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tencing. There was no indication that the defendant ever resorted to violence or threats of violence, no physical injury resulted from the assaults, and the emotional and psychological injuries suffered by the victims were probably somewhat less than usual in such cases; the fact that the assaultive conduct was repeated over an extended period of time, while a significant aggravating factor, did not justify treating the defendant as a worst offender and imposing a maximum sentence. Petty v. State, 706 P.2d 700 (Alaska Ct. App. 1985).

Sentence of 20 years with 12 years suspended for first-degree sexual assault, where the defendant was subject to an eight-year presumptive term was vacated and the case was remanded for resentencing where there was essentially only a single aggravator properly applicable, not three; where the sentencing court failed to state what weights it attached to the aggravators; and where the amount of suspended time was excessive. The superior court was directed to impose a sentencing not exceeding 12 years with four suspended. Branten v. State, 706 P.2d 1311 (Alaska Ct. App. 1986).

Review of cases which address sexual assaults involving both adult and child victims supports a sentencing range for aggravated offenses of 10 to 15 years, and use of Atkinson and Depp as benchmarks for determining the kind of conduct warranting a sentence within that range. These benchmarks are applicable to all aggravated cases because of: (1) multiple victims; (2) multiple assaults on a single victim; or, (3) serious injuries to one or more victims. State v. Andrews, 707 P.2d 900 (Alaska Ct. App. 1985), aff'd, 723 P.2d 86 (Alaska 1986).

It was not manifestly unjust to impose a five-year presumptive term upon defendant's conviction of attempted sexual assault of a minor, and he was not automatically entitled as a matter of law, to have his case referred to a three-judge panel for sentencing. Aveoganna v. State, 767 P.2d 75 (Alaska Ct. App. 1988).

Presumptive sentence for sexual assault, imposed in the absence of aggravating or mitigating factors and without any basis for referral to a three-judge panel, was not subject to modification thereafter pursuant to Cr. R. 35(b) Gabrielleff v. State, 768 P.2d 128 (Alaska Ct. App. 1989).

Sexual assault and sexual abuse of minor. — Total sentence of 38 years imposed against a first offender for sexual assault and sexual abuse of a minor was remanded for resentencing not to exceed 25 years with five years suspended, where there was prolonged abuse of the victims but no physical violence had been used to coerce the victims to participate in the sexual abuse. Howell v. State, 758 P.2d 103 (Alaska Ct. App. 1988).

Sexual abuse of minor. — A sentence of 20 years with five years suspended for a first felony offender for sexual abuse of a minor in the first degree was clearly mistaken, where the offense did not involve multiple acts with multiple victims or a prior felony record. Zecker v. State, 761 P.2d 1015 (Alaska Ct. App. 1988).

Composite term of sixty years upon conviction of two counts of sexual abuse of a minor in the first degree was clearly mistaken, and the case was remanded for imposition of a total sentence not to exceed sixty years with ten years suspended, where the sentencing court's reliance upon the seriousness of defendant's prior murder conviction placed inordinate and disproportionate weight on a single aggravating factor. Murray v. State, 770 P.2d 1131 (Alaska Ct. App. 1989).

Use of firearm in robbery. — Although the use of the firearm in a robbery results both in the defendant's having committed a more serious offense and the defendant's facing a more serious sentence, the defendant has still only been punished once for that crime; sentencing a defendant for robbery in the first degree under the provisions of paragraph (c)(2) does not violate the double jeopardy provisions of Alaska Const., Art. I, § 9. Richardson v. State, 700 P.2d 1188 (Alaska Ct. App. 1985).

Burglary and theft. — A composite sentence of five years with two years suspended, imposed upon a first felony offender upon conviction of two counts of burglary in the second degree, one count of theft in the second degree, and one count of theft in the third degree, was not excessive, where defendant's conviction of two separate burglaries and related thefts, and his admission of two additional burglaries and related thefts, justified a greater sentence than would a conviction of an isolated burglary and theft. Camegya v. State, 747 P.2d 554 (Alaska Ct. App. 1987).

Burglary. — A sentence of seven years, with four years suspended, for first-degree burglary was excessive, where defendant was a relatively youthful offender with an otherwise clean record, family ties and support in the community, and a fairly stable employment record. West v. State, 727 P.2d 1 (Alaska Ct. App. 1986).

Property crime. — An extensive misdemeanor record, covering a period of two years and highlighted by four shoplifting convictions, and multiple probation revocations, does not constitute the kind of exceptional case that would warrant a sentence for a first felony offender convicted of a property crime that exceeds the presumptive term for a second felony offender. Tate v. State, 711 P.2d 530 (Alaska Ct. App. 1985).

Fraudulently obtaining fund checks. — Imposition of two three-year concurrent sentences with one year suspended for forging fraudulent permanent fund applications and fraudulently obtaining fund checks was affirmed where the trial judge found that the crimes were easy to commit, difficult to detect and generated a substantial income; if the defendant had been subject to presumptive sentencing, the defendant's multiple acts of theft, which extended over a substantial period of time and required numerous separate intents to steal, coupled with generally fraudulent behavior, might have warranted referral of the case to a three-judge sentencing panel for consideration of a more severe sentence; and the defendant's consistent pattern of deceptive behavior in dealing with former employers and with state probation officer strongly militated against her potential for rehabilitation. Hinds v. State, 727 P.2d 11 (Alaska Ct. App. 1986).

Second-degree forgery. — Three-year unsuspended sentence for first-felony offender for seven counts of second-degree forgery was justified considering the offense and the defendant's past criminal record, but the imposition of 12 years of suspended time was clearly mistaken; the total sentence should not have exceeded five years with two years suspended. Mathison v. State, 687 P.2d 930 (Alaska Ct. App. 1984).

Misconduct involving controlled substance. — A composite sentence of eight years, with four years suspended, upon conviction of four counts of misconduct involving a controlled substance in the third degree, was excessive where, although defendant had dealt in large quantities of cocaine, he was still entitled to be sentenced as a first felony offender. Lewis v. State, 769 P.2d 460 (Alaska Ct. App. 1989).

Sentence upheld. — See Austin v. State, 627 P.2d 667 (Alaska Ct. App. 1981) (criminal mischief); Hoover v. State, 641 P.2d 1203 (Alaska Ct. App. 198[illegible] (first-degree murder); Ecker v. State, 65[illegible] P.2d 677 (Alaska Ct. App. 1982) (sexual molestation); Nukapigak v. State, 64[illegible] P.2d 216 (Alaska Ct. App. 1982) (first-degree murder); Page v. State, 667 P.2d 85[illegible] (Alaska Ct. App. 1983) (second-degree murder); Hodges v. State, 660 P.2d 120[illegible] (Alaska Ct. App. 1983) (first-degree sexual assault); Langton v. State, 662 P.2[illegible] 964 (Alaska Ct. App. 1983) (first-degree sexual assault); Montes v. State, 669 P.2[illegible] 981 (Alaska Ct. App. 1983); Jimmy v. State, 689 P.2d 504 (Alaska 1984); York v. State, 700 P.2d 341 (Alaska Ct. App. 1986); Azzarello v. State, 703 P.2d 11[illegible] (Alaska Ct. App. 1986); Brandenburg v. State, 705 P.2d 1331 (Alaska Ct. App. 1986); Grant v. State, 712 P.2d 906 (Alaska Ct. App. 1986); Lewis v. State, 731 P.2d [illegible] (Alaska Ct. App. 1987); Soper v. State, 731 P.2d 587 (Alaska Ct. App. 1987); Edwards v. State, 733 P.2d 1063 (Alaska Ct. App. 1987); Schneckner v. State, 7[illegible] P.2d 1310 (Alaska Ct. App. 1987); Jackson v. State, 750 P.2d 821 (Alaska Ct. App. cert. denied, U.S. , 109 S. Ct. 8[illegible] 102 L. Ed. 2d 56 (1988); Denbo v. State, 756 P.2d 916 (Alaska Ct. App. 1988); Goodman v. State, 756 P.2d 918 (Alaska Ct. App. 1988); Horton v. State, 758 P.2[illegible] 628 (Alaska Ct. App. 1988); Jackson v. State, 758 P.2d 1294 (Alaska Ct. App. 1988); Jansen v. State, 764 P.2d 3[illegible] (Alaska Ct. App. 1988); Hale v. State, 7[illegible] P.2d 313 (Alaska Ct. App. 1988); Barnes v. State, 780 P.2d 926 (Alaska Ct. App. 1990).

Sentence of ten years with four years suspended, in the case of a first offender convicted of six counts of sexual abuse of a minor in the second degree, was affirmed where defendant was the victim's music teacher and his abuse of the student-teacher relationship made it an exceptionally aggravated case. Osterback v. State, 780 P.2d 1037 (Alaska Ct. App. 1990).

Three-year sentence for failure to appear was not clearly mistaken, where defendant had been convicted of three or more prior felonies and the sentencing judge was entitled to take into account defendant's long history of alcohol abuse and record of offenses in concluding that his prospects for rehabilitation were guarded. Hayes v. State, 790 P.2d 713 (Alaska Ct. App. 1990).

Sentence not upheld. — See Lawrence

maximum sentence for the most serious of several offenses should be given only where the court finds that such a sentence is necessary to protect the public, or where it has some other substantial reason for imposing this kind of sentence. Hancock v. State, 762 P.2d 503 (Alaska Ct. App. 1988).

Imposition of sentence under both AS 11.41.500 and AS 12.55.125(c)(2) does not violate prohibition against double jeopardy; the enhanced presumptive terms operate independently of the elements of the underlying offenses. Abdulhaqui v. State, 726 P.2d 1211 (Alaska Ct. App. 1986).

Stipulation as to aggravating or mitigating factor. — The trial court cannot merely accept a stipulation to an aggravating or mitigating factor, but must independently review the record to ensure that there is a factual basis for the proposed aggravator or mitigator. Connolly v. State, 758 P.2d 633 (Alaska Ct. App. 1988).

Limited use of both suspended jail time and probation is permitted under AS 12.55.155. Lacquement v. State, 644 P.2d 866 (Alaska Ct. App. 1982). See also Friedberg v. State, 663 P.2d 566 (Alaska Ct. App. 1983).

Twenty-year parole restriction, applied to the entire period of twenty-year sentence, was clearly mistaken, where such an implied distrust of the parole board's ability to do its job was unwarranted, in the absence of express findings, supported by specific evidence, establishing a need to restrict parole eligibility. Newell v. State, 771 P.2d 873 (Alaska Ct. App. 1989).

Standards governing imposition of previously suspended sentence. — Where the trial court did not discuss the Chaney criteria or apply them, where the court did not consider sentences typically imposed upon burglary offenders with records comparable to the defendants nor did it consider sentences imposed upon those whose conduct on probation was similar to the subsequent criminal behavior, the case must be remanded for resentencing. Crouse v. State, 736 P.2d 763 (Alaska Ct. App. 1987).

A minimum sentence may not be adjusted for statutory mitigating factors. State v. Price, 715 P.2d 1183 (Alaska Ct. App. 1986).

Probationary sentences. — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for rehabilitation through probationary supervision. State v. Coats, 669 P.2d 1329 (Alaska Ct. App. 1983).

Under former law where statutory mitigating factors warrant a sentence of 90 days to three years, extraordinary circumstances might justify a sentence of straight probation. State v. Brinkley, 681 P.2d 361 (Alaska Ct. App. 1984).

Placement of offenders. — It is within the sentencing judge's authority to make a recommendation to the commissioner regarding the appropriate placement of the offender. Under AS 33.30.100, the commissioner has the power to effectuate such a recommendation by placing the offender in the appropriate facility, and although the commissioner is not bound by the sentencing court's recommendation, a demonstrated failure to provide an appropriate rehabilitation program or to further the purposes of the sentence may justify judicial intervention. Nell v. State, 642 P.2d 1361 (Alaska Ct. App. 1982).

Incarceration required under subsection (g). — Under the provisions of subsection (g) of this section a judge was required to order the incarceration of a convicted felon; he had no authority to place him on probation and to thus provide for his placement in a treatment program as a condition of such. Nell v. State, 642 P.2d 1361 (Alaska Ct. App. 1982).

For cases construing former AS 12.55.060, imposing increased punishment for persons convicted of more than one felony, see Bowie v. State, 494 P.2d 800 (Alaska 1972); State v. Carlson, 560 P.2d 26 (Alaska 1977); Davis v. State, 566 P.2d 640 (Alaska 1977); Johnson v. State, 560 P.2d 700 (Alaska 1978); Gonzales v. State, 593 P.2d 257 (Alaska 1979); Coleman v. State, 621 P.2d 869 (Alaska 1980), cert. denied, 454 U.S. 1090, 102 S. Ct. 653, 70 L. Ed. 2d 628 (1981); Sheakley v. State, 644 P.2d 864 (Alaska Ct. App. 1982).

B. Specific Crimes.

Murder. — Where two defendants were convicted of first-degree murder and one of second-degree murder for the same crime, the sentencing judge was entitled to make his own evaluation of the evidence in deciding how culpable was the behavior of the one convicted of second-degree murder. Where the record before the jury sufficed to support the conclusion that the defendant convicted of second-degree murder was as guilty of premeditated murder as were the other defendants, the maximum term of 99 years received by each of the defendants, though certainly severe, was justified by the extreme nature of their crime. Ridgely v. State, 739 P.2d 1289 (Alaska Ct. App. 1987).

Murder and related offenses. — Where burglary and theft offenses were property crimes integrally related with the murder for which defendants were convicted, and they were part of a single criminal episode involving the same victim, the sentencing record did not establish any actual need for consecutive sentences in excess of 99 years, given the youthfulness of the defendants (19, 16, and 17 years), their lack of any prior adult convictions, and their lack of prior involvement in any crime of violence. Under the 99-year sentences for murder alone, the defendants would not become eligible for parole consideration until they had completed serving one-third of their terms — 33 years of imprisonment, and even then, they would be entitled to release on discretionary parole only if it appeared, based on all available information, that they would conform their behavior to the requirements of the law and that they would not pose a danger to the community. Ridgely v. State, 739 P.2d 1289 (Alaska Ct. App. 1987).

Sentence for first-degree murder not clearly mistaken. — See Green v. State, 761 P.2d 720 (Alaska Ct. App. 1988).

Murder and tampering with evidence. — Trial court should not have imposed a five-year sentence for tampering with physical evidence consecutively to a 99-year sentence for murder, where the record would not support the conclusion that defendant must be incarcerated for the remainder of his life without any possibility of parole. Thompson v. State, 768 P.2d 127 (Alaska Ct. App. 1989).

Criminally negligent homicide and failure to render assistance. — Judge should not have sentenced defendant convicted of criminally negligent homicide and failure to render assistance after an injury accident to a sentence of imprisonment greater than four years, as he was only 19 years of age and had no prior criminal record; and a sentence of four years is double the presumptive sentence for a second-felony offender convicted of a class C felony, such as negligent homicide, and is equal to the presumptive sentence

for a second-felony offender convicted class B felony, to which failure to assistance is analogous. Smith v. Sta P.2d 1306 (Alaska Ct. App. 1987).

Assault and manslaughter. — unjust to impose on defendant a year presumptive term for his assau viction when the presumptive term manslaughter conviction, a more offense, was only five years, and t crimes stemmed from precisely the conduct. New v. State, 714 P.2 (Alaska Ct. App. 1986).

Assault. — Sentence of a maxim year period of imprisonment witho gibility for parole given a first-fel fender convicted of one count of ass the first degree, AS 11.41.200(a)(1) continuous course of assault up elderly woman living in the defe home as the housekeeper was held ative; that sentencing decision w versed and remanded for resentenci term not to exceed 15 years wit years suspended. Pruett v. State, 74 267 (Alaska Ct. App. 1987).

Sentence of 15 years, with three suspended, for first-degree assaul clearly mistaken, where neither dant's prior misdemeanor convictio his failure at voluntary efforts to a lasting sobriety justified the con that he was an offender who was i ble of being deterred or rehabilitate term of 10 years or less. Wentz v. 777 P.2d 213 (Alaska Ct. App. 1

Sexual assault. — Sentence years' imprisonment for first-degr ual assault of two-year-old child w cessive and case was remanded for tencing not to exceed 10 years. Lan State, 662 P.2d 964 (Alaska Ct 1983).

Suspended five-year sentence fo degree sexual assault of defendant' year-old son was disapproved as nient, with a 90-day to three-ye tence suggested. Langton v. Stat P.2d 964 (Alaska Ct. App. 1983).

Unsuspended twenty-year ter three counts of first-degree sexual a imposed under AS 11.41.410 as it r fore the 1982 amendment to the and AS 12.55.125(c), on a first o with a lengthy history of sexually tive conduct committed against hi daughters was clearly mistaken. T tencing record did not justify the m tion that the defendant was deali fail at rehabilitation that appea have been central in the decision

Jensen, 650 P.2d 422 (Alaska Ct. App. 1982); Quaile v. State, 652 P.2d 461 (Alaska Ct. App. 1982); Williams v. State, 652 P.2d 478 (Alaska Ct. App. 1982); Connors v. State, 652 P.2d 110 (Alaska Ct. App. 1982); Sears v. State, 653 P.2d 349 (Alaska Ct. App. 1982); Hartley v. State, 653 P.2d 1062 (Alaska Ct. App. 1982); Griffith v. State, 653 P.2d 1067 (Alaska Ct. App. 1982); Nix v. State, 653 P.2d 1093 (Alaska Ct. App. 1982); Dunn v. State, 653 P.2d 1071 (Alaska Ct. App. 1982); State v. Lunsford, 653 P.2d 1060 (Alaska Ct. App. 1982); Weston v. State, 656 P.2d 1186 (Alaska Ct. App. 1982); Erhart v. State, 656 P.2d 1199 (Alaska Ct. App. 1982); Baker v. State, 655 P.2d 1324 (Alaska Ct. App. 1983); Reynolds v. State, 664 P.2d 621 (Alaska Ct. App. 1983); Woods v. State, 667 P.2d 184 (Alaska 1983); Contreras v. State, 676 P.2d 654 (Alaska Ct. App. 1984); Griffith v. State, 675 P.2d 662 (Alaska Ct. App. 1984); Welch v. State, 677 P.2d 912 (Alaska Ct. App. 1984); Huitt v. State, 678 P.2d 415 (Alaska Ct. App. 1984); Maldonado v. State, 676 P.2d 1093 (Alaska Ct. App. 1984); Dodd v. State, 686 P.2d 737 (Alaska Ct. App. 1984); Harvey v. State, 691 P.2d 1061 (Alaska Ct. App. 1984); Lauterzer v. State, 693 P.2d 887 (Alaska Ct. App. 1985); Benbow v. State, 698 P.2d 1230 (Alaska Ct. App. 1985); Hart v. State, 702 P.2d 651 (Alaska Ct. App. 1985); Ecklund v. State, 730 P.2d 161 (Alaska Ct. App. 1986); S.B. v. State, 706 P.2d 695 (Alaska Ct. App. 1985); Hancock v. State, 706 P.2d 1164 (Alaska Ct. App. 1985); Davis v. State, 706 P.2d 1198 (Alaska Ct. App. 1985); Blakesley v. State, 715 P.2d 269 (Alaska Ct. App. 1986); Totemoff v. State, 739 P.2d 769 (Alaska Ct. App. 1987); Allen v. State, 759 P.2d 541 (Alaska Ct. App. 1988); Massey v. State, 771 P.2d 1131 (Alaska Ct. App. 1989); Palmer v. State, 770 P.2d 296 (Alaska Ct. App. 1989); Geer v. State, 778 P.2d 599 (Alaska Ct. App. 1989); Charles v. State, 780 P.2d 377 (Alaska Ct. App. 1989); Fagan v. State, 779 P.2d 1258 (Alaska Ct. App. 1989); Hayes v. State, 785 P.2d 33 (Alaska Ct. App. 1990).

Quoted in Sundberg v. State, 636 P.2d 619 (Alaska Ct. App. 1981); State v. Frazier, 698 P.2d 1212 (Alaska Ct. App. 1985); Road Yu v. State, 706 P.2d 348 (Alaska Ct. App. 1985); Merry v. State, 762 P.2d 476 (Alaska Ct. App. 1988).

Stated in Wertz v. State, 611 P.2d 8 (Alaska 1980); Ramil v. State, 619 P.2d 722 (Alaska 1980); Whittlesey v. State, 626 P.2d 1066 (Alaska 1980); Kaulpa v. State, 620 P.2d 676 (Alaska 1980); Tuckfield v. State, 621 P.2d 1350 (Alaska 1981); Leuch v. State, 633 P.2d 1006 (Alaska 1981); Born v. State, 633 P.2d 1021 (Alaska Ct. App. 1981); Clark v. State, 646 P.2d 1236 (Alaska Ct. App. 1982); Kimbrell v. State, 647 P.2d 618 (Alaska Ct. App. 1982); Boyles v. State, 647 P.2d 1113 (Alaska Ct. App. 1982); Nicholson v. State, 656 P.2d 1209 (Alaska Ct. App. 1982); Dexter v. State, 672 P.2d 144 (Alaska Ct. App. 1983); Gibbs v. State, 676 P.2d 606 (Alaska Ct. App. 1984); Higgs v. State, 670 P.2d 610 (Alaska Ct. App. 1984); Bush v. State, 678 P.2d 423 (Alaska Ct. App. 1984); Atkinson v. State, 699 P.2d 881 (Alaska Ct. App. 1985); James v. State, 739 P.2d 1314 (Alaska Ct. App. 1987); Tulowetzke v. State, Dept. of Pub. Safety, 743 P.2d 368 (Alaska 1987); Munroe v. State, 762 P.2d 1017 (Alaska Ct. App. 1988).

Cited in Winslow v. State, 686 P.2d 1273 (Alaska Ct. App. 1984); Shaiannikoff v. State, 690 P.2d 25 (Alaska Ct. App. 1984); Hernandez v. State, 691 P.2d 287 (Alaska Ct. App. 1984); Carlson v. State, 696 P.2d 178 (Alaska Ct. App. 1985); Stanel v. State, 718 P.2d 948 (Alaska 1986); Stuart v. State, 698 P.2d 1218 (Alaska Ct. App. 1985); Marin v. State, 699 P.2d 886 (Alaska Ct. App. 1985); Jennings v. State, 713 P.2d 1222 (Alaska Ct. App. 1986); State v. Frazier, 719 P.2d 261 (Alaska 1986); Stanta v. State, 717 P.2d 413 (Alaska Ct. App. 1986); Richey v. State, 717 P.2d 407 (Alaska Ct. App. 1986); Rhodes v. State, 717 P.2d 422 (Alaska Ct. App. 1986); Kuvana v. State, 717 P.2d 855 (Alaska Ct. App. 1986); Adams v. State, 718 P.2d 164 (Alaska Ct. App. 1986); Sanders v. State, 718 P.2d 167 (Alaska Ct. App. 1986); Gibson v. State, 719 P.2d 687 (Alaska Ct. App. 1986); Whitlow v. State, 719 P.2d 267 (Alaska Ct. App. 1986); Dymentstein v. State, 720 P.2d 42 (Alaska Ct. App. 1986); Kanuklak v. State, 719 P.2d 1046 (Alaska Ct. App. 1986); State v. Richards, 720 P.2d 47 (Alaska Ct. App. 1986); Clifton v. State, 728 P.2d 649 (Alaska Ct. App. 1986); Abdullayqui v. State, 728 P.2d 1211 (Alaska Ct. App. 1986); Ewell v. State, 730 P.2d 164 (Alaska Ct. App. 1986); Krasovich v. State, 731 P.2d 598 (Alaska Ct. App. 1987); Folsom v. State, 734 P.2d 1015 (Alaska Ct. App. 1987); McReynolds v. State, 739 P.2d 175 (Alaska Ct. App. 1987); Degler v. State, 741 P.2d 659 (Alaska Ct. App. 1987); Williams v. State, 743 P.2d 397 (Alaska Ct. App. 1987); Nashoalook v. State, 744 P.2d 420 (Alaska Ct. App. 1987); Smith v. State, 745 P.2d 1376 (Alaska Ct. App. 1987); Bond v. State, 747 P.2d 546 (Alaska Ct. App. 1987); Kirby v. State, 748 P.2d 767 (Alaska Ct. App. 1987); Upton v. State, 749 P.2d 380 (Alaska Ct. App. 1988); Agwiak v. State, 750 P.2d 846 (Alaska Ct. App. 1988); Shetters v. State, 751 P.2d 31 (Alaska Ct. App. 1988); Merry v. State, 762 P.2d 472 (Alaska Ct. App. 1988); Russell v. State, 762 P.2d 1022 (Alaska Ct. App. 1988); McCombs v. State, 764 P.2d 1129 (Alaska Ct. App. 1988); James v. State, 764 P.2d 1336 (Alaska Ct. App. 1988); Stewart v. State, 766 P.2d 900 (Alaska Ct. App. 1988); Clervo v. State, 766 P.2d 907 (Alaska Ct. App. 1988); Walker v. Endell, 860 F.2d 470 (9th Cir. 1987); Pittenger v. State, 767 P.2d 77 (Alaska Ct. App. 1988); State v. Ambrose, 768 P.2d 639 (Alaska Ct. App. 1988); Clifton v. State, 768 P.2d 1279 (Alaska Ct. App. 1988); Robison v. State, 763 P.2d 1367 (Alaska Ct. App. 1988); Sledge v. State, 763 P.2d 1364 (Alaska Ct. App. 1988); Kankanton v. State, 766 P.2d 101 (Alaska Ct. App. 1988); Luepke v. State, 766 P.2d 988 (Alaska Ct. App. 1988); Hilburn v. State, 766 P.2d 1382 (Alaska Ct. App. 1988); Mitchell v. State, 767 P.2d 203 (Alaska Ct. App. 1989); Contreras v. State, 767 P.2d 1169 (Alaska Ct. App. 1989); DeGross v. State, 768 P.2d 134 (Alaska Ct. App. 1989); Barrett v. State, 772 P.2d 569 (Alaska Ct. App. 1989); Hamilton v. State, 771 P.2d 1368 (Alaska Ct. App. 1989); White v. State, 773 P.2d 211 (Alaska Ct. App. 1989); State v. Jackson, 776 P.2d 320 (Alaska Ct. App. 1989); Bumpus v. State, 776 P.2d 329 (Alaska Ct. App. 1989); State v. Caplohn, 779 P.2d 1265 (Alaska Ct. App. 1989); Wassillie v. State, 790 P.2d 1385 (Alaska Ct. App. 1990).

I. SENTENCING.

A. In General.

Legislative prerogative. — It is within the legislature's prerogative to determine appropriate sentences, and the availability of parole either at the direction of an agency in the executive branch or at the direction of a judicial officer is not necessary to make presumptive or minimum sentences constitutional. Fowler v. State, 766 P.2d 588 (Alaska Ct. App. 1988).

Sentencing is individualized process. — While it is desirable for similarly situated defendants to receive similar treatment, as a practical matter, sentencing is an individualized process and a certain amount of disparity will result from the exercise of judicial discretion. Smith v. State, 739 P.2d 1306 (Alaska Ct. App. 1987).

ABA Standards' recommended 10-year benchmark. — Except in cases of unclassified felonies, the appellate courts of Alaska have consistently followed the ABA Standards' recommended 10-year benchmark for all but serious offenses committed by particularly dangerous offenders, and only in rare cases would a sentence in excess of 10 years be justified by any sentencing goal other than the need to isolate the defendant in order to protect the community. Williams v. State, 759 P.2d 575 (Alaska Ct. App. 1988).

First felony offenders. — In cases involving first felony offenders convicted of class A felonies, sentences exceeding ten years in prison can be justified only when case-specific evidence establishes an actual need to isolate the defendant for the protection of the community for the full period in question. Castle v. State, 767 P.2d 129 (Alaska Ct. App. 1989).

Given the status of defendants as first felony offenders and their apparent amenability to rehabilitation, the record would not support a conclusion that their isolation for more than ten years was necessary. Castle v. State, 767 P.2d 129 (Alaska Ct. App. 1989).

Sentencing of "worst offender." — A "worst offender" designation, standing alone, permits imposition of the maximum term for the single most serious offense. The designation does not, however automatically permit consecutive sentences exceeding the maximum for the single most serious crime. In order to impose such a sentence, the court must actually find, as a matter of fact, that the defendant will continue to pose a danger to the community during the extended term and that his continued isolation is actually necessary. Such a finding does not necessarily justify pyramiding consecutive maximum sentences; rather, such a finding permits only an incrementally more severe sentence based on the actual need for protection of the public under the totality of the circumstances of the prosecution's case. Hancock v. State, 741 P.2d 1210 (Alaska Ct. App. 1987).

Sentence in excess of most serious offense. — A sentence in excess of the

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 officer, 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.

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

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

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

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, 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, two years.

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

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

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

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, 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, one year;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(7) — (10), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum term may not be suspended under AS 12.55.080;

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

(3) imprisonment for the prescribed minimum term may not be otherwise reduced.

(g) If a defendant is sentenced 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.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided.

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, 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. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28-30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1-3 ch 92 SLA 1983; am § 6 ch 59 SLA 1988; am § 4 ch 37 SLA 1989)

Cross references. — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010.

Effect of amendments. — The 1988 amendment inserted "attempted murder in the first degree" in subsection (b).

The 1989 amendment added paragraph (e)(4).

Editor's notes. — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Constitutionality of 1982 amendment. — Chapter 143, SLA 1982, which amended this section, did not violate the Alaska Const., art. II, § 13 or art. II, § 14. Galbraith v. State, 693 P.2d 880 (Alaska Ct. App. 1985).

Applied in Faulkenberry v. State, 649 P.2d 961 (Alaska Ct. App. 1982); State v.

jected the notion that a drug addict must be placed in a drug rehabilitation program rather than be incarcerated. Johnson v. State, 599 P.2d 700 (Alaska 1979).

The supreme court will not automatically reverse a sentence because a drug addict is not placed in a drug rehabilitation program. Daniels v. State, 584 P.2d 47 (Alaska 1978); Good v. State, 590 P.2d 420 (Alaska 1979).

A sentence will not be reversed simply because an offender is incarcerated rather than placed in a rehabilitative facility. Holmes v. State, 594 P.2d 248 (Alaska 1979).

Although sentences imposed on defendant, a heroin addict, were not excessive, the case was remanded with directions to enter an amended judgment which included a recommendation to the division of corrections that defendant receive treatment for his drug addition as the division of corrections may find advisable. Good v. State, 590 P.2d 420 (Alaska 1979).

Imposition of sentence of imprisonment following probation revocation was a "sentence of imprisonment lawfully imposed" within the meaning of former statutes providing for sentence review; and the supreme court could review that portion of a sentence of imprisonment, originally suspended, that was later imposed when probation had been revoked. Gilligan v. State, 560 P.2d 17 (Alaska 1977); Shearer v. State, 619 P.2d 726 (Alaska 1980).

Imposition of maximum sentence held improper. — Where the trial court imposed the maximum sentence not as a result of an application of the Chaney criteria, but as an effort to coerce defendant into a rehabilitative program, that was an improper use of sentencing. Szeratics v. State, 572 P.2d 63 (Alaska 1977).

Factors applied where sentences approach maximum. — The factors used for worst offender classification are also to be applied in reviewing sentences which approach the maximum for the particular offense. Kraus v. State, 604 P.2d 12 (Alaska 1979).

Improper method for obtaining sentence review. — An application for post-conviction relief or habeas corpus is not a proper vehicle for obtaining sentence review pursuant to this section. Lemon v. State, 654 P.2d 277 (Alaska Ct. App. 1982).

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Therefore, the superior court lacks jurisdiction to review its own sentence, after it has entered a judgment on the matter, more than 60 days after it has imposed sentence. Davenport v. State, 643 P.2d 1201 (Alaska 1976); Szeratics v. State, 572 P.2d 63 (Alaska 1977).

Or which permits additional probation following service of sentence. — There is no authority under Alaska law which permits a court, when probation is revoked, to impose a fixed sentence, require the defendant to serve that sentence, and then place the defendant on an additional period of probation following service of the sentence. Franzen v. State, 573 P.2d 65 (Alaska 1978).

Sentence imposed affirmed. — See Nicholas v. State, 477 P.2d 447 (Alaska 1970); Devereux v. State, 548 P.2d 1290 (Alaska 1976); State v. Trunnel, 549 P.2d 550 (Alaska 1976); Layland v. State, 549 P.2d 1182 (Alaska 1976); Godwin v. State, 554 P.2d 463 (Alaska 1976); Thurlkill v. State, 551 P.2d 541 (Alaska 1976); Noble v. State, 552 P.2d 142 (Alaska 1976); Coleman v. State, 553 P.2d 40 (Alaska 1976); Wolfe v. State, 553 P.2d 472 (Alaska 1976); Horton v. State, 553 P.2d 484 (Alaska 1976); Schuster v. State, 553 P.2d 926 (Alaska 1976); Buchanan v. State, 554 P.2d 1163 (Alaska 1976); Dawson v. State, 557 P.2d 142 (Alaska 1976); Marks v. State, 557 P.2d 1130 (Alaska 1976); Benefield v. State, 559 P.2d 91 (Alaska 1977); Mutschler v. State, 560 P.2d 377 (Alaska 1977); Gilligan v. State, 560 P.2d 17 (Alaska 1977); Bragg v. State, 560 P.2d 391 (Alaska 1977); Nukapigak v. State, 562 P.2d 697 (Alaska 1977), aff'd on rehearing, 576 P.2d 982 (Alaska 1978); Snadvik v. State, 564 P.2d 20 (Alaska 1977); Acevedo v. State, 571 P.2d 1013 (Alaska 1977); Peter v. State, 572 P.2d 1179 (Alaska 1978); Mullins v. State, 573 P.2d 860 (Alaska 1978); Weltin v. State, 574 P.2d 816 (Alaska 1978); Alex v. State, 576 P.2d 113 (Alaska 1978); Menard v. State, 578 P.2d 966 (Alaska 1978); Brown v. State, 578 P.2d 982 (Alaska 1978); Smothers v. State, 579 P.2d 1062 (Alaska 1978); Post v. State, 580 P.2d 304 (Alaska 1978); Klenke v. State, 581 P.2d 1119 (Alaska 1978); Bendle v. State, 583 P.2d 840 (Alaska 1978); State v. Aleau, 583 P.2d 849 (Alaska 1978); Daniels v. State, 584 P.2d 47 (Alaska 1978); Honeycutt v. State, 593 P.2d 865 (Alaska 1978); Ferguson v. State, 590 P.2d 43 (Alaska 1979); Ono v. State, 592 P.2d 1183 (Alaska 1979); Dayton v. State, 598 P.2d 67 (Alaska 1979); Stone v. State, 598 P.2d 72 (Alaska 1979); Edinger v. State, 598 P.2d 943 (Alaska 1979); Larson v. State, 598 P.2d 946 (Alaska 1979); Labarbera v. State, 598 P.2d 947 (Alaska 1979); Elstad v. State, 599 P.2d 137 (Alaska 1979); Charles v. State, 606 P.2d 390 (Alaska 1980); Pyrdol v. State, 617 P.2d 513 (Alaska 1980); Coleman v. State, 621 P.2d 869 (Alaska 1980), cert. denied, 454 U.S. 1090, 102 S. Ct. 653, 70 L. Ed. 2d 628 (1981); Shearer v. State, 619 P.2d 726 (Alaska 1980); Nelson v. State, 619 P.2d 480 (Alaska Ct. App. 1980); Bryant v. State, 623 P.2d 310 (Alaska 1981); Hoover v. State, 641 P.2d 1263 (Alaska Ct. App. 1982); Davidson v. State, 642 P.2d 1383 (Alaska Ct. App. 1982); Parker v. State, 714 P.2d 802 (Alaska Ct. App. 1986); State v. Price, 740 P.2d 470 (Alaska Ct. App. 1987); State v. Capjohn, 779 P.2d 1265 (Alaska Ct. App. 1989); State v. Clark, 782 P.2d 308 (Alaska Ct. App. 1989).

Sentence too lenient. — See State v. Chaney, 477 P.2d 441 (Alaska 1970); State v. Wortham, 537 P.2d 1117 (Alaska 1975); State v. Lancaster, 550 P.2d 1257 (Alaska 1976); State v. Abraham, 560 P.2d 767 (Alaska 1977); State v. Wassillie, 578 P.2d 971 (Alaska 1978); Putnam v. State, 629 P.2d 35 (Alaska 1980); State v. Brinkley, 681 P.2d 361 (Alaska Ct. App. 1984); Cleary v. State, 548 P.2d 952 (Alaska 1976); Salazar v. State, 562 P.2d 694 (Alaska 1977); Cleary v. State, 564 P.2d 374 (Alaska 1977); Amidon v. State, 565 P.2d 1248 (Alaska 1977); Black v. State, 569 P.2d 804 (Alaska 1977); Sumabat v. State, 580 P.2d 323 (Alaska 1978); Hansen v. State, 582 P.2d 641 (Alaska 1978); Kanipe v. State, 620 P.2d 678 (Alaska 1980); Hintz v. State, 627 P.2d 207 (Alaska 1981); State v. Hooper, 760 P.2d 840 (Alaska Ct. App. 1988).

Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge. — See Parks v. State, 571 P.2d 1003 (Alaska 1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. Pascoe v. State, 628 P.2d 547 (Alaska 1980).

Case remanded for resentencing. — See Neal v. State, 628 P.2d 19 (Alaska 1981).

Case remanded for sentence review. — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence it imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. Padie v. State, 694 P.2d 60 (Alaska 1979).

Sec. 12.55.125. Sentences of imprisonment for felonies. (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years.

(b) A defendant convicted of murder in the second degree, attempted murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years.

(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 shall be

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tended or enlarged by allegations in the indictment. Walsh v. State, 677 P.2d 912 (Alaska Ct. App. 1984).

Comparison of former and current statutes. — It was the elements of the offense as established in the statute under which the defendant was convicted which had to be compared with the current Alaska statute in determining whether the two offenses had substantially identical elements. Walsh v. State, 677 P.2d 912 (Alaska Ct. App. 1984).

Prior conviction under former law. — Under paragraph (a)(2) of this section, a criminal conviction entered under prior Alaska law or under the law of another jurisdiction may be deemed to be a prior felony conviction for presumptive sentencing purposes only if the offense for which the prior conviction was entered had elements substantially identical to those of a felony under current Alaska law. Lee v. State, 673 P.2d 802 (Alaska Ct. App. 1983); Carroutte v. State, 683 P.2d 262 (Alaska Ct. App. 1984).

The trial court erred in using a violation in former grand larceny statute as a prior felony to enhance defendant's sentence for burglary in the first degree since under the criminal code in effect since January 1, 1980, the prior offense would be a misdemeanor. Wasson v. State, 652 P.2d 117 (Alaska Ct. App. 1982).

Since the elements of the receiving and concealing statute under which defendant was convicted in 1972 did not require proof of value, that offense differed substantially from current law and did not qualify as a prior felony conviction. Carroutte v. State, 683 P.2d 262 (Alaska Ct. App. 1984).

Prior conviction out of state. — Felony conviction in Missouri was a prior conviction under subsection (a)(2) where defendant at age 17 was treated as an adult even though defendant would have been treated as a juvenile under Alaska law. McMannis v. State, 650 P.2d 414 (Alaska Ct. App. 1982).

Paragraph (a)(2) of this section has consistently been interpreted to apply to the statute establishing the elements of the offense for which the defendant was previously convicted, which was an Oregon statute that is a class C felony in Oregon as it is in Alaska. Thus, it was not error to consider the previous conviction a felony even though the defendant was sentenced under an Oregon statute providing for the reduction of certain felonies to misdemeanors. Lee v. State, 673 P.2d 802 (Alaska Ct. App. 1983) (decided prior to the 1982 amendment).

A 1983 Oklahoma conviction for a felony escape while on work release from a Department of Corrections treatment facility was a prior conviction for purposes of presumptive sentencing, for the Oklahoma escape statute had elements "substantially similar" to AS 11.56.310, a class B felony. Martin v. State, 704 P.2d 1341 (Alaska Ct. App. 1985).

The legislature intended to treat convictions under prior codes and convictions under the codes of sister states identically, allowing their use as prior convictions only where their elements were substantially identical (now "similar") to the elements of crimes established in the current code. Wasson v. State, 652 P.2d 117 (Alaska Ct. App. 1982).

Conviction in New York for larceny was not a prior conviction for presumptive sentencing purposes where the New York statute involved theft of $50 — $500 and the current Alaska law required theft from $500 - $25,000. Walsh v. State, 677 P.2d 912 (Alaska Ct. App. 1984).

Presumptive sentence convictions must be consecutive. — Under the plain terms of AS 12.55.145(a)(3) and 12.55.185(6), (7), and (8), one conviction must precede the next before presumptive sentencing can apply. State v. Rastopsoff, 669 P.2d 630 (Alaska Ct. App. 1983).

Where defendant's three separate criminal episodes occurred in close proximity and his convictions were entered after all of the offenses had been committed, he cannot be deemed to be a second felony offender under AS 12.55.125 and AS 12.55.185. State v. Rastopsoff, 669 P.2d 630 (Alaska Ct. App. 1983).

The forgery of two checks on the same day involved two separate criminal episodes and convictions based on those episodes were not convictions arising out of a single, continuous criminal episode to be treated as a single conviction for purposes of considering prior convictions in imposing sentence. Linn v. State, 658 P.2d 150 (Alaska Ct. App. 1983).

Burglaries of three different residences owned by three separate victims are separate offenses. Lacquement v. State, 644 P.2d 856 (Alaska Ct. App. 1982).

Sufficient evidence of prior conviction. — An authenticated copy of a foreign docket abstract constituted sufficient

State, 712 P.2d 906 (Alaska Ct. App. 1986).

Failure to prove prior convictions. — When a party has had insufficient time to comply with the notice requirements relating to proof of prior convictions or aggravating and mitigating factors, the appropriate remedy should normally be a continuance of the sentencing proceedings; and failure to consider prior crimes for presumptive sentencing purposes can be condoned only in those cases where the state, after exercising due diligence, is unable to meet the statutory requirements for proof of a prior conviction. Kelly v. State, 663 P.2d 967 (Alaska Ct. App. 1983).

When a mandatory minimum sentence is prescribed for a repeat offender, it would be inappropriate for the court to sentence the defendant as a first offender merely because the state has failed to obtain proof of the prior conviction in time for sentencing. The normal recourse under such circumstance is a continuance. Stewart v. State, 763 P.2d 515 (Alaska Ct. App. 1988).

New sentencing hearing not required on remand. — Although the judge improperly sentenced defendant to a presumptive four-year term and a remand for imposition of a nonpresumptive sentence was necessary, a new sentencing hearing would not be required upon remand since remand for such hearing would merely result in reimposition of a nonpresumptive four-year term. Carroutte v. State, 683 P.2d 262 (Alaska Ct. App. 1984).

Applied in Bloomstrand v. State, 656 P.2d 584 (Alaska Ct. App. 1982); Fry v. State, 656 P.2d 789 (Alaska Ct. App. 1983); Huf v. State, 676 P.2d 268 (Alaska Ct. App. 1984); Maldonado v. State, 676 P.2d 1093 (Alaska Ct. App. 1984).

Quoted in Wright v. State, 666 P.2d 1220 (Alaska Ct. App. 1983); Morgan v. State, 661 P.2d 1102 (Alaska Ct. App. 1983); Sawyer v. State, 663 P.2d 230 (Alaska Ct. App. 1983); Ortberg v. State, 761 P.2d 1368 (Alaska Ct. App. 1988); McCombs v. State, 764 P.2d 1129 (Alaska Ct. App. 1988).

Cited in Kateles v. State, 666 P.2d 1199 (Alaska Ct. App. 1983); Hale v. State, 764 P.2d 313 (Alaska Ct. App. 1988); McCombs v. State, 764 P.2d 1129 (Alaska Ct. App. 1988).

Collateral references. — Chronological or procedural sequence of former convictions as affecting enhancement of penalty for subsequent offense under habitual criminal statute. 24 ALR4th 1247.

Sec. 12.55.147. Fingerprints at time of sentencing. When a defendant is convicted of a felony by a court of this state, the defendant's fingerprints shall be placed on the judgment of conviction in open court, on the record, at the time of sentencing. The defendant and the person administering the fingerprinting shall sign their names under the fingerprints. (§ 35 ch 143 SLA 1982)

Revisor's notes. — Enacted as AS 12.55.145(f). Renumbered in 1982.

Sec. 12.55.155. Factors in aggravation and mitigation. (a) If a defendant is convicted of an offense and is subject to sentencing under AS 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) 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.

(b) When sentence is imposed under this chapter, prior convictions not expressly admitted by the defendant must be proved by authenticated copies of court records served on the defendant or the defendant's counsel at least 20 days before the date set for imposition of sentence.

(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 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 include a concise statement of the grounds relied upon and may be supported by affidavit or other documentary evidence.

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that the defendant is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1) of this section, or that a conviction should not be considered a prior felony conviction under (a)(2) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(3) of this section is on the defendant by clear and convincing evidence.

(e) The authenticated judgments of courts of record of the United States, the District of Columbia, or of any state, territory, or political subdivision of the United States are prima facie evidence of conviction. (§ 12 ch 166 SLA 1978; am §§ 32-34 ch 143 SLA 1982)

Revisor's notes. — Section 36, ch. 143, SLA 1982 enacted a subsection (f) which was renumbered in 1982 as AS 12.55.147.

Cross references. — For effect of convictions prior to January 1, 1980 (effective date of ch. 166, SLA 1978), see § 23, ch. 166, SLA 1978, in the Temporary and Special Acts.

NOTES TO DECISIONS

Constitutionality of presumptive sentencing provisions. — See notes under same heading, AS 12.55.125, Nell v. State, 642 P.2d 1361 (Alaska Ct. App. 1982).

Section held constitutional. — This section was not unconstitutional and did not deny the defendant his right to trial by jury when it allowed the judge to determine whether a defendant has been convicted of one or more felonies; the provisions did not create a crime, nor were they an element of the crimes for which the defendant was convicted, but were matters of sentencing, traditionally a question for the court. Hoitt v. State, 678 P.2d 415 (Alaska Ct. App. 1984).

Determination of whether a person is a second, third, or subsequent felony offender for purposes of applying the presumptive sentencing provisions of AS 12.55.125 is governed by the provisions of this section and AS 12.55.185(6), (7) and (8). Juneby v. State, 641 P.2d 823 (Alaska Ct. App. 1982), modified on other grounds and aff'd on rehearing, 665 P.2d 30 (Alaska Ct. App. 1983).

Section applied in defining what a "felony charge or conviction" is for purposes of AS 12.55.155(c)(20). See Kuvaas v. State, 696 P.2d 684 (Alaska Ct. App. 1985).

Presumptive sentencing statutes as aid in interpreting as 28.15.181(c). — See Tulowetzke v. State, Dep't of Pub. Safety, 743 P.2d 368 (Alaska 1987).

Paragraph (a)(1) construed. — Where a defendant has spent seven years between the date of his unconditional discharge on his most recent prior felony without committing another felony, he is not subject to presumptive sentencing, but where less than seven years separates his unconditional discharge on a prior felony from the commission of his current offense then all prior felony offenses however remote may be considered for purposes of presumptive sentencing. Griffith v. State, 653 P.2d 1057 (Alaska Ct. App. 1982).

The court of appeals rejected defendant's contention that paragraph (a)(1) of this section, should be interpreted so that [illegible]

tween discharge from supervision after one felony conviction and commission of a new offense, offenses occurring prior to the seven year break may no longer be considered for purposes of presumptive sentencing. Griffith v. State, 653 P.2d 1057 (Alaska Ct. App. 1982).

With paragraph (a)(1), the legislature explicitly designated the date of the commission of the subsequent offense as the operative date for the calculation of prior convictions. Hiler v. Municipality of Anchorage, 781 P.2d 24 (Alaska Ct. App. 1989).

Use of prior criminal acts in sentencing in excess of presumptive sentence. — Where paragraph (a)(1) prohibited consideration of prior convictions for purposes of rendering defendant a second offender or third offender under AS 12.55.125, and where defendant was not otherwise subject to a presumptive sentence under AS 12.55.125, the prior criminal acts may nevertheless be considered as constituting an "exceptional case" justifying imposition of sentence in excess of the presumptive sentence for a second offender. Koganaluk v. State, 655 P.2d 339 (Alaska Ct. App. 1982).

Even if a prior felony conviction is too remote in time to be considered in determining whether a defendant is subject to the presumptive sentencing statutes, the conviction can still be considered for sentencing purposes; and substantial weight can be given to that conviction if the present circumstances indicate that the prior conviction is still relevant. Neal v. State, 670 P.2d 708 (Alaska Ct. App. 1983).

Effect of 1982 amendment to paragraph (a)(2). — The 1982 amendments which substituted "similar" for "substantially identical" in (a)(2) and amended the section to focus on past rather than current law, constituted a change rather than clarification of existing law. Wasson v. State, 662 P.2d 117 (Alaska Ct. App. 1982).

Crime cannot be enlarged by indictment. — The crime, i.e., the operative facts which constitute the criminal offense as defined by the statute, cannot be [illegible]

would be entitled to bring a sentence appeal upon the imposition of the suspended portion of the sentence. Tazruk v. State, 655 P.2d 788 (Alaska Ct. App. 1982).

In evaluating whether a partially suspended sentence for a first felony offender is in excess of the presumptive sentence which a second felony offender would receive, the reviewing court should consider only that portion of the sentence which imposes a period of incarceration. Tazruk v. State, 655 P.2d 788 (Alaska Ct. App. 1982).

Where defendant was a first felony offender convicted of a class B felony, sexual abuse of a minor, and, had the defendant been subject to presumptive sentencing, the circumstances would have been sufficiently extraordinary to warrant a substantial increase in the applicable presumptive term, the case qualified as an exceptional one under Austin v. State, 627 P.2d 657 (Alaska Ct. App. 1981); and the imposition of a sentence in excess of the four-year presumptive term for second offenders did not violate the Austin rule. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987).

Although the judge indicates that a lengthy sentence will serve the sentencing goals of general deterrence and community condemnation, these goals cannot, in themselves, support the imposition of a maximum 10-year term for a first offender convicted of a class B felony, such as sexual assault of a minor. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987).

Where defendant with no prior felony convictions was convicted of three counts of sexual assault in the first degree, an unclassified felony, and one count of attempted sexual assault in the first degree, a class A felony, the many separate incidents of sexual assault, defendant's multiple victims, his use of a dangerous instrument, and his willingness to injure his victims with that instrument, established that he was a particularly dangerous offender who had to be isolated for a substantial period of time to protect the public, and the composite sentence imposed of 37 years with 12 years suspended was not clearly mistaken. Goolsby v. State, 739 P.2d 789 (Alaska Ct. App. 1987).

A first felony offender's prior record of misdemeanor convictions, even if extensive, does not qualify as an extraordinary circumstance warranting imposition of a term exceeding the second offender presumptive. Reynolds v. State, 736 P.2d 1164 (Alaska Ct. App. 1987).

Where the defendant, a first felony offender, was convicted of one count of theft in the second degree and three counts of forgery in the second degree, she should not have received a total sentence, including consecutive increments, more severe than the presumptive term established for a third felony offender, where there was nothing in the record to suggest that a composite sentence of imprisonment, including all consecutive increments, greater than this presumptive term was needed to deter the defendant. Young v. State, 762 P.2d 497 (Alaska Ct. App. 1988).

Sentence in accord with Austin rule. — First felony offender's sentence of four years imprisonment, with three years suspended, was substantially more lenient than the two-year presumptive term that would have been applicable to a second felony offender, and therefore did not violate the Austin rule. Long v. State, 772 P.2d 1099 (Alaska Ct. App. 1989).

Sec. 12.55.135. Sentences of imprisonment for misdemeanors. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the fourth degree committed in violation of the provisions of an order issued under AS 25.35.010 or 25.35.020 shall be sentenced to a minimum term of imprisonment of 20 days.

(d) A defendant convicted of assault in the fourth degree upon a uniformed or otherwise clearly identified peace officer, 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 assault shall be sentenced to a minimum term of imprisonment of 30 days.

(e) The execution of a sentence under (c) or (d) of this section may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served. Imposition of a sentence under (c) or (d) of this section may not be suspended, except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in (c) or (d) of this section, and the minimum sentence provided for in (c) or (d) of this section may not be otherwise reduced. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980; am § 22 ch 59 SLA 1982; am § 13 ch 61 SLA 1982; am § 31 ch 143 SLA 1982; am §§ 4, 5 ch 92 SLA 1983)

NOTES TO DECISIONS

Constitutionality of presumptive sentencing provisions. — See notes under same heading, AS 12.55.125. Nell v. State, 642 P.2d 1361 (Alaska Ct. App. 1982).

Maximum sentence for joyriding justified. — The district court judge was not clearly mistaken in characterizing a defendant as a worst offender, and in imposing the maximum sentence of one year for third-degree criminal mischief (joyriding). Despite the limited period of time in which the defendant committed the offenses, the defendant's record, coupled with the especially serious nature of the particular joyriding offenses, i.e., that it was committed in order to perpetrate a felony, justifies the sentence imposed. Plant v. State, 724 P.2d 530 (Alaska Ct. App. 1986).

Sentence upheld. — Composite sentence of 24 months with six months suspended for refusal to submit to a chemical breath test and for driving with a suspended operator's license was affirmed where the defendant had five prior driving while intoxicated convictions and at least four prior driving with suspended license convictions and was on probation for a prior driving while intoxicated and driving with suspended license conviction. Witt v. State, 692 P.2d 976 (Alaska Ct. App. 1984).

Consecutive sentencing by district court permissible under former law. — See State v. Pete, 420 P.2d 338 (Alaska 1966), decided under former AS 11.05.010.

Applied in Ostrosky v. State, 725 P.2d 1087 (Alaska Ct. App. 1986); Purcella v. State, 765 P.2d 114 (Alaska Ct. App. 1988).

Cited in Law v. State, 624 P.2d 284 (Alaska 1981); Kelly v. State, 663 P.2d 967 (Alaska Ct. App. 1983); State v. Waalkes, 749 P.2d 1360 (Alaska Ct. App. 1988); Smith v. State, 766 P.2d 913 (Alaska Ct. App. 1988); Stewart v. State, 763 P.2d 515 (Alaska Ct. App. 1988).

Sec. 12.55.140. Sentences for violations. [Repealed, § 23 ch 59 SLA 1982.]

Sec. 12.55.145. Prior convictions. (a) For purposes of considering prior convictions in imposing sentence under AS 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;

(4) secure or engage in employment;

(5) attend educational institutions;

(6) secure a residence or make other preparation for release;

(7) appear before a group whose purpose is a better understanding of crime or corrections; or

(8) for any other rehabilitative purpose the commissioner determines to be in the interests of the prisoner and the public.

(b) If the commissioner determines with reasonable probability that a prisoner can live under reduced supervision without violating the law or the conditions established for the conduct of the prisoner, the commissioner may grant a furlough after considering

(1) the factors in AS 33.30.091;

(2) violations, if any, by the prisoner of a condition of a prior furlough;

(3) the history, if any, of institutional misconduct by the prisoner; and

(4) the best interests of the prisoner and the public. (§ 6 ch 88 SLA 1986)

NOTES TO DECISIONS

An amended sentence construed to have replaced the initial term of imprisonment by employment as a fire fighter would have been in effect similar to a work release. Thus, the amended sentence would have meant that each day spent working would be considered the equivalent of a day spent in jail. Chase v. State, Sup. Ct. Op. No. 667 (File No. 1217), 479 P.2d 337 (1971), decided under former AS 33.30.250.

Right to receive psychiatric care. — The test of a prisoner's right to receive treatment for health problems outlined in Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977), was an appropriate one and the supreme court adopted its criteria in determining questions as to the right of a prisoner to receive psychological or psychiatric care under the provisions of former AS 33.30.020 and former AS 33.30.050. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134, on rehearing modified on other grounds, Sup. Ct. Op. No. 1668 (File No. 3172), 584 P.2d 38 (1978), decided under former AS 33.30.260.

Pursuant to the provisions of former AS 33.30.020 and former AS 33.30.050 a prisoner in the custody of the Division [now Department] of Corrections had the right to receive psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concluded with reasonable medical certainty that the prisoner's symptoms evidenced a serious disease or injury, that such disease or injury was curable or might be substantially alleviated and that the potential for harm to the prisoner by reason of delay or denial of care could be substantial. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134, on rehearing modified on other grounds, Sup. Ct. Op. No. 1668 (File No. 3172), 584 P.2d 38 (1978), decided under former AS 33.30.260.

Collateral references. — Failure of prisoner to return at expiration of work furlough or other permissive release period as crime of escape. 76 ALR3d 658.

Sec. 33.30.110. (Repealed, § 12 ch 88 SLA 1986.)

Sec. 33.30.111. Prerelease furloughs. (a) Furlough programs established under AS 33.30.010 must include prerelease furloughs designed to facilitate the reintegration of a prisoner into society.

(b) A facility that is specifically adapted to provide a residence outside prison, including a halfway house, group home, or other placement that provides varying levels of restriction and supervision, may be used for a prisoner on a prerelease furlough.

(c) The restrictions and supervision required for a prerelease furlough shall provide safeguards that minimize risk to the public and include, as a minimum,

(1) frequent contact with the prisoner by persons supervising the prisoner;

(2) knowledge by supervisory staff of the location of the prisoner;

(3) periodic reports by supervisory staff to the commissioner on the performance of the prisoner while on furlough; and

(4) a residential setting in which persons supervising a prisoner are obliged to immediately report to the commissioner any violation of a condition set for the prisoner's conduct.

(d) Notwithstanding AS 33.30.101(b), and other eligibility criteria established by the commissioner, that relate to risks to the public posed by the proposed furlough of a prisoner,

(1) a prisoner sentenced to a definite term of imprisonment of more than one year but less than five years is not eligible for a prerelease furlough until the prisoner has served at least one-third of the sentence; and

(2) a prisoner sentenced to a definite term of imprisonment of five years or more is not eligible for a prerelease furlough until the prisoner has served at least one-third of the sentence or is within three years of the release date, whichever is later.

(e) A prisoner may request a prerelease furlough under procedures adopted by the commissioner. If the commissioner denies a request for a prerelease furlough, the commissioner shall provide the prisoner with a written explanation of the reasons for the denial.

(f) Upon request of the victim, in the case of a prisoner convicted of a crime against a person, notice of the commissioner's intent to consider the prisoner for a prerelease furlough shall be sent to the victim. The victim may comment in writing on the intent of the commissioner to release the prisoner on prerelease furlough status. The commissioner shall consider the comments of the victim before making a final decision to release a prisoner on a prerelease furlough. If the victim requests notification, the commissioner shall make every reasonable effort to notify the victim of an intent to release the prisoner on a prerelease furlough. The notice must contain the expected date of the prisoner's release, the geographic area in which the prisoner will re-

NOTES TO DECISIONS

Physical examination shortly after arrest held proper. — A physical examination by a clinical psychologist shortly after defendant was arrested and taken into custody, because the police feared defendant was suicidal, was properly authorized under former AS 33.30.130(a) and did not violate former AS 12.45.087(a), providing for a psychiatric examination of a defendant under certain conditions, and the evidence resulting from the examination was therefore legally obtained. Loveless v. State, Sup. Ct. Op. No. 1819 (File No. 3320, 592 P.2d 1206 (1979).

Collateral references. — Censorship and evidentiary use of unconvicted prisoners' mail. 52 ALR3d 648.

Sec. 33.30.080. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.081. Transportation of prisoners. (a) The commissioner of public safety is responsible for transporting a prisoner to and from the court having jurisdiction over the prisoner and for delivering a prisoner to a correctional facility upon temporary or final commitment by a court or upon transfer of a prisoner from one correctional facility to another either inside or outside the state.

(b) The commissioner of corrections shall make available return transportation to the place of arrest for a prisoner who is released from custody in a state correctional facility.

(c) The commissioner of public safety shall make available return transportation to the place of arrest for a prisoner who is released from custody before admission to a state correctional facility.

(d) The commissioner of corrections shall adopt regulations governing the furnishing of transportation, discharge payments, and clothing to prisoners upon release from a state correctional facility at any stage of a criminal proceeding.

(e) Except as provided in (f) of this section or as necessary in a criminal action pending against the prisoner, a court may not order the transportation of a prisoner.

(f) A court may order a prisoner who is a party or witness to a civil action or a witness to a criminal action to appear at a place other than within a correctional facility only if the court determines, after providing a reasonable opportunity for the commissioner to comment, that the prisoner's personal appearance is essential to the just disposition of the action. In making its determination, the court shall consider available alternatives to the prisoner's personal appearance including deposition and telephone testimony.

(g) Except as provided in (h) of this section, the expenses associated with the transportation of a prisoner ordered under (f) of this section, including the costs of travel for the prisoner and escorting officers and the salary and per diem costs of the escorting officers, shall be borne

by the party who has requested the prisoner's appearance, and shall be paid to the commissioner of public safety before the prisoner is transported.

(h) A prisoner who is a party to a civil action is not required to bear the full costs of a prisoner's own transportation under (g) of this section if the court determines that the prisoner is indigent. In these cases, the court may require the prisoner to bear a portion of the costs, and the commissioner of public safety shall bear the remaining costs of transporting the prisoner. If an indigent prisoner recovers a money judgment, the court may require the prisoner to bear all or part of the expenses required under (g) of this section. (§ 6 ch 88 SLA 1986)

Sec. 33.30.090. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.091. Designation of programs. Except as provided in AS 33.30.111 and 33.30.161, the commissioner may assign a prisoner committed to the commissioner's custody to a program established under AS 33.30.011(3) considering

(1) safeguards to the public;

(2) the prospects for the prisoner's rehabilitation;

(3) the availability of program and facility space;

(4) the prospect of future judicial proceedings requiring the presence of the prisoner;

(5) the nature and circumstances of the offense for which the prisoner was sentenced;

(6) the needs of the prisoner as determined by a classification committee and any recommendations made by the sentencing court;

(7) the record of convictions of the prisoner with particular emphasis on crimes specified in AS 11.41;

(8) the use of drugs or alcohol by the prisoner;

(9) the length of the prisoner's sentence; and

(10) other criteria considered appropriate by the commissioner, including experimental evaluation of correctional programs that are consistent with protection of the public and reformation of the prisoner. (§ 6 ch 88 SLA 1986)

Sec. 33.30.100. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.101. Furloughs. (a) The commissioner shall adopt regulations governing the granting of prerelease and short-duration furloughs to prisoners to

(1) obtain counseling and treatment for alcohol or drug abuse;

(2) secure or attend vocational training;

(3) obtain medical or psychiatric treatment;

Sec. 33.20.040. Released prisoner. (a) A prisoner released under AS 33.20.030 shall be released on mandatory parole to the custody and jurisdiction of the parole board under AS 33.16, until the expiration of the maximum term to which the prisoner was sentenced, if the term or terms of imprisonment exceeded 180 days. However, a prisoner released on mandatory parole may be discharged under AS 33.16.210 before the expiration of the term. A prisoner who was sentenced to an imprisonment of 180 days or less shall be unconditionally discharged, except as provided in (c) of this section.

(b) This section does not prevent delivery of a prisoner to the authorities of a state or the United States entitled to the custody of the prisoner.

(c) If a prisoner's sentence includes a residual period of probation, a prisoner released under AS 33.20.030 shall immediately begin serving the residual probationary period, except that if mandatory parole is required under (a) of this section, serving the probationary period shall immediately follow discharge from parole. (§ 4 ch 107 SLA 1960; am §§ 3, 4 ch 88 SLA 1985)

Effect of amendments. — The 1986 amendment rewrote subsection (a) and added subsection (c).

NOTES TO DECISIONS

The wording of 18 U.S.C. § 4194 is very close to that of subsection (a). Morton v. Hammond, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979), decided prior to 1986 amendment.

Parole board authority. — Prisoners who are released mandatorily under the provisions of subsection (a) with greater than 180 days to serve under their sentences are released as if released on parole, which means that the parole board has the authority to set special conditions of release on parole which are the same as the special conditions which the parole board sets for prisoners which it releases by exercising its discretion, and the parole board can revoke the parole of a person on mandatory release who violates these special conditions, even though the violations are not violations of statutory conditions of parole. Braham v. Bierne, Ct. App. Op. No. 337 (File No. 7739), 675 P.2d 1297 (1984), decided prior to 1986 amendment.

Release of presumptively sentenced prisoner. — A presumptively sentenced prison who is mandatorily released with 180 days or less remaining on his sentence cannot be released unconditionally. State v. Frazier, Sup. Ct. Op. No. 3061 (File No. S-972), 719 P.2d 261 (1986), reversing Ct. App. Op. No. 460 (File No. A-416), 696 P.2d 1212 (1985).

Cited in Gant v. State, Ct. App. Op. No. 171 (File No. 6161), 654 P.2d 1326 (1982).

Stated in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982).

Sec. 33.20.050. Forfeiture for offense. If during the term of imprisonment a prisoner commits an offense or violates the rules of the correctional facility, all or part of the prisoner's good time may be forfeited under regulations adopted by the commissioner of corrections. The amount of good time forfeited shall be related to the severity of the offense or rule violation. (§ 5 ch 107 SLA 1960; am § 2 ch 11 SLA 1986)

Effect of amendments. — The 1986 amendment rewrote this section.

Collateral references. — 72 C.J.S., Prisons, § 21.

Withdrawal, forfeiture, modification, or denial of good-time allowance to prisoner. 95 ALR2d 1265.

Sec. 33.20.060. Restoration of forfeited good time. The commissioner of corrections may restore all or a portion of a prisoner's forfeited good time, under regulations adopted by the commissioner, if the prisoner demonstrates progress in faithfully observing the rules of the correctional facility in which the prisoner is confined. The amount of forfeited good time restored by the commissioner shall be related to the severity of the offense or rule violation committed by the prisoner and the length of time of good conduct that followed the offense or rule violation. (§ 6 ch 107 SLA 1960; am § 3 ch 11 SLA 1986)

Effect of amendments. — The 1986 amendment rewrote this section.

NOTES TO DECISIONS

Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 813), 439 P.2d 432 (1968).

Collateral references. — 72 C.J.S., Prisons, § 21.

Right to credit for time served under erroneous or void sentence or invalid judgment of conviction necessitating new trial. 35 ALR2d 1283.

Article 2. Power of Governor to Grant Pardons, Commutations and Reprieves.

Sec. 33.20.070. Governor may grant pardons, commutations and reprieves. The governor may grant pardons, commutations of sentence, and reprieves, and suspend and remit fines and forfeitures in whole or part for offenses against the laws of the State of Alaska or the Territory of Alaska. (§ 1 ch 16 SLA 1961)

NOTES TO DECISIONS

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Davenport v. State, Sup. Ct. Op. No. 1218 (File No. 2202), 643 P.2d 1204 (1978); Szeratics v. State, Sup. Ct. Op. No. 1625 (File No. 3390), 572 P.2d 93 (1977).

Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 813), 439 P.2d 432 (1968).

for the period of good time credited under AS 33.20, subject to conditions imposed by the board and subject to its custody and jurisdiction;

(8) "parolee" means a prisoner, sentence to one or more terms of imprisonment exceeding 180 days, released by the board or by operation of law before the expiration of the term, subject to the custody and jurisdiction of the board;

(9) "prisoner" means an offender confined for a violation of state law, but does not include a person confined under AS 47;

(10) "victim" has the meaning given in AS 12.55.185. (§ 2 ch 88 SLA 1985)

Revisor's notes. — Formerly AS 33.16.260. Renumbered in 1986.

Chapter 20. Remission of Sentences and Executive Pardons and Clemency.

Article
1. Remission of Sentences (§§ 33.20.010 — 33.20.060)
2. Power of Governor to Grant Pardons, Commutations and Reprieves (§§ 33.20.070 — 33.20.080)

Article 1. Remission of Sentences.

Section
10. Computation of good time
30. Discharge
40. Released prisoner
50. Forfeiture for offense
60. Restoration of forfeited good time

NOTES TO DECISIONS

Derivation. — Alaska's mandatory release scheme is derived from 18 U.S.C. 4161-66. Morton v. Hammond, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

Sec. 33.20.010. Computation of good time. (a) Except as provided in (b) of this section and notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the state or a political subdivision of the state and sentenced to a term of imprisonment that exceeds three days is entitled to a deduction of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined.

(b) A prisoner sentenced to a term of imprisonment of more than one year before April 9, 1986 who was entitled to a deduction of less

than one-third of the term of imprisonment is entitled to a deduction of one-third of the portion of the term of imprisonment remaining to be served as of April 9, 1986, unless the Board of Parole determines that, with reasonable probability, the prisoner will not live and remain at liberty without violating any laws. (§ 1 ch 107 SLA 1960; am § 17 ch 166 SLA 1978; am § 1 ch 11 SLA 1986)

Effect of amendments. — The 1986 amendment rewrote this section.

NOTES TO DECISIONS

Wording of order. — The wording, "an order suspending the imposition of sentence for a given length of time, and requiring, as a special condition of probation, a definite term of imprisonment to be served periodically," is necessary to ensure that a prisoner given periodic time receives appropriate "good time" credit, and so that his parole eligibility is properly computed. Whittlesey v. State, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980).

Quoted in Braham v. Bierne, Ct. App. Op. No. 337 (File No. 7739), 676 P.2d 1297 (1984); Bishop v. Municipality of Anchorage, Ct. App. Op. No. 392 (File No. A-169), 686 P.2d 103 (1984).

Stated in State v. Frazier, Sup. Ct. Op. No. 3061 (File No. S-972), 719 P.2d 261 (1986).

Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 813), 439 P.2d 432 (1968); McGinnis v. Stevens, Sup. Ct. Op. No. 1205 (File Nos. 2265, 2312), 543 P.2d 1221 (1975); Morton v. Hammond, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979); Juneby v. State, Ct. App. Op. No. 72 (File No. 6606), 641 P.2d 823 (1982); Gant v. State, Ct. App. Op. No. 171 (File No. 6161), 654 P.2d 1325 (1982); State v. Frazier, Ct. App. Op. No. 460 (File No. A-416), 698 P.2d 1212 (1985).

Collateral references. — 59 Am. Jur. 2d, Pardon and Parole, § 1 et seq.

24 C.J.S., Criminal Law, §§ 1571, 1618; 67A C.J.S., Pardon and Parole, § 1 et seq.

Parole as suspending running of sentence. 27 ALR 947.

Withdrawal, forfeiture, modification, or denial of good-time allowance to prisoner. 96 ALR2d 1265.

Sec. 33.20.020. Good time. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 33.20.030. Discharge. A prisoner shall be released at the expiration of the term of sentence less the time deducted for good conduct. A certificate of deduction shall be entered on the commitment by the warden, keeper, or the commissioner. (§ 3 ch 107 SLA 1960)

NOTES TO DECISIONS

Release of presumptively sentenced prisoner. — A presumptively sentenced prison who is mandatorily released with 180 days or less remaining on his sentence cannot be released unconditionally. State v. Frazier, Sup. Ct. Op. No. 3061 (File No. S-972), 719 P.2d 261 (1986), reversing Ct. App. Op. No. 460 (File No. A-416), 698 P.2d 1212 (1985).

Applied in Morton v. Hammond, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

under AS 12.55.155(a) or during the term of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).

(c) A prisoner eligible for discretionary parole during a period of sentence enhancement imposed under AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g) shall serve the unenhanced portion of the sentence or the initial presumptive sentence before being otherwise eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this subsection, the sentence for the most serious offense in the case of consecutive or partially consecutive presumptive sentences shall be considered the initial presumptive sentence. The unenhanced sentence or the initial presumptive sentence is considered served for purposes of discretionary parole on the date the unenhanced or initial presumptive sentence is due to expire less good time earned under AS 33.20.010.

(d) In determining the eligibility of a prisoner for discretionary parole, the board may rely on the verbatim written transcript of the judge's sentencing remarks under AS 12.55.025(a)(1), and any other portion of the sentencing proceeding, as well as the judgment entered by the court. (§ 2 ch 88 SLA 1985)

Editor's notes. — Section 9, ch. 88, SLA 1985 provides that (b) of this section "shall be applied prospectively, except that prisoners sentenced before January 1, 1980 are eligible for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a) or during the term of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g) if the sentencing court orders discretionary parole eligibility for that period."

Legislative history reports. — For House letter of intent related to (b) of this section, the 1985 House Journal, p. 821.

NOTES TO DECISIONS

Wording of order. — The wording, "an order suspending the imposition of sentence for a given length of time, and requiring, as a special condition of probation, a definite term of imprisonment to be served periodically," is necessary to ensure that a prisoner given periodic time receives appropriate "good time" credit, and so that his parole eligibility is properly computed. Whittlesey v. State, Sup. Ct. Op. No. 2231 (File No. 6155), 626 P.2d 1066 (1980), decided under former AS 33.15.180.

Release of presumptively sentenced prisoner. — A presumptively sentenced prison who is mandatorily released with 180 days or less remaining on his sentence cannot be released unconditionally. State v. Frazier, Sup. Ct. Op. No. 3061 (File No. S-972), 719 P.2d 261 (1986), reversing Ct. App. Op. No. 460 (File No. A-416), 698 P.2d 1212 (1985), decided under former AS 33.15.180.

Jurisdiction to decide challenges and constitutionality. — District court lacked jurisdiction to decide challenges to the state parole board's interpretation of this section and to the constitutionality of AS 33.15.180 as interpreted. Such challenges had to be brought in the superior court. Bishop v. Municipality of Anchorage, Ct. App. Op. No. 392 (File No. A-169), 686 P.2d 103 (1984), decided under former AS 33.15.180.

Sec. 33.16.100. Granting of discretionary parole. (a) The board may authorize the release of a prisoner on discretionary parole if it determines a reasonable probability exists that

(1) the prisoner will live and remain at liberty without violating any laws or conditions imposed by the board;

(2) the prisoner's rehabilitation and reintegration into society will be furthered by release on parole;

(3) the prisoner will not pose a threat of harm to the public if released on parole; and

(4) release of the prisoner on parole would not diminish the seriousness of the crime.

(b) If the board finds a change in circumstances in a prisoner's parole release plan submitted under AS 33.16.130(a), or discovers new information concerning a prisoner who has been granted a parole release date, the board may rescind or revise the previously granted parole release date. In reconsidering the release date, the procedures set out in AS 33.16.130(b) and (c) shall be followed.

(c) Except as provided in (d) of this section, a prisoner may not be released on discretionary parole until the prisoner has served at least one-fourth of the period of confinement imposed, one-fourth of an enhanced period of confinement imposed under AS 12.55.155(a), or any minimum term set under AS 12.55.115 at sentencing, whichever is greater.

(d) A prisoner who is sentenced for a term under AS 12.55.125(a) or (b) may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.55.125(a) or (b), at least one-third of the period of confinement imposed, or any minimum term set under AS 12.55.115 at sentencing, whichever is greater. (§ 2 ch 88 SLA 1985)

NOTES TO DECISIONS

The trial court is not required to advise of parole minimums, or of its authority to fix parole eligibility, under the terms of Cr. R. 11; but it is preferable for the court to inform the defendant. Morgan v. State, Sup. Ct. Op. No. 1663 (File No. 2894), 582 P.2d 1017 (1978), decided under former AS 33.15.080.

An increase in the minimum period of incarceration required before becoming eligible for parole is an increase in the sentence. Nelson v. State, Sup. Ct. Op. No. 2260 (File No. 4098), 617 P.2d 502 (1981), decided under former AS 33.15.080.

Sec. 33.16.110. Preparole report. (a) In determining whether a prisoner is suitable for discretionary parole, the board shall consider the preparole reports including

(1) the presentence report made to the sentencing court;

(2) the recommendations made by the sentencing court, by the prosecuting attorney, and by the defense attorney, and any statements made by the victim or the prisoner at sentencing;

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

House of Representatives

DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

M E M O R A N D U M

DATE: February 28, 1994

TO: Judiciary Committee Members

FROM: Representative Con Bunde

RE: HB 334

As a result of working with Mr. Ed McNalley, members of the Dept. of Law, Senior District Attorneys throughout the state and our bill drafter Mr. Jerry Luckhaupt, the attached CS for HB 334 will be proposed in Judiciary Committee today.

Please do not hesitate to call my office if you have any questions. Thank you for your consideration.

Davidson 400

8-LS1342\J-
Luckhaupt
2/26/94

CS FOR HOUSE BILL NO. 334( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Olberg

A BILL

FOR AN ACT ENTITLED

"An Act relating to criminal sentencing; and relating to mandatory life imprisonment, parole, good time credit, pardon, commutation of sentence, reprieve, furlough, and service of sentence at a correctional restitution center for offenders with at least three serious felony convictions."

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

* Section 1. FINDINGS AND INTENT. (a) The legislature finds that

(1) community protection from persistent offenders is a priority for any civilized society;

(2) a large percentage of criminal offenders convicted in this state have prior criminal histories;

(3) punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history of the offender;

(4) the legislature has a right and the responsibility to determine when to impose a life sentence.

(b) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the legislature intends to

(1) improve public safety by placing the most dangerous criminals in prison;

(2) reduce the number of serious, repeat offenders by tougher sentencing;

(3) set proper and simplified sentencing practices that both victims and persistent offenders can understand: and

(4) restore public trust in our criminal justice system.

* Sec. 2. 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 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 officer, 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 <u>and the defendant is not subject to sentencing under (1) of this section</u>, 15 years.

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

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, 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 **and the defendant is not subject to sentencing under (l) of this section**, 25 years.

* Sec. 4. AS 12.55.125 is amended by adding a new subsection to read:

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense shall be sentenced to a mandatory term of imprisonment of 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a 99-year mandatory sentence. If a defendant is sentenced to a mandatory 99-year sentence under this section,

(1) imprisonment for the prescribed mandatory term may not be suspended under AS 12.55.080;

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

(3) imprisonment for the prescribed mandatory term may not otherwise be reduced except as provided in AS 33.20.070.

* Sec. 5. AS 12.55.145(a) is amended to read:

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

(A) [(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;

(B) [(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;

(C) [(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:

(2) AS 12.55.125(l),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

(B) of the two or more previous most serious felony convictions, at least one of the previous convictions must have occurred before the commission of any of the other most serious felony offenses and at least one of the other most serious felony convictions must have occurred prior to the commission of the present felony offense.

* Sec. 6. AS 12.55.145(c) is amended to read:

(c) The defendant shall file with the court and serve on the prosecuting attorney notice of denial, consisting of a concise statement of the grounds relied upon and that may be supported by affidavit or other documentary evidence, no later than 10 days before the date set for the imposition of sentence if [IF] the defendant

(1) denies

(A) the authenticity of a prior judgment of conviction;

(B) [,] that the defendant is the person named in the judgment;

(C) [,] that the elements of a prior offense committed in this or another jurisdiction are similar [SUBSTANTIALLY IDENTICAL] to those of a

(i) felony defined as such under Alaska law;

(ii) most serious felony, defined as such under Alaska law;

(D) [, OR] that a prior conviction occurred within the period

specified in (a)(1)(A) [(a)(1)] of this section; or

(E) that a previous conviction occurred in the order required under (a)(2)(B) of this section; or

(2) if the defendant alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(1)(C) [(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 INCLUDE A CONCISE STATEMENT OF THE GROUNDS RELIED UPON AND MAY BE SUPPORTED BY AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE].

* Sec. 7. AS 12.55.145(d) is amended to read:

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that the defendant is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1)(A) [(a)(1)] of this section, [OR] that a conviction should not be considered a prior felony conviction under (a)(1)(B) [(a)(2)] of this section or a prior most serious felony conviction under (a)(2)(A) of this section, or that a previous conviction did not occur in the order required under (a)(2)(B) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(1)(C) [(a)(3)] of this section is on the defendant by clear and convincing evidence.

* Sec. 8. AS 12.55.145 is amended by adding a new subsection to read:

(f) Under this section, a prior conviction has occurred when a defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or when a verdict of guilty or guilty but mentally ill has been returned by a jury or by the court.

* Sec. 9. AS 12.55.155(c)(20) is amended to read:

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(1)(B) [AS 12.55.145(a)(2)];

* Sec. 10. AS 12.55.185 is amended by adding a new paragraph to read:

(14) "most serious felony" means any of the following felonies:

(A) any unclassified or class A felony prescribed under AS 11 or, an attempt to commit or criminal solicitation under AS 11.31.110 of, an unclassified or class A felony prescribed under AS 11;

(B) assault in the second degree;

(C) sexual assault in the second degree;

(D) sexual abuse of a minor in the second degree;

(E) unlawful exploitation of a minor.

* Sec. 11. AS 33.16.090(b) is amended to read:

(b) Except as provided in (e) of this section, a prisoner is not eligible for discretionary parole during the term of a presumptive sentence; however, a prisoner is eligible for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a) or during the term of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g). A prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or (l) is not eligible for discretionary parole during the entire term.

* Sec. 12. AS 33.20.010(a) is amended to read:

(a) Except as provided in (b) of this section and notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the state or a political subdivision of the state and sentenced to a term of imprisonment that exceeds three days is entitled to a deduction of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner sentenced to a mandatory 99-year term of imprisonment under AS 12.55.125(l) is not eligible for a good time deduction.

* Sec. 13. AS 33.30.101 is amended by adding a new subsection to read:

(c) The regulations adopted under (a) of this section may not provide for the granting of a furlough of any type to a prisoner sentenced to a mandatory 99-year term of imprisonment under AS 12.55.125(l) unless the prisoner is at all times in the direct custody of a correctional officer while the prisoner is away from the correctional

facility.

* Sec. 14. AS 33.30.161(b) is amended to read:

(b) To be eligible to serve time in a correctional restitution center, the prisoner

(1) must be employable or eligible to work on community service projects approved by the commissioner and agree to secure employment or participate in community service projects and obey the rules of the center;

(2) may not be serving a sentence for conviction of an offense

(A) involving violence or the use of force;

(B) under AS 11.41.320, 11.41.330, or AS 11.56.740;

(3) may not have been convicted of a felony offense, in the state or another jurisdiction, involving violence or the use of force; [AND]

(4) may not have been convicted of an offense under AS 11.41.410 - 11.41.470 or an offense in the state or another jurisdiction having elements substantially identical to an offense under AS 11.41.410 - 11.41.470; and

(5) may not have been sentenced to a mandatory 99-year term of imprisonment under AS 12.55.125(l).

* Sec. 15. APPLICABILITY. References to prior or previous convictions in this Act apply to all convictions occurring before, on, or after the effective date of this Act.

8-LS1342\J.1
Luckhaupt
2/28/94

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE BUNDE

TO: CSHB 334( ), Dated 2/26/94

Page 2, following line 7:

Insert a new bill section to read:

"* **Sec. 2.** AS 12.55.025(e) is amended to read:

(e) Except as provided in (g) and (h) of this section, if the defendant has been convicted of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that the imprisonment commences at the expiration of the term imposed by the previous judgment. Nothing in AS 12.55.125(a) or (l) limits the court's ability to impose consecutive sentences."

Renumber the following bill sections accordingly.

8-LS1342N.2 ✓
Luckhaupt
2/28/94

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE BUNDE

TO: CSHB 334( ), Dated 2/26/94

Page 3, line 18:

Delete "except as provided in AS 33.20.070"

8-LS1342\J.3
Luckhaupt
3/1/94

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE BUNDE

TO: CSHB 334( ), Dated 2/26/94

Page 1, line 1:

Delete "and"

Insert "**relating to the availability for good time credit for offenders convicted of certain first degree murders; and**"

Page 1, line 2, following "**sentence,**":

Insert "**modification or reduction of sentence,**"

Page 1, line 4, following "**convictions**":

Insert "**; and amending Alaska Rule of Criminal Procedure 35**"

Page 3, following line 6:

Insert a new bill section to read:

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

(j) A defendant sentenced to a mandatory term of imprisonment of 99 years under (a) or (l) of this section may apply for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010."

Renumber the following bill sections accordingly.

Page 6, line 24, following "prisoner" through line 26:

Delete all material.

Insert "**is not eligible for a good time deduction if the prisoner has been sentenced to a mandatory 99-year term of imprisonment under**

(1) AS 12.55.125(a), after the effective date of this Act; or

(2) AS 12.55.125(l)."

Page 7, following line 18:

Insert a new bill section to read:

"* **Sec. 17.** AS 12.55.125(j), amended by sec. 4 of this Act, has the effect of amending Alaska Rule of Criminal Procedure 35 by permitting a court to reduce or modify a mandatory sentence of imprisonment of 99 years imposed under AS 12.55.125(l) after the defendant has served one-half of the mandatory term."

8-LS1342\J.4
Luckhaupt
3/4/94

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE BUNDE

TO: CSHB 334( ), Dated 2/26/94

Page 6, line 4, following the first occurrence of "or":

Delete ","

Following "attempt"

Insert "or conspiracy"

Following "commit"

Insert ","

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

House of Representatives

SPONSOR STATEMENT

HB 334
"THREE STRIKES YOU'RE OUT"

"An Act relating to criminal sentencing; and relating to mandatory life imprisonment, parole, good time credit, pardon, commutation of sentence, reprieve, furlough, and service of sentence at a correctional restitution center for offenders with at least three serious felony convictions."

HB 334 provides a mandatory 99-year sentence for a specific group of violent offenders who have two previous most serious violent felony convictions. This law is intended to affect only the criminals who work their way through the criminal justice system twice for most serious offenses and then commit a third and separate most serious crime.

There is a notification requirement in HB 334. Offenders who have two violent felony convictions must be informed in writing of sentencing requirements upon a third violent felony conviction.

Under this proposed legislation parole is not available to an offender who has been given a 99-year sentence, but release is possible. When the offender is no longer thought to be a threat, or becomes chronically ill, the governor may grant clemency or a pardon. This provision would prevent our correctional facilities from becoming overburdened.

The cost of keeping a person incarcerated for 99 years is high. However, when cost is considered, the true cost and benefits must be enumerated before concluding that this legislation is too expensive. First, strong punishments can shape behavior and deter crime by scaring some offenders away. Second, many studies have shown that the recidivism rates for three time offenders let back into society are between 65-76%. These offenders are taking up costly time in our judicial system by committing the same crimes again and again.

Third, this legislation has been narrowly focused to include only specific violent felony offenses. The intention is to keep the cost to the state to a minimum.

This proposed legislation will make our state a safer place to be by taking some violent offenders off the street. I urge your positive consideration of this legislation.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM January 11, 1994

SUBJECT: Sectional Summary - HB 334 (Work Order No. 18-LS1342\E)

TO: Representative Con Bunde
Attn: Patti

FROM: Jerry Luckhaupt
Legislative Counsel

You have a requested a sectional summary of the above-described bill, please be advised that a sectional summary is not an authoritative statement of a bill and what it does - the bill is the best statement of its contents.

Section 1 of the bill provides findings and intent.

Section 2 of the bill amends AS 12.55.025 by adding a new subsection (i) that requires a court, when sentencing a defendant convicted of a first or second most serious felony offense, to provide the defendant with notice of the mandatory 99-year term of imprisonment required when a person is convicted of a third, or more, most serious felony.

Section 3 of the bill amends AS 12.55.125(c) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Section 7 of the bill.

Section 4 of the bill amends AS 12.55.125(d) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Section 7 of the bill.

Section 5 of the bill amends AS 12.55.125(e) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Section 7 of the bill.

Section 6 of the bill amends AS 12.55.125(i) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Section 7 of the bill.

Section 7 of the bill amends AS 12.55.125 by providing a new subsection (l) that requires a court to sentence a defendant convicted of a most serious felony to a mandatory 99-year term of imprisonment when the defendant has been previously convicted of at least two most serious felonies. This section also provides that the mandatory 99-year term may not be suspended or reduced.

Section 8 of the bill amends AS 12.55.145 by adding a new subsection (f) that explains what convictions are most serious felony offenses for purposes of sentencing under AS 12.55.125(l).

Section 9 of the bill amends AS 12.55.185 by adding a new paragraph (14) that provides a definition of what is a "most serious felony."

Section 10 of the bill amends AS 33.16.090(b) to provide that a person receiving a mandatory 99-year term under AS 12.55.125(l) is not eligible for discretionary parole during the entire 99-year term.

Section 11 of the bill amends AS 33.20.010(a) to provide that a person receiving a mandatory 99-year term under AS 12.55125(l) may not earn good time deductions from the 99-year term.

Section 12 of the bill amends AS 33.20.070 by adding new subdivisions (b) and (c) that (1) recommend to the governor that the governor not exercise the pardon and commutation power of the executive for the benefit of a person that is serving a mandatory 99-year term under AS 12.55.125(l) unless the offender is at least 60 years of age, is not a sex offender, and is no longer a threat to society and (2) requires the governor to notify the legislature concerning the progress of most serious felony offenders who the governor has pardoned or commuted the sentences of.

Section 13 of the bill amends AS 33.30.011 by adding a new paragraph (7) to require the commissioner of corrections to notify at the time of their release each offender who has been convicted of a most serious felony offense of the mandatory 99-year term of imprisonment provided by AS 12.55.125(l).

Section 14 of the bill amends AS 33.30.101 by adding a new subsection (c) that provides that furlough regulations may not allow for the granting of a furlough to any inmate serving a mandatory 99-year term under AS 12.55.125(l) except in certain limited instances.

Section 15 of the bill amends AS 33.30.161(b) by adding a new paragraph (5) that provides that an inmate serving a mandatory 99-year term under AS 12.55.125(l) may not serve the inmate's sentence in a correctional restitution center.

GPL:pl
94-019.plm

HB

336

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date: February 14, 1994
Title: "An Act relating to violations of laws by juveniles."
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: February 14, 1994

Approved by Commissioner: Richard L. Pegues [FOR] Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: February 14, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

ANALYSIS CONTINUATION:

This bill amends AS 47.10.010 to provide that a minor who is at least 13 years of age at the time of an offense is committed and is arraigned shall be charged, prosecuted, and sentenced in the superior court in the same manner as adult if, at any time during the commission of the offense, the minor has possession of a firearm or a knife and used or threatened to use the firearm or knife during the commission of the offense. In effect, the bill would automatically waive juveniles 13 years of age and older to adult court if they use or threaten to use a firearm or knife in the commission of an offense. This would include both felonies and misdemeanors.

The bill does not include any provision to return a juvenile to the juvenile justice system in the event the required element of the use or threatened use of a firearm or knife is not upheld at trial. The bill also does not contain any provision that would allow a juvenile to attempt to prove amenability to treatment in the juvenile justice system. Consequently, waiver to adult court would be absolute

Current information from the Division of Family and Youth Services indicates that the incidence of crimes involving weapons and juveniles in this age group is about 60 per quarter, or 240 weapons crimes per year. However, these statistics do not indicate what weapons were used. For instance, vehicles, boots, tools and other implements are considered weapons for assaults that result in serious injury or death. Furthermore, it appears that many of the recorded lower level weapon misconduct charges involving juveniles are for possession of a firearm without the permission of a parent or guardian, or misuse of firearms. Nearly half of the weapons-related charges in the DYFS incidence survey include charges of this nature. We therefore believe that the number of new offenses that will be referred to prosecutors if these juveniles are automatically waived to adult court will be less than 120 offenses per year.

When spread between various locations, this caseload is not sufficient to warrant fiscal note costs. In the face of the already growing criminal caseload, we are concerned with the cumulative effect of changes in the criminal law that add to that caseload. Taken alone they do not indicate an impact. But, taken together with other changes, they add new burdens to the state's already overburdened prosecution staff. We do note, however, that there could be a fiscal impact for the Department of Corrections.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Dept. Affected: Health and Social Services
Title: An Act Relating to Violations of Laws By Juv
BRU: Family & Youth Services
Component: McLaughlin Youth Center
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS
COMPONENT SERIAL NO. 0264

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically wai[illegible] adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed an [illegible]hreatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director Deborah R. Wing Phone: 465-3191
Division: Division of Family & Youth Services Date: 01/24/94

Approved by Commissioner: Margaret R. Lowe, M. Ed., Ed. S. Margaret R. Lowe Date: 1-25-94
Agency: Department of Health & Social Services

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DH&SS - FAMILY & YOUTH SERVICES - 5 ZERO FISCAL NOTES (0264-0268)

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Dept. Affected: Health and Social Services
Title: An Act Relating to Violations of Laws By Juveniles
BRU: Family & Youth Services
Component: Fairbanks Youth Facility
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS
COMPONENT SERIAL NO. 0265

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed and threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director — Deborah R. Wing — Phone: 465-3191
Division: Division of Family & Youth Services — Date: 01/24/94

Approved by Commissioner: Margaret R. Lowe, M. Ed., Ed.S. — Margaret R. Lowe — Date: 1-25-94
Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Dept. Affected: Health and Social Services
Title: An Act Relating To Violations of Laws By Juveniles
BRU: Family & Youth Services
Component: Nome Youth Facility
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS
COMPONENT SERIAL NO. 0266

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed and threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director Deborah R. Wing
Phone: 465-3191
Division: Division of Family & Youth Services
Date: 01/24/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed. S. Margaret R. Lowe
Date: 1-25-94
Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Dept. Affected: Health and Social Services
Title: An Act Relating To Violations of Laws By Juveniles
BRU: Family & Youth Services
Component: Johnson Youth Center
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS
COMPONENT SERIAL NO. 0267

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed & threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director Deborah R. Wing
Division: Division of Family & Youth Services
Phone: 465-3191
Date: 01/24/94

Approved by Commissioner: Margaret R. Lowe, M. Ed., Ed.S. Margaret R. Lowe
Agency: Department of Health & Social Services
Date: 1-25-94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 336

Revision Date:
Dept. Affected: Health and Social Services
Title: An Act Relating to Violations of Laws By Juveniles
BRU: Family & Youth Services
Component: Bethel Youth Facility
Sponsor: Representative(s) Bunde & Olbers
Requestor: House HESS
COMPONENT SERIAL NO. 0268

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would automatically waive to adult court any juvenile age 13 and above who is arraigned for an offense during which the juvenile possessed & threatened to use a knife or firearm. There will be no fiscal impact on the Department.

Prepared by: Deborah R. Wing, Director — Deborah R. Wing — Phone: 465-3191
Division: Division of Family & Youth Services — Date: 01/24/94

Approved by Commissioner: Margaret R. Lowe, M. Ed., Ed. S. — Margaret R. Lowe — Date: 1-25-94
Agency: Department of Health & Social Services

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HOUSE COMMIT EE REPORT

(9)

Date Referred: January 10, 1994 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/24/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 336

HOUSE BILL NO. 336 MINORS COMMITTING CRIMES W/ GUNS & KNIVES

"An Act relating to violations of laws by juveniles."

RECOMMENDATIONS: CS HB 336 (HESS) [ ] the same title
be replaced with _____ [X] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[X] fiscal impact H+SS [ ] fiscal note(s) _____

[X] zero fiscal note Public Safety, Law [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓			✓	
	✓				X
	✓			✓	
			✓		
				✓	

CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: HB336

Revision Date: _____ Dept. Affected: Public Safety

Title: "An act relating to violations of laws by juveniles." BRU: Alaska State Troopers

Component: Detachments

Sponsor: Rep. Bunde

Requestor: H. HES

COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 94) impact: $ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact anticipated.

Prepared By: Francis C. Allan Phone: (907) 269-5691

Division: Alaska State Troopers Date: 02/24/94

Approved by Commissioner: [signature] Date: 02/24/94

Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 336(HES)

Revision Date: _____ Dept. Affected: Public Safety

Title: "An act relating to violations of laws by juveniles." BRU: Motor Vehicles

Component: _____

Sponsor: Rep. Bunde

Requestor: H. HES COMPONENT SERIAL NO. 500

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 94) impact: $ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact anticipated.

Prepared By: Juanita Hensley Phone: 465-4361

Division: Motor Vehicles Date: 02/28/94

Approved by Commissioner: _____ Date: 02/28/94

Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB336 (HES)

Revision Date: 03/01/94
Title: Relating to Disclosure of Information About Minors
Sponsor: Representative(s) Bunde & Olberg
Requester: House Jud

Dept. Affected: Health and Social Services
BRU: Purchased Services, Family & Youth Svc
Component: Residential Child Care, Foster Care, DFYS SCRO, NRO, SERO, Central Off
COMPONENT SERIAL NO. 0252,253,254,255,258,259

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	(4,617.3)*	(4,617.3)	(4,617.3)	(4,617.3)	(4,617.3)	(4,617.3)
1003 GF Match	(4,617.3)*	(4,617.3)	(4,617.3)	(4,617.3)	(4,617.3)	(4,617.3)
1004 GF	9,234.6 *	9,234.6	9,234.6	9,234.6	9,234.6	9,234.6
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

*Revising 47.10.090 making some juvenile records public in Sec. 10 will place the state out of compliance with federal regulations concerning Title IVE of the Social Security Act [42 U. S. C. 671](a)(8). The state would lose $4617.3 in Federal receipts in reimbursement for payments made for residential care, foster care, and subsidized adoptions as well as administrative costs. In addition to the $4617.3 previously required in general fund match, another $4617.3 would still be required from the general fund.

Prepared by: Deborah R. Wing, Director — Deborah R. Wing
Division: Division of Family & Youth Services
Phone: 465-3191
Date: 03/01/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S. — M. Lowe
Agency: Department of Health & Social Services
Date: 3-1-94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 336 (HES)

Revision Date: February 28, 1994
Title: "An Act relating to disclosure of information about minors."
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard L. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: February 28, 1994

Approved by Commissioner: Richard L. Pegues /FOR/ Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: February 28, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 336 (HES)

ANALYSIS CONTINUATION:

The HES Committee Substitute for HB 336 totally revises the bill, including the title, to drop any reference to waiving juveniles 13 years of age and older to adult crime if they commit an offense and used or threatened to use a firearm or knife in the commission of the offense. Instead, the committee substitute would amend AS 47.10.090, which provides for the confidentiality of juvenile records, to provide that the AS 47.10.090 limitations of disclosures of information do not apply to a minor 13 years of age and older who commits an offense and possessed a firearm or knife at the time the offense was committed, and who used or threatened to use the firearm or knife during the commission of the offense.

The Department of Law would not usually be involved in the disclosure process and, consequently, there should not be a fiscal note for the department. We hasten to add, however, that there could be a significant and substantial fiscal impact for the Division of Family and Youth Services (DFYS) in the Department of Health and Social Services. Up to $4,000,000 annually in federal funds received by DFYS could be jeopardized if the bill is adopted. That is because Sec. 471.(a)(8) of the Social Security Act appears to prohibit the disclosure of juvenile information on the categorical basis required by the bill. We have attached a copy of Sec. 471, and suggest that DFYS be contacted for its comments.

SEC. 471. [42 U.S.C. 671] (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 472 and for adoption assistance in accordance with section 473;

(2) provides that the State agency responsible for administering the program authorized by part B of this title shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under title XX of this Act, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this title (including activities under part F)[104] or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need,[105] (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect[106]; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will—

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;[107]

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years;

[104] P.L. 100-485, §202(c)(1), struck out "C, or D of this title" and substituted "or D of this title (including activities under part F)". For the effective date, see Vol. II, P.L. 100-485, §204(a) and (b)(1).

[105] P.L. 101-508, §5054(b)(2)(A), struck out "and".

[106] P.L. 101-508, §5054(b)(2)(B), added ", and" and subparagraph (E), applicable to benefits for months beginning on or after May 1, 1991.

[107] P.L. 101-508, §5064(b)(1), amended paragraph (9) in its entirety, applicable to benefits for months beginning on or after May 1, 1991. Until then, paragraph (9) read as follows:

"(9) provides that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this title is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;".

8-LS1372\K
Chenoweth
2/23/94

CS FOR HOUSE BILL NO. 336( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Olberg

A BILL

FOR AN ACT ENTITLED

"An Act relating to disclosures of information about minors."

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

* Section 1. AS 09.25.120 is amended to read:

Sec. 09.25.120. PUBLIC RECORDS; EXCEPTIONS; CERTIFIED COPIES. (a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles, unless disclosure of a record has been explicitly authorized by law;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law;

(5) to the extent the records are required to be kept confidential under

New Text Underlined [DELETED TEXT BRACKETED]

20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance; and

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings; [,]

(B) would deprive a person of a right to a fair trial or an impartial adjudication; [,]

(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness; [,]

(D) could reasonably be expected to disclose the identity of a confidential source; [,]

(E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions; [,]

(F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; [,] or

(G) could reasonably be expected to endanger the life or physical safety of an individual.

(b) Every public officer having the custody of records not included in the exceptions set out in (a) of this section shall permit the inspection, and give on demand and on payment of the fees under AS 09.25.110 - 09.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.

(c) Recorders shall

(1) permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and

(2) [SHALL] furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes, subject to

reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

* **Sec. 2.** AS 47.10.090(a) is amended to read:

(a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. **Except as required in (d) of this section, all** [ALL] information and social records pertaining to a minor and prepared by an employee of the court or by a federal, state, or **municipal** [CITY] agency in the discharge of the employee's or agency's official duty, including driver's license action under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. [HOWEVER, A STATE OR CITY LAW-ENFORCEMENT AGENCY SHALL DISCLOSE INFORMATION REGARDING A CASE WHICH IS NEEDED BY THE PERSON OR AGENCY CHARGED WITH MAKING A PRELIMINARY INVESTIGATION FOR THE INFORMATION OF THE COURT. THE COURT SHALL FORWARD A RECORD OF ADJUDICATION OF A VIOLATION OF AN OFFENSE LISTED IN AS 28.15.185(a) TO THE DEPARTMENT OF PUBLIC SAFETY, IF THE COURT IMPOSES A LICENSE REVOCATION UNDER AS 28.15.185.] Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all driver's license proceedings under AS 28.15.185, criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

* **Sec. 3.** AS 47.10.090(c) is amended to read:

(c) A person who violates a provision of **(a) or (b) of** this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500 or

by imprisonment for not more than one year, or by both.

* Sec. 4. AS 47.10.090 is amended by adding new subsections to read:

(d) Notwithstanding the limitations on disclosures of information under (a) and (b) of this section,

(1) a state or municipal law enforcement agency shall disclose information regarding a case involving a minor that is brought under AS 47.10.010 - 47.10.142

(A) to a person or agency charged with making a preliminary investigation for the information of the court, if that information is needed by the person or agency;

(B) to any person upon request, but a disclosure under this subparagraph

(i) is limited to information relating to the facts or circumstances of the violation of the criminal law of the state or municipality for which the minor may be adjudicated a delinquent minor under AS 47.10.010(a)(1); and

(ii) may not include the name of, picture of, or information specific to the minor unless disclosure of that information is authorized by (b) of this section or other law; and

(2) if, in the adjudication of a violation of an offense listed in AS 28.15.185(a), the court imposes a license revocation under AS 28.15.185, the court shall forward a record of the adjudication to the Department of Public Safety.

(e) The limitations on disclosures of information under (a) and (b) of this section do not apply to a minor who

(1) was at least 13 years of age at the time the offense was committed;

(2) possessed a firearm or a knife at any time during the commission of the offense; and

(3) used or threatened to use the firearm or knife during the commission of the offense.

Alaska State Legislature

Please enter into the record my testimony to the House H.E.S.S.
committee name

committee on H.B. 336, dated Feb. 24, 1994.
bill/subject

I am a member of the Youth Task Force a sub-committe of the Kodiak High School Parent Advisory Committe. I am a registered voter. Our committee would like to voice its support of Bill 336, because it reinforces our communities zero tolerance for violence.

Signed: Pat Fay
Testifier

Youth Task Force
Representing (Optional)

1610 Selief Ln. Kodiak, AK 99615
Address

486-7053
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the HOUSE H.E.S.S committee name

committee on HB 336 bill/subject, dated 2/24/94.

I Represent the youth Task Force, a Sub-committee of the Kodiak High School Parent Advisory Committee I am a registered voter. Our Committee would like to voice our support of House Bill 336 because it reinforces our communities zero-tolerance of for violence. Because of the transit nature of our town, it is important that violent youth be known to our School administrators. We are concerned about these issues as they affect the Safety of our school-aged youth.

Signed: _____

Testifier

Youth Task Force

Representing (Optional)

1610 Selief Lane Kodiak, AK 99615

Address

486-7053

Phone No.

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

House of Representatives

DURING SESSION:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

SPONSOR STATEMENT

HB 336
"An Act relating to violations of laws by juveniles."

This state is experiencing a rise in juvenile crime. Many crimes are committed by youngsters not more than 13 years old who have armed themselves with knives and guns. The escalation of juvenile crime is not acceptable. Those juveniles who wish to violate the law must also take full responsibility for their actions and pay the consequences.

This proposed legislation would have minors ages 13 and older tried as adults if they commit a crime using a gun or a knife. To date, the privacy of a juvenile is protected when a crime is committed. The records of the case are not made public. By bringing a juvenile to adult court all records become public. Juveniles would no longer be able to hide a criminal history.

Juveniles committing adult crimes with adult weapons should be just as accountable as adults that commit crimes with weapons. HB 336 would create this accountability. I urge your favorable consideration for HB 336.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM January 10, 1994

SUBJECT: House Bill 336 -- sectional analysis (Work Order No. 8-LS1372\J)

TO: Representative Con Bunde
ATTN: Patti Swenson

FROM: Jack Chenoweth
Legislative Counsel

The measure proposes to amend the manner of handling minors 13 years of age or older who commit an offense while in possession of a firearm or knife.

Bill section 1: The bill section proposes to add a new subsection, AS 47.10.010(e), to the statute enumerating the jurisdiction of the court over certain minors who commit offenses and as to whom a petition seeking adjudication of the minor as a delinquent could be filed. The change proposed by this bill section is direct toward minors at least 13 years of age at the time of commission of the offense who, in the commission of the offense possessed a firearm or knife and used or threatened to use the firearm or knife during the commission of the offense. As to those minors, the statutory provisions applicable to filing petition seeking adjudications of delinquency would be inapplicable. Instead, the minor would be charged, prosecuted, and sentenced as an adult. The procedure would be applicable to the offense as to which the minor was arraigned and to any additional offenses joinable to it under applicable court rule.

Bill section 2: This uncodified section specifies that the change in bill section 1 is applicable to offenses that are committed by minors who are to be prosecuted as adults if the offense was committed after the bill's effective date.

JBC:gc
94-010.glc

SECTIONAL ANALYSIS

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

P.O. BOX 110630
JUNEAU, ALASKA 99811-0630
PHONE: (907) 465-3170

December 16, 1993

The Honorable Con Bunde
Alaska State Legislator
716 W. 4th. Suite 340
Anchorage, Alaska 99501-2133

Dear Representative Bunde:

Ms. Zantek, from your Anchorage office, requested information on statewide juvenile referrals to DFYS. Our research analyst has compiled information on the frequency of weapons and weapons related referrals to DFYS. Enclosed are a set of graphics, a data table and the list of referral offense types that are identified as weapons or weapons related. It is important to note that the alleged offense types chosen are inferred to be crimes committed with a weapon, but may not truly involve the use of a weapon in all cases. Also, weapons is a broadly defined term that can include a variety of devices and/or objects that were involved in the commission of a crime.

The information provided represents an alleged offense and does not describe the outcome of the juvenile intake process. These referrals are the initial charges which can then be changed based on the examination of the available evidence.

The data extracted from the division's information system, PROBER[R], covers January 1991 through September 1993 and is presented in calendar quarters. The age of the juvenile is calculated as a function of the referral date and only juveniles 13 or older at referral are included. The frequency counts and statistics include the occurrence of multiple referrals on a juvenile. There were a total of 640 referrals on 593 individuals in this study.

Quarterly data provides a better measure of trend, and with the addition of a simple regression line, the existence of a trend can be illustrated. Also included is an illustration of all referrals during this time period as a comparison between weapons and weapons related referrals versus all referrals. Please see attached graphs.

As mentioned above, there were 640 referrals to DFYS for weapons and weapons related type offenses. This group of referral types grew at an average quarterly rate of approximately 3% over this time period. Referrals for all types grew at an average quarterly rate of approximately 2%. The average age juveniles referred for weapons and weapons related offenses is 15.5 and remains consistent across quarters. There does not appear to be any change in the

ethnicity mix nor the male to female ratio across the quarters studied. Demographics for the 640 referrals are described below.

AGE	Total	640	
	13	49	8%
	14	119	19%
	15	136	21%
	16	153	24%
	17	178	28%
	18+	5	1%
ETHNICITY	Total	640	
	AK Nat/Am I	121	19%
	Afro/Am	68	11%
	Caucasian	384	60%
	Hispanic	12	2%
	Asian	10	2%
	Other	19	3%
	Unknown	26	4%
GENDER	Total	640	
	Male	572	89%
	Female	68	11%

Note that although a slight increase has occurred in weapons and weapons related referrals compared to all referral types, the increase appears to be consistent with the growth in the juvenile population. It is possible to conclude, from this data, that the same percentage of juveniles are committing crimes and with an increasing juvenile population at about 5% per year, overall referrals to DFYS are increasing proportionally.

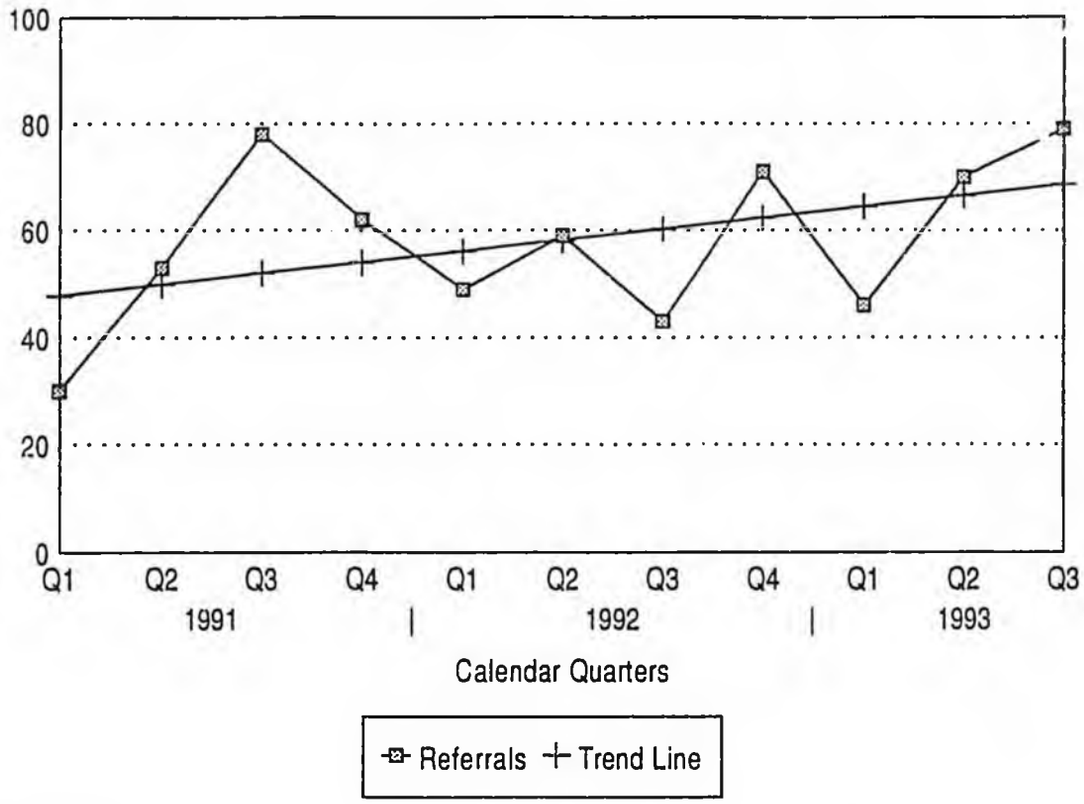
Please let me know if you need clarification or additional information.

Sincerely,

Deborah Wing
Director

WEAPO . & WEAPONS RELATED REFE RALS

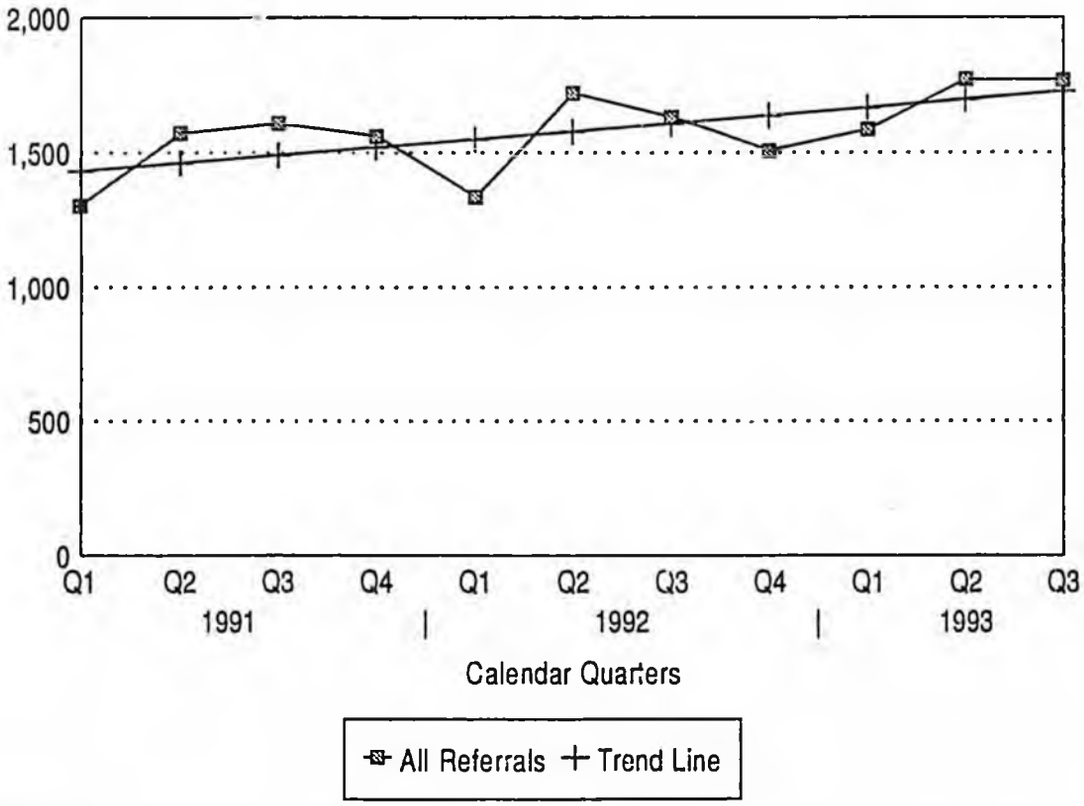
Statewide Frequency by Quarter



DFYS/December 1993

ALL REFERRALS REFERRED TO DFYS

Statewide Frequency by Quarter



DFYS/December 1993

WEAPONS AND WEAPONS RELATED REFERRALS BY QUARTER
(Referrals to Youth Services)

STATEWIDE FREQUENCY BY REFERRAL TYPE

	Calendar Quarter											
Offense	Q1CY91	Q2CY91	Q3CY91	Q4CY91	Q1CY92	Q2CY92	Q3CY92	Q4CY92	Q1CY93	Q2CY93	Q3CY93	Totals
Assault 1st	0	4	0	4	3	8	1	1	1	4	3	29
Assault 2nd	6	1	4	4	6	10	2	7	3	18	6	67
Manslaughter	0	0	1	0	0	0	0	0	0	0	0	1
Murder 1st	1	1	1	3	4	1	0	0	0	1	3	15
Murder 2nd	0	0	1	0	0	0	1	0	0	1	0	3
Negligent Homicide	0	0	0	0	0	0	0	2	0	0	1	3
Reckless Endangermnt	2	7	19	8	9	0	10	17	7	3	14	96
Robbery 1st	2	5	3	7	2	4	8	0	3	4	5	43
Misconduc Weapon 1st	5	4	4	6	2	2	0	3	2	0	0	28
Misconduc Weapon 2nd	0	2	7	5	1	3	2	7	2	3	5	37
Misconduc Weapon 3rd	14	29	37	25	22	31	19	34	28	36	42	317
Posses Explos/A Misd	0	0	1	0	0	0	0	0	0	0	0	1
Totals	30	53	78	62	49	59	43	71	46	70	79	640

NOTE: Results Include Multiple Referrals on an Individual
Data Source: PROBER

Weapons and Weapons Related Referrals

Referal Types Included

Code	Offense Description
A01	Assault 1st
A02	Assault 2nd
A70	Manslaughter
A71	Murder 1st
A72	Murder 2nd
A73	Negligent Homicide
A74	Reckless Endangermnt
A80	Robbery 1st
E01	Furnish Explosives
E10	Misconduc Weapon 1st
E11	Misconduc Weapon 2nd
E12	Misconduc Weapon 3rd
E20	Posse Explos/Murder
E21	Poss Explos A Fel
E22	Posses Explos/B Fel
E23	Posses Explos/C Fel
E24	Posses Explos/A Misd

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

January 11, 1994

The Honorable Con Bunde
Alaska State Legislature
State Capitol, Room 112
Juneau, AK 99801-1182

Dear Representative Bunde:

As you review your copy of the 1992 Report on Crime in Alaska, I am sure that you too will be alarmed at the increased crimes of violence that are occurring in our state.

What is even more alarming are the numbers of young people involved in committing serious criminal offenses. Of those arrested, youths 18 years and under accounted for:

16% of murders;
16% of rapes;
29% of robberies;
16% of aggravated assaults; and
43% of larceny arrests.

Serious consideration must be given to passing a juvenile waiver statute and removing some of the restrictions which do nothing more than make it easy for young criminals to beat the system by being treated as misunderstood victims instead of the criminals many of them really are.

Boot camp legislation and a young offenders facility is badly needed to augment and give additional space to DFYS and those agencies who must deal with juveniles who need commitment. McLaughlin Youth Center is totally inadequate to serve today's needs.

The state is long overdue for at least one, if not more, additional correctional facilities, especially in areas other than the main population centers. There is a serious need for regional minimum-to-medium security facilities in the North Slope Borough, the Alaska Peninsula, and in Kodiak.

I hope we can stop talking about crime this year and really do something about it before it is too late.

12-L2LH

BACKUP INFORMATION

I look forward to working with you, please call for any assistance we may be able to give during the upcoming year.

Sincerely,

Richard L. Burton

Richard L. Burton
Commissioner

Enclosure

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature

House of Representatives

DURING SESSION.
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
CAPITOL ROOM 112
OFFICE (907) 465-4843

Cabbie shot by 13-year-old

WEST PALM BEACH, Fla. -- A 13-year-old girl shot a cab driver to death to avoid paying a $6 fare, police said. The sixth-grader was dry-eyed during questioning Monday in the slaying of 39-year-old Yves Quettant, who was shot in the back of the head, police said. "No tears. Just cold. We're talking about coldblooded, premeditated murder committed by a 13-year-old girl who shows no remorse," Sgt. John English said. "It's frightening." Quettant was slain after picking up the girl and two of her friends at a mall Saturday night. The girl's mother said her daughter hadn't mentioned the shooting. "She acted like a 40-year-old, like nothing happened," the mother said. "There was nothing, no one tear. She didn't care at all."

Daily News wire services

An act relating to weapons and firearms; authorizing a law enforcement agency to release the name and address of a minor who has been adjudicated guilty of an offense involving possession or use of a firearm; amending s. 790.17, F.S.; prohibiting certain transfer to a minor of a weapon, or electric weapon or device; prohibiting sale or transfer to a minor of a firearm and providing that a violation constitutes a third-degree felony; amending s. 790.175, F.S.; redefining the term "minor"; requiring that the purchaser of a firearm be informed that it is unlawful to store or leave a firearm within access of a minor or to knowingly sell or transfer a firearm to a minor or a person of unsound mind; amending s. 790.18, F.S.; prohibiting an arms dealer from selling or transferring a firearm or certain other weapons to a minor; increasing the penalty for a violation from a misdemeanor to a felony; amending s. 790.22, F.S.; prohibiting a minor from possessing a firearm; providing certain exceptions; prohibiting adults responsible for a minor from knowingly and willfully permitting the minor to unlawfully possess a firearm; providing penalties for a violation by an adult; authorizing the court to require that a parent participate in classes on parenting education; authorizing community service hours in certain circumstances and

ENROLLED
1993 Legislature CS/CS/HB 91-C 2nd Engrossed

requiring the establishment of circuit community service programs; providing penalties for a violation by a minor; requiring that a minor charged with certain offenses involving the use or possession of a firearm be detained in secure detention unless the state attorney authorizes the minor's release; providing for a hearing within a specified period; providing circumstances under which the court may order that the minor continue to be held in secure detention; requiring the Department of Health and Rehabilitative Services to collect certain data and submit it to the Division of Economic and Demographic Research; requiring the court to order a minimum mandatory period of secure detention in addition to other punishments provided by law if the minor is found to have committed certain offenses involving the use or possession of a firearm and is not committed to a residential commitment program of the Department of Health and Rehabilitative Services; providing for mandatory revocation or suspension of the driving privilege if a minor is found to have committed certain offenses involving the use or possession of a firearm; providing for enhanced penalties; providing for the seizure and disposal of a firearm used or possessed unlawfully by a minor; providing that such provisions are supplemental to certain other criminal sanctions; providing for the secure detention of a minor charged with a

violation of certain provisions of ch. 790, F.S., pending a court hearing; amending s. 790.23, F.S.; prohibiting felons, and juveniles found to have committed a delinquent act that would be a felony if committed by an adult, from using or possessing a firearm under certain conditions; providing exceptions; providing penalties; amending s. 790.25, F.S.; limiting authorization for possession in private conveyance to persons over 18; directing the Department of Health and Rehabilitative Services to prepare and disseminate public service announcements; requiring the state attorney to request adult prosecution of minors in certain circumstances; providing appropriations; providing effective dates.

WHEREAS, the love affair between juveniles and firearms has reached an all-time high here in Florida, and

WHEREAS, the courts, the Legislature, and law enforcement cannot be the sole solution to stem our rising juvenile crime statistics, and

WHEREAS, it is the will of the Legislature and all Floridians that parental involvement, accountability, and responsibility become the key to solving our existing broken juvenile criminal justice system, and

WHEREAS, it is the will of Floridians all across this great state of ours that juveniles who violate laws pertaining to the illegal use of firearms be dealt with in a swift and certain and severe manner, and

WHEREAS, it is time for the Governor, the President of the Senate, and the Speaker of the House of Representatives, along with the Republican leaders of the Senate and House of Representatives, to seek relief from our counterparts in the United States Congress by cutting the federally mandated ties that bind us from curing our juvenile crime problems here at home, as said laws prevent us from using stricter, harsher, and more certain penalties in detaining Florida's juveniles, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. A law enforcement agency may release for publication the name and address of a child who has been convicted of any offense involving possession or use of a firearm.

Section 2. Section 790.17, Florida Statutes, is amended to read:

790.17 Furnishing weapons to minors under 18 years of age or persons of unsound mind and furnishing firearms to minors under 18 years of age prohibited; etc.--

(1) A person who Whoever sells, hires, barters, lends, transfers, or gives any minor under 18 years of age any pistol, dirk, electric weapon or device, or other arm or weapon, other than an ordinary pocketknife, without permission of the minor's parent or guardian of such minor, or the person having charge of such minor, or sells, hires, barters, lends, transfers, or gives to any person of unsound mind an electric weapon or device or any dangerous weapon, other than an ordinary pocketknife, commits is guilty of a misdemeanor of

the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) A person may not knowingly or willfully sell or transfer a firearm to a minor under 18 years of age, except that a person may transfer ownership of a firearm to a minor with permission of the parent or guardian. A person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The parent or guardian must maintain possession of the firearm except pursuant to s. 790.22.

Section 3. Section 790.175, Florida Statutes, is amended to read:

790.175 Transfer or sale of firearms; required warnings; penalties.--

(1) Upon the retail commercial sale or retail transfer of any firearm, the seller or transferor shall deliver a written warning to the purchaser or transferee, which warning states, in block letters not less than 1/4 inch in height:

"IT IS UNLAWFUL, AND PUNISHABLE BY IMPRISONMENT AND FINE, FOR ANY ADULT TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(2) Any retail or wholesale store, shop, or sales outlet which sells firearms must conspicuously post at each

purchase counter the following warning in block letters not less than 1 inch in height:

"IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(3) Any person or business knowingly violating a requirement to provide warning under this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4)--As-used-in-this-act;-the-term-"minor"-means-any person-under-the-age-of-16:

Section 4. Section 790.18, Florida Statutes, is amended to read:

790.18 Sale or transfer of Selling arms to minors by dealers.--It is unlawful for any dealer in arms to sell or transfer to a minor minors any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, slungshot, or electric weapon or device. A; and-every person who violates violating this section commits shall-be-guilty-of a felony misdemeanor of the second first degree, punishable as provided in s. 775.082, or s. 775.083, or 775.084.

Section 5. Section 790.22, Florida Statutes, is amended to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices;-or-firearms by minor child under

16; limitation; possession of firearms by minor under 18 prohibited; penalties.--

(1) The use for any purpose whatsoever of BB guns, air or gas-operated guns, or electric weapons or devices, or firearms as defined in s. 790.001 by any minor child under the age of 16 years is prohibited unless such use is under the supervision and in the presence of an adult who is acting with the consent of the minor's parent.

(2) Any adult responsible for the welfare of any child under the age of 16 years who knowingly permits such child to use or have in his possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the provisions of subsection (1) of this section commits is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his home, unless:

(a) The minor is engaged in a lawful hunting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult.

(b) The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by adult who is acting with the consent of the minor's parent or guardian.

(c) The firearm is unloaded and is being transported by the minor directly to or from an event authorized in paragraph (a) or paragraph (b).

(4)(a) Any parent or guardian of a minor, or other adult responsible for the welfare of a minor, who knowingly and willfully permits the minor to possess a firearm in violation of subsection (3) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any natural parent or adoptive parent, whether custodial or noncustodial, or any legal guardian or legal custodian of a minor, if that minor possesses a firearm in violation of subsection (3) may, if the court finds it appropriate, be required to participate in classes on parenting education which are approved by the Department of Health and Rehabilitative Services, upon the first conviction of the minor. Upon any subsequent conviction of the minor, the court may, if the court finds it appropriate, require the parent to attend further parent education classes or render community service hours together with the child.

(c) At any time after this act becomes law, but no later than July 1, 1994, the district juvenile justice boards or county juvenile justice councils or the Department of Health and Rehabilitative Services shall establish appropriate community service programs to be available to circuit courts in implementing this subsection. The boards or councils or department shall propose the implementation of a community service program in each circuit, and may submit a circuit plan, to be implemented upon approval of the court, at any time after this act becomes law.

(d) For the purposes of this section, community service may be provided on public property as well as on private property with the expressed permission of the property owner. Any community service provided on private property is

limited to such things as removal of graffitti and restoration of vandalized property.

(5)(a) A minor who violates subsection (3) commits a misdemeanor of the first degree, and, in addition to any other penalty provided by law, shall be required to perform 100 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense, the minor shall be required to perform not less than 100 nor more than 250 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

(6) Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer and disposed of in accordance with s. 790.08(1)-(6).

(7) The provisions of this section are supplemental to all other provisions of law relating to the possession, use, or exhibition of a firearm.

(8) Notwithstanding s. 39.042 or s. 39.044(1), if a minor under 18 years of age is charged with an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. Effective April 15, 1994, at the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 39.044(5), if the court finds that the minor meets the criteria specified in s.

39.044(2), or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or the community. The Department of Health and Rehabilitative Services shall prepare a form for all minors charged under this subsection that states the period of detention and the relevant demographic information, including, but not limited to, the sex, age, and race of the minor, whether or not the minor was represented by private counsel or a public defender, the current offense, and the minor's complete prior record, including any pending cases. The form shall be provided to the judge to be considered when determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department. The Department of Health and Rehabilitative Services must send the form, including a copy of any order, without client identifying information, to the Division of Economic and Demographic Research of the Joint Legislative Management Committee.

(9) Notwithstanding s. 39.043, if the minor is found to have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Health and Rehabilitative Services, in

addition to any other punishment provided by law, the court shall order:

(a) For a first offense, that the minor serve a mandatory period of detention of 5 days in a secure detention facility and perform 100 hours of community service.

(b) For a second or subsequent offense, that the minor serve a mandatory period of detention of 10 days in a secure detention facility and perform not less than 100 nor more than 250 hours of community service.

The minor shall receive credit for time served before adjudication.

(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9)(a) or paragraph (9)(b):

(a) For a first offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving

privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

Section 6. Section 790.23, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 790.23, F.S., for present text.)

790.23 Felons and delinquents; possession of firearms or electric weapons or devices unlawful.--

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(a) Convicted of a felony or found to have committed a delinquent act that would be a felony if committed by an adult in the courts of this state;

(b) Convicted of or found to have committed a crime against the United States which is designated as a felony;

(c) Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year; or

(d) Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding 1 year.

(2) This section shall not apply to a person convicted of a felony whose civil rights and firearm authority have been restored, or to a person found to have committed a delinquent act that would be a felony if committed by an adult with respect to which the jurisdiction of the court pursuant to chapter 39 has expired.

(3) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Subsection (5) of section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely

encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012.

Section 8. Effective July 1, 1994, if the child was 14 or more years of age at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm, the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons for not making such request, and the court, upon the state attorney's request, shall issue the order to so transfer and certify the child or provide written reasons for nonissuance.

Section 9. The Department of Health and Rehabilitative Services shall prepare public service announcements for dissemination to parents throughout the state, of the provisions of this act.

Section 10. There is hereby appropriated a lump sum of $2,157,810 from the General Revenue Fund and 94 additional full-time positions are authorized for the Juvenile Justice Program in the Department of Health and Rehabilitative

Services. This shall be used for operational funding for the secure detention, case management for community service, and commitment programs for delinquent youth. Further, $4,600,000 is hereby transferred from current surplus funds in the General Revenue Fund previously appropriated for AFDC, to be used for additional commitment resources for the Juvenile Justice Program in the Department of Health and Rehabilitative Services.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect January 1, 1994.

Chapter 10. Delinquent Minors and Children in Need of Aid.

NOTES TO DECISIONS

Cited in Flores v. Flores, 598 P.2d 893 (Alaska 1979).

Article 1. Children's Proceedings.

Cross references. — For court rules governing children's proceedings, see Alaska Rules of Court, Child in Need of Aid Rules (CINA Rules) and Delinquency Rules.

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian, or rela-

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pose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings. (§ 4 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 64 SLA 1969; am § 6 ch 104 SLA 1971; am §§ 7, 8 ch 63 SLA 1977; am § 1 ch 104 SLA 1982; am § 5 ch 39 SLA 1985; am § 17 ch 50 SLA 1987; am § 6 ch 125 SLA 1988; am § 3 ch 130 SLA 1988; am § 6 ch 125 SLA 1990)

Effect of amendments. — The 1987 amendment inserted "AS 25.23.180(c) or" in (a)(2)(A)(iii) and made punctuation changes throughout the section.

The first 1988 amendment, in subsection (b), substituted "an offense specified in this subsection" for "a traffic offense, a fish and game statute or regulation violation under AS 16 or parks and recreational facilities violation under AS 41.21" in the second sentence and, in the first sentence, inserted "AS 11.76.105 relating to the purchase of tobacco by a minor" and made a series of minor punctuation changes.

The second 1988 amendment, effective September 1, 1988, added subsection (d).

The 1990 amendment substituted "possession" for "purchase" in subsection (b).

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Constitutionality. — The statutory scheme of this chapter is not so vague as to deprive parents of their procedural due process rights. R.C. v. State, Dep't of Health & Social Servs., 760 P.2d 501 (Alaska 1988).

Applicability of 1977 amendment. — All cases pending at the time of the enactment of the new children's statute by the 1977 acts are entitled to hearing under the new, rather than the old, standards. In re J.M., 573 P.2d 1376 (Alaska 1978).

In order to provide guidance to the superior court for the administration of juvenile justice, children adjudged dependent under the standards of former subsection (a)(5) of this section prior to its repeal in 1977 are entitled, on request, to a dispositional hearing under the standards of the newly-enacted subsection (a)(2)(C) of this section. In re J.M., 573 P.2d 1376 (Alaska 1978).

Children adjudged dependent under former (a)(5) of this section are entitled on request to an adjudicative hearing under the standards of subsection (a)(2)(C). In re C.L.T., 597 P.2d 518 (Alaska 1979).

Rehabilitation, rather than punishment, is the express purpose of juvenile jurisdiction. Mere confinement without treatment does not contribute to the goal of rehabilitation; such confinement constitutes cruel and unusual punishment. Rust v. State, 582 P.2d 134 (Alaska 1978).

Principal precept behind children's court concept is that a person under 18 years of age does not have mature judgment and may not fully realize the consequences of his acts, and that therefore he should not generally have to bear the stigma of a criminal conviction for the rest of his life. In re P.H., 504 P.2d 837 (Alaska 1972).

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under this section as it existed prior to its 1977 amendment. In re C.L.T., 597 P.2d 518 (Alaska 1979).

The phrase "under 18 years of age" refers to the age of the accused person at the time of the alleged offense. In re P.H., 504 P.2d 837 (Alaska 1972).

Jurisdiction dependent upon age of offender at time of act. — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, 576 P.2d 1352 (Alaska 1978).

Child is exempt from criminal prosecution until children's court waives jurisdiction. — From the moment a child commits an offense he is exempt from criminal prosecution until the children's court properly waives its jurisdiction. In re P.H., 504 P.2d 837 (Alaska 1972).

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tive caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 25.23.180(c) or AS 47.10.080 or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian, or custodian or the failure of the parent, guardian, or custodian adequately to supervise the child;

(D) the child having been, or being in imminent and substantial danger of being, sexually abused either by the child's parent, guardian, or custodian, or as a result of conditions created by the child's parent, guardian, or custodian, or by the failure of the parent, guardian, or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian, or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian, or custodian.

(b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, AS 11.76.105 relating to the possession of tobacco by a minor, a fish and game statute or regulation under AS 16, or a parks and recreational facilities statute or regulation under AS 41.21, excepting a statute the violation of which is a felony, the procedure prescribed in AS 47.10.020 — 47.10.090 may not be followed, except that a parent, guardian, or legal custodian shall be present at all proceedings. The minor accused of an offense specified in this subsection shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(c) In a controversy concerning custody of a minor, the court may appoint a guardian of the person and property of a minor and may order support from either or both parents. Custody of a minor may be given to the department, and payment of support money to the department may be ordered.

(d) The provisions of AS 47.10.020 — 47.10.085 do not apply to driver's license proceedings under AS 28.15.185. The court shall im-

pose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings. (§ 4 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 64 SLA 1969; am § 6 ch 104 SLA 1971; am §§ 7, 8 ch 63 SLA 1977; am § 1 ch 104 SLA 1982; am § 5 ch 39 SLA 1985; am § 17 ch 50 SLA 1987; am § 6 ch 125 SLA 1988; am § 3 ch 130 SLA 1988; am § 6 ch 125 SLA 1990)

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merely by deferring action until the child's 18th birthday would frustrate the purpose of juvenile courts. In re P.H., 504 P.2d 837 (Alaska 1972).

Serious constitutional issues would arise if the nature of the proceedings against a child offender were to depend on the arbitrary decision of law-enforcement officials. In re P.H., 504 P.2d 837 (Alaska 1972).

When person over or under certain age. — With respect to penal statutes, whether a person is over or under a certain age depends upon whether he has reached that particular anniversary of his birthday or not. State v. Linn, 363 P.2d 361 (Alaska 1961).

"Delinquent" status depends not upon a criminal conviction but upon proof that the juvenile committed acts which would have been criminal if committed by an adult. Rust v. State, 582 P.2d 134 (Alaska 1978).

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, 576 P.2d 1352 (Alaska 1978).

Former AS 17.12.110(d)(4) not in conflict. — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than $1000, was not in conflict with paragraph (a)(1) of this section and AS 47.10.080(b)(1). M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982).

State may interfere with certain conduct of children in need of aid. — Conduct of children alleged to be in need of supervision [see now children alleged to be in need of aid], such as running away from home and foster home placement, may constitutionally be interfered with by the state. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Interests to be protected by legislation regarding children in need of aid. — See L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Means chosen by the state to protect children are closely and substantially related to an appropriate government interest. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

The purpose of the supervision or treatment contemplated by the creation of the child in need of supervision [see now child in need of aid], and its predecessor noncriminal delinquency was reintegration of the child into her family and resumption of parental custody including parental control. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under subsection (a)(2)(C) determines that a child is in need of aid. In re D.C., 596 P.2d 22 (Alaska 1979).

A minor who has been adjudged a child in need of supervision [now child in need of aid] cannot be institutionalized under the Children's Code. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been declared a child in need of supervision [see now child in need of aid], who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. In re A Minor Child, 490 P.2d 658 (Alaska 1971).

Requisites to determination of delinquency. — Before a juvenile can be determined delinquent in a proceeding which could result in commitment to an institution, thus curtailing his freedom, certain requisites must be met. First, written notice of the charges must be given to the juvenile and his parents sufficiently in advance of the proceedings to allow preparation to meet the charges. Second, the child and his parents must be apprised of the right to counsel, including appointed counsel in case of indigency. Third, the child may exercise his privilege against self-incrimination. Lastly, absent a valid confession, the determination of delinquency cannot be sustained in the absence of sworn testimony, which is subject to cross-examination. E.J. v. State, 471 P.2d 367 (Alaska 1970).

Minor properly declared delinquent. — Where the lower court determined that a minor would not abide by any orders it entered regarding her supervision under former subsection (j) of AS 47.10.080, this behavior constituted willful criminal contempt of the court's authority; were she an adult, her actions

would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subject to those sanctions available for the correction of a delinquent minor's behavior. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Where the parents' interests are hostile to the child's, the parents may not select the child's attorney. Wagstaff v. Superior Court, 535 P.2d 1220 (Alaska 1975).

Then the child may retain the attorney of his choice or, in the alternative, ask the court to appoint an attorney for him. Wagstaff v. Superior Court, 535 P.2d 1220 (Alaska 1975).

And court must respect choice. — If the child has retained counsel, the court must respect the child's choice. Wagstaff v. Superior Court, 535 P.2d 1220 (Alaska 1975).

The required standard of proof has been increased from "a preponderance of the evidence" to "beyond a reasonable doubt" in the adjudicatory stages of at least those delinquency proceedings in which a child is charged with an act that would be a crime if committed by an adult. E.J. v. State, 471 P.2d 367 (Alaska 1970).

Privilege against self-incrimination. — See E.L.L. v. State, 572 P.2d 786 (Alaska 1977) (decided prior to the 1977 amendment to this section).

Violation of former law relating to purchase of intoxicating liquors by minors. — See Purdy v. United States, 16 Alaska 173, 146 F. Supp. 762 (D. Alaska 1956).

Prosecution for joyriding. — Subsection (b) of this section and former AS 28.35.010(d) demonstrated a clear legislative intent to exclude from the coverage and requirements of the juvenile code those cases involving alleged misdemeanor violations of Alaska's "joyriding" statute by persons under 18 years of age. State v. G.L.P., 590 P.2d 65 (Alaska 1979).

One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.R., 590 P.2d 65 (Alaska 1979).

Termination of parental rights due to abandonment. — In proceeding to terminate parental rights, although trial judge orally stated that he considered involuntary incarceration to constitute abandonment, where written findings of fact, submitted by state and signed by court, referred to parent's voluntary absence from October of 1980 to June of 1981 as the relevant conscious disregard of parental obligations, there was no reversible error. Nada A. v. State, 660 P.2d 436 (Alaska 1983).

Parental presence at all court proceedings is a prerequisite to conviction of a minor for a traffic offense, including driving while intoxicated. Aiken v. State, 730 P.2d 821 (Alaska Ct. App. 1987).

"Judicial proceeding related to a report made under this chapter". — The phrase "judicial proceeding related to a report made under this chapter" in AS 47.17.060 only refers to child protection proceedings under AS 47.10.010. State v. Wetherhorn, 683 P.2d 269 (Alaska Ct. App. 1984).

There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. Cooper v. State, 638 P.2d 174 (Alaska 1981).

Appeal after serving sentence. — If there remain collateral legal disabilities apart from the sentence, an appeal is not mooted even though the sentence has been served. E.J. v. State, 471 P.2d 367 (Alaska 1970).

Applied in In re S.D., 549 P.2d 1190 (Alaska 1976); K.T.E. v. State, 689 P.2d 472 (Alaska 1984); D.A.W. v. State, 699 P.2d 340 (Alaska 1985); A.H. v. State, 779 P.2d 1229 (Alaska 1989).

Quoted in In re P.N., 533 P.2d 13 (Alaska 1975); R.D.S.M. v. Intake Officer, 565 P.2d 855 (Alaska 1977); N.P.A. v. State, 604 P.2d 599 (Alaska 1979); E.A. v. State, 623 P.2d 1210 (Alaska 1981).

Stated in D.R.C. v. State, 646 P.2d 252 (Alaska Ct. App. 1982); D.E.D. v. State, 704 P.2d 774 (Alaska 1985); In re A.S., 740 P.2d 432 (Alaska 1987).

Cited in Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979); P.S. v. State, 655 P.2d 1319 (Alaska Ct. App. 1982); State v. R.H., 683 P.2d 269 (Alaska Ct. App. 1984); Brower v. State, 683 P.2d 290 (Alaska Ct. App. 1984); In re J.R.S., 690 P.2d 10 (Alaska 1984); In re J.R.B., 715 P.2d 1170 (Alaska 1986); Native Village of Nenana v. State, Dep't of Health & Social Servs., 722 P.2d 219 (Alaska 1986); In re S.C.Y., 736 P.2d 353 (Alaska 1987);

E.J.S. v. State, Dep't of Health & Social Servs., 754 P.2d 749 (Alaska 1988).

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 14-27; 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 16-33.

43 C.J.S., Infants, §§ 6, 7, 19, 31 et seq.

Another court's jurisdiction over a child as affected by assumption of jurisdiction by juvenile court, 11 ALR 147; 78 ALR 317; 146 ALR 1153.

Vagrancy of minors, 14 ALR 1507.

Constitutionality of statute which, for reformatory purposes, deprives parent of custody or control of child, 60 ALR 1342.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 ALR 657.

Marriage as affecting jurisdiction of juvenile court over delinquents or dependents, 14 ALR2d 336.

Homicide by juvenile as within jurisdiction of juvenile court, 48 ALR2d 662.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court, 89 ALR2d 506.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense, 66 ALR4th 985.

Sec. 47.10.020. Investigation and petition. (a) Whenever a person informs the court of the facts that bring a minor within this chapter, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken. Upon the receipt of the report, the court may informally adjust or dispose of the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts. Where the court informally adjusts or disposes of the matter, the minor may not be detained or taken into the custody of the court, and the matter shall be closed by the court upon adjustment or disposition.

(b) The petition and all subsequent pleadings shall be styled as follows: "In the matter of ....., a minor under 18 years of age." The petition may be executed upon the petitioner's information and belief, and must be verified. It must include the following information:

(1) the name, address and occupation of the petitioner, together with the petitioner's relationship to the minor, and the petitioner's interest in the matter;

(2) the name, age and address of the minor;

(3) a brief statement of the facts that bring the minor within this chapter;

(4) the names and addresses of the minor's parents;

(5) the name and address of the minor's guardian, or of the person having control or custody of the minor.

(c) If the petitioner does not know a fact required in this section, the petitioner shall so state in the petition. (§ 5 art I ch 145 SLA 1957)

NOTES TO DECISIONS

Distinctions between this section and AS 25.24.310. — See Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979).

Cited in M.O.W. v. State, 645 P.2d 1229 (Alaska Ct. App. 1982); Gerlach v. State, 699 P.2d 358 (Alaska Ct. App. 1985).

Collateral references. — 42 Am. Jur. 2d. Infants, §§ 14-17, 20, 22 et seq.; 47 Am. Jur. 2d. Juvenile Courts and Delinquent and Dependent Children, §§ 13-33. 43 C.J.S., Infants, §§ 6, 7, 19, 31 et seq.

Sec. 47.10.030. Summons and custody of minor. (a) After a petition is filed and after further investigation that the court directs, if the person having custody or control of the minor has not appeared voluntarily, the court shall issue a summons that

(1) recites briefly the substance of the petition;

(2) clearly states that at the hearing it is possible that parental rights and responsibilities may be terminated forever and that the minor may at the hearing be committed to the department for possible adoption; and

(3) directs the person having custody or control of the minor to appear personally in court with the minor at the place and at the time set forth in the summons.

(b) In all cases under this chapter the minor, each parent of the minor and the guardian of the minor shall be given notice adequate to give actual notice of the proceedings and the possibility of termination of parental rights and responsibilities, taking into account education and language differences that are known or reasonably ascertainable by the petitioner or the department. The notice of the hearing must contain all names by which the minor has been identified. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court by order directs. Proof of the giving of the notice shall be filed with the court before the petition is heard. The court may also subpoena the parent of the minor, or any other person whose testimony may be necessary at the hearing. A subpoena or other process may be served by a person authorized by law to make the service, and where personal service cannot be made, the court may direct that service of process be in a manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court directs.

(c) If the minor is in such condition or surroundings that the minor's welfare requires the immediate assumption of custody by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall at once take the minor into custody and make the temporary placement of the minor that the court directs. (§ 6 art I ch 145 SLA 1957; am § 1 ch 110 SLA 1960; am § 6 ch 104 SLA 1971; am § 9 ch 63 SLA 1977)