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Loynes

*Section _____. The lieutenant governor shall place before the qualified voters of the state at the next general election a question advisory to the legislature of whether the legislature should enact laws which impose criminal penalties for the private use of marijuana by adults. The question shall appear on the ballot in the following form:

Q U E S T I O N

Shall the Legislature of the State of Alaska enact laws which impose criminal penalties for the private use of marijuana by adults?

Yes[]

No[]

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-900

MEMORANDUM

May 13, 1982

SUBJECT: Classification of offenses
(HB 633)

TO: Senator Charles H. Parr

FROM: James H. Lear
Legislative Counsel *JHL*

You have requested an enumeration of the classification of offenses included in Sec. 2 of HB 633. That information is as follows:

<u>Crime</u>	<u>Classification</u>
murder in the first degree	unclassified felony
murder in the second degree	unclassified felony
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criminally negligent homicide	Class C felony
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assault in the second degree	Class B felony
assault in the third degree	Class A misdemeanor
kidnapping	unclassified felony
sexual assault in the first degree	Class A felony
sexual assault in the second degree	Class B felony
robbery in the first degree	Class A felony
robbery in the second degree	Class B felony
burglary in the first degree	Class B felony
arson in the first degree	Class A felony
escape in the first degree	Class A felony
riot	Class C felony

*reduced to Class A felony if defendant establishes by affirmative defense that he voluntarily released the victim safely, within 24 hours, etc.

JHL:ljb

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3860

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 4, 1982

SUBJECT: Single subject rule
TO: Senator Charles H. Parr
FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked whether questions for an advisory vote relating to increasing the drinking age and legalizing the use of marijuana may be combined in one bill without violating the single subject rule.

The single subject rule is contained in Section 13, Article II, Constitution of the State of Alaska which provides:

SECTION 13. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

The primary aim of the rule has been stated by our court to be restraint of the log-rolling process in the legislature and describes log-rolling as deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure. Suber v. Alaska State Bond Committee, 414 P.2d 546 (1966).

The test which broadly stated:

"Ultimately the decision in cases of this kind must be made on a basis of practicality and reasonableness. In

determining whether a bill is confined to one subject we agree with the statement:

'All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.'

was adopted in Gellert v. State, 522 P.2d 1120 (Alaska 1974), and has been quoted in each subsequent case in point in Alaska with approval. It is therefore well settled that this broad language is the standard against which compliance with the single subject rule is to be tested.

There would appear to be a connection both logically and in popular understanding between the use of alcohol and the use of marijuana since the use of either has related although not identical social policy implications.

In my opinion this would not violate the single subject rule.

BGB:ljb

and prevailing national trends would tend to suggest that probation and parole staff should rely on law enforcement officers to make arrests whenever possible, and that they should avoid carrying firearms (which are seen by many as antithetical to their primary role of service provider and treatment agent for their clients.)

PROPOSED ADDITIONAL FUNCTIONS FOR COMMUNITY CORRECTIONS SERVICES

Pretrial Assessment and Supervision

According to a study of bail practices in Anchorage during 1973, conducted by the Alaska Judicial Council, ~~fully 85 percent of felony cases resulted in bail release for the defendants.~~ The Council provides evidence that ~~this rate is similar to the national average~~ ~~pretrial release rate, cited as varying from 67 to 84 percent.*~~ The Council includes within the term "bail" all forms of pretrial release, not just traditional cash bonds. Of those defendants released pretrial, the Council reports that:

- o 47 percent were released on fully secured money bond
- o 35 percent were released on personal recognizance
- o 16 percent were released on unsecured bonds or 10% bonds to the court
- o 2 percent were released by unknown means

Moyer Associates conducted a two-week survey of all releasees from the five major institutions which house the majority of

Alaska's adult pretrial detainees. This survey, conducted during August, 1978, illustrates the variance in pretrial release practices between communities; the table on the next page includes only those persons in the sample who were released prior to trial (746 out of the total of 1226 releasees for whom data was obtained during the survey period.).

The latter four categories correspond to the Judicial Council's ROR category, while the second and third correspond to money and court bond categories mentioned in the Council's study. The statewide percentages are roughly comparable to the 1973 Anchorage percentages (although the Anchorage Annex proportions observed in the recent survey diverge considerably from the earlier study in terms of ROR and court bond categories.)

Although the ~~Alaska bail statute encourages release of defendants on their own recognizance on unsecured bond~~ unless "the judge determines that neither will reasonably assure the defendants' subsequent appearance, or that either will pose a danger to other persons and the community" (Judicial Council bail study), the statute also allows imposition of conditions for release whenever the judge determines that ROR or unsecured bond are inappropriate. These conditions may range from posting a 10% bail bond with the court, requiring supervision by a responsible custodian, or even requiring full cash or other property bail bond. In order to

* The latter rate includes misdemeanor cases as well as felonies, and so is likely to be above the rate for felony cases alone.

PRETRIAL RELEASE METHODS

Moyer Associates Survey

Means of Release	Fairbanks CC		Anchorage Annex		Ketchikan CC		Juneau CC		RidgeView CC		Total Statewide	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
Charges dismissed	8	5	20	5	-	-	-	-	2	3	30	4
Cash bond	24	16	188	42	4	13	1	2	29	40	246	33
Cash Bond to court	67	45	141	32	16	50	12	25	30	41	266	36
ROR	42	28	59	13	9	28	24	50	9	12	143	19
Conditional Release	7	5	18	4	3	9	11	23	2	3	41	5
Supervised ROR	1	1	13	3	-	-	-	-	1	1	15	2
Diversion	<u>1</u>	<u>1</u>	<u>4</u>	<u>1</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>5</u>	<u>1</u>
	150	100%	443	100%	32	100%	48	100%	73	100%	746	100%
	(266)		(652)		(67)		(86)		(95)		(1226)	

determine what additional conditions might be appropriate in a given case, the statute further suggests that judges take into account "the nature and circumstances of the offense charged, the weight of the evidence against the person, the person's family ties, the person's employment, the person's financial resources, the person's character and mental condition, the length of residency in the community, the person's record of prior convictions, and the person's record of appearances at court proceedings and history of flight to avoid prosecution." (Judicial Council) Unfortunately, the Judicial Council reports that most often the ~~necessary~~ information and preparation for making such a reasoned determination is not available by the first appearance, within 24 hours after arrest.

This points to a potentially critical problem in the pretrial release process. If lack of information delays the eventual release of many defendants, then the average length of stay, and therefore the average daily population of pretrial detainees may be unnecessarily inflated. Since it seems likely that a higher than average (compared to national figures) proportion of Alaska defendants are at some point released pending trial, the greatest impact on the average daily pretrial population can be achieved not through increasing the number of persons released but rather through decreasing the average length of time which defendants are detained prior to release.

In order to accomplish this reduction in length of time

detained, the information necessary to determine an individual's eligibility for pretrial release must be collected immediately upon intake into the corrections facility. Given that probation and parole staff already perform a wide variety of assessments for both the judiciary and the Division of Corrections, it is logical that they should also be formally assigned responsibility for pretrial release eligibility assessments. However, the Accreditation Commission cautions that "provision should be made for effective use of personnel on a full- or part-time basis by using a systems approach to identify ROR service objectives and by specifying job tasks and the range of personnel necessary to meet the objectives. Similarly, space and equipment needs should be determined. Unless adequate resources are available, a probation department should not undertake an ROR program."

Further, the Commission considers as essential that "Where the agency operates pretrial intervention services, it does so with the cooperation of other criminal justice authorities," and comments that:

"Successful development and operation of pretrial services, such as release on own recognizance (ROR) programs, is dependent upon the cooperation of judges, attorneys, law enforcement officials and corrections officials. They should be involved in these programs from initial planning through implementation."

At present, ~~there is only one~~ formal pretrial release program ~~operating in the state,~~ which is

located in Anchorage. However, until quite recently, the impact of this program on the pretrial detention population was less than could be hoped for; ~~the recent institution of a 24-hour magis-~~
~~trate system in Anchorage has,~~
~~however, resulted in a signifi-~~
~~cant reduction in the pretrial population.~~ This lends credence to the suggestion that reducing the average length of time detained prior to release can have a most substantial effect on average daily detention populations.

With this in mind, an assessment of the potential impact of speedier pretrial release of eligible defendants has been conducted. The first step in estimating this potential impact was to determine, using data from the Moyer Associates survey of all releasees from 5 state institutions in a selected two-week period, how many would have been eligible for release on recognizance, using a ~~standard-~~
~~ized ROR assessment scale.~~ The scale used has been developed and refined by the Vera Institute of New York, and is used by many jurisdictions across the country to assess arrestees' stability in the community (and thus the likelihood that they would appear for trial if released from detention.) The scale is reproduced on the following page.

All of this information was available for 1084 of the total sample of 1226 releasees statewide (or 88 percent). Of these releasees, 73 percent passed the Vera requirements. Adding the requirement that the eligible defendant cannot be charged with an assaultive felony lowers the percentage eligible for pretrial release using these

criteria to 66 percent statewide. The table (on the following page of text) summarizes the percentages of eligibles in each of the five surveyed facilities.*

Thus, the percentage passing the Vera eligibility criteria alone is relatively constant across the state, with the exception of Ridgeview. The reduction in total N observed across the two analyses is due to lack of data for a few defendants on the type of offense with which they were charged.

Knowledge simply of the numbers of persons eligible for pretrial release using these criteria is not sufficient to provide an estimate of the degree to which their average length of stay could be reduced. Data from the survey therefore was used to calculate:

1. The actual number of person-days spent pretrial by all those releasees who qualified for ROR according to the Vera Scale.**
2. The number of person-days these individuals would have spent had they all been released on recognizance in an average of four hours after booking. This assumed average is not extraordinarily short given that even now, 48 percent

** Nearly all persons in the sample spent some time in pretrial detention, even those who also served time as sentenced inmates prior to their release. Thus, the pretrial days spent includes all releasees (not just those released in pre-trial status).

VERA SCALE

	<u>Requirements</u>	<u>Points</u>
Box 1	1. Defendant must reside in the county/ region under consideration.	1
	<hr/>	
	2. Defendant has lived at his current address 2 1/2 years or more.	1
	or	
Box 2	3. Defendant lives with parent(s) or spouse.	1
	or	
	4. Defendant is employed, in school or in a training program on a full-time basis.	1
	<hr/>	
	5. Defendant has a phone in his residence.	1
	or	
Box 3	6. Defendant expected someone at the arraignment (not complainant or attorney).	1
	or	
	7. Defendant has no felony convictions.	1
	TOTAL:	

Scoring Procedures

Step A: The defendant must satisfy Requirement 1.

Step B: If the defendant is not a resident of the county/region under consideration he automatically "fails" the test. If the defendant does satisfy Requirement 1, he/she is then required to satisfy at least one of the requirements in Box 2; i.e., he/she must satisfy (in addition to Requirement 1), Requirement 2, or Requirement 3 or Requirement 4.

Step C: If the defendant does not satisfy any of the requirements in Box 2, he is disqualified.

Step D: If the defendant satisfies only one of the requirements in Box 2, then he must satisfy at least one of the requirements in Box 3 in order to qualify.

Step E: If the defendant satisfies 2 or more requirements in Box 2, (in addition to Requirement 1), he automatically "passes" and there is no need to proceed to Box 3.

Step F: If the defendant satisfies Requirement 1, and one of the requirements in Box 2, but none of those in Box 3, he is disqualified.

* Percentages of Eligibles
in each of the
Five Surveyed Facilities

	Total Number of Releasees	Percent Passing Vera Criteria	Total Numbers	Percent Passing Vera and not Charged with Assaultive felony
Fairbanks	153	71%	148	68%
Anchorage Annex	644	75%	636	68%
Ketchikan	58	78%	52	67%
Juneau	78	76%	60	52%
Ridgeview	92	58%	83	51%
	<u>1025</u>		<u>979</u>	

** Percentage Decrease in ADP
Resulting from Increased ROR (Speedier pretrial release)

<u>Institution</u>	<u>Vera Only</u>	<u>Vera and No assaultive felony</u>
Fairbanks	22%	22%
Anchorage Annex	75%	54%
Ketchikan	36%	33%
Juneau	8%	6%
Ridgeview	11%	9%
Statewide total	27%	18%

(for these facilities only, which represent about 54% of the
total statewide ADP)

of all those in the sample who were released prior to trial were released in 8 hours or less (~~25 percent were released within 24 hours.~~) with the institution of formalized and prompt pretrial release assessments by community corrections staff and, at least in the urban areas, 24-hour magistrate availability, this 4-hour average stay prior to release is likely to be readily attainable.

The difference between these two figures is thus the number of person-days that would have been saved had this ROR policy been in effect. This number of person-days saved can then be translated into a reduction in the average pretrial stay and thus in the average daily inmate population (ADP) which would have occurred had the ROR policy been implemented. The percentage decreases in ADP which could have been achieved in each facility and across the state using the two different release eligibility criteria are summarized on the previous page.**

Although the impact varies across institutions, due primarily to variations in the actual number of days spent pretrial by those passing the two criteria, the overall statewide impact of speedier pretrial release is potentially quite significant. This is especially true if even a few inmates who now spend many days in pretrial detention are released in an average of four hours after booking.

Since the five facilities surveyed currently house only about 54

percent of the total statewide average daily prisoner population,* the impact of ROR on this total population would be diluted to about a 15 percent ADP decrease using the Vera criterion only, or about a 10 percent ADP decrease using the Vera plus no assaultive felony criteria (see section on factors affecting corrections populations for a more precise estimate of impact on both the projected year 2000 ADP and on the current ADP.)

This method of estimating the effect of ROR on inmate populations does not take into account one factor which may mitigate its impact. Offenders who are detained pretrial, then convicted and sentenced to a term of imprisonment receive credit for the time they served pretrial. Thus, if arrestees serve less time pretrial, it is possible that those sentenced to incarceration would be incarcerated longer in sentenced status than they would have been if detained prior to sentencing. This might offset some of the reduction in total average length of stay to be attained through speedier ROR. The degree to which this offsetting would occur is impossible to quantify. It is important to note however that the impact of an ROR program which requires that an arrestee pass the Vera scale and not be charged with an assaultive felony in order to be released is less likely to be affected by this

* Eagle River, Palmer, Third Avenue and Federally housed inmates would not be affected by ROR, since they house only sentenced inmates. No data is available on Nome, since a two-week sample was considered an insufficient sample for a facility with such a low volume of releases.

pretrial detention time credit factor since persons released using these two criteria are less likely to be sentenced to imprisonment if convicted or conversely, assaultive felons are more likely than others to receive prison sentences.) In estimating facility capacity needs under the various policy options, only the ROR option using the dual criteria is considered (see later section on facility recommendations). It is presumed to be an accurate estimate, although it may well represent the maximum impact which could be attained with a totally effective ROR program.

Because construction and operation of facilities to house pretrial detainees is so much more expensive than the salaries of community corrections staff who would operate the pretrial release screening services to reduce the needed capacity of these facilities, the implementation of such a program in Anchorage, Fairbanks, Juneau and Ketchikan certainly seems justifiable. Further legislation prescribing a uniform policy and procedure will be necessary to initiate such a program. ~~Particularly needed is a uniform method of screening and investigating persons awaiting trial as to their suitability for pretrial release,~~ and provision for the supervision of any persons granted pretrial release who are deemed to require it. Beyond authorizing community corrections staff to undertake this added responsibility, adequate funds to obtain needed staff must also be appropriated. Staff needs for community corrections services are

discussed in more detail later in this section.

Transitional or Prerelease Programs

Inclusion of responsibility for reintegrative programs of the Division among the functions to be performed by community services staff grows out of the logical programmatic association between furloughs, prerelease programs and facilities, and parole. The ACA Accreditation Commission points out that:

" Probation and parole are community-oriented and community-centered. The agency should be a catalyst, mobilizer, and developer of community resources, so that offenders can benefit from a wide variety of these resources. Field officers should serve as community organizers in addition to their more traditional roles. The agency should include such activities in the assignment of designated field staff, and invest both money and top management effort to broaden the scope of community services for offenders."

In another standard, the Commission adds that "where they exist, community residential centers should be available to parole staff for prerelease programs and to parolees for crisis situations." commenting:

"Many newly released offenders need a place to live. For some, the small, privately-operated community residential center is extremely helpful. This type of transitional residence offers privacy with some structure and guidance, but without state authority. Where such facilities

can be obtained on a contract basis, the agency budget should provide funds to purchase such services."

Further emphasizing the need for a continuum of transitional programs for inmates, the Commission states that:

"Sudden and direct release to the community after many years in a closed or maximum security institution can produce psychological shock in a releasee and may be a factor in a releasee's inability to adjust on parole. A few months in a minimum or open institution can help ease the transition to parole and should be arranged if possible. Other partial release programs include work and study release and trial visits to family and community prior to parole. Another type of program that can achieve the same objective is extension of visiting privileges at the institution for the last few months prior to release. Such programs gradually acquaint inmates with the issues, pressures and emotions they will encounter once paroled."

At present, no inmates in Alaska are placed on work or study release as a transition from incarceration to parole; some are housed in the relatively open atmosphere of Eagle River or Palmer immediately prior to release. Very few, if any, inmates are presently granted furloughs for any purpose, particularly for family visits or job-seeking prior to release. This lack of transitional programming is primarily an outgrowth of negative experiences of the recent past which caused a public and official

outcry against the then-operating prerelease and minimum security programs.

Because a gradual reintegration of inmates into the community is the most likely method of both ensuring public safety and increasing the likelihood of the inmates' successful reformation, the Division of Corrections must increase its efforts to develop viable prerelease alternatives. To accomplish this, the Division must develop an accurate method of screening inmates to determine eligibility for prerelease programs, and it must have sufficient properly trained staff to operate the programs (and adequate funds to contract with other agencies or private groups as well).

Although probation and parole staff are not presently responsible for the supervision of inmates furloughed from institutions for less than 30 days, the regional or district office must be notified by the institution prior to such releases as to their purpose and duration; the supervising offices nearest the locations to which the inmates are released provide services to them only if requested by these inmates.

Similarly, notification must take place for inmates furloughed for more than 30 days, but in these cases the releasees are to be supervised and assisted by the nearest field office. The field office also is required to furnish periodic progress reports to the releasing institution, which retains the official file and also retains jurisdiction and the responsibility to return the inmate if necessary. Regional Administrators are given discretion to develop implementing procedures

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
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907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 13, 1982

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(HB 633)

TO: Senator Charles H. Parr

FROM: James H. Lear
Legislative Counsel *JHL*

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assault in the third degree	Class A misdemeanor
kidnapping	unclassified felony
sexual assault in the first degree	Class A felony
sexual assault in the second degree	Class B felony
robbery in the first degree	Class A felony
robbery in the second degree	Class B felony
burglary in the first degree	Class B felony
arson in the first degree	Class A felony
escape in the first degree	Class A felony
riot	Class C felony

*reduced to Class A felony if defendant establishes by affirmative defense that he voluntarily released the victim safely, within 24 hours, etc.

JHL:ljb

STATE OF ALASKA
THE LEGISLATURE

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JHL:ljb

Nancy - please check w/ following, see what you can get (HB 633) - Charlie

Judicial Council
Criminal Justice Planning Agency 3591 Charlie Sidans

1. Info on % of times ^{new} crime committed by person out on bail awaiting trial
2. Info on % times accused released on own recognizance as opposed to bail being required.

Kevin (or LAA)

Class of each offense listed in HB 633 (A, B, C)
felony? violent? other?

Susan Knighton

Div of Corrections Study
"Masterplan database"

3706
Cheryl

CONTACTS

JUDICIAL COUNCIL

279-2526

Susan Johnson - will send Statistical
Summary - Anchorage 1973

DAVID MUMHEIMER

279-7424

Special Prosecutor's office

MIKE STARK

3460

District Attorney

LEGAL SERVICES

3428

CRIMINAL JUSTICE ASSISTANCE

3591

Sue W Knighton

DIVISION OF CORRECTIONS

DH & SS

3376

Amey Weir

PUBLIC DEFENDER

279-7541