ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4725 HJUD HB 371 - HB 372

NEGLECT: Judge takes children away from mom

Continued from Page A-1

...Attorney ... 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 Christopher. 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 Cravez 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."

"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 ...

Anchorage Daily News photo

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

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 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 ...

ARM... for mu...

Continued

Sen. Dan... N.Y., a forme... Intelligence... attended the... simply, "I ca... I heard, and I...

Congressio... were presen... both the Ho... hearings as s... but said Cas... testimony.

As he was ... ing, Casey wa... the law had... and he said.

Casey and ... nesses at t... House comm... is customary ... under oath.

Sen. Mitch... Ky., said "th... a technical ... law" on noti... "My counsel ... tration would ... one a mistake.

The day be... bers of the Ho... mittees met ... John Poindex... security advis... House. Then ... gan at the Ca... House heard ... two hours. T... met with him ... hours, and ... resumed its m... al more hours.

In Tehran, ... of the Iranian ... Ayatollah M... said the contr... ington repres... ic government... tory in the ... arena."

The judge, ... ran. Univers... Reagan "cau... sion" and th... States was ... stop the fire ... skin," The ... reported.

Senate an... prohibit the p... of closed ... members wer... their remarks ... ings. Several... however, tha... would be the ... on the Iran pr...

"The memb... shellshocked ... a congressiona... further hearin... pected.

Several me... gress said they... to learn from... testimony tha... cial in the ... knew the ans... questions tha... They suggeste... indicate seno... in the mana... covert operati...

The admini... ings to memb... were said to ... questions ove... shipping the ... to a congres... Casey told C... first Israeli s... In September... been authoriz... Israel was ... tised for sen... the official ...

BUSINESS: Mexico in Alaska gets a little help from its

HAPPY THANKSGIVING

SHOOT
Previ
Sports, Pa
Weekend,

Anchorage Daily N

VOL XLI, NO 330 304 PAGES ANCHORAGE ALASKA, THURSDAY NOVEMBER 2? 1988

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-3

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

Congr any m

By EDWARD
The Washington

WASHING
ing military
dealt one s
regained Sen
resistance co
transfer of fu
in Central Am
Senate De
informally a
further paym

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."

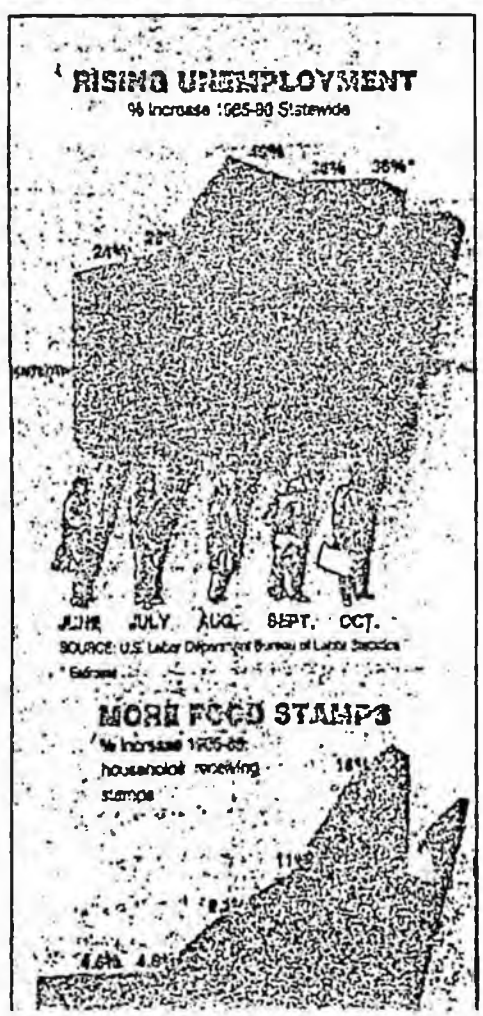
And indeed, Sweetin, 26, sat at the defense table with his head bowed, as he has each time he has been brought into court and forced to listen.

See Back Page, SWEETIN

weather

Increasing clouds today with north winds to 15 mph. High 10 to 16. Snow likely tonight with rising temperatures. Chance of

CHARTING HARD TIMES IN ANCHORAGE



Poverty has a

This year, more folks in An

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.

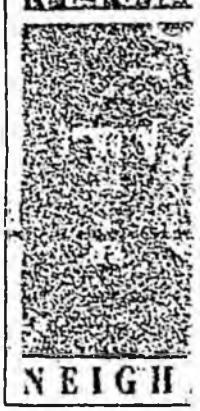
A wracking cough shatters the pre-dawn stillness outside the welfare office at Fourth Avenue and Gambell Street. The lineup snakes along the sidewalk, around the corner and down the alley. Budget cuts mean there are fewer caseworkers and the word is out. Get there early or wait all day.

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

NEIGH



NEIGH

Today the Daily
gins its third ye
Neighbor-to-Neighb
Again this holida
we'll be writing a
folks in Anchorage
use some help, and
you, our readers, a
share some of your
The help you've
neighbors before c
help today. You'll
about that and m
Neighbor-to-Neighb
styles. Page D-1.

men. ... Katrina Grendahl 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 this time last year.

As snow falls on the Chugach Mountains and the wind rushing 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 ... 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 can't even think about leaving — this is my home," says Al Horton, 28, an out-of-work steelcutter 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

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 ... to consider ... as not a danger ... general public, only ... 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

... about it. Reagan is sick about ... ration officials.

sses be r ct

- Two wit escribed the killing eight fishing boat ked to point hn Kenneth ifting a few ourtroom

lawyers lat was a point murder trial, its second l prosecutors sed the two a dramatic tification if ht the pair feel as the

ttorney Mary the witness- en certain of loting a skiff burning fish- r in Septem-

ed of killing w members estor in Sep- ile the boat raig. The 25- t of Bellingh- so accused of at to destroy rime.

Tuesday were and Jan Kit- d couple who g vessel that estor skiff as om the burn- rson and Kit- that they were

Judge refuses 'liar' Rodriguez new trial

By KIM RICH
Daily News reporter

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

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

Rodriquez had requested a new trial claiming that he received ineffective counsel during his 1981 trial. Rodriquez, 48, was convicted of 25 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.

Rodriquez 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 Rodriquez.

In his ruling, Moody dismissed all of Rodriquez' 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 Rodriquez was impaired by prescription medication he was taking at the time for a back injury.

Moody also discounted Rodriquez' claim that Schapira failed to aggressively represent him because Rodriquez couldn't come up with up to $20,000 to pay Schapira in addition to fees Schapira was receiving from the state.

Neither the existence of this fee contract or Rodriquez' failure to pay Schapira additional money affected the quality of Schapira's representation of Rodriquez. Rodriquez 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-

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.

is the boundary.

Further complicating the dispute are $10B million in leases for oil and gas drilling rights in the area that the United States sold in 1984.

The oil companies have not

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

	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)
A	B	
	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

A	B	C
	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
	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

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)(1) and (3)

Misconduct Involving Controlled Substance III
AS 11.71.030

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

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

COUCH 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
Our 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

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

§ 14 (AS 12.55.155(e)) ← ad. letter

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

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 12.55.125 [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.

Anchorage Daily News 3/4/87

Newcomb has violent history

By RONNIE CHAPPELL
Daily News reporter

Gary Frank Newcomb, 33, is a convicted killer who has eluded Alaska police dragnets three times in the past five months.

In October, he became the only man to break out of the Wildwood Correctional Facility in Kenai. He was being held in a maximum security cell at the pretrial building. He had been loose ever since.

Those who know Newcomb describe him as an intelligent, ruthless, violent sociopath who has spent most his life behind bars. He began using aliases as a juvenile. He stabbed a man to death in a fast food restaurant. Before coming to Alaska he shot a bystander in the chest following a traffic incident.

He may be responsible for the 1982 disappearance of a Soldotna man, according to

See Back Page, NEWCOMB

THE ELUSIVE TRAIL OF GARY NEWCOMB

Oct. 1: Saws his way out of the Wildwood Correction Facility in Kenai, the only person to ever escape.

Oct. 5: Newcomb is spotted by Alaska State Troopers on the banks of the Kenai River trying to pry his Volkswagen out of the mud, but he manages to elude them.

OCTOBER | NOVEMBER | DECEMBER | JANUARY | FEBRUARY | MARCH

Halloween: Troopers are tipped that Newcomb will try to leave the Kenai Peninsula in costume after a party. Officers staking out the party say Newcomb never shows.

Nov. 8: Troopers are told that Newcomb is holed up somewhere in a group of cabins in North Kenai. Twenty four Troopers carry out a cabin-by-cabin search, finding gear covered by Newcomb's fingerprints. The suspect is gone.

March 3: Acting on a tip, two Anchorage Police Department officers confront Newcomb in a Mountain View barber shop. He manages to grab an officer's gun, shoot both officers and flee. Several hours later he is captured.

Barber spotted escapee in chair

By DAVID POSTMAN
Daily News reporter

Magic Jackson said he was looking forward to cutting the customer's hair because the man said he was getting married. "And I was looking forward to doing him up real good."

But Jackson, a student at Anchorage Barber College, said he thought something was wrong when his instructor told him to give the man a shampoo he hadn't asked for.

"I took him over to the sink. I saw the police officers coming in and then she (the instructor) said, 'No, why don't we do a dry cut,'" Jackson said.

What Jackson couldn't see, but other barbers and customers could, were two Anchorage Police officers with guns drawn coming in the front and back doors. Jackson said later that one of his fellow students had recognized

See Back Page BARBER

NEWCOMB: Captured convict has history of violence, elusive ways

Continued from Page A-1

courtroom testimony. And when he escaped from the Wildwood Correctional Facility in Kenai he was awaiting sentencing on what may be the biggest armed robbery in Alaska history.

According to police, Newcomb is a powerfully built man who is in excellent physical condition. He's the kind of fugitive who is not afraid to hide in a crowd, or make casual contact with members of the public.

The search for Newcomb began in early October when he sawed his way out of a maximum-security cell in Kenai. Prison officials don't know where he got the saw. And they didn't realize that he was gone until the next morning.

Forty Peninsula policemen and a tracking dog combed the surrounding countryside. The trail went cold in downtown Kenai where people later reported that they had seen a man matching Newcomb's description drinking a beer in a local bar and hitchhiking along the Spur Highway.

The sightings continued for four days. Most of the leads were dead ends, but then a Ciechanski Road resident reported that Newcomb had come to his house to borrow an automobile jack. Troopers found Newcomb trying to pry a red Volkswagen out of the mud at Castaway Cove, a recreational subdivision on the banks of the Kenai River.

Two troopers closed to within 50 yards, and ordered Newcomb to stand up and move away from the vehicle. Instead, Newcomb moved behind the car, kicked off his rubber cannery boots and fled across a narrow footbridge onto a small, heavily wooded island.

The troopers pursued Newcomb until they lost sight of him. Then they stopped and waited for assistance. During the five-hour search that ensued, Newcomb eluded a police dog, a helicopter and a dozen policemen.

A month later, police got another chance when they learned that Newcomb was holed up in a remote cabin in North Kenai. Twenty-four troopers, assisted by a helicopter, came up empty handed. They did find camping equipment and an off-road vehicle with Newcomb's finger prints all over it. That was the last police saw of Newcomb until he surfaced Tuesday in an Anchorage barber's chair.

Newcomb's criminal record is checkered with violent crimes.

In 1974, he was convicted of manslaughter after he and George Betzner — who would team with him nine years later in a Sterling fur robbery — killed a man during a knife fight in a Jack-in-the-Box restaurant.

When released from prison, he was involved in a traffic incident that escalated into bloodshed. Newcomb, a motorcyclist, claimed that a motorist had tried to sideswipe him. When the car finally stopped, Newcomb kicked in the window, climbed inside and beat up the driver. He then drove the car to a remote location where he continued the assault.

A passer-by answered the driver's call for help. While Newcomb beat the second man, the first fled. Newcomb pursued him, but was unable to catch him. He then returned to the car and shot the second man – who was conscious but unable to move – in the chest.

Newcomb fled to Alaska, where he was involved in what may be the biggest robbery in Alaska history. It occurred the night of Feb. 10, 1983 when Newcomb and two other armed men broke into the home of Sterling fur dealer Ed Whittaker. Newcomb and his accomplices made off with pelts, raw furs, coats and other finished goods valued at $350,000.

A Kenai jury was unable to decide if Newcomb was guilty or innocent the first time he was tried. The second time, he fired his attorney and represented himself. The second jury found Newcomb guilty of armed robbery.

Before the trial, co-defendant Betzner reneged on a deal requiring him to testify against his longtime friend.

Fear that Newcomb would harm his wife and child probably prompted Betzner's decision to refuse to testify, a source close to the case said. Those who did testify said they were afraid of Newcomb because they believed him responsible for the 1982 disappearance of a Soldotna man known to them as "Joe Willy."

BARBER: Recognized escapee

Continued from Page A-1

the man as escaped convict Gary Newcomb and called police. But, at the time, Jackson didn't know who's hair he had been cutting.

The policemen put their guns away as they approached Jackson's customer.

They stood on either side of the man with shoulder-length, sandy blond hair, blue jeans and a red plaid shirt and said they needed to ask him a few questions. The man didn't seem concerned, Jackson said.

But when the officers tried to search the man, pulling up his shirt and reaching around his back, he jumped out of the chair and began fighting with them.

"They pulled him out of the chair and told him to go along with them and he wasn't about to," said Norman Rollness, who was waiting for a haircut a few chairs down.

As they fought, most of the 25 or so people in the barber shop dove for cover, some running out of the building.

"They were tussling on the floor. I was trying to get out of the way and I heard three shots," Jackson said. Witnesses said the man took one of the officers' revolvers during the fight.

"I heard, 'Pow' 'Pow' and there was a pause and then 'Pow' again," Jackson said. "There was a lot of hollering and then things got quiet."

Both officers had been shot and could do nothing when the gunman turned and ran toward the back door.

"I heard the shots and saw this guy running toward me. At the door, he stopped, turned around, squatted and shot again for good measure," said Ron Farley, who was getting his hair cut in the back of the shop. He said the final shot seemed to go into the ceiling.

Officer Francis Patrick O'Brien, slumped in a chair, trying to stop the bleeding from his left shoulder. Officer Preston "Jack" Chapman, who was shot in the neck, lay on the floor and seemed to fall in and out of consciousness.

Customers and barbers tried to give first aid "but there wasn't much we could do," Farley said.

At least one bullet was found in the Family Restaurant next door. Nick Nelson said he was drinking coffee when the bullet came screaming through the wall above his head. "It got plaster in my coffee," he said.

Officers shot; convict captured

Police capture long-sought fugitive after tense five-hour standoff

By RICHARD MAUER
Daily News reporter

The law caught up with escaped convict Gary Newcomb Tuesday night, but not before he stole a policeman's service revolver and shot the officer and his partner inside a crowded barber school in Mountain View Tuesday afternoon. Newcomb fled from there into a neighborhood of apartment houses and duplexes and for five hours eluded a huge force of officers cordoning off the neighborhood. He was finally captured in an alley at 10:10 p.m.

The two wounded officers were reported in stable condition at Humana Hospital-Alaska. Officer Preston "Jack" Chapman, 38, was shot once in the neck and once in the buttocks. He was critical but stable after undergoing surgery for an hour to remove the slug from his neck.

Officer Francis Patrick O'Brien, 42, was shot in the shoulder and was reported in stable condition. Police spokesman Joe Young said that the bullet that struck Chapman missed all his vital organs.

Newcomb's last hours of freedom were spent hiding in a apartment while a police tactical weapons squad surrounded and then attacked the house next door at 340 Price St., which is where a witness thought Newcomb was. After a tense standoff, the officers fired tear gas and concussion grenades into the house and searched it, only to come up empty.

It wasn't until police began an apartment-by-apartment search of the area that Newcomb leaped from the window of his hideout and ran into an alley. He was captured just north of Peterkin Avenue.

His arrest ended a five-hour blockade of a large section of Mountain View. Fatrolmen with copies of Newcomb's mug shot blocked off every major intersection leading out of Mountain View and searched every vehicle that left, setting off huge traffic jams in the waning minutes of the afternoon rush hour and on into the frigid night. Many motorists traveling on the Glenn Highway, Mountain View Drive and Bragaw Street were directed to open the trunks of their cars.

No one, including residents, was being

See Back Page, CAUGHT

Anchorage police officers hold Gary Newcomb after his capture on Price Street late Tuesday night.

Anchorage Daily News/Jim Lavrakas

CAUGHT: Convict nabbed after shooting two officers

Continued from Page A-1

allowed into the area into which the suspect melted.

From the start, police were convinced that their suspect was master escape artist Newcomb, 33, who has successfully eluded police through a series of close calls with authorities since he escaped from Wildwood Correctional Facility in Kenai in October. He had killed a man in California and was under sentence for convictions of kidnapping, attempted murder and robbery.

The day's dramatic events began unfolding around 5 p.m. when a man with shoulder-length, sandy blond hair, blue jeans and a plaid shirt walked in to Anchorage Barber College at 3519 Mountain View Drive. The man said he was getting married and asked for haircut.

One of the student barbers, believed by his fellow students to have once been a corrections officer, looked at the customer and made the connection. It was Gary Newcomb.

Police were called at 5:05 p.m. One of the instructors tried to distract his most-wanted customer with the full treatment until they arrived. While Newcomb was being led to the shampooing sink, officers Chapman and O'Brien, guns drawn, popped in through the doors, one from the front, the other from the back.

According to witnesses at the school, the officers put their guns away, then stood on either side of Newcomb, who by this time was seated in a chair, and said they wanted to ask him some questions. When they tried to search him, Newcomb leaped from the chair, wrestled with the officers, and grabbed the service revolver from one of the officers. He fired at least three shots and ran out the back door.

The barber shop had been crowded with customers, including children, but it emptied quickly. One witness said that the gunman stopped at the rear door just before leaving, turned, and fired once more into the shop.

One bullet pierced the wall of the Family Restaurant next door. A customer said it left a trail of plaster in his coffee.

Within moments of getting the call that two officers were down, squad cars raced to the area and roadblocks were set up. Motorists, on their way home from work were greeted at busy intersections by officers toting shotguns and drawn revolvers. Other policemen fanned out through the neighborhood north of the barber school, and dogs were called in to sniff out the suspect.

Anchorage police said it was one of their biggest manhunts ever, with 75 to 100 officers participating.

Neighbors, alerted to the troubles outside their doors, called in reports or signaled to officers with sightings. Newcomb was tracked down to apartment 2B at 340 Price St. According to one neighbor, Newcomb had been living in the apartment in the maroon and brown single-story duplex for about three weeks.

Police surrounded the building around 6 p.m., taking vantage points from the apartment house next door and from an abandoned building across the alley at 331 Mumford St.

But while all that was going on, their neighbors, including children, were nonchalant about the danger in the midst. A few strolled the sidewalks as if nothing was going on, while a young boy played by the window of an apartment kitty-corner to the one under guard.

People coming home from work or shopping walked along Mumford Street as police with shotguns ducked up alleys, closing in on Newcomb's residence.

It is a poor neighborhood, the sort of place a man on the run might find refuge, a place of cheap duplexes and fourplexes, chain link fences and barking dogs.

"What's going on?" asked a woman who left her apartment house without her coat on.

"They're after a guy who just shot two cops," she was told.

"You're kidding," she said.

It was more than an hour before police made a concerted effort to clear the streets and neighboring apartments.

While a state trooper helicopter hovered overhead, the police Crisis Intervention Response Team arrived at the neighborhood at 7 p.m. and fanned out among the buildings. They began firing tear gas grenades and finally concussion bombs before entering the apartment.

No one was there.

He had apparently been holed up in Apt. 12A in 340 N. Price St. next door.

About 10 p.m., after searching one apartment and the laundry room of 330, CIRT officers said they saw movement in the apartment. Seconds later, a back window was broken and Newcomb was out.

He ran through an alley and tried to skirt in front of Price Street, said officer Ron Wade, but changed his mind when a trooper helicopter illuminated his movements.

"I think he saw the lights, and he cut back between the buildings," said officer Ron Wade.

Newcomb ran for cover between the buildings, and slipped underneath an orange van parked in front of 330 N. Price.

Khan, a Rottweiler tracking dog, ran to the van and began to attack. K-9 officer Kelley Schunke pulled the dog back, and ran with him to the van's other side.

Newcomb was starting to slide out, with a weapon drawn, Wade said. The dog attacked again, knocking the gun from his hand, and Schunke made the arrest.

No shots were fired and there was no fight, Wade said.

Newcomb was hustled to a cruiser, handcuffed and surrounded by police. He had a bloody lip and there appeared to be be blood coming from his right ear.

Paramedics take police Officer Francis P. O'Brien to the hospital. O'Brien was shot in the shoulder Tuesday.

Daily News reporters Hal Bernton, Ronnie Chappell, Patti Epler, Jim Erickson, Nancy Montgomery, David Postman and Hal Spencer also contributed to this story.

Anchorage Daily News 4/23/87

Prosecution: Hatred fueled murder

Mackay defense argument scheduled next; case could go to jury Friday

By SHEILA TOOMEY
Daily News reporter

FAIRBANKS — Neil Mackay's hatred for Robert Pfeil consumed his life and spilled over into the life of his son, robbing the boy of love, attention and even space, prosecutor Peter Gruenstein told jurors Wednesday at Mackay's murder trial.

"There was one long, dark shadow over Bob Pfeil's otherwise sunshine-filled life," said Gruenstein. "Robert Pfeil had but one mortal enemy in the world and he sits before you, awaiting the justice he deserves."

Gruenstein took slightly more than three hours to summarize the state's case against Mackay, 63, a former Anchorage lawyer and businessman. Mackay is accused of paying strip club manager Gilbert Pauole $10,000 to arrange Pfeil's death. Mackay was once married to Pfeil's sister and the two men were long-time enemies.

The defense will give its closing arguments today, with prosecution rebuttal scheduled for Friday, when the jury should get the case.

The evidence against Mackay is straightforward, Gruenstein said, much of it coming from Mackay's own mouth. He urged jurors to listen carefully to a taped telephone conversation between Mackay and Pauole, made under police supervision just hours after Pauole was arrested on Nov. 8, 1985.

Pauole told Mackay police were closing in and asked for getaway money. "Imagine what the reaction of an innocent man would be," said Gruenstein. "Confusion, outrage, anger."

"Mr. Mackay's first reaction is, 'Well, where are you calling from?'"

"There are a hundred reactions that would be plausible and consistent with an innocent person," said Gruenstein. But not Mackay's response: "Don't say too much, you know. You're going to implicate yourself."

This tape, all by itself, is enough to erase any reasonable doubt about Mackay's guilt, he told jurors.

Gruenstein also pointed to a sheet of addresses relating to Bob Pfeil that was typed on Mackay's typewriter and found in Pauole's Seattle home, to the testimony of a jailhouse snitch who said Mackay made incriminating statements to him, and to a phone call from Pauole's Anchorage home to Mackay's Honolulu apartment at 9:08 p.m. the night Pfeil was shot.

Pauole said he called Mackay and reported that the job was done. But, during the trial, Scotty Mackay, Neil's 14-year-old son, testified that he, not his dad, answered the phone that night and no one was on the line.

"Scotty's story is incredible," Gruenstein said. The boy was able to "remember the time and the date even though he wasn't asked about it for 15 months ... until January of this year."

Consider the likelihood that a young boy could do this, Gruenstein told jurors, "then ask yourself why the defense would present such evidence."

"So much of this case can be understood through Scotty because, as you know, in a very real sense, that's where it all began."

By "it," Gruenstein meant the alleged murder motive — Mackay's long-abiding fear and hatred of Bob Pfeil and the rest of the Pfeil family. Using

See Page D-3, MACKAY

MACKAY: Trial nears end

Continued from Page D-1

a huge "hatred/fear/frustration" chart, Gruenstein traced the history of the Pfeil-Mackay feud, beginning in the late 1960s with Bob Pfeil's opposition to the marriage of Mackay and Pfeil's sister Muriel.

Animosity flamed in 1976, when Muriel died in a still unsolved car bombing and it burned brightly during years of court fights over Scotty and the management of Muriel's estate.

Mackay was obsessed, Gruenstein said, and the obsession got worse over the years, not better. He feared Pfeil would kidnap Scotty. He feared Pfeil would poison Scotty's mind against him with suspicions about who was responsible for Muriel Pfeil's death. Bob Pfeil believed Mackay was.

Mackay hated the fact that Pfeil controlled Scotty's inheritance and would one day be an influential person in Scotty's life because of it, said Gruenstein.

"It gnawed on him and gnawed on him."

Papers from 10 years of legal battles over all these fears littered every surface in the apartment Mackay and Scotty shared. Although the son of a millionaire, Scotty had no bed of his own because Mackay turned the boy's bedroom into an office, Gruenstein said. Scotty had nowhere to eat dinner, because Mackay's legal papers covered the dining room table.

Instead, Scotty "has to clear a corner of the coffee table in the living room to eat the food a neighbor has brought," he said.

Because of his father's obsession, Scotty "doesn't know whether his own grandmother is alive. . . . It's a heart-rending image when you stop to think about it."

"The motive in this case is as powerful as evidence can ever be," Gruenstein said.

Anticipating a direct attack by the defense on the credibility of the state's main witness, Pauole, Gruenstein said Pauole was no friend to the state.

No one's asking jurors to believe Pauole "because he is a fine human being," he said. Pauole came into court a confessed murderer. He should be believed because other evidence corroborates his story.

Fairbanks Daily News-Miner/Charles Mason

Peter Gruenstein

He dismissed defense suggestions that Pauole fingered Mackay in order to get a deal — 20 years maximum in prison. Pauole would have gotten the same deal no matter who he named as the principal in the conspiracy, as long as he had proof he was telling the truth, such as the phone tapes.

"The State of Alaska entered into an agreement with Junior Pauole because it had to," said Gruenstein. "Neil Mackay associated with Junior Pauole because he wanted to, because he chose to."

When the defense starts pounding on Pauole in their closing, said Gruenstein, jurors should remind themselves that Pauole was Mackay's friend, associate, tenant, a man Mackay sent his son's report card to.

The defense is trying to put Pauole on trial in place of their client, Gruenstein said. "Neil Mackay is the issue in this trial and all the evidence points in one direction. It points to Neil Mackay."

Anchorage Daily News 4/12/87

MARIANNE PFEIL: FACING HER FAMILY'S PAST

Anchorage Daily News/Erik Hill

Marianne Pfeil walks from the Anchorage airport terminal after returning from a day at the trial of Neil Mackay in Fairbanks.

Widow says she must see it through

By SHEILA TOOMEY
Daily News reporter

FAIRBANKS — Most mornings Marianne Pfeil leaves her home by 6:30 and drives to Anchorage International Airport, where she boards an Alaska Airlines flight for one more trip into the past.

Flight #89 takes her to Fairbanks, where her former brother-in-law is on trial, charged with murdering her husband."This is my life on stage up there, my family. I have to finish it."

In Courtroom D, on the second floor of the state courthouse, she takes a seat in the darkened spectator section and settles down for another day of The State of Alaska vs. Neil Mackay.

Mackay is accused of paying an Anchorage nightclub owner $10,000 to have her husband, Robert Pfeil, killed. Pfeil was shot by a gunman on Oct. 12, 1985 and died a month later.

Despite talk of gangsters and drug dealers, of strip joints and snitches, which has dominated large parts of the testimony so far, this trial is essentially a family affair.

In addition to the murder charged, Mackay is suspected by some, including Marianne, of arranging the death in 1976 of his ex-wife, Muriel Pfeil Mackay, Robert's sister. Both sides say the two killings are linked, so there has been testimony about Muriel's death, about her nasty divorce from Neil in 1975, about the bitter battle after her death over custody of her son, Scotty.

Bob and Muriel's mother has testified. She's 87 now. Mackay's sister has taken the stand. They became estranged during the custody fight. Scotty, now 14, has testified; the woman now reportedly taking care of him is Mackay's first wife, Barbara Homay.

It's a family affair. Marianne Pfeil sits and listens, five hours a day, to her family's bloody linen being washed in public. She says she cannot stay away. She says she can't step forward into her future until the past is done.

"There was one day I felt like

See Back Page, MARIANNE

MARIANNE PFEIL: She takes a daily flight to the trial so she can put the past to rest

Continued from Page A-1

screaming. . . .There was a day when they talked about me. I thought, 'If they don't stop, I'm going to scream.' "

Using a pass given to her by Alaska Airlines, her husband's employer for nearly 30 years, Pfeil commutes to Fairbanks each day the trial is in session. She hasn't missed a day since opening statements began, on Feb. 10.

"Yes, I'm tired," she admits. "It's getting to me a little bit, the immenseness of it all. And springtime, I think, being alone in springtime. It just hits you all of a sudden. . . . This is going to be over and I'm going to be alone for the rest of my life."

Most days Pfeil sits on a front row bench no more than 10 feet behind Mackay. They never speak, but she studies him during the long hours of repetitious questioning and mind-numbing legal arguments. She can describe his nervous mannerisms and tries to figure out what he's reading or writing.

"He smiled at me once," she said. "I wondered why."

She did not smile back.

The people who carried out the killing of her husband have all been tried and convicted. But this trial is different, said Pfeil. "This is the only one that matters to me. The others, they never wanted to hurt me. . . . This is the one."

In some ways Mackay's trial, with all its unhappy memories, is easier than the ones that went before. Then she was hearing for the first time how killers stalked her family, watched her home, how her husband died.

"I'm not shocked any more," she said. "Last spring was worse."

Last spring, at the trial of Larry Gentry, Pfeil rarely spoke. She sat alone most of the time and sometimes reacted emotionally to what she heard. But another year has passed and mourning is not a natural state for her. Her ebullient personality is reasserting itself.

Now she asks questions and expresses definite opinions about the witnesses and what they say. She is a woman of definite opinions. She is also friendly, often chatting with witnesses and other spectators in and outside the courtroom. She brings extra copies of the morning paper up from Anchorage each day and shares candy bars. Once she baked Swedish almond tarts for the prosecutors and the people who sit nearby.

Right behind Pfeil, in the second row of seats, sits Norma Gentry, mother of Larry Gentry, who is now serving 25 years in prison for helping to plan Bob Pfeil's death. Mrs. Gentry is also in the courtroom every day.

A wedding day photo Marianne Pfeil carries in her purse: From left are Robert Pfeil, Marianne, Muriel Pfeil Mackay and Neil Mackay, and Muriel C. Pfeil.

Norma Gentry has moved to Fairbanks temporarily so she can attend the trial and listen for something that might help her son. She takes notes for his appeal.

At Larry Gentry's trial in Anchorage last year, Marianne and Norma kept their distance from each other, sitting across the aisle in a much larger courtroom, each wrapped in her own grief. But it's hard to get very far away from anyone in Courtroom D, so Norma and Marianne have struck up a friendly relationship. Both 53 years old and bereft of someone they love, the two women have accepted that neither is responsible for what happened.

"I understand why she's here," said Pfeil. "I can see her plight . . . I don't have any bad feelings toward her. She's a nice, friendly lady. I'm sure she tried the best she could. Don't you know how kids go out and find drugs? It can happen to anyone. I feel sorry."

Norma Gentry believes her son was wrongfully convicted, so the two women avoid the subject when talking to each other.

Pfeil is Swedish and speaks with a Swedish accent. She is an attractive woman who is always well-coifed and dressed in expensive clothes that she insists she buys on sale. She was a stewardess for SAS when she married Bob Pfeil, about six weeks after they met.

Pfeil looks a little sheepish admitting this.

"We didn't know each other very much," she said, "but I knew right away he was the one I wanted to marry. I always said that he bought a pig in a sack but . . . our marriage got better and better."

She carries a snapshot in her purse; it was taken outside the church the day she and Bob got married. In the picture Marianne hugs Bob's arm while he grins. Next to the happy couple stand the best man and the maid of honor, Neil Mackay and Muriel Pfeil. Grandma's there, too. Marianne takes the picture out once in a while and shows it to people.

The daily schedule is killing, but it's not the airborne commute that's tiring, just the length of the day.

"I used to make two, three trips a day like this when I was flying to Paris and London. I'm not more tired because I'm flying." The flight takes less than an hour.

In Fairbanks, the trial usually recesses by 1:30. Pfeil catches a 4 p.m. flight back to Anchorage. It gets in at about 5 and she goes directly from the airport to a two-hour aerobics class at the Captain Cook.

"That helps me. . . . After that class, I feel refreshed. . . . Then I sit in the Jacuzzi and listen to lawyers talk."

She is home by 8:30 p.m. and should be in bed by 11 but rarely makes it. It's hard to go to bed that early, she says, especially in the springtime.

Pfeil says she is not bitter and that seems to be true. But sitting through the trial every day is more than just an existential exercise, or a way to mourn or an effort to postpone the future. Pfeil believes Mackay is guilty and she wants to see him convicted.

"Of course it matters what the verdict is," she said in answer to a question. ". . . We can maybe see Scotty again. Wouldn't that be nice? Grandma, she says, 'I just hope I can see Scotty once before I die.' "

Yes, the verdict matters.

"However it goes," said Pfeil, it will be easier for her to accept "if I see how the system works . . . how hard the prosecution works.

"No," she says, "I couldn't possibly stay away."

Pathologist testifies at trial

The Associated Press

JUNEAU — An Oregon pathologist told a jury Wednesday that a woman accused of failing to get medical help for her dying son should have known something was seriously wrong with the child before his death.

Natalie Iris Pinkerton, 22, is charged with criminally negligent homicide in the death of her 20-month-old son, Richard A. Johnson. The boy died Easter Sunday 1986 after being hit.

Dr. William Brady, who performed an autopsy on the child, told the jury the injury that killed the boy is common in cases of child abuse. Peter Paulo, Pinkerton's live-in boyfriend, has pleaded no contest to a charge of criminally negligent homicide in the death.

Prosecutor Rick Svobodny has claimed Paulo hit the child in the abdomen hard enough to drive his intestine into the spine. The intestine ruptured, causing a massive infection and the child's death, he said.

"A 20-month-old child would have been crying and wailing quite obviously" from the extreme pain caused by the developing internal infection, Brady said.

In addition, Brady said the youngster probably went into shock and became unconscious. The doctor said somebody who knew the child would be able tell the difference between unconsciousness and sleep.

Brady told the jury the boy's life could have been saved had he been brought to a doctor earlier.

Prosecutors claim Paulo struck the boy while Pinkerton was out of the home at garage sales.

Brady described old bruises on the child's head. Svobodny during several court hearings has charged that Pinkerton lied about injuries Paulo inflicted on the child.

(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 Donley

Bruce Kendziorski

SIGNING OTHER RECOMMENDATIONS:

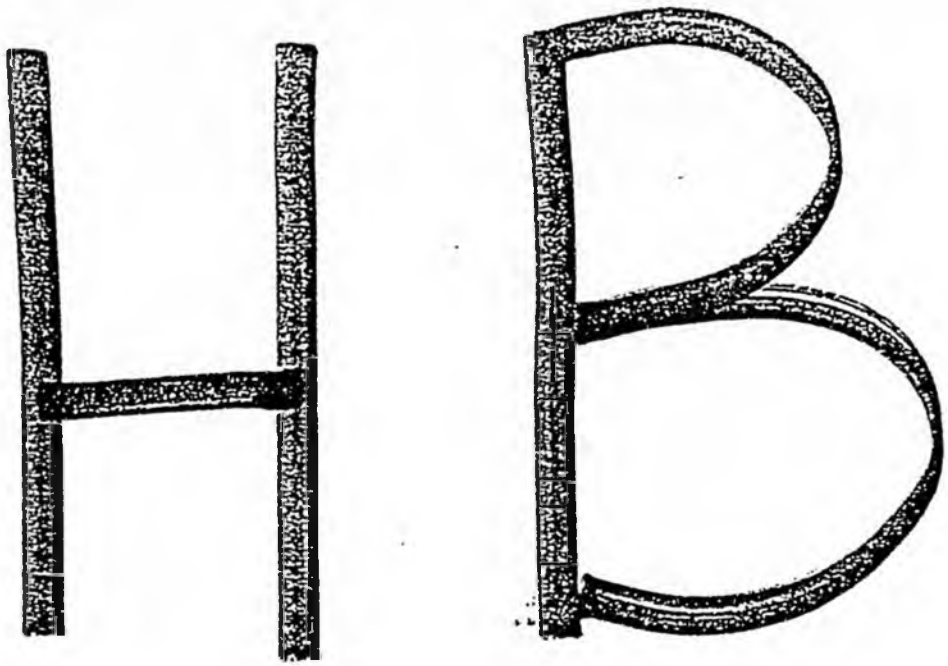
Max Gruenberg no rec

Otto Kogman no rec

John Ellis no rec

John Ellis
Chairman's signature

Otto Kogman


HB


372

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

House Judiciary:

2-18-88

2-19-88

ANCHORAGE TASK FORCE ON SEXUAL ASSAULT
LEGISLATIVE COMMITTEE RECOMMENDATIONS

The Anchorage Task Force on Sexual Assault is comprised of approximately thirty individuals from the Departments of Law, Health and Social Services, Corrections, local hospitals, the Anchorage Police Department, a local native organization (Association of Stranded Rural Alaskans in Anchorage), private mental health institutions and concerned citizens.

The purpose of the Task Force is to heighten community awareness, enhance inter-agency communication and cooperation, identify resources for victims, and advocate for legislative and policy changes for adult and child sexual assault victims and their families.

Prohibition of Suspending imposition of Sentence
For Violence Offenses

Existing provisions of Alaskan law recognize the need to provide records of individuals sentenced for violent crimes. Presently, records for some violent crimes are cleared. This poses a problem for employers wishing to conduct a background check of a persons criminal history.

In Leuch v. State 633 P.2d 106, 113 (Alaska, 1981), the Supreme Court stated: "Judgements as to the extent to which the community condemns a particular offense are more appropriately made in the legislature then the judiciary." The legislature recognizes that sexual offenses are among the most serious crimes and community condemnation and the need for deterence outweighs an individual defendant's interest in the expungment of a conviction.

This amendment is paterned after the penalty provision AS 28.35.30 precluding a suspended imposition of sentence for the crime of "driving while intoxicated."

PROPOSED AMENDMENT TO 12.55.085

Prohibition of Suspending Imposition of Sentence for Violent Offenses.

Notwithstanding any other provisions of this title, if a defendant is convicted of any crime or attempted crime under AS.11.41.410 - AS 11.41.460, the imposition of sentence may not be suspended.

~~This amendment is patterned after the penality provision AS 28.35.30 precluding a suspended imposition of sentence for the crime of "driving while intoxicated."~~

BILL NO: HB 372 DATE: February 8, 1988

TITLE: An Act prohibiting suspended imposition of sentence of a person convicted of a sexual offense.

CONTACT: Barbara Miklos
Council on Domestic Violence and Sexual Assault

The Council on Domestic Violence and Sexual Assault supports HB 372, which will prohibit suspended impositions of sentence for persons convicted of sexual offenses. Under present law, many sexual offenders are eligible for suspended impositions of sentence. This results in the conviction of the crime being removed from the record. Thus, persons who have sexually abused children may claim they have not been convicted of crimes against children on employment applications, and their previous offenses may escape notice when criminal records are screened.

Sexual offenders are prone to commit subsequent offenses. They are also likely to appear to be "model citizens" unless their record is known, as they are generally not criminal or anti-social in other parts of their lives. Thus, a judge might grant a suspended imposition of sentence, unless a judge is knowledgeable of these facts: (1) the best predictor of future sexual offenses is past sexual offenses; (2) the dangerousness or likelihood of reoffending depends on the opportunity available; that is, a sex offender is very likely to reoffend if around children at work or at home. Thus, it is very important for the protection of children that sexual offenses remain on the records.

Arthur A. English
Commissioner

DEPARTMENT OF PUBLIC SAFETY
EXHIBIT
DATE 2-5-88
HB

STATE OF ALASKA

REPRESENTATIVE
FRAN ULMER

HOUSE OF REPRESENTATIVES

P.O. Box V
JUNEAU, ALASKA 99811
(907) 465-4947

M E M O R A N D U M

February 9, 1988

TO: John Sund, Chair
House Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 372

I would sincerely appreciate your prompt consideration of HB 372, ""An Act prohibiting the suspended imposition of sentence for a person convicted of a sexual offense."

It is an important bill with a great deal of support. I have attached for your review the file which clarifies the support it has received from the Department of Law, the Public Defender, the Council on Domestic Violence and Sexual Assault, the Anchorage Sexual Abuse Task Force, and others.

Thank you for considering this important issue as soon as possible.

Attachments

/V

MEMORANDUM State of Alaska

TO: Representative Fran Ulmer
House of Representatives

DATE: February 3, 1988

FILE NO:

TELEPHONE NO: 465-3428

THRU:

SUBJECT: HB 372, Suspended Imposition of Sentence

FROM: Stephanie E. Joannides
Assistant Attorney General
Department of Law

When a defendant is convicted for an offense and appears before a judge for sentencing, a sentence may be fashioned in a number of ways. One option is the actual imposition of a sentence for a specific time with a portion of that time suspended. Or a judge may decide to withhold the imposition of the sentence and place the defendant on probation for a certain period of time with certain conditions that the defendant must abide by. These two options are discussed below.

AS 12.55.080 authorizes a court, when a sentence is actually imposed, to suspend a portion of that sentence "and place the defendant on probation for a period and upon the terms and conditions as the court considers best". For example, if a defendant is convicted of assault in the third degree (a Class C felony punishable by a maximum term of five years) a court may sentence the defendant to four years with two suspended and place the defendant on probation for three years. What that sentence means to the defendant is that the defendant has been sentenced to a potential maximum term of four years to serve but by suspending two of those years the court is only requiring that defendant to serve two years in jail at that time. The suspended two years will be "hanging over the defendant's head" during the probationary term. If a defendant violates a condition of probation at any time during the three year probation then a petition to revoke probation may be filed and a defendant may be brought back into court for a hearing. If it is then determined that in fact the defendant did violate a condition of probation, a part or all of the two years that were suspended may be reimposed and the probationary period may be adjusted appropriately.

A suspended imposition of sentence under AS 12.55.085 allows for a defendant to never actually be sentenced. After a defendant is convicted of an offense, the court has the power to

withhold or suspend the imposition of sentence and impose probation for a period up to the maximum allowable sentence. If a defendant does not violate the conditions of probation, the court may set aside the conviction at the end of the probationary term. The court, when it suspends the imposition of sentence, may impose a period of jail time as a special condition of that probation. The practical effect of this legal mechanism is illustrated in the following example. A defendant convicted of assault in the third degree may receive a maximum sentence of five years to serve. If at the time of sentencing the court suspends the imposition of the defendant's sentence, the court may do so for a period not to exceed five years which is the maximum sentence which may be imposed. The person is then placed on probation for the time period set by the court. A special condition of probation may be imposed that could require the person to serve one year in jail. After the defendant serves the required time in jail, if he or she violates a condition of probation, the court then has the power to revoke the probation and to impose sentence. Before the court may exercise the power to revoke, the defendant is entitled to a hearing. At the hearing, if the court finds that the defendant violated a condition of probation, the court then has a number of alternatives. Imprisonment is not automatic, nor does the defendant receive the maximum allowable term under the suspended imposition of sentence. Under our example, the defendant could be sentenced to three years with one year suspended. The practical effect of that sentence would be to require the defendant to go to jail only for one additional year, as he or she would receive credit for the one year already served as a special condition of probation. Another alternative would be a sentence of three years with two years suspended. In that situation, the defendant would be given credit for the one year he or she already served so no additional jail time would actually be required. A period of probation would be imposed and the conviction would not be set aside. Another alternative that is unfortunately not uncommon is that even after the court makes a finding that a defendant has in fact violated a condition of probation, the court revokes the defendant's probation but then just reimposes the SIS with an additional one or two months incarceration.

Under present law, convicted felons that are subject to presumptive terms may not receive a suspended imposition of sentence. See, AS 12.55.125 (g). In other words, a defendant convicted as a "first-time felony offender" of sexual abuse of a minor in the first degree, under AS.11.41.434, who must receive an eight year presumptive term, may not receive a suspended imposition of sentence. Individuals convicted of sexual abuse of a minor in the second or third degrees, non-presumptive offenses, may receive a suspended imposition of sentence. Other than presumptive offenders, persons convicted of Driving While

Intoxicated also may not receive a suspended imposition of sentence.

It is important to expand the list of sex offenses which cannot receive an SIS. Many experts agree that a very large percentage of child molesters do not fit into the stereotype of a criminal defendant. They are usually employed, have ties to the community and no prior convictions. As such, they are more apt to receive suspended impositions of sentence since the courts feel that their potential for rehabilitation is great due to their background. Unfortunately, sex crimes, unlike some other offenses, are repeated. Sex offenders are not usually caught the "first time." They continue to reoffend. There is no known cure and unless an offender participates in a very structured long-term sex offender program, the recidivism rates are high. As a result, it is very important to have such convictions as part of a permanent criminal record so that the people of Alaska as well as law enforcement and other interested agencies in other states are informed of the defendant's prior criminal history should he or she choose to move and look for different parts of the country in which to reoffend. By continuing to allow certain sex offenders to receive a suspended imposition of sentence, the efficacy of AS 12.62.035, which provides access to criminal histories of this high risk group, is weakened.

It is not unheard of to single out certain types of crimes for special treatment. In the past, the legislature has determined that there is an overriding state interest in not suspending the imposition of sentence of people convicted of Driving While Intoxicated. In addition, presumptive "first time" offenses have been determined to warrant permanent placement on an individual's record. The consideration of a defendant's history is also exemplified in the rules of evidence. ER 609 allows the for the impeachment of a defendant convicted of a crime involving dishonesty if he or she chooses to take the stand in subsequent criminal proceedings for five years after conviction. Evidence or reference to other convictions is not allowed.

HB 372 will impact the public by providing a clear message that sex offenses are very serious offenses in the eyes of the law and that no matter who a person is that commits the offense, he or she will receive a permanent criminal history. The public in Alaska and in other states will be protected by HB 372. Offenders who are reported to the authorities but who cannot be prosecuted because a victim is too young to go through a trial or as a result of technical legal issues often will leave this state to settle in another area. We have heard of situations where the offender reoffends again in his new home soon after the move.

Sharon Brogan of Men, Inc. (586-3585) may be able to provide you with expert testimony in support of the permanent placement of a conviction on a sex offender's criminal history. She will also be able to provide you with information to show that sex offenses are "progressive", in other words, an offender might start by exposing him or herself or harrassing or "grooming" his or her victims, and then gradually go from touching to penetration. It is unfortunate, but sex offenders are usually not caught the first time they offend. As a result, the inappropriate behavior is ingrained and not amenable to a quick and easy cure.

Should you require any additional names of experts to provide you with testimony regarding the importance of a permanent record on sex offenders, please contact me and I will provide you with additional names and phone numbers.

SEJ:jf-75

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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 Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 1, 1988

Representative Ulmer
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

This letter is in response to your request for information about the court system's record-keeping procedures, particularly in respect to the handling of suspended impositions of sentence. The court system records an SIS as a conviction. The operative statute, AS 12.55.085(e), provides that the court may set aside this type of conviction upon the court's discharge of the offender. However, the record of conviction remains if no one requests that the conviction be set aside. Even if the conviction is set aside by the court, this does not mean that the offender's record in APSIN is also expunged.

If I can provide further information, please let me know.

Sincerely,

/s/ Janalee R. Strandberg

Janalee R. Strandberg
Staff Counsel

JRS:hr

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 2, 1988

Representative Fran Ulmer
Chair, House State Affairs
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

After rereading your memo and talking with Linda today, I thought I should follow-up my February 1 letter to you with more detail about the court system's record-keeping procedures.

The court system sends records of offender sentences to the Department of Public Safety for input into APSIN. The technical services department has an APSIN terminal. Those people within the court system with a legitimate need for APSIN information may request it from technical services.

Twelve courts have their own computers. These contain case files which include sentences and are available to anyone.

I hope this additional information is of assistance.

Very truly yours,

Janalee R. Strandberg
Staff Counsel

JRS:hr

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 me

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 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 a 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:

LICENSING RECORD CLEARANCE REQUEST

Alaska Statute 47.35.010-080 and regulations for child foster homes, adult foster homes, residential child care facilities, and adult residential care facilities authorize the Division of Family and Youth Services to be satisfied that applicants for a foster home license and administrators of residential facilities are of reputable character, have sound judgement, are free from mental health problems, and are free from serious criminal history. In a foster home all members of the household 18 years or older must also be free of serious problems, including criminal history. If an adult joins a household during licensure, for an anticipated stay exceeding three weeks, a clearance request is to be submitted for that individual. The review of background records assists the Division in making a licensing determination. A failure on the part of an applicant to provide the Division with information and authorization requested on this form may be sufficient cause to deny issuance of a license.

There are two purposes of this form. First, the form will produce a Department of Public Safety check regarding the possible existence of an arrest resulting in a criminal charge and/or a criminal conviction record. Second, the form may produce a Division of Family and Youth Services file check regarding the possible existence of a substantiated child or adult abuse or neglect record. Division files also provide a check against current or previous licensing status of the applicant in the State of Alaska.

The existence of a criminal history record, or a substantiated child or abuse and neglect record does not necessarily disqualify an applicant for licensure. However, it does provide the Division with information which will be carefully evaluated to ensure that the applicant is able to meet licensing requirements.

If a license is denied, a renewal of a license is refused, or a license is revoked based upon a review of the records and a consequent determination of inability to provide adequate or appropriate care to persons being served in the licensed facility, the applicant or licensee will be furnished with a summary of findings on which the decision was made.

Under state statute and regulations child abuse or neglect and criminal history records are confidential with the exception of use in a licensing administrative or court hearing under the Alaska Administrative Procedures Act. This license record clearance form is treated as a confidential part of the licensing file. The Alaska Department of Public Safety affixes the following stamp in red to each form processed:

(7)

HOUSE COMMITTEE REPORT

Date referred: 2/10/88

FURTHER REFERRALS:

DATE: Feb 19, 1988

The Judiciary 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

[ ] zero fiscal note

[✓] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

Introduced: 1/18/88
Referred: Health, Education &
Social Services and Judiciary

IN THE HOUSE BY ULMER

HOUSE BILL NO. 372

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act prohibiting suspended imposition of the sentence of a person convicted of a sexual offense."

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

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

(a) Except as provided in (f) of this section, if [IF] it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be served, the court may, in its discretion, suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence that [WHICH] may be imposed, and upon the terms and conditions that [WHICH] the court determines, and shall place the person on probation, under the charge and supervision of the probation officer of the court during the suspension.

* Sec. 2. AS 12.55.085 is amended by adding a new subsection to read:

(f) The court may not suspend the imposition of sentence of a person who is convicted of a violation of AS 11.41.410 - 11.41.455.

12.55.125(g)

for 372 file

DRAFT

LETTER OF INTENT
CSHB 237(Judiciary)

Sections 1 and 2

The changes to AS 11.41.110(a)(2) and 11.41.200(a)(3) are solely intended as technical amendments to make it clear that the language "intentionally performs an act" means "knowingly engages in conduct". This amendment thus conforms the statutes to the interpretation provided in Neitzel v. State, 655 P.2d 325 (Alaska App. 1982).

Sections 3 and 4

The addition of AS 11.41.434(a)(30 and 11.41.436(a)(5) recognizes that the most serious forms of child sexual abuse are often committed by those who live in the same household as the victim or who are temporarily entrusted with the victim's care. Despite having no legal authority over the victim, such persons are nonetheless in a position of power such that even older children often find it impossible to thwart their advances. Because other subsections of these statutes already cover sexual misconduct with persons under the age of 13, the new changes apply only to victims from 13 to 15 years old. The cutoff at 16 years of age was specifically chosen instead of the 18-year-old cutoff in other subsections dealing with persons with legal or biological ties to the victim.

Sections 5 and 6

In enacting these sections, which require judges to impose some consecutive period of incarceration for each sexual or physical assault against a child, the legislature intends to leave to the court full discretion in determining the length of the consecutive term of incarceration. The court can impose whatever consecutive time as it decides is appropriate pursuant to the sentencing considerations in AS 12.55.005. One of the purposes of adopting a mandatory consecutive sentencing scheme for offenses against children is to express the Legislature's preference for judges to impose some consecutive period of time so as to reflect the community's abhorrence of these types of offenses, and to bring home to the offender that some additional penalty must be paid for each and every proven offense. In some cases, the court may find that only a minimal period of consecutive time to serve may be necessary while in other cases the court may find that a lengthy consecutive term is required. Another purpose of this amendment is to allow judges to fashion some consecutive period of suspended time, with conditions of probation, to assure that offenders being released from prison have an adequate period of supervision by the court or the Department of Corrections.

Section 7

AS 12.55.155(c)(18)(B) has been amended to create a new aggravating factor for repeated sexual misconduct toward minors. This change reflects the Legislature's intent that, although most judges already take into account prior misconduct in sentencing, is should be specifically recognized as a statutory aggravating factor. It is not necessary that a conviction have been entered to constitute this aggravating factor. This factor is also intended to apply to incidents not resulting in convictions. Prior convictions already trigger imposition of presumptive sentencing, or can constitute a separate aggravating factor if there are three or more felonies (AS 12.55.155(c)(15)) or if there are repeated instances of similar conduct (AS 12.55.155(c)(21)). Convictions used for those purposes are not intended to trigger this aggravating factor. As used in this aggravating factor, the phrase "same or similar conduct" is not intended to require a strict analysis of statutory elements of offenses.

Section 8

The amendment to Rule 8 of the Alaska Rules of Criminal Procedure is specifically intended to reverse the decision in Johnson v. State, 730 P.2d 175 (Alaska App. 1986) to permit multiple offenses to be joined for trial when evidence of one offense is admissible to prove another. It is intended that the determination that evidence will likely be cross-admissible be made before trial. This determination depends to a large extent on the state of the prosecution's evidence. The courts should be given great latitude to structure these pretrial proceedings to rely as much as possible on offers of proof and other non-testimonial showings, so as to avoid conducting a mini-trial, and to avoid situations where defendants use this procedure to obtain pretrial depositions to which they are not otherwise entitled. The determination on cross-admissibility may also turn on the precise parameters of a person's defense. A defendant who declines, in an *ex parte in camera* hearing, to disclose a defense, which could have been anticipated at this point in the proceedings and which would render evidence of other offenses inadmissible, should be deemed to have waived any objection to joinder.

Section 9

As the Alaska Court of Appeals has emphasized, "[a] sexually abusing parent has tremendous control over his dependent children. He can pick his time and place to minimize the risk of discovery." 731 P.2d at 590. Evidence of past acts is therefore particularly important when there is "a swearing contest between the parent denying unlawful conduct and the child alleging it" because the evidence "may tend to make the alleged incident appear much more plausible and probable." Id. at 590-1. However, having heard testimony about patterns of behavior of many of these offenders, the Legislature finds that the judiciary has drawn the line too narrowly in excluding evidence of prior misconduct,

particularly as to non-family members, and that it is appropriate to re-draw the line. The Legislature therefore specifically intends to reverse the decision in Bolden v. State, 720 P.2d 957 (Alaska App. 1986) The intent of the Legislature is that, if the court finds that such prior bad acts are relevant to a disputed fact at trial under a common scheme or plan analysis, the court must still balance the probative impact against the prejudicial effect of the evidence pursuant to Evidence Rule 403. As used in this rule, the phrase "similar acts" is not intended to be limited to statutory offenses nor require a strict analysis of statutory elements. Although specific statutory citations are not included in the language of the rule, it is the intent of the Legislature that this evidentiary provision will apply not only to cases involving sexual assault, sexual abuse and physical abuse against a child, but also to homicides where the victim is a child and to cases involving unlawful exploitation of children.

SIS's per Jeri Carnes

~~1983-1985~~ ~~[illegible]~~ 82-84 279-2526 Sexual Abuse + assault

61 - 422 - offenders

14%

PROMISE System

prior records - none 50.8%

1/4 - unknown

1/4 - 1-3 misdem

1 w/ 4 or more misdemean

NO Prior Felonies

45.9% native

41% white

2 (actual) blacks

2 (actual) asians

4 (actual) unknown

60 males

1 female

Offenses: 21.4% - class B

42.7% - " C

16.4% - unknown

4.8% - misdemeanor

14.7% - unclassified A

Data not perfect

a few A's + undas were assaults committed ~~~~ b/f Jan 82 because no presumpt sentencing

Dg distrib. seems standard; a little older than average (30's - 40's)

Can look at types of pleas, part I state if you like

Tex, Bethel, Juneau more than anch

Ketchikan	mb 1/30 ds
Sitka	10/51
Palmer	2/31
Kodiak	2/14
Barrow	5/23
Bethel	8/48

Dr. Smith called with the following:

694-9511

REFERENCE: Abel Mittleman & Becker
Article: Sexual Offenders: Results of Assessment and Recommendations for Treatment
Book: Criminal Criminology: The Assessment and Treatment of Criminal Behavior 1985

Study: Of 411 sex offenders there were 238,711 attempted offenses; of these, 218,900 were completed.

Total Victims: 138,137
over an average course of 12 years

Rapists averaged 7.5 victims per rapist (vs. the Kinsey Report of 1.4 victims)

Child molesters: each offender attempted 238 molestations; of this, 167 were completed on 75.8 victims age 14 and below.

Fifty percent of all subjects (rapists and child molesters) had multiple deviations:

Of Molesters: 30% were exhibitionists to children and adults; 17% rapes; 14% voyeurism and 8% frottage

Of Rapists: 50% reported child molestation; 29% exhibitionism; 20% voyeurism; 12% frottage; and 11% sadistic acts

The onset of deviant arousal and/or activity by age 15 equaled 42%; by age 19 equaled 57%.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION/FIRST JUDICIAL DISTRICT

OFFICE OF THE DISTRICT ATTORNEY

STEVE COWPER, GOVERNOR

REPLY TO:

☒ *POUCH KA*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3620

☐ *415 MAIN STREET, RM. 304*
KETCHIKAN, ALASKA 99901
PHONE: (907) 225-6128

☐ *304 LAKE ST, RM 202*
SITKA, ALASKA 99835
PHONE: (907) 747-5851

February 16, 1988

The Honorable Fran Ulmer
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: House Bill 372

Dear Fran:

In regard to your bill, HB 372, I'd like to pass along information that may be of interest to you. Presently I have sitting on my desk two cases which would be affected by your bill. One case is probably fairly well known to you, that being the sexual abuse by Ken McQuade of children who were in the Big Brothers/Big Sisters program when he was director. McQuade was convicted of two counts of sexual abuse of a minor in the first degree, one count of sexual abuse of a minor in the second degree, and one count of sexual abuse of a minor in the third degree. The state presented evidence that McQuade's sentence should have been increased over the presumptive sentence as a result of certain aggravating factors. Mainly the state proved by clear and convincing evidence that Ken McQuade gave venereal warts to one of the victims of his sexual abuse, specifically chose children who had been sexually abused in the past for his crimes, and had a history of repeated acts of a similar nature. The defense presented evidence of a mitigating factor which was that McQuade acted under some degree of compulsion less than would rise to the level of a defense. The state argued that this mitigating factor, which may well exist for other types of crimes, should be an aggravating factor for sexual abuse of a minor. In other words, why should McQuade's sentence be reduced if he cannot control his behavior? However, Judge Jahnke found this a mitigating factor and presumably reduced what would be an appropriate sentence for McQuade as a result of the factor. Judge Jahnke did not like the law he had to operate under and so

he announced two sentences - one was the sentence that he thought the law required - a 20 year sentence with 10 years suspended; the second which he called "an ideal" sentence. Judge Jahnke said:

> [t]here is a basis in fact in this case for a somewhat shorter sentence . . . . I have grave doubts about the legality of the kind of sentence I would like to impose in this case . . . . For that reason, I will be articulating two sentences today, the actual sentence that I will impose and the ideal sentence that I will impose, and I am frankly inviting an appeal so that the confusion over my decision under this statute authorizing suspended imposition of sentence can be clarified.

(Transcript 256-257)

Judge Jahnke's "ideal" sentence was 15 years in jail with five to seven years suspended, with a probationary period of 20 years. Judge Jahnke thought that he could reach this result by suspending imposition of sentence for 20 years on one of the unclassified felony offenses. The state argued that the law prohibited such action by the court. AS 12.55.085(a) and AS 12.55.090(c).

It did not take McQuade's lawyers long to appeal Judge Jahnke's decision, but the court of appeals agreed with the state that the legislature had articulated a sentencing scheme which did not allow Judge Jahnke to impose a suspended imposition of sentence for 20 years. The defendant appealed to the supreme court but the case was not heard. However, the Alaska Court of Appeals in dicta said:

> We do not decide whether, in an appropriate case, the three judge panel would have authority to grant relief similar to that which McQuade requests. See, AS 12.55.165; AS 12.55.175. Neither the parties or the trial court have considered or addressed this issue.

McQuade v. State, MOJ No. 1470 (August 5, 1987). Well, you can imagine what has happened now. The defendant has moved to modify his sentence, asking that it be reduced to a four year presumptive sentence, given the mitigating factor Judge Jahnke

found, or in the alternative, the case be sent to a three-judge panel so that he (McQuade) can receive a suspended imposition of sentence. If Ken McQuade receives a suspended imposition of sentence on all counts and there is a discharge of the suspended imposition of sentence sometime in the future, he could apply to be a director of a Big Brother/Big Sister program and, some attorneys believe, can honestly say on a job application that he has not been convicted of a felony offense. As I am sure you are aware, McQuade has a history of being involved in programs dealing with youth both in this and other states. The state presented evidence at McQuade's sentencing that he had sexually abused children in those other programs. At least if he stands convicted, without a suspended imposition of sentence, in the future a children's program will be able to ascertain that he was convicted of sexual abuse of a minor.

The other case is not as startling, but involves a 1984 conviction against a person who periodically would stand in front of a woman's window in North Douglas and masturbate. He received a conviction and now he is asking that the court modify that conviction to a suspended imposition of sentence so that it could be discharged from his record. His plan is, since he has not been in trouble since 1984, that then he could turn around and have the matter removed from his record.

I am sure you are aware there are a number of people involved in the area of sex offender treatment who believe that public exhibitionism of this nature suggests a high probability of later sexual abuse of either adults or children.

I pass this information on to you so that a more informed decision can be made regarding the policy question as to whether people who are involved in crimes of a sexual nature should receive a suspended imposition of sentence.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: Richard Svobodny
Richard Svobodny
District Attorney

January 29, 1988

Fran Ulmer
Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

I just wanted to clarify a few matters on the proposed legislation prohibiting a "Suspended Imposition of Sentence" (SIS) for sex offenders.

I must say quite candidly that I was very surprised by some of the questions and issues raised during the HESS hearing on the proposed bill. In spite of your eloquent plea for the legislation and concise explanation of its effects, several of individuals on the committee seemed to completely misunderstand the effect of this bill.

First, I am very perplexed by the testimony from the individual in the Department of Corrections that this bill could potentially cost the State as much as one million dollars a year. AS 12.55.125 (§g) already prohibits an SIS for several serious offenses including "sexual assault in the first degree." The impact of the proposal bill would be to prohibit a suspended imposition for second degree, third degree and fourth degree offenders, all sexual offenders.

As you are well aware, this bill is not a sentencing provision. Whether or not an individual receives a suspended imposition of sentence has virtually no effect upon whether jail time is imposed, except in the very limited number of cases in which an individual is a second sex offender. Therefore, the only individuals who would receive any kind of sentencing enhancement as a result of this legislation are individuals who commit second sexual offense in Alaska. The clear purpose of this legislation is not to enhance the penalties for sexual offenders, but simply to identify the population of sexual offenders to potential employers and other interested parties in our society. Conversely, this bill should actually save the time and resources needed to have court hearings to expunge sex convictions.

I hope that the committee is able to see past some of the spurious issues raised by the debate on this legislation and focus in on the dual purpose of this bill: 1) to identify the population of sexual offenders; and 2) send a message to the community that sexual assault is at least as serious a crime as drunk driving. The legislation, in AS 28.35.030, (driving while intoxicated) upon which this legislation is based, has already withstood several court challenges and been effectively enforced for several years.

Thank you again for your support of this legislation and your unwavering commitment to the safety of Alaskans. I look forward to the day that we can live in a state in which we are able to readily identify those individuals who pose the greatest risks to their fellow citizens.

Sincerely,

Russell S. Babcock
Attorney

RSB:krn

LAW OFFICES OF
KEMPPEL, HUFFMAN AND GINDER
A PROFESSIONAL CORPORATION

ROGER R. KEMPPEL
RICHARD R. HUFFMAN
PETER C. GINDER
DARREL J. GARDNER
DONALD C. ELLIS
MARY ELLEN FLAHERTY
BOBBY DEAN SMITH
VICTOR C. 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

SAM - SENTENCING: AS 11.41.430-NS THRU AS 11.41.438

OFFICE LOC TRANS OFFICE LOC : PALMER

	CASE NO / JUDGE	CHARGE TRANS / CHARGE / CHARGE CONVICTED	TOTAL JAIL TIME / TIME SUSPENDED	SUS IMPOS SENT	CONCURRENT	CONSECUTIVE	NOTE	DATE
1)		SEXABUSE I-STAT RAPE	4Y					01/27/87
2)		ABUSE II-NOT SPECIFC	2Y					
3)	CUTLER, B							
1)		SEX ABUSE MINOR III	2Y					11/26/86
2)			18M					
3)	CUTLER, B							
1)		SEX ABUSE MINOR III	2Y			Y		11/26/86
2)			18M					
3)	CUTLER, B							
1)		SEX ABUSE I-INCEST	8Y					02/26/87
2)								
3)	CUTLER, B						UNSUPERVISED CONTACT W/18YRS PROHIBITED UNLESS 2	
1)		SEX ABUSE I-INCEST	8Y					02/26/87
2)			8Y					
3)	CUTLER, B						UNSUPERVISED CONTACT W/18YRS PROHIBITED UNLESS 2	
1)		SEXABUSE I-STAT RAPE	4Y			Y		03/04/87
2)		SEX ABUSE MINOR II	1Y6M					
3)	CUTLER, B							
1)		SEXABUSE I-STAT RAPE	4Y			Y		03/04/87
2)		SEX ABUSE MINOR II	1Y6M					
3)	CUTLER, B							
1)		SEX ABUSE MINOR II	4Y			Y		03/04/87
2)			1Y6M					
3)	CUTLER, B							
1)		SEX ABUSE MINOR II	4Y			Y		03/04/87
2)			1Y6M					
3)	CUTLER, B							
1)		SEX ABUSE MINOR II	4Y			Y		03/04/87
2)			1Y6M					
3)	CUTLER, B							

SAM - SENTENCING: AS 11.41.430-NS THRU AS 11.41.438

OFFICE LOC TRANS OFFICE LOC : PALMER

	CASE NO / JUDGE / JUDGE	CHARGE TRANS CHARGE / CHARGE TRANS CHARGE CONVICTED	TOTAL JAIL TIME / TIME SUSPENDED	SUS IMPOS SENT	CONCURRENT	CONSECUTIVE	DATE
1)		SEX ABUSE MINOR II	4Y			Y	03/04/87
2)			1Y6M				
3)	CUTLER, B						
1)		SEXABUSE I-STAT RAPE	8Y				04/02/87
2)	CUTLER, B						
3)	CUTLER, B						
1)		ABUSE II-NOT SPECIFC	3Y				04/02/87
2)	CUTLER, B		3Y				
3)	CUTLER, B						
1)		SEX ABUSE MINOR III	15D		Y		12/04/87
2)	CUTLER, B						
3)	CUTLER, B				AT LEAST 6M SEX ABUSE COUNSELING / 120 HRS CWS		
1)		SEXABUSE I-STAT RAPE	10Y				01/02/87
2)	CUTLER, B		8Y				
3)	CUTLER, B				DURATION BEGINS DATE OF RELEASE		
1)		ABUSE II-NOT SPECIFC	90D		Y		07/01/87
2)							
3)	CUTLER, B						
1)		SEX ABUSE MINOR II			Y		02/13/87
2)	ASHMAN						
3)	ASHMAN				40HRS CWS W/IN 6M; COUNSELING		
1)		SEXABUSE I-STAT RAPE	8Y				06/05/87
2)	CUTLER, B						
3)	CUTLER, B				PRESUMPTIVE		
1)		SEX ABUSE MINOR II			/		08/24/87
2)	BOSSHARD, J						
3)	BOSSHARD, J				HEALTH COUNSELING FOR SEXUAL ABUSE PROBLEMS		
1)		SEX ABUSE MINOR III	270D				10/19/87
2)	BOSSHARD, J	ATT SEXABUS MINR III	270D				
3)	BOSSHARD, J				DF TO UNDERGO SEXUAL ABUSE COUNSELING AT HIS		

SAM - SENTENCING: AS 11.41.410A3

OFFICE LOC TRANS OFFICE LOC : ANCHORAGE

	JUDGE	CHARGE TRANS CHARGE CHARGE CONVICTED	TOTAL JAIL TIME TIME SUSPENDED	SUS IMPOS SENT	CONCURRENT	CONSECUTIVE	DATE
1)							
2)		SEXUAL ASSAULT I	10Y 7Y		Y		09/10/85
3)				NSV 5Y, RECOMMENDED SEXUAL ABUSE COUNSELING			
1)		SEXUAL ASSAULT I	8Y				03/08/85
2)	BUCKALEW, S						
3)	BUCKALEW, S						
1)		SEXUAL ASSAULT I	10Y 10Y		Y		11/30/83
2)							
3)	RIPLEY, J			PRESUMPTIVE SENT. 5Y PROB. AFTER JAIL.			
1)		SEXUAL ASSAULT I	10Y 10Y		Y		11/30/83
2)							
3)	RIPLEY, J						
1)		SEXUAL ASSAULT I	10Y 10Y		Y		11/30/83
2)							
3)	RIPLEY, J						
1)		SEXUAL ASSAULT I	10Y 10Y		Y		11/30/83
2)							
3)	RIPLEY, J			PRESUMPTIVE SENT			
1)		SEXUAL ASSAULT I		Y	Y		11/30/83
2)							
3)	RIPLEY, J			SIS CONSECUTIVE TO PRESUPTIVE W/5Y PROB.			
1)		SEXUAL ASSAULT I		Y	Y		11/30/83
2)							
3)	RIPLEY, J						
1)		SEXUAL ASSAULT I		Y	Y		11/30/83
2)							
3)	RIPLEY, J						
1)		SEXUAL ASSAULT I		Y	Y		11/30/83
2)							
3)	RIPLEY, J						

SAM - SENTENCING: AS 11.41.410A3

OFFICE LOC TRANS OFFICE LOC : ANCHORAGE

	JUDGE	CHARGE TRANS CHARGE CONVICTED	TOTAL JAIL TIME / TIME SUSPENDED	SUS IMPOS SENT	CONCURRENT	CONSECUTIVE	DATE
1)		SEXUAL ASSAULT I		Y			10/29/84
2)							
3)							
1)		SEXUAL ASSAULT I	8Y				10/29/84
2)			6Y				
3)							
1)		SEXUAL ASSAULT I		Y			10/29/84
2)							
3)							
1)		SEXUAL ASSAULT I	8Y				10/29/84
2)			6Y				
3)							
1)		SEXUAL ASSAULT I		Y			10/29/84
2)							
3)							
1)		SEXUAL ASSAULT I		Y			10/29/84
2)							
3)							
1)		SEXUAL ASSAULT I	8Y				10/29/84
2)			6Y				
3)							
1)		SEXUAL ASSAULT I	10Y				10/29/84
2)			8Y				
3)							
1)		SEXUAL ASSAULT I	8Y				12/22/83
2)							
3)	CARLSON, V			PRESUMPTIVE.			
1)		SEXUAL ASSAULT I	8Y		Y		05/03/84
2)							
3)	[illegible]OWLAND, M						

SAM - SENTENCING: AS 11.41.410A3

OFFICE LOC TRANS OFFICE LOC : ANCHORAGE

	JUDGE	CHARGE TRANS CHARGE CHARGE CONVICTED	TOTAL JAIL TIME TIME SUSPENDED	SUS IMPOS SENT	CONCURRENT	CONSECUTIVE	DATE
1)		SEXUAL ASSAULT I	18M		Y		07/28/87
2)	BUCKALEW, S						
3)	BUCKALEW, S						
1)		SEXUAL ASSAULT I	8Y				08/10/84
2)							
3)	OCCHIPINTI						
1)		SEXUAL ASSAULT I	5Y	Y		Y	11/01/84
2)							
3)	RIPLEY, J						
1)		SEXUAL ASSAULT I	13Y				11/01/84
2)			5Y				
3)	RIPLEY, J						
1)		SEXUAL ASSAULT I	54M				01/08/85
2)	RIPLEY, J						
3)	RIPLEY, J						
1)		SEXUAL ASSAULT I	8Y				04/03/87
2)	LEWIS, E		2Y				
3)	SHORTELL, B			NSV 5Y, MENTAL HEALTH CNCLNG,			
1)		SEXUAL ASSAULT I	10Y				08/27/84
2)							
3)							
1)		SEXUAL ASSAULT I	7Y		Y		02/22.85
2)	BUCKALEW, S						
3)	BUCKALEW, S			PRESUMPTIVE TERM			
1)		SEXUAL ASSAULT I	7Y		Y		02/22/85
2)	BUCKALEW, S						
3)	BUCKALEW, S			PRESUMPTIVE			
1)		SEXUAL ASSAULT I	8Y				04/15/85
2)	LEWIS, E						
3)	LEWIS, E						