IN THE SUPREME COURT OF THE STATE OF ALASKA

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

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

CERTIFICATE OF SERVICE

VRA 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, that the font used in this document is Arial 12.5 point.

Ross T. Klein certifies that: I am a Paralegal employed by the Alaska Public Defender Agency, 900 West 5th Avenue, Suite 200, Anchorage, Alaska 99501. On **June 4, 2018**, I **delivered** a copy of the **Reply Brief of Petitioner** to:

Donald Soderstrom
Office of Criminal Appeals
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

I further certify, pursuant to Appellate Rule 513.5 that the font used in the attached document is Arial 12.5 point.

Ross T. Klein
Paralegal

ALASKA PUBLIC DEFENDER AGENCY
Quinlan Steiner, Public Defender
900 West 5th Avenue, Suite 200
Anchorage, AK 99501
Phone: 907.334.4400 • Fax: 907.334.4440
1.800.478.4404

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

REPLY BRIEF OF PETITIONER

PUBLIC DEFENDER AGENCY

QUINLAN STEINER (9811057)
PUBLIC DEFENDER

KELLY R. TAYLOR (1011100)
ASSISTANT PUBLIC DEFENDER
900 West 5th Avenue, Suite 200
Anchorage, Alaska 99501
Telephone: (907) 334-4400

Filed in the Court of Appeals
of the State of Alaska
_____, 2018

MARILYN MAY, CLERK
Appellate Courts

_____
Deputy Clerk

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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

AUTHORITIES RELIED UPON

STATUTES

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.

RULES

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.

ARGUMENT

WATSON'S TRIAL 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. The state's concerns about the effect of a ruling in Watson's favor are based on flawed interpretations of the applicable statutes.

The state argues that a ruling in Watson's favor would render all minors "immune from prosecution for non-felony traffic offenses." [Resp. Br. 10-11 n.3] According to the state, because the legislature defines juvenile court jurisdiction, any holding that excluding misdemeanor DUI from juvenile court violates equal protection would prevent prosecution of child offenders charged with that offense (and other non-felony traffic offenses) in any court. [Resp. Br. 10-11 n.3] But this argument fundamentally misinterprets Alaska's juvenile jurisdiction statutes.

Alaska Statute 47.12.020(a) defines juvenile court jurisdiction: "Proceedings relating to a minor . . . are governed by this chapter, except as otherwise provided in this chapter, when the minor is alleged to be . . . a delinquent minor as a result of violating a criminal law of the state or a municipality of the state." Alaska Statute 47.12.030 then sets out certain exceptions to juvenile court jurisdiction, including misdemeanor DUI. If this court held that the misdemeanor DUI exception to juvenile court jurisdiction set out in AS 47.12.030 violated Watson's right to equal protection, AS 47.12.020—which expansively defines juvenile court jurisdiction—would still operate to allow the state to pursue child offenders charged with misdemeanor DUI in juvenile court.

The state argues that a ruling in Watson's favor would also prevent the state from "retry[ing] her in juvenile court" because she is no longer under 18 years of age. [Resp. Br. 10-11 n.3] But this argument also misinterprets Alaska's statutes. Alaska Statute 47.12.020(b) allows proceedings to go forward in juvenile court against a person who is 18 years of age or older so long as the person was younger than 18 years of age when the alleged offense occurred. Once the person turns 19 years old, however, juvenile court and DHSS may no longer have jurisdiction over the person for purposes of continued supervision.[1] Thus, a ruling in Watson's favor would still allow the state to prosecute her and enter a judgment against her in juvenile court; it simply may not allow the juvenile court and DHSS to supervise her.[2]

2. History of waiver to adult court

As Watson and the state have both indicated in their briefs [Pet. Br. 14 n.45; Resp. Br. 9], the legislature excluded most traffic offenses from juvenile court jurisdiction in 1961 but created certain exceptions from that exclusion for violating certain serious traffic statutes, including those proscribing DUI, reckless driving, leaving the scene of an accident, and any traffic statute "the violation of which is a felony."[3] Then, eight years later, the legislature removed the three exceptions for specific traffic offenses.[4] At that time, non-felony traffic offenses were the only offenses for which children under 18 years old were automatically subject to adult

---

1 *See* AS 47.12.160.

2 Moreover, such supervision is unnecessary at this point, since Watson has abided by the conditions of her bail release for more than five years.

3 SLA 1961, ch. 76.

4 SLA 1969, ch. 64.

court jurisdiction.[5] Also at that time, three principal statutory problems with excluding misdemeanor DUI from juvenile court jurisdiction did not yet exist.

In 1969, adult courts hearing cases of children under 18 years old charged with DUI and other non-felony traffic offenses still had some statutory discretion to treat children as children: DUI carried no mandatory minimum sentence the courts would be required to impose on child offenders, and DUI was not excluded from suspended imposition of sentence (SIS), allowing courts to suspend sentence for child offenders. The legislature did not set a mandatory minimum for a first DUI until 1978,[6] and it did not disallow SIS for DUI convictions until 1983.[7] In both instances, the legislature made those amendments directly to the DUI statutes, in title 28, chapter 35,[8] likely without considering their implications for the juvenile court statutes, then in title 47, chapter 10.

Also in 1969, the Alaska Statutes did not have the offense of felony DUI. Thus, Alaska courts hearing cases of children under 18 years old charged with DUI did not face the inconsistency of treating children charged with first and second DUIs as adults while treating children charged with third DUIs as children.[9] The

---

5 When the legislature created Alaska's juvenile court, it permitted discretionary waiver into adult court of a child 16 years or older who is charged with a felony. *See* SLA 1957, ch. 145, § 9.

6 SLA 1978, ch. 152, § 2.

7 SLA 1983, ch. 77, § 14.

8 *See* SLA 1978, ch. 152, § 2; SLA 1983, ch. 77, § 14.

9 The legislature created such an inconsistency in 1967 with respect to the offense of joyriding but eliminated that inconsistency as part of the criminal code revision. *See* SLA 1978, ch. 166; SLA 1967, ch. 87.

legislature did not create the offense of felony DUI until 1995.[10]

Finally, in 1969, the Alaska Statutes had not established the age of the child offender and seriousness of the offense as the basic criteria for being automatically subject to adult court jurisdiction: *all* children under 18 years old were automatically subject to juvenile court jurisdiction unless the juvenile court opted to waive jurisdiction of a child to adult court, or the offense was a traffic offense. But in 1994, the Alaska Legislature followed legislatures around the country in creating new criteria under which children would be subject to adult court jurisdiction if they were older teenagers and if their alleged offenses were particularly serious.[11] Under the revised statutes, a child 16 years and older who was charged with an unclassified or class A felony that is a crime against a person or with first-degree arson was automatically subject to adult court jurisdiction.[12] And in 1998 and 2005, the legislature expanded the list of serious offenses triggering adult court jurisdiction for children 16 years and older to include certain offenses involving firearms.[13]

---

10 SLA 1995, ch. 80, § 7.

11 *See* State Responses to Serious and Violent Juvenile Crime, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevension, xi-xvi, 3-9 (July 1996) (providing overview of "sea of change" in juvenile law across country from 1992-1996 and discussing legislative changes reducing jurisdictional authority of juvenile court), *available at* https://www.ncjrs.gov/pdffiles/statresp.pdf (last visited May 29, 2018).

12 *See* SLA 1994, ch. 113, § 6.

13 *See* AS 47.12.030(a)(3)-(4); SLA 2005, ch. 66, § 4 (adding subsection (a)(3)); SLA 1998, ch. 9, § 1 (adding subsection (a)(4)). The "tougher, more punitive" approach to child offenders that prevailed around the country in the late 1980s and early 1990s began abating at the turn of the century. *See* Trends in Juvenile Justice State Legislation 2001-2011, National Conference of State Legislatures (June 2012), *available at* http://www.ncsl.org/documents/cj/trendsinjuvenilejustice.pdf (last visited May 29, 2018).

This court does not have to decide whether excluding DUI from juvenile court jurisdiction violated equal protection in 1969. Whether an exclusion from juvenile court jurisdiction violates equal protection hinges in part on the operation of the statutes as a whole: how do the statutes group children, how do the statutes treat different groupings, and are those groupings and treatment sufficiently related to the government's interests?[14] The question for this court in this case is only whether the exclusion of misdemeanor DUI from juvenile court jurisdiction violated equal protection at the time of Watson's offense—a time when misdemeanor DUI carries a mandatory minimum with no option for an SIS, when felony DUI is included in juvenile court jurisdiction, and when the main governing criteria for a child offender's removal to adult court jurisdiction is being at least 16 years old and charged with a particularly serious offense.

B. Excluding Watson from Juvenile Court Jurisdiction Violated Her Rights to Equal Protection and Due Process.[15]

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

This court has held that whether two groups are similarly situated is

---

[14] *See, e.g.*, *Planned Parenthood of the Great Northwest v. State*, 375 P.3d 1122, 1135-45 (Alaska 2016); *Public Employees' Retirement System v. Gallant*, 153 P.3d 346, 349-50 (Alaska 2007); *Ladd v. State*, 951 P.2d 1220, 1222-23, 1225 (Alaska App. 1998).

[15] The state argues that Watson must overcome a presumption that the challenged exclusion from juvenile court jurisdiction is constitutional. [Resp. Br. 18-19] But this presumption has effect where a challenged statute is susceptible of more than one construction, one of which is constitutional. *See, e.g.*, *Bonjour v. Bonjour*, 592 P.2d 1233, 1237-38 (Alaska 1979). Where, as here, the statute is susceptible of only one construction, the question for this court is whether that construction is constitutional. *See id.*

"shorthand analysis" applicable only cases where "it is so exceedingly clear" the groups are not similarly situated that full equal protection analysis is unnecessary.[16] [Pet. Br. 21-22] As this court has suggested, and Watson expressly set forth in her opening brief, determining whether two groups are similarly situated involves fundamentally the same analysis as full equal protection review.[17] [Pet. Br. 21-22]

Without responding to either of these points, the state asserts that whether two groups are similarly situated is a threshold question that must be resolved before applying Alaska's three-part, sliding-scale test for equal protection claims. [Resp. Br. 11-18] In support, the state cites several cases in which this court applied its "shorthand analysis" to reject equal protection claims. [Resp. Br. 11-18]

But again, for the reasons discussed in Watson's opening brief, both this court's shorthand analysis and full equal protection analysis use the same essentially relational framework in any given case: both analyses consider the classification at issue in relation to the individual interests and government interests implicated.[18] [Pet. Br. 21-22] In addition, this court's application of its shorthand analysis in several varied cases does not mean this court should apply its shorthand

---

16 *Planned Parenthood of the Great Northwest v. State*, 375 P.3d 1122, 1136-37 & n.81 (Alaska 2016).

17 *Id.; see also Burke v. Raven Electric, Inc.*, --- P.3d ----, 2018 WL 2173938 (Alaska 2018).

18 *See, e.g., 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[.]"; *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 968-69 (Alaska 2005) (explaining that "the physical dissimilarities [between the communities being compared] are directly relevant and material to the issue of how Alaska State Troopers are to provide on-location law enforcement services"); Giovanna Shay, *Similarly Situated*, 18 Geo. Mason L. Rev. 581 (2011).

analysis in this case. The interplay between Watson's interests, the state's interests, and the nexus between the state's interests and its means for realizing those interests in this case are sufficiently complex that this court should apply full equal protection analysis. Applying Alaska's three-part, sliding-scale test, this court should weigh Watson's interests in juvenile court and the government's interests in criminal administration, and this court should evaluate the relationship between the government's interests and its means for realizing those interests.[19]

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."[20] The state argues that Watson is only similarly situated to other offenders charged with non-felony traffic offenses. [Resp. Br. 17-18] But this is simply a restatement of the challenged classification and would defeat equal protection analysis entirely. As legal scholars have explained, the phrase "similarly situated" cannot mean "merely that everyone in the class possessed the 'classifying trait' . . . because that would produce the tautological result that a law complies with equal protection if it 'applies equally to all to whom it applies.' If that were true, 'a law applying to red-haired makers of margarine' would not violate equal protection."[21]

This court should reject the state's invitation to compare Watson only to others within the challenged classification. Instead, this court should consider

---

19 *See Planned Parenthood of the Great Northwest*, 375 P.3d at 1137.

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

21 Shay, *supra* note 18, at 587 (quoting Joseph Tussman & Jacobus tenBroek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341, 345 (1949)).

Watson similarly situated to other children younger than 16 years old charged with violating the law or to children charged with felony DUI. [Pet. Br. 31-39]

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

The state argues that Watson has "only a limited interest in juvenile court" because she is interested in minimizing her punishment and because any interest she has in rehabilitation and treatment is met by adult courts when imposing sentence. [Resp. 19-28] This argument is unpersuasive and fails to adequately consider juvenile system's express, defining purpose of rehabilitating child offenders and a child offender's corresponding interest in that system.

As this court has explained, the "principle 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."[22] [Resp. Br. 23] Watson emphasized her interest in the juvenile system's particular rehabilitative focus[23] and pointed to the fact that she faced a longer maximum sentence in

---

22 *P.H. v. State*, 504 P.2d 837, 841 (Alaska 1972). The United States Supreme Court decisions that the state characterizes as "hav[ing] little bearing" on this case actually echo this essential formulation of a child offender's character that creates a role for juvenile court. *See J.D.B. v. North Carolina*, 564 U.S. 261, 272-73 (2011) ("A child's age is far more than a chronological fact.") (internal quotation marks and citation omitted); *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (describing a child as lacking maturity, being "more vulnerable . . . to negative influences and outside pressures" and having character that "is not as well formed as that of an adult," personality traits that "are more transitory, less fixed," and an underdeveloped sense of responsibility that results "in impetuous and ill-considered actions and decisions").

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

juvenile court than in adult court. [Pet. Br. 22-28] (The state acknowledges that Watson's adult sentence was relatively short compared with the indeterminate juvenile sentence she would otherwise have faced. [Resp. Br. 22-23])

The state's argument that Watson "seeks to minimize her punishment" is thus inconsistent with her sentencing reality. [Resp. Br. 21] The state points to Watson's statement that child offenders charged with misdemeanor DUI face "uniquely harsh consequences." [Resp. Br. 21] But this statement related directly to Watson's observation that child offenders charged with almost all other offenses were subject to juvenile court jurisdiction; thus, the "uniquely harsh consequences" faced by child offenders charged with misdemeanor DUI are the product of their automatic referral to adult court and lack of access to rehabilitation within the juvenile court system. [Pet. Br. 14-20]

The state also incorrectly equates an interest in minimizing collateral consequences of an adjudication or conviction with minimizing punishment. [Resp. Br. 26-27] Minimizing collateral consequences of an adjudication or conviction, and thus safeguarding the child's future opportunities for education and employment, is integrally related to rehabilitation. It is a principal reason why juvenile courts exist and why their records remain confidential.[24] It is also a principal reason why the court system administratively categorizes minor consuming alcohol and minor alcohol-and-driving offenses—which are noncriminal infractions that leave a public

---

[24] *See* AS 47.12.300; *P.H. v. State*, 504 P.2d 837, 841 (Alaska 1972).

record—as "alcohol underage" offenses.[25]

The state notes that the juvenile court confidentiality statute does not apply to records of traffic offenses. [Resp. Br. 21] But this inapplicability appears directly linked with the exclusion of traffic offenses from juvenile court jurisdiction.[26] Thus, if this court holds that excluding misdemeanor DUI from juvenile court jurisdiction violates equal protection, the holding should extend to the confidentiality statute's inapplicability to DUI. And even if it did not, the administrative policy governing "alcohol underage" offenses demonstrates that records can fall somewhere between confidential and easily publicly accessible.

In addition, the state incorrectly asserts that sentencing in adult court provided Watson with adequate rehabilitation. [Resp. Br. 23-27] The state points to the fact that adult courts must consider rehabilitation when imposing sentence. [Resp. Br. 23-24] But as this court has recognized, juvenile courts have an express focus on rehabilitation over punishment that distinguishes them from adult courts.[27] The state also argues that the sentencing court in Watson's case could consider her age and potential for rehabilitation. [Resp. Br. 23-24] But despite Watson's age and potential for rehabilitation, the sentencing court did not have discretion to suspend imposition of sentence or impose sentence below the mandatory minimum.[28]

---

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

26 The legislature enacted the first juvenile court confidentiality statute in 1972—after traffic offenses, including DUI, had been excluded from juvenile court jurisdiction. *See* SLA 1972, ch. 124, § 1. Pursuant to that original statute, records of traffic offenses were not subject to confidentiality provisions. *See id.*

27 *See Sandsness*, 72 P.3d at 304; *Rust*, 582 P.2d at 140 & n.21.

28 *See* AS 28.35.030(b)(1)(A), (2)(B).

Finally, the state's argument that Watson's remaining on bail without violating the conditions of her release for the past five years "shows that [she] received adequate treatment and did not require any extra opportunities for treatment that might have been available through the juvenile court" misses the point. [Resp. Br. 26] Watson did not complete a treatment program through the court; rather, her family ensured she participated in an age-appropriate treatment program. Watson completed a six-week program through Alaska Crossings—an intensive behavioral health program, with individual therapy, specifically for children aged 12-18.[29] [R. 16-17; Tr. 212, 215, 222] Further, Watson has not served the sentence imposed by the court; rather, with family support, she has been able to remain on bail, pursuing an appeal, during her formative years. [Tr. 223] Watson's rehabilitation was not the result of the court system treating her as an adult but her family doing everything in its power to ensure her treatment as a child.

The state's argument that Watson has "only a limited interest in juvenile court" does not allow for the substantively different quality of rehabilitation in the juvenile system. [Resp. Br. 19] This court should conclude that Watson has an important interest in rehabilitation as a juvenile, in juvenile court.

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

The state appears to acknowledge that the government's interests are linked to the broad constitutional purposes of criminal administration. [Resp. Br. 32-

---

[29] *See* Alaska Crossings, http://www.alaskacrossings.org/ (last visited May 30, 2018).

33] But the state then attempts to identify interests that could more specifically apply to the challenged classification in this case. In particular, the state relies on *Ardinger v. Hummell*,[30] a decision by this court holding that, in a civil lawsuit against a minor for negligently entrusted a vehicle to another minor, public safety requires the minor to be held to an adult standard of care. [Resp. Br. 28-29] In her opening brief, Watson argued that *Ardinger* is inapplicable here because 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 court system. [Pet. Br. 29] The state does not address these arguments. The state also does not address the logical inconsistency in applying *Ardinger* only to hold minors charged with misdemeanor (as opposed to felony) driving offenses to an adult standard of care. This court should clarify that *Ardinger* specifically concerned children's civil liability and does not require children to be criminally tried and sentenced as adults.

Watson does not dispute that the legislature has discretion in defining offenses and penalties for those offenses.[31] But that discretion is not relevant to the second prong of Alaska's equal protection analysis. Rather, in articulating the government's interests for purposes of equal protection analysis in this case, it is important to distinguish between the act of establishing penalties, in and of itself, and establishing penalties that serve Alaska's purposes of criminal administration. If

---

[30] 982 P.2d 727 (Alaska 1999), cited in *Watson v. State*, 400 P.3d 121, 123 (Alaska App. 2017).

[31] *See Valentine v. State*, 215 P.3d 319, 326 (Alaska 2009); *Dancer v. State*, 715 P.2d 1174, 1180-82 (Alaska App. 1986).

the government's interest were in the mere act of establishing penalties, that interest would collapse the third prong of equal protection analysis, since a nexus will always exist between a government interest in the act of establishing a penalty and the resulting penalty. But if the government interest is in establishing penalties that serve Alaska's purposes of criminal administration, the second and third prongs represent different analyses, and different nexuses can exist between the government's interest and penalties enacted, depending upon the way the interest is served by different penalties.

This court may consider the legislature's discretion in defining offenses and penalties as part of the third prong of Alaska's equal protection analysis—this court's evaluation of the nexus between the government's interest and its classification for penalty purposes.[32] But no such nexus exists in this case.

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.

a. The state's reliance on out-of-state cases does not advance its position.

The state sets forth a two-page string citation to support the proposition that many other states "exclude some or all traffic offenses from juvenile court in appropriate circumstances." [Resp. Br. 29-31] But the state's proposition is not relevant to the issue presented in this case. Whether another state's exclusions

---

[32] *See Public Employees' Retirement System v. Gallant*, 153 P.3d 346, 349-50 (Alaska 2007); *State v. Ostrosky*, 667 P.2d 1184, 1194 (Alaska 1983); *Dancer*, 715 P.2d at 1180-82 (holding that statutes treating offenders convicted of unclassified or class A felonies differently from other offenders for presumptive sentencing purposes did not violate equal protection).

from juvenile court are similar to Alaska's or potentially violate equal protection requires understanding that state's juvenile system as a whole and its equal protection jurisprudence, as compared with those of Alaska. Because the state's citation does not (and cannot feasibly) undertake such comprehensive comparisons, it does not advance the state's position in this case.

To the extent this court is interested in other state's apparent treatment of juveniles who commit traffic offenses, a surface review of the authorities the state cites and some other authorities reveals several points that support Watson's position: In the vast majority of other states, Watson's DUI would have been subject to juvenile court jurisdiction. In many states, this is because all traffic offenses, all criminal traffic offenses, or all traffic offenses carrying incarceration as a possible penalty committed by children are subject to juvenile court jurisdiction.[33] In some states, this is because certain more serious traffic offenses, including DUI, committed by children are subject to juvenile court jurisdiction.[34] In some states,

---

[33] *See* Ariz. Rev. Stat. Ann. §§ 8-202(E), 8-323(B)(1); Cal. Welf. & Inst. Code §§ 602, 603.5 (conferring juvenile court jurisdiction over criminal traffic offenses but providing that juvenile court lacks jurisdiction over traffic infractions); Del. Code Ann. tit. 10, § 927(16); Md. Code Ann. Cts. & Jud. Proc. § 3-8A-03(d)(3) (excluding from juvenile court jurisdiction children at least 16 years old who are alleged to have violated a traffic law, unless incarceration is a punishment for the violation); Mich. Comp. Law Ann. §§ 712A.2, 712A.2b; Nev. Rev. Stat. §§ 62A.220, 62B.330, 62B.380, 484C.110 (permitting juvenile court to transfer "minor traffic offenses" to adult court and defining "minor traffic offense" to exclude DUI); N.M. Stat. Ann. § 32A-2-3(1)(a); N.Y. Fam. Ct. Act § 301.2 (defining "juvenile delinquent" to mean a child who has "committed an act that would constitute a crime if committed by an adult" and noting that this definition applies to felonies and misdemeanors, not violations); Ohio Rev. Code Ann. §§ 2151.23, 2152.02, 2152.21; Or. Rev. Stat. Ann. §§ 419C.005, 419C.007, 809.412, 813.400.

[34] *See* La. Child. Code Ann. arts. 804, 953 (defining "delinquent act" to

this is because traffic offenses committed by children under 15 or 16 years old—who generally cannot be fully licensed drivers—are subject to juvenile court jurisdiction.[35] In some states, this is for both latter reasons.[36] And of those minority states in which Watson's DUI would not necessarily have been subject to juvenile court jurisdiction, many still provide the juvenile court preferred or concurrent jurisdiction with adult court over such an offense.[37]

---

exclude "traffic violations" but defining "traffic violations" to exclude serious traffic offenses, including DUI); Me. Stat. tit. 15, §§ 3101, 3103(1)(A), (E), (F) (defining "juvenile crime" to exclude traffic offenses but excepting DUI from that exclusion); Tenn. Code Ann. §§ 37-1-102(10), 37-1-103; Tex. Family Code Ann. § 51.03 (defining "delinquent conduct" to exclude any "traffic offense" but excepting any traffic offense "punishable by imprisonment or by confinement in jail"); Utah Code Ann. § 78A-6-103(1)(a), (2)(a).

[35] *See* Conn. Gen. Stat. § 46b-120(9) (defining "delinquent act" to include any violation of law or ordinance by child under 16 years old but exclude motor vehicle offenses by child 16 or 17 years old); Ind. Code Ann. § 31-30-1-1(8); Ky. Rev. Stat. Ann. § 610.010; Mass. Gen. Laws ch. 119, § 74; Minn. Stat. § 260B.225; N.H. Rev. Stat. § 169-B:32; N.C. Gen. Stat. Ann. § 7B-1501; Mo. Rev. Stat. § 311.031(e) (excluding from juvenile court jurisdiction children at least 15 years old who are alleged to have violated a traffic ordinance, the violation of which is not a felony); Wash. Rev. Code Ann. § 13.04.030(1)(e); Wis. Stat. Ann. §§ 938.12, 938.17.

[36] *See* Ala. Code § 12-15-102(6)(a)(1) (excluding non-felony traffic offenses committed by 16- and 17-year-olds from juvenile court jurisdiction but excepting DUI from that exclusion); Ga. Code Ann. § 15-11-630 (providing for juvenile court jurisdiction over all traffic offenses committed by children under 16 years old and over all serious traffic offenses, including DUI, committed by children); Vt. Stat. Ann. tit. 23, § 5102(9)(B).

[37] *See* Colo. Rev. Stat. Ann. § 19-2-104(5) (providing juvenile court and county courts with concurrent jurisdiction over children under 18 years old charged with certain offenses, including DUI); Haw. Rev. Stat. Ann. § 571-41(f) (providing that family court can confer concurrent jurisdiction on district court jurisdiction to hear cases involving traffic offenses by children but that district courts' exercise of jurisdiction "shall, nevertheless, be considered noncriminal in procedure and result in the same manner as though the matter had been adjudicated and disposed of by a family court); Idaho Code Ann. § 20-505(6) (providing that court may choose to treat juvenile who violates traffic offense pursuant to juvenile code); 705 Ill. Comp. Stat

b. A government interest in public safety and uniform treatment of drivers does not have a sufficient nexus to the classification in this case.

The state argues that the government "has a compelling interest in treating drivers alike regardless of age." [Resp. Br. 28-32] The state cites *Ardinger* and an out-of-state case for the notion that the government has an interest "in public safety and in uniform treatment of drivers." [Resp. Br. 28-29, 32]

But the challenged classification in this case does not treat all drivers, children and adults, alike. It treats children charged with misdemeanor driving offenses, including DUI, the same as adults, and it treats children charged with felony offenses, including felony DUI, differently.

c. A government interest in treating children who engage in adult activity as adults does not have a sufficient nexus to the classification in this case.

The state argues that "[i]f a minor engages in a highly regulated and substantially dangerous activity that is normally reserved for adults, then that minor should expect to be treated as an adult." [Resp. Br. 29] Watson noted in her opening brief that child offenders charged with offenses in other areas of highly regulated adult activity—including alcohol, drugs, and weapons offenses—are either charged with non-criminal infractions or are subject to juvenile court jurisdiction. [Pet. Br. 15-17] Thus, the challenged classification does not treat all children who engage in adult activity as adults. In response, the state argues, "The use of alcohol, controlled substances, or weapons is not uniquely adult." [Resp. Br. 37] But all three activities are highly regulated and require minors to be a certain age before

---

405/5-125; Miss. Code Ann. 43-21-159 (providing that youth court may choose to exercise jurisdiction over juvenile who violates traffic offense); Neb. Rev. Stat. Ann. §§ 43-246.01, 43-247; S.C. Code Ann. § 63-3-520; Wyo. Stat. Ann. § 14-6-203(c).

participating, and the state does not explain its reasoning for suggesting otherwise. [Pet. Br. 17 & nn.56-58]

The state also argues that driving presents different, more grave dangers than the use of alcohol, drugs, and weapons. [Resp. Br. 37] Even if that were true, the challenged classification also does not treat all child drivers alike.[38]

d. A government interest in prohibiting underage drinking and driving does not have a sufficient nexus to the classification in this case.

The state cites an out-of-state case for the notion that the government has an interest in "prohibiting underage drinking and driving, or simply underage consumption of alcohol." [Resp. Br. 32] But the challenged classification does not treat all children who drink, or even all children who drink and drive, alike. Children who are charged with other alcohol-related offenses are either charged with non-criminal infractions or are subject to juvenile court jurisdiction. [Pet. Br. 15-17] Children who are charged with minor alcohol-and-driving offenses are charged with non-criminal infractions. [Pet. Br. 16] And children who are charged with felony DUI are subject to juvenile court jurisdiction. [Pet. Br. 15] Only children charged with misdemeanor DUI are charged with a criminal offense but are not eligible for rehabilitation in juvenile court.

e. Relying on competing government interests in treating drivers uniformly but protecting children accused of felony offenses from adult consequences is problematic and does not have a sufficient nexus to the classification in this case.

The state argues that the anomalous treatment of misdemeanor DUI is the product of the legislature balancing two competing interests: its interest in

---

38 *See supra* Part B.4.b.

treating all traffic offenders alike and its interest in protecting minors from the harsh consequences of felony convictions. [Resp. Br. 37-38] This formulation is problematic because it relies on assumptions about the legislature's intent that are not clearly expressed in or apparent from the legislative history—and it does so nearly 60 years after the fact, following subsequent legislatures' changes to the surrounding and implicated statutes.[39] It assumes that the 1969 legislature that eliminated the exception allowing the three specific driving offenses, including DUI, to remain in juvenile court also considered and decided not to eliminate the exception allowing felony driving offenses to remain in juvenile court. And it assumes that the 1969 legislature would have intended this result even where subsequent legislatures establish a mandatory minimum for misdemeanor DUI, render misdemeanor DUI ineligible for SIS or SEJ, and create a new offense of twice-recidivist felony DUI that is subject to juvenile court jurisdiction.

As this court has held, even at the lowest level of scrutiny under Alaska's equal protection analysis, "[j]udicial deference to a broad range of conceivable legislative purposes and to imaginable facts that might justify classifications is strikingly diminished."[40] This court should not speculate as to competing state interests that, if considered together, could hypothetically support the challenged classification.

Moreover, even these competing interests do not have a sufficient nexus to the challenged classification. As Watson discussed in her opening brief,

---

39 *See* Part A.2.

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

the legislature could achieve both interests—treating all traffic offenders alike but shielding children from felony convictions—by making all DUIs misdemeanor offenses as to children younger than 18 years old. [Pet. Br. 39] But instead, the Alaska Statutes deny children charged with misdemeanor DUI any benefits of treatment and rehabilitation in juvenile court but grant children charged with felony DUI those same benefits. [Pet. Br. 39]

In response, the state argues that "[t]he legislature need not rewrite criminal laws in order to accommodate minors who break those laws." [Resp. Br. 40] The state then points to two out-of-state cases in which courts held that trying children 16 years and older as adults for misdemeanor traffic offenses did not violate equal protection. [Resp. Br. 40-42] But Watson was 14 years old at the time of her offense, so those cases did not consider her situation. Moreover, when a legal issue is as state-law dependent as this one is, out-of-state cases are often too distinct to be instructive.

Alaska's equal protection clause "protects Alaskans' right to non-discriminatory treatment more robustly than the federal equal protection clause," including at the lowest level of scrutiny.[41] By contrast, both cases the state cites applied only rational basis review.[42] In addition, Alaska's motor-vehicle-offense exception to juvenile court jurisdiction applies to all children under 18 years old.[43]

---

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

[42] *State v. Deflorio*, 512 A.2d 1133, 1136-37 (N.H. 1986); *State v. Hart*, 277 N.W.2d 843, 846-47 (Wisc. 1979).

[43] *See* AS 47.12.030(b).

By contrast, both cases the state cites limited their motor-vehicle-offense exceptions to juvenile court jurisdiction to children aged 16 and older,[44] who are generally eligible for drivers' licenses.[45]

While the legislature has discretion in defining offenses and fixing penalties, it must do so consistent with Alaska's constitutional protections. Requiring children younger than 16 years old who are charged with misdemeanor DUI to be subject to adult court jurisdiction and face a mandatory sentence of imprisonment, where other children younger than 16 years old do not, violates equal protection and due process. And requiring children charged with misdemeanor DUI to be subject to adult court jurisdiction, where children charged with felony DUI are not, violates equal protection and due process.

CONCLUSION

This court should reverse the court of appeals' decision, and Watson's conviction, in this case.

DATED at Anchorage, Alaska, on June 4, 2018.

PUBLIC DEFENDER AGENCY

Kelly Taylor

KELLY R. TAYLOR (1011100)
ASSISTANT PUBLIC DEFENDER

---

[44] *See* N.H. Rev. Stat. § 169-B:32; *Deflorio*, 512 A.2d at 1136-37; *Hart*, 277 N.W.2d at 845-46 (explaining that juvenile code treats children 16 years and older differently from children younger than 16 years old).

[45] *See, e.g.*, N.H. Rev. Stat. § 263:14; *supra* notes 35-36 and accompanying text.