

SB

141



Superior Court
State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

SB 141

Chambers of
THOMAS E. SCHULZ, Judge

February 21, 1979

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: An Act Relating to Probation

Dear Bob:

I have reviewed the proposed legislation that would allow imprisonment as a condition of a suspended imposition of sentence and thus, get us out of the disaster fomented by the Boyne decision. I think that the proposed legislation covers all the bases. I particularly like the provisions for deductions for good conduct but I'm not so sure that I agree with the provisions allowing parole. If parole is to be a factor, I think the minimum term of imprisonment should be one year rather than 180 days. In my experience, when a judge suspends imposition of sentence but feels that the defendant should serve some time in prison, he usually has a definite period of time in mind and putting parole eligibility into the equation just makes it more difficult to arrive at a sentence that gets the desired results. I also feel that imprisonment as a condition of a suspended imposition of sentence should never involve more than one year's incarceration anyway. If the guy needs to go to jail longer than a year, he probably should not have gotten an SIS anyway. Of course, the same argument can be made at the six month level but frequently that young slow learner comes along that you want to give a good sharp jolt to but still leave him an opportunity to clear his record of the conviction and so I would like to see the latitude of using up to a year's imprisonment as a condition of an SIS and without having to worry about parole. The good time deduction is fine. If the guy can get along in the institution and obey all the rules and get his good time deduction, he should be able to earn it.

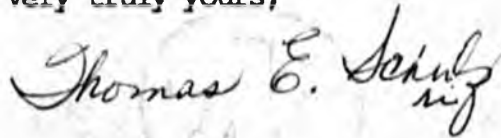
Under Sec. 5, the Act is take effect on January 1, 1980. The new Criminal Code goes into effect on January 1, 1980, as I understand it at this time, and we would not have the Boyne problem under the new Criminal Code because the statute specifically authorizes the judge to impose a period of imprisonment as a condition of probation. I would much prefer to see this Act rammed through

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as quickly as possible to take effect immediately after its signature by the Governor and thus, cover the period of time between now and the time the new Code comes into effect.

As you know Jeff Currall has left the District Attorney's Office but I have talked to both he and Mike Thompson on this subject before and I am sure they agree with the need for the Bill. I know that Harold Brown does also but I'm not sure that anyone else would agree with my comments about parole. Since I am going to Anchorage to play Supreme Court Justice for awhile, I am going to send them a copy of this letter and ask that they get their comments to you directly as soon as possible. I would really like to see this legislation in effect just as soon as it can get passed.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas E. Schulz". The signature is written in dark ink and is positioned above the typed name.

Thomas E. Schulz
Superior Court Judge

TES:ri

cc: Hon. Jay Rabinowitz, Chief Justice
Hon. Robert Boochever
Hon. Roger G. Connor
Hon. Edmund W. Burke
Hon. Warren Matthews

POSITION PAPER

Senate Bill 141

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prop. S.I.S.
summary lls
[Signature]

"An Act relating to sentencing of Criminal Defendants; and Providing for an Effective Date."

The Dept. of Health & Social Services is in support of Senate Bill 141.

This legislation would provide a means by which a defendant who has received a suspended imposition of sentence may be required to serve a portion of that suspended sentence in incarceration.

This concept allows the court to prescribe a short period of incarceration as a special condition of probation. Thus, the defendant, especially in cases of youthful and/or first offender, will experience incarceration and also receive probation supervision upon release to the community. This "jail therapy" is one attempt to deter offenders from committing additional crimes when used as a part of a probation plan.

At this time, the Department is unable to determine the fiscal impact that would result from this method of sentencing. The Department will be able to make that determination after having gained experience. It should be noted that terms of incarceration served on a continuous basis would probably not have a major impact. However, a sentence to be served on weekends, would be difficult and restrictive from an operational aspect. All correctional centers are presently operating near, at or over capacity. Normally, there is an increase in the population of these facilities over the weekend period. To include offenders sentenced to serve their period of incarceration on weekends would increase the "weekend peaking effect" and possibly cause overcrowding.

Recommended by: Charles F. Campbell 3/28/79
Charles F. Campbell, Director Date
Division of Corrections

Approved by: Helen D. Beirne 3/28/79
Helen D. Beirne, Commissioner Date
Department of Health & Social Services