extent we observe due public process.

We have no record of successive suspended imposition of sentence. I do not doubt it has happened. Under current law an offender is given a presumptive eight year jail sentence, generally interpreted to mean without possibility of parole (which also means no treatment, training, or subsequent supervision after release).

The other alternatives appear to be: a) charge bargaining (where the prosecutor reduces the charge to a lesser offense - this has been happening all over since we put in presumptive sentencing); b) suspended sentence; c) acquittal or release on a technicality. Suspended imposition of sentence is intended to mean that the offender is convicted and is sentenced, but the sentence is not imposed for a given period (usually the period of the sentence plus a probationary period) during which time the offender remains on some form of supervised probation. I do not feel that we have enough probation/parole officers to provide an adequate level of supervision currently, but that is a budgetary, not a statutory, problem and will not be solved until legislators and their constituents are willing to pay for such services. If the offender repeats his offense or otherwise breaks the conditions of probation, the sentence automatically goes into effect: the offender goes directly to jail. Properly supervised and adequately staffed, a probation system can employ the suspended imposition of sentence most effectively. It can be a very heavy

hammer, indeed. Going to jail immediately can be a greater deterrent than the thought of a possible trial.

The Russell case, which you cite, would have been totally unaffected had this bill been law at the time, in as much as it was his wife that applied for the license and, in your statement, you tell us the DFYS found an SIS in his record, which appears to show that his record was not expunged.

In the past several years we have dealt with this problem in a variety of ways, including legitimizing the use of television tapes of the testimony of young children in grand jury indictments. But some of the panaceas proposed have had a reverse effect, making uniform application of the law throughout Alaska difficult resulting in excessive sentences for some and freedom for others guilty of the same offense.

I have talked with John Hartle and obtained the material you sent him. It is a useful addition to our file.

Thanks again for your comments.

Sincerely,

Niilo Koponen

Representative Niilo Koponen, Co-Chair
House Health, Education and Social Services Committee

cc: Rep. Fran Ulmer
House HESS Committee members
John Hartle

NK/dm

Women In Safe Homes
A Safe Alternative to Family Violence
WISH
P.O. Box 6552
Ketchikan, Alaska 99901
(907) 225-9474

January 27, 1988

Nilo Koponen, Chair
House Health & Education and Social Services Committee
P.O.Box V
Juneau, AK 99811

Attention: All Committee Members
Re: House Bill 372

Dear Mr. Koponen:

I was very disturbed by the extraneous number of issues that were brought into the discussion of 372 on 1/27/88. I would like to respectfully request that the committee deal with only what is before them;

1) That the expunging of a sexual assault offenders record is not in the best interest of all the children of our state because:

a) We know these offenders repeat, we know they seek ways to access children. Therefore, an employer who hires people to care for children must know of these offenses.

b) That children do not have the power to protect themselves as we would if our home was burglarized. Therefore, we must tighten up our ability to protect children from the power of these offenders.

2) There would be an insignificant fiscal impact to corrections.

a) SIS's are used very rarely in S.E. Alaska on sexual offenders.

b) If its a second offense the person would be sentenced to jail time, but don't we want to incarcerate those kinds of offenders? I think we all do as we are currently on other crimes.

We are in the early stages of recognizing and dealing with the issue of child sexual abuse. As an example of how far we have come in less than ten years let me site a Ketchikan case. George Russell came to this area and applied for a day care license. In checking they found an SIS for sexual abuse of a minor in his background in

Washington state. The Division of Family and Youth Services declined his license, but they licensed his wife. He then over the next year proceeded to molest children under the care of his wife. He was convicted and sentenced. The point of this is, DFYS would not license his wife today because I hope they understand better today the nature of these offenders. They were sued and settled out of court so I know that has helped their approach to these issues as well.

We have today greater levels of knowledge about these offenders. John Hartle of Representative Sund's office has such information for your request and review.

Recently the FBI has told us that preferential offenders (child molesters) are now seeking four and five year olds as they have learned the judicial system has trouble gaining convictions because it often boils down to the offenders word against a four or five year old.

Please consider the uniqueness of this issue, the offender, the victim and our responsibility to protect all citizens. Pass 372.

Sincerely,

Floyd H. Richmond
Executive Director

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 372
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An Act prohibiting suspended imposition of sentence."
Sponsor: Representative Ulmer
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation will have minimal impact on the Department of Corrections. We estimate that it will affect approximately 45 sex offenders per year, and they will receive jail sentences no greater than 6 months. This is

Susan E. Knighton

Prepared by: Susan E. Knighton, Director — Phone: 465-3376
Division: Administrative Services — Date: 1-28-88

Approved by Commissioner: Susan Humphrey-Barnett — Date: 1-28-88
Agency: Department of Corrections

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis:

based upon current practice of only giving an SIS to persons with the least risk of recidivating. These people will now be required to serve some jail time, but it will be minimal.

Juvenile Diversion: 17

Programs to divert juvenile offenders from the formal justice system have been successful and cost effective. These youth are often at risk of running away, are experiencing family problems and are potential substance abusers. Early help that does not label them as offenders could prevent future problems. The state's previous program funding has been significantly reduced.

The Division of Family and Youth Services together with the judicial system should again fund and expand a juvenile diversion program as an alternative to the traditional, punitive juvenile justice system. The program would allow youths charged with first-time, less serious crimes to do community service, pay restitution and receive intensive family support services.

Background Checks: 18

Our children are potentially at risk of abuse because pre-employment investigations for prior history of abuse are not required. Several obstacles prevent reducing this risk including the following:

- Abusers often have no formal conviction record.
- Criminal background checks are currently authorized but not required.
- Child caregivers are frequently hired on short notice and work briefly before moving to a better paying job.
- Agencies that investigate criminal histories and licensing actions have insufficient personnel.
- Convicted offenders of sexual assault may now have their record cleared through a suspended imposition of sentence regardless of whether they spend any time in jail.
- No system keeps track of reports of abuse on the same alleged abuser or allows disclosure to appropriate persons.

A statewide system that provides employers with the criminal history of all personnel working directly with or supervising children should be developed. This system should provide the information in a timely way at little cost to employee or employer. To assure that all sexual assault convictions remain on the record, criminal sentencing laws should be amended to prohibit suspended imposition of sentences for individuals convicted of sexual assault. Additionally, the child protection laws should allow for appropriate disclosure of instances of abuse by a person who works directly with or supervises children to authorized persons or agencies that employ people or use volunteers who work with children. Due process requires that the alleged abuser be given the opportunity to have a fair hearing before a determination that the report of abuse is founded is disclosed.

Child Protection System: 57

Alaska's rates of child sexual and physical abuse are shocking, as noted above. Because the state does not keep records of assaults and murders by age of victim, we do not know how many of these incidents resulted in criminal charges and convictions. Anchorage alone had 618 child sexual abuse cases in 1986, a rate of 1,042 per 100,000 minor inhabitants, or 6.6 times the national rate of 158 per 100,000. Most professionals in child sexual abuse estimate that the hidden rate of child sexual abuse between five and 10 times greater than the reported rate.

Increased education and public awareness have led to increased reporting and expectations for protection of children and prosecution of offenders. Most reports, even those that are substantiated, do not result in the offender being prosecuted or treatment being made available to the victim. The resulting lack of confidence in the system means that children are victimized twice. They believe no one can or will rescue them or hold their abuser accountable.

Most professionals in child sexual abuse estimate that the hidden rate of child sexual abuse between five and 10 times greater than the reported rate.

The Governor should charge this or a new Commission with an in-depth analysis of how the existing child protection system can be improved. To assist that analysis, law enforcement officials should keep data on reported incidents of assault and abuse, and the court system and the Alaska Judicial Council should keep statistics on sentencing of individuals found guilty of child sexual assault and physical abuse.

January 20, 1988

Fran Ulmer
Alaska State Representative
1700 Angus Way
Juneau, Alaska 99801

Re: Proposed legislation prohibiting suspended imposition of sentence for sex offenders

Dear Representative Ulmer:

On behalf of all concerned citizens in Alaska, thank you for your support of the pending legislation prohibiting suspended impositions of sentence for sex offenses.

You have asked me to clarify the mechanism for the expungement of a conviction when an individual receives a suspended imposition sentence "SIS." AS 12.55.085(e) provides, "Upon the discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect." In Mekiana vs. State 707 P.2d 918 (Alaska Ct. App. 1985), the Alaska Court of Appeals interpreted this legislation and held that any individual who receives a suspended imposition of sentence has the right to a hearing and ultimately have their conviction set aside if they have not committed any subsequent violations in their probationary period.

While an individual may still have an arrest record and notation in the APSIN criminal information system for the charged offense, the net effect of a suspended imposition of sentence is to remove the conviction from the individual's record at the end of the probationary period. In my previous practice as an assistant district attorney, I have noted several cases in which not only has the conviction been expunged, but in fact, there has been no notation on the APSIN System that an individual has been previously convicted of a sex offense after the conviction has been set aside. I distinctly remember a Washington case in which Anchorage District Attorney's Office was unaware of the individual's previous sex offense because he had received a suspended imposition of sentence. While Alaska does not have the same precise criminal laws as Washington, I've attached a copy of Washington, Section 9.948 230, which explains the effect of a vacation of defendant's record of conviction.

A second example of the unfortunate effect of a suspended imposition in a sex case, is the case involving defendant Douglas Arnet Moerlein. The attached documents show that Mr. Moerlein received a suspended imposition of sentence in Washington state on July 20, 1981 and was reindicted for a subsequent sex offense in Alaska on July 28, 1987. From my review of the court records and speaking with prosecutors in the District Attorney's Office, I learned that the only way the court became aware that the defendant had been previously convicted of a sex offenses was because he informed the victim of this at the time the offense was committed.

Clearly, it is not in the public interest for a second time sex offender to be sentenced as a first time sex offender without any knowledge of his previous conviction by the sentencing court. By abolishing the suspended imposition of sentence for sex offenses, this unfair and unsafe result should be prevented.

A more important byproduct of the suspended imposition of sentence is that it allows a defendant to lawfully withhold information regarding his previous sex conviction from prospective employers. When an individual applies for a job, such as a day care worker or a school teacher, and he is requested on the application form to indicate whether or not he's previously been convicted of a felony offense, he can lawfully answer that he has not, even though he had previously been convicted of a serious sexual offense and received a suspended imposition of sentence. This poses a grave danger to the community because employers in sensitive areas may not become aware of the defendant's previous sexual misconduct.

In addition, the passage of the proposed legislation will send a much needed message to the community that sex offenses are among our most serious violations of law. There is no reason that sex offenses should not be treated at least as seriously as drunk driving offenses, which already have a penalty provision prohibiting suspended impositions of sentence (See AS 28.35.30.)

If I may provide you with any other information in

support of this legislation, please do not hesitate to contact me.

Sincerely,

Russell S. Babcock

Russell S. Babcock
Attorney
P.O. Box 101101
Anchorage, Alaska 99510
(907) 337-3553

Enclosures
cc: Dwayne W. McConnell, District Attorney Anchorage
Carrie Longoria, STAR

RSB:krn

In the Superior Court of the State of Washington

For the County of King

THE STATE OF WASHINGTON, *Plaintiff,*

v.

DOUGLAS ARNETT MOERREIN, *Defendant.*

'81 SEP 11 PM 3:14

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WASH.

No. 81-1-02180-4

Order Deferring Imposition of Sentence (PROBATION)

The Prosecuting Attorney, the above-named defendant and counsel Adam Kline came into Court, the defendant having been charged by information with the crime(s) of INDECENT LIBERTIES

To this information the defendant entered a plea of "Guilty" on the 20th day of July, 1981,

The Court having determined that no legal cause exists to show why judgment should not be pronounced, it is therefore ORDERED, ADJUDGED and DECREED that the said Defendant is guilty of the crime(s) of INDECENT LIBERTIES, Class "B" Felony, RCW 9A.44.100

CERTIFIED COPY TO COUNTY JAIL SEP 1 1 1981

The Defendant having made application to the Court for probation and the Court having found Defendant eligible under the law to be granted probation, and the Court being fully advised in the premises, it is therefore,

ORDERED that the imposition of sentence against the Defendant herein be, and the same is hereby deferred pursuant to RCW 9.95.200 for a period of five years from date upon the following terms and conditions, to-wit:

1) That the Defendant shall be under the charge of a Probation and Parole Officer employed by the Department of Corrections and follow implicitly the instructions of said Department, and the rules and regulations promulgated by said Department for the conduct of the Defendant during the term of his probation hereunder.

2) The Defendant shall not commit any law violations. Defendant has served pre-sentence (6) months.

~~3) The Defendant shall pay all costs, within _____ from date of this order.~~

4) The Defendant shall serve a term of _____ in King County Jail, (with) ~~(without)~~ credit to be given for time already served, to commence

3) The defendant shall remain in treatment with an approved sexual deviancy treatment agency approved by probation officer.

4) The defendant shall not change residence without the approval of the probation officer.

DONE IN OPEN COURT this 9th day of September 1981

Judge

Presented by:

Deputy Prosecuting Attorney

Adam Kline

Atty. for Def.

POSTED

THE STATE OF WASHINGTON

vs.

DOUGLAS ARNETT MOERLEIN

ADDITIONAL CONDITIONS

CAUSE NO. 81-1-02190-4

5) The defendant shall not have contact with minor children without proper adult supervision.

6) The defendant shall not go to parks, elementary schools or other such places where children are present.

7) The defendant shall follow the recommendations of Dr. Leslie Rawlins concerning control of his behavior including:

a) When children visit the group home or other residences, the defendant will leave the home with proper supervision.

b) The defendant shall call the group home when he arrives at work and to notify the group home when he leaves work travelling to the group home. This includes all trips outside the group home.

c) The defendant shall not watch television programs involving children or child-oriented themes.

d) When the defendant engages in recreational activities where children are present he should be supervised by a responsible adult.

DONE IN OPEN COURT this 9th day of September, 1981

Jerome M. Johnson
JUDGE

Presented by:
[signature]
Deputy Prosecuting Attorney

Adam [signature]
Atty. for Def.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

DOUGLAS A. MOERLEIN
DOB: 01/21/59
AK ID/OL: 6009688
SSN: 574-52-8735

Defendant.

Court No. 3AN-~~S87-6758~~ 88-212 Cr.

REINDICTMENT

SEXUAL ABUSE OF A MINOR IN THE SECOND DEGREE
AS 11.41.436(a)(2)

THE GRAND JURY CHARGES:

That on or about the 28th day of July, 1987, at or near Anchorage, in the Third Judicial District, State of Alaska, Douglas A. Moerlein, being 16 years of age or older, did knowingly engage in sexual contact with C.T., age 11.

All of which is a class B felony offense being contrary to and in violation of AS 11.41.436(a)(2) and against the peace and dignity of the State of Alaska.

DISTRICT ATTORNEY, STATE OF ALASKA
1031 WEST FOURTH AVENUE, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 277-8622

DATED this 5 day of January, 1988.

A true bill

Elizabeth H Sheley

ELIZABETH H. SHELEY
ASSISTANT DISTRICT ATTORNEY

Barbara Burg

GRAND JURY FOREMAN

WITNESSES EXAMINED BEFORE THE GRAND JURY:
C.T.
Arlene D. Vollema
Frank Feichtinger
Preston Chapman

EHSce
i18

BAIL SET AT _____

DATED _____

_____
JUDGE

ACCEPTED FOR FILING _____

_____
DEPUTY CLERK

DISTRICT ATTORNEY, STATE OF ALASKA
1031 WEST FOURTH AVENUE, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 277-8622

9.94A.210 Sentence within standard range for offense not appealable——Sentence outside sentence range subject to appeal and review——Procedure——Grounds for reversal——Written opinions. (1) A sentence within the standard range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first offender under RCW 9.94A.120(5) shall also be deemed to be within the standard range for the offense and shall not be appealed.

(2) A sentence outside the sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing judge are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing judges and others in implementing this chapter and in developing a common law of sentencing within the state. [1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21.]

Effective dates——1984 c 209: See note following RCW 9.92.150.
Effective date——1981 c 137: See RCW 9.94A.905.

9.94A.220 Discharge upon completion of sentence——Certificate of discharge——Counseling after discharge. When an offender has completed the requirements of the sentence, the secretary of the department or his designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge. The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [1984 c 209 § 14; 1981 c 137 § 22.]

Effective dates——1984 c 209: See note following RCW 9.92.150.
Effective date——1981 c 137: See RCW 9.94A.905.

9.94A.230 Vacation of offender's record of conviction. (1) Every offender who has been discharged under RCW 9.94A.220 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.220; (d) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.220; and (e) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under RCW 9.94A.220.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. [1981 c 137 § 23.]

Effective date——1981 c 137: See RCW 9.94A.905.

9.94A.250 Clemency and pardons board——Established——Membership——Terms of office——Chairman——Bylaws——Travel expenses——Staff. (1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chairman from among its members and shall adopt bylaws governing the operation of the board.

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: HB 372
Publish Date:

Revision Date: 1-26-88
Title: An act prohibiting suspended imposition of sentence...sexual offense
Sponsor: Ulmer
Requestor: House hESS

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Dan Strandberg, General Counsel — Phone: 264-8215
Division: Alaska Court System — Date: 1-26-88

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 1-26-88
Agency: Alaska Court System

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☒ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☐ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

January 20, 1988

Fran Ulmer
Alaska State Representative
Pouch V
Juneau, Alaska 99801

Re: Proposed legislation prohibiting suspended imposition of sentence for sex offenders

Dear Representative Ulmer:

On behalf of all concerned citizens in Alaska, thank you for your support of the pending legislation prohibiting suspended impositions of sentence for sex offenses.

You have asked me to clarify the mechanism for the expungement of a conviction when an individual receives a suspended imposition sentence "SIS." AS 12.55.085(e) provides, "Upon the discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect." In Mekiana vs. State 707 P.2d 918 (Alaska Ct. App. 1985), the Alaska Court of Appeals interpreted this legislation and held that any individual who receives a suspended imposition of sentence has the right to a hearing and ultimately have their conviction set aside if they have not committed any subsequent violations in their probationary period.

While an individual may still have an arrest record and notation in the APSIN criminal information system for the charged offense, the net effect of a suspended imposition of sentence is to remove the conviction from the individual's record at the end of the probationary period. In my previous practice as an assistant district attorney, I have noted several cases in which not only has the conviction been expunged, but in fact, there has been no notation on the APSIN System that an individual has been previously convicted of a sex offense after the conviction has been set aside. I distinctly remember a Washington case in which Anchorage District Attorney's Office was unaware of the individual's previous sex offense because he had received a suspended imposition of sentence. While Alaska does not have the same precise criminal laws as Washington, I've attached a copy of Washington, Section 9.948 230, which explains the effect of a vacation of defendant's record of conviction.

A second example of the unfortunate effect of a suspended imposition in a sex case, is the case involving defendant Douglas Arnet Moerlein. The attached documents show that Mr. Moerlein received a suspended imposition of sentence in Washington state on July 20, 1981 and was reindicted for a subsequent sex offense in Alaska on July 28, 1987. From my review of the court records and speaking with prosecutors in the District Attorney's Office, I learned that the only way the court became aware that the defendant had been previously convicted of a sex offenses was because he informed the victim of this at the time the offense was committed.

Clearly, it is not in the public interest for a second time sex offender to be sentenced as a first time sex offender without any knowledge of his previous conviction by the sentencing court. By abolishing the suspended imposition of sentence for sex offenses, this unfair and unsafe result should be prevented.

A more important byproduct of the suspended imposition of sentence is that it allows a defendant to lawfully withhold information regarding his previous sex conviction from prospective employers. When an individual applies for a job, such as a day care worker or a school teacher, and he is requested on the application form to indicate whether or not he's previously been convicted of a felony offense, he can lawfully answer that he has not, even though he had previously been convicted of a serious sexual offense and received a suspended imposition of sentence. This poses a grave danger to the community because employers in sensitive areas may not become aware of the defendant's previous sexual misconduct.

In addition, the passage of the proposed legislation will send a much needed message to the community that sex offenses are among our most serious violations of law. There is no reason that sex offenses should not be treated at least as seriously as drunk driving offenses, which already have a penalty provision prohibiting suspended impositions of sentence (See AS 28.35.30.)

If I may provide you with any other information in

support of this legislation, please do not hesitate to contact me.

Sincerely,

Russell S. Babcock
Attorney
P.O. Box 101101
Anchorage, Alaska 99510
(907) 337-3553

Enclosures
cc: Dwayne W. McConnell, District Attorney Anchorage
Carrie Longoria, STAR

RSB:krn

Alaska State Legislature
House

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

February 1, 1988

TO: House Health, Education and Social Services Committee

FROM: Representative Fran Ulmer

SUBJECT: Recidivism

I'd like to share with you a statement I received from Patty Barnes, a Children's Counselor at Women in Safe Homes, pertaining to the subject of recidivism.

Attachment

Prepared by Patty Barnes
Children's Counselor
Women In Safe Homes
January 29, 1988

Recidivism

When we combine the data from offender/victim studies, clinical observations, treatment/program evaluations and criminal justice statistics it is apparent that there is a serious short coming in the sex-offender literature given to the study of sex-offender recidivism. Only a few efforts have been made to follow up identified child molesters over a period of time to find out under what conditions they continue to reoffend. With incarcerated offenders investigators routinely use as their criterion of recidivism subsequent offenses that came to the attention of the authorities or in many cases only if a conviction occurred. The serious flaw in these studies is that it only measures the types of offenders most likely to reoffend in the first place. The vast majority of sexual offenders are never reported and never come to the attention of the authorities (Russell study). Because very few offenders ever get caught and sent to prison, those men that do are men who have patterns of repetitive offending. The mean for 10 of these incarceration studies was about 20% recidivism rate.

Two recent studies have been conducted on nonincarcerated individuals, one at Northwest Treatment Associates (1985) and the other by Gene Abel et al (1984). The Northwest Treatment Associates study reported reoffense at 3% for a group of 126 child molesters who had been ordered to treatment and followed up for an average of 24 months. Knowledge of new offenses was not based on a systematic record check, but rather on self-reports or reports from family members. Experts in this field know from the evidence that offenders do not self-report, especially when they are in the criminal justice system. Abel et al. reported a 21% recidivism rate for his group (a mixture of convicted, nonconvicted and publicly undetected offenders) of 24 followed for 12 months after treatment. Abel relied on self-reports, but unlike N.T.A. promised offenders complete confidentiality for their admission. Both of these groups were receiving intensive treatment and up to date therapeutic assistance unlike those offenders who are not caught or who are treated in less sophisticated settings.(Finkelhor, 1986)

Another serious problem with recidivism studies is the short time span which offenders are followed. It is widely accepted in this field today that child molesting is an addictive behavior that is reinforced over long periods of time and cannot be cured, but only controlled by the offender. A child molester may appear reformed while he is under observation, but later will rivert to the original pattern. This is supported by one of the longest follow up studies (22) years that found the longer period dramatically increased their rates of recidivism (Soothill and Gibbons, 1978). (Finkelhor, 1986)

In summary, based on the most recent studies of offender behavior and dynamics and on retrospective surveys conducted with adult women and men, recidivism rates are almost impossible to determine. The only two realistic and valid methods to measure recidivism is the offenders decision to self-report an offense and the victims willingness to report the abuse. As offenders rarely self-report on a voluntary basis and victims do not report a large majority of assaults, little reliance can be placed on recidivism rates. As most child sexual assault offenders are never caught, let alone prosecuted, we are left with the national statistics that 25% to 38% of females are victims of sexual abuse by the time they are 18 years old. Either 1 out of every 3 males (and a small minority of females) in this country are sexual assault offenders or a small minority of males are molesting hundreds and hundreds of children during their lifetime.

Exerts From The Experts

1. Faye Knopp, The Rational and Goals of Early Intervention

Offenders begin deviant sexual interests at an early age, through fantasy and reinforcement by orgasm. The deviant themes continue over and over again. This is the key to persistent deviant arousal. When the problem becomes chronic it takes on life of its own. Specialists who are veterans of treating sex offenders never mention "cure" only control and reduction. These compulsive behaviors are compared to addictive, habitual behaviors such as alcohol, gambling and eating.

Offenders learn through observation and direct experience (molestation), cultural influences, socialization process, chaotic, enmeshed or rigid families and sexual trauma as a child. These all contribute to the dynamics that are used to rationalize abusive behaviors.

2. Gene Abel, Judith Becker, Characteristics of Men Who Molest Young Children, 1983 presentation to World Congress of Behavior and Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs, Journal of Interpersonal Violence, March 1987.

Most unique study and data gathered because 561 paraphiliacs were interviewed who were voluntary subjects not under court order to receive evaluations or treatment (nonincarcerated).

Results show that nonincarcerated sex offenders are:

- Well-educated and socioeconomically diverse.
- Report an average number of crimes and victims that is substantially higher than represented in current literature.
- Sexually molest young boys with an incidence that is 5 times greater than the molestation of girls.
- *- 44% of incest fathers admitted to offending outside the home.
- 50% of men had multiple deviations.
- 232 molesters were responsible for a total of 17,585 victims. (Knopp)
- According to a study of adolescent males they may be expected to have contact with 380 victims during lifetime. (Knopp)
- Offender does not outgrow sexually exploitive preferences. Begin deviant fantasies as early as 12 years old. (Knopp)

3. Nicholas Groth, responsible for fixated-regressed typology, author of Men Who Rape and numerous publications on offenders.

- In study of incarcerated rapists and child molesters, (1982), offenders admitted committing up to 5 times as many sexual offenses for which they were apprehended. Child molesters committed first offense as early as eight years, rapists at nine.

- A similar population, 1982 study reflects potential for escalation. Of incarcerated sex offenders interviewed, 35% reported progression from compulsive masturbatory activity, repetitive exhibition to the more serious crimes for which they were convicted as an adult.

- Groth reports in Psychology Today, The Unspeakable Family Secret, 1984 that "sexual abuse is a chronic problem like alcoholism. Offenders shouldn't think of themselves as cured. It's something they have to work on every day of their lives." In evaluating current data on offenders, it appears dangerous to identify intrafamilial offenders as regressed offenders and therefore unlikely to offend outside the home. According to Abel and others almost half of incest fathers admit to pedophilia. Also of interesting note is David Finkelhors data that reveals girls with a step-father are 6 times more likely to be abused than those without. Pedophiles can enter families with ease.

4. Robert Freeman-Longo, director of Sex Offender Unit, Oregon State Hospital, lecturer, researcher, administrator, therapist, Changing a Lifetime of Sexual Crime, Psychology Today, 1986 and Life Magazine, Special Report, The Offenders, 1984.

- Sexually deviant behavior is usually deeply engrained and most sex offenders need extensive psychological help to change deviant thought and behavior patterns.

- No responsible professional in our field would claim that sexual deviancy can now be cured. We can give sex offenders skills and methods for controlling their deviant behavior, but it seldom can be eliminated.

- Sex offenders may adapt their behavior superficially, but unless they develop noncriminal, even empathetic thinking patterns they are likely to revert to their deviant patterns.

- There are no cures in this business. We tell these men they will need to work on their problem everyday for the rest of their lives.

- Estimates of the recidivism rate among untreated sex offenders range between 35 and 80%. These offenders not only commit more sex crimes, but their behavior may help to create a future generation of sex offenders.

- A total of 53 offenders treated at Oregon State Hospital reportedly committed 25,757 sexual crimes.

5. Dr. Irwin Dreiblatt, Ph.D, Pacific Psychological Services, WA, Issues in the Evaluation of Sex Offenders, 1982.

- Sexual Assault is often a chronic behavior problem. Even with only 1 victim. We are unable to predict what his future sexual behavior will be or how it will be managed.

- Strongest predictor of future sexual offense is past offenses.

- Sexual deviant behavior must be viewed as a highly, habitual sexual preference, a habit not very dissimilar than alcohol abuse. One must view the offender as vulnerable to his deviant sexual preference indefinitely. He will fall prey to reoffense if he does not respect his vulnerability and cease to manage his life in ways necessary to prevent reoffense. Such a vulnerability model emphasis that there is no cure, but rather mastery of a serious behavioral problem.

6. Stephen Wolf, director, Northwest Treatment Associates, Seattle; editor of Sexual Violence Quarterly, Fall 1985, Evaluation and Treatment: Characteristics of Adult Sexual Offenders.

Sexual offenders act out their deviances at high rates. Behavior does not show the pattern of decline in frequency with age as found in property offenders. It appears they do not outgrow their sexually exploitive preferences. Recidivism rates are high and increase in relation to the number of previous sex offenses and with attraction to male (non-incest child victim). Sexual offenders are motivated to act out their deviances as a sexual preference. In simple terms, they like what they do. They are not in any large numbers psychotic or schizophrenic. Once their sexual preference is established they tend to continue to pursue it. They will most often at the time of discovery have more than one victim and probably more than one deviant sexual focus. In incest cases they molest children outside the home almost half the time.

Offenders tend to return to deviance shortly after they feel safe from criminal justice sanctions. In their histories.

7. Diana Russell, researcher and author, The Secret Trauma, in widely utilized study of 930 women in San Francisco survey found that only 2% of intrafamilial abuse and only 6% of extrafamilial abuse was reported. 38% of women admitted to having been sexually abused, 152 abused by family member.

Women In Safe Homes
Ketchikan, Alaska

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LAW OFFICES OF
KEMPPEL, HUFFMAN AND GINDER
A PROFESSIONAL CORPORATION

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BOBBY DEAN SMITH
VICTOR G. KRUMM

255 E. FIREWEED LANE, SUITE 200
ANCHORAGE, ALASKA 99503
(907) 277-1604
TELECOPIER (907) 276-2493

January 28, 1988

Representative Fran Ullmer
Alaska State Legislature
Box V
Juneau, AK 99811

Re: House Bill 372

Dear Representative Ullmer:

I had the opportunity to listen to the House's consideration of H.B. 372 on January 27, 1988, and have the following comments to offer. These comments are made on the basis of my experiences in the criminal justice system, having been the district attorney for Bethel, the district attorney for Ketchikan, the first Department of Law Sexual Assault Project Coordinator, and the district attorney of Anchorage. I ask that these comments be disseminated to House HESS.

Initially, it is necessary to address two misconceptions of the committee. The first relates to eligibility for SIS under the present system. Present statutes prohibit the suspended imposition of sentence for crimes involving mandatory terms of imprisonment: murder, kidnapping, misconduct involving controlled substances in the first degree, and driving while intoxicated. Additionally, SIS may not be granted to any individual convicted of a crime for which a presumptive sentence must be imposed. These crimes presently involve all catagories of first degree felony violent offenses and all second-time convicted felons.

However, under present law, a suspended imposition of sentence may be imposed for any misdemeanor crime other than driving while intoxicated (and driving while license is suspended), and for all felony crimes other than those described above. This means, for example, that anyone convicted of felony burglary, theft, second-degree robbery, second-degree sexual assault, second-degree assault, and a whole panoply of other felony crimes is presently eligible for an SIS unless presumptive or mandatory sentencing has already kicked in.

The suspended imposition of sentence statute is a part of a social/legal policy adopted well before the present recodification of our criminal statutes and is, in my judgment, a

policy that in some measure has outlived whatever usefulness that it may have had.

I support House Bill 372, but I do not believe that it goes nearly far enough. I agree with the comments of Representative Hanley and Representative Phillips that people who commit serious crimes should be identified for a whole variety of reasons besides those present in sexual offense situations. Whether or not the House or either legislative body wishes to go beyond H.B. 372, however, your bill, at minimum, should be passed.

As you pointed out so well, the SIS creates a legal fiction that flies in the face of actual experience. As I understand it, the original purpose for the suspended imposition of sentence was to act as a carrot for youthful, nonviolent offenders. The belief was that young people who are sowing wild oats should be given a second opportunity.

The problem is not the theory; the problem is the application to real-life situations. Presently, there is a substantial dichotomy of sentencing, especially notable in child-molestation cases but also prevalent as to other categories of specific offenses as well. The sexual abuse statutes are a good example of the real situation. A person who is convicted of first-degree sexual abuse of a minor is subject to an eight-year presumptive term of imprisonment that may be mitigated to no less than four years unless referral is made to the three-judge panel. However, a person who is convicted of second-degree sexual abuse of a minor or, for that matter, attempted first-degree sexual abuse of a minor, has a substantial likelihood of receiving a suspended imposition of sentence. If I recall the testimony correctly, the Department of Correction witness said that one out of five sex offenders are given SISs. I may not have understood that correctly, but I think that number is probably a reasonable figure. Representative Hudson wanted to know how many of those offenses involved children. I believe he will find that a vast majority of those cases involve sex offenses with children.

We know an awful lot more about criminals now than we knew about them 25 years ago when the SIS bill first made its way into our statutes. We know, for example, that sex offenders are highly repetitive. We know that offenders who molest children are highly secretive, that children report only a fraction of the abuse that they are receiving, that child sex offenders appear not to be curable, and that in contrast to a number of other offender groups, child sex offenders do not seem to grow out of their obsessions. We also know that the harm to children is

long-standing and that the costs--economic and social--of child sexual abuse are quite high.

Also, in contrast to an adult-victim rapist, who may attack his victim but one time, a child molester may attack a victim over the course of many years. We also know that many child sex offenders gravitate to certain jobs and avocations because of the presence of children. This should not surprise us: predators need prey for sustenance.

As a long-time, now-former prosecutor, I can assure you that SISs do not travel very well with offenders. Record keeping in this state is, contrary to popular belief, terribly inadequate. Only in the last two years has a reasonably sophisticated system been in place within the Department of Public Safety. If one were to go into the bowels of the Public Safety records in Juneau, I believe one would find literally thousands of judgments that have not made their way into the APSIN computer. Additionally, court system records are virtually not retrievable by any human being that I have ever met. There is not a prosecutor in this state who has not learned of frequently unreported SISs.

As I noted above, the SIS creates a legal fiction that somebody has a clean record. But it is more than that. An SIS actually does result in a conviction being set aside. This means that anyone who has received an SIS and who has had a conviction set aside may truthfully say to an employer that the person has no convictions.

It should be borne in mind that we are talking about two different things. The first is the legal fiction. As far as a sentencing judge is concerned, a person who has received an SIS that has been set aside is viewed for sentencing purposes as though that person has no prior convictions. That is the fiction. In effect, we sometimes pretend that a person is not as bad as he is.

The second point is that by statute, an SIS that is set aside means that by law a person is not deemed convicted of the crime. Consequently, employers who have a legitimate reason to inquire into a person's background find themselves unable to get accurate information. Applicants for daycare, child care, teaching, Boy Scouts, counselors, ministers, attorneys and many others who are required to be licensed or who can reasonably be expected to work around children can, under present law, truthfully aver that they have been convicted of no crime, even if in fact a jury found them guilty and a judge imposed an SIS that has been set aside.

There is a vast difference between having a computer entry in the depths of a Public Safety machine in Juneau and having information that somebody can actually use.

Additionally, while there may be no statute presently authorizing expungement of a record, it is not uncommon for courts to order expungement. It is reasonable to assume that somewhere down the line, someone is going to sue on the basis that their privacy rights are being infringed by the failure of the Department of Public Safety to expunge an SIS.

I guarantee that some state agencies believe that a set-aside SIS requires expunging their record. In a document from former DFYS Director Mike Price, in which he defended that agency's daycare licensing of an SIS sex offender, he argued, I think, that the SIS gave DFYS no options. The document is attached.

I was surprised to hear the Department of Corrections' off-the-hip comments about a fiscal note. There should be no initial fiscal note for this bill. If the bill passes, the only effect is that courts who are now free to impose suspended imposition of sentences may not do so in the future. Judges may still impose, unless prohibited by other statutes, suspended sentences. Presumably, probation officers are already tracking SIS probationers as well as probationers who are receiving straight suspended sentences, so there will be no more probation office expense. Additionally, unless the individual who receives a suspended sentence commits another felony crime, there will be no impact on our jails. But, upon reoffense, presumptive sentencing will automatically kick in for people who have been convicted of prior felonies who have not received SISs. Only in this situation will there be a fiscal note for the Department of Corrections, and under this situation, the Department of Corrections ought to be incarcerating this individual. After all, anybody who has been given one bite of the apple on a suspended sentence who takes a second bite is surely too incorrigible to ignore.

There is one other point that I wish to make about costs. There are two kinds of fiscal notes. The first is the fiscal note that the Department of Corrections may put onto a bill such as this. The second is an undifferentiated fiscal note that is hidden in virtually every agency's budget. The second can be larger than the first, but it is more difficult to see. When a person receives an inappropriate sentence, perhaps because of considerations for the Department of Corrections' budget, and is released back into society, if that person commits another felony offense, the local police agency or Department of Public

Safety is required to investigate, often at substantial expense; the Criminal Division of the Department of Law is required to convene a grand jury, pay for witnesses at the grand jury and then again at trial; the court system often convenes a trial jury; and the public defender agency has substantial expense as well. The costs of investigation, prosecution, and resentencing run into the tens of thousands of dollars but are often diffused in agencies' particular budgets. Additionally, of course, there are dramatic social and economic costs to the victim, social service agencies, the violent crimes compensation board, and others. In a global sense, incarceration is often substantially more economical than release onto a community.

The only problem I have with your bill is that it does not go far enough. Eliminating the suspended imposition of sentence for all Title 11, or perhaps for only Title 11, Chapter 41 and 71 crimes will have no economic impact on the state of Alaska for individuals who do not commit a subsequent felony. To the extent that there is an impact, it will all be occasioned by people who do commit subsequent felony offenses. They deserve jail anyway.

Finally, one of the primary justifications for the adoption of presumptive sentencing in 1980 was parity of sentencing. The SIS statute is a remnant, a vestige of an old system that is, in a large part, no longer in existence. Unequal application of SISs is occurring statewide, with the consequence that felony sentencing--much of it based upon presumptive terms--is increasingly disparate.

Your present H.B. 372 will receive widespread support among prosecutors, police agencies, and victims groups around the state. It is legislation whose time has come.

Very truly yours,

KEMPPEL, HUFFMAN AND GINDER, P.C.

Victor C. Krumm

VCK:kj
Enclosure

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H-05
JUNEAU, ALASKA 99811
PHONE: (907) 465-3170

DIVISION OF FAMILY AND YOUTH SERVICES

October 31, 1985

The Honorable M. Mike Miller
Alaska State House
House Judiciary
Room 122
Pouch V
Juneau, AK 99811

Dear Representative Miller:

Frank Barthel has briefed me on the House Judiciary Committee hearing on October 24, 1985 in Anchorage. I would have responded to the committee's questions sooner; however, I just returned to the office this week.

Presently when criminal history clearance checks are requested of foster parents and all adult members of the foster home plus administrators of residential facilities, a criminal history consent form signed by the applicant (see attached consent form) is sent to the state (central) office of the Division of Family and Youth Services. A designated state office clerk who has the responsibility of requesting and receiving criminal history information, gives the consent form a log number and logs the date the request was received, the date the consent form was sent to the Department of Public Safety (DPS) for a criminal clearance, and the date DPS responds. If there is no criminal history the original consent form is returned to the licensing worker. If a criminal history is received it is noted in the log book, the licensing worker is called and the charges, date of charges, and disposition of the case is stated over the phone. The consent form is xeroxed, the xeroxed copy plus the criminal history received from DPS is filed in the state office and the original consent form is mailed to the licensing worker. License workers, who review criminal history clearances, are trained and procedures are in place for confidentiality of records. Frank Barthel has been receiving a copy of the criminal history information. However, in order to have only one copy in our office the designated criminal history clerk will keep all criminal history records in a locked filing cabinet. Security of criminal history records is a concern of the division. Except for a few cases, (for example recently an applicant had three pages of criminal activity), the actual criminal record is not sent to the field workers.

On the division's consent form it is stated that one is not automatically denied a license because of a criminal record. Once a licensing worker receives word that an applicant has a criminal history the worker must examine the nature of the offenses, the number of offenses and when the

offenses occurred. The licensing worker will discuss the criminal history with the applicant and if the applicant has a probation officer, ask the latter his/her's assessment of the applicant. If the worker and the supervisor feel that an applicant has rehabilitated himself and is no longer a threat, a license may be issued. On the other hand if the record indicates potential risk to children the applicant is encouraged to reconsider applying for a foster home license or to resubmit a license application once the threat is no longer in the home. In some cases, once a person is asked to complete a criminal history consent form they either decline or they take the consent form home and never complete their application. If an applicant, who is a potential risk to children, proceeds with his application the licensing worker would hold further consultation with the worker's supervisor and possibly the regional manager. If denial of a license is agreed upon often the Department of Law is also consulted.

As for the expungement of records, the division would in many cases have no problem with destroying our copies of criminal history records once those records were, by statute, officially expunged. However, in some cases the division should maintain the records because the division's primary responsibility is the safety of children. For example, last year a child was sexually abused by a husband of an operator of a family child care home. The husband had been convicted and jailed for sexually abusing a child in another state. However, that particular state had a policy of expunging a criminal record if a convicted criminal demonstrated proper behavior for a specific length of time. The division learned of the husband's past criminal behavior, but was advised that a license could not be denied to the wife because officially the husband's criminal sexual abuse record did not exist. As a result, a young child suffered harm and the state was sued. Hence, if the division learns that an individual has the potential of sexually or physically abusing children that information should be kept on file. Should that individual apply for a foster home license or live in a home of a person applying for a foster home license the licensing worker would deny the applicant a license or devise a protection plan where the person has no contact with children.

As for day care operators, according to the DPS less than five child (day) care centers have requested criminal history checks under AS 12.62.035 in little over a year. The number of requests may increase, however, as the new child care facilities' regulations (7 AAC 50.120 - 7 AAC 50.275) go into effect. Under 7 AAC 50.205 (g) an individual may not be employed if the individual "has been convicted of a crime of violence or moral turpitude within the previous 10 years." Furthermore, the city of Soldotna is considering adopting an ordinance requiring criminal history clearances for employees of child care centers. Should other municipalities pass similar ordinances, there would be an increase in criminal history clearance requests. According to DPS, once they receive a the criminal history sheet they screen the criminal information and release the pertinent information allowable under AS 12.62.035. The child care operator must destroy the criminal history records six months after they receive the criminal information. No guidelines have been established as to how to

secure the records during the six month hold period; however, if the records are improperly used, the child care operator could be sued (see AS 12.62.060). Furthermore, DPS stamps the criminal history request form with the statement that the criminal history is confidential and misuse can result in a fine or imprisonment.

Except for sole proprietor, the board of directors does an employment check on all child care operators. The operator must furnish references which are then checked. Furthermore, the board of the child care center can, as an employer, request a AS 12.62.035 criminal history clearance on the administrator. The board would be subject to the same rules of confidentiality. The division does the employment check on a sole proprietor.

The division recognizes and agrees with the House Judiciary Committee's concern about the proliferation and confidentiality of criminal history records. The division trains and does everything within its power to protect these records. By statute and regulations, the child care operators must also maintain the records in a confidential matter or suffer the consequences.

Sincerely,

Michael L. Price
Director

MLP/FB/sa

Enclosures

cc: Hayden Kaden

Connie J. Sipe
Deputy Commissioner

Norma Lang
Special Assistant to the Commissioner

Pat O'Brien
SS Program Officer

LICENSING RECORD CLEARANCE REQUEST
ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

SS [ ] or YS [ ]
REGION_____
Worker_____
Field Office or
Private Agency_____

INSTRUCTIONS: Please read reverse side. Complete a separate request for each applicant and adult household mem

APPLICANT/LICENSEE/ADULT HOUSEHOLD MEMBER INFORMATION:

LAST NAME | FIRST NAME | MIDDLE NAME | JR., III, ETC.

ALSO KNOWN AS, ALIASES, MAIDEN NAME, PREVIOUS MARRIED NAME(S)

DATE OF BIRTH | SEX | SOCIAL SECURITY NUMBER

ADDRESS | CITY | STATE | ZIP CODE

HAVE YOU OR ANY MEMBER OF YOUR HOUSEHOLD EVER BEEN CONVICTED OF A CRIME? [ ] YES [ ] NO
HAVE YOU OR ANY MEMBER OF YOUR HOUSEHOLD BEEN CHARGED WITH A CRIMINAL OFFENSE? [ ] YES [ ] NO

IF YES, PLEASE EXPLAIN BELOW: (INDICATE TYPE AND DATE OF CONVICTION OR CRIMINAL CHARGE)

HAVE YOU BEEN PREVIOUSLY LICENSED TO CARE FOR A CHILD(REN) OR AN ADULT(S)? IF YES, PLEASE INDICATE LOCATION AND TYPE OF CARE:

HAS THERE EVER BEEN A CASE OF SUBSTANTIATED ABUSE OR NEGLECT IN WHICH YOU OR ANY MEMBER OF YOUR HOUSEHOLD WERE INVOLVED? [ ] YES [ ] NO

I hereby authorize the Alaska Department of Health and Social Services, Division of Family and Youth Services t submit my name and descriptive information to the Alaska Department of Public Safety for a criminal histo search. I also certify that the information I have given on this form is, to the best of my ability, true ar correct.

SIGNATURE OF APPLICANT/ADULT HOUSEHOLD MEMBER | DATE

RECORDS CLEARANCE: (DIVISION OF FAMILY AND YOUTH SERVICES REGIONAL OFFICE USE ONLY.)

PROTECTIVE SERVICES: [ ] NO [ ] YES (DETERMINATION ATTACHED)

PREVIOUS LICENSE: [ ] NO [ ] YES (LIST NUMBER AND LOCATION)_____

****

LAW ENFORCEMENT CLEARANCE: