IN THE SUPREME COURT OF THE STATE OF ALASKA

ELIZABETH WATSON,

Petitioner,

vs.

STATE OF ALASKA,

Respondent.

Supreme Court No. S-16752

Court of Appeals No. A-11592
Trial Court No. 4BE-11-01326CR

PETITION FOR HEARING FROM THE COURT OF APPEALS

APPEAL FROM THE DISTRICT COURT
FOURTH JUDICIAL DISTRICT AT BETHEL
DENNIS CUMMINGS, JUDGE, AND BRUCE WARD, MAGISTRATE

BRIEF OF RESPONDENT

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MARILYN MAY, CLERK
APPELLATE COURTS

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VRA CERTIFICATION: I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

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Constitutional Provisions

Alaska Constitution Article I section 12 provides:

> **Criminal Administration**
>
> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.

Alaska Constitution Article IV, section 1 provides:

> **Judicial Power and Jurisdiction**
>
> The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Statutes

Alaska Statute 12.55.005 provides:

> **Declaration of purpose.**
>
> The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

(1) the seriousness of the defendant's present offense in relation to other offenses;

(2) the prior criminal history of the defendant and the likelihood of rehabilitation;

(3) the need to confine the defendant to prevent further harm to the public;

(4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;

(5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct;

(6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms; and

(7) the restoration of the victim and the community.

Alaska Statute 12.55.135(a) provides:

Sentences of imprisonment for misdemeanors.

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than

(1) one year, if the

(A) conviction is for a crime with a mandatory minimum term of 30 days or more of active imprisonment;

(B) trier of fact finds the aggravating factor that the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(C) defendant has past criminal convictions for conduct violative of criminal laws, punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced;

(D) conviction is for an assault in the fourth degree under AS 11.41.230; or

(E) conviction is for a violation of

(i) AS 11.41.427;

(ii) AS 11.41.440;

(iii) AS 11.41.460, if the indecent exposure is before a person under 16 years of age;

(iv) AS 11.61.116(c)(2); or

(v) AS 11.61.118(a)(2);

(2) 30 days.

Alaska Statute 28.15.051 provides:

Instruction permits, temporary drivers licenses, and special drivers permits and licenses.

(a) Except as provided in (b) of this section, a person who is at least 14 years of age may apply to the department for a noncommercial instruction permit. The department may, after the applicant has successfully passed all parts of the examination under AS 28.15.081 other than the driving test, issue to the applicant an instruction permit. The permit allows a person, while having the permit in the person's immediate possession, to drive a specified noncommercial type or class of motor vehicle on a highway or vehicular way or area for a period not to exceed two years. The permittee shall be accompanied by a person at least 21 years of age who has been licensed at least one year to drive the type or class of vehicle being used, who is

capable of exercising control over the vehicle and who occupies a seat beside the driver, or who accompanies and immediately supervises the driver when the permittee drives a motorcycle. An instruction permit may be renewed one time. Once a license is issued to drive a specified type or class of motor vehicle, a driver is not eligible to obtain an instructional permit for that specified type or class of motor vehicle unless five years have passed since the expiration of the license.

(b) The department, upon receiving proper application, may issue a restricted instruction permit effective for a school year or for a more restricted period to an applicant who is at least 14 years of age and who is enrolled in a driver education program that includes practice driving and is approved by the department. The restricted instruction permit allows the permittee, when the permittee has the permit in the permittee's immediate possession, to drive a specified type or class of motor vehicle; however, an approved instructor must occupy a seat beside the permittee or, if the permittee is driving a motorcycle, the permittee must be accompanied by and under the immediate supervision of an approved instructor.

(c) The department may issue a temporary driver's license to an applicant for a driver's license permitting the applicant to drive a specified type or class of motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's eligibility to receive a driver's license. The temporary license must be in the applicant's immediate possession while the applicant is driving a motor vehicle. A temporary driver's license is invalid when the applicant's license has been issued or has been refused for good cause.

(d) The department may issue a special driver's permit to a person who is at least 14 years of age with the consent of the person's parents, guardians, or spouse who is 18 years of age or older, for the purpose of driving a motor-driven cycle. This permit may be issued upon application and successful completion of all prescribed tests and fees, and is valid for the same period of time as a driver's license. The permit is not valid in a municipality that by ordinance prohibits the driving of a motor-driven cycle by a person under the age of 16 years; a

borough may adopt the ordinance on a nonareawide basis only, unless the power to adopt it on an areawide basis is acquired under AS 29.35.300 — 29.35.330 or former AS 29.33.250 — 29.33.290.

(e) Notwithstanding other provisions of this chapter, the department may issue a special driver's license to a person who is under the age of 16 years because of the circumstances of hardship. Special licenses to be issued because of hardship shall be determined on an individual basis by the commissioner.

(f) A person who is at least 18 years of age may apply to the department for a commercial instruction permit. The department may, after the applicant has successfully passed all parts of the examination under AS 28.15.081 other than the driving test, issue to the applicant a commercial instruction permit. The permit allows a person, while having the permit in the person's immediate possession, to drive a specified commercial type or class of motor vehicle on a highway or vehicular way or area for a period not to exceed 180 days. The permittee shall be accompanied by a person at least 21 years of age who has been licensed at least one year to drive the type or class of vehicle being used, who is capable of exercising control over the wheel, and who occupies a seat beside the driver. A commercial instruction permit may be renewed one time for a period of 180 days. Once a license is issued to drive a specified type or class of motor vehicle, a driver is not eligible to obtain a commercial instructional permit for that specified type or class of motor vehicle unless

(1) five years have passed since the expiration of the previous license; or

(2) the commercial instruction permit is obtained for the purpose of adding an endorsement to a current class of commercial license.

Alaska Statute 28.15.055 provides:

> **Provisional drivers license.**
>
> Upon application, the department may issue a provisional drivers license to a person who is at least 16 years of age but not yet 18 years of age if the
>
> (1) person has been licensed under an instruction permit issued under AS 28.15.051 or under the law of another state with substantially similar requirements for at least six months;
>
> (2) persons parent, legal guardian, or employer provides proof satisfactory to the department that the applicant has at least 40 hours of driving experience, including at least 10 hours of driving in progressively challenging circumstances, such as driving in inclement weather and nighttime driving; and
>
> (3) person has not been convicted of a violation of a traffic law within the six months before the application is filed; in this paragraph, "traffic law" has the meaning given to "traffic laws" in AS 28.15.261.

Alaska Statute 28.35.030 provides:

> **Operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.**
>
> (a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft
>
> (1) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance, singly or in combination; or
>
> (2) and if, as determined by a chemical test taken within four hours after the alleged operating or driving, there is 0.08

percent or more by weight of alcohol in the persons blood or 80 milligrams or more of alcohol per 100 milliliters of blood, or if there is 0.08 grams or more of alcohol per 210 liters of the persons breath.

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor. Upon conviction,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of six months, and impose a fine of not less than $1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 12 months, and impose a fine of not less than $3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 18 months, and impose a fine of not less than $4,000 if the person has been previously convicted twice and is not subject to punishment under (n) of this section;

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 24 months, and impose a fine of not less than $5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum

of 30 months, and impose a fine of not less than $6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 36 months, and impose a fine of not less than $7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection;

(ii) pay the minimum fine required under (1) of this subsection;

(B) suspend imposition of sentence; or

(C) suspend the requirement for an ignition interlock device for a violation of (a)(1) of this section involving an alcoholic beverage or intoxicating liquor, singly or in combination, or a violation of (a)(2) of this section;

(3) the court shall revoke the persons drivers license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law.

(c) [Repealed, § 34 ch 119 SLA 1990.]

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under this section shall supply the judge, prosecutor, defendant, and an agency involved in the defendants treatment with information and reports concerning the defendants past and present assessment, treatment, and progress. Information compiled under this subsection is confidential and may only be used in connection with court proceedings involving the defendants treatment, including use by a court in sentencing a person convicted under this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) [Repealed, § 34 ch 119 SLA 1990.]

(g) Notwithstanding (b) of this section, the court may reduce the fine required to be imposed under (b) of this section by the cost of the ignition interlock device.

(h) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an alcohol safety action program if such a program is available in the community where the person resides, or a private or public treatment facility approved by the Department of Health and Social Services, under AS 47.37 to make referrals for rehabilitative treatment or to provide

rehabilitative treatment. If a person is convicted under (n) of this section, the court shall order the person to be evaluated as required by this subsection before the court imposes sentence for the offense.

(i) A program of inpatient treatment may be required by the authorized agency under (h) of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment under this subsection may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agencys referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(j) If a person fails to satisfy the requirements of an authorized agency under (i) of this section, the court

(1) may impose any portion of a suspended sentence; however, if the person was convicted under (n) of this section, the court shall impose a part or all of the remaining portion of any suspended sentence;

(2) may punish the failure as contempt of the authority of the court under AS 09.50.010 or as a violation of a condition of probation; and

(3) shall order the revocation or suspension of the persons drivers license, privilege to drive, and privilege to obtain a drivers license until the requirements are satisfied.

(k) Imprisonment required under (b)(1)(A) of this section shall be served by electronic monitoring at a private residence under AS 33.30.065. If electronic monitoring is not available, imprisonment required under (b)(1)(A) of this section shall be served at a private residence by other means determined by the commissioner of corrections. A person who is serving a sentence of imprisonment required under (b)(1)(A) of this section by electronic monitoring at a private residence may not be subject

to a search of the persons dwelling by a peace officer or a person required to administer the electronic monitoring under AS 33.30.065(a), except upon probable cause. Imprisonment required under (b)(1)(B) - (F) of this section may be served at a community residential center or at a private residence if approved by the commissioner of corrections. Imprisonment served at a private residence must include electronic monitoring under AS 33.30.065 or, if electronic monitoring is not available, by other means as determined by the commissioner of corrections. The cost of imprisonment resulting from the sentence imposed under (b)(1) of this section shall be paid to the state by the person being sentenced. The cost of imprisonment required to be paid under this subsection may not exceed $2,000. Upon the persons conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the persons permanent fund dividend as provided under AS 43.23.065. A person sentenced under (b)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

(l) The commissioner of corrections shall determine and prescribe by regulation a uniform average cost of imprisonment for the purpose of determining the cost of imprisonment required to be paid under (k) of this section by a convicted person. The regulations must include the costs associated with electronic monitoring under AS 33.30.065.

(m) If the act for which a person is convicted under this section contributes to a motor vehicle accident, the court shall order the person to pay the reasonable cost of any emergency services that responded to the accident, if the convicted person or the convicted persons insurer has not already paid the cost of the emergency services. If payment is required under this subsection, the payment shall be made directly to the emergency service and shall be equal to the actual cost of responding to the accident or the previous years annual average cost of responding to a motor vehicle accident, whichever is higher. In this subsection, "emergency service" includes a peace officer, fire department, ambulance service, emergency medical technician, or emergency trauma technician.

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.032(p) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of (u)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than $10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 60 months, and impose a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection;

(ii) pay the minimum fine required under (1) of this subsection;

(B) suspend imposition of sentence; or

(C) suspend the requirement for an ignition interlock device for a violation of (a)(1) of this section involving an alcoholic beverage or intoxicating liquor, singly or in combination, or a violation of (a)(2) of this section;

(3) shall permanently revoke the persons drivers license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

(4) may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(6) shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle or is registered as a co-owner under a business name, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

(o) Upon request, the department shall review a drivers license revocation imposed under (n)(3) of this section and

(1) may restore the drivers license if

(A) the license has been revoked for a period of at least 10 years;

(B) the person has not been convicted of a driving- related criminal offense since the license was revoked; and

(C) the person provides proof of financial responsibility;

(2) shall restore the drivers license if

(A) the person has been granted limited license privileges under AS 28.15.201(g) and has successfully driven under that limited license for three years without having the limited license privileges revoked;

(B) the person has successfully completed a court-ordered treatment program under AS 28.35.028 or a rehabilitative treatment program under AS 28.15.201(h);

(C) the person has not been convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction since the license was revoked;

(D) the person is otherwise eligible to have the persons driving privileges restored as provided in AS 28.15.211; in an application under this subsection, a person whose license was revoked for a violation of AS 28.35.030(n) or 28.35.032(p) is not required to submit compliance as required under AS 28.35.030(h) or 28.35.032(l); and

(E) the person provides proof of financial responsibility.

(p) [Repealed, § 7 ch 56 SLA 2006.]

(q) For purposes of this section, the director of the division within the department responsible for administration of this section or a person designated by the director may request and receive criminal justice information available under AS 12.62. In this subsection, "criminal justice information" has the meaning given in AS 12.62.900.

(r) [Repealed, § 12 ch 85 SLA 2010.]

(s) In a prosecution under (a) of this section, a person may introduce evidence on the amount of alcohol consumed before or after operating or driving the motor vehicle, aircraft, or watercraft to rebut or explain the results of a chemical test, but the consumption of alcohol before operating or driving may not be used as a defense that the chemical test did not measure the blood alcohol at the time of the operating or driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft, or watercraft may be used to raise such a defense.

(t) Notwithstanding (b) or (n) of this section, the court shall waive the requirement of the use of an ignition interlock device when a person operates a motor vehicle in a community included on the list published by the department under AS 28.22.011(b).

(u) In this section,

(1) "inhalant" has the meaning given to the phrase "hazardous volatile material or substance" in AS 47.37.270;

(2) "operate an aircraft" means to navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(3) "operate a watercraft" means to navigate a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state;

(4) "previously convicted" means having been convicted in this or another jurisdiction within the 15 years preceding the date of the present offense of any of the following offenses; however, convictions for any of these offenses, if arising out of a single transaction and a single arrest, are considered one previous conviction:

(A) operating a motor vehicle, aircraft, or watercraft in violation of this section or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the persons blood or breath than imposed under (a)(2) of this section;

(B) refusal to submit to a chemical test in violation of AS 28.35.032 or in violation of another law or ordinance with similar elements; or

(C) operating a commercial motor vehicle in violation of AS 28.33.030 or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the persons blood or breath than imposed under AS 28.33.030(a)(2).

Alaska Statute 47.12.010 provides:

Goal and purposes of chapter.

(a) The goal of this chapter is to promote a balanced juvenile justice system in the state to protect the community, impose accountability for violations of law, and equip juvenile offenders with the skills needed to live responsibly and productively.

(b) The purposes of this chapter are to

(1) respond to a juvenile offenders needs in a manner that is consistent with

(A) prevention of repeated criminal behavior;

(B) restoration of the community and victim;

(C) protection of the public; and

(D) development of the juvenile into a productive citizen;

(2) protect citizens from juvenile crime;

(3) hold each juvenile offender directly accountable for the offenders conduct;

(4) provide swift and consistent consequences for crimes committed by juveniles;

(5) make the juvenile justice system more open, accessible, and accountable to the public;

(6) require parental or guardian participation in the juvenile justice process;

(7) create an expectation that parents will be held responsible for the conduct and needs of their children;

(8) ensure that victims, witnesses, parents, foster parents, guardians, juvenile offenders, and all other interested parties are treated with dignity, respect, courtesy, and sensitivity throughout all legal proceedings;

(9) provide due process through which juvenile offenders, victims, parents, and guardians are assured fair legal proceedings during which constitutional and other legal rights are recognized and enforced;

(10) divert juveniles from the formal juvenile justice process through early intervention as warranted when consistent with the protection of the public;

(11) provide an early, individualized assessment and action plan for each juvenile offender in order to prevent further criminal behavior through the development of appropriate skills in the juvenile offender so that the juvenile is more capable of living productively and responsibly in the community;

(12) ensure that victims and witnesses of crimes committed by juveniles are afforded the same rights as victims and witnesses of crimes committed by adults;

(13) encourage and provide opportunities for local communities and groups to play an active role in the juvenile justice process in ways that are culturally relevant; and

(14) review and evaluate regularly and independently the effectiveness of programs and services under this chapter.

Alaska Statute 47.12.020 provides:

Applicability; inclusion of certain persons as minors.

Except as provided in AS 47.12.025, the provisions of this chapter apply to a person who is 18 years of age or older and who is subject to the jurisdiction of this chapter due solely to AS 47.12.020(b). To implement AS 47.12.020(b) and this section, the term "minor" as used in this chapter includes a person described in this section.

Alaska Statute 47.12.030 provides:

Provisions inapplicable.

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

the minor is charged by complaint, information, or indictment with an offense

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

(2) of arson in the first degree;

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

(4) that is misconduct involving weapons in the first degree under

(A) AS 11.61.190(a)(1); or

(B) AS 11.61.190(a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person.

(b) When a minor is accused of violating a statute specified in this subsection, other than a statute the violation of which is a felony, this chapter and the Alaska Delinquency Rules do not apply and the minor accused of the offense shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult; if a minor is charged, prosecuted, and sentenced for an offense under this subsection, the minors parent, guardian, or legal custodian shall be present at all proceedings; the provisions of this subsection apply when a minor is accused of violating

(1) a traffic statute or regulation, or a traffic ordinance or regulation of a municipality;

(2) AS 11.76.105, relating to the possession of tobacco by a person under 19 years of age;

(3) a fish and game statute or regulation under AS 16;

(4) a parks and recreational facilities statute or regulation under AS 41.21;

(5) [Repealed, § 22 ch 32 SLA 2016.]

(6) a municipal curfew ordinance, whether adopted under AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for the violation of a municipal curfew ordinance, the court shall allow a defendant the option of performing community work; the value of the community work, which may not be lower than the amount of the fine, shall be determined under AS 12.55.055(c); in this paragraph, "community work" includes the work described in AS 12.55.055(b) or work that, on the recommendation of the municipal or borough assembly, city council, or traditional village council of the defendants place of residence, would benefit persons within the municipality or village who are elderly or disabled.

(c) The provisions of AS 47.12.010 47.12.260 and the Alaska Delinquency Rules do not apply to drivers license proceedings under AS 28.15.185; the court shall impose a drivers license revocation under AS 28.15.185 in the same manner as adult drivers license revocations, except that a parent or legal guardian shall be present at all proceedings.

Alaska Statute 47.12.100 provides:

Waiver of jurisdiction.

(a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as an adult.

(b) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minors history of delinquency, the probable cause of the minors delinquent behavior, and the facilities available to the department for treating the minor.

(c) For purposes of making a determination under this section,

(1) the standard of proof is by a preponderance of the evidence; and

(2) the burden of proof that a minor is not amenable to treatment under this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking to have the court declare a minor a delinquent is based on the minors alleged commission of an offense that is an unclassified felony or class A felony and that is a crime against a person, the minor

(A) is rebuttably presumed not to be amenable to treatment under this chapter; and

(B) has the burden of proof of showing that the minor is amenable to treatment under this chapter.

Alaska Statute 47.12.110 provides:

Hearings.

(a) The court shall conduct a hearing on the petition. The court shall give notice of the hearing to the department, and the department shall send a representative to the hearing. The representative of the department may also be heard at the hearing. The department shall give notice of the hearing and a copy of the petition to the minors foster parent, and the court shall give the foster parent an opportunity to be heard at the hearing. The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing if their attendance is compatible with the best interests of the minor. Nothing in this section may be applied in such a way as to deny a minors rights to confront adverse witnesses, to a public trial, and to a trial by jury.

(b) Notwithstanding (a) of this section or an order prohibiting or limiting the public made under (e) of this section, the victim of an offense that a minor is alleged to have committed, or the designee of the victim, has a right to be present at all hearings or proceedings held under this section at which the minor has a right to be present. If the minor is found to have committed the offense, the victim may at the disposition hearing give sworn testimony or make an unsworn oral presentation concerning the offense and its effect on the victim. If there are numerous victims of a minors offense, the court may limit the number of victims who may give sworn testimony or make an unsworn oral presentation, but the court may not limit the right of a victim to attend a hearing even if the victim is likely to be a witness in a hearing concerning the minors alleged offense.

(c) [Repealed, § 54 ch 107 SLA 1998.]

(d) Notwithstanding (a) of this section, a court hearing on a petition seeking the adjudication of a minor as a delinquent shall be open to the public, except as prohibited or limited by order of the court, if

(1) the department files with the court a motion asking the court to open the hearing to the public, and the petition seeking adjudication of the minor as a delinquent is based on

(A) the minors alleged commission of an offense, and the minor has knowingly failed to comply with all the terms and conditions required of the minor by the department or imposed on the minor in a court order entered under AS 47.12.040(a)(2) or 47.12.120;

(B) the minors alleged commission of

(i) a crime against a person that is punishable as a felony;

(ii) a crime in which the minor employed a deadly weapon, as that term is defined in AS 11.81.900(b), in committing the crime;

(iii) arson under AS 11.46.400 — 11.46.410;

(iv) burglary under AS 11.46.300;

(v) distribution of child pornography under AS 11.61.125;

(vi) sex trafficking in the first degree under AS 11.66.110; or

(vii) misconduct involving a controlled substance under AS 11.71 involving the delivery of a controlled substance or the possession of a controlled substance with intent to deliver, other than an offense under AS 11.71.040 or 11.71.050; or

(C) the minors alleged commission of a felony and the minor was 16 years of age or older at the time of commission of the offense when the minor has previously been convicted or adjudicated a delinquent minor based on the minors commission of an offense that is a felony; or

(2) the minor agrees to a public hearing on the petition seeking adjudication of the minor as a delinquent.

(e) Notwithstanding (a) of this section, a court proceeding shall be open to the public, except as prohibited or limited by order of

the court, when the district attorney has elected to seek imposition of a dual sentence and a petition has been filed under AS 47.12.065, or when a minor agrees as part of a plea agreement to be subject to dual sentencing.

(f) During jury selection or as part of an opening statement at the hearing, the attorney representing the department may introduce the victim to the jury, and the attorney for the minor may introduce the minor to the jury.

Alaska Statute 47.12.120 provides:

Judgments and orders.

(a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent.

(b) If the minor is not subject to (j) of this section and the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minors 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

(2) order the minor placed on probation, to be supervised by the department, and released to the minors parents, guardian, or a

suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the minors 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the custody of the department and placed on probation, to be supervised by the department and released to the minors parents, guardian, other suitable person, or suitable nondetention setting such as with a relative or in a foster home or residential child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minors best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minors parents or guardian, the minors foster parent, and the minors attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that do not extend beyond the minors 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(4) order the minor and the minors parent to make suitable restitution in lieu of or in addition to the courts order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minors offense as to the amount of or manner of payment of the restitution;

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minors residence for the purpose of evading the parent or who is otherwise missing from the minors usual place of abode without the consent of the parent; and

(C) at the request of the department, the Department of Law, the victims' advocate, or on its own motion, the court shall, at any time, order the minor and the minors parent, if applicable, to submit financial information on a form approved by the Alaska Court System to the court, the department, and the Department of Law for the purpose of establishing the amount of restitution or enforcing an order of restitution under AS 47.12.170; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification in the second degree under AS 11.56.210;

(5) order the minor committed to the department for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program

or commitment under (1) of this subsection if the program is not satisfactorily completed;

(6) in addition to an order under (1) (5) of this subsection, order the minor to perform community service; for purposes of this paragraph, "community service" includes work

(A) on a project identified in AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled; or

(7) in addition to an order under (1) — (6) of this subsection, order the minors parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1).

(c) If the court finds that the minor is not delinquent, it shall immediately order the minor released from the departments custody and returned to the minors parents, guardian, or custodian, and dismiss the case.

(d) A minor found to be delinquent is a ward of the state while committed to the department or while the department has the power to supervise the minors actions. The court shall review an order made under (b) of this section annually and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. The department, the minor, and the minors parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel and the minors foster parent reasonable notice in advance of the review and hold a hearing where these parties and their counsel and the minors foster parent shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

(e) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency

under this chapter, including hearings that result in the release of the minor.

(f) A minor, the minors parents or guardian acting on the minors behalf, or the department may appeal a judgment or order, or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter.

(g) [Repealed, § 54 ch 107 SLA 1998.]

(h) [Repealed, § 74 ch 35 SLA 2003.] (i) When, under (a) of this section, the court enters judgment finding that a minor is delinquent, the court may order the minor temporarily detained pending entry of its dispositional order if the court finds that detention is necessary

(1) to protect the minor or the community; or

(2) to ensure the minors appearance at a subsequent court hearing.

(j) If, in a case in which a district attorney has elected to seek imposition of a dual sentence under AS 47.12.065, the court finds that the minor is delinquent for committing an offense in the circumstances set out in AS 47.12.065, or if the minor agrees as part of a plea agreement to be subject to dual sentencing, the court shall

(1) enter one or more orders under (b) of this section; and

(2) pronounce a sentence for the offense in accordance with the provisions of AS 12.55; however, the sentence pronounced under this paragraph must include some period of imprisonment that is not suspended by the court.

(k) [Repealed, § 22 ch 32 SLA 2016.]

Alaska Statute 47.12.160 provides:

Retention of jurisdiction over minor.

(a) Except as provided in (g) of this section, the court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for the minors best interest, for a period of time not to exceed the maximum period otherwise permitted by law or in any event extend past the day the minor becomes 19, unless sooner discharged by the court, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. An application for any of these purposes may be made by the parent, guardian, or custodian acting in behalf of the minor, or the court may, on its own motion, and after reasonable notice to interested parties and the appropriate department, take action that it considers appropriate.

(b) If the court determines at a hearing authorized by (a) of this section that it is in the best interests of the minor to be released to the care or custody of the minors parent, guardian, or custodian, it may enter an order to that effect and the minor is discharged from the control of the department.

(c) If a minor is adjudicated a delinquent before the minors 18th birthday, the court may retain jurisdiction over the minor after the minors 18th birthday for the purpose of supervising the minors rehabilitation, but the courts jurisdiction over the minor under this chapter never extends beyond the minors 19th birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. The department may retain jurisdiction over the person between the persons 18th and 19th birthdays for the purpose of supervising the persons rehabilitation, if the person has been placed under the supervision of the department before the persons 18th birthday,

except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it.

(d) The department, or the district attorney in a matter subject to the jurisdiction of this chapter under AS 47.12.020(b), may petition the court for imposition of sentence pronounced under AS 47.12.120(j)(2) if the offender is still subject to the jurisdiction of the court and if the offender, after pronouncement of sentence under AS 47.12.120(j)(2),

(1) commits a subsequent felony offense;

(2) commits a subsequent offense against a person that is a misdemeanor and involves injury to a person or the use of a deadly weapon;

(3) fails to comply with the terms of a restitution order;

(4) fails to engage in or satisfactorily complete a rehabilitation program ordered by a court or required by a facility or juvenile probation officer; or

(5) escapes from a juvenile or other correctional facility.

(e) If a petition is filed under (d) of this section and if the court finds by a preponderance of the evidence that the minor has committed a subsequent felony offense that is a crime against a person or is the crime of arson, the court shall impose the adult sentence previously pronounced under AS 47.12.120(j) and transfer custody of the minor to the Department of Corrections. If the court finds by a preponderance of the evidence that any of the other circumstances set out in (d)(1) — (5) of this section exist, the court shall impose the adult sentence previously pronounced and transfer custody of the minor to the Department of Corrections unless the minor proves by preponderance of the evidence that mitigating circumstances exist that justify a continuance in the stay of the adult sentence and the minor is amenable to further treatment under this

chapter. The court shall make written findings to support its order.

(f) Notwithstanding another provision of law, the court shall accept (1) payments of restitution from a minor and the minors parent at any time, and (2) prepayments of restitution or payments in anticipation of an order of restitution. If the recipient has elected to have the Department of Law collect the judgment of restitution under AS 12.55.051(g), the court shall forward all payments of restitution to the Department of Law within five days after the court's acceptance.

(g) If the department has filed a delinquency petition under AS 47.12.020 and 47.12.040 regarding a minor who is 18 years of age or older, the court has jurisdiction to adjudicate and dispose of the matter as provided in this chapter.

Alaska Statute 47.12.300 provides:

Court records.

(a) The court shall make and keep records of all cases brought before it.

(b) The court shall forward a record of adjudication of a violation of an offense listed in AS 28.15.185(a) to the Department of Administration if the court imposes a license revocation under AS 28.15.185.

(c) Except when disclosure of the name of a minor is authorized or required by this chapter and except as provided in (g) of this section, the name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minors status as a delinquent unless authorized by order of the court.

(d) Except as provided in (f) of this section, within 30 days of the date of a minors 18th birthday or, if the court retains jurisdiction of a minor past the minors 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor, the court shall order all the courts official records

pertaining to that minor in a proceeding under this chapter sealed, as well as records of all drivers license proceedings under AS 28.15.185, criminal proceedings against the minor, and punishments assessed against the minor. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. The provisions of this subsection relating to the sealing of records do not apply to records of traffic offenses.

(e) The courts official records prepared under this chapter and not made public under this section are confidential and may be inspected only with the courts permission and only by persons having a legitimate interest in them. A foster parent is considered to have a legitimate interest in those portions of the courts official records relating to a child who is already placed with the foster parent or who is recommended for placement with the foster parent. A person with a legitimate interest in the inspection of a confidential record maintained by the court also includes a victim who suffered physical injury or whose real or personal property was damaged as a result of an offense that was the basis of an adjudication or modification of disposition. If the victim knows the identity of the minor, identifies the minor or the offense to the court, and certifies that the information is being sought to consider or support a civil action against the minor or against the minors parents or guardian under AS 09.65.255, the court shall, subject to AS 12.61.110 and 12.61.140, allow the victim to inspect and use the following records and information in connection with the civil action:

(1) a petition filed under AS 47.12.040(a) seeking to have the court declare the minor a delinquent;

(2) a petition filed under AS 47.12.120 seeking to have the court modify or revoke the minors probation;

(3) a petition filed under AS 47.12.100 requesting the court to find that a minor is not amenable to treatment under this chapter and that results in closure of a case under AS 47.12.100(a); and

(4) a court judgment or order entered under this chapter that disposes of a petition identified in (1) (3) of this subsection.

(f) A person who has been tried as an adult under AS 47.12.100(a) or a person whose records have been made public under (g) of this section, or the department on the person's behalf, may petition the superior court to seal the records of all criminal proceedings, except traffic offenses, initiated against the person, and all punishments assessed against the person, while the person was a minor. A petition under this subsection may not be filed until five years after the completion of the sentence imposed for the offense for which the person was tried as an adult or five years after a disposition was entered for an offense for which the records were made public under (g) of this section. If the superior court finds that its order has had its intended rehabilitative effect and further finds that the person has fulfilled all orders of the court entered under AS 47.12.120, the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil rights removed because of a conviction. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. The court may not, under this subsection, seal records of a criminal proceeding

(1) initiated against a person if the court finds that the person has not complied with a court order made under AS 47.12.120; or

(2) commenced under AS 47.12.030(a) unless the minor has been acquitted of all offenses with which the minor was charged or unless the most serious offense of which the minor was convicted was not an offense specified in AS 47.12.030(a).

(g) When a district attorney has elected to seek imposition of a dual sentence and a petition has been filed under AS 47.12.065, or when a minor agrees as part of a plea agreement to be subject to dual sentencing, all court records shall be open to the public except for predisposition reports, psychiatric and psychological reports, and other documents that the court orders to be kept

confidential because the release of the documents could be harmful to the minor or could violate the constitutional rights of the victim or other persons.

(h) A person who discloses confidential information in violation of this section is guilty of a class B misdemeanor.

STATEMENT OF ISSUES PRESENTED

Does AS 47.12.030(b) violate equal protection by requiring a minor who is accused of a non-felony traffic offense to be "charged, prosecuted, and sentenced in the district court in the same manner as an adult?"

STATEMENT OF THE CASE

Statement of facts

In November 2011, Elizabeth Watson (14), Jon Simon (15), Chelsea Kelly (15), and Kimberly Evans (16) were driving around in a vehicle that belonged to Watson's mother. [Tr. 62-65, 111; R. 14] Watson drove them to buy alcohol, which all four of the occupants shared. [Tr. 66-67]

Julian Garcia called the police early in the morning to report a loud crash outside of his apartment. [Tr. 29-30] Watson's vehicle had crashed into a pipe twenty or thirty feet from his apartment. [Tr. 30, 54] Garcia saw the passengers leave the vehicle, but the driver could not exit the vehicle because the pipe prevented her from opening her door. [Tr. 31] She turned the vehicle on and tried to move it, but it sank deeper into the snow. [Tr. 31] The driver screamed and yelled and appeared intoxicated. [Tr. 32]

Officer Gwen Drake responded to the accident and contacted Simon, Kelly, and Evans as they were walking away from the vehicle. [Tr. 129-30] Officer Nicholas Dias pulled Watson out of the vehicle after the other three teenagers were in Officer Drake's patrol car. [Tr. 168] Watson was "hysterical and crying," and she appeared to be more intoxicated than Kelly, Simon, and Evans. [Tr. 130, 134] All four teenagers told Officer Drake that Watson had been driving at the time of the accident. [Tr. 148-50, 156] Watson performed

poorly on standardized field sobriety tests, and her breath alcohol content was 0.152 percent. [Tr. 169-73]

Course of proceedings

The State charged Watson in district court with misdemeanor driving under the influence (DUI). [Exc. 53] Watson filed a motion to dismiss the DUI charge for lack of jurisdiction. [Exc. 1] She argued that she should be tried in juvenile court due to her age. [Exc. 3] Watson acknowledged that violations of traffic statutes and regulations are excluded from juvenile court jurisdiction under AS 47.12.030(b)(1), but she argued that DUI was not a traffic offense. [Exc. 5-6] Watson also argued that the exclusion of these offenses from juvenile court was arbitrary and violated her right to equal protection because "[m]ost other misdemeanors and many felonies fall into the juvenile court's jurisdiction." [Exc. 6]

The State opposed the motion on the grounds that DUI is a traffic offense and that the exclusion of traffic offenses from juvenile court jurisdiction does not violate a minor's right to equal protection. [Exc. 16-25]

Superior Court Judge Dennis Cummings denied Watson's motion, holding that DUI is a traffic offense and that the exclusion of traffic offenses from juvenile court jurisdiction does not violate equal protection. [Exc. 37]

Watson filed a motion for reconsideration, which Judge Cummings also denied. [Exc. 43-49, 51]

After a bench trial in district court, Magistrate Bruce Ward found Watson guilty of DUI. [Tr. 202-06] Magistrate Ward specifically credited the testimony of Garcia and Officer Drake. [Tr. 202-06] He found that the passengers were not credible at trial when they testified that Watson had not been driving. [Tr. 204-05]

The court sentenced Watson to 28 days with 25 days suspended (three days to serve). [Exc. 55] The court also imposed two years of probation subject to conditions that Watson obey all court orders, commit no jailable offenses, and refrain from possessing or consuming alcohol. [Exc. 55] The court stayed Watson's sentence pending her appeal. [Tr. 223]

The decision of the court of appeals

The court of appeals affirmed Watson's conviction. *Watson v. State*, 400 P.3d 121 (Alaska App. 2017). The court held that a minor's interest in juvenile court was only "the relatively narrow interest of a convicted offender in minimizing the punishment for an offense." *Id.* at 123 (quoting *Gray v. State*, 267 P.3d 667, 672 (Alaska App. 2011)). The court noted that driving is a "highly regulated and substantially dangerous adult activity," and minors are less experienced than other drivers, so the legislature could conclude that they pose

a particularly significant threat to public safety. *Watson*, 400 P.3d at 123. Thus, the legislature has "a legitimate and weighty interest" in holding all drivers to an adult standard of care and an adult level of accountability. *Id.* The court found "no particular anomaly" in the fact that minors who commit felony driving offenses are presumptively treated as juveniles. *Id.* Felony offenders are subject to significantly more imprisonment as well as lifelong legal disabilities, and the legislature could reasonably conclude that minors should not face such severe consequences even when the felony arises from the act of driving. *Id.*

The order granting Watson's petition for hearing

This Court granted Watson's petition for hearing and ordered briefing on whether the exclusion of non-felony traffic offenses from juvenile court violates equal protection.[1] Order, *Watson v. State*, S-16752 (Nov. 8, 2017). This Court instructed the parties to specifically identify (1) the interest a minor has in being included in the juvenile justice system, and (2) the composition of the classes to be scrutinized for purposes of determining whether they are "similarly situated" under an equal protection analysis. *Id.*

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[1] Watson argues that the exclusion of non-felony traffic offenses from juvenile court violated her right to due process as well as equal protection. [Pet. 8, 20, 39] This brief only responds to the equal protection argument.

ARGUMENT

THE JUVENILE JURISDICTION STATUTE DOES NOT VIOLATE EQUAL PROTECTION BY REQUIRING A MINOR ACCUSED OF A NON-FELONY TRAFFIC OFFENSE TO BE TRIED AS AN ADULT.

A. Standard of review

Whether the exclusion of non-felony traffic offenses from the juvenile court's jurisdiction violates equal protection is a question of law this Court reviews *de novo*. *See Treacy v. Municipality of Anchorage*, 91 P.3d 252, 260 (Alaska 2004). This court adopts the rule of law "most persuasive in light of precedent, reason, and policy." *State v. Schmidt*, 323 P.3d 647, 655 (Alaska 2014).

B. The juvenile court lacks jurisdiction over non-felony traffic offenses.

At common law, 14-year-olds had the same criminal capacity as adults, and minors as young as seven were considered capable of possessing criminal intent. *In re Gault*, 387 U.S. 1, 16-17 (1967); Wayne R. LaFave, *Substantive Criminal Law*, § 9.6(a), at 79 (2d ed. 2003). Minors may be held civilly liable for torts, may hold property, may exercise constitutional rights, and may make contracts binding on the other party (although voidable by the minor). *R.L.R. v. State*, 487 P.2d 27, 34 (Alaska 1971) (noting that although the age of majority in Alaska is 18, this "does not carry a broad negative implication" regarding minors). Under appropriate circumstances minors may

have the disability of their minority removed at 16, may marry at 14, and may make medical decisions for themselves and their children. AS 09.55.590; AS 25.05.171; AS 25.20.025. A minor who wishes to drive is eligible to receive an instruction permit at 14 and a provisional driver's license at 16. AS 28.15.051; AS 28.15.055.

Beginning in Illinois in 1899, state legislatures created juvenile courts where persons under 16 years old could be adjudicated as delinquents rather than criminals, although most states now begin general adult criminal responsibility at 18.[2] *In re Gault*, 387 U.S. at 14; Edward L. Thompson, *Juvenile Delinquency: A Judge's View of Our Past, Present, and Future*, 46 Okla. L. Rev. 655, 656-58 (1993). The juvenile courts were meant to embrace a "social welfare philosophy that emphasized rehabilitation rather than punishment of juvenile offenders." Thompson, *Juvenile Delinquency*, 46 Okla. L. Rev. at 656. The goal of rehabilitation has been praised by many, but the rehabilitative model has long been criticized for ignoring other functions of the criminal law. *Id.* at 682-83 (recommending a justice model because the rehabilitative model ignores equally important functions of criminal law); John

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[2] Some countries begin adult criminal responsibility at a younger age. *See* Tapio Lappi-Seppälä, *Nordic Youth Justice*, 40 Crime & Just. 199, 199-200 (2011) (in Nordic countries, offenders 15 and older (14 in Denmark) are sentenced in accordance with the same criminal code as adults, although some are dealt with under both the criminal justice and the child welfare authorities).

H. Wigmore, *Juvenile Court v. Criminal Court*, 21 Ill. L. Rev. 375, 376 (1926) (advocates of the rehabilitative model have "lost their balance" due to their "narrow and imperfect conception of the criminal law"); *In re Gault*, 387 U.S. at 17-18 ("The constitutional and theoretical basis for this peculiar system is — to say the least — debatable. And in practice . . . the results have not been entirely satisfactory."). Juvenile courts historically denied many of the fundamental rights that are given in criminal proceedings "by insisting that the proceedings were not adversary, but that the state was proceeding as parens patriae." *In re Gault*, 387 U.S. at 14-17. Courts and legislatures have granted many of those rights, but even those decisions have been criticized as undermining the benevolent goals of the juvenile system by transforming juvenile proceedings into adversarial criminal proceedings in all but name. *Id.* at 59-61 (Black, J., concurring); *id.* at 78-81 (Stewart, J., dissenting).

In the past, this Court has emphasized the juvenile justice system's focus on rehabilitation. *See P.H. v. State*, 504 P.2d 837, 841 (Alaska 1972); *State v. G.L.P.*, 590 P.2d 65, 71 (Alaska 1979) (Rabinowitz, J., dissenting). But the legislature has "gradually narrowed the coverage of the juvenile delinquency laws and increased the scope of adult criminal prosecution for felonies involving violence." *Waterman v. State*, 342 P.3d 1261, 1266 (Alaska App. 2015) (noting amendments in the 1990s); *see also* Kenneth A. Schatz, *Juvenile Justice: Reflections on 100 Years of Juvenile Court*, 24-Dec. Vt. B.J. &

L. Dig. 50 (1998) (noting that across the country the pendulum has swung back and forth between the goals of rehabilitation and public safety). In doing so, the legislature removed a group of offenders from the "benevolent" juvenile justice system "and made them subject to the more societally oriented prosecution and punishment of the adult criminal justice system." *Waterman*, 342 P.3d at 1267. Thus, Alaska has adapted its juvenile justice system to meet the changing needs of society.

The exclusion of the most serious felony offenses from juvenile court in Alaska is a relatively recent development, but traffic offenses have been considered inappropriate for the juvenile justice system for many years. Traffic offenses were specifically excluded from the juvenile court's jurisdiction in 1961, with the exception of three offenses: DUI, reckless driving, and leaving the scene of an accident. SLA 1961, Ch. 76, § 1; 1961 House Journal 196-99, Letter from Gov. William Egan to House Rules Committee (Feb. 4, 1961); *see also State v. Linn*, 363 P.2d 361, 363 (Alaska 1961). In 1969, the legislature amended the juvenile code to remove those three offenses from the juvenile justice system and to make it clear that "the minor be charged, prosecuted, and sentenced in the district court in the same manner as an adult" for all non-felony traffic offenses. SLA 1969, Ch. 64, § 1; Judiciary Committee Report, 1969 House Journal 362. Thus, most traffic offenses have been ineligible for juvenile court in Alaska since shortly after statehood.

Today, consistent with the goals of criminal law enshrined in the Alaska Constitution, the juvenile court is meant to "promote a balanced juvenile justice system in the state to protect the community, impose accountability for violations of law, and equip juvenile offenders with the skills needed to live responsibly and productively." AS 47.12.010(a). These goals are consistent with "the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation." Alaska Const. art. I, § 12.

The juvenile court generally has jurisdiction when a person under 18 years of age is alleged to have violated a criminal law. AS 47.12.020. Whenever a minor is charged in juvenile court, the court may waive jurisdiction if the court finds that the minor is not amenable to treatment under the juvenile code. AS 47.12.100(a). The minor may then be prosecuted as an adult. AS 47.12.100(a).

Certain offenses are excluded from the juvenile court's jurisdiction regardless of the minor's amenability to treatment. [3] The juvenile court does

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[3] It does not appear that this Court may grant jurisdiction over non-felony traffic offenses to the juvenile court. Jurisdiction is defined by the legislature, not by the courts. Alaska Const. art. IV, § 1; *State v. Browder*, 486 P.2d 925, 929 (Alaska 1971). When a court is created by statute, its jurisdiction is defined by that statute. *Mund v. State*, 325 P.3d 535, 540 (Alaska App. 2014). The judiciary cannot enlarge its own jurisdiction. *Id.*

Watson has not explained what effect a decision finding an equal protection violation would have on the juvenile court. Since Watson herself is

not have jurisdiction over certain felony offenses if the offender was at least 16 years old at the time of the offense. AS 47.12.030(a). Traffic offenses (and some other offenses) are excluded from the juvenile court's jurisdiction regardless of the offender's age, unless the offense is classified as a felony. AS 47.12.030(b).

Watson agrees that misdemeanor DUI is a traffic offense that is statutorily excluded from the juvenile court's jurisdiction. [Pet. Br. 14] She argues that this exclusion violates her right to equal protection.

C. Watson has not shown that she was treated differently than a similarly situated group.

1. *Watson has not shown that she was similarly situated with a person charged with a different offense.*

"A threshold question in . . . equal protection analysis is whether similarly situated groups are being treated differently." *Black v. Municipality of Anchorage*, 187 P.3d 1096, 1102 (Alaska 2008). "If it is clear that the two groups in question are not 'similarly situated,' this conclusion 'necessarily

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now beyond the juvenile court's jurisdiction due to her age, the State would likely be unable to retry her in juvenile court. But such a decision from this Court would have broader implications. For nearly 50 years, the legislature has expressly excluded non-felony traffic offenses from the juvenile court's jurisdiction. Since this Court cannot expand the jurisdiction of the statutorily-created juvenile court, it appears that the only remedy this Court could grant would be to declare that minors charged with non-felony traffic offenses cannot be tried as adults. Minors would effectively be immune from prosecution for non-felony traffic offenses, because there would be no court to hear their cases. This Court should not grant a remedy that would be contrary to public safety as well as run afoul of the legislature's intent underlying both the juvenile code and the traffic laws.

implies that the different legal treatment of the two classes is justified by the differences between the two classes.'" *Id.* (quoting *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 967 (Alaska 2005)). "And 'where there is no unequal treatment, there can be no violation of the right to equal protection of law. In the absence of an evidence of disparate treatment, there is no basis for an equal protection claim.'" *Black*, 187 P.3d at 1102 (quoting *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391, 397 (Alaska 1997) (with no disparate treatment, a claim need not be subjected to sliding scale scrutiny)).

To determine whether differently treated groups are similarly situated, a court "look[s] to the state's reasons for treating the groups differently." *Public Employees' Retirement System v. Gallant*, 153 P.3d 346, 349 (Alaska 2007). This Court has noted that a finding that differential treatment is justified because two groups are not similarly situated is an "abbreviated analysis [used] only in clear cases." *Lauth v. State*, 12 P.3d 181, 187 (Alaska 2000). However, this Court has frequently rejected equal protection claims on the basis that the groups at issue were not similarly situated.

In *Lauth*, when considering welfare eligibility for "needy children and their families," this Court held that children with one "economically secure" parent who cares for them at least half of the time are not similarly situated with children whose parents are both economically insecure. *Id.* Thus, the

difference in treatment between the two categories was "amply justified by the difference in economic circumstances." *Id.*

In *Black*, this Court held that Black was not similarly situated with other condominium unit owners for taxation purposes, because Black's condominium unit sat on a yard that was much larger than average in the municipality. 187 P.3d at 1102. And the municipality taxed all condominium unit owners based on the same criteria, so there was no disparate treatment. *Id.*

In *Alaska Inter-Tribal Council*, this Court held that due to the innate physical differences between on-road communities and off-road communities, such communities are dissimilar for purposes of allocating law enforcement services. 110 P.3d at 968-69. This Court rejected the claim that all Alaska communities are similarly situated in "their basic need for and right to equal access to adequate police protection." *Id.* at 968. This Court held that the purported "basic need for and right to equal access to adequate police protection" were "not the relevant, much less the *only* relevant, points of comparison for determining the issue of similarly-situatedness." *Id.* at 969.

In a challenge to the state's dram shop act, this Court held that tort claimants against liquor stores (where the claimant must prove criminal negligence) and tort claimants against other types of defendants (where the claimant need only prove ordinary negligence) were not comparable classes.

Gonzales v. Safeway Stores, Inc., 882 P.2d 389, 396 (Alaska 1994). Thus, this Court rejected the plaintiff's equal protection claim. *Id.*

This Court has also rejected equal protection claims in criminal cases after finding that the proposed classes are not similarly situated. In *Bell v. State*, the defendant argued that his right to equal protection was violated because the statute at issue gave the prosecutor discretion to charge joyriding as either a misdemeanor or a felony based on a defendant's prior convictions for joyriding. 598 P.2d 908, 909-14 (Alaska 1979). This Court rejected this claim, noting "the legislature's power to define crimes and affix punishment according to the offender's conduct and culpability." *Id.* at 913. The misdemeanor and felony provisions did not punish "the same conduct," because the felony provision required the prosecutor to prove a defendant's prior convictions as an additional element of the offense. *Id.* at 914. "This principle is dispositive of the equal protection issue raised by Bell." *Id.*

Consistent with this Court's decisions, the court of appeals has held that a person who engages in criminal misconduct "shares common traits only with other offenders who have committed the same misconduct." *Maeckle v. State*, 792 P.2d 686, 689 (Alaska App. 1990). The court held that a person convicted of guiding without a license is not similarly situated with an unlicensed practitioner in another profession who is subject to a less severe punishment. *Id.* The right to equal protection is not violated when a person is

"subject to the same penalties as any other person committing the same misconduct." *Id.*

Other courts have held that juvenile traffic offenders are not similarly situated with other juvenile offenders. "[J]uvenile traffic offenders are a group qualitatively distinct from other juveniles to whom the procedures of the [Juvenile Court] Act may apply. The legislature was therefore free to provide different treatment for the two groups." *People v. Sampson*, 473 N.E.2d 1002, 1008 (Ill. App. Ct. 1985); *see also In re B.L.*, 301 N.W.2d 387, 389 n.2 (N.D. 1981) (legislature may distinguish between licensed and unlicensed minors who commit traffic offenses). Watson has not provided any authority that a traffic offender is similarly situated with another type of offender.

Watson argues that all persons under 16 are similarly situated regardless of the charges against them, and they should all be tried as juveniles unless the juvenile court finds them unamenable to treatment under AS 47.12.100. [Pet. Br. 31] But the legislature has determined that age is not the only relevant characteristic. *Cf. Alaska Inter-Tribal Council*, 110 P.3d at 969 (need for police protection was not the relevant characteristic). Eligibility for juvenile court depends on a person's age *and* her alleged conduct. *See* AS 47.12.020; AS 47.12.030.

A person has no right to be treated the same as another person solely because the two are the same age. *State v. Wilson*, 409 A.2d 226, 228 (Me. 1979)

(no right to special treatment based on status as a minor); *Washington v. State*, 642 So.2d 61, 63 (Fla. App. 1994) (same); *Stokes v. Fair*, 581 F.2d 287, 289 (1st Cir. 1978) (same). In *Treacy v. Municipality of Anchorage*, minors argued that a curfew ordinance violated their right to equal protection because the ordinance exempted minors who were married or emancipated. 91 P.3d 252, 267 (Alaska 2004). Due to the differences between these groups, however, this Court held that the ordinance did not violate equal protection. *Id.* at 267-68. Thus, the government may validly draw distinctions even among minors who are the same age and who engage in the same conduct if another relevant criterion exists.

In excluding non-felony traffic offenses from juvenile court, the legislature has not discriminated at all — every driver in Alaska is treated equally. Watson "complains not so much of unequal protection as of protection that is too equal." *Anderson v. State*, 904 P.2d 433, 436 (Alaska App. 1995). Watson argues that the state is *required* to discriminate based on age, *i.e.*, the state *must* treat minors differently than adults who engage in the same conduct. The legislature may treat people differently based on age — as the juvenile justice system demonstrates — but the legislature is not required to treat minors differently than it treats adults who engage in the same conduct solely because of the minor's age.

Watson has not shown that a person charged with misdemeanor DUI is similarly situated with anyone except another person charged with misdemeanor DUI. Minors charged with non-felony traffic offenses are not similarly situated with minors charged with other offenses. The differences between traffic offenses and other offenses necessarily justify treating all non-felony traffic offenders as adults regardless of age. *Black*, 187 P.3d at 1102. Watson's claim fails on the threshold question.

2. *Watson has not shown that she was treated differently than another person charged with a non-felony traffic offense.*

Even people charged with separate traffic offenses are not similarly situated, because the different conduct that defines each offense justifies different treatment. *See Bell*, 598 P.2d at 914; *Maeckle*, 792 P.2d at 689. For example, a person charged with DUI has engaged in different conduct than a person charged with (1) driving with a suspended license, (2) reckless driving, or (3) failure to stop at the direction of a peace officer. However, even if a court were to consider these offenders similarly situated because they all committed traffic offenses, there is no disparate treatment. Any minor charged with a non-felony traffic offense is treated as an adult.

The only group that is potentially similarly situated with Watson, and that receives different treatment than Watson, is offenders who are charged with felony traffic offenses. (An adult charged with a felony traffic offense is

tried in superior court, while a minor charged with a felony traffic offense is presumptively tried in juvenile court.) But even offenders charged with misdemeanor DUI and felony DUI are not similarly situated, because felony DUI requires the prosecution to prove that the offender has twice been convicted of misdemeanor DUI. *Cf. Bell*, 598 P.2d at 914; *Ross v. State*, 950 P.2d 587, 590 (Alaska App. 1997) (misdemeanor DUI and felony DUI are separate offenses). And even if these two classes of offenders are similar enough to pass the threshold question, the differential treatment is justified under Alaska's three-step sliding-scale test.

D. Minors charged with misdemeanor traffic offenses may be tried as adults under Alaska's three-step sliding-scale equal protection test.

An equal protection challenge to a statute "must overcome a presumption of constitutionality." *Planned Parenthood of the Great Northwest v. State*, 375 P.3d 1122, 1133 (Alaska 2016). Once a challenger has raised a viable equal protection claim by showing that the government treats two groups of similarly situated people differently, a court uses a three-step sliding scale analysis to determine whether the different treatment is justified. *Planned Parenthood*, 375 P.3d at 1135-37.

> First, it must be determined at the outset what weight should be afforded the constitutional interest impaired by the challenged enactment. ... Depending on the primacy of the

> interest involved, the state will have a greater or lesser burden in justifying its legislation.
>
> Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest.
>
> Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. Once again, the state's burden will differ in accordance with the determination of the level of scrutiny under the first stage of analysis. At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between means and ends must be much closer. If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.

Planned Parenthood, 375 P.3d at 1137 (ellipsis in original) (quoting *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, 269-70 (Alaska 1984)). Watson has not met her burden to overcome the presumption that the juvenile jurisdiction statute is constitutional.

1. *Minors have only a limited interest in juvenile court.*

The court of appeals held that "a juvenile's interest in avoiding prosecution as an adult implicates only 'the relatively narrow interest of a convicted offender in minimizing the punishment for an offense.'" *Watson*, 400 P.3d at 123 (quoting *State v. Ladd*, 951 P.2d 1220, 1224 (Alaska App. 1998)); *see also Maeckle*, 792 P.2d at 689 (an adult challenging the penalties for

violating a statute has only "the relatively narrow interest of a convicted offender in minimizing the punishment for an offense"). "[P]eople who break the law have only a limited right to insist on the kind of penalty they will face." *Ladd*, 951 P.2d at 1224.

Courts agree that there is no constitutional right to juvenile court. *Gray v. State*, 267 P.3d 667, 672 (Alaska App. 2011); *W.M.F. v. State*, 723 P.2d 1298, 1300 (Alaska App. 1986) (citing *Woodard v. Wainwright*, 556 F.2d 781, 785 (5th Cir. 1977)). "Rather, it is a right granted by the state legislature, and the legislature may restrict or qualify the right as it desires, so long as no arbitrary or discriminatory classification is involved." *W.M.F.*, 723 P.2d at 1300. In Alaska, minors have only a statutory right to juvenile court for specified offenses, and even that right is qualified because the juvenile court may waive its jurisdiction if the minor is not amenable to treatment in juvenile court. AS 47.12.030; AS 47.12.100.

Minors in Alaska enjoy the same rights whether they are tried as juveniles or as adults. *See, e.g., R.L.R. v. State*, 487 P.2d 27 (Alaska 1971) (minors have right to public jury trial); *Wagstaff v. Superior Court*, 535 P.2d 1220, 1226-27 (Alaska 1975) (noting rule-based right to counsel); *Kent v. United States*, 383 U.S. 541, 562 (1966) (right to due process); *In re Gault*, 387 U.S. at 20-57 (right to due process, notice of charges, counsel, confrontation, cross-examination, and privilege against self-incrimination); *In re Winship*,

397 U.S. 358, 368 (1970) (right to standard of proof beyond a reasonable doubt). Treatment as adults does not deprive minors of any constitutional protections.

Watson emphasizes that she seeks to minimize her punishment by claiming that she faced "uniquely harsh consequences" from being tried as an adult. [Pet. Br. 14-20] The primary way that juvenile and adult punishment differ is that a juvenile is "adjudicated" rather than "convicted." But a person who engages in criminal conduct has "no right to avoid the collateral consequences of a criminal conviction." *In re Tyrone K.*, 887 N.W.2d 489, 502 (Neb. 2016). And the term "delinquent" has "only slightly less stigma" than the term "criminal." *In re Gault*, 387 U.S. at 24. Watson has no significant interest in avoiding the legal consequences of her conduct.

Juvenile proceedings may also be closed to the public in many cases, and the records of juvenile proceedings are generally sealed once the minor leaves the juvenile system, but the sealing provisions "do not apply to records of traffic offenses." AS 47.12.110; AS 47.12.300(d). Thus, delinquency proceedings often allow an added measure of privacy for minors, but the records of traffic offenses remain public.

Another way treatment as a juvenile differs from treatment as an adult is in how long the state may retain custody or supervision of the offender. If the juvenile court finds that a minor is delinquent, the court may commit the minor to the supervision of the Department of Health and Social Services for

two years, either in custody or on probation. AS 47.12.120(b). The court may grant two-year extensions until the delinquent's 19th birthday, and may grant an additional extension until the delinquent's 20th birthday if the delinquent consents. *Id.* This system does not distinguish between minors based on the specific offenses they commit.

Whether a person is tried as a juvenile or an adult can have an impact on the length of state supervision the person faces. For example in *Gray*, a 16-year-old was convicted as an adult of murder and kidnapping, and then sentenced to 65 years to serve, even though the juvenile court would have lost jurisdiction over her when she turned 20. *Gray*, 267 P.3d at 669 (no equal protection violation treating 16-year-old as adult); AS 47.12.160 (age limit on juvenile court jurisdiction). But treatment as an adult does not inevitably lead to longer periods of custody. In *Gault*, the United States Supreme Court noted that if Gault had committed his offense as an adult he would have faced no more than two months of imprisonment, but as a juvenile he faced up to six years in state custody. *In re Gault*, 387 U.S. at 29. Watson admits that a minor's disposition in juvenile court could be longer than the minor would face if tried as an adult. [Pet. Br. 10] Thus, juvenile court is not necessarily the more lenient option.

When Watson committed her offense in 2011, an adult convicted of her first DUI faced a minimum of three days and a maximum of one year of

imprisonment. AS 28.35.030(b); Former AS 12.55.135(a) (2011). The legislature amended the law in 2016. SLA 2016, Ch. 36, §§ 91, 107. Today, an adult convicted of her first DUI will ordinarily face a maximum of 30 days of imprisonment, and the three-day mandatory minimum sentence will be served at a private residence. AS 12.55.135(a); AS 28.35.030(k). Although Watson argues that treatment as an adult subjected her to uniquely harsh consequences, this is not reflected in her sentence, which fell within the newly reduced sentencing range for a first DUI conviction.

Watson points out decisions where courts have noted that teenagers often lack maturity and fail to fully consider the consequences of their actions. [Pet. Br. 8 (citing *Roper v. Simmons*, 543 U.S. 551 (2005) (Eighth Amendment forbids execution of individuals who were minors when they committed murder); *J.D.B. v. North Carolina*, 564 U.S. 261, 272-73 (2011) (a minor's age properly informs the *Miranda* custody analysis); *Johnson v. Texas*, 509 U.S. 350 (1993) (Johnson was sentenced to death for murder he committed when 19; instructions during penalty phase did not restrict the jury from considering Johnson's youth as a mitigating factor))] These cases have little bearing on the issue in this case.

Excluding non-felony traffic offenses from juvenile court does not mean that a judge cannot consider a minor's age when fashioning an appropriate sentence. Magistrate Ward took Watson's age and potential for

rehabilitation into account when he sentenced her. [Tr. 210-24] And under *Roper*, even 65 years of imprisonment does not constitute cruel and unusual punishment. *Gray*, 267 P.3d at 671-72. A lengthy sentence may serve "legitimate penological goals" even for a youthful offender. *Gray*, 267 P.3d at 671-72 (65-year sentence for kidnapping and murder was not cruel and unusual under *Roper*).

In *Waterman*, the court of appeals had no quarrel with the proposition that many young people are immature, but the court rejected the argument that the threshold age of adult criminal responsibility should depend on scientific research into brain development. *Waterman*, 342 P.3d at 1263. "[T]he assessment of the proper scope of criminal responsibility hinges on more than brain science." *Id.* "[T]he problem of defining the nature and extent of criminal responsibility involves larger issues of philosophy, morality, and social policy. And under our government of divided powers, it is the legislative branch that is primarily responsible for addressing and resolving these issues." *Id.* An Illinois court reached a similar conclusion and rejected an attack on its statutory provision requiring that all 15- and 16-year-olds charged with certain offenses be tried as adults. *People v. Harmon*, 26 N.E.3d 344, 358-59 (Ill. App. 2013), *cert. denied*, 136 S. Ct. 400 (2015). Such a provision "does not impose a punishment but rather specifies the forum in which the defendant's guilt may be adjudicated." *Id.* at 359. Cases prohibiting the death penalty for minors have

little application to the question whether a minor may be treated as an adult for a non-felony traffic offense.

Watson claims that she has an important interest in the rehabilitation and treatment available in juvenile court, and that this interest merits "greater-than-minimum scrutiny." [Pet. Br. 26-28] But a sentencing judge must always consider the goal of rehabilitation, even if the judge determines that other sentencing goals should be given more weight. *Shagloak v. State*, 582 P.2d 1034, 1039 (Alaska 1978); Alaska Const. art. I, § 12. The legislature has determined that rehabilitation is important for *all* drunk drivers, and the trial court must order treatment for any person convicted of DUI. AS 28.35.030(h). And although rehabilitation is the historical focus of juvenile court, it is not the court's only focus. The express goals of the juvenile justice system are largely the same as the goals of the adult criminal justice system, including protecting the public. *Compare* AS 47.12.010 *with* AS 12.55.005. To the extent the statutory goals differ, the legislature has concluded that the purposes underlying the juvenile system simply do not apply to non-felony traffic offenses. *Cf. Christy v. Commonwealth*, 2008 WL 682601, at *2 (Ky. Ct. App. Mar. 14, 2008) (unpublished) ("[T]he purpose of the juvenile code is of no importance in this case, as we have already discussed that DUI offenses are within the exclusive jurisdiction of the adult session of district court."). Treatment is available in the district court as well as juvenile court, and

Watson's interest in treatment does not require this Court to exercise any heightened level of scrutiny.

Watson has not explained why the treatment available through the district court is inadequate or how the juvenile court is better suited to treat the needs of minors charged with traffic offenses. Watson argues that the State "effectively conceded that Watson was amenable to rehabilitation as a juvenile" [Confidential Portion of Opening Brief], but this misses the point. Amenability to treatment does not entitle a person to be tried in juvenile court. Watson may have been amenable to treatment as a juvenile, but she has shown that she was also amenable to treatment as an adult. After being tried as an adult, Watson completed a six-week behavioral health program that satisfied the statutory requirement for treatment. [Tr. 215, 221-23] And as Watson now points out, she has not violated the conditions of her release pending appeal in the years since her sentencing. [Pet. Br. 7] This shows that Watson received adequate treatment and did not require any extra opportunities for treatment that might have been available through the juvenile court.

Watson also notes that a criminal conviction may hinder a person's prospects for college, employment, or military service. [Pet. Br. 10-11] This is another collateral consequence of criminal conduct that a person has no right to avoid. *See In re Tyrone K.*, 887 N.W.2d at 502. Schools and employers may develop their own criteria regarding who to admit or hire. A person's driving

record may be important to many prospective employers, and it is certainly important to an insurance company offering to insure a person who wishes to legally drive. Shielding minors from the stigma of a criminal conviction is a worthy goal in some respects, but it comes at a cost to society. The legislature has reasonably concluded that society's interests outweigh a minor's interest in avoiding a criminal conviction for a non-felony traffic offense.

Courts reviewing similar challenges have found that minors have no substantial interest in being tried in juvenile court. *See People v. Sampson*, 473 N.E.2d 1002, 1008 (Ill. App. 1985) (rational basis to exclude traffic offenses from juvenile court); *State v. Wilson*, 409 A.2d 226, 227-28 (Me. 1979) (rational basis for legislature to conclude that a minor found guilty of a hunting offense is "not in need of the rehabilitative processes of the juvenile court system"); *Commonwealth v. Wade*, 402 A.2d 1360, 1364 (Pa. 1979) (rational basis to exclude murder from original jurisdiction of juvenile court; rehabilitation was the "main purpose" of the Pennsylvania Juvenile Act, but the act also provided for public safety); *Mason v. State*, 781 So.2d 99, 101-02 (Miss. 2000) (rational basis for statute prohibiting a person under 21 from driving with a blood-alcohol level of 0.02 percent or greater, even though the same conduct would not be criminal for a 21-year-old). This reflects the view that "the loss of access to juvenile court itself does not affect a substantial right." *In re Tyrone K.*, 887 N.W.2d at 500 (quoting *State v. Meese*, 599 N.W.2d 192, 199 (Neb. 1999)).

Watson has not shown that a minor has any interest juvenile court that warrants greater-than-minimum scrutiny.

The court of appeals correctly held that minors have only a narrow interest in being prosecuted as a juvenile and that the jurisdictional statute must be upheld as long as it is supported by a legitimate, non-arbitrary government interest.

2. *The legislature has a compelling interest in treating drivers alike regardless of age.*

The court of appeals held that the legislature has a "strong and legitimate interest in 'establishing penalties for criminal offenders and in determining how those penalties should be applied to various classes of convicted defendants.'" *Watson*, 400 P.3d at 123 (quoting *Gray*, 267 P.3d at 673). The court also pointed out that driving is a "highly regulated and substantially dangerous adult activity" and that minors pose a threat to public safety due to their inexperience compared to other drivers. *Watson*, 400 P.3d at 123. Thus, the court held that the legislature also had a "legitimate and weighty interest in assuring that minors who drive be held to an adult standard of care, and that they be held accountable for traffic offenses in the same fashion as adults." *Id.* (citing *Ardinger v. Hummell*, 982 P.2d 727, 731 (Alaska 1999) (holding that minor drivers must be held to an adult standard

of care for public safety reasons)). These interests justify treating minors who are charged with non-felony traffic offenses as adults.

In *Ardinger*, this Court noted that minors are generally held to the standard of care of a reasonable person of the same age because of society's interest in the welfare and protection of minors. 982 P.2d at 731. But an exception exists when a minor engages in an activity which is normally undertaken only by adults, such as driving a car. *Id.* "Children who physically control vehicles must, for public safety reasons, be held to an adult standard of care." *Id.* This Court held that a minor engaged in adult conduct when the minor took control of a car and entrusted the car to another minor, and the jury should have been instructed to evaluate this conduct using an adult standard of care. *Id.*

This Court's reasoning in *Ardinger* applies equally to criminal conduct. To promote public safety, the legislature may hold all drivers to the same standard of care and the same consequences when their conduct falls below that standard. If a minor engages in a highly regulated and substantially dangerous activity that is normally reserved for adults, then that minor should expect to be treated as an adult.

As already explained, minor drivers have generally been ineligible for juvenile court for many years in Alaska. *See* SLA 1969, Ch. 64, § 1. This is not

unusual — a majority of state legislatures have chosen to exclude some or all traffic offenses from juvenile court in appropriate circumstances.[4]

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[4] *See, e.g.,* Ala. Code § 12-15-102(6)(a)(1) (DUI is a "delinquent act," but other non-felony traffic offenses are not delinquent acts if committed by a person 16 years or older); Ariz. Rev. Stat. Ann. §§ 8-202(E), 8-323(B)(1) (juvenile court has jurisdiction over non-felony traffic offenses committed by minors); Ark. Code Ann. § 9-27-303(15) (traffic offenses are not "delinquent acts"); *State v. J.B.*, 827 S.W.2d 144, 145 (Ark. 1992) (juvenile court has no jurisdiction over DUI); Cal. Welf. & Inst. Code §§ 602, 603.5 (juvenile court has jurisdiction over traffic misdemeanors or felonies but lacks jurisdiction over traffic infractions); Colo. Rev. Stat. §19-2-104 (juvenile court lacks original jurisdiction over non-felony traffic offenses, but county court may transfer such cases for minors under 16 years old); Conn. Gen. Stat §46b-120 (9) ("delinquent act" does not include a motor vehicle offense committed by a person 16 years or older); Fla. Stat. §§ 26.012(2)(c), 316.635(1) (juvenile court has jurisdiction over felony traffic offenses but not misdemeanor traffic offenses); *State v. W.W.*, 16 So.3d 305, 305-06 (Fla. Ct. App. 2009) (juvenile court has jurisdiction over felony traffic offenses but not misdemeanor traffic offenses, unless a juvenile is charged with both a felony and a misdemeanor); Ga. Code Ann. § 15-11-630 (excluding specific driving offenses from definition of "juvenile traffic offense"); Idaho Code Ann. § 20-505(6) (juvenile court does not have exclusive, original jurisdiction over traffic offenses, but has discretion to treat minors charged with traffic offenses under the juvenile code); *Zamora v. State*, 846 P.2d 194, 196 (Idaho 1992) (under former code, juvenile court had jurisdiction over misdemeanor traffic offenses but not felony traffic offenses); 705 Ill. Comp. Stat. §§ 405/5-120, 405/5-125 (juvenile and criminal courts have concurrent jurisdiction over traffic offenses); *People v. Markley*, 984 N.E.2d 546, 550 (Ill. Ct. App. 2013) (prosecutors have discretion to charge minors with traffic offenses in either juvenile court or adult traffic court); *Gressel v. State*, 429 N.E.2d 8 (Ind. App. 1981) (under former code, traffic offenses were excluded from juvenile court); Iowa Code § 232.8(1)(b) (traffic ordinances are excluded from juvenile court "and shall be prosecuted as simple misdemeanors"); Kan. Stat. Ann. § 38-2302(s) ("juvenile offender" does not include a person 14 or older who commits a traffic offense); *In re Hockenbury*, 680 P.2d 561 (Kan. App. 1984) (noting that in 1983 the juvenile court lost jurisdiction over persons 14 or older who commit traffic offenses); Ky. Rev. Stat. Ann. § 610.010(1) (juvenile court lacks jurisdiction over persons 16 or older charged with non-felony motor vehicle offenses); La. Child. Code Ann. art. 804 ("delinquent act" excludes

"traffic violations"); Me. Rev. Stat. Ann. § 3103(1)(A) ("juvenile crime" generally excludes traffic offenses, but includes DUI and crimes with a maximum sentence of 3 years or more); Minn. Stat. § 260B.225 (a person 16 years or older who commits a traffic offense other than a "major traffic offense" is treated as an adult); Miss. Code Ann. § 43-21-159 (traffic offenses generally do not proceed in juvenile court, but the court may remove cases from criminal court); Mo. Rev. Stat. § 211.031 (juvenile court lacks jurisdiction over non-felony traffic offenses committed by a person 15 years or older); *State ex rel. Kinsky v. Weber*, 55 S.W.3d 422, 423 (Mo. Ct. App. 2001) (same); Mont. Code Ann. § 41-5-203(1) (juvenile court lacks jurisdiction over traffic offenses); *State v. Allen*, 206 P.3d 951, 955 (Mont. 2009) (juvenile court lacks jurisdiction over DUI); *In re Tyrone K.*, 887 N.W.2d 489, 493 (Neb. 2016) (whether juvenile court has original, exclusive, or concurrent jurisdiction depends on the age of the offender and the nature of the offense); N.H. Rev. Stat. Ann. § 169-B:32 (juvenile code does not apply to persons 16 or older charged with a motor vehicle offense); *In re B.L.*, 301 N.W.2d 387, 388-89 (N.D. 1981) (noting that a minor without a license charged with DUI is treated as a juvenile, but a minor with a license charged with DUI is treated as an adult; the law in North Dakota appears to have changed since 1981); Okla. Stat. § 2-1-103(13) ("delinquent child" does not include a person who violates a traffic law, but includes one who habitually violates traffic laws); R.I. Gen. Laws § 14-1-3(5) ("delinquent" means a child who has committed "a felony, or who has on more than one occasion violated any of the other laws of the state . . . other than ordinances relating to the operation of motor vehicles"); S.C. Code Ann. §§ 63-3-510, 520 (juvenile court and criminal court have concurrent jurisdiction over persons under 17 charged with traffic violations); S.D. Codified Laws § 26-8C-2 (juvenile court excludes "traffic laws that are classified as misdemeanors, or petty offenses or any violation of . . . [driver under 21 operating vehicle with .02 BAC]"); Tenn. Code Ann. § 37-1-102(10) (juvenile court generally excludes traffic offenses but includes failure to stop, DUI, vehicular homicide, or a felony traffic offense); Utah Code Ann. § 78A-6-103(1)(a), (2) (juvenile court excludes most traffic offenses but includes DUI and reckless driving); *Nelson v. Green*, 479 P.2d 480 (Utah 1971) (DUI was previously handled in criminal court in Utah); 33 Vt. Stat. Ann. § 5102(9)(B) ("delinquent act" does not include felony motor vehicle offenses committed by a person 16 or older, except DUI or negligent driving); Wis. Stat. § 938.12, 938.17(1) (criminal courts have exclusive jurisdiction in cases with juveniles 16 or older charged with DUI; court may disregard minimum period of incarceration for the offense).

Courts addressing claims similar to Watson's have noted society's interest in public safety and in uniform treatment of drivers. *See People v. Sampson*, 473 N.E.2d 1002, 1009 (Ill. App. 1985) (driving is considered an adult activity, although the privilege has been extended to minors; given the large volume of traffic offenses committed by minors, the protections of juvenile court are "neither appropriate nor necessary"). Some courts have held that prohibiting underage drinking and driving, or simply underage consumption of alcohol, are legitimate goals in themselves. *See Mason v. State*, 781 So.2d 99, 102-04 (Miss. 2000) (societal interest in public safety and deterring underage drinking and driving); *Barnett v. State*, 510 S.E. 527, 528 (Ga. 1999) (minors are more inexperienced than adults at both driving and judging the effects of alcohol; strict laws provide disincentive to consume alcohol or drive under the influence). Watson has not addressed these strong government interests.

Watson points out that the court of appeals previously described a state interest in "rehabilitating wayward youths who are rehabilitatable in their youth." *W.M.F. v. State*, 723 P.2d 1298, 1300 (Alaska App. 1986) (rejecting argument that due process requires the State to prove a minor's non-amenability to treatment by a standard higher than a preponderance of the evidence). [Pet. Br. 28] But the court recognized that there were "equally important interests" in protecting the public, showing community

condemnation for the offenses, and deterring the defendant and others from committing future crimes. *Id.* (citing *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970)).

This Court has applied the same principle in cases involving adults. "Penalties must be imposed in most instances in order to make rehabilitation effective, as well as to protect the public and deter others from engaging in criminal conduct. Equally important in the imposition of sanctions is the need to recognize and express community condemnation of the offender's anti-social conduct." *State v. Lancaster*, 550 P.2d 1257, 1259 (Alaska 1976). In *Chaney*, this Court recognized that a penalty that is too lenient may actually undermine the goal of rehabilitation. 477 P.2d at 447 ("At most, appellee was told that he was only technically guilty and minimally blameworthy, all of which minimized the possibility of appellee's comprehending the wrongfulness of his conduct."). Thus, although society has an interest in rehabilitating offenders, society has other interests that are equally compelling. Society's interest in rehabilitating a young first-time DUI offender can be satisfied by the treatment available in district court while also promoting the State's other interests.

Watson also argues that the court of appeals erred in holding that the legislature has a strong interest in "establishing penalties for criminal offenders and determining how those penalties should be applied to various

classes of convicted defendants." *Watson*, 400 P.3d at 123. [Pet. Br. 29-30] This argument is unpersuasive as well.

"It is elementary that the power to define crimes and fix punishments rests in the legislature. In the performance of that function, that body is to use the discretion lodged in it, and not be confined by narrow or unduly restrictive limits." *Alex v. State*, 484 P.2d 677, 684 (Alaska 1971) (concluding that defendants who escape from custody on a felony charge may be treated differently than those who escape from custody on a misdemeanor). "So long as a legislative classification is not based upon an arbitrary or unjustifiable distinction and does not invidiously discriminate between two groups, there is no denial of equal protection." *Id.* "Save only as limited by constitutional safeguards, the legislature may choose any reasonable means to protect the people from the violation of criminal laws." *Id.* at 685.

Likewise, the court of appeals has held that "it is the legislature's province to decide which prosecutions shall be governed by the normal criminal laws and which shall be governed by the juvenile delinquency laws." *Nao v. State*, 953 P.2d 522, 525 (Alaska App. 1998). Courts "should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes." *Dancer v. State,* 715 P.2d 1174, 1181 (Alaska App. 1986) (quoting *Solem v. Helm*, 463 U.S. 277, 290 (1983) (considering claim that sentence was cruel and unusual)). A Florida

court has held that a legislature has "absolute discretion" to determine whether an individual charged with a particular crime is entitled to the benefit of the juvenile justice system. *Washington v. State*, 642 So.2d 61, 63 (Fla. App. 1994) (citing *State v. Cain*, 381 So.2d 1361, 1363 (Fla. 1980) ("[A] child has the right to be treated as a juvenile delinquent only to the extent provided by our legislature.")). Defining crime and punishment is a core legislative function, and the legislature is afforded great deference when exercising that function.

Watson argues that the legislature's interest is not in the act of establishing penalties itself, but rather in doing so in ways that serve the constitutional purposes of criminal administration. [Pet. Br. 30] Watson asserts that the constitutional purposes of criminal administration are subverted by excluding "a younger offender charged with a less serious offense" from juvenile court. [Pet. Br. 29-30] This argument hinges on this Court finding that the legislature's decision actually subverts the goals of criminal administration, but Watson has not shown any flaw in the legislature's decision. Criminal law must be based on community condemnation and the need for protecting the public as well as the principle of reformation. Alaska Const. art. I, § 12. Excluding non-felony traffic offenses from juvenile court promotes all of these constitutional goals. And treating all non-felony traffic offenders alike regardless of age promotes the goal of equal protection.

The court of appeals correctly held that the legislature has a strong interest in determining which offenders are eligible for the juvenile justice system and which are not. Although society also has an interest in the welfare and protection of minors, that interest does not require special treatment when minors engage in dangerous adult conduct.

3. *The means chosen by the legislature to achieve its purpose bear a close relationship to its interests.*

Since minors have only a narrow interest in avoiding prosecution as adults, the court of appeals determined that the legislature could distinguish between different groups of minors as long as those distinctions were not arbitrary or base on a discriminatory classification. *Watson*, 400 P.3d at 123 (citing *State v. Ladd*, 951 P.2d 1220, 1225 (Alaska App. 1998)). The classifications drawn by the legislature easily meet this standard, as they bear a close relationship to strong legislative interests.

It is natural for a legislature to treat traffic offenders as adults because "exercising physical control of a motor vehicle on a roadway is an adult activity requiring a driver's license." *Ardinger*, 982 P.2d at 731. All non-felony traffic offenses have been excluded from juvenile court for almost 50 years. SLA 1969, Ch. 64, § 1. This exclusion bears a close relationship to the legislature's strong interests in public safety and establishing uniform penalties based on criminal conduct.

Watson complains that minors charged with misdemeanor traffic offenses receive harsher treatment than minors charged with most other offenses, particularly offenses involving alcohol, drugs, or weapons. [Pet. Br. 16-17] As explained above, this argument ignores the key differences between these offenses — these classes of individuals are not similarly situated. The use of alcohol, controlled substances, or weapons is not uniquely adult. The legislature has created some offenses and infractions based on underage use of weapons, alcohol, and drugs, but such activities present different dangers than driving, both in quantity and quality. Every day in Alaska, thousands of people drive on the highways, creating a risk of injury or death to drivers, passengers, and pedestrians even when drivers obey the traffic laws. Thus, it makes sense to treat drivers as adults while also offering different treatment to minors who engage in conduct that is not regulated in the same way that the traffic laws are. The government interest in highway safety justifies treating all first-time drunk drivers equally.

Watson also argues that trying minors charged with *misdemeanor* DUI as adults while presumptively trying minors charged with *felony* DUI as juveniles reverses traditional principles of criminal sentencing by creating harsher penalties for less serious offenses. [Pet. Br. 36] The court of appeals found "no particular anomaly" in this distinction, however, because felony offenders are subject to "significantly increased amounts of imprisonment, as

well as various lifetime legal disabilities." *Watson*, 400 P.3d at 123. Thus, the legislature could reasonably decide that minors should not face such severe consequences even when the felony arises from the act of driving. *Id.* The court's conclusion was well founded for two reasons.

First, the exclusion of misdemeanor traffic offenses from juvenile court and the presumptive inclusion of felony traffic offenses (subject to the possibility of waiver under AS 47.12.100) are consistent with the legislature's intent in creating the juvenile justice system. The legislature has balanced two legitimate policy determinations. On one hand, traffic offenders generally should be tried as adults because traffic offenses by their nature are poorly suited for juvenile court. On the other hand, minors accused of all but the most serious felonies generally should be tried in juvenile court to avoid the consequences associated with a felony conviction. AS 47.12.030(a). When these policies collide — when minors commit felony-level traffic offenses — one must give way. The legislature determined that a minor's interest in avoiding a felony conviction outweighs the societal interest in treating all drivers as adults, even though a minor's interest in avoiding a misdemeanor conviction does not. *See* AS 47.12.030(b) (traffic offenses are eligible for juvenile court not based on specific conduct but rather because the conduct is classified as a felony). The Alaska Constitution does not compel a different policy.

Second, this classification system is not novel. Many jurisdictions distinguish between traffic offenses and other offenses, and several jurisdictions treat minors charged with less serious traffic offenses as adults yet try more serious traffic offenses within the juvenile justice system.[5] Watson is correct that a system that provides harsher penalties for more serious offenses is permissible [Pet. Br. 36 (citing *Gray*, 267 P.3d at 673)], but it does not follow that the legislature may *only* provide different treatment based on the seriousness of the offense. It is reasonable for the legislature to exclude entire categories of offenses from the juvenile justice system due to the nature

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[5] *See, e.g.,* Ala. Code § 12-15-102(6)(a)(1) (non-felony traffic offenses other than DUI are not delinquent acts if committed by a person 16 years or older); Ariz. Rev. Stat. Ann. §§ 8-202(E), 8-323(B)(1) (juvenile court has jurisdiction over non-felony traffic offenses committed by minors); Colo. Rev. Stat. §19-2-104 (juvenile court lacks original jurisdiction in non-felony traffic offenses, but county court may transfer such cases for minors under 16 years old); Fla. Stat. §§ 26.012(2)(c), 316.635(1) (juvenile court has jurisdiction over felony traffic offenses but not misdemeanor traffic offenses); *Zamora v. State*, 846 P.2d 194, 196 (Idaho 1992) (juvenile court has jurisdiction over misdemeanor traffic offenses but not felony traffic offenses); Ky. Rev. Stat. Ann. § 610.010(1) (juvenile court lacks jurisdiction over persons 16 or older charged with non-felony motor vehicle offenses); Me. Rev. Stat. Ann. § 3103(1)(A) ("juvenile crime" generally excludes traffic offenses, but includes DUI and crimes with a maximum sentence of 3 years or more); Mo. Rev. Stat. § 211.031 (juvenile court lacks jurisdiction over non-felony traffic offenses committed by a person 15 years or older); S.D. Codified Laws § 26-8C-2 (juvenile court excludes "traffic laws that are classified as misdemeanors, or petty offenses or any violation of . . . [driver under 21 operating vehicle with .02 BAC]"); Tenn. Code Ann. § 37-1-102(10) (juvenile court generally excludes traffic offenses but includes failure to stop, DUI, vehicular homicide, or a felony traffic offense).

of those offenses, yet still retain a narrow exception for offenses that carry the collateral consequences associated with a felony conviction.

Watson suggests that if the legislature wanted to shield minors from the consequences of a felony conviction, it "could have chosen to make all DUIs misdemeanor offenses — at least as to children younger than 18 years." [Pet. Br. 39] This argument is unpersuasive. The legislature need not rewrite criminal laws in order to accommodate minors who break those laws. The legislature reasonably decided to treat all drivers alike, with a narrow exception for minors who would otherwise be subject to felony penalties because in that case, the scales tip towards the juvenile justice model with the primary goals of rehabilitation and reformation.

Other courts have found good reason to distinguish between minors charged with traffic offenses and minors charged with other offenses. In a New Hampshire case, a minor was tried as an adult for misdemeanor traffic offenses he committed when he was 16. *State v. Deflorio*, 512 A.2d 1133, 1134 (N.H. 1986) (Souter, J.). He argued that his right to equal protection was violated by treating him as an adult when minors who commit most other misdemeanors or who commit felonies of any sort were presumptively tried in juvenile court. *Id.* at 1136. The New Hampshire Supreme Court held that there was an obvious rational basis for the different treatment. *Id.* at 1136-37. The state may demand that a licensed 16-year-old driver possess "not only physical skill

but also enough social responsibility to respect the rules of the road" and to control his impulsiveness. *Id.* at 1137. "A teenage driver who lacks self-control, however, is not likely to be deterred from wild driving by a fear of the least restrictive rehabilitative alternative under the juvenile law." *Id.* Thus, the legislature could conclude that "the only effective deterrent is fear of adult penalties." *Id.* The court noted that minors who drive have long been held to adult standards. *Id.* "Fairness therefore combines with practical necessity in rationally justifying the distinction" between traffic and non-traffic offenses. *Id.*

The Wisconsin Supreme Court found a similar basis to treat traffic offenders differently than other offenders. *State v. Hart*, 277 N.W.2d 843, 845-46 (Wis. 1979). Under Wisconsin's juvenile statutes, 16- and 17-year-old traffic offenders were treated as adults even though other offenders the same age were presumptively tried in juvenile court. *Id.* at 846. The court found that the motor vehicle code served a different purpose than the general criminal law. *Id.* at 847. "The legislative purpose in other statutory provisions which define and proscribe conduct may also be the protection of property and life[,] but those provisions are not directly and primarily related to the regulation of drivers and motor vehicles for highway safety." *Id.* Due to the "staggering" number of traffic accidents in the state, the court found that the legislature might reasonably conclude that a person is "more likely to be killed or injured

on the highway than at home or in the streets." *Id.* at 847-48. The exclusion of some minors from juvenile court could make enforcement of the motor vehicle code more uniform, deter dangerous driving, and promote highway safety. *Id.* at 848. The court rejected an assertion that the exclusion offended the purpose of the juvenile court. *Id.* Although one of the court's purposes was "to promote the best interests of the children" of Wisconsin, legislature also intended that the juvenile code be interpreted with "the interest of the public" in mind, which included highway safety. *Id.*

There are many legitimate ways the legislature could choose to structure juvenile court. The fact that the legislature has declined to give minors preferential treatment when it comes to non-felony traffic offenses, and to treat every person who commits misdemeanor DUI equally, does not violate the constitutional right to equal protection. The exclusion of non-felony traffic offenses from juvenile court bears a close interest to strong government interests. Watson has not met her burden to show that the legislature's decision to treat minors charged with non-felony traffic offenses as adults is unconstitutional.

CONCLUSION

Watson has not overcome the presumption that the statutory exclusion of non-felony traffic offenses from juvenile court is constitutional. Watson did not receive different treatment than a similarly situated group. A

minor's only interest in being prosecuted in juvenile court is the narrow interest in avoiding the consequences of criminal conduct. The exclusion of non-felony traffic offenses from juvenile court bears a close relationship to the strong government interests in the public safety and establishing uniform penalties for those convicted of traffic offenses. The distinction between non-felony traffic offenses and other offenses does not violate equal protection.

This Court should affirm Watson's conviction.

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