

11833

SENATE

JUDICIARY

1 (B) commission of and conviction for offenses relied on as
2 prior most serious felony offenses must occur in the following order:
3 conviction for the first offense must occur before commission of the second
4 offense, and conviction for the second offense must occur before commission
5 of the offense for which the defendant is being sentenced;

6 (3) AS 12.55.135(g),

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

11 (B) a conviction in this or another jurisdiction of an offense
12 having elements similar to those of a crime against a person or a crime
13 involving domestic violence is considered a prior conviction;

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

21 (4) AS 12.55.125(i),

22 (A) a conviction in this or another jurisdiction of an offense
23 having elements similar to those of a sexual felony is a prior conviction for a
24 sexual felony;

25 (B) a felony conviction in another jurisdiction making it a
26 crime to commit any lewd and lascivious act upon a child under the age of 16
27 years, with the intent of arousing, appealing to, or gratifying the sexual desires
28 of the defendant or the victim is a prior conviction for a sexual felony;

29 (C) two or more convictions arising out of a single, continuous
30 criminal episode during which there was no substantial change in the nature of
31 the criminal objective are considered a single conviction unless the defendant

1 was sentenced to consecutive sentences for the crimes; offenses committed
 2 while attempting to escape or avoid detection or apprehension after the
 3 commission of another offense are not part of the same criminal episode or
 4 objective.

5 * Sec. 16. AS 12.55.155(a) is amended to read:

6 (a) Except as provided in (e) of this section, if [IF] a defendant is convicted
 7 of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i)
 8 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (c)(3), OR (i)] and

9 (1) the low end of the presumptive range [TERM] is four years or
 10 less, the court may impose any sentence below the presumptive range [DECREASE
 11 THE PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS THE
 12 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of
 13 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment
 14 for factors in aggravation;

15 (2) the low end of the presumptive range [TERM OF
 16 IMPRISONMENT] is more than four years, the court may impose a sentence below
 17 the presumptive range as long as the active term of imprisonment is not less than
 18 50 percent of the low end of the presumptive range [DECREASE THE
 19 PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS 50 PERCENT OF THE
 20 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of
 21 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment
 22 for factors in aggravation.

23 * Sec. 17. AS 12.55.155(b) is amended to read:

24 (b) Sentences [SENTENCE INCREMENTS AND DECREMENTS] under
 25 this section that are outside of the presumptive ranges set out in AS 12.55.125
 26 shall be based on the totality of the aggravating and mitigating factors set out in (c)
 27 and (d) of this section.

28 * Sec. 18. AS 12.55.155(c) is amended to read:

29 (c) The following factors shall be considered by the sentencing court if
 30 proven in accordance with this section, and may allow imposition of a sentence
 31 above the presumptive range [AND MAY AGGRAVATE THE PRESUMPTIVE

1 TERMS] set out in AS 12.55.125:

2 (1) a person, other than an accomplice, sustained physical injury as a
3 direct result of the defendant's conduct;

4 (2) the defendant's conduct during the commission of the offense
5 manifested deliberate cruelty to another person;

6 (3) the defendant was the leader of a group of three or more persons
7 who participated in the offense;

8 (4) the defendant employed a dangerous instrument in furtherance of
9 the offense;

10 (5) the defendant knew or reasonably should have known that the
11 victim of the offense was particularly vulnerable or incapable of resistance due to
12 advanced age, disability, ill health, or extreme youth or was for any other reason
13 substantially incapable of exercising normal physical or mental powers of resistance;

14 (6) the defendant's conduct created a risk of imminent physical injury
15 to three or more persons, other than accomplices;

16 (7) a prior felony conviction considered for the purpose of invoking a
17 [THE] presumptive range under [TERMS OF] this chapter was of a more serious
18 class of offense than the present offense;

19 (8) the defendant's prior criminal history includes conduct involving
20 aggravated or repeated instances of assaultive behavior;

21 (9) the defendant knew that the offense involved more than one victim;

22 (10) the conduct constituting the offense was among the most serious
23 conduct included in the definition of the offense;

24 (11) the defendant committed the offense under [PURSUANT TO] an
25 agreement that the defendant either pay or be paid for the commission of the offense,
26 and the pecuniary incentive was beyond that inherent in the offense itself;

27 (12) the defendant was on release under AS 12.30.020 or 12.30.040 for
28 another felony charge or conviction or for a misdemeanor charge or conviction having
29 assault as a necessary element;

30 (13) the defendant knowingly directed the conduct constituting the
31 offense at an active officer of the court or at an active or former judicial officer,

1 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,
2 emergency medical technician, paramedic, ambulance attendant, or other emergency
3 responder during or because of the exercise of official duties;

4 (14) the defendant was a member of an organized group of five or
5 more persons, and the offense was committed to further the criminal objectives of the
6 group;

7 (15) the defendant has three or more prior felony convictions;

8 (16) the defendant's criminal conduct was designed to obtain
9 substantial pecuniary gain and the risk of prosecution and punishment for the conduct
10 is slight;

11 (17) the offense was one of a continuing series of criminal offenses
12 committed in furtherance of illegal business activities from which the defendant
13 derives a major portion of the defendant's income;

14 (18) the offense was a felony

15 (A) specified in AS 11.41 and was committed against a spouse,
16 a former spouse, or a member of the social unit made up of [COMPRISED
17 OF] those living together in the same dwelling as the defendant;

18 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
19 has engaged in the same or other conduct prohibited by a provision of
20 AS 11.41.410 - 11.41.460 involving the same or another victim; or

21 (C) specified in AS 11.41 that is a crime involving domestic
22 violence and was committed in the physical presence or hearing of a child
23 under 16 years of age who was, at the time of the offense, living within the
24 residence of the victim, the residence of the perpetrator, or the residence where
25 the crime involving domestic violence occurred;

26 (19) the defendant's prior criminal history includes an adjudication as a
27 delinquent for conduct that would have been a felony if committed by an adult;

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

31 (21) the defendant has a criminal history of repeated instances of

1 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
2 similar in nature to the offense for which the defendant is being sentenced under this
3 section;

4 (22) the defendant knowingly directed the conduct constituting the
5 offense at a victim because of that person's race, sex, color, creed, physical or mental
6 disability, ancestry, or national origin;

7 (23) the defendant is convicted of an offense specified in AS 11.71 and

8 (A) the offense involved the delivery of a controlled substance
9 under circumstances manifesting an intent to distribute the substance as part of
10 a commercial enterprise; or

11 (B) at the time of the conduct resulting in the conviction, the
12 defendant was caring for or assisting in the care of a child under 10 years of
13 age;

14 (24) the defendant is convicted of an offense specified in AS 11.71 and
15 the offense involved the transportation of controlled substances into the state;

16 (25) the defendant is convicted of an offense specified in AS 11.71 and
17 the offense involved large quantities of a controlled substance;

18 (26) the defendant is convicted of an offense specified in AS 11.71 and
19 the offense involved the distribution of a controlled substance that had been
20 adulterated with a toxic substance;

21 (27) the defendant, being 18 years of age or older,

22 (A) is legally accountable under AS 11.16.110(2) for the
23 conduct of a person who, at the time the offense was committed, was under 18
24 years of age and at least three years younger than the defendant; or

25 (B) is aided or abetted in planning or committing the offense by
26 a person who, at the time the offense was committed, was under 18 years of
27 age and at least three years younger than the defendant;

28 (28) the victim of the offense is a person who provided testimony or
29 evidence related to a prior offense committed by the defendant;

30 (29) the defendant committed the offense for the benefit of, at the
31 direction of, or in association with a criminal street gang;

1 (30) the defendant is convicted of an offense specified in AS 11.41.410
 2 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
 3 the victim in furtherance of the offense with the intent to make the victim
 4 incapacitated; in this paragraph, "incapacitated" has the meaning given in
 5 AS 11.41.470;

6 (31) the defendant's prior criminal history includes convictions for
 7 five or more crimes in this or another jurisdiction that are class A misdemeanors
 8 under the law of this state, or having elements similar to a class A misdemeanor;
 9 two or more convictions arising out of a single continuous episode are considered
 10 a single conviction; however, an offense is not a part of a continuous episode if
 11 committed while attempting to escape or resist arrest or if it is an assault upon a
 12 uniformed or otherwise clearly identified peace officer; notice and denial of
 13 convictions are governed by AS 12.55.145(b), (c), and (d).

14 * Sec. 19. AS 12.55.155(d) is amended to read:

15 (d) The following factors shall be considered by the sentencing court if
 16 proven in accordance with this section, and may allow imposition of a sentence
 17 below the presumptive range [AND MAY MITIGATE THE PRESUMPTIVE
 18 TERMS] set out in AS 12.55.125:

19 (1) the offense was principally accomplished by another person, and
 20 the defendant manifested extreme caution or sincere concern for the safety or well-
 21 being of the victim;

22 (2) the defendant, although an accomplice, played only a minor role in
 23 the commission of the offense;

24 (3) the defendant committed the offense under some degree of duress,
 25 coercion, threat, or compulsion insufficient to constitute a complete defense, but that
 26 [WHICH] significantly affected the defendant's conduct;

27 (4) the conduct of a youthful defendant was substantially influenced by
 28 another person more mature than the defendant;

29 (5) the conduct of an aged defendant was substantially a product of
 30 physical or mental infirmities resulting from the defendant's age;

31 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the

1 defendant acted with serious provocation from the victim;

2 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,
3 the victim provoked the crime to a significant degree;

4 (8) [REPEALED

5 (9)] the conduct constituting the offense was among the least serious
6 conduct included in the definition of the offense;

7 (9) [(10)] before the defendant knew that the criminal conduct had
8 been discovered, the defendant fully compensated or made a good faith effort to fully
9 compensate the victim of the defendant's criminal conduct for any damage or injury
10 sustained;

11 (10) [(11)] the defendant was motivated to commit the offense solely
12 by an overwhelming compulsion to provide for emergency necessities for the
13 defendant's immediate family;

14 (11) [(12)] the defendant assisted authorities to detect, apprehend, or
15 prosecute other persons who committed an offense;

16 (12) [(13)] the facts surrounding the commission of the offense and
17 any previous offenses by the defendant establish that the harm caused by the
18 defendant's conduct is consistently minor and inconsistent with the imposition of a
19 substantial period of imprisonment;

20 (13) [(14)] the defendant is convicted of an offense specified in
21 AS 11.71 and the offense involved small quantities of a controlled substance;

22 (14) [(15)] the defendant is convicted of an offense specified in
23 AS 11.71 and the offense involved the distribution of a controlled substance, other
24 than a schedule IA controlled substance, to a personal acquaintance who is 19 years of
25 age or older for no profit;

26 (15) [(16)] the defendant is convicted of an offense specified in
27 AS 11.71 and the offense involved the possession of a small amount of a controlled
28 substance for personal use in the defendant's home;

29 (16) [(17)] in a conviction for assault or attempted assault or for
30 homicide or attempted homicide, the defendant acted in response to domestic violence
31 perpetrated by the victim against the defendant and the domestic violence consisted of

1 aggravated or repeated instances of assaultive behavior.

2 * Sec. 20. AS 12.55.155(e) is amended to read:

3 (e) If a factor in aggravation is a necessary element of the present offense, or
4 requires the imposition of a sentence within the presumptive range [TERM] under
5 AS 12.55.125(c)(2), that factor may not be used to impose a sentence above the high
6 end of [AGGRAVATE] the presumptive range [TERM]. If a factor in mitigation is
7 raised at trial as a defense reducing the offense charged to a lesser included offense,
8 that factor may not be used to impose a sentence below the low end of [MITIGATE]
9 the presumptive range [TERM].

10 * Sec. 21. AS 12.55.155(f) is amended to read:

11 (f) If the state seeks to establish a factor in aggravation at sentencing

12 (1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this
13 section, or if the defendant seeks to establish a factor in mitigation at sentencing,
14 written notice must be served on the opposing party and filed with the court not later
15 than 10 days before the date set for imposition of sentence; the factors [. FACTORS]
16 in aggravation listed in this paragraph, and factors in mitigation must be established
17 by clear and convincing evidence before the court sitting without a jury; all [. ALL]
18 findings must be set out with specificity;

19 (2) other than one listed in (1) of this subsection, the factor shall be
20 presented to a trial jury under procedures set by the court, unless the defendant
21 waives trial by jury, stipulates to the existence of the factor, or consents to have
22 the factor proven under procedures set out in (1) of this subsection; a factor in
23 aggravation presented to a jury is established if proved beyond a reasonable
24 doubt; written notice of the intent to establish a factor in aggravation must be
25 served on the defendant and filed with the court

26 (A) 10 days before trial, or at another time specified by the
27 court;

28 (B) within 48 hours, or at a time specified by the court, if
29 the court instructs the jury about the option to return a verdict for a lesser
30 included offense; or

31 (C) five days before entering a plea that results in a finding

1 of guilt, or at another time specified by the court.

2 * Sec. 22. AS 12.55.165(a) is amended to read:

3 (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or
 4 (i) [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and the court finds by
 5 clear and convincing evidence that manifest injustice would result from failure to
 6 consider relevant aggravating or mitigating factors not specifically included in
 7 AS 12.55.155 or from imposition of a sentence within the presumptive range
 8 [TERM], whether or not adjusted for aggravating or mitigating factors, the court shall
 9 enter findings and conclusions and cause a record of the proceedings to be transmitted
 10 to a three-judge panel for sentencing under AS 12.55.175.

11 * Sec. 23. AS 12.55.175(b) is amended to read:

12 (b) Upon receipt of a record of proceedings under AS 12.55.165, the three-
 13 judge panel shall consider all pertinent files, records, and transcripts, including the
 14 findings and conclusions of the judge who originally heard the matter. The panel may
 15 hear oral testimony to supplement the record before it. If the panel supplements the
 16 record, the panel shall permit the victim to testify before the panel. If the panel finds
 17 that manifest injustice would result from failure to consider relevant aggravating or
 18 mitigating factors not specifically included in AS 12.55.155 or from imposition of a
 19 sentence within the presumptive range [TERM], whether or not adjusted for
 20 aggravating or mitigating factors, it shall sentence the defendant in accordance with
 21 this section. If the panel does not find that manifest injustice would result, it shall
 22 remand the case to the sentencing court, with a written statement of its findings and
 23 conclusions, for sentencing under AS 12.55.125.

24 * Sec. 24. AS 12.55.175(e) is amended to read:

25 (e) If the three-judge panel determines under (b) of this section that manifest
 26 injustice would result from imposition of a sentence within the presumptive range
 27 [TERM] and the panel also finds that the defendant has an exceptional potential for
 28 rehabilitation and that a sentence of less than the presumptive range [TERM] should
 29 be imposed because of the defendant's exceptional potential for rehabilitation, the
 30 panel

31 (1) shall sentence the defendant within [TO] the presumptive range

1 [TERM] required under AS 12.55.125 or as permitted under AS 12.55.155:

2 (2) shall order the defendant under AS 12.55.015 to engage in
3 appropriate programs of rehabilitation; and

4 (3) may provide that the defendant is eligible for discretionary parole
5 under AS 33.16.090 during the second half of the sentence imposed under this
6 subsection if the defendant successfully completes all rehabilitation programs ordered
7 under (2) of this subsection.

8 * Sec. 25. AS 12.55.185 is amended by adding a new paragraph to read:

9 (18) "active term of imprisonment" has the meaning given in
10 AS 12.55.127.

11 * Sec. 26. AS 33.05.070 is amended by adding new subsections to read:

12 (c) At any time within the probation period, a police officer certified by the
13 Alaska Police Standards Council may detain a probationer if the police officer has
14 reasonable suspicion that the probationer has recently violated or may imminently
15 violate a probation condition relating to one of the topics set out in (d) of this section.
16 The police officer may also arrest the probationer without a warrant if the police
17 officer has probable cause to believe that the probationer has violated a probation
18 condition relating to one of the topics set out in (d) of this section.

19 (d) The conditions that permit a police officer to detain or arrest a probationer
20 or parolee without a warrant under AS 33.16.240 and (c) of this section are those
21 conditions imposed by the court, or the parole board, relating to

22 (1) geographic limitations on the probationer's movements;

23 (2) possessing or consuming controlled substances under state or
24 federal law;

25 (3) possessing firearms;

26 (4) possessing or consuming alcoholic beverages, or being in a place
27 where they are sold or served;

28 (5) operating or driving a motor vehicle; or

29 (6) other conduct that creates an imminent public danger or threatens
30 serious harm to persons or property.

31 * Sec. 27. AS 33.16.085(a) is amended to read:

1 (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term
2 or sentence a prisoner may be serving or any restriction on parole eligibility under
3 AS 12.55, a prisoner who is serving a term of at least 181 days, may, upon application
4 by the prisoner or the commissioner, be released by the board on special medical
5 parole if the board determines that

6 (1) the prisoner has not been convicted of an offense under
7 AS 11.41.410 - 11.41.425 or 11.41.434 - 11.41.438 and the prisoner is severely
8 medically or cognitively disabled as certified in writing by a physician licensed under
9 AS 08.64

10 (2) a reasonable probability exists that

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

13 (B) because of the prisoner's severe medical or cognitive
14 disability, the prisoner will not pose a threat of harm to the public if released
15 on parole; and

16 (C) release of the prisoner on parole would not diminish the
17 seriousness of the crime;

18 (3) the prisoner

19 (A) was not suffering from the severe medical or cognitive
20 disability at the time the prisoner committed the offense or parole or probation
21 violation for which the prisoner is presently incarcerated; or

22 (B) was suffering from the severe medical or cognitive
23 disability at the time the prisoner committed the offense or parole or probation
24 violation for which the prisoner is presently incarcerated and the medical or
25 cognitive disability has progressed so that the likelihood of the prisoner's
26 committing the same or a similar offense is low;

27 (4) the care and supervision that the prisoner requires can be provided
28 in a more medically appropriate or cost-effective manner than by the department;

29 (5) the prisoner is incapacitated to an extent that incarceration does not
30 impose significant additional restrictions on the prisoner;

31 (6) the prisoner is likely to remain subject to the severe medical or

1 cognitive disability throughout the entire period of parole or to die and there is no
 2 reasonable expectation that the prisoner's medical or cognitive disability will improve
 3 noticeably; and

4 (7) an appropriate discharge plan has been formulated that addresses
 5 basic life domains of the prisoner, including care coordination, housing, eligibility for
 6 public benefits, and health care, including necessary medication.

7 * **Sec. 28.** AS 33.16.090 is repealed and reenacted to read:

8 **Sec. 33.16.090. Eligibility for discretionary parole and minimum terms to**
 9 **be served.** (a) A prisoner sentenced to an active term of imprisonment of at least 181
 10 days may, in the discretion of the board, be released on discretionary parole if the
 11 prisoner has served the amount of time specified under (b) of this section, except that

12 (1) a prisoner sentenced to one or more mandatory 99-year terms under
 13 AS 12.55.125(a) or one or more definite terms under AS 12.55.125(l) is not eligible
 14 for consideration for discretionary parole;

15 (2) a prisoner is not eligible for consideration of discretionary parole if
 16 made ineligible by order of a court under AS 12.55.115;

17 (3) a prisoner imprisoned under AS 12.55.086 is not eligible for
 18 discretionary parole unless the actual term of imprisonment is more than one year.

19 (b) A prisoner eligible under (a) of this section who is sentenced

20 (1) to a single sentence under AS 12.55.125(a) or (b) may not be
 21 released on discretionary parole until the prisoner has served the mandatory minimum
 22 term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment
 23 imposed, or any term set under AS 12.55.115, whichever is greatest;

24 (2) to a single sentence within or below a presumptive range set out in
 25 AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i), and has not been allowed by the
 26 three-judge panel under AS 12.55.175 to be considered for discretionary parole
 27 release, may not be released on discretionary parole until the prisoner has served the
 28 term imposed, less good time earned under AS 33.20.010;

29 (3) to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and
 30 (4), or (i), and has been allowed by the three-judge panel under AS 12.55.175 to be
 31 considered for discretionary parole release during the second half of the sentence, may

1 not be released on discretionary parole until

2 (A) the prisoner has served that portion of the active term of
3 imprisonment required by the three-judge panel; and

4 (B) in addition to the factors set out in AS 33.16.100(a), the
5 board determines that

6 (i) the defendant has successfully completed all
7 rehabilitation programs ordered by the three-judge panel that were
8 made available to the prisoner; and

9 (ii) the prisoner would not constitute a danger to the
10 public if released on parole;

11 (4) to a single enhanced sentence under AS 12.55.155(a) that is above
12 the applicable presumptive range, may not be released on discretionary parole until the
13 prisoner has served the greater of the following:

14 (A) an amount of time, less good time earned under
15 AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth
16 of the amount of time above the presumptive range; or

17 (B) any term set under AS 12.55.115;

18 (5) to a single sentence under any other provision of law, may not be
19 released on discretionary parole until the prisoner has served at least one-fourth of the
20 active term of imprisonment, any mandatory minimum sentence imposed under any
21 provision of law, or any term set under AS 12.55.115, whichever is greatest;

22 (6) to concurrent sentences, may not be released on discretionary
23 parole until the prisoner has served the greatest of

24 (A) any mandatory minimum sentence or sentences imposed
25 under any provision of law;

26 (B) any term set under AS 12.55.115; or

27 (C) the amount of time that is required to be served under (1) -
28 (5) of this subsection for the sentence imposed for the primary crime, had that
29 been the only sentence imposed;

30 (7) to consecutive or partially consecutive sentences, may not be
31 released on discretionary parole until the prisoner has served the greatest of

1 (A) the composite total of any mandatory minimum sentence or
2 sentences imposed under any provision of law, including AS 12.55.127;

3 (B) any term set under AS 12.55.115; or

4 (C) the amount of time that is required to be served under (1) -
5 (5) of this subsection for the sentence imposed for the primary crime, had that
6 been the only sentence imposed, plus one-quarter of the composite total of the
7 active term of imprisonment imposed as consecutive or partially consecutive
8 sentences imposed for all crimes other than the primary crime.

9 (c) As used in this section,

10 (1) "active term of imprisonment" has the meaning given in
11 AS 12.55.185;

12 (2) "primary crime" has the meaning given in AS 12.55.127.

13 * Sec. 29. AS 33.16.100 is amended by adding a new subsection to read:

14 (c) If the parole board considers an application for discretionary parole, and
15 denies parole because the prisoner does not meet the standards in (a) of this section,
16 the board may make a prisoner ineligible for further consideration of discretionary
17 parole, or may require that additional time be served before the prisoner is again
18 eligible for consideration for discretionary parole.

19 * Sec. 30. AS 33.16.240(c) is amended to read:

20 (c) In addition to the powers granted to a police officer under (g) of this
21 section, a [A] parole officer may, without a warrant, arrest a parolee for a violation of
22 parole only if there is danger to the public, if there is a likelihood that the parolee will
23 flee, or if the parolee committed a crime in the presence of the parole officer.

24 * Sec. 31. AS 33.16.240 is amended by adding a new subsection to read:

25 (g) At any time within the period of parole supervision, a police officer
26 certified by the Alaska Police Standards Council may detain a parolee if the officer
27 has reasonable suspicion that the person has recently violated or may imminently
28 violate a parole condition relating to one of the topics set out in AS 33.05.070(d). The
29 officer may also arrest the parolee without a warrant if the officer has probable cause
30 to believe that the person has violated a parole condition relating to one of the topics
31 set out in AS 33.05.070(d).

1 * **Sec. 32.** AS 12.55.125(k); AS 33.16.100(c) and 33.16.100(d) are repealed.

2 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **APPLICABILITY.** Sections 1, 4, 6, 26, and 29 - 31 of this Act apply to offenses
5 committed before, on, or after the effective date of this Act. Sections 2, 3, 5, 7 - 25, and 27 -
6 28 of this Act apply to offenses committed on or after the effective date of this Act.
7 References to prior offenses or convictions in secs. 8 - 21 of this Act include offenses
8 committed before, on, or after the effective date of this Act.

9 * **Sec. 34.** This Act takes effect July 1, 2005.

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MEMORANDUM

January 12, 2005

SUBJECT: Draft Bill on Various Criminal Law and Procedure Topics
(Work Order No. 24-LS0308\G)

TO: Senator Ralph Seekins

FROM: Gerald P. Luckhaupt *ERD*
Legislative Counsel

Enclosed is the second draft of this criminal law and procedure bill. This draft incorporates changes requested by Dean Guaneli of the Department of Law to the material they originally supplied to you in the first draft. I have two comments about the draft.

1. Section 2 of the draft provides that a judge may no longer impose a periodic sentence¹ except in one situation - when extreme hardship would result to the defendant's ability to pay restitution or fines as the sentence would interfere with the defendant's employment. The Department of Law is proposing this change because some judges have been trying to use this provision to require that prisoners be released to make doctor or dentist appointments, attend funerals, etc., and the department believes that keeping track of this is rather burdensome. It seems to me that this is a very large hammer for a rather small nail. Reasons for imposing periodic sentences go far beyond ability to pay restitution or fines and are often quite beneficial to the state. Having a defendant who is serving a 3 day, 5 day, 10 day, or 30 day sentence on weekends or in some other periodic manner often allows the defendant or the family of the defendant to keep working, stay in school, stay off of welfare or aid to families, etc. Sometimes allowing the service of a sentence periodically actually benefits the state by allowing the sentence to be served when the correctional institution is not already full. Allowing a defendant to receive medical care while the defendant is not incarcerated may actually reduce the burden on the state to provide medical care to prisoners. In any event, you should examine this provision closely. There may be an easier way to achieve the department's goals than virtually eliminating periodic sentencing as an available sentencing option.

2. Mr. Guaneli had me change the applicability section (Sec. 33) to make sections 26 and 29 - 31 of the bill apply to offenses committed before, on, or after the effective date of the

¹ A periodic sentence is a sentence that is served in parts instead of in whole. For example, it is fairly common for judges to sentence persons to serve certain limited sentences on weekends so the person can keep their job, remain in school, or whatever.

Senator Ralph Sækins

January 12, 2005

Page 2

Act. While I see no problem with this change as to secs. 26 and 30 - 31, it can be argued that sec. 29 constitutes an impermissible change in sentence, an unconstitutional increase in punishment, when applied to offenses committed before the effective date of the Act. By allowing the board of parole to make a prisoner ineligible for further consideration of parole when they otherwise would have been eligible appears to be an increase in punishment. You should closely examine this provision and its application to offenses committed before the effective date of the Act.

GPL:med

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Enclosure

SENATE BILL NO.

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY SENATOR SEEKINS

**Introduced:
Referred:**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to criminal law and procedure, criminal sentences, and probation and**
2 **parole; and providing for an effective date."**

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

4 *** Section 1.** AS 12.40.100 is amended by adding a new subsection to read:

5 (c) An indictment that complies with this section and with applicable rules
6 adopted by the supreme court, is valid and need not specify aggravating factors set out
7 in AS 12.55.155.

8 *** Sec. 2.** AS 12.55.015(a) is amended to read:

9 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
10 sentence on a defendant convicted of an offense, may singly or in combination

11 (1) impose a

12 (A) fine when authorized by law and as provided in
13 AS 12.55.035; or

14 (B) day fine when authorized by law and as provided in

1 AS 12.55.036 if the court does not impose a term of periodic or continuous
2 imprisonment or place the defendant on probation;

3 (2) order the defendant to be placed on probation under conditions
4 specified by the court that may include provision for active supervision;

5 (3) impose a definite term of periodic imprisonment, but only if an
6 employment obligation of the defendant preexisted sentencing and continuous
7 incarceration would cause extreme hardship to the defendant's ability to pay
8 finest or restitution:

9 (4) impose a definite term of continuous imprisonment;

10 (5) order the defendant to make restitution under AS 12.55.045;

11 (6) order the defendant to carry out a continuous or periodic program
12 of community work under AS 12.55.055;

13 (7) suspend execution of all or a portion of the sentence imposed under
14 AS 12.55.080;

15 (8) suspend imposition of sentence under AS 12.55.085;

16 (9) order the forfeiture to the commissioner of public safety or a
17 municipal law enforcement agency of a deadly weapon that was in the actual
18 possession of or used by the defendant during the commission of an offense described
19 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

20 (10) order the defendant, while incarcerated, to participate in or
21 comply with the treatment plan of a rehabilitation program that is related to the
22 defendant's offense or to the defendant's rehabilitation if the program is made available
23 to the defendant by the Department of Corrections;

24 (11) order the forfeiture to the state of a motor vehicle, weapon,
25 electronic communication device, or money or other valuables, used in or obtained
26 through an offense that was committed for the benefit of, at the direction of, or in
27 association with a criminal street gang;

28 (12) order the defendant to have no contact, either directly or
29 indirectly, with a victim or witness of the offense until the defendant is
30 unconditionally discharged.

31 * Sec. 3. AS 12.55.025(i) is amended to read:

1 (i) Except as provided by AS 12.55.125(a)(3), [12.55.125(k),] 12.55.145(d),
2 12.55.155(f), and 12.55.165, the preponderance of the evidence standard of proof
3 applies to sentencing proceedings.

4 * Sec. 4. AS 12.55.055(d) is amended to read:

5 (d) The court may offer a defendant convicted of an offense the option of
6 performing community work in lieu of a sentence of imprisonment. Substitution of
7 community work shall be at a rate of eight hours for each day of imprisonment. A
8 court may not offer substitution of community work for any mandatory minimum
9 period of imprisonment or for any period within the [OF A] presumptive range
10 [TERM] of imprisonment for the offense.

11 * Sec. 5. AS 12.55.088(c) is amended to read:

12 (c) A [NO] sentence may not be reduced or modified so as to result in a term
13 of imprisonment that [WHICH] is less than the minimum [OR PRESUMPTIVE]
14 sentence or within the presumptive range required by law for the original sentence.

15 * Sec. 6. AS 12.55.100(a) is amended to read:

16 (a) While on probation and among the conditions of probation, the defendant
17 may be required

18 (1) to pay a fine in one or several sums;

19 (2) to make restitution or reparation to aggrieved parties for actual
20 damages or loss caused by the crime for which conviction was had, including
21 compensation to a victim that is a nonprofit organization for the value of labor or
22 goods provided by volunteers if the labor or goods were necessary to alleviate or
23 mitigate the effects of the defendant's crime;

24 (3) to provide for the support of any persons for whose support the
25 defendant is legally responsible;

26 (4) to perform community work in accordance with AS 12.55.055;

27 (5) to participate in or comply with the treatment plan of an inpatient
28 or outpatient rehabilitation program specified by either the court or the defendant's
29 probation officer that is related to the defendant's offense or to the defendant's
30 rehabilitation; [AND]

31 (6) to satisfy the screening, evaluation, referral, and program

1 requirements of an agency authorized by the court to make referrals for rehabilitative
2 treatment or to provide rehabilitative treatment; and

3 (7) if ordered by the court, to abide by additional conditions of
4 probation imposed by the defendant's probation officer; an additional condition
5 imposed by the probation officer must be provided in writing to the defendant;
6 the additional condition is binding upon delivery until modified by the court; this
7 paragraph does not require written notice of conditions relating to the day-to-day
8 management of probationers, in which probation officers direct the activities of
9 probationers to implement existing court-imposed conditions.

10 * Sec. 7. AS 12.55.120 is amended by adding a new subsection to read:

11 (e) A sentence reviewed by the appellate court under this section and
12 AS 22.07.020, or by the superior court under AS 22.10.020, or a sentence reviewed by
13 petition accepted under court rules, may not be reversed as excessive, and the
14 sentencing court is not required to make specific findings, if the sentence is within an
15 applicable presumptive range set out in AS 12.55.125, or is a consecutive or partially
16 consecutive sentence imposed in accordance with the minimum sentences set out in
17 AS 12.55.127.

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

19 (c) Except as provided in (i) of this section, a defendant convicted of a class A
20 felony may be sentenced to a definite term of imprisonment of not more than 20 years,
21 and shall be sentenced to a definite term within the following presumptive ranges
22 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

23 (1) if the offense is a first felony conviction and does not involve
24 circumstances described in (2) of this subsection, five to eight [FIVE] years;

25 (2) if the offense is a first felony conviction

26 [(A) OTHER THAN FOR MANSLAUGHTER] and the
27 defendant possessed a firearm, used a dangerous instrument, or caused serious
28 physical injury or death during the commission of the offense, or knowingly
29 directed the conduct constituting the offense at a uniformed or otherwise
30 clearly identified peace officer, fire fighter, correctional employee, emergency
31 medical technician, paramedic, ambulance attendant, or other emergency

1 responder who was engaged in the performance of official duties at the time of
2 the offense, seven to eleven [SEVEN] years;

3 [(B) FOR MANSLAUGHTER AND THE CONDUCT
4 RESULTING IN THE CONVICTION WAS KNOWINGLY DIRECTED
5 TOWARDS A CHILD UNDER THE AGE OF 16, SEVEN YEARS;

6 (C) FOR MANSLAUGHTER AND THE CONDUCT
7 RESULTING IN THE CONVICTION INVOLVED DRIVING WHILE
8 UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE,
9 INHALANT, OR CONTROLLED SUBSTANCE, SEVEN YEARS;]

10 (3) if the offense is a second felony conviction, 10 to 14 [10] years;

11 (4) if the offense is a third felony conviction and the defendant is not
12 subject to sentencing under (l) of this section, 15 to 20 [15] years.

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

14 (d) Except as provided in (i) of this section, a defendant convicted of a class B
15 felony may be sentenced to a definite term of imprisonment of not more than 10 years,
16 and shall be sentenced to a definite term within the following presumptive ranges
17 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

20 (2) if the offense is a first felony conviction, the defendant violated
21 AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

22 (3) if the offense is a second felony conviction, four to seven [FOUR]
23 years;

24 (4) [(2)] if the offense is a third felony conviction, six to ten [SIX]
25 years.

26 * Sec. 10. AS 12.55.125(e) is amended to read:

27 (e) Except as provided in (i) of this section, a defendant convicted of a class C
28 felony may be sentenced to a definite term of imprisonment of not more than five
29 years, and shall be sentenced to a definite term within the following presumptive
30 ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

31 (1) if the offense is a first felony conviction and does not involve

1 circumstances described in (4) of this subsection, zero to two years;

2 (2) if the offense is a second felony conviction, two to four [TWO]
3 years;

4 (3) [(2)] if the offense is a third felony conviction, three to five
5 [THREE] years;

6 (4) [(3)] if the offense is a first felony conviction, and the defendant
7 violated AS 08.54.720(a)(15), one to two years [ONE YEAR].

8 * Sec. 11. AS 12.55.125(g) is amended to read:

9 (g) If a defendant is sentenced under (c), (d), (e) [(d)(1), (d)(2), (e)(1), (e)(2),
10 (e)(3)], or (i) of this section, except to the extent permitted under AS 12.55.155 -
11 12.55.175,

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

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

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

15 * Sec. 12. AS 12.55.125(i) is amended to read:

16 (i) A defendant convicted of

17 (1) sexual assault in the first degree or sexual abuse of a minor in the
18 first degree may be sentenced to a definite term of imprisonment of not more than 40
19 years and shall be sentenced to a definite term within the following presumptive
20 ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

21 (A) if the offense is a first felony conviction and does not
22 involve circumstances described in (B) of this paragraph, eight to twelve
23 [EIGHT] years;

24 (B) if the offense is a first felony conviction and the defendant
25 possessed a firearm, used a dangerous instrument, or caused serious physical
26 injury during the commission of the offense, 12 to 16 [10] years;

27 (C) if the offense is a second felony conviction and does not
28 involve circumstances described in (D) of this paragraph, 15 to 20 [1] years;

29 (D) if the offense is a second felony conviction and the
30 defendant has a prior conviction for a sexual felony, 20 to 30 [20] years;

31 (E) if the offense is a third felony conviction and the defendant

1 is not subject to sentencing under (F) of this paragraph or (I) of this section, 25
2 to 35 [25] years;

3 (F) if the offense is a third felony conviction, the defendant is
4 not subject to sentencing under (I) of this section, and the defendant has two
5 prior convictions for sexual felonies, 30 to 40 [30] years;

6 (2) attempt, conspiracy, or solicitation to commit sexual assault in the
7 first degree or sexual abuse of a minor in the first degree may be sentenced to a
8 definite term of imprisonment of not more than 30 years and shall be sentenced to a
9 definite term within the following presumptive ranges [TERMS], subject to
10 adjustment as provided in AS 12.55.155 - 12.55.175:

11 (A) if the offense is a first felony conviction and does not
12 involve circumstances described in (B) of this paragraph, five to eight [FIVE]
13 years;

14 (B) if the offense is a first felony conviction, and the defendant
15 possessed a firearm, used a dangerous instrument, or caused serious physical
16 injury during the commission of the offense, 10 to 14 [10] years;

17 (C) if the offense is a second felony conviction and does not
18 involve circumstances described in (D) of this paragraph, 12 to 16 [10] years;

19 (D) if the offense is a second felony conviction and the
20 defendant has a prior conviction for a sexual felony, 15 to 20 [15] years;

21 (E) if the offense is a third felony conviction, does not involve
22 circumstances described in (F) of this paragraph, and the defendant is not
23 subject to sentencing under (I) of this section, 15 to 25 [15] years;

24 (F) if the offense is a third felony conviction, the defendant is
25 not subject to sentencing under (I) of this section, and the defendant has two
26 prior convictions for sexual felonies, 20 to 30 [20] years;

27 (3) sexual assault in the second degree, sexual abuse of a minor in the
28 second degree, unlawful exploitation of a minor, or distribution of child pornography
29 may be sentenced to a definite term of imprisonment of not more than 20 years and
30 shall be sentenced to a definite term within the following presumptive ranges
31 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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(A) if the offense is a first felony conviction, two to four years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) [(B)] of this paragraph, five to eight [FIVE] years;

(C) [(B)] if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 10 to 14 [10] years;

(D) [(C)] if the offense is a third felony conviction, does not involve circumstances described in (E) [(D)] of this paragraph, 10 to 14 [10] years;

(E) [(D)] if the offense is a third felony conviction, and the defendant has two prior convictions for sexual felonies, 15 to 20 [15] years;

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 10 years and shall be sentenced to a definite term within the following presumptive ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, one to two years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) [(B)] of this paragraph, two to five [TWO] years;

(C) [(B)] if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, three to six [THREE] years;

(D) [(C)] if the offense is a third felony conviction and does not involve circumstances described in (E) [(D)] of this paragraph, three to six [THREE] years;

(E) [(D)] if the offense is a third felony conviction and the

1 defendant has two prior convictions for sexual felonies, six to ten [SIX] years

2 * Sec. 13. AS 12.55.125 is amended by adding a new subsection to read:

3 (n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i)
4 of this section, the total term, made up of the active term of imprisonment plus any
5 suspended term of imprisonment, must fall within the presumptive range, and the
6 active term of imprisonment may not fall below the lower end of the presumptive
7 range.

8 * Sec. 14. AS 12.55.127(d) is amended by adding a new paragraph to read:

9 (4) "presumptive term" means the middle of the applicable
10 presumptive range set out in AS 12.55.125.

11 * Sec. 15. AS 12.55.145(a) is amended to read:

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

13 (1) AS 12.55.125(c), (d), or (e) [(d)(1), (d)(2), (e)(1), OR (e)(2)],

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

18 (B) a conviction in this or another jurisdiction of an offense
19 having elements similar to those of a felony defined as such under Alaska law
20 at the time the offense was committed is considered a prior felony conviction;

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

28 (2) AS 12.55.125(f),

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

1 (B) commission of and conviction for offenses relied on as
2 prior most serious felony offenses must occur in the following order:
3 conviction for the first offense must occur before commission of the second
4 offense, and conviction for the second offense must occur before commission
5 of the offense for which the defendant is being sentenced;

6 (3) AS 12.55.135(g),

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

11 (B) a conviction in this or another jurisdiction of an offense
12 having elements similar to those of a crime against a person or a crime
13 involving domestic violence is considered a prior conviction;

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

21 (4) AS 12.55.125(i),

22 (A) a conviction in this or another jurisdiction of an offense
23 having elements similar to those of a sexual felony is a prior conviction for a
24 sexual felony;

25 (B) a felony conviction in another jurisdiction making it a
26 crime to commit any lewd and lascivious act upon a child under the age of 16
27 years, with the intent of arousing, appealing to, or gratifying the sexual desires
28 of the defendant or the victim is a prior conviction for a sexual felony;

29 (C) two or more convictions arising out of a single, continuous
30 criminal episode during which there was no substantial change in the nature of
31 the criminal objective are considered a single conviction unless the defendant

1 was sentenced to consecutive sentences for the crimes; offenses committed
2 while attempting to escape or avoid detection or apprehension after the
3 commission of another offense are not part of the same criminal episode or
4 objective.

5 * Sec. 16. AS 12.55.155(a) is amended to read:

6 (a) Except as provided in (e) of this section, if [If] a defendant is convicted
7 of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i)
8 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and

9 (1) the low end of the presumptive range [TERM] is four years or
10 less, the court may impose any sentence below the presumptive range [DECREASE
11 THE PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS THE
12 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of
13 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment
14 for factors in aggravation;

15 (2) the low end of the presumptive range [TERM OF
16 IMPRISONMENT] is more than four years, the court may impose a sentence below
17 the presumptive range as long as the active term of imprisonment is not less than
18 50 percent of the low end of the presumptive range [DECREASE THE
19 PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS 50 PERCENT OF THE
20 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of
21 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment
22 for factors in aggravation.

23 * Sec. 17. AS 12.55.155(b) is amended to read:

24 (b) Sentences [SENTENCE INCREMENTS AND DECREMENTS] under
25 this section that are outside of the presumptive ranges set out in AS 12.55.125
26 shall be based on the totality of the aggravating and mitigating factors set out in (c)
27 and (d) of this section.

28 * Sec. 18. AS 12.55.155(c) is amended to read:

29 (c) The following factors shall be considered by the sentencing court if
30 proven in accordance with this section, and may allow imposition of a sentence
31 above the presumptive range [AND MAY AGGRAVATE THE PRESUMPTIVE

1 TERMS] set out in AS 12.55.125:

2 (1) a person, other than an accomplice, sustained physical injury as a
3 direct result of the defendant's conduct;

4 (2) the defendant's conduct during the commission of the offense
5 manifested deliberate cruelty to another person;

6 (3) the defendant was the leader of a group of three or more persons
7 who participated in the offense;

8 (4) the defendant employed a dangerous instrument in furtherance of
9 the offense;

10 (5) the defendant knew or reasonably should have known that the
11 victim of the offense was particularly vulnerable or incapable of resistance due to
12 advanced age, disability, ill health, or extreme youth or was for any other reason
13 substantially incapable of exercising normal physical or mental powers of resistance;

14 (6) the defendant's conduct created a risk of imminent physical injury
15 to three or more persons, other than accomplices,

16 (7) a prior felony conviction considered for the purpose of invoking a
17 [THE] presumptive range under [TERMS OF] this chapter was of a more serious
18 class of offense than the present offense;

19 (8) the defendant's prior criminal history includes conduct involving
20 aggravated or repeated instances of assaultive behavior;

21 (9) the defendant knew that the offense involved more than one victim;

22 (10) the conduct constituting the offense was among the most serious
23 conduct included in the definition of the offense;

24 (11) the defendant committed the offense under [PURSUANT TO] an
25 agreement that the defendant either pay or be paid for the commission of the offense,
26 and the pecuniary incentive was beyond that inherent in the offense itself;

27 (12) the defendant was on release under AS 12.30.020 or 12.30.040 for
28 another felony charge or conviction or for a misdemeanor charge or conviction having
29 assault as a necessary element;

30 (13) the defendant knowingly directed the conduct constituting the
31 offense at an active officer of t' e court or at an active or former judicial officer,

1 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,
2 emergency medical technician, paramedic, ambulance attendant, or other emergency
3 responder during or because of the exercise of official duties;

4 (14) the defendant was a member of an organized group of five or
5 more persons, and the offense was committed to further the criminal objectives of the
6 group;

7 (15) the defendant has three or more prior felony convictions;

8 (16) the defendant's criminal conduct was designed to obtain
9 substantial pecuniary gain and the risk of prosecution and punishment for the conduct
10 is slight;

11 (17) the offense was one of a continuing series of criminal offenses
12 committed in furtherance of illegal business activities from which the defendant
13 derives a major portion of the defendant's income;

14 (18) the offense was a felony

15 (A) specified in AS 11.41 and was committed against a spouse,
16 a former spouse, or a member of the social unit made up of [COMPRISED
17 OF] those living together in the same dwelling as the defendant;

18 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
19 has engaged in the same or other conduct prohibited by a provision of
20 AS 11.41.410 - 11.41.460 involving the same or another victim; or

21 (C) specified in AS 11.41 that is a crime involving domestic
22 violence and was committed in the physical presence or hearing of a child
23 under 16 years of age who was, at the time of the offense, living within the
24 residence of the victim, the residence of the perpetrator, or the residence where
25 the crime involving domestic violence occurred;

26 (19) the defendant's prior criminal history includes an adjudication as a
27 delinquent for conduct that would have been a felony if committed by an adult;

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

31 (21) the defendant has a criminal history of repeated instances of

1 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
2 similar in nature to the offense for which the defendant is being sentenced under this
3 section;

4 (22) the defendant knowingly directed the conduct constituting the
5 offense at a victim because of that person's race, sex, color, creed, physical or mental
6 disability, ancestry, or national origin;

7 (23) the defendant is convicted of an offense specified in AS 11.71 and

8 (A) the offense involved the delivery of a controlled substance
9 under circumstances manifesting an intent to distribute the substance as part of
10 a commercial enterprise; or

11 (B) at the time of the conduct resulting in the conviction, the
12 defendant was caring for or assisting in the care of a child under 10 years of
13 age;

14 (24) the defendant is convicted of an offense specified in AS 11.71 and
15 the offense involved the transportation of controlled substances into the state;

16 (25) the defendant is convicted of an offense specified in AS 11.71 and
17 the offense involved large quantities of a controlled substance;

18 (26) the defendant is convicted of an offense specified in AS 11.71 and
19 the offense involved the distribution of a controlled substance that had been
20 adulterated with a toxic substance;

21 (27) the defendant, being 18 years of age or older,

22 (A) is legally accountable under AS 11.16.110(2) for the
23 conduct of a person who, at the time the offense was committed, was under 18
24 years of age and at least three years younger than the defendant; or

25 (B) is aided or abetted in planning or committing the offense by
26 a person who, at the time the offense was committed, was under 18 years of
27 age and at least three years younger than the defendant;

28 (28) the victim of the offense is a person who provided testimony or
29 evidence related to a prior offense committed by the defendant;

30 (29) the defendant committed the offense for the benefit of, at the
31 direction of, or in association with a criminal street gang;

1 (30) the defendant is convicted of an offense specified in AS 11.41.410
2 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
3 the victim in furtherance of the offense with the intent to make the victim
4 incapacitated; in this paragraph, "incapacitated" has the meaning given in
5 AS 11.41.470;

6 (31) the defendant's prior criminal history includes convictions for
7 five or more crimes in this or another jurisdiction that are class A misdemeanors
8 under the law of this state, or having elements similar to a class A misdemeanor;
9 two or more convictions arising out of a single continuous episode are considered
10 a single conviction; however, an offense is not a part of a continuous episode if
11 committed while attempting to escape or resist arrest or if it is an assault upon a
12 uniformed or otherwise clearly identified peace officer; notice and denial of
13 convictions are governed by AS 12.55.145(b), (c), and (d).

14 * Sec. 19. AS 12.55.155(d) is amended to read:

15 (d) The following factors shall be considered by the sentencing court if
16 proven in accordance with this section, and may allow imposition of a sentence
17 below the presumptive range [AND MAY MITIGATE THE PRESUMPTIVE
18 TERMS] set out in AS 12.55.125:

19 (1) the offense was principally accomplished by another person, and
20 the defendant manifested extreme caution or sincere concern for the safety or well-
21 being of the victim;

22 (2) the defendant, although an accomplice, played only a minor role in
23 the commission of the offense;

24 (3) the defendant committed the offense under some degree of duress,
25 coercion, threat, or compulsion insufficient to constitute a complete defense, but that
26 [WHICH] significantly affected the defendant's conduct;

27 (4) the conduct of a youthful defendant was substantially influenced by
28 another person more mature than the defendant;

29 (5) the conduct of an aged defendant was substantially a product of
30 physical or mental infirmities resulting from the defendant's age;

31 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the

1 defendant acted with serious provocation from the victim;

2 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,
3 the victim provoked the crime to a significant degree;

4 (8) [REPEALED

5 (9) the conduct constituting the offense was among the least serious
6 conduct included in the definition of the offense;

7 (9) [(10)] before the defendant knew that the criminal conduct had
8 been discovered, the defendant fully compensated or made a good faith effort to fully
9 compensate the victim of the defendant's criminal conduct for any damage or injury
10 sustained;

11 (10) [(11)] the defendant was motivated to commit the offense solely
12 by an overwhelming compulsion to provide for emergency necessities for the
13 defendant's immediate family;

14 (11) [(12)] the defendant assisted authorities to detect, apprehend, or
15 prosecute other persons who committed an offense;

16 (12) [(13)] the facts surrounding the commission of the offense and
17 any previous offenses by the defendant establish that the harm caused by the
18 defendant's conduct is consistently minor and inconsistent with the imposition of a
19 substantial period of imprisonment;

20 (13) [(14)] the defendant is convicted of an offense specified in
21 AS 11.71 and the offense involved small quantities of a controlled substance;

22 (14) [(15)] the defendant is convicted of an offense specified in
23 AS 11.71 and the offense involved the distribution of a controlled substance, other
24 than a schedule IA controlled substance, to a personal acquaintance who is 19 years of
25 age or older for no profit;

26 (15) [(16)] the defendant is convicted of an offense specified in
27 AS 11.71 and the offense involved the possession of a small amount of a controlled
28 substance for personal use in the defendant's home;

29 (16) [(17)] in a conviction for assault or attempted assault or for
30 homicide or attempted homicide, the defendant acted in response to domestic violence
31 perpetrated by the victim against the defendant and the domestic violence consisted of

1 aggravated or repeated instances of assaultive behavior.

2 * **Sec. 20.** AS 12.55.155(e) is amended to read:

3 (e) If a factor in aggravation is a necessary element of the present offense, or
4 requires the imposition of a sentence within the presumptive range [TERM] under
5 AS 12.55.125(c)(2), that factor may not be used to impose a sentence above the high
6 end of [AGGRAVATE] the presumptive range [TERM]. If a factor in mitigation is
7 raised at trial as a defense reducing the offense charged to a lesser included offense,
8 that factor may not be used to impose a sentence below the low end of [MITIGATE]
9 the presumptive range [TERM].

10 * **Sec. 21.** AS 12.55.155(f) is amended to read:

11 (f) If the state seeks to establish a factor in aggravation at sentencing

12 (1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this
13 section, or if the defendant seeks to establish a factor in mitigation at sentencing,
14 written notice must be served on the opposing party and filed with the court not later
15 than 10 days before the date set for imposition of sentence; the factors [. FACTORS]
16 in aggravation listed in this paragraph, and factors in mitigation must be established
17 by clear and convincing evidence before the court sitting without a jury; all [. ALL]
18 findings must be set out with specificity;

19 (2) other than one listed in (1) of this subsection, the factor shall be
20 presented to a trial jury under procedures set by the court, unless the defendant
21 waives trial by jury, stipulates to the existence of the factor, or consents to have
22 the factor proven under procedures set out in (1) of this subsection; a factor in
23 aggravation presented to a jury is established if proved beyond a reasonable
24 doubt; written notice of the intent to establish a factor in aggravation must be
25 served on the defendant and filed with the court

26 (A) 10 days before trial, or at another time specified by the
27 court;

28 (B) within 48 hours, or at a time specified by the court, if
29 the court instructs the jury about the option to return a verdict for a lesser
30 included offense; or

31 (C) five days before entering a plea that results in a finding

1 of guilt, or at another time specified by the court.

2 * Sec. 22. AS 12.55.165(a) is amended to read:

3 (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or
4 (i) [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and the court finds by
5 clear and convincing evidence that manifest injustice would result from failure to
6 consider relevant aggravating or mitigating factors not specifically included in
7 AS 12.55.155 or from imposition of a sentence within the presumptive range
8 [TERM], whether or not adjusted for aggravating or mitigating factors, the court shall
9 enter findings and conclusions and cause a record of the proceedings to be transmitted
10 to a three-judge panel for sentencing under AS 12.55.175.

11 * Sec. 23. AS 12.55.175(b) is amended to read:

12 (b) Upon receipt of a record of proceedings under AS 12.55.165, the three-
13 judge panel shall consider all pertinent files, records, and transcripts, including the
14 findings and conclusions of the judge who originally heard the matter. The panel may
15 hear oral testimony to supplement the record before it. If the panel supplements the
16 record, the panel shall permit the victim to testify before the panel. If the panel finds
17 that manifest injustice would result from failure to consider relevant aggravating or
18 mitigating factors not specifically included in AS 12.55.155 or from imposition of a
19 sentence within the presumptive range [TERM], whether or not adjusted for
20 aggravating or mitigating factors, it shall sentence the defendant in accordance with
21 this section. If the panel does not find that manifest injustice would result, it shall
22 remand the case to the sentencing court, with a written statement of its findings and
23 conclusions, for sentencing under AS 12.55.125.

24 * Sec. 24. AS 12.55.175(e) is amended to read:

25 (e) If the three-judge panel determines under (b) of this section that manifest
26 injustice would result from imposition of a sentence within the presumptive range
27 [TERM] and the panel also finds that the defendant has an exceptional potential for
28 rehabilitation and that a sentence of less than the presumptive range [TERM] should
29 be imposed because of the defendant's exceptional potential for rehabilitation, the
30 panel

31 (1) shall sentence the defendant within [TO] the presumptive range

1 [TERM] required under AS 12.55.125 or as permitted under AS 12.55.155:

2 (2) shall order the defendant under AS 12.55.015 to engage in
3 appropriate programs of rehabilitation; and

4 (3) may provide that the defendant is eligible for discretionary parole
5 under AS 33.16.090 during the second half of the sentence imposed under this
6 subsection if the defendant successfully completes all rehabilitation programs ordered
7 under (2) of this subsection.

8 * **Sec. 25.** AS 12.55.185 is amended by adding a new paragraph to read:

9 (18) "active term of imprisonment" has the meaning given in
10 AS 12.55.127.

11 * **Sec. 26.** AS 33.05.070 is amended by adding new subsections to read:

12 (c) At any time within the probation period, a police officer certified by the
13 Alaska Police Standards Council may detain a probationer if the police officer has
14 reasonable suspicion that the probationer has recently violated or may imminently
15 violate a probation condition relating to one of the topics set out in (d) of this section.
16 The police officer may also arrest the probationer without a warrant if the police
17 officer has probable cause to believe that the probationer has violated a probation
18 condition relating to one of the topics set out in (d) of this section.

19 (d) The conditions that permit a police officer to detain or arrest a probationer
20 or parolee without a warrant under AS 33.16.240 and (c) of this section are those
21 conditions imposed by the court, or the parole board, relating to

- 22 (1) geographic limitations on the probationer's movements;
23 (2) possessing or consuming controlled substances under state or
24 federal law;
25 (3) possessing firearms;
26 (4) possessing or consuming alcoholic beverages, or being in a place
27 where they are sold or served;
28 (5) operating or driving a motor vehicle; or
29 (6) other conduct that creates an imminent public danger or threatens
30 serious harm to persons or property.

31 * **Sec. 27.** AS 33.16.085(a) is amended to read:

1 (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term
2 or sentence a prisoner may be serving or any restriction on parole eligibility under
3 AS 12.55, a prisoner who is serving a term of at least 181 days, may, upon application
4 by the prisoner or the commissioner, be released by the board on special medical
5 parole if the board determines that

6 (1) the prisoner has not been convicted of an offense under
7 AS 11.41.410 - 11.41.425 or 11.41.434 - 11.41.438 and the prisoner is severely
8 medically or cognitively disabled as certified in writing by a physician licensed under
9 AS 08.64

10 (2) a reasonable probability exists that

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

13 (B) because of the prisoner's severe medical or cognitive
14 disability, the prisoner will not pose a threat of harm to the public if released
15 on parole; and

16 (C) release of the prisoner on parole would not diminish the
17 seriousness of the crime;

18 (3) the prisoner

19 (A) was not suffering from the severe medical or cognitive
20 disability at the time the prisoner committed the offense or parole or probation
21 violation for which the prisoner is presently incarcerated; or

22 (B) was suffering from the severe medical or cognitive
23 disability at the time the prisoner committed the offense or parole or probation
24 violation for which the prisoner is presently incarcerated and the medical or
25 cognitive disability has progressed so that the likelihood of the prisoner's
26 committing the same or a similar offense is low;

27 (4) the care and supervision that the prisoner requires can be provided
28 in a more medically appropriate or cost-effective manner than by the department;

29 (5) the prisoner is incapacitated to an extent that incarceration does not
30 impose significant additional restrictions on the prisoner;

31 (6) the prisoner is likely to remain subject to the severe medical or

1 cognitive disability throughout the entire period of parole or to die and there is no
2 reasonable expectation that the prisoner's medical or cognitive disability will improve
3 noticeably; and

4 (7) an appropriate discharge plan has been formulated that addresses
5 basic life domains of the prisoner, including care coordination, housing, eligibility for
6 public benefits, and health care, including necessary medication.

7 * **Sec. 28.** AS 33.16.090 is repealed and reenacted to read:

8 **Sec. 33.16.090. Eligibility for discretionary parole and minimum terms to**
9 **be served.** (a) A prisoner sentenced to an active term of imprisonment of at least 181
10 days may, in the discretion of the board, be released on discretionary parole if the
11 prisoner has served the amount of time specified under (b) of this section, except that

12 (1) a prisoner sentenced to one or more mandatory 99-year terms under
13 AS 12.55.125(a) or one or more definite terms under AS 12.55.125(f) is not eligible
14 for consideration for discretionary parole;

15 (2) a prisoner is not eligible for consideration of discretionary parole if
16 made ineligible by order of a court under AS 12.55.115;

17 (3) a prisoner imprisoned under AS 12.55.086 is not eligible for
18 discretionary parole unless the actual term of imprisonment is more than one year.

19 (b) A prisoner eligible under (a) of this section who is sentenced

20 (1) to a single sentence under AS 12.55.125(a) or (b) may not be
21 released on discretionary parole until the prisoner has served the mandatory minimum
22 term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment
23 imposed, or any term set under AS 12.55.115, whichever is greatest;

24 (2) to a single sentence within or below a presumptive range set out in
25 AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i), and has not been allowed by the
26 three-judge panel under AS 12.55.175 to be considered for discretionary parole
27 release, may not be released on discretionary parole until the prisoner has served the
28 term imposed, less good time earned under AS 33.20.010;

29 (3) to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and
30 (4), or (i), and has been allowed by the three-judge panel under AS 12.55.175 to be
31 considered for discretionary parole release during the second half of the sentence, may

1 not be released on discretionary parole until

2 (A) the prisoner has served that portion of the active term of
3 imprisonment required by the three-judge panel; and

4 (B) in addition to the factors set out in AS 33.16.100(a), the
5 board determines that

6 (i) the defendant has successfully completed all
7 rehabilitation programs ordered by the three-judge panel that were
8 made available to the prisoner; and

9 (ii) the prisoner would not constitute a danger to the
10 public if released on parole;

11 (4) to a single enhanced sentence under AS 12.55.155(a) that is above
12 the applicable presumptive range, may not be released on discretionary parole until the
13 prisoner has served the greater of the following:

14 (A) an amount of time, less good time earned under
15 AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth
16 of the amount of time above the presumptive range; or

17 (B) any term set under AS 12.55.115;

18 (5) to a single sentence under any other provision of law, may not be
19 released on discretionary parole until the prisoner has served at least one-fourth of the
20 active term of imprisonment, any mandatory minimum sentence imposed under any
21 provision of law, or any term set under AS 12.55.115, whichever is greatest;

22 (6) to concurrent sentences, may not be released on discretionary
23 parole until the prisoner has served the greatest of

24 (A) any mandatory minimum sentence or sentences imposed
25 under any provision of law;

26 (B) any term set under AS 12.55.115; or

27 (C) the amount of time that is required to be served under (1) -
28 (5) of this subsection for the sentence imposed for the primary crime, had that
29 been the only sentence imposed;

30 (7) to consecutive or partially consecutive sentences, may not be
31 released on discretionary parole until the prisoner has served the greatest of

1 (A) the composite total of any mandatory minimum sentence or
2 sentences imposed under any provision of law, including AS 12.55.127;

3 (B) any term set under AS 12.55.115; or

4 (C) the amount of time that is required to be served under (1) -
5 (5) of this subsection for the sentence imposed for the primary crime, had that
6 been the only sentence imposed, plus one-quarter of the composite total of the
7 active term of imprisonment imposed as consecutive or partially consecutive
8 sentences imposed for all crimes other than the primary crime.

9 (c) As used in this section,

10 (1) "active term of imprisonment" has the meaning given in
11 AS 12.55.185;

12 (2) "primary crime" has the meaning given in AS 12.55.127.

13 * Sec. 29. AS 33.16.100 is amended by adding a new subsection to read:

14 (e) If the parole board considers an application for discretionary parole, and
15 denies parole because the prisoner does not meet the standards in (a) of this section,
16 the board may make a prisoner ineligible for further consideration of discretionary
17 parole, or may require that additional time be served before the prisoner is again
18 eligible for consideration for discretionary parole.

19 * Sec. 30. AS 33.16.240(c) is amended to read:

20 (c) In addition to the powers granted to a police officer under (g) of this
21 section, a [A] parole officer may, without a warrant, arrest a parolee for a violation of
22 parole only if there is danger to the public, if there is a likelihood that the parolee will
23 flee, or if the parolee committed a crime in the presence of the parole officer.

24 * Sec. 31. AS 33.16.240 is amended by adding a new subsection to read:

25 (g) At any time within the period of parole supervision, a police officer
26 certified by the Alaska Police Standards Council may detain a parolee if the officer
27 has reasonable suspicion that the person has recently violated or may imminently
28 violate a parole condition relating to one of the topics set out in AS 33.05.070(d). The
29 officer may also arrest the parolee without a warrant if the officer has probable cause
30 to believe that the person has violated a parole condition relating to one of the topics
31 set out in AS 33.05.070(d).

1 * Sec. 32. AS 12.55.125(k); AS 33.16.100(c) and 33.16.100(d) are repealed.

2 * Sec. 33. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. Sections 1, 4, 6, 26, and 29 - 31 of this Act apply to offenses
5 committed before, on, or after the effective date of this Act. Sections 2, 3, 5, 7 - 25, and 27 -
6 28 of this Act apply to offenses committed on or after the effective date of this Act.
7 References to prior offenses or convictions in secs. 8 - 21 of this Act include offenses
8 committed before, on, or after the effective date of this Act.

9 * Sec. 34. This Act takes effect July 1, 2005.

SB

65

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/19/05

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 65

SB 65 OFFENSES BY MINORS/AGAINST TEACHERS

"An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

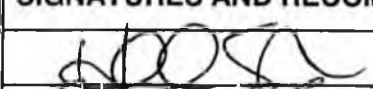


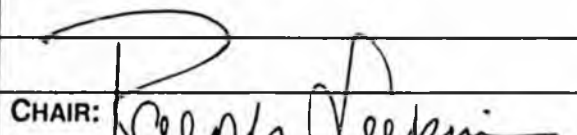
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	X			
			X	
	X			
CHAIR: 	X			



FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

520 Fifth Avenue Fairbanks, Alaska 99701-4756 (907) 452-2000



February 7, 2005

The Honorable Senators Ralph Seekins and Gene Thernault
State Senate
Alaska State Capitol
Juneau, AK 99801-1182

Dear Senators:

The Fairbanks North Star Borough School District praises the efforts of the legislature to strengthen the laws relating to school violence. In particular, the CS for SB65 calls for an aggravating circumstance when assaults occur in places where students are located.

In the new section of AS 12.55.155(c) (31), we would suggest an amendment that would modify

"or in the administrative offices of a school district;" to

"or in the administrative offices of a school district in which students are also educated."

We understand the original intent to cover school district offices; however, the question arises as to why a school district office (comprised solely of adults) should have any different standing than any other office building (public or private). The intent of this new section seems to clearly apply to locations in which students are educated.

Many school districts in Alaska combine administrative space with spaces for students, i.e. administrative offices are located in schools as opposed to a separate building. In Fairbanks, we have a separate administrative center; however, we also have students educated in our administrative center in two programs - one for suspended/expelled students, and the other is our district's Guided Independent Study (correspondence) program. We believe the additional phrase "in which students are also educated" covers the situation where administrative centers also house educational programs for students.

We are pleased to be able to clarify this distinction and hope this amendment is looked upon favorably. If the phrase "in the administrative offices of a school district" is deleted then our students located at our administrative center would not be covered with this additional deterrent.

Sincerely yours

A handwritten signature in cursive script that reads "Ann Shortt".

Ann Shortt, Ed.D.,
Superintendent of Schools

24-GS1096F
Luckhaupt
2/1/05

CS FOR SENATE BILL NO. 65(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to certain weapons offenses involving minors; relating to aggravating**
2 **factors in sentencing for certain offenses committed on school grounds, on a school bus,**
3 **at a school-sponsored event, or in the administrative offices of a school district; and**
4 **providing for an effective date."**

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

6 *** Section 1.** AS 12.55.155(c) is amended by adding a new paragraph to read:

7 (31) the offense is a violation of AS 11.41 and the offense occurred on
8 school grounds, on a school bus, at a school-sponsored event, or in the administrative
9 offices of a school district; in this paragraph,

10 (A) "school bus" has the meaning given in AS 11.71.900;

11 (B) "school district" has the meaning given in AS 47.07.063;

12 (C) "school grounds" has the meaning given in AS 11.71.900.

13 *** Sec. 2.** AS 47.12.030(a) is amended to read:

14 (a) When a minor who was at least 16 years of age at the time of the offense is

1 charged by complaint, information, or indictment with an offense specified in this
2 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
3 for which the minor is charged or to any additional offenses joinable to it under the
4 applicable rules of court governing criminal procedure. The minor shall be charged,
5 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
6 an adult. If the minor is convicted of an offense other than an offense specified in this
7 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
8 the minor is amenable to treatment under this chapter. If the court finds that the minor
9 is amenable to treatment under this chapter, the minor shall be treated as though the
10 charges had been heard under this chapter, and the court shall order disposition of the
11 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this
12 subsection apply when the minor is charged by complaint, information, or indictment
13 with an offense

14 (1) that is an unclassified felony or a class A felony and the felony is a
15 crime against a person;

16 (2) of arson in the first degree; [OR]

17 (3) that is a class B felony and the felony is a crime against a person in
18 which the minor is alleged to have used a deadly weapon in the commission of the
19 offense and the minor was previously adjudicated as a delinquent or convicted as an
20 adult, in this or another jurisdiction, as a result of an offense that involved use of a
21 deadly weapon in the commission of a crime against a person or an offense in another
22 jurisdiction having elements substantially identical to those of a crime against a
23 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
24 weapon" has the meaning given in AS 11.81.900(b); or

25 **(4) that is misconduct involving weapons in the first or second**
26 **degree in violation of AS 11.61.190 or 11.61.195.**

27 * Sec. 3. The uncoded law of the State of Alaska is amended by adding a new section to
28 read:

29 APPLICABILITY. Sections 1 and 2 of this Act apply to acts committed on or after
30 the effective date of this Act.

31 * Sec. 4. This Act takes effect July 1, 2005.

Brian Hove

From: Vanessa Tondini
Sent: Tuesday, January 25, 2005 10:10 PM
To: Brian Hove
Subject: SB 65

Hey Brian,

You guys did a GREAT job today. Thanks for everything and please tell your boss the same. Let me know what your thoughts are from here.

I wanted to discuss SB 65 with you, which you've got up tomorrow morn. We're hearing the House companion HB 88 tomorrow as well. Its the same general topic as HB 41 sponsored by Reps Lynn and McGuire. The admin. agreed with us that we could roll HB 88 into HB 41 and have that move forward. Rep. Lynn had carried that bill for the past two years (HB 54) and we want him (and Lesil) to get the credit for addressing the topic, not the Gov. Due to Blakely, I'm not sure if we're going to go with the mand. min. concept of HB 41 or instead go with the concept of an aggravator in HB 88. We haven't "joined" the bills yet, but I just wanted to give you the heads up on what was happening over here with it just so we can coordinate.

Let me know what happens in your hearing. Thanks Brian and I can't wait to hear your stories from the Inauguration!
Vanessa

Run this by RS again.

HOUSE BILL NO. 41

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY REPRESENTATIVES LYNN AND MCGUIRE, Anderson, Wilson, Ramras

**Introduced: 1/10/05
Referred: Judiciary, Finance**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to minimum periods of imprisonment for the crime of assault in the
2 fourth degree committed against an employee of an elementary, junior high, or
3 secondary school who was engaged in the performance of school duties at the time of the
4 assault."

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

6 * **Section 1.** AS 12.55.135(d) is amended to read:

7 (d) A defendant convicted of assault in the fourth degree who knowingly
8 directed the conduct constituting the offense at

9 (1) a uniformed or otherwise clearly identified peace officer, fire
10 fighter, correctional employee, emergency medical technician, paramedic, ambulance
11 attendant, or other emergency responder who was engaged in the performance of
12 official duties at the time of the assault shall be sentenced to a minimum term of
13 imprisonment of

14 (A) [(1)] 60 days if the defendant violated AS 11.41.230(a)(1)

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or (2);

(B) [(2)] 30 days if the defendant violated AS 11.41.230(a)(3);

(2) an employee of an elementary, junior high, or secondary school who was engaged in the performance of school duties at the time of the assault shall be sentenced to a minimum term of imprisonment of 60 days if the defendant violated AS 11.41.230(a)(1) or (2).

HOUSE BILL NO. 88

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/19/05
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain weapons offenses involving minors; to aggravating factors in**
2 **sentencing for certain offenses committed against a school employee; and providing for**
3 **an effective date."**

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 **SHORT TITLE.** This Act may be known as the School Violence Prevention Act of
8 2005.

9 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

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

12 (1) violent crime among the state's youth is of concern to Alaskans;

13 (2) the Department of Health and Social Services conducted a youth risk
14 behavior survey and found the following:

1 (A) 29.8 percent of male students in this state responding to the survey
2 reported carrying a weapon; this figure is higher than the national average;

3 (B) 11.8 percent of male students in this state responding to the survey
4 reported carrying a weapon, such as a gun, knife, or club, on school property within
5 the 30 days before taking the survey; this figure is higher than the national average;

6 (C) nearly 11 percent of high school students in this state responding
7 to the survey reported having been threatened or injured with a weapon, such as a gun,
8 knife, or club, on school grounds within the 12 months before taking the survey; and

9 (3) in 2003, 13 percent of students responding to a survey by the Anchorage
10 School District reported feeling unsafe at school; this figure is more than double the average
11 percentage of students nationwide who felt unsafe at school.

12 (b) It is the intent of the legislature to further the important state interest of deterring
13 misconduct involving weapons by certain minors, and in discouraging crime in the schools of
14 this state.

15 * Sec. 3. AS 12.55.155(c) is amended by adding a new paragraph to read:

16 (31) the offense is a violation of AS 11.41 and the defendant
17 knowingly directed the conduct constituting the offense against a school employee
18 while on school grounds or at a school-sponsored event.

19 * Sec. 4. AS 47.12.030(a) is amended to read:

20 (a) When a minor who was at least 16 years of age at the time of the offense is
21 charged by complaint, information, or indictment with an offense specified in this
22 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
23 for which the minor is charged or to any additional offenses joinable to it under the
24 applicable rules of court governing criminal procedure. The minor shall be charged,
25 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
26 an adult. If the minor is convicted of an offense other than an offense specified in this
27 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
28 the minor is amenable to treatment under this chapter. If the court finds that the minor
29 is amenable to treatment under this chapter, the minor shall be treated as though the
30 charges had been heard under this chapter, and the court shall order disposition of the
31 charges of which the minor is convicted under AS 47.12.120(b). The provisions of

1 this subsection apply when the minor is charged by complaint, information, or
2 indictment with an offense

3 (1) that is an unclassified felony or a class A felony and the felony is a
4 crime against a person;

5 (2) of arson in the first degree; [OR]

6 (3) that is a class B felony and the felony is a crime against a person in
7 which the minor is alleged to have used a deadly weapon in the commission of the
8 offense and the minor was previously adjudicated as a delinquent or convicted as an
9 adult, in this or another jurisdiction, as a result of an offense that involved use of a
10 deadly weapon in the commission of a crime against a person or an offense in another
11 jurisdiction having elements substantially identical to those of a crime against a
12 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
13 weapon" has the meaning given in AS 11.81.900(b); or

14 (4) that is misconduct involving weapons in the first or second
15 degree in violation of AS 11.61.190 or 11.61.195.

16 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 APPLICABILITY. Sections 3 and 4 of this Act apply to acts committed on or after
19 the effective date of this Act.

20 * Sec. 6. This Act takes effect July 1, 2005.



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SB65
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill, the School Violence Prevention Act of 2005, that addresses certain weapons violations by children and assault and other crimes by adults in schools. Violence by students and adults in schools is simply unacceptable.

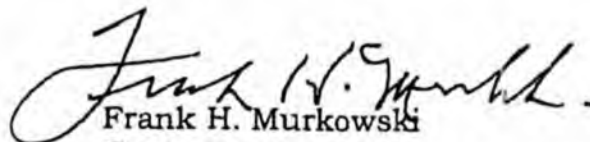
This bill would provide that minors who are 16 or 17 years old and commit certain felony misconduct involving weapons are automatically waived to adult court. This will deter such potentially lethal activity with a weapon by holding these minors accountable to the same legal consequences adults face for this conduct. When minors engage in a dispute and weapons are brought into the situation, the negative effects are magnified for all involved.

This bill also addresses violence by adults at school. It would adopt an aggravating factor in sentencing for those convicted of a crime against a person, such as assault, on a school employee on school grounds or at a school-sponsored event.

The enactment of this legislation will send the message that Alaskans will not tolerate violence in our schools, either by minors or adults. All children and teachers in this state should have a safe environment in which to work and learn.

I urge your prompt and favorable action on this measure.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

COMMITTEE COPY

SENATE BILL 65

Sectional Analysis

Section 1 adopts the title "School Violence Prevention Act of 2005".

Section 2 proposes findings, including one of legislative and public concern for violent crime among Alaska youth; information from the Alaska Department of Health and Social Services Youth Risk Behavior Study of 2003; and the Anchorage School District survey in 2003 indicating that 13% of Anchorage students who responded to the survey did not feel safe at school. **Section 2** also adopts legislative intent to deter violence involving weapons by minors, and discouraging school violence in Alaska.

Section 3 adopts an aggravating factor for sentencing persons convicted of crimes against a person in violation of AS 11.41. AS 11.41 includes homicide, assault, kidnapping, sexual offenses, and robbery, and related offenses.

The new aggravating factor applies to a sentence for a person convicted of an offense under AS 11.41, if the person directed the crime against a school employee while on school grounds or at a school-sponsored event.

Aggravating factors apply to sentences for felonies. However, at misdemeanor sentencing proceedings, the prosecution may and often does argue that the court should consider aggravating factors in sentencing defendants convicted of a misdemeanor.

Section 4. Generally minors who commit crimes come under the juvenile justice system. For certain serious crimes, however, the law requires that minors 16 and 17 years of age be prosecuted as adults. These crimes include murder, manslaughter, assault in the first degree, first degree sexual assault and first degree sexual abuse, and arson. **Section 4** adds misconduct in the first and second degrees to these crimes. Misconduct involving weapons in the first degree is a class A felony. Misconduct involving weapons in the second degree is a class B felony. Both address criminal conduct with firearms. For example, the first degree offense prohibits discharging a firearm from a moving propelled vehicle under circumstances manifesting substantial risk of harm to a person or property. The second degree offense prohibits, for example, possession of a firearm during the commission of a drug crime.

Table 38
 Anchorage School District
 Student Report Card Survey
 Number = 19,186

Question	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Our school is clean and well maintained.	20%	44%	18%	12%	6%
I am treated fairly by adults here at school.	25%	38%	20%	11%	6%
I am treated fairly by other students.	16%	40%	24%	12%	8%
I find my school work interesting.	18%	32%	27%	13%	10%
I understand the school work I am given.	22%	44%	23%	7%	4%
Our school rules are fair.	23%	30%	22%	14%	11%
My teachers treat me with respect.	36%	37%	16%	6%	5%
Students here treat me with respect.	15%	39%	26%	12%	8%
Our school rules are fairly enforced.	22%	32%	26%	11%	9%
I like school.	24%	27%	24%	11%	15%
I am safe at school.	34%	34%	20%	7%	6%
If I have a problem at school, I know where I can go for help.	32%	38%	18%	7%	6%
Have chances to participate in school activities.	34%	42%	15%	5%	4%
I use computers at school.	37%	39%	12%	7%	7%
The library/media center has the materials I need to do my school work.	25%	37%	25%	8%	6%
I feel welcome at school.	29%	35%	22%	7%	7%
I feel safe on the bus and at the bus stop.	17%	24%	20%	7%	32%

13%

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 65
 (S) Publish Date: 1/19/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to penalties for certain weapons offenses involving minors; to delinquent minors..." RDU CRIMINAL
 Sponsor _____ Component CDCO
 Requester Governor Component No. _____

Expenditures/Revenues (The Usands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill seeks to address the issue of school violence by adopting an aggravating factor in sentencing a person convicted of felony assault directed at a school employee. The bill would deter minors 16 years and older from committing felony offenses involving misconduct with weapons in the first and second degrees by holding them accountable to the same legal consequences as adults. Passage of this legislation will not have a foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-5427
 Division: Administrative Services Date/Time 1/18/05 3:14 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/18/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 65
 (S) Publish Date: 1/18/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title WEAPONS OFFENSES INVOLVING MINORS
AND OFFENSES AGAINST SCHOOL
EMPLOYEES

RDU Juvenile Justice

Component Probation Services

Sponsor (RLS) BY REQUEST OF THE
GOVERNOR

Requester GOVERNOR

Component No. 2134

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation will not have a significant impact on workloads of the Division of Juvenile Justice staff. Therefore, this zero fiscal note is entered to reflect negligible fiscal impact.

Prepared by: Patty Ware
 Division: Juvenile Justice
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-2112
 Date/Time _____
 Date 01/06/2005



Alaska Youth Risk Behavior Survey 2003



2003 Youth Risk Behavior Survey (YRBS)



A Joint Project Between
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Acknowledgments

The 2003 Alaska Youth Risk Behavior Survey would not have been possible without the support of many individuals working cooperatively at all phases of the project. We would like to thank:

- School district superintendents and administrators, school boards, secondary school principals, teachers, parents and guardians who cooperated with and supported the survey
- The U.S. Centers for Disease Control and Prevention, Division of Adolescent and School Health, and Westat, Inc. for their technical assistance; and most importantly;
- The Alaska students who participated in the survey

Table of Contents

Youth Risk Behavior Survey	
Introduction	1
Youth Risk Behavior Survey Background	3
Methodology	4
Survey Limitations	5
High School Results	
Section I: Intentional and Unintentional Injuries	6
Section II: Tobacco Use	14
Section III: Drug and Alcohol Use	18
Section IV: Sexual Behaviors	23
Section V: Weight and Dietary Behaviors	28
Section VI: Physical Activity	32
Section VII: Connectedness	35
References	37
Appendices	
A. Body Mass Index	40
B. High School Questions	41

Introduction

As the State of Alaska moves into the 21st century, it is more important than ever to provide quality instruction to children across our state. Research tells us that many of our students struggle with issues and problems not addressed within the typical school day. In order to better understand and provide assistance with those issues, the Alaska Department of Health and Social Services conducted this survey to assess students' self-reported health risk behaviors.

With a better understanding of the risk behaviors that may lead to early morbidity and mortality; schools, agencies and communities will be better equipped to provide effective interventions, resources and quality prevention services. By addressing risk behaviors early and providing support and guidance, schools will provide students with a much greater opportunity to succeed in school and beyond.

This report describes the methods used to conduct and the results of the 2003 Alaska Youth Risk Behavior Survey (YRBS). The 2003 results are compared to the 1995 YRBS results for an overview of how risk behaviors have changed over the last several years among youth in Alaska. Where data are available, Alaska results are compared to U.S. 2001 YRBS results. The survey is intended to provide a better understanding of the health risk behaviors for students in public school settings. The YRBS asks students to self-report on their behaviors in six major areas of health that directly lead to morbidity and mortality in adult populations within our country.

How To Use This Report

The results of the YRBS can help detect changes in risk behaviors over time and provide an important piece of program evaluation. The information from the YRBS will identify and highlight the differences and similarities in risk behaviors among high school students in Alaska and the US. This information will help schools, communities and parents focus primary prevention efforts and better utilize limited resources.

Think of this report as a tool for starting discussions, for encouraging parent involvement, for educating the community, for planning and evaluating programs, for comparing Alaska students with other students nationwide and strengthening existing programs and policies.

- **Starting the Conversation.** Use this report to begin a conversation with young people about the personal choices they make or about the health of their community. Ask them if the results accurately reflect what they see happening around them. How do they explain the results? What ideas do they have about ways to promote healthy behaviors? From their perspective, what seems to be working and what isn't working?
- **Increasing Awareness.** This report provides an opportunity to make community members aware of the risks that their young people face. It can dispel myths and correct misinformation about the "average teenager." In addition, you can use the YRBS to **accentuate the positive**, and to celebrate the fact that many students are abstaining from behaviors that endanger their health and their ability to succeed.

- **Planning and Evaluating Programs.** The results of this report can serve as the basis for a school and/or community needs assessment. It can help identify strengths and weaknesses in current programs and can suggest strategies to address gaps in services to students. Identifying areas that need strengthening can expand professional development efforts within schools and in the larger community.
- **Alaska and National Comparisons.** The Centers for Disease Control and Prevention (CDC) conducts a biennial YRBS of a national sample of high school students. These results permit us to draw comparisons between Alaska and the nation.
- **Alaska Comparisons 1995 to 2003.** The Centers for Disease Control and Prevention provides a Trend Analysis Report to states who have conducted and received weighted data from the YRBS in multiple years. The report indicates where statistically significant trends exist for each standard YRBS question and helps states to determine if behaviors have increased, decreased, or stayed the same over time. We have noted the statistically significant changes throughout this document wherever applicable. They are noted with an * by the 2003 percentage value in the charts and graphs and stated as significant in the text.

Youth Risk Behavior Survey Background

The Youth Risk Behavior Survey (YRBS) is part of an epidemiological surveillance system that was established in 1988 by the U.S. Centers for Disease Control and Prevention (CDC) to help monitor the prevalence of behaviors that not only influence adolescent health, but also put youth at risk for the most significant health and social problems that can occur during adolescence and adulthood.

The YRBS specifically investigates behaviors related to the leading causes of mortality, morbidity and social problems among youth in the United States. Among deaths occurring to youths aged 10-24 years, 70% are due to intentional and unintentional injuries (motor-vehicle crashes, homicide, suicide and other unintentional injuries).¹ Results from the 2003 YRBS demonstrate that numerous high school students are engaging in these behaviors increasing their likelihood of dying from these four causes. Additionally, many behaviors that contribute to preventable adult deaths are initiated during adolescence. Among adults in the U.S. over 25 years of age, 64.6% of deaths are caused by cardiovascular disease (41.0%) and cancer (23.6%).¹ Behaviors related to these causes of death include: use of tobacco; excessive consumption of fats, calories and sodium; insufficient consumption of milk, fiber, fruits and vegetables; and insufficient physical activity.

Voluntary behaviors directly contribute to the deaths, diseases and social problems described above. Examples of risk behaviors include: carrying a weapon, physical fighting, suicide attempts, drinking or using drugs, lack of seatbelt or helmet use and unprotected sexual intercourse.

The YRBS survey examines six categories of adolescent behavior:

- behaviors that result in unintentional and intentional injuries;
- tobacco use;
- alcohol and other drug use;
- sexual behaviors that can result in HIV infection, other sexually transmitted diseases (STD's) and unintended pregnancies;
- dietary behaviors; and
- physical activity.

The YRBS high school survey was first implemented at the national level in 1990. Since that time CDC has sponsored national and state surveys in 1991, 1993, 1995, 1997, 1999, 2001 and, most recently, in 2003. Alaska first participated in the YRBS in 1995 at both the high school and middle school levels and obtained weighted (representative) statewide data. Due to external factors, the YRBS was not administered in 1997. It was administered in 1999, however the 1999 sample did not include the Anchorage School District, the state's largest school district. Without Anchorage, the data were not representative of the state as a whole. The survey was administered in 2001 with the participation of Anchorage, but not enough student responses statewide were collected, and so no data were analyzed. A major obstacle in 2001 was the active parental consent law that had just gone into effect at the end of the 1999 survey administration. In 2003 the survey was administered statewide with active parental consent and weighted (representative) data were obtained. Comparisons with 1995 data, the only other representative statewide data, are highlighted throughout this report.

Methodology

The 2003 YRBS was a replica of the 1995 YRBS with the exception that active parental consent was used in 2003 and additional questions were added. As a result, the 2003 survey results are comparable to 1995.

A two-stage sample design was used to select the students eligible for participation. The first stage consisted of selecting schools. Schools were selected with probability proportional to the size of their enrollment. Alaska has a large number of small schools, which means more schools were needed to obtain the number of students required for the desired precision. Once a school was selected, classes were selected as the second stage. Eligible classes were those where a student would be enrolled in one and only one class at a time. For example second period or required English. This gave each student an equal opportunity of being selected. At any time a school district, an individual school, a student's parents, or a specific student had the opportunity to decline to participate.

The samples were scientifically selected with each eligible student in the school population having an equal probability of being selected. This sampling process is most often referred to as probability sampling. The size of a sample is related directly to the size of the eligible population, the estimated student response rate, and the desired precision of the results. The eligible student population was determined from the official 2002 October enrollment counts reported by the Alaska Department of Education & Early Development. The enrollment count was edited to include only students in grades 9 through 12. The school list was edited to remove boarding, correspondence, home study, alternative, and correctional schools. A sufficient number of students were selected to give a plus or minus five percent margin of error for each question.

The numbers sampled in each stage were adjusted upward in anticipation that some schools and students would fail to participate. To ensure that sample results can be generalized to the total population, the overall participation rate (school participation rate multiplied by the student participation rate) must be equal to or greater than 60 percent. The overall 2003 high school YRBS participation rate exceeded 60 percent and the results are weighted to represent risk behaviors of all students enrolled in Alaska public high schools in grades 9-12.

At the classroom level, teachers were given a script to read to students that established guidelines for student privacy and anonymity and the importance of the survey. Each student was given an unmarked envelope in which to seal his or her survey before turning it in. These survey envelopes remained sealed until received at a central state collection site. No individual identifiers were recorded on the surveys or sealed envelopes.

The Centers for Disease Control and Prevention (CDC) and Westat, Inc, a CDC contractor, analyzed the state survey data. Analysis included performance of extensive edit checks to identify survey inconsistencies. When inconsistencies were found, responses were excluded from the analysis. For example, if a student reported in one question having never been in a physical fight, but then reported in another question being hurt in a physical fight, the data on that student were excluded for the two questions related to physical fighting. These inconsistencies occurred with a frequency of less than 2% on average. There were only 14 questions which had logic inconsistencies higher than 5% and all were less than 11%.

At the same time that Alaska implemented the YRBS, a national YRBS was conducted at the high school level. Because the results of the national YRBS 2003 survey were not available at the time this report was written, when applicable, 2001 national YRBS results were used for comparison.

Survey Limitations

The 2003 YRBS provides descriptive data on the who, what, where and when of the self-reported behaviors in a number of major risk categories. The YRBS survey does not attempt to answer the questions of why and how. The descriptive data apply only to students attending public high schools (grades 9-12) in Alaska.

Participation in the Statewide Survey

The high school sample was drawn with a desired precision of ± 5 percent. The high school sample included 42 schools from 19 districts and sought 2,175 completed questionnaires. The overall response rate was 62 percent with 90 percent of the schools and 68 percent of the students participating. The high school survey results can be generalized to the eligible students in grades 9 - 12. Table 1 provides a comparison of the sampled student characteristics to those characteristics in the statewide enrollment as well as the characteristics in the eligible population. As can be seen the adjusted weighted percentages closely mirror the percentages of students by sex and grade, but not race/ethnicity. This is because the gender/grade characteristics reported by each participating class were used to calculate the final weighted value.

Table 1: High School Student Demographic Characteristics

		% Total Statewide Enrollment	% Eligible for Sample Selection	% In Sample	Adjusted Weighted %
Sex	Female	48.1	47.8	47.9	48.1
	Male	51.9	52.2	51.4	51.9
	Refused Response	n/a	n/a	0.7	**
Grade	9th	29.7	30.2	34.4	30.0
	10th	25.6	25.8	21.1	25.7
	11th	22.7	22.8	24.4	22.7
	12th	22.0	21.2	18.4	21.1
	Other/Missing	n/a	n/a	1.6	0.5
Race/Ethnicity	Alaskan/American Native	23.0	22.9	19.9	23.0
	Asian/Pacific Islander	6.3	6.8	7.2	8.1
	African American/Black	4.3	4.4	2.9	1.8
	Hispanic	3.1	3.2	4.3	3.0
	White	61.4	61.5	60.7	61.4
	Multiple Races	2.0	1.2	4.2	2.7
	Refused Response	n/a	n/a	0.9	**

n/a indicates not available.

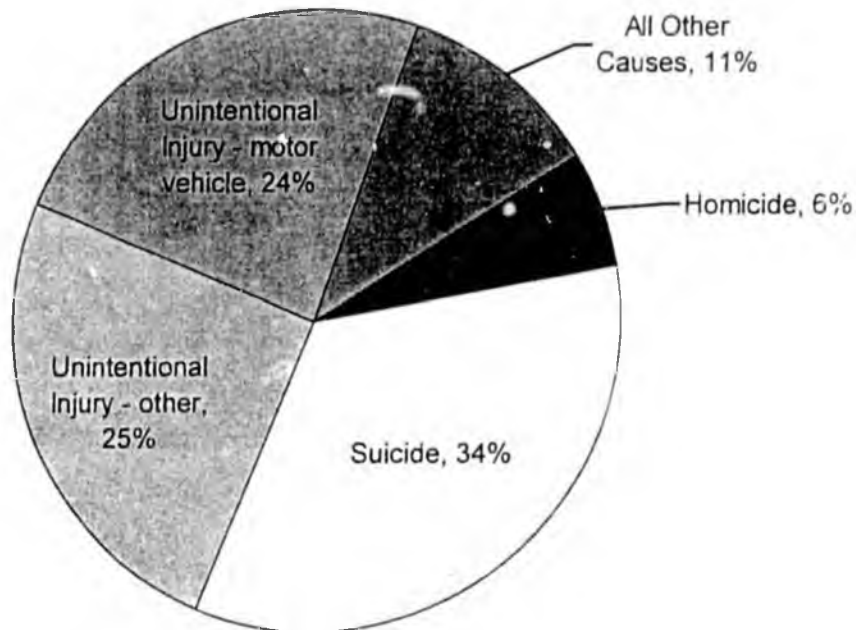
** indicates responses excluded from weighted calculations.

Section I: Injury

Background

Injuries are the leading causes of death among children, adolescents and young adults.¹ As shown in the accompanying graph, 89% of the deaths among young people in Alaska (ages 14- 19 years) are attributable to injuries, including motor vehicle crashes, homicide, suicide and other unintentional injuries.

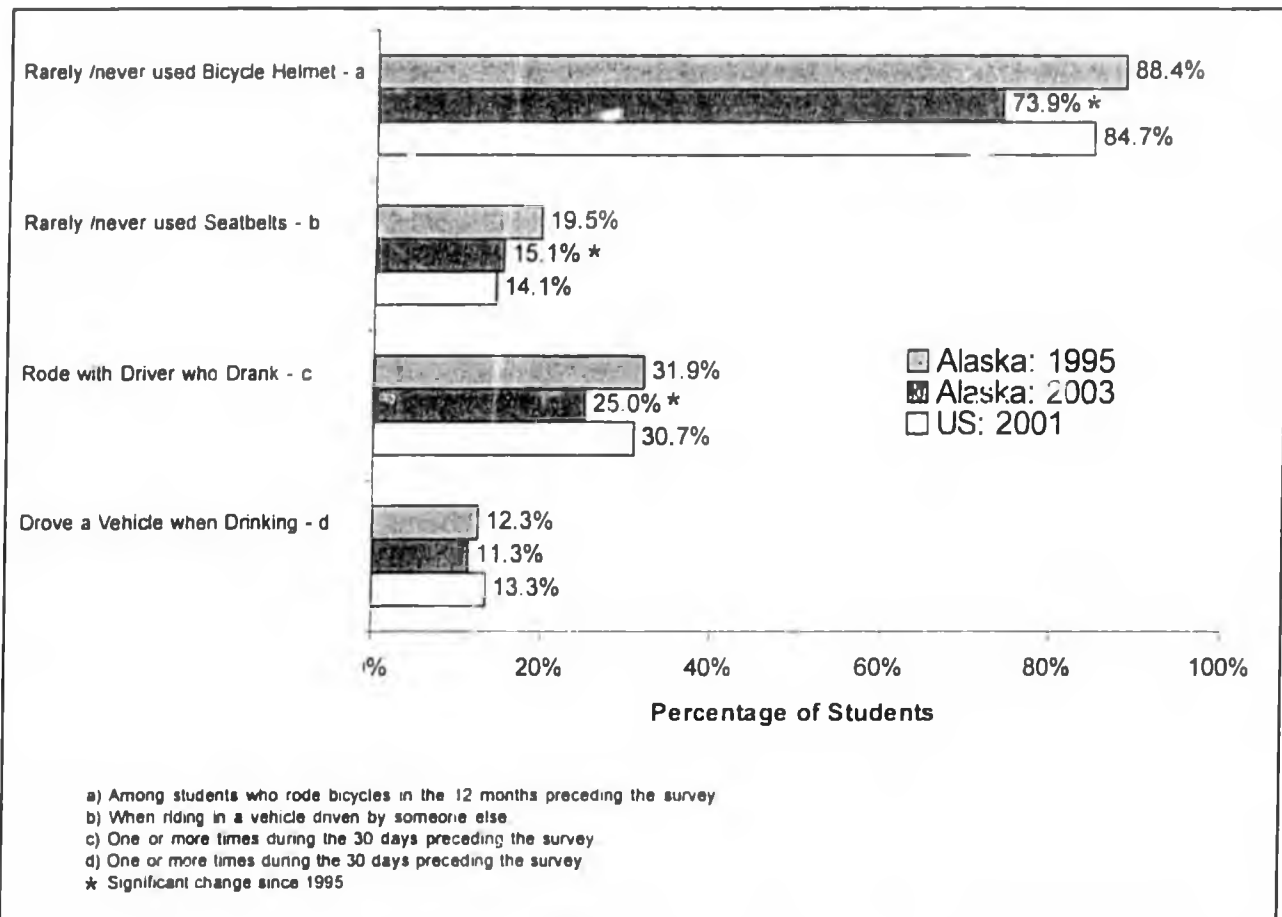
Percentage of Deaths by Cause Among Alaskans Aged 14-19 Years
1999-2001 (N=177)



Source: National Center for Health Statistics (NCHS), Vital Statistics System

Safety Behaviors Regarding Vehicles and Bicycles

Among high school students, only 15.1% report rarely or never using seatbelts. This is a decrease of about 4% from 1995. Among those who ride bicycles, 73.9% report not wearing helmets. Within the 30 days prior to the survey, 25.0% of students rode with an automobile driver who had been drinking alcohol, and 11.3% drove a vehicle when drinking alcohol, a significant decline for both from 1995.

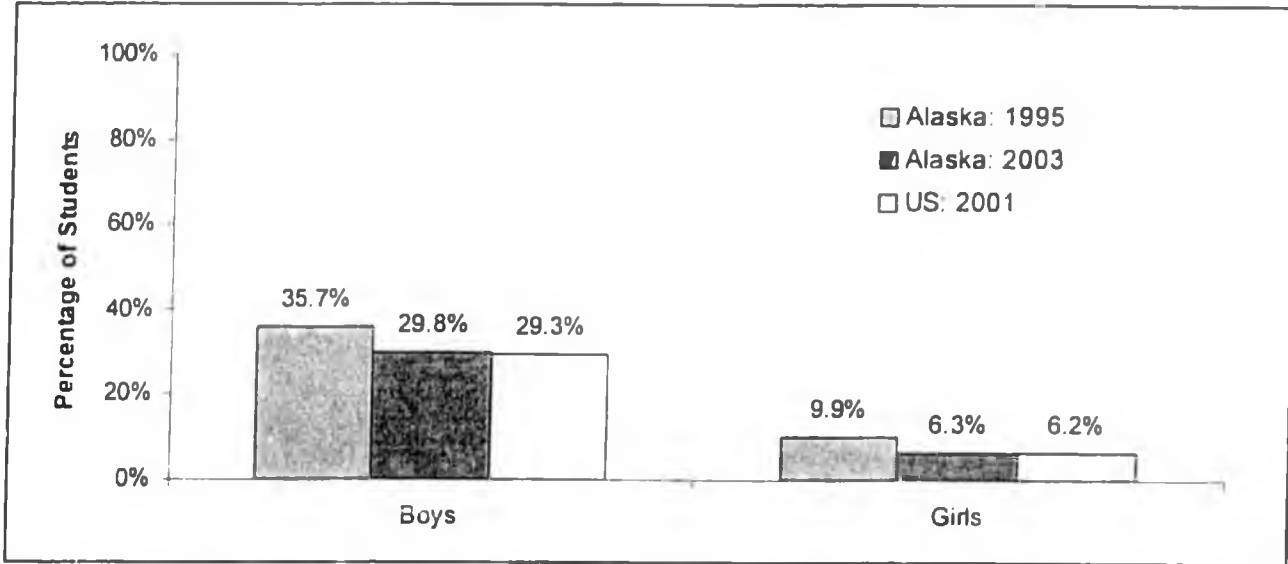


Healthy Alaskans 2010 Objective:

- ▶ Reduce to 20% the proportion of adolescents who ride in vehicle with a driver who has been drinking alcohol (percentage of high school students grades 9-12 who report riding at least once with a driver who had been drinking alcohol within the past 30 days)

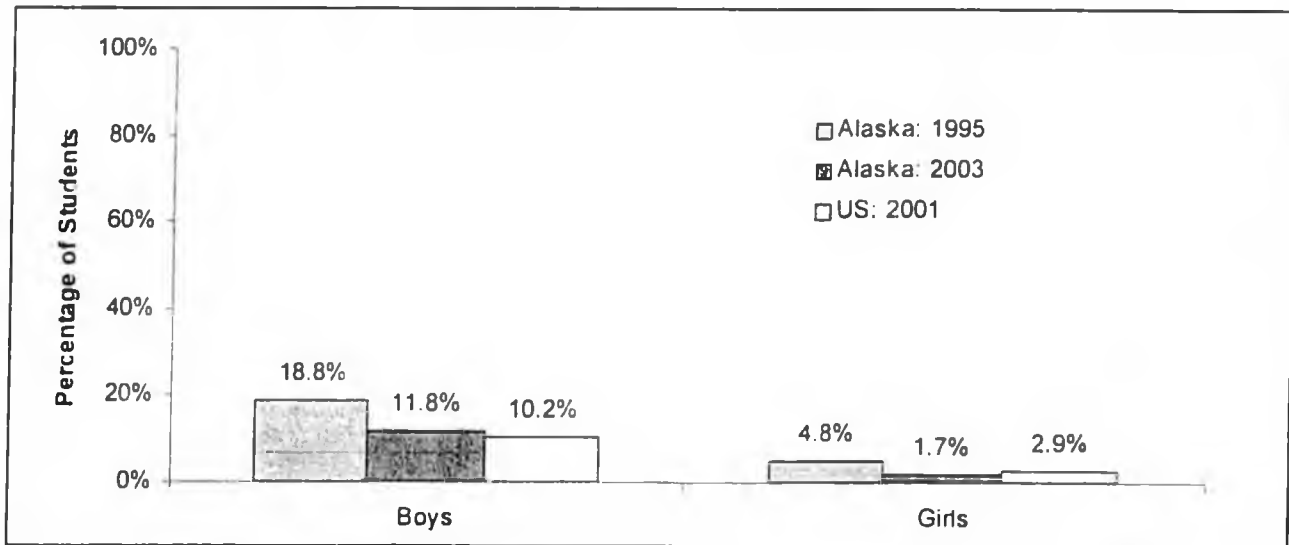
Carried a Weapon

About 6.3% of girls report carrying a weapon compared to 29.8% of boys. Both Alaska boys and girls report similar weapon carrying behavior as U.S. boys and girls. Significant decreases have occurred in weapon carrying behavior for combined sexes since 1995.



Carried a Weapon on School Property

Among Alaska high school students, 11.8% of boys and 1.7% of girls report having carried a weapon, such as a gun, knife or club, on school property in the previous 30 days. Both boys and girls show a significant decrease in weapon carrying on school property from 1995. In 2003 Alaska boys were somewhat (11.8%) more likely to report carrying a weapon on school property than were 2001 U.S. boys (10.2%).

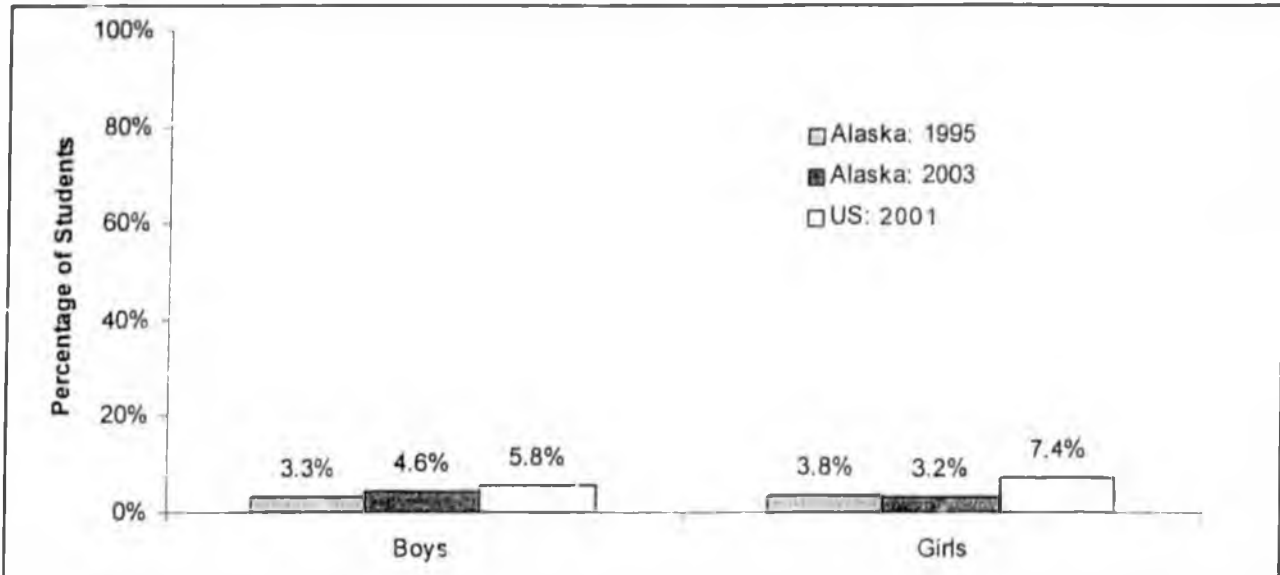


Healthy Alaskans 2010 Objective:

- ▶ Reduce to 3% weapon carrying by high school students on school property (percentage of students who carried a weapon on school property in the past 30 days)

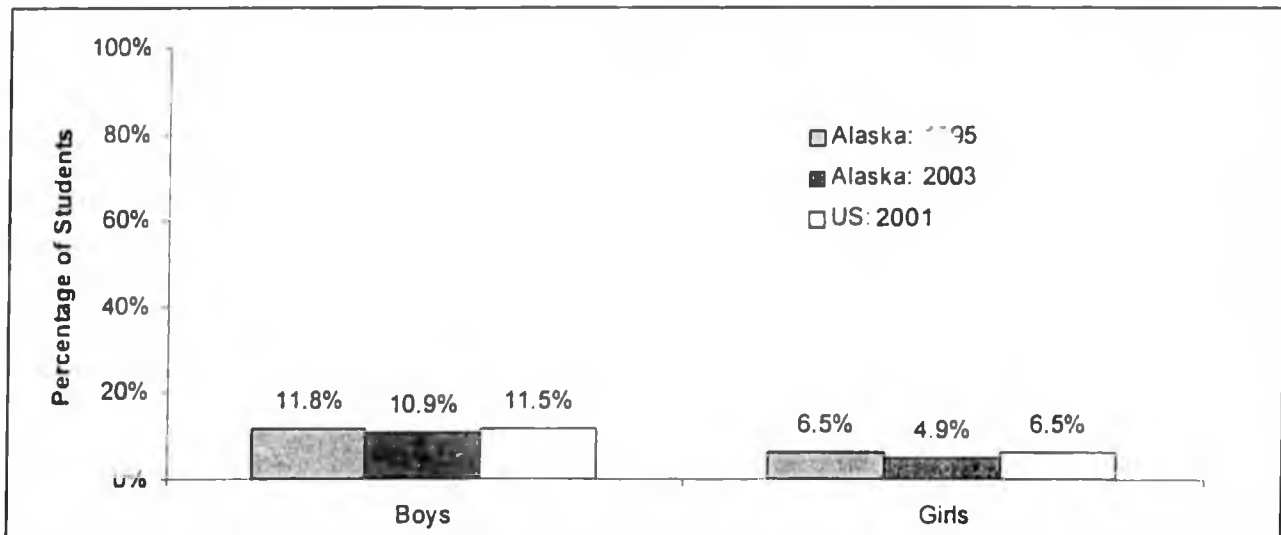
Did Not Go to School on One or More Days in Past 30 Days Because They Felt Unsafe

Among Alaska high school students fewer than 5% of either boys or girls did not go to school because they felt unsafe. Boys show a slight increase (1.3%) from 1995, as where among girls there appears to be no difference.



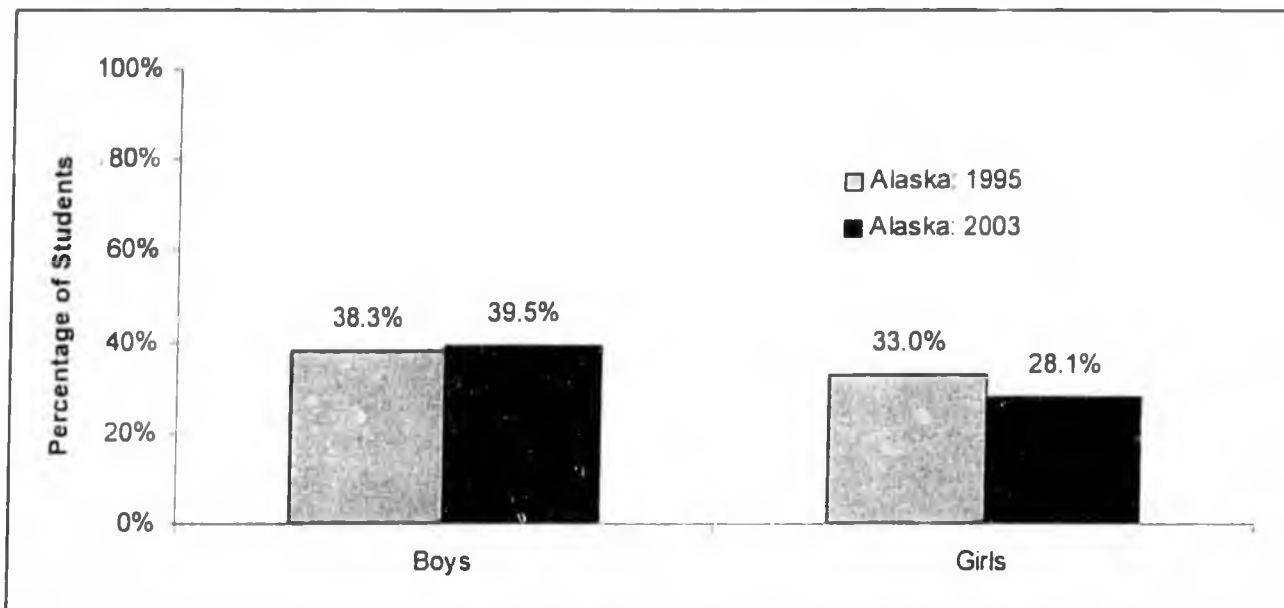
Threatened or Injured by a Weapon on School Property

Among Alaska high school students, 10.9% of boys and 4.9% of girls report having been threatened or injured with a weapon such as a gun, knife or club on school property within the past 12 months. There has been little or no change in this behavior since 1995. A smaller percentage of both Alaska boys and girls report having been threatened or injured with a weapon on school property than U.S. boys and girls report.



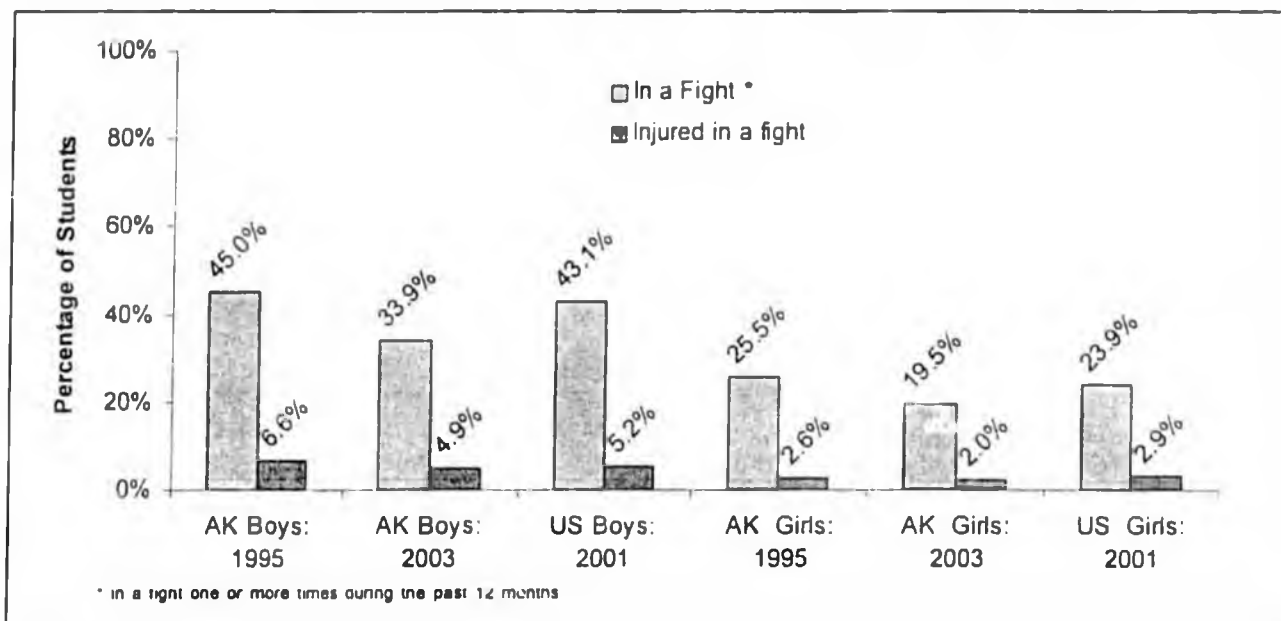
Had Property Stolen at School During Past 12 Months

Among Alaska high school boys, 39.5% report having had property stolen at school compared to 28.1% of girls. Although girls report a drop from 1995, boys show no real change.



Physical Fighting in Past Twelve Months

Among Alaska high school boys, 33.9% report having been in a physical fight within the past 12 months, and 4.9% report having been injured (requiring treatment by a doctor or nurse) in a physical fight. Girls are less likely to report physical fighting. Alaska high school students show a significant decrease in physical fighting since 1995. Alaska boys (33.9%) are significantly less likely to have reported being in a physical fight in the past 12 months than U.S. boys (43.1%).

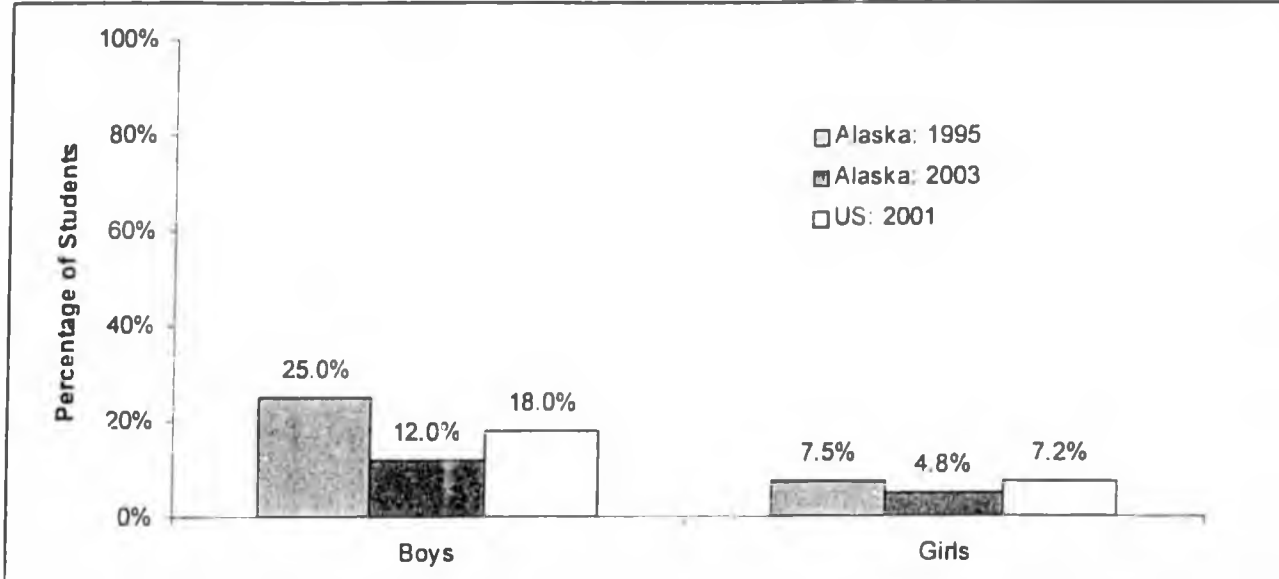


Healthy Alaskans 2010 Objective:

- ▶ Reduce to 20% physical fighting among high school students (percentage of students who have been in a fight in the past 12 months)

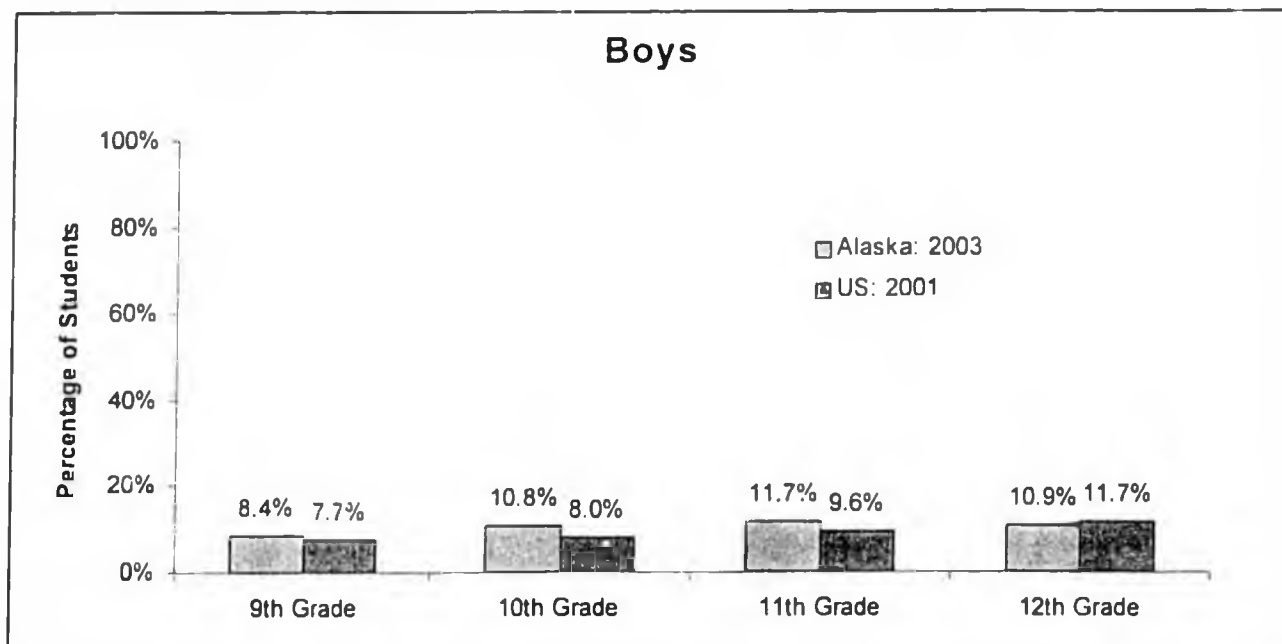
Physical Fighting on School Property in Past 12 Months

Physical fighting among high school boys on school property has decreased by over 50% since 1995, from 25.0% to 12.0%, well below 18.0% for U.S. boys. Among Alaska high school girls the drop is less significant, dropping from 7.5% in 1995 to 4.8% in 2003. When compared to 1995 data, significant changes have occurred for both sexes.



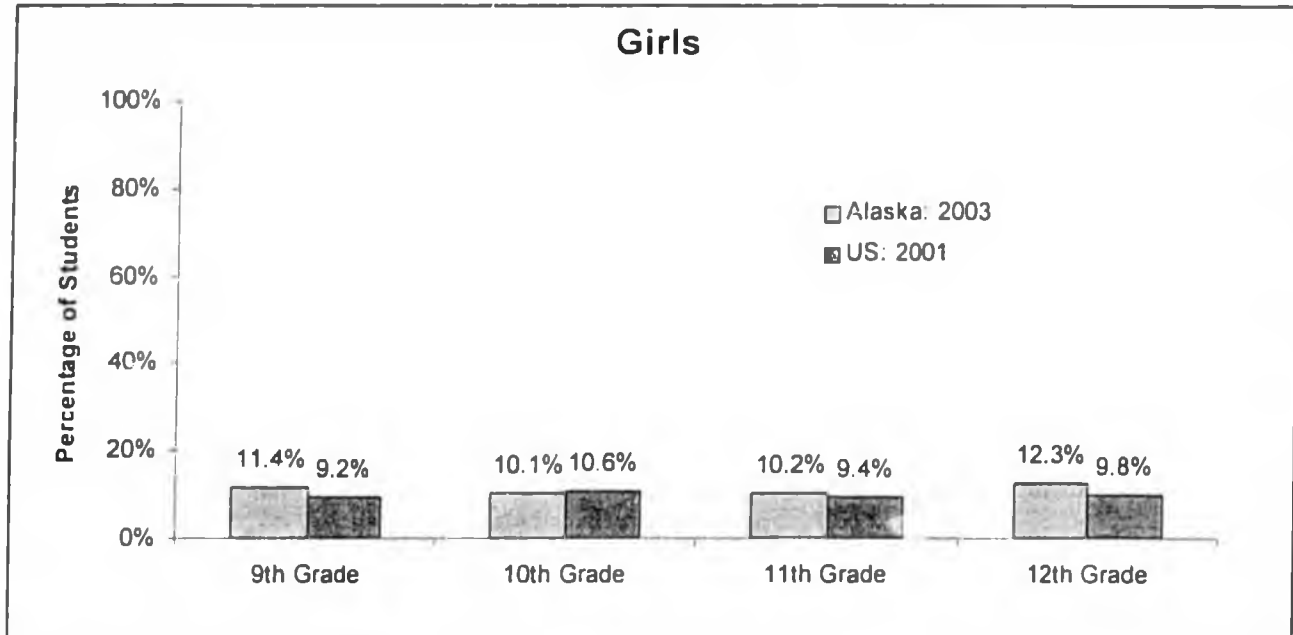
Ever Been Hit, Slapped or Physically Hurt on Purpose During the Past 12 Months

In 2003, among Alaskan high school students (both genders), 10.8% report ever having been slapped or physically hurt by their boyfriend or girlfriend. This is slightly higher than U.S. 2001 students report at 9.5%. Alaska tenth and eleventh grade boys also report a higher rate than U.S. tenth and eleventh grade boys.



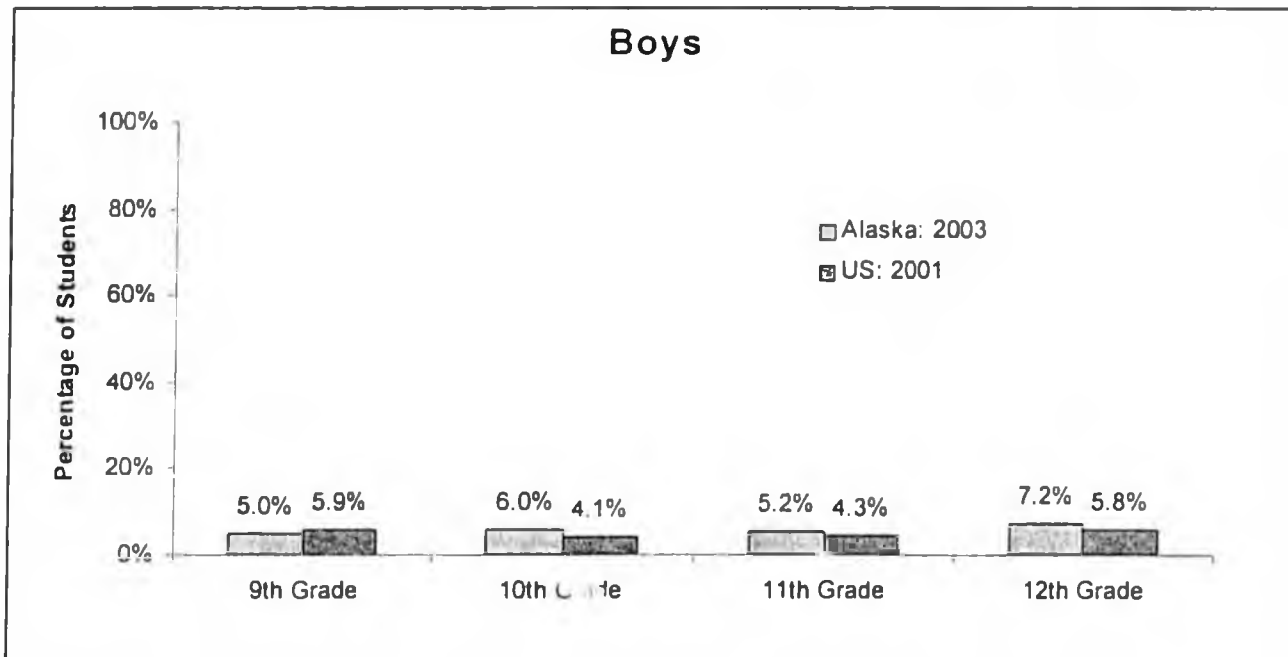
Ever Been Hit, Slapped or Physically Hurt on Purpose During the Past 12 Months

Twelfth grade Alaska girls (12.3%) report being slapped or hit at a slightly higher rate than U.S. girls (9.8%).



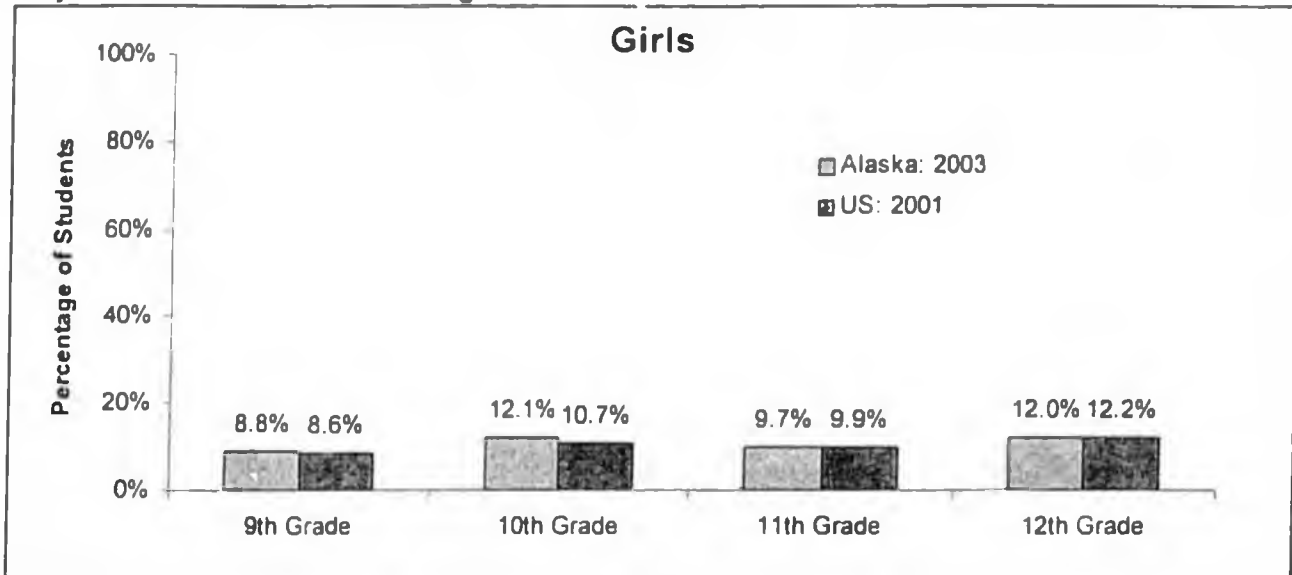
Physically Forced to Have Sex When They Did Not Want to

With the exception of tenth grade boys, Alaska boys are similar to U.S. boys in reporting that they were forced to have sex when they did not want to.



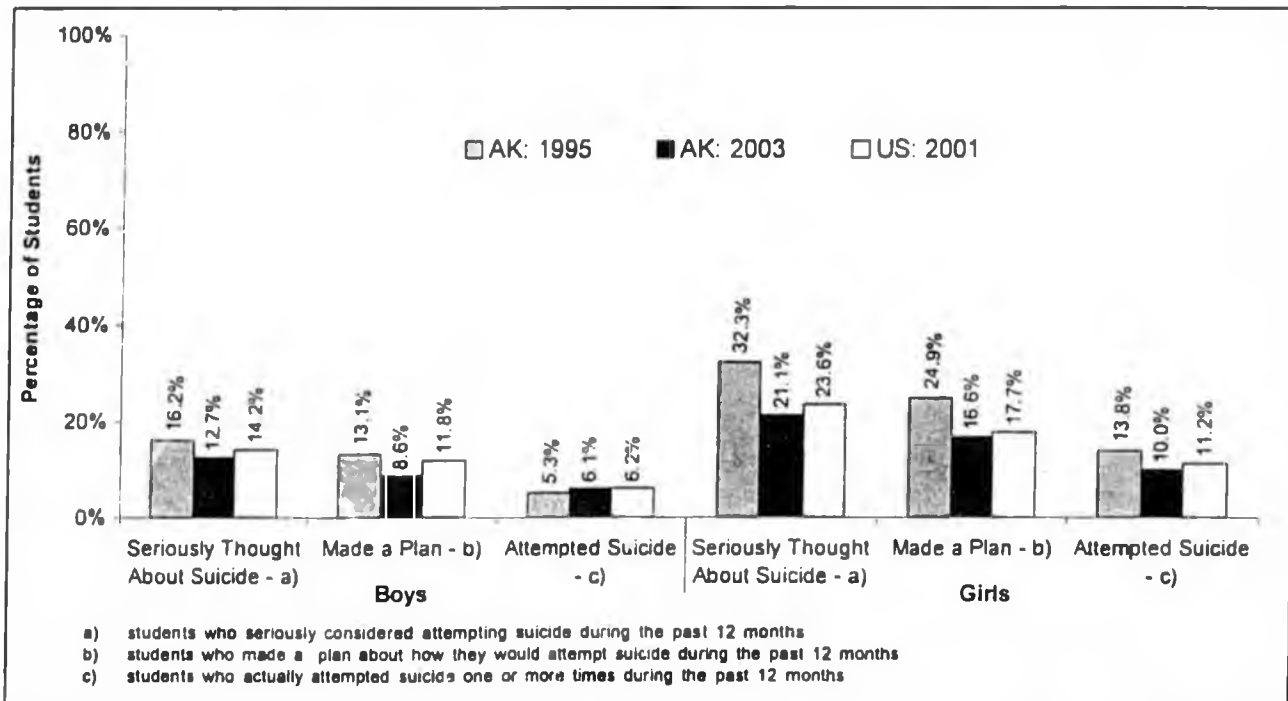
Physically Forced to Have Sex When They Did Not Want to

Ninth and tenth grade Alaska girls are more likely to report having been forced to have sex when they did not want to than are U.S. girls.



Suicide

Girls are more likely to report suicide thoughts, plans and attempts within the past 12 months than are boys. Among Alaska girls, 21.1% have seriously thought about suicide, 16.6% have made a plan and 10.0% report suicide attempts. Among Alaska boys, 12.7% have seriously thought about suicide, 8.6% have made a plan and 6.1% report suicide attempts. Significantly fewer Alaska students report having made a plan to commit suicide in 2003 than in 1995.



Healthy Alaskans 2010 Objective:

- ▶ Reduce to 1% the rate of suicide attempts among adolescents (percentage of high school students grades 9-12 who attempted suicide requiring medical attention in the past 12 months)

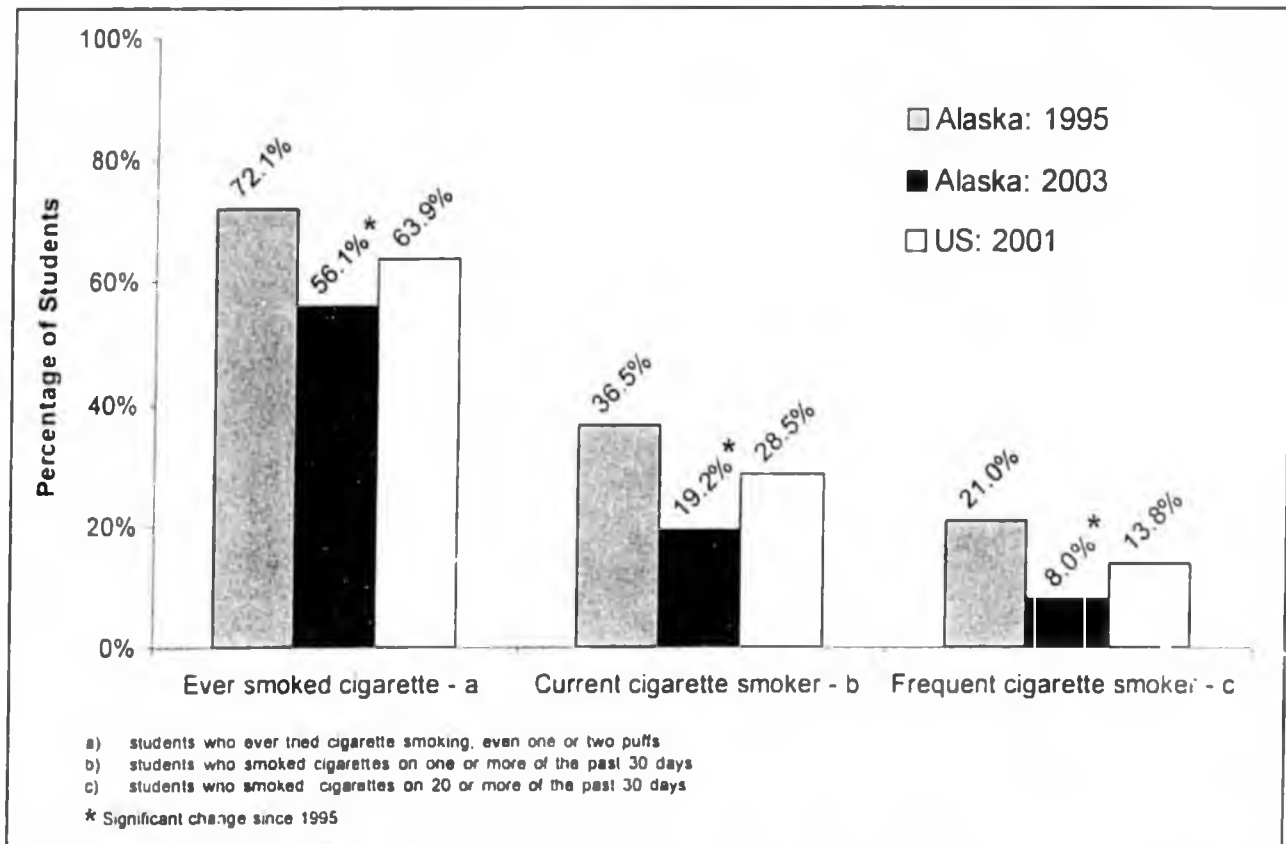
Section II: Tobacco Use

Background

Tobacco is the leading preventable cause of premature mortality in the United States. The majority of Alaska smokers (80%) began smoking between the ages of 10 and 20 years.² Alaskans have been working to decrease youth tobacco use through increasing the tax on tobacco products, education of young people, enforcement of laws restricting sales to minors, and a statewide ban on self-service tobacco displays. The 2003 YRBS data show a marked decrease in youth tobacco use.

Cigarette Smoking

Since the 1995 YRBS, significant reductions in the percentage of students who have ever smoked, currently smoke or are frequent smokers have occurred for both boys and girls. Among Alaska students, 19.2% report current smoking, compared to 36.5% in 1995, and frequent smokers fell from 21.0% in 1995 to 8.0% in 2003. The percentage of Alaska students reporting any cigarette use is significantly below that of U.S. students.

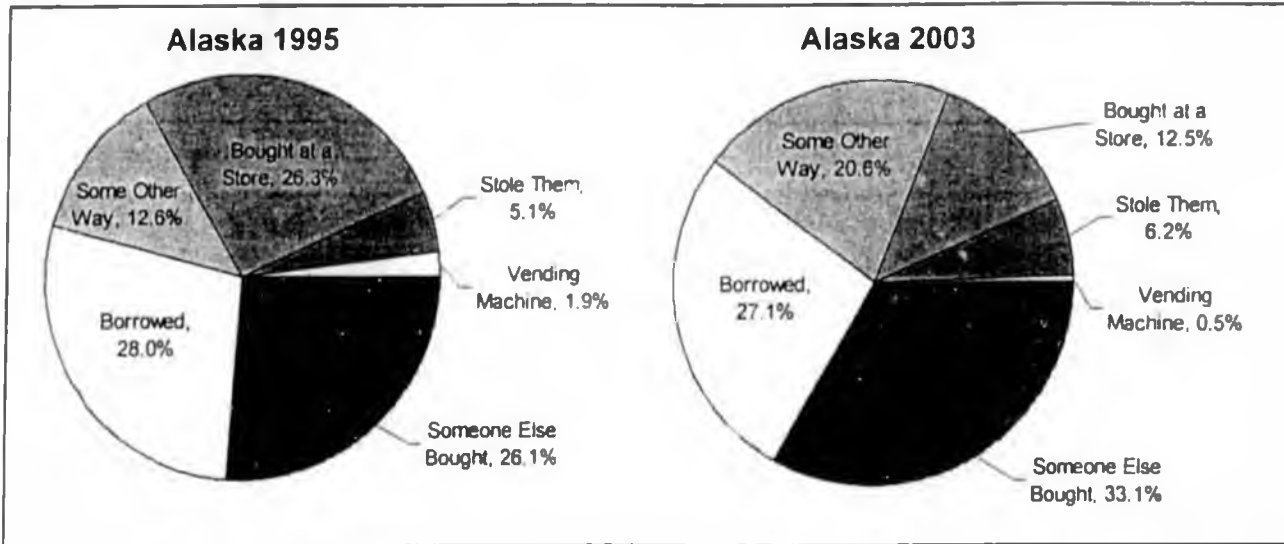


Healthy Alaskans 2010 Objective:

- ▶ Reduce to 17% cigarette smoking by adolescents (percentage of high school students grades 9-12 who have smoked cigarettes on one or more of the past 30 days)

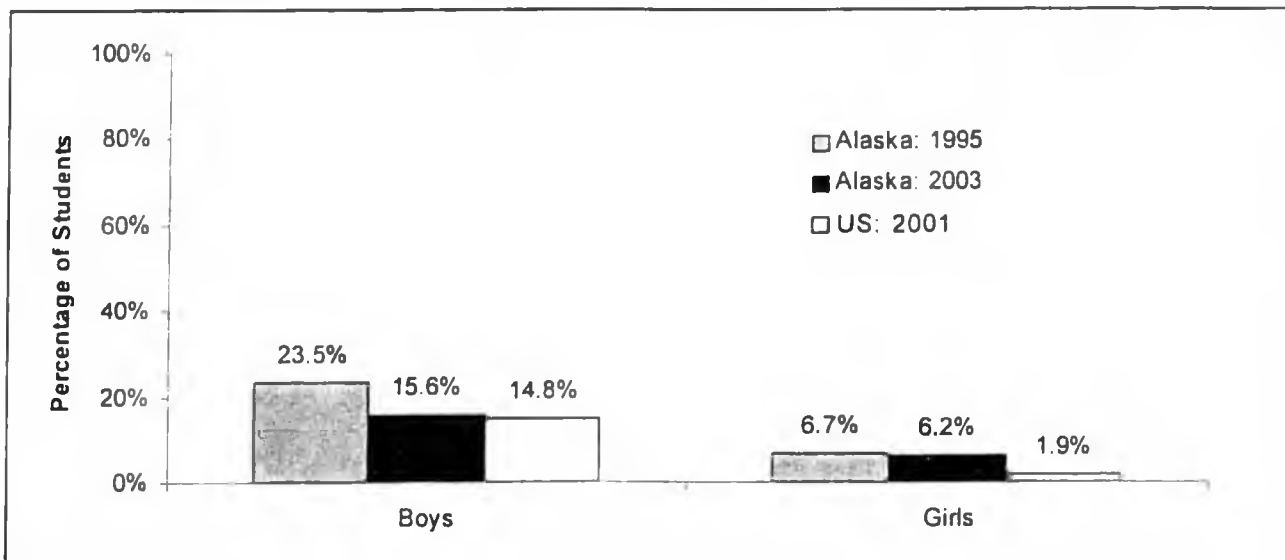
Where are Students Getting Cigarettes?

Among Alaska students, 12.5% report purchasing cigarettes at a store, a reduction of over 50% from 26.3% in 1995. This compares to 13.1% of U.S. students who report purchasing cigarettes at a store. The majority of students report getting their cigarettes by borrowing them from someone else (27.1%) or having someone else buy them (33.1%).



Chewing Tobacco and Snuff

Among Alaska boys, 15.6% report having used chewing tobacco or snuff in the 30 days prior to the survey. This is a decline of about 8.0% from 1995. There is relatively no change for girls between 1995 (6.7%) and 2003 (6.2%). However, Alaska girls (6.2%) are far more likely to report use of chewing tobacco or snuff the 30 days prior to the survey than are U.S. girls (1.9%). Overall, significantly fewer Alaska students report using chewing tobacco and snuff in 2003 than in 1995.



Healthy Alaskans 2010 Objective:

- ▶ Decrease to 8% the proportion of high school students who have used smokeless tobacco on one or more of the past 30 days.