THE STATE
of ALASKA
GOVERNOR BILL WALKER

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March 30, 2017

The Honorable Anna MacKinnon
Senate Finance Co-Chair
Alaska State Legislature
State Capitol, Room 516
Juneau, Alaska 99801-1182

The Honorable Lyman Hoffman
Senate Finance Co-Chair
Alaska State Legislature
State Capitol, Room 518
Juneau, Alaska 99801-1182

Re: Plea Negotiations

Dear Senators MacKinnon and Hoffman:

This letter is provided to supplement my oral testimony and is intended to respond to questions from the committee about the use of plea negotiations and how the presumptive sentencing ranges for first time class C felonies could impact future negotiations.

The United States Supreme Court has stated that "plea negotiations are an essential component to the administration of justice"[1] and they are "necessary and proper."[2] In Alaska, as in all states, prosecutors resolve approximately 90% - 95% of all cases through plea negotiations. Prosecutors within the Criminal Division of the Department of Law consider a myriad of factors when evaluating whether to extend an offer to resolve a case short of trial. Those factors are primarily grouped into three categories: the facts of the offense, the defendant's background including his/her criminal history, and the societal interests in the prosecution of the offense. Individual case resolution reflect both the constitutional[3] and statutory sentencing goals[4] of public safety, community condemnation, victim rights (including restitution), and rehabilitation.

Plea negotiations are necessary because they ensure that the Criminal Division direct its limited resources to cases of its highest priority – *i.e.,* domestic violence, sex offenses, homicides, and other cases of statewide significance. Plea negotiations necessarily assist the entire criminal justice system to ensure justice is achieved and resources are efficiently utilized.

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[1] *Santobello v. New York*, 404 U.S. 257 (1971).
[2] *Bordenkircher v. Hayes*, 434 U.S. 357 (1978).
[3] AK CONST. art. I, § 12.
[4] AS 12.55.005.

It is for this reason the percentage of cases resolved by plea negotiations will continue regardless of where the legislature sets the presumptive range for first time class C felony offenses. Many of these cases are resolved with only probation imposed as a sentence. However, our courts require that determining an appropriate sentence be an individualized process[5] and all relevant factors be considered. These factors are similar to the factors a prosecutor must consider in extending an offer to resolve a case.

One aspect of SB 54 establishes a presumptive range of zero to one year for first time class C felonies. A presumptive range is the range of possible jail time that a court can impose. Generally, a defendant cannot receive a sentence above the presumptive range. Plea negotiations are impacted by presumptive ranges because the prosecutor must generally extend an offer for a sentence lower than expected if there was no agreement. Thus, the lower the range, the lower any offer must be.

Anticipating every possible fact pattern for the various class C felonies is difficult. Every case, and every defendant, is different. Thus, providing the court with an appropriate range gives a particular judge the discretion to assess all the possible variables in sentencing a particular defendant, in a particular case. This method provides the greatest ability to achieve justice for both victims and defendants.

The goals of criminal justice reform in both SB 91last year and SB 54 this year, are to decrease the use of incarceration and encourage rehabilitative treatment, while maintaining public safety. The Administration supports these concepts. However, last year's reduction in the presumptive range for first time class C felonies to only probation placed Alaska's sentencing for such offenses at the lowest level in the nation. To incentivize rehabilitation --indeed to authorize judges to order residential treatment in these cases --the presumptive range must include active jail time. Authorizing up to one year provides both prosecutors and the courts the discretion in sentencing to maintain or improve public safety.

I hope these comments help your committee in deciding how to balance treatment and rehabilitation with protection of the public. I will be available to answer any further questions when your committee once again takes up SB 54.

Sincerely,

JAHNA LINDEMUTH
ATTORNEY GENERAL

By: John Skidmore
Criminal Division Director

[5] *Smith v. State*, 739 P.2d 306 (AK App. 1987).