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IN THE SUPREME COURT OF THE STATE OF ALASKA

ELIZABETH WATSON,	)	
Petitioner,	)	
vs.	)	Court of Appeals No. S-16752
STATE OF ALASKA,	)	
Respondent.	)	

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

PETITION FOR HEARING FROM THE COURT OF APPEALS

APPEAL FROM THE DISTRICT COURT
FOURTH JUDICIAL DISTRICT AT BETHEL
HONORABLE BRUCE WARD, JUDGE

OPENING BRIEF OF PETITIONER

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Filed in the Supreme Court
of the State of Alaska
February 7, 2018

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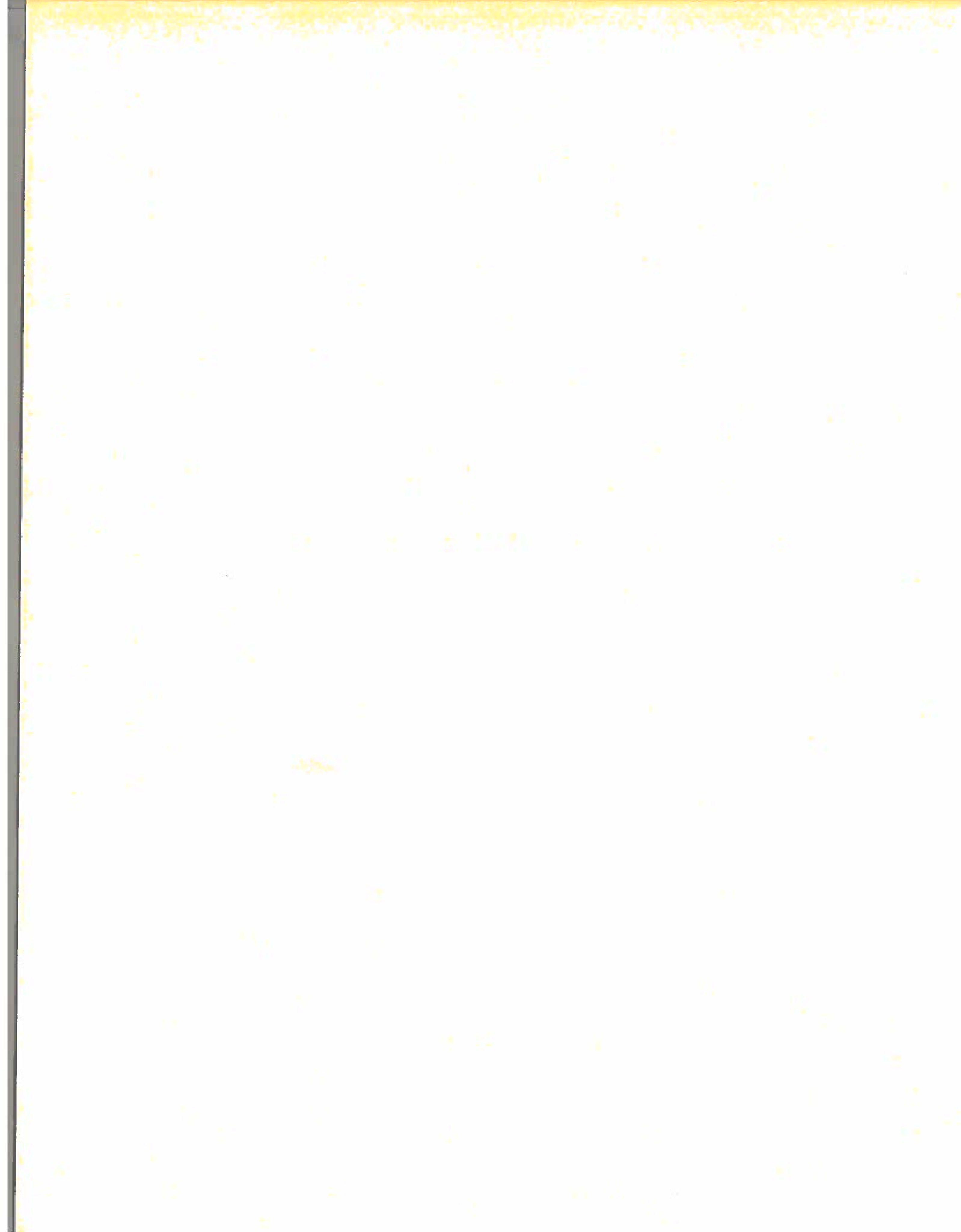
VRA CERTIFICATION AND APP. R. 513.5 CERTIFICATION

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 of or witness to any offense 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. I further certify, pursuant to App. R. 513.5, that the font used in this document is Arial 12.5 point.



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Alaska Statute 28.35.030(a), (b), (k), and (n) provide:

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 person's 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 person's 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 person's driver's 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.

. . .

(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 person's 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 person's 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 person's 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.

. . .

(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 person's driver's 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.

. . . .

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 offender's 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 offender's 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:

Jurisdiction.

(a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor is alleged to be or may be determined by a court to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state.

(b) Except as otherwise provided in this chapter, proceedings relating to a person who is 18 years of age or over are governed by this chapter if the person is alleged to have committed a violation of the criminal law of the state or a municipality of the state, the violation occurred when the person was under 18 years of age, and the period of limitation under AS 12.10 has not expired.

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 minor's 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, Sec. 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 defendant's 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 driver's license proceedings under AS 28.15.185; the court shall impose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings.

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 minor's history of delinquency, the probable cause of the minor's 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 minor's 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 47.12.120(a)-(c) 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 minor's 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 minor's 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 minor's 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 minor's 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 minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, the minor's foster parent, and the minor's 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 minor's 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 minor's parent to make suitable restitution in lieu of or in addition to the court's 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 minor's 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 minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's 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 minor's 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 minor's 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 department's custody and returned to the minor's parents, guardian, or custodian, and dismiss the case.
. . . .

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 minor's 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 minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor, the court shall order all the court's official records pertaining to that minor in a proceeding under this chapter sealed, as well as records of all driver's license proceedings under AS 28.15.185 , criminal proceedings against the minor, and punishments assessed against the minor. 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 court's official records prepared under this chapter and not made public under this section are confidential and may be inspected only with the court's 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 court's 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 minor's 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 minor's 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.

<u>RULES</u>

Alaska Rule of Minor Offense Procedure 18 provides:

Minor Offenses that Must be Filed as Underage Consuming Cases.

Unless filed with a related criminal case, the offenses listed as exceptions to the minor offense case numbering policy in Administrative Bulletin 7 must be filed as underage consuming cases and must be assigned underage consuming case numbers. Criminal rules rather than minor offense rules apply to these offenses, even though these offenses are not classified by statute as criminal offenses. Criminal charges may not be filed in an underage consuming case.

CONSTITUTIONAL PROVISIONS

ALASKA CONSTITUTION
Article I, Section 1 provides:

Inherent Rights.

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

ALASKA CONSTITUTION
Article I, Section 3 provides:

Civil Rights.

No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section.

ALASKA CONSTITUTION
Article I, Section 7 provides:

Due Process.

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

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.

STATEMENT OF JURISDICTION

Elizabeth Watson appealed to the court of appeals from the final judgment entered by the district court at Bethel on May 13, 2013 [Exc. 55], and the court of appeals issued its decision affirming Watson's conviction on May 19, 2017.[1] Watson petitioned for hearing from the court of appeals' decision in accordance with Appellate Rule 302. This court granted Watson's petition on November 8, 2017,[2] and has jurisdiction over this petition from a final judgment pursuant to AS 22.05.010 and AS 22.07.030.

ISSUE PRESENTED FOR REVIEW

Does AS 47.12.030(b) violate equal protection by requiring a minor who is accused of misdemeanor driving under the influence to be "charged, prosecuted, and sentenced in the district court in the same manner as an adult"?[3]

STATEMENT OF THE CASE

A. Background Facts

In November 2011, Elizabeth Watson was fourteen years old. [Tr. 16] Driving her mother's car one evening, she met up at the Bethel AC store with three older teenagers: Kimberly Evans, who was sixteen years old, and Jon Simon and Chelsea Kelly, who were fifteen years old. [R. 14; Tr. 64-65, 87-88, 111, 119, 183]

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1 *Watson v. State*, 400 P.3d 121 (Alaska App. 2017).

2 *See* Order, *Watson v. State*, S-16752 (Nov. 8, 2017) (quoting AS 47.12.030(b)).

3 *Id.* This court directed the parties to "specifically identify the interests a minor has in being included in the statutory juvenile justice system" and "specifically identify the composition of the classes to be scrutinized for purposes of determining whether they are 'similarly situated' under an equal protection analysis." *Id.*

The teenagers left the AC together, with Watson driving. [Tr. 65-66, 88, 111-12] Evans, Simon, and Kelly wanted to drink and asked Watson to drive them to a specific location, where they bought a bottle of R&R. [Tr. 112-13] That night, all four teenagers took shots of R&R and drove around town. [Tr. 67-68, 113-15]

Just after 4:30 a.m., police received a report of a vehicle hitting a sewer pipe. [Tr. 128-29] Officer Gwendolyn Drake responded and encountered Evans, Simon, and Kelly walking toward her, away from the accident. [Tr. 128-30] She then checked on Watson, who was sitting in the front passenger seat of the car, intoxicated and crying. [Tr. 130, 132-33, 142] Drake spoke with Evans, Simon, and Kelly as a group and then put them in her police vehicle. [Tr. 76, 98, 118, 129-30, 134] Officer Nicolas Dias put Watson in his police vehicle. [Tr. 131, 134]

Evidence was inconsistent as to the driver or drivers responsible. Watson had driven the car at the start of the evening; Evans took over driving sometime later.[4] [Tr. 68-72, 93-94, 115-16] Simon also tried to switch out as the driver at some point but accidentally hit the accelerator, causing the car to hit a fence, and then apparently did not drive farther. [Tr. 75, 119-20] Both Evans and Simon testified that Evans was the driver who crashed into the pipe.[5] [Tr. 71-72, 116-17] But at the scene, Evans told Drake—when Drake interviewed Evans,

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4 Simon stated that the two girls had switched seats because Watson was intoxicated and driving poorly. [Tr. 69-70] Evans testified that although Watson was intoxicated, that did not affect Evans' decision to take over driving. [Tr. 116]

5 Kelly testified that Evans took over driving from Watson, and her testimony seemed to indicate that Evans was still driving at the time of the collision. [Tr. 94-95] But Kelly later testified that she was too drunk to remember the night and did not answer specific questions, including about who was driving. [Tr. 101-05]

Simon, and Kelly together—that Watson had been driving. [Tr. 78, 130, 148-49]

Julian Garcia testified that he saw the driver try to drive out of the ditch but fail, and then try again and succeed in moving the car about thirty feet up the road.[6] [Tr. 31-33, 58-59] Garcia is nearsighted and was not wearing his glasses that night. [Tr. 50, 53-54] He identified Watson as the driver "[o]nly because she's heavy set" and he believed the driver was "easily one of the heavier set person than all the other individuals." [Tr. 32-33, 35-36] He also testified that he believed the driver was a heavy-set girl who worked at Swanson's. [Tr. 56] Watson had never worked at Swanson's, but Evans had. [Tr. 121, 184]

When police spoke with Watson, she admitted driving that night—apparently without indicating when or where[7]—but did not have the car keys or know where they were. [Tr. 140, 194, 196, 200] The keys were never found. [Tr. 184]

At the police station, Drake cited Evans, Simon, and Kelly for minor consuming alcohol (MCA), a non-criminal infraction,[8] and Dias processed Watson

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6 Garcia also said he saw passengers leave the vehicle and the driver try to get into the back seat because the pipe was blocking the driver's door. [Tr. 30-33] He said he saw the driver push hard against the pipe, knocking it over, and then, with help, get into the back seat and later into the front passenger seat. [Tr. 35]

7 Watson's recorded statement was played in court but was not transcribed. [Tr. 139-40] Watson's attorney in closing said, "The only person who vaguely, drunkenly puts herself driving that car at any time is Ms. Watson" [Tr. 196], suggesting Watson admitted driving that night but without specifying when or where. Because Watson's statement is not "essential to a determination of the issues on appeal," *see* Appellate Rule 210(b)(1)(A), Watson did not request its transcription.

8 *See* AS 04.16.050.

for driving under the influence (DUI), a misdemeanor.[9] [Tr. 99, 134] According to Dias, Watson performed and failed two field sobriety tests and told him she could not perform the third because she was too intoxicated. [Tr. 169-71] She also provided a breath sample that revealed an alcohol level of 0.152. [Tr. 173] The state charged Watson with DUI under both AS 28.35.030(a)(1) and (2). [Exc. 53-54]

B. Court Proceedings

1. Motion to dismiss

Watson filed a motion to dismiss for lack of jurisdiction, arguing that the state should have filed its charges in juvenile court. [Exc. 1-10] She acknowledged that AS 47.12.030 excludes certain offenses, including traffic offenses, from juvenile court jurisdiction but argued that DUI is not a traffic offense for purposes of juvenile jurisdiction and that, even if it were, excluding misdemeanor DUI from juvenile jurisdiction violated equal protection. [Exc. 5-10]

The district court denied Watson's motion before the state had even responded. [Exc. 12-14] The state later responded, disagreeing with both of Watson's arguments [Exc. 16-26], and Watson replied, requesting a hearing to determine whether she was amenable to treatment in juvenile court. [Exc. 27-35] The court again denied Watson's motion, ruling that appellate courts had concluded DUI is a traffic offense excluded from juvenile jurisdiction and such exclusion does not violate equal protection. [Exc. 37-38] Watson filed a motion for reconsideration explaining that the cases on which the court relied had not decided the constitutional

9 *See* AS 28.35.030(a)-(b).

issue she raised; the court also denied that motion. [Exc. 43-49, 51]

[See attached confidential brief for additional facts.]

2. Trial

At Watson's bench trial, the state called as witnesses Garcia, the three teenagers (Evans, Simon, and Kelly), a paralegal employed by the District Attorney's Office, and the two police officers (Drake and Dias). [Tr. 2, 27, 61, 82, 107, 121-22, 125, 160] The defense called Watson's mother as a witness. [Tr. 183-84]

In closing, the state conceded that Evans had driven the car into the pipe. [Tr. 188] But the state argued that Watson was impaired before she and Evans switched out as drivers. [Tr. 188] The state also argued that Watson had driven the car thirty feet from the site of the collision; was impaired at that time; and, within four hours, had a blood-alcohol level above the legal limit. [Tr. 188-90]

The court found Watson guilty of DUI under both impairment and blood-alcohol theories.[10] [Tr. 201-06] The court found that Evans, Simon, and Kelly were not credible when they testified that Evans drove the car into the pipe.[11] [Tr. 205] Because Garcia testified that he could not positively identify Watson as the driver, the court put "a substantial amount of weight on his testimony," including on his testimony that a heavy-set female had been driving. [Tr. 205-06]

3. Sentencing and post-sentencing proceedings

At sentencing in May 2013, Watson's mother and her attorney addressed the court on Watson's behalf. [Tr. 212-16] Her mother reported that

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10 *See* AS 28.35.030(a)(1), (2) (setting out two DUI prosecution theories).

11 *See supra* note 5 and accompanying text.

Watson was doing much better in school and at home, was "not hanging out with those friends anymore," and had completed a treatment program at Alaska Crossings. [Tr. 212] Alaska Crossings, based in Southeast Alaska, is an intensive behavioral health program that includes individual therapy for children aged 12-18.[12] [Tr. 215, 222] Watson successfully completed its six-week program. [R. 16-17; Tr. 222]

As defense counsel explained, Watson "was a child at the age of 14 when this happened" and "every other kid in that car was older than her and . . . she was not . . . instrumental in getting that alcohol." [Tr. 212-13] "By her age alone, [Watson] is incredibly rehabilitatable. She's not fully formed. Her brain's not finished growing." [Tr. 214-15] Defense counsel requested the court impose only the statutorily mandated minimums and order that Watson serve her sentence at a youth facility. [Tr. 216] She also asked that Watson's sentence be stayed pending appeal. [Tr. 216]

The court gave Watson the chance to speak at her sentencing, but she declined. [Tr. 217-18] Despite this decision, the court questioned and lectured Watson, as one might a child. [Tr. 218-19] The court asked Watson what she had been thinking that night, why she had been hanging out with older kids, what she had done that got her into trouble with the law, how alcohol can affect her thinking, and what she had learned from the case. [Tr. 218-19] The court then encouraged Watson to stay in school. [Tr. 219]

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[12] *See* Alaska Crossings, http://www.alaskacrossings.org/ (last visited Jan. 8, 2018).

The court sentenced Watson to 28 days with 25 suspended and two years of probation. [Tr. 220-21] The court ordered that Watson serve her sentence at the Bethel Youth Facility: "Given her age, the court finds that it would be highly inappropriate to have her in Yukon Kuskokwim Correctional Facility. I'm not sure they'd even take her if we ordered her to go there."[13] [Tr. 223] The court also stayed Watson's sentence pending her appeal, thus allowing her to remain in the community, subject to the conditions of her bail release, until the conclusion of her appeal. [Tr. 223] In the nearly five years since her sentencing, Watson has abided by the conditions of her bail release.[14]

The court of appeals affirmed the district court's exercise of jurisdiction over Watson.[15] Watson then petitioned this court for discretionary review, and this court granted her petition.[16]

STANDARD OF REVIEW

This court reviews de novo whether proscribing juvenile jurisdiction for an offense violates equal protection and due process.[17]

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[13] It is unclear whether, under AS 47.12.030(b), the court had the authority to issue this order.

Long after Watson's sentencing, the legislature amended AS 28.35.030(k) to require the mandatory minimum sentence for a first DUI to be served at a private residence and to allow the same for a second DUI. *See* SLA 2016, ch. 36, § 107.

[14] This fact can be inferred from the absence of any charge for violating conditions of release. *See* AS 11.56.757.

[15] *Watson v. State*, 400 P.3d 121 (Alaska App. 2017).

[16] *See* Order, *Watson v. State*, S-16752 (Nov. 8, 2017).

[17] *See, e.g.*, *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 260, 264-68 (Alaska 2004); *Gray v. State*, 267 P.3d 667, 672-75 (Alaska App. 2011).

ARGUMENT

WATSON'S TRIAL AS AS AN ADULT, WITHOUT FIRST HOLDING A HEARING TO DETERMINE HER AMENABILITY TO TREATMENT AS A JUVENILE, VIOLATED EQUAL PROTECTION AND DUE PROCESS.

A. Juvenile Court Jurisdiction in Alaska

1. Juvenile court's express focus on rehabilitating child offenders

The "principal precept" behind juvenile court is the notion that a child offender "does not have mature judgment and may not fully realize the consequences of his acts, and that therefore he should not generally have to bear the stigma of a criminal conviction for the rest of his life."[18] A child's character "is not as well formed as that of an adult" and her personality traits "are more transitory, less fixed."[19] A child is "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[20] In contrast with an adult offender, a child offender lacks maturity and has an underdeveloped sense of responsibility that result "in impetuous and ill-considered actions and decisions."[21] And it is for these reasons that child offenders are generally exempt from prosecution in adult court and are instead referred to juvenile court.[22]

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18 *P.H. v. State*, 504 P.2d 837, 841 (Alaska 1972).

19 *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

20 *Id.* at 569.

21 *Id.* (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)); *see also J.D.B. v. North Carolina*, 564 U.S. 261, 272-73 (2011) (reciting language from prior decisions about child behavior and perception and concluding, "Describing no one child in particular, these observations restate what 'any parent knows'—indeed, what any person knows—about children generally.").

22 *See P.H.*, 504 P.2d at 841-42, 845 ("The statutory framework for dealing with child offenders contemplates that non-criminal treatment is to be the

Juvenile court expressly focuses on rehabilitating, rather than punishing, child offenders.[23] Alaska's territorial legislature viewed juvenile courts as helping assure all Alaska children "such care and guidance as is as nearly as possible equivalent to that which should be given him by his parents."[24] Among juvenile court's statutory benefits, this court has described the "benevolent attitude" toward child offenders as "perhaps conceptually most important."[25] Juvenile court has special goals of responding to the minor's needs and providing "an early, individualized assessment and action plan" for the child to help her develop skills to "liv[e] productively and responsibly in the community."[26] Children in juvenile court work with probation officers and staff through the Department of Health and Social Services and have access to facilities offering specialized youth programming and treatment.[27] Juvenile court records also remain confidential, thus safeguarding the child's future opportunities for education and employment.[28]

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rule and adult criminal disposition the exception.").

[23] *State v. Sandsness*, 72 P.3d 299, 304 (Alaska 2003); *Rust v. State*, 582 P.2d 134, 140 n.21 (Alaska 1978).

[24] SLA 1957, ch. 145, §§ 1-4. Indeed, the legislature first created juvenile courts to handle all matters involving children—child-in-need-of-aid proceedings as well as delinquency proceedings.

[25] *P.H.*, 504 P.2d at 842 n.12.

[26] *See* AS 47.12.010 (b)(1), (11).

[27] *See, e.g.*, DJJ Facilities, Alaska Dep't of Health & Soc. Servs., Div. of Juvenile Justice, http://dhss.alaska.gov/djj/Pages/Facilities/facilities.aspx (last visited Feb. 1, 2018); What is Probation Supervision?, Alaska Dep't of Health & Soc. Servs., Div. of Juvenile Justice, http://dhss.alaska.gov/djj/Pages/Probation/diversion.aspx (last visited Feb. 1, 2018).

[28] *See* AS 47.12.300(d); *P.H.*, 504 P.2d at 842 n.12 (listing some statutory benefits of juvenile court as "no criminal conviction or the attendant employment prejudice and loss of civil rights" and "minimal publicity concerning the

As part of its rehabilitative model, juvenile court employs indeterminate sentencing. When juvenile court finds a child delinquent, the court can commit the minor to a juvenile detention center or place the child on juvenile probation for up to two years.[29] Depending on how he or she fares, the court can order two-year extensions of that detention or probation up until the child is 19 years old.[30] The court can also order an additional one-year period of supervision, until the person is 20 years old, if he or she consents.[31] Thus, depending on the offense, a child's detention or probation—for the purpose of treatment and rehabilitation—could be longer than what the child would face in adult court.[32]

Adult court does not have the same special focus on rehabilitation, or on child offenders. Adult offenders receive fixed sentences that serve a variety of sentencing goals, only one of which is rehabilitation.[33] Adult offenders report to probation officers and staff through the Department of Corrections. And adult court records are open to the public without expiration, limiting education and employment opportunities for offenders with felony *and* misdemeanor adult convictions. Most colleges—particularly four-year, private colleges—ask applicants about their criminal

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adjudication").

29 AS 47.12.120(b).

30 *Id.*

31 *Id.*

32 As this court has explained, the parens patriae principle justifies reduced procedural due process protections for minors, as compared with adults, because the government's goal in confining minors is rehabilitation, not punishment, and because minors have rights to treatment and rehabilitation to an extent that adults do not. *Rust*, 582 P.2d at 139-40; *see also Morgan v. State*, 111 P.3d 360, 365 (Alaska App. 2005) (Mannheimer, J., dissenting).

33 *See State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970).

history, require applicants with criminal history to comply with special admissions procedures, and look unfavorably upon applicants with even misdemeanor drug or alcohol convictions.[34] A misdemeanor conviction can also disqualify an individual from certain types of employment, including with the State of Alaska or in law enforcement, or from joining the military.[35]

2. Waiver of child offenders into adult court

Cases involving child offenders, although generally handled in juvenile court, can arrive in adult court in two ways. First, if the state files a petition for discretionary waiver of a child's case to adult court, the juvenile court must hold a hearing and consider whether the child "probably cannot be rehabilitated by treatment [as a juvenile] before reaching 20 years of age."[36] In making this decision, the juvenile court considers at least four factors: the seriousness of the

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[34] *See The Use of Criminal History Records in College Admissions Reconsidered*, Center for Community Alternatives, 1, 7-19 (2010), *available at* http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf (last visited Feb. 1, 2018). More than 65 percent of colleges collect criminal history information from applicants, and the number is even higher for private schools (about 80 percent) and four-year schools (74 percent). *Id.* at 8-10. About 75 percent of schools reported that they viewed drug or alcohol convictions negatively. *Id.* at 18.

[35] *See, e.g.*, Deborah Periman, *The Hidden Impact of a Criminal Conviction: A Brief Overview of Collateral Consequences in Alaska, Occupational/Enterprise Disabilities*, 24 Alaska Justice Forum no.3 (2007); Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Conviction and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. Rev. 623 (2006); Enlisted Process / Step 01: Basic Requirements (video), Look, Learn & Understand, U.S. Air Force, https://www.airforce.com/watch-videos/jD-PdA4-W9A (last visited Feb. 1, 2018).

[36] AS 47.12.100. The minor can also file a petition for discretionary waiver. *See M.O.W. v. State*, 645 P.2d 1229, 1233-35 (Alaska App. 1982) (holding that although a minor "cannot 'elect' to be tried as an adult," he or she "may move to waive children's court jurisdiction").

offense the child is alleged to have committed, the child's history of delinquency, the probable cause of the delinquent behavior, and the facilities available for treating the child.[37]

Under the statute, the party bearing the burden of proof depends on the seriousness of the charged offense: If the child is accused of committing an unclassified or a class A felony, the child has the burden of proving he or she is amenable to treatment as a juvenile.[38] But if the child is accused of committing any offense less serious than an unclassified or class A felony, the state has the burden

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[37] AS 47.12.100(b); *see also Kent v. United States*, 383 U.S. 541 (1966). In *Kent*, the Supreme Court first held that due process requires a hearing on the question of waiver and, if the court waives jurisdiction, a statement of reasons for waiver, and then suggested criteria for trial courts to use in deciding whether to waive jurisdiction:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint[.]
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime[.]
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile[.]
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile . . . by the use of procedures, services and facilities currently available to the Juvenile Court.

Id. at 566-67.

[38] *See* AS 47.12.100(c)(2).

of proving the child is not amenable to treatment as a juvenile.[39] At the conclusion of the hearing, if the court finds that the child is not amenable to treatment as a juvenile, the court must order the case closed, and the state may then prosecute the child as an adult.[40]

Second, AS 47.12.030 excludes certain classes of cases from juvenile court jurisdiction. Subsection (a) of the statute provides that a child at least 16 years of age at the time of an alleged offense who is charged with certain very serious offenses must be "charged, held, released on bail, prosecuted, sentenced, and incarcerated" as an adult.[41] These offenses include unclassified or class A felonies that are crimes against a person, first-degree arson, and class B felonies that are crimes against a person and involved deadly weapons.[42] These presumptive exclusions from juvenile court jurisdiction do not apply to child offenders younger than 16 years at the time of the offense.

Subsection (b) provides that all children charged with certain various, non-felony offenses must also be "charged, prosecuted, and sentenced" as adults.[43] These less serious offenses that trigger adult court jurisdiction are traffic offenses, violations of fish and game or parks and recreation statutes, tobacco possession,

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39 *See id.*

40 *See* AS 47.12.100(a) .

41 AS 47.12.030(a). Some of these children are eligible for dual sentencing, through which the child receives both a juvenile sentence and an adult sentence, but the adult sentence is suspended on condition of the child's successful completion of the juvenile sentence. *See* AS 47.12.065(a).

42 *Id.*

43 AS 47.12.030(b).

and curfew violations.[44] Unlike child offenders charged with subsection (a) offenses who are excluded from juvenile court jurisdiction only if 16 years or older, child offenders charged with subsection (b) offenses are excluded from juvenile court jurisdiction regardless of age.

3. Uniquely harsh consequences for minors charged with misdemeanor DUI

The combination of AS 47.12.030(b) (the juvenile court exclusion statute) and AS 28.35.030 (the DUI statute) creates uniquely harsh consequences for children, especially children under 16 years old, charged with a first or second DUI. As a traffic offense under AS 47.12.030(b),[45] DUI triggers adult court jurisdiction for all child offenders, regardless of age. And under AS 28.35.030(b), DUI carries a mandatory minimum sentence of imprisonment and is ineligible for sentencing options that can mitigate those consequences.[46]

a. Children under 16 years old charged with serious offenses are subject to juvenile court jurisdiction; children under 16 years old charged with misdemeanor DUI are not.

Whether adult court or juvenile court has jurisdiction over a child charged with the very serious offenses set out in AS 47.12.030(a) depends on the age of the child. If the child is younger than 16 years old, juvenile court has

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44 *See id.* Subsection (b) excludes from juvenile court jurisdiction the violation of statutes "other than a statute the violation of which is a felony," thus exempting felony-level violations of these statutes from the juvenile-court exclusion. *Id.*

45 *Compare* SLA 1961, ch. 76 (excluding traffic offenses from juvenile court jurisdiction, with exceptions for DUI, reckless driving, and leaving the scene of the accident) *with* SLA 1969, ch. 64, § 1 (removing exceptions); *see also* Judiciary Committee Report on Committee Substitute for H.B. 10, House Journal 1969, at 362.

46 *See infra* Part A.3.d.

jurisdiction and can only waive jurisdiction if it holds a hearing and makes a child-specific, case-specific finding that the child is not amenable to treatment as a juvenile.[47] A child younger than 16 years old thus has more access to rehabilitation and treatment in the juvenile system if charged with one of those very serious offenses (or several of those very serious offenses) than if charged with a misdemeanor DUI.

b. Children charged with felony DUI are subject to juvenile court jurisdiction; children charged with misdemeanor DUI are not.

Under AS 47.12.030(b), a child "accused of violating a statute specified in this subsection, *other than a statute the violation of which is a felony*" is prosecuted in adult court. (Emphasis added.) Because DUI becomes a class C felony if a person has been convicted of DUI twice in the previous ten years,[48] a third DUI is exempted from the subsection (b) exclusions from juvenile court jurisdiction. Thus, while a child charged with the more serious offense of felony DUI is subject to juvenile court jurisdiction, a child charged with misdemeanor DUI is subject to adult court jurisdiction.

c. Children charged with other alcohol-related offenses are charged with either infractions or are subject to juvenile court jurisdiction; children charged with misdemeanor DUI are not.

Other alcohol-related offenses are either non-criminal infractions or are subject to juvenile court jurisdiction. Minor consuming alcohol (MCA) is the offense

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47 *See supra* Part A.2; AS 47.12.100. In addition, even if the child is 16 years or older, the child could be eligible for dual sentencing. *See supra* note 41; AS 47.12.065.

48 *See* AS 28.35.030(a), (n).

of consuming or possessing alcohol while younger than 21 years old and is a non-criminal infraction.[49] Alaska also has three alcohol-and-driving offenses specific to children, and they are also are non-criminal infractions.[50] Regardless how many times police cite a child for MCA or any of the three alcohol-and-driving offenses, the offense remains an infraction.[51] And to ensure public understanding that children convicted of MCA or convicted of these alcohol-and-driving offenses are not convicted of a criminal offense, these offenses are administratively categorized as "alcohol underage" offenses.[52]

In addition, when the state charges a child with a general alcohol-related offense that applies to adults and children, the child is subject to juvenile court jurisdiction. Examples of such offenses include selling or offering for sale alcohol in a local option area, a class C felony;[53] importing alcohol or purchasing imported alcohol in a local option area, a class A misdemeanor or class C felony, depending on the quantity of alcohol;[54] or furnishing alcohol to a person younger

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49 *See* AS 04.16.050(b), (c).

50 A minor "who is at least 14 years of age but not yet 21 years of age" cannot operate a vehicle after consuming any amount of alcohol. AS 28.35.280. A minor who is under arrest for minor operating a vehicle after consuming alcohol cannot refuse to submit to a chemical test. AS 28.35.285. And a minor who is cited for either of these offenses cannot operate a vehicle within 24 hours of those citations. AS 28.35.290.

51 *See* AS 04.16.050(c); AS 28.35.280(d); AS 28.35.285(d); AS 28.35.290(d).

52 *See* Alaska R. Min. Off. P. 18.

53 *See* AS 04.11.010; AS 04.16.200(b).

54 *See* AS 04.11.499; AS 04.16.200(e).

than 21 years old, a class A misdemeanor.[55] When the state charges a child with any of these alcohol-related offenses, juvenile court has jurisdiction.

Further, as with violations of alcohol laws, violations of laws in other areas of highly regulated adult activity consistently subject children to juvenile court jurisdiction. When the state charges a child with a general drug-related[56] or weapons-related[57] offense that applies to adults and children, the child is subject to juvenile court jurisdiction. And when the state charges a child with a drug-related or weapons-related offense that applies specifically to children, the offense is either a non-criminal infraction or the minor is subject to juvenile court jurisdiction.[58] Misdemeanor DUI is thus unique among offenses involving regulated adult activity as the only criminal offense for which a child is not eligible for rehabilitation and treatment in the juvenile system.

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55 *See* AS 04.16.051; AS 04.16.180(a).

56 *See* AS 11.71.010-.060.

57 *See* AS 11.61.190-.220.

58 For example, a minor under 18 years old who uses or possesses marijuana would be guilty of a class B misdemeanor and subject to juvenile court jurisdiction. *See* AS 11.71.060; AS 17.38.010; AS 47.12.020. And a minor under 21 years old who presents false evidence of age to a marijuana establishment would be guilty of a violation. *See* AS 17.38.050.

In addition, a minor under 16 years old who possesses a firearm, switchblade, or gravity knife without a parent's consent, and a minor under 18 years old who conceals a deadly weapon, other than a pocket knife or defensive weapon, on his or her person would be guilty of a class B misdemeanor and subject to juvenile court jurisdiction. *See* AS 11.61.220(a)(3), (6); AS 47.12.020.

d. Children charged with other relatively minor offenses excluded from juvenile court jurisdiction are eligible for suspended imposition of sentence or suspended entry of judgment; children charged with misdemeanor DUI are not.

Misdemeanor DUI are even unique among the miscellaneous offenses excluded from juvenile court jurisdiction under AS 47.12.030(b). Unlike other excluded offenses, misdemeanor DUI are criminal offenses carrying mandatory minimum sentences that cannot be suspended.

Many of the offenses excluded from juvenile court jurisdiction under subsection (b)—including tobacco possession,[59] curfew violations,[60] and many traffic offenses[61]—are non-criminal infractions. Nearly all the rest of these offenses are misdemeanors that carry no mandatory minimum sentence *and* are eligible for suspended imposition of sentence (SIS) or suspended entry of judgment (SEJ).[62] The SIS allows a court to set aside a conviction after an offender successfully completes a period of probation; a set-aside order "reflect[s] a substantial showing of

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[59] *See* AS 11.76.105.

[60] *See* AS 29.35.085.

[61] *See, e.g.*, AS 28.15.057 (violating restrictions for 16-to-18-year-old drivers); AS 28.15.131 (having license in possession while driving); AS 28.35.029 (driving with an open container); AS 28.35.140 (blocking traffic); AS 28.35.235 (unlawfully using disabled parking); AS 28.35.410 (negligent driving).

[62] *See, e.g.*, AS 16.05.430 (setting out misdemeanor penalties for sport fishing and hunting license violations); AS 28.90.010 (setting out misdemeanor penalties for violations of motor vehicle title); AS 41.21.950 (setting out misdemeanor penalties for violations of parks and recreation chapter). The only offense, other than DUI and refusal, that carries a minimum sentence appears to be misdemeanor-level driving with a suspended license. *See* AS 28.15.291. But because minors under 16 years cannot have driver's licenses, *see* AS 28.15.031(a), they likewise cannot have suspended licenses. And even misdemeanor-level driving with a suspended license does not carry a mandatory minimum jail sentence and is eligible for an SIS or SEJ. *See* AS 28.15.291(b)(1).

rehabilitation."[63] And while some consequences of a conviction remain after it has been set aside, those are "relatively limited."[64] The SEJ, introduced in 2016, allows a court, with both parties' consent, to fully dismiss charges against an offender after the offender successfully completes a term of probation.[65] A person whose charges are dismissed pursuant to an SEJ "is not convicted of a crime."[66]

Under AS 28.35.030(b), a first DUI carries a mandatory minimum sentence of three days' imprisonment, a second DUI carries a mandatory minimum sentence of twenty day's imprisonment, and both are ineligible for SIS or SEJ.[67] Thus, children charged with a first or second DUI are excluded from the treatment and rehabilitation of juvenile court, are subject to adult convictions that will limit their educational and employment opportunities for the rest of their lives, are subject to mandatory minimum adult sentences of imprisonment, and are ineligible for the very sentencing options (SIS or SEJ) that could mitigate some of those consequences. Apart from refusal to submit to a chemical test, which carries penalties mirroring those for DUI,[68] no other offense appears to automatically trigger the same uniquely

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63 *Doe v. State*, 92 P.3d 398, 406 (Alaska 2004) (quoting *Wickham v. State*, 844 P.2d 1140, 1144 (Alaska App. 1993)) (alteration in *Doe*); *see also* AS 12.55.085.

64 *Id.* at 407.

65 *See* AS 12.55.078.

66 SLA 2017, ch. 13, § 12 ("A person who is discharged under this subsection is not convicted of a crime.").

67 AS 28.35.030(b)(1)(A)-(B) (providing for mandatory minimum sentences of imprisonment); *see also* AS 12.55.078; AS 28.35.030(b)(2); SLA 2017, ch. 13, § 11 ("The court may not impose a sentence of imprisonment under this subsection.").

68 *See* AS 28.35.032 (setting forth offense of refusing to submit to a

harsh consequences for children under 16 years old.

B. Excluding Watson from Juvenile Court Jurisdiction Violated Her Rights to Equal Protection and Due Process.

The Alaska Constitution commits this state to the principle "that all persons are equal and entitled to equal rights, opportunities, and protection under the law"[69] and "protects Alaskans' right to non-discriminatory treatment more robustly than does the federal equal protection clause."[70] It also protects Alaskans' right to due process of law.[71]

In analyzing equal protection claims, Alaska courts use a three-part, sliding-scale test to determine the appropriate level of scrutiny to apply when reviewing a challenged government action.[72] In determining the level of scrutiny, "the most important variable" is the nature of the individual interest burdened by the government action.[73] "As the right asserted becomes more fundamental or the classification scheme employed becomes more constitutionally suspect, the challenged law is subjected to more rigorous scrutiny at a more elevated position on our sliding scale."[74]

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chemical test upon being arrested for DUI or upon being involved in a motor vehicle accident that causes death or serious physical injury to another person).

69 Alaska Const. art. I, §§ 1, 3.

70 *State v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 909 (Alaska 2001).

71 Alaska Const. art. I, § 7.

72 *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391, 396-97 (Alaska 1997).

73 *Id.* at 396 ("Depending upon the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation.").

74 *Public Employees' Retirement System v. Gallant*, 153 P.3d 346, 349-50

Alaska courts then consider the government's interests and how the government realizes those interests.[75] Where an individual interest does not justify strict scrutiny but still justifies heightened scrutiny, this court requires the governmental purpose be important and the classification by which the government achieves that purpose "bear a substantial relationship to the accomplishment of their objectives."[76] At a bare minimum, legislation must have a legitimate public purpose and that the classification used to achieve that purpose "be reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation."[77]

1. Determining whether classes are "similarly situated" involves the same essential analysis as substantive equal protection review.

In some equal protection cases, this court "summarily conclude[s] that two classes are not similarly situated" and declines to substantively review whether the challenged classification is reasonable and justifies disparate treatment.[78] This court applies such "shorthand analysis" only in cases where "it is so exceedingly clear that the two classes in question are not similarly situated."[79] But the essential analysis involved in determining whether classes are "similarly situated" is the same

(Alaska 2007) (internal quotation marks and citation omitted).

[75] *See Matanuska-Susitna Borough*, 931 P.2d at 396-97.

[76] *Public Employees' Retirement System*, 153 P.3d at 349-50.

[77] *State v. Ostrosky*, 667 P.2d 1184, 1194 (Alaska 1983).

[78] *See Planned Parenthood of the Great Northwest v. State*, 375 P.3d 1122, 1136-37 & n.81 (Alaska 2016); *compare Shepherd v. State, Dep't of Fish & Game*, 897 P.2d 33, 44 n.12 (Alaska 1995) *with id.* at 46 (Rabinowitz, J., concurring).

[79] *Planned Parenthood*, 375 P.3d at 1136-37 & n.81.

essential analysis involved in applying substantive equal protection review.[80]

As one law professor explained, the United States Supreme Court has not historically viewed "similarly situated" as a threshold requirement, but "as one and the same as the equal protection merits inquiry."[81] Indeed, the " 'similarly situated' analysis is relational"—that is, requiring the same evaluation of "the relationship between the classification and the statutory purpose" that complete equal protection analysis does and "infused with [the same] principles traditionally applied in the complete equal protection analysis."[82] This is even more true in Alaska because Alaska's equal protection clause "provide[s] greater protection of individual rights than its federal counterpart."[83]

2. Watson's interests in juvenile court are important.

Although this court has not defined the significance of a child's interest in juvenile court in the context of an equal protection challenge, it has discussed the significance of a child's interest in juvenile court, emphasizing juvenile court's rehabilitative focus. In *P.H. v. State*,[84] this court described the hearing on a petition to waive a child into adult court as "a critically important stage in criminal

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80 *See Shepherd*, 897 P.2d at 45-47 (Rabinowitz, J., concurring); Giovanna Shay, *Similarly Situated*, 18 Geo. Mason L. Rev. 581 (2011).

81 Shay, *supra* note 80, at 598-615.

82 *Id.* at 615, 624 (explaining that "similarly situated" analysis "should not be used as an end-run around equal protection review"); *see also Romer v. Evans*, 517 U.S. 620, 632 (1996) ("The search for the link between classification and objective gives substance to the Equal Protection Clause; it provides guidance and discipline for the legislature, which is entitled to know what sorts of laws it can pass; and it marks the limits of our own authority.").

83 *Shepherd*, 897 P.2d at 47 (Rabinowitz, J., concurring).

84 504 P.2d 837 (Alaska 1972).

proceedings against a child" that implicated "the statutory promise of special rehabilitative treatment in lieu of the harsher sanction of criminal conviction."[85] And in *Rust v. State*,[86] this court contrasted child offenders' greater rights to rehabilitation and treatment through juvenile court with adult offenders' rights: "[R]ehabilitation rather than punishment is the express purpose of juvenile jurisdiction."[87]

The court of appeals has defined the significance of a child's interest in juvenile court several times in the context of child offenders' constitutional challenges to the statutory scheme. The court of appeals has sometimes defined the child's interest as "important"[88] and sometimes as "relatively narrow."[89] But it has consistently considered the question in cases where a child is charged with very serious offenses against a person and, in those cases, the court of appeals has focused on the vastly different lengths of sentences the child would face in juvenile court as compared with adult court.[90]

In *W.M.F. v. State*,[91] involving a 14-year-old who helped break into a home and kill three people, the court of appeals described the child's interest as "important," noting that the difference between juvenile court and adult court "can

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85 *Id.* at 842 & n.12 (holding that hearing had to comply with due process).

86 582 P.2d 134 (Alaska 1978).

87 *Id.* at 140 & n.21; *see also Sandsness*, 72 P.3d at 302-03, 304.

88 *See W.M.F. v. State*, 723 P.2d 1298, 1300 (Alaska App. 1986).

89 *See Gray v. State*, 267 P.3d 667, 672 (Alaska App. 2011).

90 *See, e.g.*, *Gray*, 267 P.3d at 669, 672; *W.M.F.*, 723 P.2d at 1299-1300.

91 723 P.2d 1298 (Alaska App. 1986).

mean the difference between six years' imprisonment and a life sentence."[92] But in *Gray v. State*,[93] involving a 16-year-old who participated in a kidnapping and murder, the court of appeals described the minor's interest as an "interest in avoiding adult penalties" and thus as "the relatively narrow interest of a convicted offender in minimizing the punishment for an offense."[94] Gray, who would have faced a maximum of about four years of detention or probation through juvenile court,[95] received a sentence of ninety-nine years, with forty-four suspended, for murder and a consecutive sentence of ten years for kidnapping.[96]

The court of appeals' formulation in *Gray* ultimately derives from a court of appeals decision involving an *adult* offender. *Gray* quotes a prior court of appeals case, *State v. Ladd*,[97] in which a 16-year-old was charged with first-degree assault for shooting another boy.[98] But *Ladd* relied on a case involving an adult, not

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92 *Id.* at 1300.

93 267 P.3d 667 (Alaska App. 2011).

94 *Id.* at 672 (quoting *Ladd v. State*, 951 P.2d 1220, 1224 (Alaska App. 1998) (quoting *Anderson v. State*, 904 P.2d 433, 436 (Alaska App. 1995))).

95 *See* AS 47.12.120(b) (providing that juvenile court can order a child offender committed only until the child is 19 years old or, with his or her consent, until 20 years old).

96 *Gray*, 267 P.3d at 670.

97 951 P.2d 1220 (Alaska App. 1998).

98 *Id.* at 1221. At trial, Ladd was acquitted of first-degree assault and convicted of the misdemeanor offense of fourth-degree assault. *Id.* Under AS 47.12.030(a), when a child offender is charged with a serious felony and waived into adult court but convicted only of a lesser offense, the child can return to the jurisdiction of juvenile court only if he proves he is amenable to treatment. *Id.* Ladd argued that the state should bear the burden of proving he is not amenable to treatment as a juvenile, as it would have had the state only charged him with fourth-degree assault. *Id.* The court of appeals rejected Ladd's argument, holding that the showing of probable cause of first-degree assault at grand jury "provides a plausible

a child, offender. The court said:

> Obviously, it makes a great deal of difference to a minor whether the superior court can impose adult criminal penalties or whether the court is limited, instead, to imposing a disposition under the juvenile laws. However, people who break the law have only a limited right to insist on the kind of penalty they will face.[99]

In support, the court discussed and quoted its decision in *Anderson v. State*,[100] a case involving an adult offender who challenged, on equal protection grounds, the statute classifying him as a third felony offender and subjecting him to a higher presumptive sentencing range.[101] The court of appeals' prior definitions of children's interests in juvenile court have thus emphasized the much longer sentences of imprisonment minors charged with a very serious crimes would face in

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basis" for treating Ladd differently and emphasizing that the statutory provision "does not disqualify any minor from being treated under the juvenile laws" once he or she satisfies the burden of proof. *Id.* at 1222-23, 1225.

Sitting as a four-justice panel, this court granted Ladd's petition for hearing but later dismissed it as improvidently granted over two justices' dissenting votes to reverse the court of appeals' decision. *See* Order, *Ladd v. State*, S-08495 (Sept. 9, 1999) (dismissing petition for hearing over the dissenting votes of Justices Bryner and Carpeneti, who would have reversed the court of appeals' decision and held that the burden shifting provisions of AS 47.12.030 violated equal protection); Order, *Ladd v. State*, S-08495 (Sept. 14, 1998) (granting petition for hearing over dissenting vote of Justice Matthews).

99 *Ladd*, 951 P.2d at 1224.

100 904 P.2d 433 (Alaska App. 1995).

101 *Ladd*, 951 P.2d at 1224 (discussing *Anderson*, 904 P.2d at 436). Anderson had argued that because his two prior felony convictions had been simultaneously entered and allowed him only one opportunity for rehabilitation, he should have been considered a second felony offender. *Anderson*, 904 P.2d at 435. He argued that the statute classifying him as a third felony offender "infringe[d] . . . his right to liberty," but the court of appeals held that he "[could] rightfully complain of no more than an infringement of the relatively narrow interest of a convicted offender in minimizing the punishment for an offense." *Id.* at 436 (internal quotation marks and citation omitted).

adult court, as compared with the maximum length of detention or probation in juvenile court. The court of appeals has not fully considered the essential purpose of juvenile court, and minors' interest, in rehabilitation and treatment.

Although the court of appeals has held that a child does not have a constitutional right to be tried in a juvenile court,[102] the child's interests in rehabilitation and treatment in juvenile court are nonetheless important.[103] This is particularly true where—as a combination of the child's youth and the relatively minor nature of the charged offense—the child faces a much longer potential sentence in juvenile court and the child's interest in juvenile court is thus untainted, so to speak, by a desire to "minimiz[e] the punishment."[104]

For a first DUI, Alaska courts are required to impose certain mandatory minimums, including an active sentence of three days' imprisonment, and can also impose a period of unsupervised probation.[105] But even if a person does not do well on probation, the most a court can do is impose the suspended term of

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102 *W.M.F.*, 723 P.2d at 1300.

103 *See id.*; *cf. Griffith v. State*, 641 P.2d 228, 234 (Alaska App. 1982) (holding that although offender had no right to bail pending appeal, his interest in bail pending appeal was "substantial").

104 *Gray*, 267 P.3d at 672.

105 *See* AS 12.55.015(a)(2); AS 28.35.030(b)(1)(A); AS 33.05.020(a) (providing that probation office "shall" actively supervise probationers convicted of felonies and "may" actively supervise probationers convicted of misdemeanors); *Wikan v. State*, No. A-11686, 2016 WL 1719546, at *6 (Alaska App. Apr. 27, 2016) (unpublished); *Hammer v. State*, No. A-8301, 2003 WL 21279539, at *2 (Alaska App. June 4, 2003) (unpublished) ("[T]he fact that [the defendant] had an assigned probation officer (and was not simply on unsupervised probation) meant that he had been convicted of a felony, not a misdemeanor.").

imprisonment and require the child to spend a maximum of thirty days in custody.[106] Watson was 14 years old at the time of her offense; as a result, juvenile court jurisdiction meant the court and juvenile probation could remain involved in her life—through detention or probation—for nearly five years without her consent and nearly six years with her consent.[107] Watson's interest in juvenile court was thus not an interest in minimizing her punishment but the interest in rehabilitation and treatment that justifies extending confinement in juvenile court.[108]

In its opinion in this case, the court of appeals acknowledged Watson's argument that her interest in juvenile court—"a system that emphasizes the individual rehabilitation of offenders"—"merits more than minimal scrutiny" under Alaska's equal protection test.[109] But the court of appeals then apparently concluded that Watson's argument for greater scrutiny could not succeed in view of the *government's* interest.[110] This is incorrect as a matter of law: the appropriate level of scrutiny in reviewing a challenged action turns principally on the strength of *Watson's* interest in juvenile court.[111] This court should hold that Watson's interest

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[106] *See* AS 12.55.135(a); AS 28.35.030(b). At the time of Watson's sentencing, the maximum sentence of imprisonment for all misdemeanors, including a first DUI, was one year. *See* Former AS 12.55.135(a) (amended 2016).

[107] *See* AS 47.12.120(b).

[108] *See, e.g.*, *Rust*, 582 P.2d at 139-40 (describing minors' loss of some due process protections in exchange for treatment and rehabilitation as "[q]uid pro quo").

[109] *Watson*, 400 P.3d at 123.

[110] *Id.* (rejecting Watson's argument because "rehabilitation of minors convicted of traffic offenses is not the sole governmental interest at stake"); *see also infra* Part B.3.

[111] *See, e.g.*, *Matanuska-Susitna Borough*, 931 P.3d at 396-97.

in juvenile court is important and subject the challenged statute to greater-than-minimum scrutiny.[112]

3. The government's interests are linked with the constitutional purposes of criminal administration.

In *W.M.F.*, the court of appeals accurately described the government's interests in determining juvenile court jurisdiction as its interests in "rehabilitating wayward youths who are rehabilitatable in their youth" and "protecting the public from youths who are not so quickly rehabilitated."[113] To that end, child offenders in the former category remain in juvenile court,[114] and child offenders in the latter category go to adult court.[115]

These interests can reasonably justify the government's exclusion from juvenile jurisdiction of children at least 16 years old who are accused of very serious offenses. It is reasonable to conclude that the more serious the charged offense, the less likely the child will be amenable to rehabilitation.[116] It is also reasonable to

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112 *See Public Employees' Retirement System*, 153 P.3d at 349-50; *W.M.F.*, 723 P.2d at 1300.

113 *W.M.F.*, 723 P.2d at 1300.

114 *Id.* (citing *In re F.S.*, 586 P.2d 607, 609-10 (Alaska 1978) and *P.H. v. State*, 504 P.2d 837, 845 (Alaska 1972)); *see also* AS 47.12.100(b) (setting forth criteria for discretionary waiver of child offender to adult court).

115 *W.M.F.*, 723 P.2d at 1300 (explaining that child offenders who proceed to adult court could receive a longer sentence and would be subject to the *Chaney* sentencing criteria, including community condemnation, deterrence of the offenders themselves, and deterrence of others).

116 *See Gray*, 267 P.3d at 673 (holding that distinction between minors charged with an unclassified or class A felony and minors charged with less serious offenses "specifies progressively harsher penalties for progressively more serious classes of offenses" and is thus "a form of classification that has traditionally been recognized and upheld as rational").

conclude that the older the child, the less likely he or she will be amenable to rehabilitation—both because the child's age renders him or her less receptive to rehabilitation and because, as a result of the child's age, juvenile court has less time in which to rehabilitate him or her.[117] But these interests are not served, and are actually subverted, by categorically excluding from juvenile jurisdiction a younger offender charged with a less serious offense.

In *Watson*, the court of appeals described the government's interests in determining juvenile court differently than it had in *W.M.F.*, and erroneously. The court of appeals relied on a decision by this court holding that, in a civil lawsuit against a minor for negligently entrusting a vehicle to another minor, the minor is held to an adult standard of care.[118] But civil liability is fundamentally different from criminal liability, which carries greater collateral consequences and moral culpability and from which the legislature has shielded most children by establishing the juvenile system.[119]

In addition, the court of appeals held that "[t]he legislature has a strong and legitimate interest in 'establishing penalties for criminal offenders and in

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117 *See* AS 47.12.120(b).

118 *See Watson*, 400 P.3d at 123 (citing *Ardinger v. Hummell*, 982 P.2d 727, 731 (Alaska 1999)).

119 In *Waterman v. State*, the court of appeals held that a 16-year-old girl tried as an adult for criminally negligent homicide is held to an adult standard of care. 342 P.3d 1261 (Alaska App. 2015). But in that case, she was also charged with first-degree murder, conspiracy to commit murder, second-degree murder, and kidnapping, which—because she was at least 16 years old and charged with unclassified and class A felonies—subjected her to adult court jurisdiction. *Id.* at 1263-64. The court of appeals' decision hinged on the legislature's decision to require all children at least 16 years old charged with serious felonies to be tried and sentenced as adults. *Id.* at 1267-68.

determining how those penalties should be applied to various classes of convicted [defendants].' "[120] The court of appeals quoted *Gray*, quoting *Anderson*.[121] But in *Gray*, the court of appeals referred to the "legitimate sentencing goals" set forth in the Alaska Constitution and in *Chaney*.[122] It then explained that those goals give the government an interest in establishing penalties for different classes of offenders.[123] Thus, the government's interests are not in the act of establishing penalties, in and of itself. Rather, the government's interests are in establishing penalties—and drawing jurisdictional lines between courts—in ways that serve Alaska's constitutional purposes of criminal administration.[124] The government has no interest in penalties or jurisdictional boundaries that subvert those fundamental purposes of criminal administration.

4. No nexus exists between the government's interests and the exclusion of misdemeanor DUIs from juvenile court jurisdiction sufficient to satisfy equal protection and due process.

As this court has explained, under Alaska's approach to equal protection, "Judicial deference to a broad range of conceivable legislative purposes

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[120] *Watson*, 400 P.3d at 123 (quoting *Gray*, 267 P.3d at 673 (quoting *Anderson*, 904 P.2d at 436)) (editing marks in *Watson*).

[121] *Id.* (quoting *Gray*, 267 P.3d at 673 (quoting *Anderson*, 904 P.2d at 436)); *see also supra* notes 93-101 and accompanying text.

[122] 267 P.3d at 673 (quoting Alaska Const. art. I, § 12, and *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970)).

[123] *Id.*

[124] *See* Alaska Const. art. I, § 12 ("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."); *Chaney*, 477 P.2d at 444; *Gray*, 267 P.3d at 673 (quoting the Alaska Constitution and *Chaney*).

and to imaginable facts that might justify classifications is strikingly diminished. Judicial tolerance of overinclusive and underinclusive classifications is notably reduced. Legislative leeway for unexplained pragmatic experimentation is substantially narrowed."[125]

Here, this court directed the parties to "specifically identify the composition of the classes to be scrutinized for purposes of determining whether they are 'similarly situated' under an equal protection analysis."[126] Watson argues that children charged with first and second DUIs are subject to consequences that are uniquely harsh as compared to children charged with a wide variety of other offenses.[127] But perhaps the most pertinent classes for comparison are children younger than 16 years old charged with first or second DUI, who appear in adult court and face mandatory sentences of imprisonment, and children younger than 16 years old charged with other offenses, who do not.

a. Children younger than 16 years old charged with misdemeanor DUI are the only children younger than 16 years old who are automatically waived into adult court and face a mandatory sentence of imprisonment.

All children younger than 16 years old—the age below which the Alaska Statutes presume minors amenable to treatment as juveniles—are similarly situated. Indeed, youth defines juvenile court jurisdiction, defines Alaska's statutory presumption of amenability to rehabilitation as a juvenile, and is relevant for individualized sentencing. It is thus a defining feature, and perhaps the defining

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125 *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976).

126 Order, *Watson v. State*, S-16752 (Nov. 8, 2017).

127 *See supra* Part A.3.

feature, of an offender.

First, the fundamental concept behind juvenile court—as this court explained, that an offender younger than 18 years old "does not have mature judgment and may not fully realize the consequences of his acts, and that therefore he should not generally have to bear the stigma of criminal conviction for the rest of his life"—is rooted in age.[128] Children have less cognitive development, maturity, responsibility, and experience but greater vulnerability to external pressures.[129] They "are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults."[130] In sum, youth negatively correlates with blameworthiness and positively correlates with likelihood of rehabilitation. Moreover, the younger a child is, the more years the juvenile system will have to rehabilitate and treat the child.[131] As a result, younger children are inherently more rehabilitatable *and* have a longer period of time for rehabilitation.

Second, for those reasons, the Alaska Statutes establish a presumption that children younger than 16 years old are amenable to treatment in the juvenile system, even when charged with very serious offenses. First, children

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128 *P.H. v. State*, 504 P.2d 837, 841-42 (Alaska 1972).

129 *See, e.g.*, *J.D.B. v. North Carolina*, 564 U.S. 261, 271-73 (2011); *Graham v. Florida*, 560 U.S. 48, 67-69 (2010) ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.").

130 *Graham*, 560 U.S. at 68 (internal quotation marks and citation omitted).

131 *See* AS 47.12.120(b).

younger than 16 years old, even when charged with unclassified or class A felonies that are crimes against a person, are not subject to automatic waiver to adult court.[132] Instead, juvenile court has jurisdiction and may waive jurisdiction only if, following a hearing at which the child bears the burden of proof, it finds that the specific child offender is not amenable to treatment as a juvenile.[133] Second, children younger than 16 years old who are charged with any offense less serious than an unclassified or class A felony is statutorily presumed amenable to treatment as juveniles.[134] If the state files a petition to waive such a child into adult court, the state bears the burden of proving the child's lack of amenability to treatment as a juvenile and, again, the court can only waive jurisdiction if it finds that the specific child offender is not amenable to treatment as a juvenile.[135]

First and second DUI, and a few miscellaneous offenses, are thus the only criminal offenses for which a child younger than 16 years old is automatically subject to adult court jurisdiction.[136] Their exclusion from juvenile court jurisdiction is fundamentally inconsistent with the philosophy behind juvenile court and inconsistent with Alaska's statutory presumption that children younger than 16 years old are amenable to treatment as juveniles.

Last, "[s]entencing is an individualized process,"[137] and the sentencing

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132 *See* AS 47.12.030(a).

133 *See* AS 47.12.100.

134 *See id.*

135 *See id.*

136 *See supra* Parts A.2 and A.3.d.

137 *Padie v. State*, 594 P.2d 50, 61 (Alaska 1979); *see also State v.*

court "must determine the priority and relationship of [the *Chaney* factors] in any particular case."[138] An offender's youthfulness is "highly relevant . . . [to] his potential for rehabilitation"[139] and, thus, for sentencing. In fact, youthfulness can help establish the non-statutory mitigating factor of extraordinary potential for rehabilitation, for purposes of referral to a three-judge sentencing panel.[140]

In all other types of cases for which an adult court could sentence a child offender, the court can consider the child offender's youth when determining an appropriate sentence. If a child is waived into adult court and convicted of a serious offense subject to a presumptive sentencing range, the court can consider the child's age and the degree to which others influenced the child's conduct in weighing mitigating factors and fashioning an appropriate sentence or referring the case to a three-judge sentencing panel.[141] And if a child is waived into adult court for any of the other, relatively minor offenses excluded from juvenile court jurisdiction, the

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Chaney, 477 P.2d 441, 443-44 (Alaska 1970) (explaining that courts must tailor sentences to specific facts about the offender and the offense, including "the nature of the crime, the defendant's character, and the need for protecting the public").

138 *Nicholas v. State*, 477 P.2d 447, 448 (Alaska 1970) ("Some range of sentencing alternatives must be provided to allow adjustment for the special facts of each crime as well as the record and character of each convicted individual.").

139 *Kirby v. State*, 748 P.2d 757, 764 (Alaska App. 1987).

140 *See, e.g.*, *Harapat v. State*, 174 P.3d 249, 253 (Alaska App. 2007) (noting defendant's youth and holding that, given sentencing court's findings, it was clearly mistaken not to refer case to three-judge panel); *Kirby*, 748 P.2d at 764 ("In some cases, the fact that a defendant is of mature years and has engaged in a continuous course of sexual abuse, might justify a trial court in discounting his potential for rehabilitation, despite the enthusiastic testimony of mental health professionals."); *Smith v. State*, 711 P.2d 561, 570-71 (Alaska App. 1985) (noting defendants' youth).

141 *See* AS 12.55.005; AS 12.55.155(d)(4); AS 12.55.175.

court can consider the child's age and opt to impose an SIS or, with the parties' approval, an SEJ.[142]

The exclusion of first and second DUI from juvenile court jurisdiction is inconsistent with the principle of individualized sentencing. If a child is convicted of a first or second DUI, the adult sentencing court is required to impose a mandatory minimum sentence of three days' or twenty days' imprisonment, respectively.[143] And in both instances, the sentencing court is barred from imposing an SIS or SEJ.[144] The sentencing court thus has no way to account for a child offender's youth and greater potential for rehabilitation.[145]

For these reasons, requiring only children younger than 16 years old who are charged with first or second DUIs to be subject to adult court jurisdiction and face a mandatory sentence of imprisonment treats these children differently from minors younger than 16 years old charged with other offenses and violates equal protection.

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142 *See supra* Part A.3.d.

143 AS 28.35.030(b)(1)(A)-(B) (providing for mandatory minimum sentences of imprisonment for first and second DUI);

144 *See* AS 12.55.078; AS 28.35.030(b)(2); SLA 2017, ch. 13, § 12 ("The court may not impose a sentence of imprisonment under this subsection.").

145 At the time the legislature excluded DUI from juvenile court jurisdiction, a first DUI carried no mandatory minimum sentence and was eligible for SIS. *See* SLA 1969, ch. 64, § 1 (removing DUI exception to traffic offense exclusion from juvenile court jurisdiction); SLA 1978, ch. 152, §§ 2-3 (setting mandatory minimum sentence for first DUI and conditioning any SIS on completion of mandatory minimum sentence); SLA 1983, ch. 77, §§ 13-15 (disallowing SIS).

b. Misdemeanor DUI offenses are the only DUI offenses for which a child offender under 18 years old is excluded from juvenile court jurisdiction.

An alternative set of appropriate classes for comparison are children charged with misdemeanor DUI and children charged with felony DUI. These DUI offenses share essentially the same criminal conduct, the only difference between them being the offender's recidivism as to that same conduct.[146] Nonetheless, children charged with misdemeanor DUI appear in adult court and face mandatory sentences of imprisonment, and children charged with felony DUI do not. This inverts traditional principles of criminal sentencing.

The court of appeals explained in *Gray*, "A sentencing system that specifies progressively harsher penalties for progressively more serious classes of offenses is neither novel nor impermissible."[147] But a sentencing system that does the opposite—specifies harsher penalties for less serious offenses—is both novel

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[146] *See* AS 28.35.030(a)-(b).

[147] *Gray*, 267 P.3d at 673. In *Dancer v. State*, 715 P.2d 1174 (Alaska App. 1986), the court of appeals held that presumptive sentencing of offender convicted of first-degree sexual abuse of a minor does not violate equal protection or the principle of reformation, explaining:

> [A] class comprised of class A felons and unclassified felons is the group most likely to be dangerous to the community. . . .
>
> The legislature could also reasonably conclude that those who commit class A felonies and unclassified felonies or are repeat offenders present a sufficient risk of danger to the public so that a presumptive sentence that emphasizes special and general deterrence, the isolation of repeat offenders who cannot be deterred or reformed, and the affirmation of community norms, should be given preference over rehabilitation.

Id. at 1181-82.

and impermissible and inconsistent with the purposes of criminal administration in Alaska.[148] In the context of juvenile jurisdiction, this anomaly also subverts the government's interests in rehabilitating child offenders who are amenable to rehabilitation and protecting the public from child offenders who are not so quickly rehabilitated.[149] Indeed, "seriousness of the [charged] offense" is one criterion by which the juvenile court considers whether to exercise its discretion to waive a child offender into adult court.[150]

Justice Rabinowitz considered a similarly structured statute in his dissenting opinion in *State v. G.L.P.*[151] This court held in *G.L.P.* that joyriding was a traffic offense and thus exempt from juvenile court jurisdiction.[152] Justice Rabinowitz dissented from that holding and then weighed the constitutional implications of the statutory scheme, in which the first offense of joyriding was a misdemeanor and excluded from juvenile court and the second offense was a felony and presumptively included within juvenile court.[153]

Justice Rabinowitz called this type of construction "inconsistent with the theory of juvenile jurisdiction and disposition."[154] A child convicted of the first, less serious offense would not receive the juvenile court's "specialized rehabilitative

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148 *See* Alaska Const. art. I, § 12; *Chaney*, 477 P.2d at 444.

149 *See W.M.F.*, 723 P.2d at 1300.

150 AS 47.12.100(b); *see also supra* note 37 and accompanying text.

151 590 P.2d 65 (Alaska 1979).

152 *Id.* at 66-67.

153 *Id.* at 67-71 (Rabinowitz, J., dissenting).

154 *Id.* at 71 (Rabinowitz, J., dissenting).

treatment to prevent development of criminal behavior patterns" and "might be confined in a correctional facility which is not designed to separate young offenders from older, more experienced criminals."[155] This type of disposition would hamper the juvenile court's task in a subsequent prosecution for the recidivist offense.[156] Further, where the greater offense contained the elements necessary to prove a lesser included offense, a prosecutor could avoid juvenile jurisdiction entirely by charging the lesser included offense.[157] This would again "invert the process" and would also "undercut" juvenile court's jurisdiction over the greater offense.[158]

G.L.P. did not decide these equal protection and due process issues, as the parties had argued only whether joyriding was a traffic offense for purposes of juvenile jurisdiction, but Justice Rabinowitz observed that "they present questions of significant constitutional dimensions."[159] When the legislature repealed the joyriding statute as part of the criminal code revision, it apparently eliminated that anomaly.[160] But more than fifteen years later, when the legislature created the offense of felony DUI, it created a similar anomaly.[161]

The court of appeals in *Watson* said it "perceive[d] no particular anomaly" in requiring children charged with misdemeanor DUIs to go to adult court

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155 *Id.* (Rabinowitz, J., dissenting).
156 *Id.* (Rabinowitz, J., dissenting).
157 *Id.* (Rabinowitz, J., dissenting).
158 *Id.* (Rabinowitz, J., dissenting).
159 *Id.* (Rabinowitz, J., dissenting).
160 *See* SLA 1978, ch. 166.
161 *See* SLA 1995, ch. 80, §§ 3-7.

while allowing children charged with felony DUIs to go to juvenile court.[162] This is because the "significantly increased amounts of imprisonment" and "various lifetime legal disabilities" of felony convictions justified shielding children from "such severe consequences , . . . even when the felony arises from the act of driving."[163]

But if the legislature had wanted to shield children charged with DUI from felony penalties, it could have chosen to make all DUIs misdemeanor offenses—at least as to children younger than 18 years. In that case, a child charged with a third DUI would have a third adult misdemeanor DUI conviction and would not face "the severe consequences" of a felony conviction. The legislature did not do that. Instead, the legislature placed children charged with felony DUIs under juvenile court jurisdiction, shielding them from *any* adult criminal conviction. Giving children charged with felony DUIs the benefits of treatment and rehabilitation in juvenile court while denying the same benefits to children charged with misdemeanor DUIs is "inconsistent with the theory of juvenile jurisdiction,"[164] is inconsistent with Alaska's purposes for criminal administration, and violates Alaska's equal protection and due process clauses.

c. Watson was amenable to treatment as a juvenile.

Based on the principal statutory criteria establishing juvenile jurisdiction—age and seriousness of the charged offense[165]—Watson was

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162 *Watson*, 400 P.3d at 123.

163 *Id.*

164 *G.L.P.*, 590 P.2d at 71 (Rabinowitz, J., dissenting).

165 *See* AS 47.12.030(a).

amenable to rehabilitation. A child her age who was charged with unclassified or class A felony offenses, or a child her age who was charged with felony DUI, would be rehabilitated in juvenile court unless the court held a waiver hearing and specifically found the child unamenable to rehabilitation in the juvenile system. By ensuring that such children are presumptively subject to juvenile court jurisdiction, the legislature has determined that children charged with those offenses are typically amenable to rehabilitation in the juvenile system. Watson and other children charged with first or second DUI are no exception.

[See attached confidential brief for further argument.]

CONCLUSION

For the foregoing reasons, this court should reverse the court of appeals' decision and district court's ruling subjecting Watson to adult court jurisdiction and reverse her conviction in this case.

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