HB
473

COMMITTEE REPORT

SENATE

FURTHER: None

Date: May 8, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 473(jud)

changing the classification of and punishment for certain crimes against the person

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Original sponsors: Barnes, Hayes, Abood, et al

Offered: 5/15/82
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 473 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

2½-20 years

A BILL

For an Act entitled: "An Act relating to sentencing for class A felonies."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 12.55.125(c) is repealed and reenacted to read:

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction, other than for manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, seven years; → CURRENTLY 6 years

CORRECT NO PRESUMPTIVE (2) if the offense is a first felony conviction and does not involve circumstances described in (1) of this subsection, five years;

CURRENT IS 10 (3) if the offense is a second felony conviction, 10 years;

CURRENT IS 15 (4) if the offense is a third felony conviction, 15 years.

* Sec. 2. AS 12.55.125(g) is amended to read:

(g) If a defendant is sentenced under (c) [(c)(1), (c)(2), (c)(3)], (d)(1), (d)(2), (e)(1), or (e)(2) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080 [AS 12.55.80]; CORRECTIVE AMENDMENT

(2) imposition of sentence may not be suspended under AS 12.-55.085 [AS 12.55.85]; CORRECTIVE AMENDMENT

(3) terms of imprisonment may not be otherwise reduced.

* Sec. 3. 12.55.155(a) is amended to read:

(a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c) [AS 12.55.125(c)(1). (c)(2), (c)(3)], (d)(1), (d)(2), (e)(1), or (e)(2) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

* Sec. 5. AS 12.55.165 is amended to read:

Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant is subject to sentencing under AS 12.55.125(c) [AS 12.55.125(c)(1), (c)(2), (c)(3)], (d)(1), (d)(2), (e)(1), or (e)(2) and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

* Sec. 5. AS 33.15.180 is amended to read:

Sec. 33.1 .180. PERSONS ELIGIBLE FOR PAROLE. (a) A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, and who is not imprisoned in accordance with AS 12.55.125(c)

[AS 12.55.125(c)(1), (c)(2), (c)(3)], (d)(1), (d)(2), (e)(1), or (e)(2), whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in AS 33.15.080 and 33.15.230(a)(1).

(b) A state prisoner who has been imprisoned in accordance with AS 12.55.125(a) or (b) may not be released on parole until he has served at least the prescribed minimum term of imprisonment.

(c) A state prisoner imprisoned in accordance with AS 12.55.125(c) [AS 12.55.125(c)(1), (c)(2), (c)(3)], (d)(1), (d)(2), (e)(1), or (e)(2) who is released under AS 33.20.030 shall be placed on parole for the period specified in the certificate of deduction, subject to written rules and conditions imposed by the board or his parole officer.

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE
Contact: Rep.Ramona Barnes
465-3718

May 19, 1982

House Judiciary Committee Chairman Ramona Barnes today blasted the Senate for being "soft on crime." She specifically singled out Senate Judiciary Committee Chairman Pat Rodey for "ignoring the desires of a majority of Alaskans to fight the growing crime rate." She said, "Senator Rodey has proven he won't take a tough stance against criminals by the bill stripping action taken in his committee."

Barnes referred to HB 473 which she sponsored to establish minimum mandatory sentences for sexual assault in the first degree and combinations of unclassified felonies such as kidnap and murder. Under the Barnes version of the bill, sexual assault in the first degree would be raised from a class A felony to an unclassified felony. The Senate Judiciary Committee has altered the bill to an act relating to class A felonies. The Senate Co was largely drafted by the Department of Law which stated the House version would lighten sentences in many cases.

Barnes said, "The Department's claims are simply not true. While both the Department and the Senate Judiciary Chairman seem to believe sentences now handed out are adequate to punish those who commit multiple violent crimes, statistics show just the opposite."

Barnes pointed to the following examples:

In the Klinkhart case in Anchorage where a teenager was beaten, sexually assaulted and murdered, a judge could have given a 258 year sentence which was sought by the prosecution. The judge gave a 75 year sentence with parole eligibility in 25 years. Under the Barnes bill there would have been a mandatory sentence of 99 years and no parole.

In the Walatka murder trial, none of the defendants were convicted of murder but were convicted on two counts of kidnapping. The judge can sentence the offenders to a 5 year minimum sentence with parole eligibility in 1½ years. Under the Barnes bill there would have been a 50 year minimum sentence and no parole.

In Fairbanks where a person killed 2 people and seriously injured another in a multiple murder in the second degree case, the offender was sentenced to 20 years with parole eligibility in 6½ years. Under the Barnes bill there would have been a fifty year minimum sentence with no parole.

Barnes added, "Current sentencing practices show judges are not handing out stiff penalties. My version of HB 473 would assure that those who commit the most serious violent crimes are severely punished and that they are not released back on the streets almost as soon as they are imprisoned. A recent study showed that the average sentence for first time offenders committing sexual assault in the first degree was 3.5 years with parole eligibility after only 1.2 years. My bill would have provided for a minimum 5 year sentence for first offenders with no parole eligibility.

Barnes continued, "The Department of Law's and the Senate Judiciary Committee's statement that sexual assault in the first degree should not be made an unclassified felony is a slap in the face to the dozens of women who have endured the nightmare of rape. Further the Senate Judiciary bill proves plainly that those on that committee are not willing to fight crime in this state but may be willing to subject the public to needless danger by prematurely releasing those who commit violent crimes. Should the Senate pass their version of this legislation without sufficient time to remedy the problems in conference, I expect I would likely prefer to see the bill die than to pass a bill which I consider to be an insult to Alaskan citizens who deserve to be protected from violent crime."

# # # # #

DAILY NEWS MINER - FAIRBANKS, March 9, 1981

Officials say state handing out longer jail terms for offenders

By DEBBIE CARTER
Staff Writer

Convicted rapists set free from Alaska jails in 1976 spent less time behind bars than those in any other state surveyed except Nevada, the National Law Journal says.

Using statistics which compare 37 states and the federal system, the newspaper said rapists from Alaska and Nevada spent an average of 14 months in jail before finishing their sentence or getting out on parole.

On the other end of the scale, rapists freed in Arkansas in 1976 were jailed an average of almost 10 years—eight times as long as in Alaska, the weekly newspaper for lawyers said.

More recent information on how long Alaska criminals are staying in jail for rape and other violent crimes is not available.

But Fairbanks Presiding Superior Court Judge James Blair and other court officials predict that jail time has drastically increased within the past five years.

Court officials also say the Alaska cases are so few in comparison to other states that meaningful figures and conclusions can not be generated.

Blair estimates there were probably only a half dozen to a dozen rapists paroled in Alaska in 1976—the year which the National Law Journal chose as an example.

He also points to an Alaska Judicial Council study released in November that says sentences meted out in Alaska almost doubled for certain violent crimes in the late 1970s, compared to an earlier three-year period.

That study said sentences for violent crimes increased 82 per cent but no specific breakdown was available by crime. The only category to decrease was drug offenses.

The judicial council study also noted a sharp drop in the number of probationary sentences given out instead of jail time.

In another category, the National Law Journal shows that in only one other state persons convicted of manslaughter were released in as short a time.

Inmates in Missouri spent an average of eight months in jail for manslaughter. Alaskans were jailed an average of 11 months.

The average Alaskan felon paroled in 1976 spent 22 months in jail, three months shorter than the national average and five months shorter than prisoners convicted in the federal system.

Sam Trivette, executive director of the Alaska Parole Board, questioned

(See SENTENCES, page 6)

ANCHORAGE TIMES, April 4, 1981

Bill calls for harsher rape terms

Associated Press

Juneau — Much harsher sentences would be allowed for people convicted of rape under a bill introduced today by Rep. Ramona Barnes, R-Anchorage.

Under the bill (HB473), a person convicted of rape or assault with intent to rape could be sentenced to up to 99 years in prison. The bill would require a minimum five-year sentence for forcible rape, and no parole or probation would be allowed until after five years.

Existing law allows a maximum sentence of 20 years.

Barnes said she introduced the bill to "keep rapists off the streets."

"Right now, under Alaska law, a first-time forcible rape offender can be paroled after six months in prison, the sentence mitigated or suspended by judicial or parole board discretion," Barnes said in a speech from the House floor.

Barnes cited a national law journal article that said the national average for prison time served for forcible rape is 52 months. She said her bill's "approach to minimum mandatory sentences at 60 months is quite reasonable and responsible."

The bill also redefines other sexual offenses, including incest and statutory rape, but penalties are not changed.

According to a recent study by the state's Criminal Justice Planning Agency, Alaska had more rapes per capita in 1978 and 1979 than any other state in the nation.

Eleven Republicans co-sponsored the bill introduced by Barnes.

ANCHORAGE TIMES, April 23, 1981

Study: rape sentences longer

by Maureen Blewett
Times Writer

Convicted rapists in Alaska are spending more time in prison than they used to.

Rapists paroled in Alaska in 1979-80 spent an average of 48 months, or four years, behind bars, state Department of Corrections statistics show. This compares with an average of 14 months served by rapists paroled in 1976.

But it is still under the 52 months served nationally in 1976 by convicted rapists, according to figures published in the Feb. 23 issue of the National Law Journal.

Two laws have been passed since the 1976 study was made that have affected the length of the sentence handed down by judges. Plea bargaining was banned in the state in 1976. And in 1980 mandatory sentences were set up for second-time offenders.

Southcentral Alaska residents in recent months have been highly critical of what they view as lenient sentences and bail practices for violent crimes, particularly rape.

A representative of an Anchorage rape prevention group, Standing Together Against Rape, refused comment on the rape figures Wednesday.

Dr. Richard Mohr of the Corrections Department said the department studied time served for 11 convicted rapists released from jail in Alaska in 1979. The shortest time served was 14 months, the longest was 106 months.

Statisticians for the department said Wednesday they do not have figures on the length of time served in prison by those convicted of murder and negligent homicide.

An unrelated study by the Alaska Judicial Council of felony sentences in 1976-1979 shows that Alaska judges sentenced 21 convicted rapists to serve an average of 12.8 years. That figure is consistent with the Corrections Department study because prisoners generally are eligible for parole after serving one-third of their sentences.

The judicial council study also included sentences handed down for murder and manslaughter. Judges sentenced 13 convicted first-degree murderers to an average of 86 years. They sentenced 19 second-degree murderers to an average of 22 years. And they sentenced 22 people convicted of manslaughter to an average of 6.8 years.

The figures published by the National Law Review show that in 1976 Arkansas was hardest on convicted rapists of the 37 states surveyed. There they served an average of 9.9 years. Second was North Carolina with nine years. Third was Missouri with eight years.

At the other end of the scale in 1976 came Alaska and Nevada with 14 months each, followed by West Virginia with 16 months. In contrast, those convicted of car theft in West Virginia served an average of 41 months — nearly three times the average sentence for forcible rape.

Massachusetts was the toughest state on willful homicide. It required the average offender to serve more than 15 years before parole, according to the law review. Nebraska followed with 10.6 years and Utah had 9.25 years.

Prisoners served the least amount of time for homicide in South Dakota. There they served 2.5 years. In Iowa they served 3.1 years and in Kentucky they served 3.2 years.

The national study concluded that the length of time spent in prison depends less on the type of crime committed and more on the state where the felon chose to commit the crime.

The 1976 figures compared Alaska with 36 other states, Puerto Rico and the District of Columbia.

ANCHORAGE TIMES, May 19, 1981

Tougher sentences fail to reduce crime

Crime is again a major concern of Americans. This is the third article in a series examining the rising fear and what is being done by legislators and within the criminal justice system.

by Timothy Harper
Associated Press

New York — There are more people in American jails and prisons today than ever before, but steel bars and concrete walls have not slowed the alarming rise in violent crime in the United States.

Instead, a national passion for longer jail sentences — now almost twice as long on average as they were 30 years ago — is testing the penal system's ability to carry out legislative mandates for tougher punishment and the public's willingness to finance stiffer retribution.

Potentially dangerous overcrowding is pervasive, and many convicts are being shoved out early to ease tensions and make room for new criminals.

Georgia, which instituted mandatory sentencing in 1978, this year freed 1,100 inmates en masse to relieve overcrowding. New Jersey had to put 334 prisoners in mobile homes. A pending Supreme Court case could force other states to do likewise.

At the same, there is overwhelming evidence that prisons don't reform criminals — and some speculation that they actually contribute to crime by giving convicts added training in their illicit skills.

Still, 36 states, including 15 last year, have enacted laws requiring mandatory sentences for people convicted of certain violent, drug-related and repeat crimes. The laws don't allow probation or parole. Many states are considering even tougher sentencing laws.

The result is that 450,000 people are now locked away in the United States, a 50 percent increase since 1972, according to a new federal study.

The average prison sentence went from under two years in the 1950s to nearly four years in the 1970s, according to the National Council on Crime and Delinquency.

But crime has not gone down. The Justice Department says one in three American households was touched by crime last year. And the FBI says violent crime has tripled in the last 20 years, with much of the record 1980 crime rate based on repeat criminals.

Two of every three inmates in federal prison have been there at least once before, and one out of every four released on parole will be back within two years, according to Justice Department statistics.

"The dismal failure of our system to stem the flood of crime repeaters is reflected in part in the massive number of those who go in and out of prisons," Chief Justice Warren Burger said recently.

". . . We must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short-term benefits. A winning of battles while losing the war."

Are all these prison cells and long sentences worth the billions they require? According to the U.S. Bureau of Prisons, it costs $50,000 to build a new cell and $17,000 a year to maintain it. According to Engineering News-Record, a trade publication, there are now more than 130 correctional facilities under construction and another 380 jails and prisons proposed at a cost of $6 billion.

A study by the American Foundation, a Philadelphia-based policy research center, showed that between 1955 and 1975, the crime rate grew faster in the states that increased prison capacity the most.

In the 15 states where cell space increased an aggregate 56 percent, crime rose 21 percent faster than in the 15 states where cell space was expanded by only 3.7 percent.

"The United States is sort of nuts about putting people away in prison," said Leonard Tropin, vice president of the National Council on Crime and Delinquency in Hackensack, N.J.

He said studies show the "college of crime" theory is true: The longer a man is in prison, the more likely he is to return.

Romeo Sanchez, a New York City counselor for ex-convicts whose former heroin habit resulted in nearly seven years in prison on a variety of charges, said his experience is living proof.

His first time in prison, Sanchez learned how to pick locks. After completing a sentence for drug possession, he was quickly re-arrested — for burglary.

David Rothenberg, founder of the Fortune Society, a New York-based nonprofit group working for prisoners' and former prisoners' rights, said prisoners become accustomed to having decisions made for them. When they have to make decisions for themselves, they are overwhelmed.

"Many of them become institutional people," he said. "They've been in so long they can only cope when they're in an institution."

Many "throw a brick," he said: commit a crime just to get back behind bars. And behind those bars, the people an inmate talks to, looks up to and goes to for advice are all criminals.

"Successful adjustment to prison life may actually hinder subsequent readjustment to the community," said Anne Newton, a researcher for theNational Council on Crime and Delinquency.

Nevertheless, some people still favor tougher sentencing. They argue that deterring crime, either among ex-convicts or would-be criminals, is not the real issue.

"Prison deters some crimes, but the test should not be whether it deters all crimes," said Thomas Reppetto, president of the Citizens Crime Commission of New York. "You send people to prison for two reasons: to lock them up so they won't be committing more crimes, and to punish them."

However, Michael Kanner, state criminal justice resear Kentucky, said the costs of b new prisons to ease overcrowding are giving pause to the get-tough sentencing trend. For example, Michigan voters, who two years ago called for harsh new sentences to send more people to jail, last fall refused to authorize the spending needed to keep all the inmates.

"People say they want more prisons," Kannensohn said, "but I don't know if they square that with the fact that it will mean more taxes."

Wednesday: Letting them walk — too soon?

FEATURE SHOWCASE

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

POUCH N
ROOM 312, GOLDSTEIN BUILDING
JUNEAU, ALASKA 99811
PHONE:

February 4, 1982

CS HB 473 (Judiciary)

POSITION PAPER

CS HB 473 (Judiciary) is an act changing the classification of and punishment for certain crimes against the person.

The Council on Domestic Violence and Sexual Assault unanimously supports Section 1 of the bill.

The Council also supports Sections 2-12 of the bill and considers it a "housekeeping" change.

The Council recommends deleting Section 13 as the Council is opposed to mandatory terms of imprisonment for crimes, without court discretion.

William R. Nix, Chair

12-L16LH

SENATE JUDICIARY
STANDING COMMITTEE
April 13, 1982
9:00 a.m.

Members Present: Senator Pat Rodey, Chairman
Senator Nels Anderson
Senator Charlie Parr
Senator Bill Ray

Members Absent: Senator Don Bennett

COMMITTEE CALENDAR

HB 34 "An Act requiring the preparation of a course transfer ability guide covering courses offed in post-secondary institutions; and providing for an effecti: date".

HB 2 Amended Title "An act relating to land; and providing for an effective date".

HB 548 Amended Title "An Act providing for legal services in civil cases for persons who are financially unable to obtain legal counsel".

HB 473 "An Act changing the classification of the punishment for certain crimes against the person".

HB 637 "An Act relating to the regulations of taking, purchase, or sale of certain fishery resources; and providing for an effective date".

WITNESS REGISTER

Mr. Haynes, Deputy Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811
465-2400
Position Statement: On HB 548 explained the amendment only deals with a credit against taxes in the range of $2 to $5 million dollars per year range average over a period of time. On HB 2 explained that of the 3 and 1/4 million acres designated; 3 million 1 thousand acres is for reindeer grazing lands, and 200 thousand acres has been rail belt, road map work, etc.

Mr. Bruce
Judiciary Committee Assistant
c/o Senator Rodey
Pouch V
Juneau, Alaska 99811
465-3717

Position Statement: On HB 34 explained the recent chain reactions of the bill. On HB 548 explained that DNR had amendments to the bill. On HB 2 explained that DNR had submitted language that referred to clearing and cultivating of the land.

PREVIOUS ACTION

HB 548 — The bill is in reference to seismic information obtained by the state, the amendment is in reference to credit against taxes. Senator Ray made the motion to move HB 548 from committee with the credit against taxes amendment. Senators Parr, Rodey signed do not pass. And Senators' Ray, Anderson signed do pass with no recommendations.

HB 34 — The bill is in reference to University of Alaska Trust lands. Senator Ray moved to have the Senate Resources letter of intent attached to the bill when passed. Senator Parr moved to pass HB 34 from committee with letter of intent. The bill passed from committee.

HB 2 — The bill is in reference to Homestead Limited Entry lands. Senator Anderson proposed for committee consideration an amendment by Senator Kerttula that is in reference to establishing state grazing lands. Senator Ray made a motion to move the amendment and the bill out of committee.

HB 473 — The bill is in reference to the change of classification of certain charges to a person, more commonly known as the rape bill. Senator Ray moved to adopt the amendment of the committee substitute. Senators Rodey, Ray and Anderson voted to adopt the committee substitute and Senator Parr voted not to adopt the committee substitute.

ACTION NARRATIVE

Tape #0044
Recording
Number 0001

Senator Rodey: The regional portion of the bill which is really the University of Alaska section endorses the settlement between the state and the University which is now HB 34. It is exactly the language which the Senate passed previously. I did check with the University and it is still in it's exact state. Ms. Tutten did you examine HB 34 to ensure that all portions of the bill were exactly as required by law.

Number 0006

Ms. Tutten: No, Senator I have not seen a copy of that bill.

Number 0007

Senator Rodey: Mr. Bruce, they are the same.

Number 0007

Mr. Bruce: Mr. Chairman, they are the same.

Number 0009

Senator Rodey: Yes, they are exactly the same as the....

Number 0010

Unanimous: Does that mean that the language that you may adopt today is exactly the language that is passed out of Senate Resource Committee or on the House or Senate floor.

Number 0011

Senator Rodey: Yes it is exactly the same. It is the Resource language.

Number 0012

Senator Parr: I move to pass out the Senate Committee Substitute for HB 34.

Number 0014

Senator Rodey: The motion has been made to pass HB 34 from Committee with individual recommendations. Is there any objections to that motion. (hearing no objection). The bill is passed from the Committee with individual recommendations.

Number 0015

Mr. There was a Senator Resources Committee letter of intent. And I don't know whether the committee examined that one or not.

Number 0016

Senator Ray: I would move also the Letter of Intent along with the bill.

Number 0017

Senator Rodey: The motion has been made to pass the Letter of Intent along with the bill, is there any objection to that motion? (hearing no objection). The Letter of

Intent will go along with the bill.

Number 0027 — Senator Rodey: Next I would like to take up House Bill 548. This is the seismic data portion of the House bill. This is the amendment proposed yesterday by Exxon was not included.

Number 0032 — Senator Ray: I move the Senate Committee Substitute.

Number 0032 — Senator Rodey: The motion is made that the Senate Committee Substitute. Does that ..... yes, Mr. Bruce.

Number 0033 — Mr. Bruce: Well the Department of Natural Resources had some amendment and the Committee added something else to it.

Number 0036 — Senator Rodey: This is the credits amendment. Is there any objection. Senator Ray's motion has been withdrawn. What is the preference of this committee for this amendment, this is the 50% credit amendment proposed by the Department. Mr. Haynes do you have any comment on this amendment?

Number 0039 — Mr. Haynes: The only thing that was asked yesterday that we couldn't answer at the time was were our financial exposure would be, if this credit provision passed. And we really can't tell exactly but we asked and they estimate probably it is somewhere in the $2 to $5 million per year range average over a period of time. It would be approximately what the state's exposure would be on the credit.

Number 0046 — Senator Parr: Mr. Chairman I gave this thing some more thought last night. I guess my position at this point is that that should be, the question of the data should be a prerequisite to requiring the permit and so that is what the CS does.

Number 0050 — Senator Rodey: Mr. Haynes your amendment does not effect the concept of leasing preconditioned upon being able to have access to data. Is that correct.

Number 0052 — Mr. Haynes: That's correct.

Number 0052 — Senator Rodey: The amendment only deals with a credit against taxes.

Number 0054 — Senator Parr: What I am saying Mr. Chairman is that my position is the precondition of getting the permit is furnishing the information, and I don't think to furnish it for $2 to $5 million dollars a year.

Number 0057 — Senator Rodey: You are opposing it sir, at any cost. That might be associated with.....

Number 0058 — Senator Ray: I repropose my motion to move it out.

Number 0059 — Senator Rodey: Senator Ray has moved that the bill pass from Committee with individual recommendations. All those people in favor of the motion.

Number 0061 — Senator Rodey: Did you wish to speak for the motion?

Number 0061 — Senator Ray: It's a lousey bill.

Number 0062 — Senator Rodey: I understand that Senator, I feel the same way. All those in favor of passing the bill out with individual recommendations raise your right, all those opposed. The bill is passed from Committee with individual recommendations. (Senator Parr signed do pass, Senator Rodey signed do not pass, Senators Anderson and Pay signed pass with no recommendations). Next I will like to take HB 2, homesteading limited entry. Mr. Bruce we have Senate Committee Substitute. We do not have a Judiciary Committee Substitute?

Number 0071 — Mr. Bruce: No we don't have a Judiciary Committee Substitute. I think everyone can follow the language that the Department of Natural Resources submitted taking care of the concerns that we went over yesterday about clearing and cultivation mandatory. And also there is an amendment in the file from Senator Anderson.

Number 0074 — Senator Rodey: Senator Anderson do you wish to speak on the amendment.

Number 0076 — Senator Anderson: This is an amendment that has to do with grazing lands proposed by Senator Kerttula. States notwithstanding the other provision of law state lands classified.....do you have a copy in front

of you.

Number 0078 Senator Rodey: Yes sir, I believe that every member has it in his file, second sheet right hand side.

Number 0080 Senator Parr: I might ask what's the amendment I am not quite clear on that.

Number 0081 Senator Rodey: I think I can answer the question, it is to perserve the grazing lands particularly in Senator Ferguson's area. I presume the Senator is concerned with the reindeer.

Number 0084 Senator Parr: That would be land under the exempt from homestead entry?

Number 0085 Senator Rodey: No it does not go that far. It only says that grazing land shall remain in its current category and shall not be classed as other kinds of agricultural lands would be. Except. Quite frankly it is very remote that land from that point on will be classified, that particular land would be classified as agricultural land.

Number 0089 Senator Parr: I wonder if the Department of Natural Resources has seen that amendment.

Number 0093 Mr. Haynes: Well, I think I understand the purposes is to obtain an existing state grazing lands classified for that purpose is apparently suitable for that purpose to obtain the current user classification for that intended into purpetuity.

Number 0094 Senator Anderson: Well as long as its used for that purpose.

Number 0096 Senator Parr: My question is that this section of the bill is talking about a homestead entry under AS 05.05.070 may not exceed 320 acres as agricultural. Does that apply to this too. Does this come under that category?

Number 0099 Mr. Haynes: Well my question is that approximately three and a quarter million acres of state land is currently designated and after this action is classified as grazing lands, 200 thousand acres of that has been rail-belt, road map work, what ever

area. About 3 million 1 hundred thousand acres is, out west, is for reindeer grazing. Since that is all recent T.A., that reindeer grazing land, I doubt if any of it has to be reclassified. It would be presently unclassified. However, if it is designated as being fairly permenently reserved for that classification, that sort of like establishing a state grazing area out there. And I assume that that would be considered the primary use on all of those lands. And that's the way we will have to manage them. So because it shall retain that current use, it is really hard to judge what constraints that puts on us management wise in terms of things like mineral entry for example, or extend this excluded land disposal in those areas. I'm not quite sure I understand what the intent is in terms of limiting the Department management in this.

Number 0118 — Senator Parr: Let me rephase my question differently. I'm sorry, it is early in the morning for me. Would a person who lived out in that area be able to get a 320 acre homestead of this grazing land for the purpose on this bill. Or is that bared from the homestead entry?

Number 0123 — Senator Ray: It wouldn't bar it if you wanted to keep that agricultural use for grazing land.

Number 0124 — Senator Parr: That is what I am trying to find out.

Number 0124 — Mr. Haynes: What this would do sir is, were we to open this area to promote parcel stakes for agricultural reasons for land disposals. Then they would be able to get 320 acres.

Number 0125 — Senator Parr: It would have to be for grazing right?

Number 0126 — Mr. Haynes: It would be an adverience title only which includes (sic).....

Number 0128 — Senator Rodey: Is there any other questions with regard to Senator Anderson's amendment. Is there objections to Senators Anderson's amendments.

Number 0130 — Senator Ray: I object to it.

Number 0131 — Senator Fahrenkamp: Are you leaving Ray with the best legislation covering suitable for grazing? If you leave that in, that's (sic).....

Number 0139 — Senator Parr: The intent is misleading, and not adopt the amendment, and give us all more time to think and to find out more about it. I am not saying that I am opposed to it, it's just that it's not exactly the clearest thing in the world.

Number 0144 — Senator Rodey: You would call your amendment with the intention of raising it on the floor for speed of the bill from committee. Every member has the amendment proposed by the Administration.

Number 0150 — Senator Ray: I move that amendment.

Number 0151 — Senator Rodey: Is there any objection of the adoption of that amendment by the committee (hearing no objection) the amendment is adopted.

Number 0152 — Senator Ray: I move to move the bill out with individual recommendations Mr. Chairman.

Number 0153 — Senator Rodey: The motion is made that HB 2 pass from committee with individual recommendations. Is there any objection to that motion. (hearing no objection) The bill is passed from Committee with individual recommendations. Next I would like to take up HB 473, to change the classification of certain charges to a person, this is the rape bill.

Number 0159 — Senator Anderson: Did we adopt the Committee Substitute?

Number 0161 — Senator Rodey: No sir we did not. The matter was left for the members to consider in the evening.

Number 0162 — Senator Parr: Again I would like this held over because I have not really had time to go through the amendments with the Department of Law. I did go through it last night, and I do have some problems with it. What they are trying to do is go the person with the first offense, under circumstances (sic). I don't have any objection in going

to that whether a defendant used a firearm or a dangerous instrument that causes serious physical injury. (Indisc.) but I am not willing to ...(indisc)....

Number 0166 — Senator Rodey: I understand your position Senator Parr and I presume from previous conversation that you are not being very enthusiastic about the bill.

Number 0172 — Senator Rodey: The title is a little deceiving because the Committee Substitute is not the same title as...

Number 0174 — Senator Ray: As far as 473 either the House or the suggested Substitute, I am not particularly pleased with either one, but I would just assume move it out, either up or down on the floor.

Number 0182 — Senator Rodey: In the mean time, we can...quite frankly we all know there will be a conference committee on this point and I think that as we can maybe come back and talk about a committee position.

Number 0187 — Senator Ray: With that Mr. Chairman I would move that we move the Committee Substitute.

Number 0187 — Senator Rodey: The motion has been made, Senator Parr.

Number 0187 — Senator Parr: I object.

Number 0188 — Senator Rodey: Senator Parr objects. All those in favor of adopting the Senate Committee Substitute and passing the Committee Substitute for 473 from committee, raise your right hand, all those opposed. The bill passes from committee with individual recommendations. (Senators' Ray, Rodey, and Anderson voting to move the committee substitute and Senator Parr voting not to move the committee substitute). Technically the bill is in committee still. Gentlemen we will be called upon a regular basis between now and whenever we adjourn to meet both past bills and consider in some detail measures from the Committees. In the closing days if I could know your schedules and preferences so we can plan committee meetings that will meet with the meetings and members. Do we have a meeting scheduled for this afternoon Mr. Bruce.

Number 0198 Mr. Bruce: No, Mr. Chairman we don't.

Number 0199 Senator Rodey: Do we have any bills that are to be moved today from other committees to us that require immediate attention.

Number 0200 Mr. Bruce: No.

Number 0202 Senator Rodey: Perhaps to be safe we should schedule a meeting for 1:30 p.m. today, is that agreeable with the members that maybe a very short meeting and if for some reason no business does transpire shortly before noon. The Judiciary Committee is recessed until 1:30 a.m.

SENATE RESOURCES COMMITTEE

LETTER OF INTENT

SCS CSHB 2(Res)

Sections 13 - 17 of this bill relate to the settlement of certain claims by the University of Alaska against the State of Alaska, Departments of Natural Resources, Administration, and Revenue.

It is the intent of the Senate Resources Committee in passing out Senate Committee Substitute for Committee Substitute for House Bill 2 (Resources) that the Board of Regents of the University of Alaska develop a plan for distribution of revenues derived from university lands to be submitted to the legislature by January 10, 1983. The Committee intends that in developing this plan the Board consider a policy of reinvesting part of the revenues from university lands located within the boundaries of local governments so as to benefit the people within such communities. The Committee further intends that such a policy give appropriate weight to statewide and other area's needs, while addressing the objective of benefiting communities near revenue-producing university lands.

The Committee further intends that the University and the Municipality of Anchorage negotiate to settle their claims presented in litigation (3AN 79 2801 Civil), Third Judicial District and that the two parties shall report to the legislature by the tenth day of the 1983 session on the results of their discussions.

As originally introduced in the Senate, this bill was accompanied by companion legislation, orginally SB 876, which provided funds to implement the Settlement Agreement between the State and the University date March 12, 1982.

The companion legislation, passed as part of the FY 83 budget, provided that $500,000 in lapsed funds of the University of Alaska be used to conduct research to determine the total dollar compensation due the University as a result of the Settlement Agreement. The funds will be used to employ independent professional fee appraisers to determine the fair market value of certain University-grant lands which have been utilized and/or disposed of by the State at less than fair market value, and to appraise certain state lands which might be conveyed to the University or relinquished to the State; to conduct research on financial transactions involving University grant-lands; and to process the quitclaim deeds necessary to convey clear title to all University-grant lands involved in the settlement.

Specifically, the Department of Law, as recipient of these funds, is to allocate $110,000 directly to the Department of Natural Resources and the balance of $390,000 directly to the University of Alaska, Statewide Office of Lanad Management. The attached budget contains a breakdown use of these funds.

C E R T I F I C A T E

STATE OF ALASKA)
) ss
FIRST JDICIAL DISTRICT)

I, EVE FOX, a Notary Public, duly commissioned in and for the State of Alaska, do hereby certify that the foregoing Record of the May 13, 1982 Senate Judiciary Committee proceedings relating to the lands issue HB 2, HB 34, HB 548, HB 637, and HB 473 were recorded by the Senate Judiciary Committee and thereafter was transcribed by the Senate Records Staff under the direction of the Senate.

I further certify that the transcript consisting of pages 1 to 10, both inclusive, is a full, true and correct Record of the proceedings, considering the quality of the tape and the information furnished to me.

I further certify that the Senate Records Staff is not a relative of any of the parties, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of May, 1982.

Notary Public, for the State of Alaska
My Commission Expires: My Commission Expires March 25, 1985

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder in the First Degree
AS 11.41.100
20-99 years

Murder in the Second Degree
AS 11.41.110
5-99 years

Kidnapping
AS 11.41.300
5-99 years

CLASSIFIED FELONIES

A	B	C
Attempted Murder or Kidnapping AS 11.31.100(d)(1)	Attempted A felony AS 11.31.100(d)(2)	Attempted B felony AS 11.31.100(d)(3)
Solicitation of Murder or Kidnapping AS 11.31.110(c)(1)	Solicitation of A felony AS 11.31.110(c)(2)	Solicitation of B felony AS 11.31.110(c)(3)
Manslaughter AS 11.41.120	Assault II AS 11.41.210	Criminally Negligent Homicide AS 11.41.130
Assault I AS 11.41.200	Sexual Assault II AS 11.41.420	Custodial Interference I AS 11.41.320
Sexual Assault I AS 11.41.410	Unlawful Exploitation of a Minor AS 11.41.455	Sexual Assault III AS 11.41.430

CLASSIFIED FELONIES

A	B	C
Robbery I AS 11.41.500	Robbery II AS 11.41.510	Sexual Abuse of a Minor AS 11.41.440
Arson I AS 11.46.400	Extortion AS 11.41.520	Incest AS 11.41.450
Escape I AS 11.56.300	Theft I AS 11.46.120	Coercion AS 11.41.530
Criminal Possession of Explosives with Intent to Commit Murder or Kidnapping AS 11.61.240(b)(1)	Issuing a Bad Check, $25,000 or more AS 11.46.280(d)(1)	Theft II AS 11.46.130
	Burglary I AS 11.46.300	Concealment of Merchandise, $500 or more AS 11.46.220(c)(1)
	Arson II AS 11.46.410	Removal of Identification Marks, $500 or more AS 11.46.260(b)(1)
	Criminal Mischief I AS 11.46.480	Unlawful Possession (of Altered Property), $500 or more AS 11.46.270(b)(1)
	Forgery I AS 11.46.500	Issuing a Bad Check, $500 or more AS 11.46.280(d)(2)
	Scheme to Defraud AS 11.46.600	Fraudulent Use of a Credit Card, $500 or more AS 11.46.285(b)(1)
	Defrauding Creditors, $25,000 or more AS 11.46.730(c)(1)	

2-3

PLUS SOME NEW DRUG OFFENSES.

2/23/82

SECTIONAL ANALYSIS OF CSHB473

Sec. 1 Changes the name of Second Degree Sexual Assault to Third Degree Assault in the felony murder statute, AS 11.41.110(a)(3). The actual crime is the same and the classification is the same, B felony, but this change is needed because a part of present First Degree Sexual Assault is renamed Second Degree Sexual Assault. See Section 3.

Sec. 2 Changes Sexual Assault in the First Degree - nonconsensual penetration and attempted nonconsensual penetration with serious physical injury - from A felony, 0-20 years, to Unclassified Felony, 5-99 years.

Sec. 3 Takes two other forms of present Sexual Assault First Degree and changes to Sexual Assault Second Degree. The A felony, 0-20 years, does not change, only the name. These are basically statutory rape of a youth 12 years old or younger, and incest by parents. In 1980 Code..

Sec 4 Renames present Second Degree Sexual Assault to Third Degree Sexual Assault. Penalty of B felony, 0-10 years does not change. This crime, in 1980 code, basically covers sexual contact, not penetration, by coercion. Housekeeping change, in line with Sec. 3.

Sec. 5 Renames present Third Degree Sexual Assault to Fourth Degree Sexual Assault. Penalty of C felony, 0-5 years does not change. This crime, in 1980 Code, is basically penetration with a mentally incompetent or drunk person. Housekeeping change, in line with Sec. 4.

Sec. 6 Adds Sexual Assault First Degree (per Sec. 2 above) to list of other Unclassified Felonies in classification section. Housekeeping.

Sec. 7 Adds Sexual Assault First Degree (per Sec. 2, above) to a list of Unclassified Felonies in another classification section. Housekeeping.

Sec. 8 Changes name of Second Degree Sexual Assault to Third Degree Sexual Assault (per Sec. 4, above) in list of crimes for which a person can use deadly force to defend herself. Does same for penetration and penetration with serious injury - the only First Degree Sexual Assault crimes under this bill. Housekeeping, no substantive changes.

Sec. 9 Adds Sexual Assault First Degree to $75,000 maximum fine list of other Unclassified Felonies.

Sec. 10. Housekeeping - adds (i) as an exception for 20 year minimum or First Degree Murder.

Sec. 11 Housekeeping - adds (i) as an exception to 5 year minimum for Second Degree Murder, Kidnapping, and First Degree Sexual Assault.

Sec. 12 Housekeeping - adds (i) to prohibition of Suspended Sentence, Suspended Imposition of Sentence and other Reduction.

Sec. 13 This is (i)! Establishes these Minimum Mandatory Sentences for combinations of the most violent crimes:

(1) 99 years - First Degree Murder plus two other Unclassified crimes. This could be:

Three 1st° murders
One 1st° + two 2nd°'s
One 1st° + one 2nd° + one rape
One 1st° + two rapes
One 1st° + two kidnappings
One 1st° + one kidnap + one rape

(2) 75 years - First Degree Murder plus one other Unclassified Crime. This could be:

1st° + rape
1st° + 2nd°
1st° + kidnapping
Two 1st°'s

(3) 60 years - Three Violent Crimes, not including 1st°. This could be:

Three rapes
Three kidnappings
Three 2nd°'s
2nd° + kidnap + rape
Two 2nd° + one rape

(4) 50 years - Two Violent Crimes, not including 1st°. This could be:

Two 2nd°'s
Two rapes
Two kidnappings
One 2nd° + rape
One 2nd° + kidnap
One kidnap + one rape

All of the above must have been inflicted upon the victim or victims IN THE COURSE OF A SINGLE CRIMINAL INCIDENT.

(5). First Degree Sexual Assault with a prior conviction for First Degree Sexual Assault or a crime which would be a First Degree Sexual Assault in Alaska now. - results in a minimum of 20 years.

Sec. 14 Housekeeping - adds (i) above to minimum period prior to parole.

Sec. 15 Housekeeping - removes the "statutory rape" and "incest" from new First Degree Sexual Assault, as these are now called Second Degree Sexual Assault. No change in classification or penalty. See Sec. 3, supra.

HOUSE JUDICIARY COMMITTEE 3/4/82
ANALYSIS OF "POSITION PAPER: HB473"

of the

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

I.

The position paper, undated and unsigned, states in paragraph 4 that the "Network" supports Sections 1-5 of HB473. The Network agrees that (1) forcible penetration and, (2) attempted forcible penetration would result in serious physical injury should be an unclassified felony, equivalent to kidnapping and second degree murder. This results in a minimum of a five-year term.

II.

The position paper does not comment on bill sections 6-12. These are mostly housekeeping sections (see sectional analysis attached), but bill sections 10, 11, and 12 are essential to the implementation of Section 13, which is opposed by the Network in the last paragraph. As an example, Section 12 is absolutely necessary to:

negate the possibility of Suspended Sentence, Suspended Imposition of Sentence, and other reduction of the 99, 75, 60, 50 and 20 year terms set in Section 13.

III.

The last paragraph of the Position Paper deliniates the Networks opposition to the Bill. Upon careful examination of this paragraph, several questions arise as to how the Network arrived at their asessment of Section 13 - the section on minimum mandatory sentences which the Network opposes. The following are "excerpts" from the Position Paper with a brief explanation clarifying how HB473 addresses the Network's opposition to the Bill.

1. "...(Section 13) which creates mandatory sentences for the individual convicted of multiple crimes" implies that Bill Section 13 applies to all crimes, when in fact it applies only to the most serious ones recognized by our Criminal Code and probably the most universally condemned crimes in our society, (with the possible exception of treason in wartime).

- First Degree Murder
- Second Degree Murder
- Kidnapping
- Rape

An individual unacquainted with the realities of HB473 but having read this "Position Paper" would have no knowledge of which crimes were covered in Bill Section 13. Possibly the bill itself was attached to the Position Paper in each and every instance where the person received a copy. Nonetheless, the sentence itself seems to be a clear misinterpretation of Bill Section 13, regardless of the cause of the misconstruction.

2. The sentence "Simply in terms of blame worthiness, criminal cases are different from each other in ways that cannot be anticipated." [emphasis added] is equally surprising. Perhaps "blame worthiness" covers a wide spectrum of ideas, including the presence and type of mens rea of the crime ("intentionally, with knowledge, recklessly, with criminal negligence") and the question of whether the crime is a "strict liability" one, (D.W.I., commercial fishing, etc.) or degree of injury to a human being or property. In any event, most people would agree that crimes do differ, always have, and always will. However, the proposition that the people through its legislature cannot "anticipate" the "blame worthiness" differential between certain crimes, the specific ways that they are carried out, and their combinations with other crimes, is an unsupported, unqualified, and unjustified assumption, apparently one to be swallowed by the reader of the Position Paper along with the other assumptions therein. For example:

Could ordinary but reasonable people distinguish between and anticipate differences between "simple" kidnapping cases without injury - minimum mandatory term of five years under both present law and HB473 - and First Degree Murder after the kidnapping - minimum mandatory term of 75 years? The position paper assumes that these people could not so distinguish, and the legislature should not attempt to do so.

Could ordinary and reasonable people distinguish between a forcible rape of a 12 year old girl by a 40 year old man near a bike path (no kidnapping), and a similar instance where the rapist increased his possible minimum mandatory term from five years to 75 years by committing First Degree Murder after the rape? Could and should these people (and the Legislature which represents them) consider the differences in these crimes including all factors guiding laws of criminal punishment, not just deterrence. Should they consider the fact that the rapist coldly calculated his chances of apprehension and decided to eliminate the evidence by murdering the child. Could they consider that obviously the rapist had no remorse at all for the life that he had despoiled by the rape and already possibly pschologically destroyed, but took the ultimate step, murder of the child.

Is it really not possible to anticipate the "blame worthiness" differentials in these acts and similar ones?

Every legislature considers "blame worthiness" differentials whenever criminal statutes are enacted; else how would it be able to specify any penalty, regardless of minimum, maximum, presumptive or mandatory. To take the "no anticipation of blame worthiness" assumption to its logical extension, every crime would be of equal degree and would suffer equal punishment, all the way from littering to torture murder. Certainly there would be no need for Unclassified, A, B, C felonies, A, B, misdemeanors and violations in our Alaska Criminal Code. Penal laws, whether set by legislative bodies, monarchs, or any other form of human government, have always operated on the theory that ordinary and reasonable human beings were able to detect "blame worthiness" differentials between crimes.

Granted that there certainly are differentials in "blame worthiness", the Position Paper erroneously concludes that Bill Section 13 precludes the consideration of these differentials. Of course the people through legislative enactment of HB473 in its present form would in fact have considered these differentials. Obviously, as in any other enactments specifying terms of imprisonment, there are limitations on the discretion of prosecutors, courts, and parole boards. However, the prosecutors would continue to have discretion over which counts would be indicted and tried, (hopefully limiting that discretion to the question of the existence of sufficient evidence under the Department of Law's "no plea bargaining" rule). Likewise, the courts and parole boards would still retain discretion.

IV.

The last paragraph concludes "The Network prefers the current statutory scheme of presumptive sentencing, which specifies a "normal" sentence for each offense, but permits limited departures from the norm in atypical cases." [no emphasis added] This is a unusual statement in light of the prior support of the increase of rape to an Unclassified felony, removing it from the "presumptive sentencing" scheme. Presumptive sentences do not apply to Unclassified felonies. (AS 12.55.135) Even without the enactment of Bill Section 13, the penalty ranges for unclassified felonies are:

- First Degree Murder - 20-99
- Second Degree Murder - 5-99
- Kidnapping - 5-99
- Rape - 5-99

There are no presumptive sentences for any of these offenses, either in present law or in HB473. Presumptive

sentencing only applies to lessor crimes. Therefore, the presumptive sentence reference in the Position Paper refers to something not yet in law and not specifically suggested in the Position Paper.

Also, the Position Paper does not specify which are the "atypical" (or the "typical" for that matter) cases of multiple murder, kidnapping and rape. What could these be? Rape of a child under three with subsequent murder? Torture murder of a rape victim? Is there some distinction between the murder victims if they were in the same household, etc.? Need the murderer have previously completed a "rehabilitation course"?

The Position Paper seems to recognize the shortcoming of its own conclusions by placing quotes around the word normal. Perhaps the "normal" sentence for multiple murders, kidnappings, and rapes can and should be defined by the legislature. HB473 does exactly that. A copy of the committee sectional analysis of the bill is attached; the mandatory minimum sentences for combinations of murder and other unclassified felonies are listed under Section 13 on the second page of that analysis.

Jan 23, 1982

Alaska Network on Domestic Violence and Sexual Assault

P.O. Box 3356, ANCHORAGE, ALASKA 99510

POSITION PAPER: House Bill 473

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit corporation composed of seventeen domestic violence, sexual assault, and adult crisis intervention programs throughout the State. Network programs are funded in part through grants and contracts awarded by the recently established Council on Domestic Violence and Sexual Assault in the Department of Public Safety.

Network programs have extensive experience dealing with the issue of sexual assault. Often victims contact our crisis centers immediately after the assault, involving our program advocates in the entire reporting and judicial process.

Based on experience with the offense of sexual assault and with the criminal justice system, the Network offers the following remarks regarding House Bill 473.

The Network supports that portion of House Bill 473 (Sections 1 - 5) which reclassifies sexual assault in the first degree, making it an unclassified felony. The crime of sexual assault is traumatic and dehumanizing. In Coker v. Georgia, 433 U.S. 584, 612 (1977), the United States Supreme Court commented on sexual assault:

> Short of homicide, it is the "ultimate violence of self." It is also a violent crime because it normally involves force, or the threat of force or intimidation, to overcome the will and the capacity of the victim to resist. . . . .Because it undermines the community's sense of security, there is public injury as well.

House Bill 473 by reclassifying sexual assault raises the penalty for those convicted of first degree sexual assault, thereby recognizing the gravity of the crime.

The Network is however, not in support of that section of the proposed legislation (Section 13) which creates mandatory sentences for the individual convicted of multiple crimes. Simply in terms of blame worthiness, criminal cases are different from each other in ways that cannot be anticipated. The mandatory sentencing requirements of Section 13 do not allow for these differences to be considered. The Network prefers the current statutory scheme of presumptive sentencing, which specifies a "normal" sentence for each offense, but permits limited departures from the norm in atypical cases.

1980 CASES INVOLVING SEXUAL ASSAULT FIRST DEGREE
Information provided by Alaska Judicial Council
1980 Felony Sentencing Study

URBAN	SENTENCE LENGTH (months)	# OF PRIORS	# OF CONTEMPORANEOUS CHARGES	PRESUMPTIVE SENTENCES
*1	-0-	-0-	1	no
*2	96	Misdemeanor only	none	no
*3	54	-0-	none	no
*4	36	misd. only	none	no
*5	60	-0-	none	no
6	240	1 felony	1	yes
7	240	1 felony	4	no
*8	24	misd. only	none	no
*9	24	misd. only	none	no
10	180	1 felony	1	yes
RURAL				
1	60	1 felony	1	no
1	60	1 felony	1	no
*2	24	misd. only	none	no
*3	120	-0-	2	no
*4	12	-0-	none	no
*5	36	-0-	1	no
*6	60	misd. only	none	no
7	60	1 felony	none	no
*8	6	misd. only	none	no
*9	36	-0-	1	no
10	60	1 felony	none	no

* 1) Average sentence for Sexual Assault First Degree -
(first time felony offender) - under current law - 3.5 years
- with "good time" provisions - 2.6 years

2) Minimum mandatory sentence Sexual Assault First Degree -
(first time felony offender) - under HB 473 - 5 years
- with "good time" provisions - 3.75 years

3) Average sentence for Sexual Assault First Degree -
(all 1980 cases) - under current law - 5.8 years
- with "good time" provisions - 4.3 years

1980 CASES WITH MULTIPLE CHARGES INVOLVING SEXUAL ASSAULT FIRST DEGREE

URBAN (def. #)	PRIOR CONVICTIONS	CONTEMPORANEOUS CHARGE(s)	SENTENCE LENGTH (months)	TOTAL ACTIVE TIME TO SERVE (months)
1	-0-	sexual assault first degree	-0-	-0-
		sexual abuse of a minor	-0-	-0-
6	1 felony	sexual assault first degree	240	240 -- (20 yrs.)
		burglary first degree	96	(concurrent sent.)
7	1 felony	sexual assault first degree	240	1,188 -- (99 yrs.)
		murder first degree - 3 counts	1,188 each ct.	(all sentences
		kidnapping	360	ran concurrent.)
10	1 felony	sexual assault first degree	180	180 -- (15 yrs.)
		burglary first degree	48	(concurrent sent.)
RURAL				
1	1 felony	sexual assault first degree	60	60 -- (5 yrs.)
		sexual assault first degree	60	(concurrent sent.)
3	-0-	sexual assault first degree	120	180 -- (15 yrs.)
		kidnapping	180	(all sent. ran
		assault second degree	60	concurrently.)
5	-0-	sexual assault first degree	36	36 -- (3 yrs.)
		burglary	36	(concurrent sent.)
9	-0-	sexual assault first degree	36	36 -- (3 yrs.)
		burglary	24	(concurrent sent.)

Spent in Jail U.S. Felon, NLJ Study

with state-by-state data. Average time served in the United States in the late 1960s for felonies were 79 months for homicide, 68 months for forcible rape, 29 months for negligent manslaughter, 44 months for robbery, 23 months for assault, 23 months for burglary, 17 months for larceny and 18 months for auto theft.

In 1977 certain states punished criminals far more severely in general than did other states. Although Massachusetts leads the list in time served for all felonies covered by the survey, at 53 months, the state actually is one of the more lenient states on penal matters in general. Its lengthy time-served statistic is partially a consequence of a low incarceration rate for crimes other than willful homicide, and the relatively high percentage of murderers serving extremely long sentences in its prison population. Utah, at 41 months for the average time served over all categories, was the next most punitive state, followed by Puerto Rico (40 months), South Carolina (32 months), and North Carolina and West Virginia (31 months each).

By contrast, seven states covered by the survey released prisoners who had served only an average of 18 months or less. These states were South Dakota (13 months), Delaware (15 months), North Dakota (16 months), New Jersey (17 months), and Illinois, Kansas and Missouri (18 months each).

Disparities Seen

Although the states show general agreement that murder and rape are the most serious offenses, several states punished less serious crimes more severely than others did rape. And the lack of overall standards in the United States actually allowed some states to require prisoners to serve more time on the average for relatively minor felonies than other states did for willful homicide.

For example in South Carolina, prisoners convicted of robbery served an average of 46 months before parole in 1977. That's more time than the average prisoner convicted of willful homicide served in Arkansas, Illinois, Iowa, Louisiana, Pennsylvania or South Dakota. Similarly, in West Virginia, the average prisoner convicted of car theft served 41 months — nearly three times the average time served for forcible rape in the state. West Virginia's average time served for car theft was also higher than that for rape in Alaska, Arizona, Colorado, Delaware, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New York, North Dakota, Pennsylvania, Puerto Rico and Wisconsin.

In the category of willful homicide, Massachusetts was far and away the most punitive state, requiring the

PRISON TIME SERVED

In Months

	Assault	Burglary	Car Theft	Forcible Rape	Larceny Theft	Negl. Manslaughter	Robbery	Willful Homicide	ALL FELONIES
ALABAMA	19	19	14	50	11	—	40	70	25
ALASKA**	28	—	—	14	26	11	23	—	22
ARIZONA*	21	18	15	36	18	—	25	58	23
ARKANSAS**	17	26	—	119	22	16	20	41	26
CALIFORNIA* [1]	34	24	21	47	21	35	35	76	30
COLORADO*	21	16	—	34	18	22	27	79	20
DELAWARE	13	15	—	35	11	23	18	—	15
D.C.	21	30	35	70	18	57	39	70	31
FLORIDA	27	22	22	68	18	39	39	52	28
GEORGIA	23	25	18	62	16	28	35	63	28
IDAHO	14	21	13	42	23	23	33	45	22
ILLINOIS[7]	20	15	13	46	13	21	21	40	18
IOWA**	34	20	22	—	17	—	30	38	21
KANSAS	19	16	—	31	15	15	29	69	18
KENTUCKY	18	13	16	35	11	17	28	39	18
LOUISIANA* [1]	22	19	—	45	17	—	27	42	25
MAINE	16	16	—	28	16	31	28	74	20
MARYLAND	18	19	9	52	14	34	41	78	22
MASSACHUSETTS* [1]	30	30	18	30	18	—	18	180+	53
MICHIGAN	28	22	16	—	18	46	33	99	24
MINNESOTA*	32	23	15	34	19	—	40	65	30
MISSOURI	19	9	11	96	11	8	31	72	18
NEBRASKA	25	28	28	37	22	30	37	128	25
NEVADA	21	20	21	14	19	15	25	89	23
NEW JERSEY	19	10	16	42	12	27	20	62	17
NEW YORK* [1]	22	20	16	30	17	33	34	84	22
NORTH CAROLINA	23	33	17	109	19	38	43	87	35
NORTH DAKOTA	21	15	—	28	14	—	19	—	16
OHIO	27	22	29	47	16	32	39	86	26
PENNSYLVANIA	22	22	21	32	15	25	27	46	24
PUERTO RICO**	26	29	21	18	30	87	27	82	40
SOUTH CAROLINA	30	28	16	73	25	20	46	58	33
SOUTH DAKOTA	15	13	—	59	15	—	23	31	13
TEXAS	26	19	17	55	17	16	38	60	25
UTAH[3]	19	41	—	52	32	107	53	111	41
VIRGINIA	23	24	57	49	15	16	38	67	29
WEST VIRGINIA[4]	44	31	41	16	24	20	60	72	32
WISCONSIN	23	22	16	32	15	18	29	96	26
WYOMING	24	20	18	46	24	30	21	54	23
NATIONAL AVERAGE[5]	23	20	17	52	16	32	31	62	25
FEDERAL CRIMES[6]	34	35	21	—	19	—	48	—	27
FEDERAL TERRITORIES	34	21	16	74	21	—	35	55	33

(*) 1977 LEAA data.

(**) 1976 LEAA data.

(1) Median figures only. State medians on time served are generally about one-third lower than average or mean time served.

(2) Approximate average only. State supplied range figures, such as 24-36 months. Figures represent midpoint of range.

(3) State parole board supplied figures for forcible rape and willful homicide. Other state figures did not agree with Uniform Parole Reports data and show lower penalties in most categories. Utah's self-reporting for 1977 runs as follows: assault (19), burglary (23), forcible rape (52), larceny theft (22), willful homicide (111), robbery (53), negligent manslaughter (28), all felonies (31).

(4) Combines 1976 and 1977 figures for forcible rape.

(5) National averages include only those states within the Uniform Parole Reports data. States not included in figuring the national averages were Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Hawaii, Indiana, Iowa, Louisiana, Massachusetts, Minnesota, Montana, Oklahoma, Oregon, Rhode Island, Vermont and Washington.

(6) Federal crimes refer to prisoners released from Federal Bureau of Prisons in 1977.

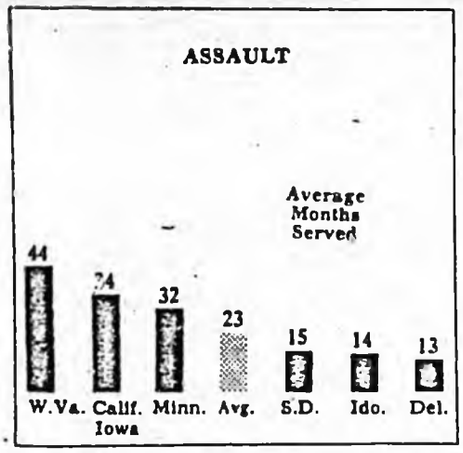
(7) Illinois parole officials dispute the Uniform Parole Reports statistics for their state for willful homicide. State officials said that murderers in the state must serve 16 years or more for murder and that the overall average for willful homicide is far higher than reflected by the UPR data.

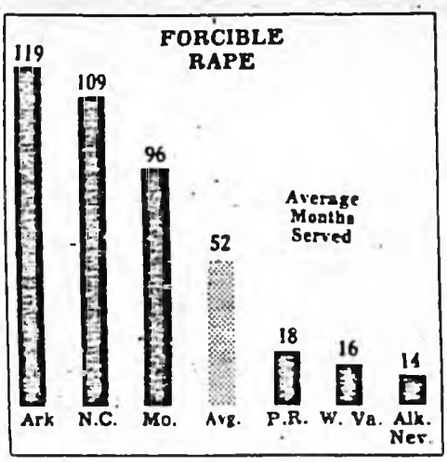
and Utah, at 111 months, were the next most punitive states in the category of willful homicide. However, since then

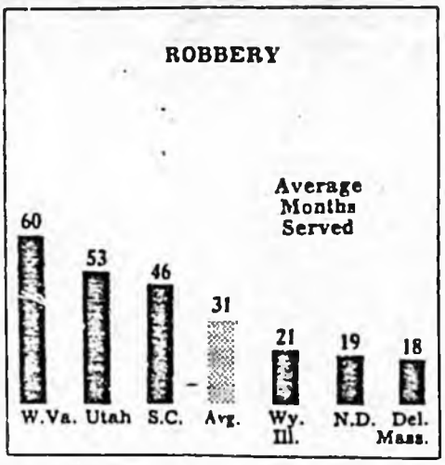
state was closer to the 1976 figure of 63 months.

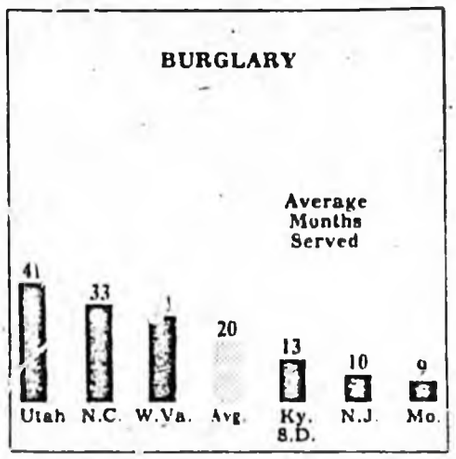
Those paroled after serving time on

Crime-by-Crime Comparisons of Months Spent in Prison

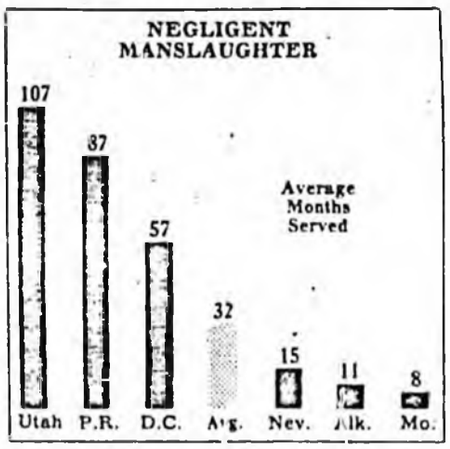




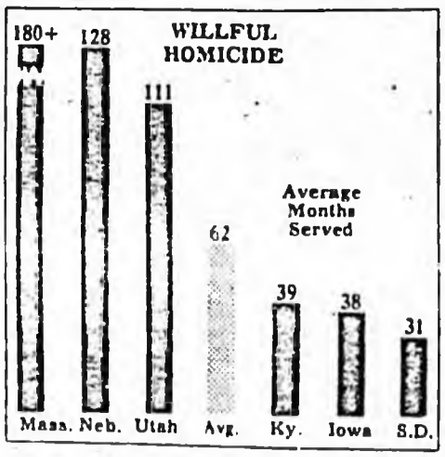




Utah figures disputed by state parole officials, who contend correct figure is 23 months for burglary.



Utah figures disputed by state parole officials, who contend correct figure is 28 months for negligent manslaughter.



Kentucky figure disputed by state parole officials, who contend correct figure is close to national average. Charts by RONNIE LEE LYONS

Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Maine, New Jersey, New Mexico, North Dakota, Rhode Island and Tennessee. In most cases, time served in those jurisdictions has increased since then, officials speculated.

But in at least one state, Maine, the increased time served has not been an unmixed success. Last month, state legislators introduced a bill that would re-establish the discretionary parole system abolished by the state's determinate sentencing law.

Wide Deference

The lack of national standards relating to time served before parole would apparently not be enough to sustain a constitutional attack on sentencing and parole procedures following the Supreme Court's decision in *Rummel v. Estelle*, 48 USLW 4261 last March.

In the *Rummel* decision, a five-man majority of the Supreme Court ruled that a mandatory life sentence imposed on a Texas prisoner for three petty property offenses involving a total of $230 and classified as felonies by the state did not violate the Eighth Amendment's proscription against cruel and unusual punishment.

In the majority opinion, written by Justice William H. Rehnquist, the court rejected an attack on the Texas habitual offender statute based on the theory of "proportionality," granting the state legislature wide deference to determine terms of imprisonment.

The Supreme Court's attitude varied sharply from that expressed by the American Bar Association in a 1979 Task Force study on sentencing alternatives and procedures. In that study, the principal conclusion of the ABA was that "above all, the role of the legislature in sentencing must be recognized as a limited one." The ABA emphasized that proportionality and equality in punishing similar defendants similarly should be highly significant principles in the criminal system.

FOIA REQUESTS

SELECTED INFORMATION ACT REQUESTS

◘ FEDERAL TRADE COMMISSION

FOI Office: (202) 523-3582

Data re: Whiteworth Inc., a California corporation. 12-3. Req. by: George M. Turner Esq., Turner & Smart, of Pasadena, Calif. No information on file. 1-2.

Data re: Alhambra Motor Parts, others. 12-5. Req. by: David Brice Toy Esq., Toy & Rymer, of Los Angeles. Partially granted. 1-19. Exemptions: 3, 4.

Data re: General Motors Corp. automatic transmissions. 12-9. Req. by: Claude P. Rosser Jr. Esq., Alvin T. Prestwood, of Montgomery, Ala. Partially granted. 12-31. Exemptions: 3, 4.

Data re: LTV Corp. 12-9. Req. by: William E. Wallace III Esq., Howrey & Simon.

Data re: Sydney Wolofsky, Mel Shuster, others. 12-11. Req. by: Warren L. Miller Esq., Stein, Halpert & Miller, of Wash., D.C. Partially granted. 1-14. Exemptions: 3, 4, 5, 7A, D.

Data re: Investigation of American Express Co.'s purchase of the stock or assets of First Data Resources Inc. 12-11. Req. by: Stephen R. Bell Esq., Wilkinson, Cragun & Baker, of Wash., D.C. Denied. 12-29. Exemptions: 3, 5.

Data re: FOIA requests concerning Oldsmobile warranties. 12-11. Req. by: David A. Collins Esq., staff attorney, General Motors, of Detroit. Granted. 12-17.

Data re: Subaru of America Inc. or Fuji Heavy Industries Ltd. 12-11. Req. by: Kenneth D. Ludwig Esq., Steptoe & Johnson, of Burbott, of Palm Springs, Calif. Denied. 11-17. Exemption: 4.

Copies of correspondence re: Haudek FOIA request concerning First National Bank of Chicago. 11-7. Req. by: Ricki Rhodarmer Tigert, of Leva, Hawes, Symington, Martin & Oppenheimer, of Wash., D.C. Granted. 11-13.

Data re: acquisition of Fidelity National Bank, of Concord, Calif. 11-10. Req. by: Rachel F. Robbins, of Milbank, Tweed, Hadley & McCloy, of New York City. Partially granted. 11-25. Exemptions: 4, 5, 6, 8.

Data re: Citibank charter application for South Dakota. 11-17. Req. by: Stanley A. Carlson, of Davis, Wright and Todd, of Seattle. Granted. 11-20.

Data re: letters approving or denying applications under Change of Bank Control

YOUR SIGNATURE ON THE ATTACHED WILL ASSIST IN GETTING ALASKA STATE HOUSE BILL #473 PASSED. HOUSE BILL #473 SETS A MINIMUM MANDATORY PRISON TERM FOR FORCEABLE RAPE WHERE THE SENTENCE MAY NOT BE REDUCED OR SUSPENDED AND PAROLE NOT GRANTED UNTIL AT LEAST THE MINIMUM MANDATORY PRISON TERM IS SERVED.

FOR A FIRST TIME FORCEABLE RAPE CONVICTION, ONE WILL RECEIVE A 5 YEAR MINIMUM MANDATORY PRISON TERM NOT EXCEEDING 99 YEARS. A SECOND FORCEABLE RAPE CONVICTION CARRIES WITH IT A 20 YEAR MINIMUM MANDATORY PRISON TERM NOT EXCEEDING 99 YEARS.

YOUR ASSISTANCE IN THIS EFFORT IS GREATLY APPRECIATED.

SINCERELY,

J. B. Burt

J. B. BURT
1901 OTTER ST.
PH. 333-9862

P. S.
THIS BILL WAS INTRODUCED BY REPRESENTATIVE - RAMONA BARNES
AND CO-SPONSORED BY REPRESENTATIVES - JOE HAYES
MITCH ABDOD
CHARLES ANDERSON
MIKE BEIRNE
BERNIE BYLSMA
DAVID CUDDY
RICK HALFORD
E. J. HAUGEN
TERRY MARTIN
RAY METCALFE
JOE MONTGOMERY
PATRICK O'CONNELL
RANDY PHILLIPS

TO ALL LEGISLATORS:

WE, THE UNDERSIGNED, REQUEST THAT HOUSE BILL #473 BE PASSED PRIOR TO THE ADJOURNMENT OF THIS LEGISLATIVE SESSION. THIS IS AN EXCELLENT BILL AND SHOULD BE PASSED INTO LAW WITHOUT ANY CHANGES.

P.E. Whitehead	#103 Northwood - Anchorage
C.W. Cutler	3623 Lynn Dr.
E.C. Kent	PO Box 1206. Eagle River
C.H. Magnuson	370: Eureka Anchorage
Ed Stamm	SR 1 B Box 1756 Eagle River
John A Freeman	1410 MCKINLEY ANCHORAGE AK
Stanley Cavender	SRD. 9777 Palmer ak
Donald A. Fontaine	5766 S. Tahiti # 195 Anch.
Hazel Lenko Jr.	3500 Hazen Circle Anch
Gordon L. Olson	2947 E. 6th Ave AK.
Phyllis Mark	6460 Hillcrest Parkway, Anc

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR
DEPARTMENT OF LAW
CRIMINAL DIVISION
POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

May 10, 1982

The Honorable Patrick Rodey
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: CSHB 473

Dear Senator Rodey:

Kevin Bruce of your staff recently requested that we provide you with a position paper on CSHB 473, an Act changing the classification of and punishment of certain crimes. Briefly summarized, this legislation changes the classification of conduct commonly referred to as Rape and Assault with Intent to Commit Rape from a class A felony to an unclassified felony. Under the revised criminal code, this conduct is currently defined as Sexual Assault in the First Degree under AS 11.41.410(a)(1) and (2). The change in classification proposed in this legislation raises the maximum sentence for the crime from 20 years to 99 years and specifies a mandatory minimum sentence of five years. Additionally, the bill establishes minimum sentences for multiple unclassified crimes committed pursuant to one course of conduct.

While we believe that the existing sentencing statutes should be revised to establish presumptive sentences for all felony offenses, we do not support the approach taken in this bill.[1/] In reviewing the merits of this legislation, however, it is first necessary to clarify two issues that have been somewhat obscured in the debate over the merits of the bill.

First, during consideration of this legislation on the House floor it was argued that a mandatory minimum sentence of five years is necessary because the average sentence imposed on rapists is only 14 months. That statement was not correct. In fact, the recent study by the Alaska Judicial Council entitled A Preliminary Descriptive Statistical

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1/ We note that the mandatory sentencing provisions in this bill have also been opposed by the Alaska Council on Domestic Violence and Sexual Assault and the Alaska Network on Domestic Violence and Sexual Assault.

Report of 1980 Felony Sentences shows that the median sentence of time to be served imposed on persons convicted of Sexual Assault in the First Degree is five years. It is also significant to note that 40% of offenders received sentences in excess of five years to serve. Thus, to the extent that it is argued that the five year minimum sentence is necessary to prevent rapists from being released without being required to serve a substantial term of imprisonment, it appears that existing sentencing practices result in offenders being sentenced to terms of imprisonment in excess of the minimum sentence required by this legislation.

Secondly, it should be noted that under existing law a defendant convicted of Sexual Assault in the First Degree who has a prior felony conviction within the time frame specified in AS 12.55.145 is subject to a presumptive sentence of ten years if there is one prior felony conviction and 15 years if there are two prior felony convictions. Essentially, these presumptive sentences require imposition of mandatory minimum sentences of five and seven-and-a-half years since the sentencing court only has the discretion to decrease a presumptive sentence by a maximum of 50% because of the presence of legislatively established mitigating factors.[2/] A defendant subject to presumptive sentencing is not eligible for probation or a suspended imposition of sentence. Nor is he eligible for parole. Consequently, to the extent that it is argued that existing law does not sufficiently limit a judge's discretion in sentencing persons convicted of Sexual Assault in the First Degree, that argument should be limited to offenders without prior felony convictions.

Having clarified these two issues, we will now discuss the reasons why we oppose this legislation and present our suggestion for a proposed committee substitute.

1. Sexual Assault in the First Degree is Properly Classified As a Class A Felony.

Under existing law, there are only three unclassified felony offenses, Murder in the First Degree, Murder in the Second Degree and Kidnapping. A comparison of those offenses with the crime of Sexual Assault in the First Degree supports the conclusion that the legislature acted properly

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2/ While a three judge sentencing panel retains discretion to impose a sentence that is less than 50% of the presumptive sentence, that panel has never done so since it was established in 1980.

in 1978 when it classified Sexual Assault in the First Degree as a class A felony offense.

Few would argue that the crime of murder, requiring as an element the death of the victim, is of equal seriousness with Sexual Assault in the First Degree. With regard to Kidnapping, the code provides that the crime is reduced to a class A felony if the defendant voluntarily releases the victim unharmed without serious physical injury within 24-hours of arrest. Consequently, kidnapping is only treated as an unclassified felony in the most extreme cases where the victim is seriously injured or is not released within 24-hours of arrest. We submit that very few, if any, sexual assaults approach in seriousness the conduct proscribed when kidnapping can be prosecuted as an unclassified felony.

By comparison, in 1978 the legislature appropriately redefined the crime of Rape to clearly eliminate the need for proving resistance by the victim or the infliction of physical injury as an element of the offense. Consequently, while in many cases the sexual assault will also involve a violent assault on the victim, the crime can also occur when a defendant coerces the victim to engage in sexual penetration by the use of force against property or by the threat of physical injury. We believe that this conduct, though clearly serious enough to justify class A felony classification, cannot be appropriately equated with the other three unclassified felonies currently recognized in the criminal code.

2. <u>To The Extent That A Judge's Discretion Should Be More Closely Structured In Sentencing A Defendant For Sexual Assault in the First Degree Who Does Not Have A Prior Felony Conviction, Presumptive Sentencing Should Apply.</u>

Throughout this legislative session the administration has recommended the adoption of HB 293 and CSHB 225, which, if enacted, would in part establish presumptive sentences for defendants who commit felonies but do not have a prior felony conviction. Under existing law, only felons with prior felony convictions are subject to presumptive sentencing. We have proposed a five year presumptive sentence for all first offense class A felonies and a seven year sentence if a firearm was possessed, a dangerous instrument used, or serious physical injury inflicted. We believe that the specification of a presumptive sentence for all class A felonies (as opposed to a mandatory minimum sentence) insures consistency with the sentencing structure applicable to the overwhelming majority of crimes in the criminal code

and provides that all serious violent crimes are subject to presumptive sentencing regardless of whether the defendant has a prior felony conviction.[3/]

The problem with adopting the piecemeal approach that is reflected in this legislation by specifying a mandatory minimum sentence for Sexual Assault in the First Degree but not changing the penalty structure for other class A felonies is readily apparent. For example, a sexual assault not involving physical injury to the victim will be treated more seriously than an Assault in the First Degree where the defendant threw acid in a victim's face resulting in permanent disfigurement or a death caused by a drunken driver. While there is no question that there are some sexual assaults that are more serious than other class A felonies, it is also true that there are some class A felony crimes that are more serious than some sexual assaults. To single out the crime of Sexual Assault in the First Degree as meriting more serious treatment than all other class A felony offenses does a disservice to the classification scheme that was devised by the legislature when it adopted the criminal code in 1978. This is particularly the case considering current sentencing practices which reveal that even without a mandatory minimum sentence applicable to first offenders 40% of rapists received a sentence in excess of 5 years. To summarize, it is our position that Sexual Assault in the First Degree should remain a class A felony offense, and that all class A felonies should be dealt with similarly by adopting presumptive sentencing applicable to first offenders. A proposed committee substitute accomplishing that result is attached, for your consideration.

3. In Some Cases This Legislation Reduces The Mandatory Minimum Sentence For Sexual Assault in the First Degree.

Though supporters of this legislation have argued that the bill will necessarily result in increased sentences for rapists, the opposite may be true when the offender has a prior felony conviction. For example, under existing law the presumptive sentence for a defendant convicted of Sexual

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3/ Though HB 293 and CSHB 225 also specify presumptive sentences for first offense class B and C felony crimes, the merits of applying presumptive sentencing beyond first offense class A felonies is beyond the scope of this position paper. As you are well aware, as a result of testimony before your committee by the Attorney General, we feel strongly that presumptive sentencing should apply to all felonies.

Assault in the First Degree who five years earlier was convicted of any felony is ten years. Under this bill, the mandatory sentence is only five years. This is so because the bill provides that an increased mandatory minimum sentence is to apply only if the prior conviction was for Sexual Assault in the First Degree, while under current law any prior felony conviction will result in repeat felon classification. Even if the defendant had two prior felony convictions he would still only face a mandatory sentence of five years as compared to the presently established presumptive sentence of 15 years. Further, even assuming that the judge exercised the maximum amount of sentencing discretion allowed and reduced the sentence by 50%, the mandatory minimum sentence required under existing law would still be 50% greater than that required under this bill.

4. The Mandatory Minimum Sentences Specified For Multiple Unclassified Felonies Are Unnecessary.

Section 13 of the legislation specifies mandatory minimum sentences for multiple unclassified felonies committed pursuant to one course of conduct. For example, if the defendant kidnaps and murders his victim, the minimum sentence is 75 years. It is our position that such specification is absolutely unnecessary given existing sentencing practices where the average sentence for Murder in the First Degree is life and the sentencing court has the authority to sentence a defendant up to 99 years for any unclassified felony. In the absence of any showing that appropriate sentences are not being applied when a defendant commits more than one unclassified felony, we believe that the minimum sentences required by this legislation are unnecessary to restrict judicial sentencing discretion.

CONCLUSION

While we find it somewhat difficult to strongly oppose a bill that supporters argue is necessary in order to "get-tough" on violent crime, we do not feel that this legislation accomplishes that result. This is so particularly when existing sentencing practices result in average sentences in excess of the mandatory minimum sentence specified in the legislation and in some cases may require harsher sentences than provided under the bill. We oppose the piecemeal approach of this legislation in singling out one violent crime for more severe treatment while not addressing the issue of the sentencing of all other class A felony offenses. We believe that the proposed committee substitute that we have drafted sufficiently limits a judge's discretion in

sentencing all class A felonies and reflects a more comprehensive approach, consistent with the penalty structure in the revised criminal code, to the subject of violent crime.

Very truly,

WILSON L. CONDON
ATTORNEY GENERAL

By: _____
Daniel W. Hickey
Chief Prosecutor

and

By: _____
Barry J. Stern
Assistant Attorney General

DWH/lb

Attachment

cc: Art Peterson
Assistant Attorney General
Department of Law

Keith Specking
Special Assistant
Office of the Governor

Caren Robinson
Alaska Network on Domestic
Violence and Sexual Assault

Betsy McGuire
Alaska Council on Domestic
Violence and Sexual Assault

From Prime Sponsor Rep. Rangeela L. Barnes

MR. SPEAKER, HB473 IS INTENDED TO ADDRESS A CRIME PROBLEM IN ALASKA. I AM SURE THAT THE MEMBERS OF THIS BODY ARE FAMILIAR WITH THE SADDENING STATISTICS, ALASKA HAS ONE OF THE HIGHEST RAPE RATES OF ANY STATE IN THE NATION ON A PER CAPITA BASIS. ANCHORAGE HAS A RATE THAT IS TWO AND A HALF TIMES THE NATIONAL AVERAGE, BUT THIS EXTENDS TO RURAL ALASKA AS WELL.

IT IS EXTREMELY DISTURBING TO NOTE THAT RECENTLY THE NATIONAL AVERAGE FOR TIME SERVED IN PRISON STANDS AT 52 MONTHS FOR PEOPLE CONVICTED FOR FORCIBLE RAPE, PERSONS CONVICTED OF THE SAME CRIME IN ALASKA SERVE AN AVERAGE OF ONLY 14 MONTHS.

THE MAIL I HAVE RECEIVED SINCE HB473 WAS INTRODUCED IS INDICATIVE OF THE PUBLIC'S AWARENESS AND GREAT SENSE OF FRUSTRATION OVER THE INCREASE IN THIS TRAGIC CRIME. IN ADDITION TO THE SCORES OF LETTERS, TELEGRAMS, AND PUBLIC OPINION MESSAGES I HAVE RECEIVED, PLEADING FOR THIS LEGISLATURE TO TAKE ACTION AND PASS HB473, I HAVE RECEIVED A PETITION FROM THE PEOPLE OF BARROW, COMPLAINING OF INSENSITIVITY OF THE COURTS TO THE RAPE PROBLEMS THERE. ALSO, I HAVE FOR THE INSPECTION OF ALL MEMBERS, A PETITION SIGNED BY OVER 2000 ALASKA RESIDENTS, CALLING FOR MINIMUM MANDATORY SENTENCES FOR SEXUAL ASSAULT IN ALASKA. HB473 ESTABLISHES THIS.

FOR A FIRST TIME FORCEABLE RAPE CONVICTION, A RAPIST WILL RECEIVE A FIVE YEAR MINIMUM PRISON TERM NOT EXCEEDING 99 YEARS. THIS PARALLELS CURRENT SENTENCING FOR SECOND DEGREE MURDER AND KIDNAPPING. A SECOND OFFENSE RAPIST RECEIVES A 20 YEAR MINIMUM MANDATORY PRISON TERM.

HB473 ALSO CONTAINS A MULTIPLE CRIMES PROVISION, WHEREBY UNCLASSIFIED MULTIPLE FELONIES SUCH AS FIRST AND SECOND DEGREE MURDER, KIDNAPPING AND FORCEABLE RAPE OCCURRING IN A SINGLE CRIMINAL INCIDENT SHALL CARRY PERSCRIBED MINIMUM MANDATORY SENTENCING.

THE NEED FOR HB473 IS GREAT AND ITS PENALTY PROVISIONS REASONABLE IN RELATION TO OTHER SERIOUS FELONY PUNISHMENTS. CURRENTLY UNDER ALAKSA LAW, A FIRST TIME FORCEABLE RAPIST CAN RECEIVE A SUSPENDED SENTENCE, WITH NO TIME SERVED, NO PROTECTION FOR THE PUBLIC.

IT IS IMPERATIVE THAT WE RESPOND TO THE PUBLIC OUTCRY TO KEEP RAPISTS OFF THE STREETS. WE HAVE A RESPONSIBILITY TO ALL THE PEOPLE OF THIS STATE TO PROVIDE THE NECESSARY DIRECTION TO THE COURT SYSTEMS TO CARRY OUT THIS PUBLIC MANDATE FOR PROTECTION.

THE TIME TO DO IT IS NOW, NOT TOMORROW, OR NEXT MONTH, OR NEXT SESSION, BUT NOW.

THE PUBLIC HEARINGS HAVE BEEN HELD, THE TESTIMONY TAKEN, THE FACTS CLEARLY STATED------

THE TIME IS NOW OURS, AND THE QUESTION BEFORE US WILL SOON BE----SHALL HB473 PASS THE ALASKA STATE HOUSE OF REPRESENTATIVES?

I URGE YOUR SUPPORT IN ACCOMPLISHING THAT OBJECTIVE!

THANK YOU.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS FOR HOUSE BILL NO. 473 (Judiciary)
Title "An act changing the classification of and punishment for certain crimes* Requested by THE JUDICIARY COMMITTEE Date 1/22/82
* against the person."

II. FISCAL DETAIL
Agency Affected Department of Health & Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

There would be no fiscal impact resulting from enactment of this legislation in the first 5 years because of the current minimum sentence lengths for the crimes addressed in this bill. However, because of the longer sentences which would be required in Section 13, there will eventually be an impact on the number of prisioners in confinement under Alaska Statutes.

IV. DATE May 12, 1982 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 473
Title An Act changing the classification of and punishment for certain crimes against the person
Requested by House Judiciary Date 1/7/82

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
This legislation imposes mandatory minimum sentences for first offenders convicted of certain forms of the crime of sexual assault in the first degree. Additionally, the bill establishes mandatory minimum sentences for offenders convicted of more than one unclassified felony during a single criminal incident. While these increased penalties will not result in any additional expenditures by the department, it is expected that the bill will have a fiscal impact on the division of corrections, assuming that this legislation will result in longer sentences for certain offenders than would be the case under current law.

IV. DATE January 8, 1982 PREPARED BY Daniel W. Hickey, Chief Prosecutor
AGENCY Department of Law
PHONE 465-3429

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 473
Title An Act Changing the Classification of and Punishment for Crimes
Requested by House Judiciary Committee Date 1/8/82

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected
BRU, Program, or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction Section III)

HB 473 changes the classification of and punishment for certain crimes against the person. This substantive change in criminal classification should have no fiscal impact on the Alaska Court System.

IV. DATE 1/12/82 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 473
Title "An Act changing the classification of and punishment for certain crimes
Requested by Representative Barnes Date 1/8/82 against a perso

II. FISCAL DETAIL
Agency Affected Department of Health & Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

There would be no fiscal impact resulting from enactment of this legislation in the first 5 years because of the current minimum sentence lengths for the crimes addressed in this bill. However, because of the longer sentences which would be required in Section 13, there will eventually be an impact on the number of prisoners in confinement under Alaska Statutes.

IV. DATE January 11, 1982 PREPARED BY Roger C. Lange Roger C Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

Joanne C. Clark, Acting Director
Division of Management & Budget

TO: The House Judiciary Committee

FROM: Suzanne Lombardi
Client Service Coordinator
Valley Womens Resource Center

RE: Testimony for House Bills on Sexual Assault and Violent Crime

The Valley Womens Resource Center has been serving victims of sexual assault and domestice violence in the Matanuska-Susitna Borough for the last year. I would like to thank the Judiciary Committee for this opportunity to express our opinions on the follwing bills:

HB 473 Regarding Sexual Assault

We are grateful to see that the Task Force has recognized the serious effects of these crimes and are pleased to see this legislation that will enforce stiffer penalties.

We would like to suggest that along with longer sentences that there be mandated treatment programs as well as funds appropriated for treatment not only within the prison system, but for ouside as well.

We have found that assailants convicted of sexual assault are usually sentenced to time without parole, and therefore, upon release there is not treatment and no hold upon them. As aresult the recidivism rate for this particular crime is extremely high.

HB 572 Domestice Violence/Emergency Injunctive Relief or TRO

We are pleased to see that the breakdown has been recognized between victims being informed of the TRO and the actual carrying through of this process.

At this time we are not sure that more legislation, or more paperwork will solve this gap. The problem in our area seems to be with the original bill. To our knowledge, some women have not been informed of either the Resource Center or the option of filing a TRO.

It is our opinion that more would be accomplished if the original HB 287 was more effectively enforced.

If the victims were made aware of the existence of the Center, and if possible, a call made at the scene of the incident to our advocates, the trained staff would be able to follow through with the action and accompany the person throughout the legal system. This would cut down on police time as well as put the victim in direct contact with the Resource Center for further support systems.

We would emphasize that our situation in the Valley may differ substantially from more inaccessable areas.

CONTINUED OVER →

276-7292

Oct. 26 /1981

My name is Celia Warrior,

And I'm addressing the The House Judiciary Committee on House Bill 473, because I believe it being passed, will go a long way towards reducing the incresing crimes of SEXHAL CRIMES that are on the constant rise in our State of Alaska. Also because of reading the police blotter as of early last spring of 81" I was becoming aware that these Sex offenders were not being punish, because a day or two later they were right back on the street committing the same offences, usually within a week or two. Looking into this more I found out the reason for all of them being let loose again so soon after they were apprehended that is the fault came to rest on accounts of the sentencing of these offenders being so lenient.

Research reveals the problems are exactly these!

I. The bails were way too low! They were required to make only 10 % of the bail. I see they have toughened up on bails, because of the newly started Crime Commission back in or arround July somewhere, and thats very good!

2. The Process that the offenders go through after their arrest is such that there is not information on Lack of in-- formation on the offenders past records(possibly he,is a repeater) on the Judges desk! by sentencing time! A good solution to that would be to appoint some people to the task of acting as a go between the Police and the Prosecuting Attorneys, This go--between would gather allthe facts about the case, and about the offender, his convictions past records,ect.

3. Fleabargaining" They say it doesn't go on,but it does! Thats getting lighter sentences because of lack of evidence. Get the evidence!

4. Get a jail built, and the sooner the better! they approved of getting one built in a election a couple yrs. and all that needs to be done is to get the bonds sold. A good place place would be Fire Island! Its a military installation , not doing thing! and they couldn't get offof there to easily! Not a recreation like Eagle River!

The problem is that there was 326 cases oth er types of sex crimes , reported other t h a n actual rapes . These are the ones that I m addressing to you now . this include Child enticement, Flashers, and actual assults of the innocents. Children on the most part are not very observant of the persons that do this type of offences or the incidents that surrounded or what led up to the violation against their own , and after that its very hard to relate what happened to them to a third person. Simply because it was a tramatic situtation for them at the time. and it does stay with them throughout thei. lives! And a lot of the time its ended up destroying their lives if they don' t have support from their loved ones. Saddest of all is that this happens to the victims , and they are in returned to asshamed to report it to anyone , and they carry it inside where it does irreparable damage to their wellbeing!

These are some of these reported offences published in the Police Blotter! -

of the Anchorage Times , and these occurred since Jan. 1981

Read a few of them, Also read the petition and the events surrounding it. the response from people who signed , and what they felt could resolved the problem!

Also say what this bill could do to prevent these crimes against people , and the one thing that could be ammended on House bill 473.

Page 3 , section 6!

Thank You for listening to me .

Celia Warrior

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM March 24, 1981

SUBJECT: Section-by-section analysis of Work Order Number 12-1161

TO: Representative Ramona L. Barnes

FROM: Tamara Brandt Cook
Legislative Counsel TBC

This draft makes no changes to existing laws relating to lesser sexual offenses or lesser degrees of assault, but instead deals with the crime of sexual assault in the first degree and assault in the first degree:

"Sec. 11.41.410. SEXUAL ASSAULT IN THE FIRST DEGREE. (a) A person commits the crime of sexual assualt in the first degree if,

"(1) being any age, he engages in sexual penetration with another person without consent of that person;

"(2) being any age, he attempts to engage in sexual penetration with another person without the consent of that person and causes serious physical injury to that person;

"(3) being 16 years of age or older, he engages in sexual penetration with another person under 13 years of age or aids, induces causes or encourages a person under 13 years of age to engage in sexual penetration with another person; or

"(4) being 18 years of age or older, he engages in sexual penetration with another person who is under 18 years of age and who

(A) is entrusted to his care by authority of law; or

(B) is his son or daughter, whether adopted, illegitimate, or stepchild.

"(b) Sexual assault in the first degree is a class A felony.

"Sec. 11.41.200. ASSAULT IN THE FIRST DEGREE. (a) A person commits the crime of assault in the first degree if

"(1) with intent to cause serious physical injury to another person, he causes physical injury to any person by means of a dangerous instrument;

"(2) with intent to cause serious physical injury to another person, he causes serious physical injury to any person; or

"(3) he intentionally performs an act that results in serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life.

"(b) Assault in the first degree is a class A felony."

Sec. 1. The classification of assault in the first degree is changed from a class A felony, with a maximum term of imprisonment of not more than 20 years, to an unclassified felony.

Sec. 2. The classification of sexual assualt in the first degree is changed from a class A felony, with a maximum term of imprisonment of not more than 20 years, to an unclassified felony.

Sec. 3. Sexual assault in the first degree and assault in the first degree are added to the list of unclassified felonies, the most serious crimes in the state.

Sec. 4. Sexual assault in the first degree and assault in the first degree are added to the list of unclassified felonies.

Sec. 5. Sexual assault in the first degree and assault in the first degree are included as an unclassified felony for

which a fine of up to $75,000 may be imposed. Under existing law, a fine of $50,000 may be imposed upon conviction of either crime.

Sec. 6. A minimum sentence of 25 years shall be imposed upon conviction of sexual assault in the first degree or murder in the first degree. Under existing law, the maximum sentence which may be imposed for sexual assault in the first degree is 20 years and the minimum sentence which may be imposed for murder in the first degree is 20 years. This section increases the sentences imposed for sexual assault in the first degree and murder in the first degree, making these crimes the most serious in the state.

Sec. 7. A minimum sentence of 5 years and not more than 99 years shall be imposed upon conviction of assualt in the first degree.

Sec. 8. A person sentenced AS 12.55.125(i), added by this draft, may not have his term suspended or otherwise reduced.

Sec. 9. New minimum sentences are imposed when a defendant is convicted of several crimes committed in the course of a single criminal incident:

(1) Murder in the first degree, kidnapping, and sexual assault in the first degree or assault in the first degree -- 99 years;

(2) Murder in the second degree, kidnapping, and sexual assault in the first degree or assault in the first degree -- 75 years;

(3) Murder in the first degree, and sexual assault in the first degree or assault in the first degree -- 60 years;

(4) Sexual assault in the first degree or assault in the first degree, and murder in the second degree -- 50 years; and

(5) Sexual assault in the first degree or assault in the first degree, and kidnapping -- 40 years.

Sec. 10. No person serving a sentence under AS 12.55.125(i), added by this bill, may be released on parole until he has served the minimum term of imprisonment.

TBC:ljb

Two girls reported raped;

JUL 11 1980

Police search for two

By HEIDI EKSTRAND
Daily News Staff Writer

In a related incident, two juvenile girls were raped Thursday night on the Schoenbar Trail behind Schoenbar Junior High School. Two suspects in the case are still at large.

Police received the first call at 11:13 p.m. Thursday from a woman who lived on Harris St. She reported that a girl was at her house who said she and a friend had been raped. The girl, who was not wearing any clothes, told the woman that her friend and the rapists were still outside.

The second call to the police came from the fire department who said they had dispatched an ambulance to the Teen Home after receiving a report that a second rape victim was there.

Ketchikan police have released no further information. Ages of the girls were not revealed, and there is no report on their condition.

Police are looking for two men in the case. Anyone with information is requested to call the Ketchikan Police Department.

The first suspect is described as a 20-30 year-old white male, 5-ft. 7 inches to 5 feet, 8 inches tall and 175-180 lbs. Police say he carried a 6-inch blade hunting knife and has a stab wound in the back. Police would not say how he received the stab wound.

The man is of medium build with a chubby belly. His hair is dark, curled at the ends and of ear lobe length. He was unshaven, with approximately one and one-half weeks growth. He has a red and blue tattoo on his forearm. He has a big nose, medium voice with a slight southern accent, and was wearing a dark brown or black leather jacket with fur inside that may have been sheepskin. He wore blue jeans with square pockets in the back, and a black belt with a dull metal buckle.

The second suspect is described as a 17 to 18-year old white male of approximately the same height as the first suspect. He is of medium build, 120 lbs., with light brown hair falling just below his ears and slightly curled at the ends. He had peach fuzz on his chin and face, with a two-inch scar on the right side of his right eye. He was wearing a dark blue jean jacket with a light fur liner, and blue jeans. Police say he had been wearing a brown-beige corduroy cowboy hat with a dark brown fur band with several feathers on the left side.

Rape suspects are arrested

14 1980

One is wanted for Oregon prison break

By HARRY McFARLAND
Daily News Assistant Editor

An Oregon prison escapee and his brother were arraigned on sexual assault charges Sunday, following their arrest Saturday afternoon.

Grady M. Howard, 28, and brother Jon W. Howard, 19, both giving Colton, Ore. addresses, are being held on $10,000 bail on each charge against them.

The elder Howard is charged with two counts of sexual assault, while his brother is charged with one. They were arraigned before District Court Judge Henry Keene.

Public defenders were appointed for the pair.

The arrests came Saturday after a search by Ketchikan police officers, following an incident on the Schoenbar trail near Schoenbar Junior High Thursday night, when two teenage girls were raped by a pair of men, according to police reports.

Shortly after 11 p.m. Thursday, a woman on Harris Street called police and said a nude, young girl had come to her door, saying she and a friend had been raped. The girl told the woman her friend and the rapists were still outside.

Not long afterwards, the fire department called the police and said they had dispatched an ambulance to the Teen Home after receiving a report a second rape victim was there.

After questioning, police began the search for the men and broadcast the pair's descriptions to the public through the newspaper, television and radio. A brown, corduroy cowboy hat was found at the incident scene. Photos of it were shown by the media over the weekend, and it prompted approximately a dozen phone calls.

It was a citizen's phone call that alerted officers to the men's location, Lt. Ben Neff said.

Sgt. Tom Varnell and Officer Chuck Mallott arrested the pair about one-half to three-quarters of a mile up Ketchikan Creek behind the powerhouse.

When officers arrived at the camp, the elder Howard jumped up, grabbed a rifle and ran off. He had to be taken at gunpoint, Varnell said.

The younger Howard was taken in camp.

One victim told police said she had stabbed one man with his own knife. The elder Howard has a knife wound in his lower back, Neff said.

He was charged with two sexual assault charges, Neff said, because he allegedly raped each girl once.

The elder Howard had been booked into jail as Dan J., but in court he said his true name was Grady Marion. A National Crime Identification Code check shows a Grady Marion Howard to be wanted for escape from the Oregon State Penitentiary, where he was serving a nine-year term for armed robbery and parole violations, Varnell said. A $10,000 warrant was outstanding on him.

Oregon officials will want the elder Howard, Varnell said, when proceedings are finished here.

Further proceedings are set for Tuesday at 1:30 p.m.

irls' testimony recreates night they were raped

Trial of Jon Howard begins in Ketchikan Superior Court

NOTE: Because the two girls in the following ...nealles, fictitious names are used. They have ...nd Grady Howard of raping them. The trial of ...is week. The first day's testimony is contained ...ng. The trial is expected to extend through the ...week.

By HARRY McFARLAND
Daily News Assistant Editor

...orneys and Superior Court Judge Eben Lewis ...inging Jon Howard into the courtroom, Jane's ...es showed fear.

...day when Howard, 19, walked into the courtroom ...floor of the Ketchikan State Office Building, ...d by an Alaska State Trooper, Jane's eyes ...k with anger. Her lips mouthed a silent ..., "You sonuvabitch!"

...the morning for Jane, 14, who with friend Sue, 15, ...allegedly by Jon and Grady Howard on July 10, ...Schoenbar trail. The elder Howard will go on trial ...rly in March. The penalty for sexual assault is ...years in jail.

...wasn't present when Jane silently screamed. The ...the judge had agreed that the jury should not be ...en the girls were asked to initially identify the ...oward.

...dressed in a light blue shirt, gray slacks and blue ..., sat quietly as Jane, and later Sue, identified ... of the rapists. When Sue was confronted by ... eyes intensely followed him to his seat.

...agreed to the procedure on advice of his court-...torney, Dennis McCarty.

...cribed him as wearing a brown cowboy hat, fur-...acket, and jeans. She said he had light "dishwater blond" hair, peach-fuzzed face, stood 5 foot, 7 inches, and weighed 120 pounds. He also had a long, thin red scar near his eye. And he "stunk."

District attorney Vic Krumm tried to establish in the morning's session that Jane and Sue could identify Howard from the night ot the rapes.

McCarty tried to show that subsequent events — police photos of Howard, her seeing him in the police station and two sightings of his picture at the state jail while visiting someone — were what made Jane identify Howard in court.

McCarty asked if she hadn't paid more attention to the older guy (Grady Howard), who she said carried the knife.

"I didn't care about him," Jane said. "I was worried about the knife."

When the girls were asked to go to the police station, McCarty asked, were they told they were going to look at some pictures?

> ***'I didn't care about him. I was worried about the knife.'***

"I didn't know," Jane said. "I assumed they had the men."

"When you looked at the pictures," McCarty asked, "didn't you think the pictures of the two men would be there?"

"Yes," she answered.

Didn't you identify the older man first?

"Sue picked out the photo of the younger guy (Jon Howard) before I did. We then looked at each other and said these are the two."

WHAT HAPPENED JULY 10

Jane and Sue had left the Teen Home, where they were staying, at 6 p.m. and went to a friend's house near Ferry's Food Store.

An 11 p.m. curfew was what prompted them to return to the Teen Home. Jane said she had three or four beers; Sue had two.

Sue said they turned down a ride from their friend because it was still light and the weather was nice.

Near the State Office Building, they asked a friend for the time. They were told it was around 10:30 p.m. Since they were running late, they decided to take the shortcut, the Schoenbar Trail.

As they were to enter the unpaved part of the trail, a man in late 20s or early 30s came down the steps from the last house on the right on Grant Street.

He, whom they later identified as Grady Howard, asked them if they knew the people who lived in the house. They said they didn't.

They walked on into the trail. A few yards in, they were startled to find a younger man crouched behind a "box."

"We jumped back," Jane said.

Both girls said he appeared to be hiding.

As they walked down the trail, Sue commented, "What a freak!"

The girls giggled.

As they walked down the trail, they kept looking back.

"Why did you do that?" asked Krumm.

"We always look back," Jane said.

Jane said she had the feeling they were being followed. She and Sue turned around. The men were walking behind them. Jane and Sue walked faster.

The older one yelled, "Wait a minute!"

He cut in front of them and asked questions about a street and a person. Jon stood behind them.

The girls didn't know anything.

"We don't want to hurt you," Grady Howard said, as he pulled out the hunting knife. "We just want to have a little fun."

The knife was put threatenly to Jane's throat. His other hand grabbed her shirt and twisted it.

"My life flashed before my eyes," Jane said. "I told him I was scared of knives."

"Shut up, bitch," he said.

Jane tried to deter him by saying he could have some "fun" for free. She pointed to some houses.

He tightened the grip on her shirt and "kinda dragged" Jane up the hill.

> ***'We don't want to hurt you. We just want to have a little fun.'***

At that point Jane "was looking at the knife" and didn't know where Sue was.

Jon, followed by Sue, was ahead, as he led the way to a

Cont. on page 2

Grand jury will hear case against brothers

In sex assault case

By HARRY McFARLAND
Daily News Assistant Editor

A grand jury will hear the case against two brothers charged with the sexual assault of two Ketchikan teenage girls Thursday morning, district attorney Vic Krumm said in court Tuesday afternoon.

Grady M. Howard, 28, is charged with two counts of first-degree sexual assault against two girls, ages 14 and 15.

His brother, Jon W. Howard, 19, is charged with one count of first-degree sexual assault.

Bail on the elder Howard has been raised to $40,000 from $20,000. The younger brother's bail went from $10,000 to $20,000.

While District Judge Henry Keene set a 2 p.m. Monday preliminary hearing for the record, Krumm said a grand jury would hear the case at 9 a.m. Thursday.

Assistant public defender Michael O'Brien asked for another attorney for Jon Howard. The public defender's office has decided it should not defend both men, because of different defenses to be used during trial, O'Brien said.

Under a felony, a district attorney can either schedule a public, preliminary hearing or a grand jury. Under a preliminary hearing, the witnesses can be cross-examined by the defendants' attorneys.

A grand jury only hears the state's evidence against the defendants. In either a hearing or a grand jury, it is decided whether the defendants are to be held for trial.

During the brief court appearance, the elder Howard, an escapee from the Oregon State Penitentiary in Salem, wore both handcuffs and leg shackles. Jon Howard wore only handcuffs.

Grady Howard escaped in April from the Oregon penitentiary, where he was serving time for armed robbery and parole violations, Ketchikan police have said. A $10,000 warrant is outstanding for him.

The two men were arrested Saturday afternoon at a campsite about three-quarters of a mile up Ketchikan Creek behind the powerhouse, by Sgt. Tom Varnell and officer Chuck Mallott.

The brothers are alleged to have raped two girls Thursday night on the Schoenbar Trail near Schoenbar Junior High School.

Police conducted a search Friday and Saturday, until the suspects were arrested. They were arraigned before Judge Keene Sunday.

2 plead not guilty to charges of rape

JUL 18 1980

Grady and Jon Howard pleaded not guilty to two charges each of first-degree sexual assault against two Ketchikan teenage girls.

The pleas were entered Friday afternoon before Ketchikan Superior Court Judge Thomas Schulz.

Schulz set further procedures on the case for Aug. 8 at 1:15 p.m.

Grady M. Howard, 28, is charged with two counts of sexual assault on both teenagers. Jon W. Howard, 19, is charged with two counts of sexual assault, one for aiding his brother rape a second girl.

The rapes were reported to police the night of Thursday, July 10. The brothers were apprehended by police last Saturday.

Grand jury indicts Howards on assault

JUL 18 1980

Two Oregon brothers charged with raping two Ketchikan teenage girls on July 10 faced arraignment in Superior Court this afternoon.

Grady M. Howard, 28, and Jon W. Howard, 19, were indicted by a grand jury Thursday on two counts of sexual assault each.

Grady Howard was indicted with sexual assault against both teenagers. Jon Howard, who was charged originally with the rape of one girl, also was indicted by the grand jury with aiding his brother commit a rape on on the second girl.

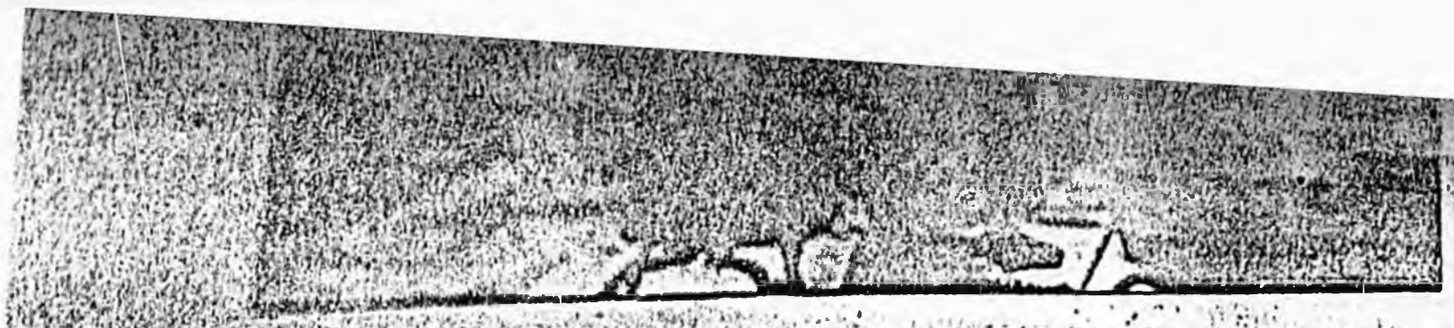
The arraignment before Superior Court Judge Thomas Schulz was at 1:30 today.

Bail was continued at $40,000 for Grady Howard and $20,000 for Jon Howard.

Grady Howard escaped from Oregon State Penitentiary in April. He was serving a prison sentence for armed robbery and parole violations.

The two men were arrested Saturday, two days after the two teenage girls were raped on the Schoenbar Trail.

Meanwhile, District Court Judge has appointed Dennis McCarty as Jon Howard's attorney, following a request by the Public Defender's office, which represents Grady Howard.



...Chamber of Commerce representatives with U.S. Borax to discuss the proposed molybdenum mining site at Quartz Hill, Borax presented a film which showed background for the mining operation and projected plans. Company representatives fielded questions from the audience following the film presentation. Nikki Murray Jones photo

...would send the money from the state's general fund to the Department of Transportation. They would forward the money to STC when the road is completed.

The road would be closed to public use until the state finished it, Sears said. Rep. Ken Fanning, Libertarian-Fairbanks, insisted on including a letter of intent assuring the road would be public when completed, Sears said.

The road will be 14-feet wide and include four permanent bridges. The state will widen it for permanent use.

Access to the Klawock airport and harbor facilities will be opened for Hydaburg residents when the road is complete. The road will also assist a synthetic fuel-ethanol operation located in the area.

The bill left the committee with unanimous support, except for Fanning's.

Jury to begin rape trial review

By HARRY McFARLAND
Daily News Assistant Editor

The jury in the sexual assault trial of Jon Howard was to begin deliberations shortly after noon today in Ketchikan Superior Court, following final arguments by District Attorney Vic Krumm and defense counsel Dennis McCarty.

Jon Howard, 19, and his 29-year-old brother, Grady, are charged in the July 10 rape of two teenage girls on the Schoenbar Trail.

After the opening defense statement Monday, the Howards' sister, Susan Park, testified on the brothers' characters.

Mrs. Park said she feared for Jon, when she learned that he and Grady planned to travel to Alaska. Her fear was caused "by knowing Grady's problem."

Grady has been in trouble 12-13 years, Mrs. Park said, with the last 10 being spent going in and out of prisons. "He went into institutions at a very young age," she said.

Alcohol and drugs were the catalyst for his violence, she said. He was okay without them, but their use would make Grady "very uncontrollable" and unrational."

Trying to reason with Grady would make him more violent, Mrs. Park said.

In 1972, Grady attacked their mother, she said. It took five people to control him. In another incident, Grady beat his cousin severely. He was trying to strangle the cousin when four people finally subdued.

Grady's violence has now "come to the point that there is a weapon involved," Mrs. Park said.

Jon was present at these violent incidents, Mrs. Park said. He withdrew from them, she said, which became a characteristic. Anytime violence would flare up within the family, Jon would withdraw.

Mrs. Park said she knew Grady had escaped from prison in July, but never advised authorities. He was on a three-day furlough from an Oregon prison, when he decided not to return. Three weeks more and he would have been paroled.

When she would turn Grady into the authorities, "no one ever came after him until a crime was committed," Mrs. Park said.

Upon hearing about the planned Alaska trip, she told Jon not to go with Grady.

But Jon told her that Grady had changed.

"Jon absolutely wanted to believe everything was going to be fine," she said. "Jon is not mature in many ways." He takes "everything at face value."

Prior to Jon's testimony, Grady was brought into the courtroom with belly chains attached to his wrists and leg chains. He did not speak.

"Ever since I was young," Jon began, "I'd always had a dream to go to Alaska."

His Alaskan dream was enhanced by a "Grizzly Adams picture," said Mrs. Park as she described the letters that Grady wrote to Jon about the trip.

Grady also told Jon he had changed, that he wanted to make a fresh start in Alaska.

"I wanted to help him out," Jon said.

Starting out on the trip, it didn't take Grady long to fall back to his violent ways. They stopped under a bridge near a freeway, when Grady suggested they buy a six-pack of beer, since it was a hot, sweaty day.

"I told him we didn't have enough money," Jon testified, "and he shouldn't drink. But he always seemed able to persuade me."

Grady came back with the beer and a bottle of Mogen David wine, known as Mad Dog 20-20.

Things got hectic. Grady pulled a knife and threatened to kill him. Jon told him to go ahead. "I rebelled against him," Jon said.

Jon decided he didn't want to go with Grady, so they called a brother. The brother took them to his house, where the argument continued. Jon's rebellion continued, until Grady "finally stopped being mean."

"By morning," Jon said, "he had me persuaded to go along."

From Portland through Canada and finally to Ketchikan, Grady stayed away from alcohol. They arrived here on July 5. Because they didn't have any money, they sought out the Salvation Army for a place to stay.

Salvation Army personnel told them that the organization

Cont. on page 2

yer tries to show was 'unwilling'

By HARRY McFARLAND
Daily News Assistant Editor

erris McCarty continued Friday his attempts to
fendant Jon Howard was as much an unwilling
as were the two teenage girls on that evening on

d faces one to 10 years in prison, if convicted of
sexual assault. The case is being tried in Ket-
hikan Court before a seven-man, six-woman jury.
o be alternate.
McCarty tried to show that Jon was coerced into
n July 10 by his older brother, Grady Howard, 29.
Howard's trial is expected to start in March.
ied the knife and the two girls testified that Jon
Grady to "get to it," and to "shut up."
ne girl testified that Grady tapped Jon on the
ble.

d attorney Vic Krumm, during re-direct
ed both girls testify that at no point and in any
show unwillingness to participate.
afternoon testimony, Bethel police chief Tom
erly a sergeant with the Ketchikan Police
was challenged by McCarty about the contents
pt from a tape made by Varnell with Jon.
nscript, Varnell told Jon that the girls had told
didn't want to do it, that he hadn't committed any

knowledged that he had made those statements.
uickly asked Varnell what his motive was for

n attempt on my part to con him into a con-
Varnell testified.
mm sat down, McCarty asked if "con wasn't a
for lying. I mean, in impolite society, wouldn't
d be called lying?"
ed to explain, but McCarty said "Just answer
n."
knowledged he lied, but said he did this often as a
with many suspects to try and obtain a confession.
I know you're not lying now?" McCarty asked.
er oath," Superior Court Judge Eben Lewis said.
aw the question," McCarty said.
n the afternoon, Varnell testified he and officer
ott, along with citizen Dave Spear, went up the
tchikan Creek looking for a campsite and two

's tip about seeing smoke in the area behind the
Public Utilities powerhouse had prompted officers
the area.
three men reached the campsite, Varnell said he
oward sitting on a log. He quickly searched and
Jon, while Mallott went after the other man in the

returned with Grady Howard, who at that time
d Danny Howard. Varnell said that Grady had a
ense for a Danny Howard, who is a brother to the

until Grady and Jon were arraigned in Distric
ell said, that he learned of the elder Howard's

took Varnell through identification testimony
brown cowboy hat that had been found at the scene

n the girls said had worn it, was asked at the
if he had such a hat, Varnell said. Jon answered he
had been stolen from their campsite a few days

e officers entered the unmarked police car, Varnell
the floorboard of the car and asked Jon if that was
Jon replied yes, Varnell said.
estified he finally got Jon to agree to talk if the two
ved him from a picture.
e girls identified the Howard brothers from the
Varnell told Jon it was positive identification.
then admitted taking part, but denied actually
ing sexual penetration of one girl.
ann will call two experts Monday with the defense
its case that afternoon.

Trial

A mistrial was declared late Tuesday night in the rape trial of Jon Howard, 19, after the jury deadlocked at 7-5 on a verdict.

Howard is charged with two counts of first-degree sexual assault against two teenage girls. The incident happened on July 10 on the Schoenbar Trail.

A new trial is scheduled for next week, probably in Juneau or Sitka. Court officials were trying to find an open court-room this morning.

The jury began deliberations Tuesday afternoon after district attorney Vic Krumm and defense counsel Dennis McCarty gave their closing arguments.

"It was my understanding that some of them (the jury) disagreed on Jon's involvement and believed the duress issue," Krumm said.

The major angle of the defense for Howard centered on the intimidation power of Grady Howard, who will go on trial March 10 in Juneau on the same charges and stemming from the same incident.

Grady's past record as a violent man, based on testimony by the Howard brothers' sister and by Jon, were introduced to show that Jon was scared of his brother. The duress issue made Jon an unwilling participant in the July 10 incident, the defense argued in its closing argument.

The prosecution argued that Jon had plenty of opportunity to escape and never told his brother to stop. Krumm also argued that Jon wasn't forced to participate in the rapes.