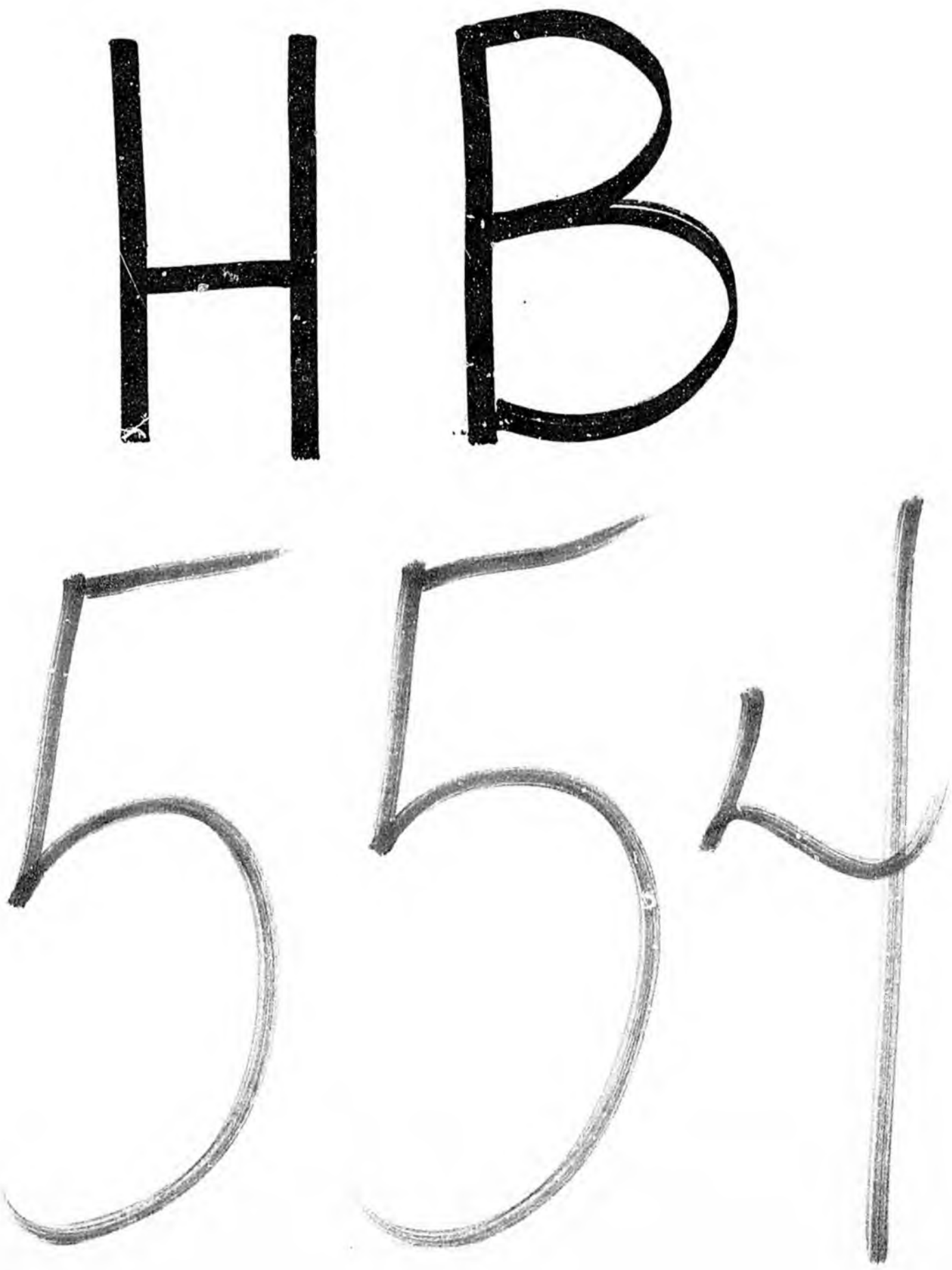

HB
5534

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date e CM 14. In order to save space copies of minu have not been left in the files.

Jeanie Henry

House Judiciary		2/21/86	1:30 pm
"	"	3/10/86	1:30 - 3:00 pm
"	"	3/26/86	1:30 PM
"	"	4/8/86	8 AM
"	"	4/30/86	1:30 pm

HOUSE

COMMITTEE REPORT

(7)

Date referred: 2/7/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered HB 554

"An Act relating to sentencing."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with CSHB 554 (JUD) [ ] same title [ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

April 24, 1986

Representative Mike Miller
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Subject: CSHB 554 (Jud) -
Presumptive Sentencing

Dear Chairman Miller:

The following is a sectional analysis of the proposed committee substitute dated April 25, 1986.

Section 1. - Allows the court in imposing sentence to order a defendant convicted of certain offenses to participate in a sex offender, drug, or alcohol treatment program. This would be an additional requirement aimed at rehabilitating the offender. Current law is limited to ordering participation only for drug offenders.

Section 2. - Lowers the presumptive term by two years (from seven to five years) for first time offenders convicted of a Class A felony committed with a firearm or dangerous instrument, where serious physical injury occurred, or against certain uniformed officials. Removes the five year presumptive term for first time offenders convicted of any other Class A felony.

Section 3. - The percentage amount by which a court can decrease a presumptive term if mitigating factors are found is increased from 50 to 75 percent. This section was proposed by the Attorney General.

Section 4. - New mitigating factors are added that, if applicable, could reduce a presumptive sentencing. Note: currently law has 26 aggravating factors and 15 mitigating factors.

Section 5. - Expands discretionary parole eligibility to first time felony offenders who are subject to presumptive sentencing.

Mr. Chairman, thank you for consideration of this bill.

Sincerely,

Representative Don Clocksin

Ford/Udermohle
4/25/86

Original sponsors: Clocksin, Adams, Duncan, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 554 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to sentencing and discretionary parole."

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

* Section 1. AS 12.55.015(d) is repealed and reenacted to read:

(d) The court, in imposing sentence on a defendant convicted of (1) sexual assault or sexual abuse of a minor; (2) misconduct involving a controlled substance in the first, second, third, fourth, fifth or sixth degree; or (3) a felony involving the abuse of alcohol, may, in addition to a sentence required by law, order the defendant to participate in a treatment program for persons who are sex offenders or a program for treatment of drug or alcohol abusers, if the court determines that the treatment is appropriate. Participation may be required as a condition of probation, a condition of suspended execution of sentence, or a condition of suspended imposition of sentence. This subsection may not be construed to reduce a mandatory minimum or presumptive sentence.

* Sec. 2. AS 12.55.125(c) is amended 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 AND DOES NOT INVOLVE CIRCUMSTANCES DESCRIBED IN (2) OF THIS SUBSECTION, FIVE YEARS;]

(2) 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, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, five [SEVEN] years;

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

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

* Sec. 3. AS 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),(d)(1), (d)(2), (e)(1), (e)(2), or (i) 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 75 [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. 4. AS 12.55.155(d) is amended by adding new paragraphs to read:

(17) the defendant is under the age of 25;

(18) the defendant has demonstrated good potential for rehabilitation;

(19) the offense was isolated and not premeditated;

(20) the defendant, before apprehension, notified law enforcement authorities of the defendant's involvement in the criminal conduct.

* Sec. 5. AS 33.16.090(b) is amended to read:

(b) Unless a prisoner is serving a term for the prisoner's first conviction of an offense subject to a presumptive sentence, a [A] prisoner is not eligible for discretionary parole during the term of a presumptive sentence; however, a prisoner is eligible for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a) or during the term of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/29/86

REQUEST

Bill/Resolution No.: CSSB 554
Title: "An Act Relating to Sentencing."

Sponsor: Representative Clocksin
Requestor: House Judiciary Committee
Date of Request: 4/29/86

FISCAL DETAIL

Agency Affected: Corrections
BRU: Administration and Support and Operations

Components: Various

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES				122.9	127.8	132.9
TRAVEL				125.1	131.4	138.0
CONTRACTUAL				126.8	133.1	139.8
SUPPLIES				1.3	1.4	1.4
EQUIPMENT				-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	376.1*	393.7	412.1
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	376.1	393.7	412.1
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	376.1	393.7	412.1

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

*See page 4 for projected savings

Prepared by: Nadine Winters, Special Assistant — Phone: 465-3376
Division: Corrections — Date: 4/29/86

Approved by Commissioner: — Date: 4/29/86
Agency: Corrections

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 554

Currently the Parole Board is hearing 200 parole cases a year. This bill provides for increased parole eligibility that would approximately double the number of parole case hearings per year. To accommodate the increased workload the department has two options.

Option I (Displayed on fiscal note form): Continue to operate with a 5 member Parole Board composed of lay persons with increased support staff.

Probation Officer II 16A				
$2702/mo x 12	=	$ 32,424		
SBS @ .0613	=	1,988		
RET @ .1325	=	4,296		
VAR BEN @ .051694	=	1,676		
HI @ $252.29/mo	=	3,027		
		$ 43,411	x 2 =	$ 86,822
Clerk Typist II 7B				
$1586/mo x 12	=	$ 19,032		
SBS @ .0613	=	1,167		
RET @ .1325	=	2,522		
VAR BEN @ .051694	=	984		
HI @ $252.29/mo	=	3,027	=	$ 26,732
Total Personnel Services FY 87 = Assumed 4% inflation in personal services for fiscal years beyond FY87				$113,554
Total Personnel Services FY 89 =				$122,900
Travel Provides for increased travel for 5 board members and 2 support staff to hold increased number of hearings				$125,100
Contractual Additional board members compensation, increased office space rent and utilities				$126,800
Supplies				$ 1,300
Total FY87 Costs Assumed 5% inflation in other than personal services line items for fiscal years beyond FY87				$376,100

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 554

Option II: Provide for a full-time, compensated Parole Board of three members and support staff.

Parole Board Member 21A			
$3,812/mo x 12	=	$ 45,744	
SBS @ .0613 or 2800	=	2,800	
RET @ .1325	=	6,061	
VAR BEN @ .051694	=	2,365	
HI @ $252.29/mo	=	3,027	
		$ 59,997 x 3 =	$179,991
Probation Officer II 16A			
$2,702/mo x 12	=	$ 32,424	
SBS @ .0613	=	1,988	
RET @ .1325	=	4,296	
VAR BEN @ .051694	=	1,676	
HI @ $252.29/mo	=	3,027	
		$ 43,411 x 2 =	$ 86,822
Clerk Typist II 7B			
$1586/mo x 12	=	$ 19,032	
SBS @ .0613	=	1,167	
RET @ .1325	=	2,522	
VAR BEN @ .051694	=	984	
HI @ $252.29/mo	=	3,027	$ 26,732
Delete Executive Director			($ 75,231)
			$218,314
Travel Same as Option I			$113,500
Contractual Increase office rent, delete board members compensation			$ 30,000
Supplies			$ 2,000
Equipment			$ 30,000
Total FY87 Costs			$393,814

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 554

It is difficult to calculate with absolute certainty the fiscal impact of the proposed legislation. The largest impact on the department would be expanding parole eligibility to first time offenders. Since the cost of incarceration per year per offender is approximately $29,200, and probation/parole supervision cost per year is approximately $1,800, the savings would be substantial.

The following table represents the projected reduction in prisoner-years associated with presumptively sentenced first time felons becoming parole eligible.

	1987	1988	1989	1990
Number of first-time felons admitted to serve presumptive sentences	229	247	267	289
Total prisoner-years to be served	916	990	1,070	1,156
Total prisoner-years to be served with parole eligibility	732	792	856	925
Difference in prisoner-years	184	198	214	231

The cumulative savings associated with the reduction in years would be theoretically realized over a period of years amounts to $22,659,800. This is assuming no other changes in sentencing law and a stable population base. The increased workload for the Parole Board would not be realized until FY 89.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 554
Title : "An Act relating to sentencing."

Sponsor : Representative Clocksin
Requestor : H. Judiciary
Date of Request : 2/12/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Alaska State Troopers

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : K Niles Kathy Niles, Admin. Assistant Phone : 465-4336
Division : Commissioner's Office Date : 2/14/86

Approved by Commissioner : [signature] Date : 2/14/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

February 21, 1986

Department of Public Safety

HOUSE BILL 554

Position Paper

Commissioned Officers within the Department of Public Safety, as well as other law enforcement officers within the State of Alaska, are charged with the responsibility to protect the life and property of all persons within the jurisdiction of this State. You, as members of the Alaska Legislature, duly elected representatives of the citizens of the State of Alaska, are likewise charged with the responsibility to insure that the citizens of this State can reside in a safe environment.

This bill, in the opinion of law enforcement, takes a tremendous step towards reducing the ability of law enforcement to protect the citizens we serve. This law allows those predators to serve a minimal period of incarceration and does nothing to address the needs of the victim or the protection of our citizens.

This bill is allegedly designed to address the first offender who, in the sponsor's opinion, may be receiving an excessive sentence. There are, in fact, very few individuals who are first offenders when they are arrested. What we are really talking about in this bill is reducing the sentence of those individuals who may have an extensive history of committing crimes, but who had never been previously convicted.

In Alaska, consistent with the rest of the nation, law enforcement agencies solve approximately 25 percent of the crimes by arresting the defendants. Due to the abolishment of plea bargaining, the prosecutors heavily screen cases before accepting the case for trial. Thus, even a smaller number are eventually charged within our court system. Of those, fewer yet plead guilty or are convicted. The odds of committing a crime, not being prosecuting, and not being convicted are heavily in favor of the offender.

To specifically address this bill, I find that it is extremely confusing to interpret.

The only mandatory sentences which are not affected by this bill are first degree murder, second degree murder, kidnapping, and misconduct involving a controlled substance in the first degree.

Virtually every other crime has had the sentencing structure gutted.

There is no longer any protection for a peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other first responder who is engaged in the performance of his official duties at the time of the offense. This law reduces the jeopardy of the offender, and increases the jeopardy of those who respond to give aid.

An individual who commits a heinous rape or sexually abuses a minor and is convicted for the first time could receive any sentence, including, as I understand this bill, a suspended sentence or a suspended imposition.

Although this bill purports to reduce presumptive sentencing by only one year for subsequent felony convictions this bill allows much more discretion. For Class B and Class C felony convictions for the second or third offense, the sentence can be suspended or the individual can receive a suspended imposition of sentence. For a Class A felony, an individual convicted of sexual assault or sexual abuse of a minor in the first degree, several mitigating factors have been incorporated into this bill.

1. The defendant is under the age of 25. We fail to find any valid reason for this to be a mitigating circumstance.

2. The defendant has demonstrated good potential for rehabilitation. Who is to judge that the defendant has demonstrated good potential for rehabilitation? In many instances, the individual has not even been under observation from the time that he was first apprehended until he is convicted. Will this result in bringing in various psychiatrists to argue their less than exact scientific findings?

3. The defendant has no record of criminal law violations. This makes no sense, since we are talking about those individuals who are being presumptively sentenced for second and third offenses.

4. The defendant has demonstrated sincere remorse for the offense. It has been my experience, after 23 years in this profession, that most individuals, when they are apprehended, are sincerely remorseful. I would find it extremely subjective

for an individual to determine whether the remorse was for the victim or for the fact that the defendant was apprehended.

5. The offense was isolated, and not premeditated. What does this mean, if an individual is involved in a drunk driving manslaughter case, is it not isolated? It certainly is not premeditated. If an individual has two or three beers and rapes a woman in a hospital parking lot, is the offense not isolated? Was it a crime of opportunity?

6. The defendant's capacity to formulate the requisite culpable mental state for the offense was diminished to a degree insufficient to constitute a complete defense. I suppose this means that everyone who claims that he was using drugs or alcohol at the time of the offense was in a diminished mental state.

7. The defendant sought counseling or other mental health treatment for the conduct underlying the criminal offense before discovery of the offense or apprehension of the defendant. This situation would probably only occur in those child sexual abuse cases, where the family has become aware of the parent or other relative's abhorrent behavior. Is this a result of pressures from within the family, or the defendant acknowledging that he needs treatment? If, in fact, it is the latter, he certainly had the opportunity to discuss his abnormal desires with a competent professional before committing the act.

8. The defendant, before apprehension, notified law enforcement authorities of the defendant's involvement in the criminal conduct. It would appear that if an individual is being questioned for an offense without being taken into custody, and admits that offense, this could also be considered as a mitigating circumstance. If the defendant knew a warrant had been issued, he/she could call in before apprehension.

Section 11 of the proposed bill purportedly amends AS 33.15.180(a). Although this statute was repealed in the last legislative session, it would appear the sponsor's intent, in my opinion, is that any individual who is sentenced for a term over 180 days, other than a juvenile delinquent, is eligible for parole.

Alaska is unique. Alaska has both a young and transient population. Both of these factors contribute to a higher crime rate, according to many national studies.

Although it is too early to tell, it would appear that crime in Alaska is beginning to level off. Although we do not know exactly what the cause for this is, it could be Alaska's tough presumptive sentencing laws, which discourage individuals from coming to Alaska to commit their crimes.

Previous legislators cast presumptive sentencing, with the intent to insure a measure of certainty and uniformity in prison sentences, while allowing mitigating or extraordinary cases to be treated differently. The primary benefit of presumptive sentencing has been to minimize disparity created by widely varying sentencing practices among individual judges. Any law enforcement officer or criminal attorney knows that the particular judge assigned to a case is the single most significant factor in the ultimate sentence imposed. This law would create an incentive for "judge shopping." It would turn the sentencing system into the "luck of the draw."

It is true that there are more sex offenses being reported, investigated, and referred to prosecution. That would indicate that the sponsor of this bill is incorrect in indicating that people are not reporting the offenses because of the length of sentencing. We believe that more crimes are being reported now due to the publicity of the offense and the emphasis placed on sex offenses by our legislators. However, the trend does show some indication of levelling off.

Although one of the sponsors of this bill indicated there may be too much control by prosecutors, our system is designed to insure that unjust convictions do not occur. The defendant is represented by counsel and he does have a right to trial by jury. Offenses must be proven beyond a reasonable doubt. The individual may appeal those convictions, even after that determination has been made by a trial judge and jury. The only real danger to the public is that a prosecutor may choose a charge which is too low or too lenient. That concern is not addressed by this bill.

During the last two years, I have heard many individuals testify before this legislative body regarding the traumatization of a child victim. Some of these individuals have expressed concern as a result of the criminal justice system breaking up the family unit, as a result of presumptive sentencing. Many have explained that the father who rapes his child is not the same as a predator who rapes a

stranger's child. I ask you, who is better off, the child who is traumatized by a stranger who has loving parents to go home to for support, or a child who is traumatized by an individual whom that child loves and respects, and who believes is there to protect her or him? If the family unit turns on a child who becomes a victim within their own family, then maybe it is in the best interest of the child to remove the child from that family unit, rather than allow the child to continue to be victimized by either the defendant or the other family members.

If this bill is designed to reduce the cost of corrections, I believe other avenues should be explored.

Certainly, the cost of criminal justice in Alaska, as well as in the rest of the nation, is rising.

In good conscience, I do not believe we can reduce that cost by increasing the risk to those we serve.

Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 564
Title : An Act Relating to Presumptive Sentencing

Sponsor : _____
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Alaska Court System
BRU : Trial Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Karla Forsythe
Division : Alaska Court System
Phone : 264-8228
Date : 2/19/86

Approved by Commissioner : Arthur E. Snowden, II
Agency : Alaska Court System
Date : 2/19/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

1 [illegible]5/85

HB 554: Presumptive Sentencing
Fiscal Impact

Although the precise impact of HB 554 is difficult to quantify, it appears that this bill would permit the judiciary to devote more of its resources to the civil caseload, decreasing the delay in scheduling civil trials.

Alaska Court System statistics reflect that 18% of all felonies filed in superior court go to trial, more than double the national trial rate as reported by the National Center for State Courts. Alaska's presumptive sentencing scheme, combined with the ban on plea bargaining, appears to have contributed to this disproportionately high trial rate.

It is anticipated that the provisions of this bill which decrease the length of presumptive terms will have limited impact on the courts. However, eliminating first offenders from the presumptive scheme may have a significant and positive impact. In a recent study assessing the impact of sentencing patterns for sex-related offenses, the Judicial Council found that the trial rate for these defendants was double the rate for defendants sentenced non-presumptively. If this ratio can be generalized to all felonies, eliminating first offenders from presumptive sentencing could significantly reduce the overall felony trial rate.

Felonies comprise only 5% of the Anchorage superior court workload, but require half of the court's judicial resources. A decreased felony trial rate would result in more expeditious processing of domestic relations matters, commercial cases and other disputes which comprise the civil portion of the court's workload.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 554
Title : "An Act relating to sentencing."

Sponsor : Repr. Clocksin
Requestor : House Judiciary Committee
Date of Request : February 13, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Prosecution

Components : All Components

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Richard L. Pegues

Prepared by : Richard I. Pegues, Director — Phone : 465-3672
Division : Administrative Services Division — Date : 2/20/86

Richard L. Pegues/FOR/

Approved by Commissioner : Harold M. Brown, Attorney General — Date : 2/20/86
Agency : Department of Law

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

This bill would remove first time offenders from the presumptive sentencing provisions of AS 12.55, would reduce all other presumptive sentences, would make many repeat felony offenders eligible for suspended impositions of sentence and suspended sentences, would extend parole eligibility to presumptively sentenced prisoners and would create a number of additional mitigating factors.

This bill will probably reduce the number of trials of first time felony offenders charged with class A felonies or unclassified sexual assaults. Because of the addition of new mitigating factors such as "good potential for rehabilitation" and "sincere remorse for the offense," it is anticipated that sentencing proceedings will delve into areas involving psychological evidence that is for the most part irrelevant under current law. Sentencing proceedings may, as a consequence, be longer and more complicated. In addition, more cases may undergo additional sentencing proceedings before the three-judge panel.

Because potentially more prisoners will be placed under probation or parole supervision, there may be more revocation proceedings and, in the appropriate case, further sentencing procedures. It is difficult to assess whether there would be substantial savings in trial resources. However, there would be substantially less expense and inconvenience in connection with jury service and more flexibility for the court and the Department of Law in calendaring cases for post plea proceedings.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No.: HB554
Title: "An Act relating to sentencing..."

Sponsor: Rep. Clocksin
Requestor: Judiciary
Date of Request: 2/13/86

FISCAL DETAIL

Agency Affected: Dept. of Administration
BRU: Office of Public Advocacy

Component: Office of Public Advocacy

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-				
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-				
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-				
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-				

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: Brant McGee, Public Advocate
Phone: 274-1684
Division: Office of Public Advocacy
Date: 2/21/86

Approved by Commissioner: Eleanor Andrews
Date: _____
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 554
Title: "An Act relating to sentencing."

Sponsor: Representative Clocksin
Requestor: House Judiciary
Date of Request: February 20, 1986

FISCAL DETAIL

Agency Affected: Department of Administratic
BRU: Public Defender Agency

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The Alaska Public Defender Agency's caseload is rapidly becoming out of control for the number of attorneys authorized for that Agency. National caseload statistics for the maximum number of

Prepared by: Dana Fabe, Public Defender
Division: Public Defender Agency
Phone: 279-7541
Date: February 20, 1986

Approved by Commissioner: Maude Hartford
Agency: ADMINISTRATION
Date: 2/24/86

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

cases to be handled by a public defender during a year indicate that this Agency is 7.5 attorneys short of the minimum number required to handle its caseload. Furthermore, drastic increases in the number of jury trials in felony cases has caused greater stress on the attorneys, resulting in delays in processing of cases through the court system.

Because the Public Defender Agency is already operating without the recommended minimum number of attorneys to handle its caseload, this Agency cannot give up positions based on this legislation. However, this legislation will allow the attorneys in this Agency to handle the assigned caseload more quickly and efficiently and to absorb future increases in felony caseloads without the requirement of additional funding. This is due to the fact that the number of jury trials will certainly decrease if presumptive sentencing is not required for first offenders. Currently, a first time felony offender charged with a Class A felony is subject to a five-year presumptive term regardless of whether he demands a jury trial or pleads guilty to the charge. If presumptive terms are removed for first offenders, many offenders now electing a trial will plead guilty in the hope that their cooperation and demonstrative remorse will be reflected in their sentence. If the number of trials decreases for the Public Defender Agency, the number of felony appeals decreases as well, since there is no right to an appeal after a defendant has pled guilty to the charge. Similarly, the number of post-conviction relief actions handled by the Public Defender Agency should decrease.

For the above reasons, a zero fiscal note is anticipated for this legislation.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 554
Title : "An Act Relating to Sentencing."

Sponsor : Representative Clocksin
Requestor : House Judiciary Committee
Date of Request : February 19, 1986

FISCAL DETAIL

Agency Affected : Corrections
BRU : Administration and Support and Operations

Components : Various

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		113.6	118.1	122.9	127.8	132.9
TRAVEL		113.5	119.2	125.1	131.4	138.0
CONTRACTUAL		115.0	120.7	126.8	133.1	139.8
SUPPLIES		1.2	1.3	1.3	1.4	1.4
EQUIPMENT		20.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	363.3	359.3	376.1	393.7	412.1
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	363.3	359.3	376.1	393.7	412.1
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	363.3	359.3	376.1	393.7	412.1

POSITIONS :

FULL-TIME	-0-	3	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by : Susan Knighton, Research Analyst — Phone : 465-3376
Division : Corrections — Date : 2-19-86

Approved by Commissioner : _____ — Date : 2-19-86
Agency : Corrections

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

Currently the Parole Board is holding 20[illegible] parole cases a year. This bill provides for increased parole eligibility that would approximately double the number of parole case hearings per year. To accommodate the increased workload the department has two options.

Option I (Displayed on fiscal note form): Continue to operate with a [illegible] member Parole Board composed of lay persons with increased support staff.

Probation Officer II 16A			
$2702/mo x 12	=	$ 32,424	
SBS @ .0613	=	1,988	
RET @ .1325	=	4,296	
VAR BEN @ .051694	=	1,676	
HI @ $252.29/mo	=	3,027	
		$ 43,411 x 2 =	$ 86,822
Clerk Typist II 7B			
$1586/mo x 12	=	$ 19,032	
SBS @ .0613	=	1,167	
RET @ .1325	=	2,522	
VAR BEN @ .051694	=	984	
HI @ $252.29/mo	=	3,027	= $ 26,732
Total Personnel Services Assumed 4% inflation in personal services for fiscal years beyond FY87			$113,554
Travel Provides for increased travel for 5 board members and 2 support staff to hold increased number of hearings			$113,500
Contractual Additional board members compensation, increased office space rent and utilities			$115,000
Supplies			$ 1,200
Equipment Office furniture and word processing equipment for new staff, one-time expenditure			$ 20,000
Total FY87 Costs Assumed 5% inflation in other than personal services line items for fiscal years beyond FY87			$363,254

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

Option II: Provide for a full-time, compensated Parole Board of three members and support staff.

Parole Board Member 21A			
$3,812/mo x 12	=	$ 45,744	
SBS @ .0613 or 2800	=	2,800	
RET @ .1325	=	6,061	
VAR BEN @ .051694	=	2,365	
HI @ $252.29/mo	=	3,027	
		$ 59,997 x 3 =	$179,991
Probation Officer II 16A			
$2,702/mo x 12	=	$ 32,424	
SBS @ .0613	=	1,988	
RET @ .1325	=	4,296	
VAR BEN @ .051694	=	1,676	
HI @ $252.29/mo	=	3,027	
		$ 43,411 x 2 =	$ 86,822
Clerk Typist II 7B			
$1586/mo x 12	=	$ 19,032	
SBS @ .0613	=	1,167	
RET @ .1325	=	2,522	
VAR BEN @ .051694	=	984	
HI @ $252.29/mo	=	3,027	$ 26,732
Delete Executive Director			($ 75,231)
			$218,314
Travel Same as Option I			$113,500
Contractual Increase office rent, delete board members compensation			$ 30,000
Supplies			$ 2,000
Equipment			$ 30,000
Total FY87 Costs			$393,814

For fiscal years beyond FY87 the inflation rates of Option I would be assumed for Option II. FY88 - $379.8, FY89 - $396.5, FY90 - $414.0, FY91 - $432.2.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

This proposed legislation reflects only minimal change to the current criminal code sentencing provisions. However, these minor changes will represent cost savings to the state in future years.

The following table represents the reduction in prisoner-years associated with presumptively sentenced felons projected to be admitted over the next five years.

	1986	1987	1988	1989	1990
Number of felons admitted to serve presumptive sentences	424	458	495	535	578
Total prisoner-years to be served by felons sentenced presumptively-current criminal code	2,544	2,748	2,970	3,210	3,468
Total prisoner-years to be served with proposed changes	2,264	2,446	2,643	2,857	3,087
Difference in prisoner-years	280	302	327	353	381

A person currently serving a 10 year presumptive sentence will generally serve 7.5 years in prison at a cost of $219,000 (7.5 years x 365 days x $80 day). If the presumptive sentence was reduced to 9 years, the prisoner will serve 6.75 years in jail at a total cost of $197,000. Thus, the reduction in sentence length would result in a savings of $21,900 in the seventh year.

The cumulative savings associated with the reduction in prisoner-years in the table above which would be theoretically realized over a 10-15 year period amounts to $47,975,600, assuming no other changes in sentencing laws and a stable population base.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 554

February 20, 1986

HB 554 "An Act relating to sentencing."

The Council on Domestic Violence and Sexual Assault would like to add some concerns, comments and questions about certain sections of HB 554 to the discussion of these very important issues.

Sec. 5. AS 12.55.125(i). This section proposes to abolish presumptive terms for first felony convictions of sexual assault in the first degree and sexual abuse of a minor in the first degree. This section also reduces presumptive sentences for second and third felony convictions.

The Council on Domestic Violence and Sexual Assault would like to insure that serious discussion occurs prior to abolishing presumptive terms for first felony convictions of sexual assault in the first degree and sexual abuse of a minor in the first degree. When the Legislature classified first degree sexual assaults as unclassified felonies, they recognized the seriousness of these crimes. Except for homicide, rape is the most serious violation of a person's body because it deprives the victim of both physical and emotional privacy and autonomy. When rape occurs, the victim's ego or sense of self as well as her body is penetrated and used without consent. She has lost a basic human need and right: control of physical and emotional self. Although in many cases of child sexual assault physical force is not an issue, the damage to the victim is as serious and can be longer lasting because emotional damage is not as easily repaired as broken bones or bruises. Victims of child molestation are affected more severely by the crime than are victims of most crimes as supported by statistics relating to these victims. Studies have revealed that a majority of prostitutes were molested as children. Female molestation victims often become abusers of alcohol or drugs and a large proportion of female patients in mental hospitals were molested as children. One researcher has estimated that "upwards of 80% of kids at juvenile hall had been sexually molested regardless of the reasons that placed them there". Also of great concern is the probability that an overwhelming majority (75% according to one study) of child molesters and most rapists reported they were molested during childhood. The consequences of child sexual assault plus the ongoing trauma suffered by victims confirm the seriousness of the crime.

Research has shown that molestation by a parent or step parent is more traumatic to the child than cases involving non-family members because the child has been harmed repeatedly by a person whom he or she loves, trusts and regards as a protector. Treatment experts find little difference in the behavioral characteristics and patterns of offending behavior of an incest offender and a non-family child molester. In one of the few

empirical studies of child molesters, it was shown that incest offenders often commit sexual assault upon other individuals. Forty-four per cent of the incestuous males studied reported molesting non-family female children as well as their daughters; 11% of these incestuous men reported sexually abusing their sons as well as their daughters; 11% of these incestuous men reported molesting non-family boys as well as their daughters; and 18%, or nearly one out of five, of incest offenders also reported that they were violent rapists of adult women. Another stunning piece of information from this study was that the 411 non-incarcerated offenders studied reported committing 219,000 completed crimes involving thousands of victims over many years.

Besides the seriousness of these crimes, and the need to protect victims from further harm, other important aspects of this issue need to be scrutinized. A rationale has been presented that first time offenses should not be subject to presumptive sentences because first time offenders are more amenable to treatment. A study conducted at Atascadero State Hospital in California revealed that almost 85% of the hospitalized child molesters admitted to prior separate undetected molestations. Two thirds of these molesters were officially considered to be first time offenders. It is highly unlikely that someone convicted for the first time is really a first time offender.

Although a great deal of discussion has centered around the conflict of long prison terms versus the need for treatment of offenders to assure rehabilitation, there is little empirical evidence that treatment is effective. Reputable sex offender therapists admit that there is no guarantee for cures and, in fact, they recommend long term monitoring of known sex offenders to prevent reoffending. Also, most treatment specialists recognize that imprisonment is necessary so offenders recognize the severity of the crime and society's sanction against it.

There is a need to appreciate the chronicity and dangerousness of this population, the damage that is done by their offenses and have some knowledge of victims and victimology. Discussion of this complicated issue must weigh all factors before actions are taken. The most important factor is our responsibility to protect the community and prevent future victims.

Sec. 7.AS 12.55.155(d). This section adds mitigating factors to presumptive terms. The Council on Domestic Violence and Sexual Assault has serious questions and concerns about the following mitigating factors in the HB 554:

(17) "the defendant is under the age of 25"

Why is the fact that the defendant is under age 25 seen as a mitigating factor?

(18) "the defendant has demonstrated good potential for rehabilitation"

Who would judge that the defendant has demonstrated good potential for rehabilitation? How would someone "demonstrate potential"? It is recognized that sex offender treatment is a highly specialized area

psychology with few experts. Although there are therapists without a sex offender speciality who may feel they can assess rehabilitation potential, the consequences are too serious to be left to non-specialists. Mental health professionals without specialized expertise are more prone to errors such as undercalling risk, inattention or oversimplification of the variables that are relevant and making unrealistic or dangerous recommendations. This issue is particularly important in Alaska where there is a dearth of sex offender specialists.

Even specialized sex offender therapists have not developed and tested a treatment model for minority cultures. Assessment and treatment would therefore be biased and could add to the over-representation of Alaskan Natives in prisons and denial of appropriate treatment services.

(19) "the defendant has no record of criminal law violations"

If the presumptive terms in HB 554 are only for defendants with prior convictions, how is this factor relevant?

(20) "the defendant has demonstrated sincere remorse for the offense"

It is difficult to judge remorse. Even if there is remorse, it is not sufficient to assure that the offender will not reoffend. In the case of sex offenders, frequently after the offender has sexually abused a child, he will go through a period of feeling depressed and terrible about what he has done. He will swear to himself that he will never repeat the behavior again. This will eventually be overcome again by the rationalizations he used in the behavior and once again, the behavior will occur. Also, it would be possible and, in fact, very likely for skilled manipulators to appear remorseful. Therapists who have been working in the field for many years assert that very few sex offenders are sincerely remorseful.

(22) "the defendant's capacity to formulate the requisite culpable mental state for the offense was diminished to a degree insufficient to constitute a complete offense"

It is not clear what factors diminish a defendant's culpable mental state. Does this include being under the influence of alcohol or drugs? If this is true, is this sufficient justification to mitigate a serious crime? What about the offender who purposefully uses alcohol and drugs to lower inhibitions against committing sexual and other violent crimes?

Sec. 11. AS 33.15.180(a). This section makes prisoners who are given presumptive terms eligible for parole. Because of the severity of the crimes addressed by presumptive sentencing, issues and concerns listed for Section 5 in this position paper should be considered for this section of HB 554 also.

The Council recognizes the serious fiscal questions facing Alaska because of the increased and costly demands placed upon the criminal justice system. However, we understand that other reforms of the correctional system could be implemented that are less controversial and that would also have a negative fiscal impact. All these issues should be considered before actions are taken. We also know that solutions to these problems are complex and may not be to everyone's satisfaction. There is a great deal that is unknown about sex offenders and less that is understood. As the primary state agency representing victims of domestic violence and sexual assault, the Council thinks it is imperative that actions taken consider the protection of victims and that the State do all it reasonably can to prevent further victimization.

Robert J. Sundberg

POSITION PAPER

HB 554

This bill makes adjustments to the presumptive sentencing scheme and its major effect is to return a modicum of sentencing discretion to the judiciary. The bill accomplishes this by removing presumptive terms in cases involving first time felony offenders, allowing the court to suspend portions of sentences for Class B and C felony offenders, expanding parole eligibility to those offenders subject to presumptive sentencing, and expanding the list of aggravating and mitigating factors which are available to increase or decrease a presumptive sentence.

This legislation will affect the Alaska Public Defender Agency and the Office of Public Advocacy in a number of ways. First, it is estimated that the number of trials for first felony offenders will decrease dramatically, since these offenders will be subject to sentencing at the discretion of the judge. Currently, a first offender charged with a Class A felony knows that he will receive a presumptive five-year sentence regardless of whether he demands a jury trial or pleads guilty. Were full discretion returned to the court in sentencing first offenders, many would change their pleas to guilty or no contest in the hope that their cooperation and demonstrated remorse will be taken into account at the sentencing hearing. The reduction in trials will not only allow attorneys in both agencies to handle their ever increasing caseloads more efficiently, it will also decrease the number of time-consuming and expensive appeals of convictions, since no appeal can be taken from a guilty plea.

This legislation is also desirable because it recognizes that many first offenders demonstrate potential for rehabilitation, rendering lengthy and expensive jail sentences unnecessary to accomplish the goals of deterrence and protection of the public. Other provisions of the bill, including the addition of mitigating factors, allowing suspension of sentence for Class B and C felons and parole eligibility for presumptive offenders will also result in easing jail overcrowding and allowing offenders who do not need hard jail space to participate in more economical and beneficial rehabilitative

treatment programs. A decrease in the jail population will not only save a great deal of money for the state but will also reduce the number of post-conviction relief actions handled by the Public Defender Agency and Office of Public Advocacy for convicted felons.

For the above reasons, the Department supports this bill.

Dana Rabe, Public Defender — 2-21-86 Date

Grant McGee, Director, Office of Public Advocacy — 2/21/86 Date

Eleanor Andrews, Commissioner of Administration — 2/22/86 Date

DF:sh

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 9981
907-465-3800

MEMORANDUM April 7, 1986

SUBJECT: Sentencing
(CSHB 554(Jud))

TO: Representative Don Clocksin

FROM: Michael F. Ford M.F.
Legislative Counsel

The following is a sectional analysis of CSHB 554(Jud):

Section 1 - Allows the court to order a defendant, convicted of certain offenses, to participate in a treatment program for persons who are sex offenders, or drug or alcohol abusers.

Section 2 - Deletes the reference to limitations on discretionary parole in AS 33.16.090 and 33.16.100.

Section 3 - Deletes presumptive sentencing for first felony offenders, except as provided in paragraph (2). Reduces the presumptive term for a first felony conviction from seven to five years.

Section 4 - The percentage amount by which a court could decrease a presumptive term is increased from 50 to 75 percent.

Section 5 - Adds four new mitigating factors that would permit the court to decrease a presumptive sentence.

Section 6 - Amends the section to provide that both mandatory and discretionary parole are available to a prisoner sentenced to a term of imprisonment greater than 180 days.

Section 7 - Provides that a prisoner serving a term of at least 181 days may be released on discretionary parole, subject to AS 12.55.086(b) regarding suspended imposition of sentence, and 12.55.115 regarding the power of the court to restrict eligibility for parole.

Section 8 - Repeals those provisions establishing that certain prisoners are ineligible for parole.

MFF:mkr
m4/076

LETTERS IN SUPPORT

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K Street
Anchorage, Alaska 99501

Chambers of
VICTOR D. CARLSON, Judge

March 10, 1986

The Honorable M. Mike Miller
Chairman, Judiciary Committee
Alaska House of Representatives
Pouch V - Mailstop 3100
Juneau, Alaska 99811

Re: House Bill 554
Presumptive Sentencing

Dear Representative Miller:

This letter is written with reference to the amendments proposed to the scheme of criminal penalties set forth in AS 12.55 which has been in effect since January 1, 1980. Over the past six years a substantial body of judicial interpretation has accumulated and practitioners and trial judges can predict with a reasonable degree of certainty what the statute means.

The subject bill eliminates from the scheme of punishment for Class A felonies a five-year presumptive sentence for the first conviction and a seven-year sentence for attacks against peace officers, etc. and for those who use weapons in the perpetration of crime. I question why, if penalties discourage criminal conduct, stiff penalties for what are clearly significant crimes should be reduced.

The proposed reduction one year from the second and third convictions ranges from a one-half reduction to a one-fifteenth reduction depending upon the class of crime and number of the conviction. I can understand where reducing from two years to one year the presumptive sentence may promote changes of plea but reducing from fifteen years to fourteen means very little.

Concerning AS 12.55.155(a)(1) which provides for the possibility of decreasing a presumptive term by the full amount

if the term is four years or less and a mitigating factor has been established. It appears as if greater flexibility could be accomplished by simply raising the four years to six.

The proposed additional mitigating factors generally weaken the presumptive sentencing scheme. The scheme was adopted to more nearly achieve equal treatment of offenders based upon their offense and not personality, color, social status, education, identity of the judge, wealth, etc. Factors like "seeking mental health treatment" are related to social status, education and wealth and have nothing to do with "making the punishment fit the crime." If the additional mitigating factors are included, the presumptive sentencing scheme is seriously eroded.

The elimination of "manifest injustice" from AS 12.55.165 and 175 and the insertion of new language to permit referral to the three-judge sentencing panel and the provision for referral just to permit deviation from the presumptive sentencing scheme will spawn numerous appellate cases interpreting the new language. It seems counterproductive to eliminate words which have been given an appellate interpretation and to add words which will require an interpretation when certainty of sentencing is one of the main objectives. Further, to permit "deviation" seems particularly troublesome.

Thanking you for considering this letter, I am

Very truly yours,

Victor D. Carlson
Superior Court Judge

VDC:rw

cc: Karla L. Forsythe
Staff Counsel
Alaska Court System
303 K Street
Anchorage, Alaska 99501

CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801

April 28, 1986

The Honorable M. Mike Miller
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: House Bill 554
For an Act entitled: "An Act relating to sentencing."

Sir:

The Central Council of Tlingit and Haida Indian Tribes of Alaska strongly urges passage of House Bill 554.

Considering all testimony being provided throughout the state, including judges, parole and probation officers, and the Commissioner of Corrections himself, there can be no doubt that presumptive sentencing, as it currently is being enforced, has the effect of discriminating against Alaska Natives.

Whenever laws are enacted that are designed to be especially harsh in order to deter criminal behavior, what often results instead is that many of those who are accused and are members of the dominant culture avoid persecution and conviction altogether. At the same time, members of minorities feel the full brunt of the increased severity of punishment.

The bill under consideration does not move toward a leniency which would jeopardize the public welfare.

What it does is provide some reasonableness and latitude in considering appropriate and just punishment.

This bill is not one which will "weaken" criminal justice in Alaska. It is one which will move toward ensuring that all who commit crimes against our state are meted out fair and equal justice.

Sincerely,

Art Holmberg, Director
Department of Human Services

TELEPHONE: 907/ 586-1432

Alaska Native Health Board

1136 W. 8th AVENUE, SUITE 2, ANCHORAGE, ALASKA 99501 PHONE (907) 276-6082

Reference #A86-0326

March 21, 1986

Representative M. Mike Miller
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, Alaska 99811

Dear Representative Miller:

This letter is in support of H.B. 554, "An Act relating to sentencing."

The Alaska Native health Board has long been concerned about the inordinately high percentage of Alaska Natives residing in the State's correctional system.

We believe significant cultural differences not currently understood or recognized by the criminal justice system, coupled with the current presumptive sentencing statutes, conspire to create this gross inequity.

The interests of both the State and the rehabilitation needs of offenders will be better served if judges are allowed the flexibility to make judgments free of the presumptive sentencing requirements. Passage of H.B. 554 is therefore strongly recommended.

Sincerely,

Dennis P. DeGross
Executive Director

dd/DD

ALEUTIAN/PRIBILOF ISLAND ASSOC., INC.
BRISTOL BAY AREA HEALTH CORPORATION
COOK INLET NATIVE ASSOCIATION
COPPER RIVER NATIVE ASSOCIATION
KODIAK AREA NATIVE ASSOCIATION
MANILAQ ASSOCIATION
THE NORTH PACIFIC RIM
NORTH SLOPE BOROUGH HEALTH CORP.
NORTON SOUND HEALTH CORPORATION
SOUTHEAST ALASKA REGIONAL HEALTH CORP.
TANANA CHIEFS CONFERENCE
YUKON-KUSKOKWIM HEALTH CORPORATION

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: MORRIS BROWN
BOX 1232
KENAI 99669
283-3364

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

I SUPPORT PASSAGE OF THIS BILL BECAUSE ALASKA CAN NO LONGER AFFORD TO KEEP INMATES INCARSERATED FOR LONG TERMS WITHOUT PAROLE. PAROLE DOES WORK. IT IS ALOT LESS EXPENSIVE TO KEEP A PERSON ON PAROLE THAN IN JAIL AND HE STILL WILL BE SUPERVISED.

DATE: 04/01/86 TIME: 14:41:14 SENT BY: SOLDOTNA LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: DARYL SHAW
2104 CLEVELAND AVENUE
ANCHORAGE 99517
248-3704

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

I AM FOR HB 554. I BELIEVE PEOPLE SHOULD DESERVE A SECOND CHANCE. I DO AGREE THAT THEY NEED TO HIRE MORE PAROLE OFFICERS TO HELP REHABILITATE THE OFFENDERS.

DATE: 04/01/86 TIME: 09:32:18 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: GEORGIA EASTLUND, SUSITNA B.P.W.
PO BOX 4832
ANCHORAGE 99510
272-6970

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

AS A REPRESENTATIVE OF THE SUSITNA BUSINESS AND PROFESSIONAL WOMEN I WOULD LIKE YOU TO KNOW THAT OUR ORGANIZATION OPPOSES HB 554.

DATE: 04/01/86 TIME: 10:27 /2 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE JUDICIARY

Robert Thompson
P.O. Box 103155, H
Anchorage, Alaska 99501

Dear Legislator,

This letter is a product of very careful consideration. It is a plea for an alternative. Please do not misconstrue this plea as "just another convict crying about what the system has done to him." This letter, hopefully, will in some way help to bring about some type of viable alternatives to constant incarceration.

To begin with let me set out some ground rules, as I understand them. First, from the figures that I have been fiving, it cost between $35,000 and $45,000 a year to incarcerate an inmate. Second, there are "outpatient or halfway houses" for certain classes of crimes. Third, the protection of John Q. Public. Fourth, the need for a criminal justice system.

Before I address other issues let me give some of my personal back ground. I am a thirty-four year old, white male with nine years of military service as of March 16, 1985. I have a substantial amount of college credits toward degree's in Drug and Alcohol, Mental Health and Social Work Counseling. I am divorced and have a 13 year old son. I come from an old southern background and have been in Alaska Since October 1982. In October of 1984 I was accused of sexually abusing my fiancee's nine year old daughter. I was convicted in February of 1985, and sentenced to sixteen years incarceration.

I am a 4.0 average college student so I feel I am reasonably intelligent, but there are many aspects of the "Criminal Justice System" that I just cannot understand. I have been a reasonably law abiding citizen through my life. I have no juvenile record and only a misdemeanor as an adult. I do have some traffic tickets but no D.W.I.'s or suspended license.

I have been in Cook Inlet Pre-Trial for almost a year, and have seen many people come and go. I have seen people paroled or released and they have come back already. I have seen people with extensive adult and juvenile records, committing murder, assaults, robberies, drug sales and others yet they are given lighter sentences and are being told in some cases that because they are young that they are good candidates for rehabilitation. But those of us that have been productive citizens, not in trouble with the system and educated, that we are not good candidates because we should have know better. I must reject that idea. It did not take me long to realize that I never wanted to come back on this side. Which takes me back to my original points. Having been on the other side, management if you will, the staggering amount of money spent on each inmate yearly appalls me. Factored out if I spend 10 years incarcerated the state will have spent approximately $350,000 to $450,000 and that is at today's figures. It appears that there could be some type of less expensive alternatives. I contend that there are those of us, innocent or guilty that have learned our lessons and have expressed a desire for professional help. As it is now, with presumptive sentence, the programs the court has directed us to attend won't even be available to us until many years down the road. I am truthfully telling you that the inmates I've talked to, in my class of crime, say that if treatment were available now they would enthusiastically attend. But that 4, 8 ro 10 years from now all they want to do is get out. But in defense of the system, if sex offenders were promptly sent to a treatment program and

completed it, there wouldn't be any justification for further incarceration. Would there?

Drug and alcohol offenders have an outpatient and in-house program. It is my assertion that the vast amount of money that will be spent on us over the coming years could be spent in a more productive way. After being associated with Mental Health professionals for many years, I understand that their fees are approximately $100 an hour. At this rate an individual could receive over 10 years, 4,500 hours of one on one professional help. Broken down this would amount to 112½ days of 4 hour sessions per year. And if the individual subsidized part of this cost it would greatly increase the amount of treatment time. I feel if the State of Alaska was really interested in stemming the tide of Child Abuse, it would take a bold step to find an alternative to long term incarceration.

I am not so naive as to believe that everyone could exist in the type of alternative that I suggest, but I feel that if John Q. Public put aside their emotions, and honestly evaluated the repercussions of long term incarceration they would scream for alternatives.

Using myself as an example consider the fact that I will not reintergrate into society until I am 45 years old. Granted thats still young but how many employers are looking for a 45 year old ex-con with no skills of the job market of the year 1997. I'll agree that there are some educational opportunities available but what about the funds for shelter, food, clothes or transportation. Some of us will have the foresight to save as much as we can but not everyone will. This means that we will probably have to apply for some form of State aid. This thought does not make me feel very good about myself or my chances at a normal productive life. This will continue to place the burden of our support on the public.

Don't get me wrong. Crimes that are committed against our young should be punished. But if punishment is the main goal of the system then the society is not going to be any better off when inmates are released. I have talked to many people during my short incarceration and some are willing to pay their debt to society but with no alternatives they are becoming very cynical people. Very hardened towards any form of authority and very down trodden individuals. I will grant you that the system is not supposed to be pleasent and as has been said before "don't do the crime if you can't do the time," but there has to be some type of vision for the future. I sit here day in and day out, listening to people that are proud to be called a thief. This is what they have been in the past and say they will be in the future. When the space shuttle disintergrated there were actually people here that laughed and said that it served them right. One individual who committed a violent rape said that he had gotten drunk and committed this sane crime many times prior to being caught, and was proud of it. And from talking to him this could happen when he gets out. My background was such that human life and love of country were our mainstays. The simple thought that people will now doubt my word because I've been convicted of a felony is probably what bothers me most.

Last and certainly not least, I'll address the "Criminal Justice System," or as some of termed it the "Criminal Injustice Industry." Even though I am incarcerated I still believe that we need a protection system. But it seems strange to me that the conviction rate in Alaska is extremely high. Overall I've been told about 90%. In sex cases even higher. Enclosed you"ll find a letter from Assistant D.A. Betsy Sheely, stating that they have never lost a sex case in which a child had testified. The D.A.'s office consistantly states that "children don't lie about sexual abuse, that they don't have the knowledge and that they don't have any sexuality. They have doctors, counselors, police officers, and social workers who are consistantly used and reused to testify. And in most cases their testimonies are almost mirror images of their prior testimony.

I challenge the State of Alaska to seek information from noted experts in the field. People who have substantial credentials and have done long term research in the child abuse field. There are professionals on both sides of the fences. But I

have yet to find one in Anchorage that will testify contrary to the states allegations.

I will grant you that child abuse does occur, in large numbers. I personally talked to my attorney's secretary and asked her how many sex cases they had won during her tenure there (2 years), and she told me only one. Enclosed find a newspaper article from Public Defender Dana Fabe, in which she states they handled over 13,000 cases last year. I can't believe that an attorney has time to be in court, to counsel with client, to research and to prepare for trial on this number of cases. In my case I gave him names of approximately 13-15 potential witnesses. He interviewed 6, subponeaed 4 and called only 3. What kind of investigation was that?

I don't necessarilly fault my attorney but I do feel that because of his case load, he just couldn't alot anymore time to my case.

Other inmates have made the exact same statement about this attorney and other's from the P.D.'s office. I feel that many good attorneys are being made to look bad, because of the overload of cases. I know that the D.A.'s office has an overload also, but they have the assets of the State behind them. When was the last time the P.D.'s office hired a prominent attorney from the private sector to defend against a "Special Prosecutor" that the State has hired? Ultimately the defendent suffers. I truly believe that in this state "You Are Guilty Until Proven Innocent."

In closing I thank you for your time and ask that you consider what I have had to say. You may decide that none of this has any merit, but at least you have taken time from you schedule to review these writings and I again thank you.

Should you desire anything further from me, I enclose my address below.

Sincerely,

Robert Thompson

Michael W. Brewer
Bldg. 10 Chugach Ave.
Kenai, Alaska 99611

M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Miller,

In this letter I would like to address the issues of Presumtive Law; as it directly affects the people convicted under it.

This law as it affects the convicted offender, forces the court system to impose a greater mandatory presumtive sentence on the first offender. Or because of a prior felony does not allow the sentencing court to take into account the nature of the prior offense in second offender cases.

In essence the very nature of the presumtive law prohibits the sentencing judge from invoking any judicial discretion, which might reduce the impact of the sentence, when the sentence is clearly unjust. This actually negates any consideration of factors that might of been able to come into play.

Initially, the idea of presumtive sentencing was proposed for repeat offenders. Alot of people were of the opinion that repeat offenders were not being given adequate sentences. When the legislature took the idea of presumtive law and applied it to first time offenders, the results were clearly mistaken. People are being given long term sentences that simply aren't justified. (Under Chaney, the case which sets out criteria used by judges to set jail terms. The criteria includes the need to reaffirm societal norms, condemnation of anti-social behavior and evaluation of the likelihood of a defendants rehabilitation.)

The presumptive law does not allow a person access to the court system for sentence modification or reduction in any form. The law does not take into account any rehabilitation that may take place; in fact by it's very presence, rehabilitation is not only hampered but almost removed from reality. This is done through the removal of incentives for reform. It doesn't matter how good you are or how much you change, you still have no hope of parole or sentence reduction. They are strictly disallowed for those convicted under presumptive statutes.

With hope gone the inmate has little or no reason to change or to better himself. In fact, many inmates no longer care about rehabilitation because it just doesn't matter what they do.

In summary, I strongly support HOUSE BILL NO. 554 as written, and urge the swift passage of the BILL.

Sincerely,

Michael W. Brewer

Michael W. Brewer

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION/THIRD JUDICIAL DISTRICT

OFFICE OF THE DISTRICT ATTORNEY

RECEIVED 1/18/85

BILL SCHEIELD, GOVERNOR

REPLY TO

☑ 1031 WEST 4th AVENUE SUITE 520
ANCHORAGE, ALASKA 99501
PHONE (907) 277-8622

☐ DRAWER 1180
KENAI, ALASKA 99611
PHONE (907) 283-3131

☐ 326 CENTER AVE. 2ND FLOOR
KODIAK, ALASKA 99615
PHONE (907) 486-5744

☐ P.O. BOX 1070
PALMER, ALASKA 99645
PHONE (907) 745-5027

☐ P.O. BOX 671
VALDEZ, ALASKA 99686
PHONE (907) 835-2462

January 16, 1985

William David Weed, Esq.
716 W. 4th Ave. Suite 400
Anchorage, Alaska 99501

Re: State v. Richard Anderson

Dear Mr. Weed:

I have discussed with the District Attorney Victor Krumm my desire to dispose of this case without a trial to avoid further damage to Jacob and Elizabeth from testifying. He has authorized me to offer the following plea bargain to your client Richard Anderson:

1. By filing an information, we will consolidate counts I, II and III into one count of Sexual Abuse of a Minor in the First Degree. The count would charge Mr. Anderson with engaging in sexual penetration with E.E. by fellatio, digital penetration into her genital opening, and digital penetration into her anal opening.

2. By information we would consolidate counts IV, V and VI into one count of Sexual Abuse of a Minor in the First Degree charging him with engaging in sexual penetration with J.E. by fellatio, anal intercourse and digital penetration of his anal opening.

3. Counts VII and VIII would be dismissed.

4. We would not attempt to seek aggravation of the presumptive sentences. There are several aggravating factors which we could prove. The victims are particularly vulnerable due to their age and entrustment to the care of the Andersons as babysitters. AS 12.55.155(c)(5). The conduct involved physical injury (anal tears). AS 12.55.155(c)(1). Anderson has a prior criminal history of similar offenses based on the incestuous abuse with his stepdaughters. AS 12.55.155(c)(21). The offenses are among the most serious conduct. AS 12.55.155(c)(10). I have appellate cases and superior court decisions from this district to support the findings of all these aggravating factors.

5. Anderson can enter a no contest plea to the two count information charging the offenses as outlined in paragraphs one and two above. The District Attorney must be notified of his acceptance of this plea bargain by 4:30 p.m. on January 17, 1985.

He must enter his plea on January 18, 1985, unless the court cannot schedule it by then. Otherwise, it must be entered by January 21, 1985.

I believe your client should know the severity of the charges he is facing and the likelihood of conviction. This office has never lost a child sexual abuse case with children this young when they have gotten on the stand and confirmed that the abuse occurred. Several grand jurors told me after the indictment that these two children were the most persuasive and best child witnesses they had seen in their three months of grand jury service. Some of them were visibly emotionally affected by the testimony.

If your client is convicted at trial, because of the mandatory consecutive sentencing provisions of AS 12.55.025(g)(5), he would be facing a minimum presumptive sentence of 48 years on the six unclassified counts plus whatever amount of years we can get for aggravation and the class B felonies. The proposed plea bargain would limit his liability to sixteen years.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

VICTOR C. KRUMM
DISTRICT ATTORNEY

By: Elizabeth H. Sheley
Elizabeth H. Sheley
Assistant District Attorney

EHS:sa

Read by Dick 1/18/85
and rejected
DW

FROM: JOSEPH P. PALMIER

DATE: July 25, 1984

RE: ANDERSON Child Molestation Matter

At approximately 11:30 a.m. on July 25, 1984, I received a telephone call from Helene M. Antel, Assistant District Attorney. She indicated that she heard I was representing the Andersons, which I acknowledged. She said that she made it a practice to call defense attorneys in all of these cases where she was contemplating an indictment. She said that she had testimony from two children apparently that there was anal penetration and that she was thinking of charging both Mr. and Mrs. Anderson (apparently Mrs. Anderson on the theory of an accomplice). She said that if the Andersons would waive Grand Jury and plead to one count each of a Class A crime (felony), she would charge it in such a way that the presumptive sentencing did not apply, i.e., charge the crime as occurring before the new law went into effect in 1983. Otherwise, she would charge each of them with two counts of presumptive, two counts unpresumptive, which of course, would increase any sentence they would get if they were, in fact, found guilty.

I told Helene that I had a five day trial starting and would not be able to get back to her probably within the next five or six days. She said she could not promise that she wouldn't go to Grand Jury, on the one hand, however, she said there was a lot of pressure from the families of the victims to get something done. She said that she had viewed the videtapes

and that psychologists will testify that children at this age have no psychological ability to lie.

I asked Helene to put this in writing; however, she declined to do so.

The question is now to determine how much evidence they have and whether or not they're bluffing. Since our clients deny any involvement whatsoever, I have instructed Eddi to immediately get them in so that we can determine what, if any, action they wish to take.

RA/SMEMOS

NOTE.
DICK AND BETTY ANDERSON BOTH MAINTAIN THEIR INNOCENS
DICK WAS SENTENCED TO FIFTY TWO YEARS - PRESUMPTIVE
BETTY WAS SENTENCED TO SIXTEEN YEARS PRESUMPTIVE.
THEY ARE BOTH APPEALING THE CONVICTION.

F.H. 8-1-85

Jewel Lake
Church of the Nazarene
4025 West 88, Anchorage, Alaska 99502
(907) 243-2344
LYLE K. COBLENTZ Pastor
(907) 243-7609
MATTHEW L. WEAVER Associate
(907) 248-4192
SID STONE Minister of Visitation
(907) 243-2586

March 17, 1986

Rep. M. Mike Miller
Pouch V "MS 3100"
Juneau, AK 99811

Dear Rep. M. Miller:

I want you to know that I strongly support House Bill 554.

The law as it is stated today falls short of accomplishing the intent of the original authors. H.B. 554 comes closer to dealing with the issues of presumptive sentencing.

There are many instances when the facts of a case require judges to modify sentences. I would be happy to cite them upon request.

I urge you to vote for H.B. 554.

Thank you for your time.

In His Service,

Lyle K. Coblentz

LKC:ms

LAW OFFICE
TORRISI & SNYDER

FREDERICK TORRISI
DAVID B. SNYDER

P.O. BOX 210
(OLD BANK BUILDING)
DILLINGHAM, ALASKA 99576
(907) 842-5608

February 21, 1986

Representative Mike Miller
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 554

Dear Representative Miller:

I am a lawyer who has practiced in Alaska since 1974. I have reviewed HB 554 and believe it should be enacted into law.

The points advanced by Representative Clocksin are well taken. Alaska has excellent judges and in some instances present law unnecessarily restricts their discretion. Uniformity may be a proper goal, but people and crimes are unique, and the system should allow more flexibility. I think enactment of HB 554 would be a significant improvement of our criminal justice system.

Please let me know if you have any questions on this.

Sincerely,

TORRISI & SNYDER

Fred Torrisi
Attorney

FT:ilk

cc: Rep. Adelheid Herrmann
Sen. Fred Zharoff
Rep. Don Clocksin
Rep. Mike Davis

2-25-86

DEAR SIR,

I am writing you in response to house bill #554 concerning presutive sentencing in the state of alaska. I am eighteen years old and was a senior in high school. Until now I have never been in trouble with the law. I have been arrested for one count of armed robbery,which I did no' committ. I am what is known as an accessory to the fact.(I knew about it and said nothing). Anyway there is no excuse for such a crime! I am now looking at five years in an adult prison,(Presumtive sentenceing). I do not feel like I deserve five years in jail. I never dreamed I would be in jail with all those murders and rapers one might hear about on telivision. Now I eat breakfast,lunch,and dinner with them every day. A place like this could easyly psyic a young person such as myself into a life of crime.

The reason I am writing you is I would love to have the chance to speak at a pulic hearing I heard would be held in Anchorage. The prisons in thi state are presently over crowded with people like myself who find themselve in jail over night and don't really deserve such conditions...

If ther is anything you can do to assist me it would be greatly appreciated.

signed frightened and confussed,
JAMES O'DELL NUNLEY

LAW OFFICE
TORRISI & SNYDER

FREDERICK TORRISI
DAVID B. SNYDER

P.O. Box 210
(OLD BANK BUILDING)
DILLINGHAM, ALASKA 99576
(907) 842-5608

February 21, 1986

Representative Mike Miller
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 554

Dear Representative Miller:

I am a lawyer who has practiced in Alaska since 1974. I have reviewed HB 554 and believe it should be enacted into law.

The points advanced by Representative Clocksin are well taken. Alaska has excellent judges and in some instances present law unnecessarily restricts their discretion. Uniformity may be a proper goal, but people and crimes are unique, and the system should allow more flexibility. I think enactment of HB 554 would be a significant improvement of our criminal justice system.

Please let me know if you have any questions on this.

Sincerely,

TORRISI & SNYDER

Fred Torrisi
Attorney

FT:ilk

cc: Rep. Adelheid Herrmann
Sen. Fred Zharoff
Rep. Don Clocksin
Rep. Mike Davis

FEBRUARY 17, 1986

DONALD E. CLOCKSIN
POUCH V,
JUNEAU, ALASKA
99811

RE: HOUSE BILL NO. 554

DEAR SIR:

THE ABOVED MENTIONED HOUSE BILL ADDRESSES MANY PROBLEMS IN THE SENTENCING PROCEDURE AND I BELIEVE WOULD PUT A LITTLE "JUSTICE" BACK IN THE SYSTEM. WHILE THIS BILL HAS MY FULL SUPPORT, I AM DEEPLY CONCERNED THAT UNCLASSIFIED FELONIES ARE NOT INCLUDED. IS THIS BECAUSE ALL SUPPORT WOULD BE WITHDRAWN IF UNCLASSIFIED FALONY SENTENCES WERE PROPOSED FOR ADJUSTMENT?

CERTAINLY OUR ELECTED OFFICIALS ARE AWARE OF THE INJUSTICES THAT OCCUR AT ALL LEVELS OF THE CRIMINAL JUSTICE SYSTEM, FROM CHARGING TO SENTENCING, BUT SEEM TO BE UNABLE OR UNWILLING TO TRY AND BRING IT BACK TO A FAIR AND JUST PROCESS AS IT WAS MEANT TO BE. PUNISHING "CRIMINALS" GUILTY OR NOT, IS A POPULAR ISSUE AND A POLITICAL VOTE GETTER. TOO MANY CONVICTIONS ARE BASED ON POLITICAL ADVANCEMENT OF THE PROSECUTING ATTORNEY AND NOT TRUTH, FACTS, HONESTY, OR JUSTICE. THIS IS ALL MADE SO EASY BY THE DEFENDANTS WHO HAVE NO KNOWLEDGE OF CRIMINAL LAW AND DISCOVER TOO LATE THAT THE DEFENSE ATTORNEY THEY HIRED AND TRUSTED WAS AS IGNORANT AND UNQUALIFIED AS THEY THEMSELVES. BY THE TIME ALL THIS COMES TO LIGHT, THE DEFENDANT HAS BEEN CONVICTED AND SENTENCED TO A LARGE NUMBER OF YEARS IN PRISON LEAVING ONLY THE APPELLATE PROCESS AS RELIEF. HOWEVER, THE FACTS NOT BROUGHT OUT IN THE TRIAL THAT ARE NECESSARY TO SHOW INNOCENCE CANNOT BE INCLUDED IN THE APPELLATE PROCESS. THE QUESTION ALSO ARISES AS TO WHETHER OR NOT THE DEFENDANT EVEN AFFORD TO FINANCIALLY PURSUE THE APPEALS AT ALL. THE PUBLICE DEFENDERS OFFICE IS

TOO BUSY TO DEVOTE THE NECESSARY TIME AND AT THIS POINT THE DEFENDANT HAS ALREADY SPENT EVERYTHING AVAILABLE ON A SUB-STANDARD DEFENSE ATTORNEY. THE BOTTOM LINE IS THAT POST-CONVICTION RELIEF IS NEXT TO IMPOSSIBLE, SO THE INJUSTICES MUST BE STOPPED AT THE FIRST STEPS OF THE PROCESS BEFORE THEY CAN BE COMPOUNDED.

IF I SOUND A LITTLE RADICAL, I APOLOGIZE. MY FAMILY HAS A PERSONAL INVOLVEMENT WHERE THE CRIMINAL JUSTICE IS CONCERNED SINCE OUR SON WAS CONVICTED OF FIRST DEGREE MURDER AND SENTENCED TO 20 YEARS. THIS HAPPENED 4 YEARS AGO WHEN HE WAS 19 YEARS OLD. SINCE THAT TIME, WE HAVE BEGGED AND PLEADED FOR SONEONE TO HEAR THE FACTS OF HIS CASE, BUT NO ONE SEEMS TO CARE - NOT UNTIL IT HAPPENS TO SOMEONE THEY CARE FOR. WE HAVE ALSO SPENT THESE LAST YEARS LEARNING EVERYTHING WE CAN ABOUT CRIMINAL LAW. HAD WE KNOWN THEN WHAT WE KNOW NOW, OUR SON WOULD NOT BE IMPRISONED FOR A CRIME HE DID NOT COMMIT-AND HE CERTAINLY WOULD HAVE HAD AN ATTORNEY WHO KNEW THE LAW. THERE IS DEFINITELY A DIFFERENCE BETWEEN FIRST DEGREE MURDER AND SELF-DEFENSE!

IN YOUR BILL (SEC.7, A.S. 12.55.155(D)) I FIND MY SON MEETS 7 OUT OF 8 OF YOUR CRITERIA FOR SENTENCE ADJUSTMENT, BUT THIS DOES NOT APPLY TO UNCLASSIFIED FELONIES, SO THERE IS NO HELP FOR HIM OR OTHERS LIKE HIM IN YOUR LEGISLATION. KNOWING THAT THE WHEELS OF JUSTICE TURN VERY SLOWLY, IS OF NO REAL CONSOLATOIN TO THOSE OF US IN THIS TYPE OF SITUATION. HOWEVER, BELIEVING THAT YOUR SPONSERED LEGISLATION IS AT LEAST A START AND MAYBE SOMEONE DOES CARE AFTER ALL, MY FAMILY AND I WILL DO WHATEVER POSSIBLE TO SUPPORT THE PASSAGE OF SUCH. AT THE SAME TIME WE WILL CONTINUE OUR PRAYERS THAT THOSE WRONGLY CHARGED, CONVICTED AND INCARCERATED WILL ONE DAY BE CONSIDERED AS SALVAGEABLE HUMAN BEINGS RATHER THAN STATISTICS TO BE COUNTED IN DOLLARS AND CENTS.

SINCERELY,
Patricia A. Muzzana
PATRICIA A. MUZZANA

(CONT.)

CC
ALBERT P. ADAMS
JIM DUNCAN
PETER GOLL
ADELHEID HERRMANN
NILO E. KOPONEN
M. MIKE MILLER
JOHN SUND
ROBIN L. TAYLOR
KAY WALLIS

Commercial
& Investment
Real Estate

MARY LOU WIRUM
500 L Street Suite 501
Anchorage Alaska 99501
907/276-3628

March 18, 1986

Representative M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99801

Dear Representative Miller:

I am taking the liberty of enclosing a copy of a letter my husband and I sent to Representative Don Clocksin a week ago.

I will appreciate your taking the time to read this letter. You may or may not agree with our very strong feelings against presumptive sentencing. Unfortunately, our feelings are very personal and come from first-hand involvement.

We hope that you will take the time to consider presumptive sentencing from a standpoint of service of justice and for individuals who are first offenders. These individuals should have the opportunity to become useful citizens after an appropriate sentence that provides for rehabilitation and gives them the desire to carry on, rather than eliminate all hope for the future.

We hope you will support every effort to do away with presumptive sentencing in Alaska.

Sincerely,

Mary Lou Wirum

Mary Lou Wirum

Enclosure

CCIM Certified Commercial Investment Member

1240 "S" Street
Anchorage, Alaska 99501
March 11, 1986

Representative Don Clocksin
Alaska State Lesiglature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Clocksin:

There are many purposes behind our writing this letter to you. First we want to let you know that we strongly support your efforts to modify the presumptive sentencing approach for first offenders and young offenders.

I am sure that if more people were aware of the actual manner in which presumptive sentencing is handled - such that a legislator from years past who has never met the individual passes sentence, rather than the judge who gets to know the individual - that more people would be troubled by this type of arms-length sentencing. Therefore, we would like you to know that we do support your efforts with regard to changing the law, and will be of whatever assistance you feel we can be.

Because of matters involving our son, many of our friends have come to understand the realities of presumptive sentencing and agree with your position that more individualized justice is appropriate. We are sure that they will write to you so that you are aware of the support you do have. They are also interested in writing to their legislators or any lawmakers you feel should be made aware of the strong public opposition to presumptive sentencing.

Our first-hand involvement in this sentencing procedure came as a result of the sentencing of our son, Jay. Due to almost a decade of substantial drug usage, the early years of which had not been recognized by either ourselves or the counseling professionals whom we turned to for help, we had contacted our family lawyer regarding trying to commit him for some type of drug treatment. Although he had been exposed to some drug treatment programs during the year just prior to his arrest, their basic position was that we should "let him hit bottom" prior to more active intervention. The "bottom" that he hit was a series of extremely serious felon charges that involved presumptive time.

As we sat through the sentencing hearing and listened to the district attorney play number games with our son's life, and then heard the sentence, we could hardly believe what was happening. We were shocked at the sentence, but we were also aware that to a large extent the judge had very little discretion with what to do with our son's life. Furthermore, our son's lawyer has explained that when the presumptive terms such as seven years for a young person who drives someone to an armed robbery, or eight years for a person who engages in consentual sex with an underaged person are typically given by the judge, that when the judge is confronted with more serious conduct, the sentence time goes up substantially without any view toward individual fairness.

We have always been supportive of bringing people who engage in crime to justice, but our concept of justice had been that the judge would carefully examine all the facts and circumstances, and if the person were redeemable, that a lesser or more rehabilitative sentence would be imposed. Similarly, if the judge found the person to be a professional criminal or someone who is not even trying to comply with our rules or regulations, the judge would have the power to impose a lengthy sentence to protect us all. Our observations are that determining these sentences by virtue of things that legislators, who may not even be in office now, determined four or five years ago, is not meeting our concerns of justice.

We agree that our son needs some help and needs to demonstrate that he can live drug free and comply with society's rules before he is entitled to complete freedom without any supervision at all. As a result of the presumptive sentences and the lengths of sentences, as well as the high number of Alaskans who are incarcerated, our son has simply been sitting at Cook Inlet Pretrial Facility for one year. There are relatively few programs or opportunities for him there. He has been classified to be sent Outside to the Federal Bureau of Prisons, and it is unclear to us when, if at all, he will be transferred.

We feel that a sentencing structure that permitted more focus on the individual would have included the consideration of things such as halfway houses, drug treatment programs, parole, and a local placement so that we can try to assist him in squaring away his life. Quite simply, Mr. Clocksin, our son has no friends or support people other than his family. We do not even know what state he will be living in during this period of his sentence, and that makes it very difficult for us to try to help him help himself.

As mentioned above, we would be very willing to discuss anything with you or with any other legislators. We believe that many of the lawmakers are not specifically familiar with the way presumptive sentencing works.

We also believe that the way the media portrays any attempt to change always ends up with some type of sensationalist headlines which will deter any effort to change.

We are afraid that many young people such as our son, after virtually decades of incarceration, will not have the motivation or the opportunity to go on and live productive lives. We are confident that if individual judges passed the sentences, that many of these lives could be redeemed at no cost or danger to the public. Quite frankly, as our son's lawyer has explained to us, all of these young eighteen, nineteen and twenty-year-olds who are incarcerated almost a decade will, in fact, get out -- but what kind of citizens will they be then?

We hope that our son will stay strong through his period of incarceration and come out and be the productive, rehabilitated citizen he wishes to be. However, we are afraid he may lose hope and not survive. We are afraid that many young men would not be able to spend a decade or more in prison and return to our community as productive citizens.

Thank you again for your interest in bringing individualized justice to our citizens. Please let us know what we can do to help you in your efforts to bring justice back into the court rooms.

Sincerely,

Harold and Mary Lou Wirum

Legislative
Information and
Teleconference Networks

ALASKA STATE
LEGISLATURE

LEGISLATIVE
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ANCHORAGE
1024 West Sixth Avenue
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BARROW
P.O. Box 830, Barrow 99723
852-7111

BETHEL
P.O. Box 886, Bethel 99559
543-3541

DELTA JUNCTION
P.O. Box 1189
Delta Junction 99737
895-4236

DILLINGHAM
P.O. Box 215, Dillingham 99576
842-5319

FAIRBANKS
315 Barnette Street, Suite 101
Fairbanks 99701
452-4448

GLENNALLEN
P.O. Box 68, Glennallen 99588
822-5588

JUNEAU
Pouch Y, Juneau 99811-3101
465-4648

KENAI PENINSULA
312 Tyee Street, Suite 3, Soldotna 99669
262-9364

KETCHIKAN
111 Stedman, Room 100
Ketchikan 99901
225-9675

KODIAK
720 Mill Bay Road, Room 231, Kodiak 99615
486-8116

KOTZEBUE
P.O. Box 667, Kotzebue 99752
442-3880

MATANUSKA-SUSITNA
P.O. Box 871470
Wasilla 99687-1470
376-3704

NOME
P.O. Box 1630, Nome 99762
443-5555

PETERSBURG
P.O. Box 1470, Petersburg 99833
772-3741

SITKA
210 Lake Street, Sitka 99835
747-6276

VALDEZ
P.O. Box 1969, Valdez 99686
835-2111

February 24, 1986

M. Mike Miller, Chairman
House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Representative Miller:

Please find attached written testimony from Constance Griffith and Scott Ballard regarding House Bill 554, relating to sentencing. I have also attached a copy of our sign in list for the teleconference in which testimony was received on House Bill 554. No one on the list was able to testify because of the limited time schedule. They would all like to be contacted if the committee decided to teleconference again on House Bill 554.

Thank you.

Sincerely,

Bonnie Potter, Information Officer
Ketchikan Legislative Information Office

Attachments



Legislative Teleconference Network

Email → LTCJ

SIGN-IN SHEET

DATE: 2-21-91

SITE/LOCATION: Ketchikan

SPONSOR/SUBJECT: (H) Judiciary House Bill 554

BROADCAST CONSENT: This teleconference may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by initialing the appropriate box.

NAME/REPRESENTING	ADDRESS	PHONE	HERE TO PARTICIPATE	BROADCAST CONSENT	HERE TO OBSERVE	
Patricia Francis - Self	815 Brown Deer Ketchikan	225-5827	X			
Floyd Richmond	P.O Box 6552 Ketchikan	225 9474	X			
Gig Pilcher	2749 Third Ave	225-6734			X	
Constance E. Griffith	2509 Fourth Ave	225-5069	X			
A. D. Griffith	2509 4th	"			X	
Debbie McElroy	P.O. Box 9518 KTKN	225 1465	X			
Scott Ballard	832 Buren Ketchikan	225 1625	X			

To: Rep. Dan Clarkson
Fr: Constance Griffith
Re: HB #554 & today's hearing
Da: Ketchikan LIO
21 Feb. 86 - 3 p.m.

I support your efforts, Rep. Clarkson, and thank you for addressing this thorny issue. Thank you for the packet of information you sent me, too.

Reacting to today's hearing:

I concur fully with the testimony from Robert Wagstaff & from Dana Fabe. Both made points based squarely on facts known to them & thoroly researched.

I concur with Ms. Carpenter's (Bethel) observations about rehabilitation; that money spent for prevention is money well spent; that non-violent offenders should not be taking up expensive jail beds.

The inmates at Goose Bay made cogent points.

Most important, Dr. Marden (?), the Clinical Psychologist in Juneau, raised critical substantive issues: 1. Warehousing merely expensively postpones (and exacerbates, I might add) the problem of dealing with offenders. 2. There are programs that are achieving positive results around the

↓ Pls. turn up

↓

country - he named some. [I sent you a description of Colorado's promising program, brought about by the failure of mere incarceration to solve problems.]

3. Dr. Marden pointed out that clearly identified types of offenders are treatable.

My own points I drew:

1. Money spent warehousing human offenders is not cost-effective. Offending fathers, relatives - even strangers - are a human resource. A released prisoner once told me: "You come out sort of retarded." If nothing has changed the inmate's perspective and psychological make-up, how has the expensive incarceration protected the public? How are "society's norms" upheld? Millions to create monsters are dollars mis-spent.

2. Young first offenders with long sentences for quite usual infractions are angry and embittered. I have this at first hand from a state jail inmate. Will they avail themselves of training opportunities? What will they be like when they come out as middle-aged men? They need to see a light at the tunnel's end.

to p. 3, pls. →

3. Shorter sentences are important in reducing the deleterious effect on the person incarcerated and on that person's family. Shorter sentences release mega-dollars for:
- training jail personnel;
- developing effective programs for habilitating or re-habilitating offenders (as the case may be);
- implementing effective programs to habilitate/re-habilitate offenders;

Ketchikan's COHK,* Inc. study, submitted to the Legislature six years ago (and carefully panned by the DOC) brought nationally known corrections experts to Ketchikan. They pointed out that idleness only has harmful effects on persons on whom it is enforced. A good program reduces the deleterious effect of idleness on inmates.

In short, the legislature should look at quality time, and at incentives to encourage prison inmates to use

*Committee on Jail Alternatives for Ketchikan

(flip)

their time in prison wisely and productively. Prisons could be more like good schools. The increased effectiveness of incarceration could make it possible to safely reduce the length of sentences for first offenders, especially felons.

The elements of A.S. 11.41.434 should be examined. This unclassified felony scoops into its net one-time inadvertent offenders as well as repeating, violent offenders. Was this the legislature's intent? Looking at this law could reduce the population in Alaska's prisons, because its wording has been judicially approved, and yet it has resulted in the incarceration at lengthy mandatory sentences of some totally innocent individuals.

A more efficient sentencing system can make it feasible to prioritize fiscal demands. Give the judges an opportunity to "fit the punishment to the crime." Give the prisons the opportunity to improve the persons they serve.

Constance A. Griffith

I support changes in presumtive sentencing laws. All residents, but especially native Alaskans could benefitft from this legislation. Alaska natives are at a [redacted] disadvantage in dealing equally with the legal process and the brutal conditions experienced in prison

Scott Ballard
Box 6714
Ketchikan AK
99501

LAW OFFICE
TORRISI & SNYDER

FREDERICK TORRISI
DAVID B. SNYDER

P.O. BOX 210
(OLD BANK BUILDING)
DILLINGHAM, ALASKA 99576
(907) 842-5608

February 24, 1986

Representative Mike Miller
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 554

Dear Representative Miller:

I am writing to you in support of HB 554. It is clear that presumptive sentencing has resulted in severely overcrowded prisons and a greater strain on the state budget. Equally important, is the loss of human potential by the needlessly severe sentences for a number of different offenses. Particularly in the area of sexual assault or sexual abuse of a minor, presumptive sentencing has incarcerated too many people for an inordinate length of time. There have been several sentencings held here in Dillingham where a number of the community leaders spoke in favor of a more lenient sentence than a seven year presumptive term for sexual abuse of a minor and where the judge stated that he had no other choice but to impose seven years. I remember in particular the testimony offered in behalf of one man from the village of Portage Creek who supported a very large family including his father and mother who were well into or past their 80's. In that case, Superior Court Judge Hansen (who is not known as a lenient judge in any sense of the word) stated on record that he would not have given the defendant a sentence of more than two or three years, but for the presumptive sentencing law. As I said, at that hearing well respected community members including the Chairman of the Board of the Bristol Bay Native Corporation, had urged a much lighter sentence in view of the defendant's lack of any prior conviction and his prospects for no antisocial activity.

There have been other similar sentences handed down within the Dillingham area and many persons in the community cannot believe that a person is required to spend seven years in jail with no discretion by a judge to impose a lesser term of imprisonment. I think the current sentencing scheme has fostered a disrespect for the law and it is time that the law be amended.

I would be happy to give you or the relevant committees further information of other instances of failed justice in support of this bill.

Thank you for your concern in addressing the problem.

Sincerely,

TORRISI & SNYDER

David B. Snyder
Attorney

DBS:ilk

H B 554 - pro

February 12th 1986

Honorable Bill ~~Sheffield~~ and Rep M. Mike Miller
Governor
State of Alaska
3601 C Street
Anchorage, Alaska 99503

Mr. Sheffield

I take this opportunity to write to you to offer congratulations to Representative Don Clocksin. It appears that he and his co-sponsors of H.B. 554, are intelligent enough to notice and correct, or at least try to correct, the current injustices in the court system in this state.

The approval of H.B. 554, would put Individuality back in the court system. This bill makes a good beginning to correct the problem that was created by past legislatures.

It clearly states in Alaskas Constitution that "Penal Administration shall be based on the potential for rehabilitation and protecting the Public." The present statute on presumptive sentencing does not allow for consideration of the defendants potential for rehabilitation. You may as well have a chart on the wall in the court rooms, if you fill this square on the chart this is your sentence. That is basically the way it is now. There is no allowance for someone that sought help, because he realized his mistake. Part of a persons sentence is to be a deterrant. Are you trying to deterr offenders from seeking help and turning themselves in? Is this protecting the public?

Don Clocksins bill does not completely do away with presumptive sentencing for first time offenders. It merely allows mitigators that should have been there in the first place. It will encourage people to seek help because they will be allowed consideration of this in a Court of Law.

In closing please review the attached copy of an article in the Feb. 11th Anchorage Times. Don't you think the people of this state should be told the truth? Isn't it about time you started doing your job? You and the legislature want to protect the public, don't scare off the people that want to ask for help. Encourage them to do so. Treat people as individuals. This country was founded by individuals. You are not protecting the public when you discriminate against them.

Maybe all the tourists that this state depends on every year should be told about the categorizing of human being and the warehousing of them in correctional facilities. You say you are protecting the public, you are rehabilitating people. Bull: Wake up. You and your colleagues are breeding recidivism. Correct the situation now!

Respectfully:

Al Sharp

Al Sharp
P.I.A.C.
257 E. Potter Dr.
Anchorage, Alaska 99518

CC: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
All State Legislators
All State Senators
Anchorage Times
Anchorage Daily News
20-20 News Magazine
U.S. Supreme Court

Mrs. Genevieve Blavka
Star Route 3, Box 1239
Old Glenn Highway
Chugiak, Alaska 99567

February 24, 1986

Alaska State Legislature
Pouch V Capital Building
Juneau, Alaska 99811

Attention: Senator's and Representatives of the State of Alaska

Ladies and Gentlemen:

Thank you for your efforts to make wise decisions on behalf of first time offenders who are serving presumptive sentences. You are likely to know that often the longer a prisoner spends in confinement, the more attached they are subject to become to the lifestyle - unincumbered by the economics of life perhaps in the end to become products of our welfare program. Institutionalization is an insidious condition which may persist once a prisoner is released after many non-productive years.

Our entire system of fairness in this country is structured around granting some leniency to first time offenders. This method is in itself rehabilitative.

One of the more serious consequences of a criminal conviction is that it remains a permanent blemish, and a person is forever punished for his/her indiscretion. The best situation for both society and the offender is to insure that criminal behavior is not habitual. What can help is that our system return felons to the streets with some infastructure in place; i.e. friends, family, and the ability to re-enter the work force.

The sentencing practices of this state are, in my opinion, reprehensible. You have created a system where dispostion of a convicted felon could as well be accomplished using a computer. The statute clearly decides the sentence a person is to receive. Perhaps for the habitual offender this is acceptable because society is weary of the effects these people impose upon their innocent prey. And we really seem to be at wits end trying to combat the "total" problem of criminal behavior in this country. Unfortunately our coffers are not so inexhaustable that we can afford to support prisoners whom it would be more economical to manage using methods other than containment, where our money must care for them as if they were cottled children. Many first time offenders do not pose a sustained threat to our communities and people. We are able to sort out these people considering all factors at sentencing.

Please consider allowing non-violent first time offenders to go free if they have served three years prior time. They have lost the most— careers they worked years to achieve - loss of families, paid out huge sums of money for trial expenses etc..

Sincerely,

Genevieve Blavka

Mrs. Genevieve Blavka

Michael W. Brewer
Bldg. 10 Chugach Ave.
Kenai, Alaska 99611

M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Miller,

In this letter I would like to address the issues of Presumtive Law; as it directly affects the people convicted under it.

This law as it affects the convicted offender, forces the court system to impose a greater mandatory presumtive sentence on the first offender. Or because of a prior felony does not allow the sentencing court to take into account the nature of the prior offense in second offender cases.

In essence the very nature of the presumtive law prohibits the sentencing judge from invoking any judicial discretion, which might reduce the impact of the sentence, when the sentence is clearly unjust. This actually negates any consideration of factors that might of been able to come into play.

Initially, the idea of presumtive sentencing was proposed for repeat offenders. Alot of people were of the opinion that repeat offenders were not being given adequate sentences. When the legislature took the idea of presumtive law and applied it to first time offenders, the results were clearly mistaken. People are being given long term sentences that simply aren't justified. (Under Chaney, the case which sets out criteria used by judges to set jail terms. The criteria includes the need to reaffirm societal norms, condemnation of anti-social behavior and evaluation of the likelihood of a defendants rehabilitation.)

The presumptive law does not allow a person access to the court system for sentence modification or reduction in any form. The law does not take into account any rehabilitation that may take place; in fact by it's very presence, rehabilitation is not only hampered but almost removed from reality. This is done through the removal of incentives for reform. It doesn't matter how good you are or how much you change, you still have no hope of parole or sentence reduction. They are strictly disallowed for those convicted under presumptive statutes.

With hope gone the inmate has little or no reason to change or to better himself. In fact, many inmates no longer care about rehabilitation because it just doesn't matter what they do.

In summary, I strongly support HOUSE BILL NO. 554 as written, and urge the swift passage of the BILL.

Sincerely,

Michael W. Brewer

Michael W. Brewer

PO Box 1232
Kenai, AK 99611
March 12, 1986

Dear Representative Miller,

I am in favor of HB 554 and the repeal of presumptive sentencing for first time offenders. "Equal time" for "equal crime" is a fallacy because the circumstances in every crime vary. The right of the judge to consider every case individually needs to be returned to them.

A person could spend 10,20, or 30 years of their adult life as a responsible member of society and then during a stressful period of their life commit a crime. This one time mistake will cost them 5 - 10 years of their life even if they show immediate remorse. The judge and parole board need the power to differentiate between individual cases.

The Alaska prison system has many self-help and rehabilitation programs. The people that avail themselves of these programs should be released earlier. Let the parole board decide when a man is ready for release.

Most first time felons do not repeat and therefore need not be treated as career criminals.

Long presumptive sentences are counter productive to rehabilitation. People become institutionized because they adapt their behavior to adjust to living in an institution. They then lose their desire to alter their lives to live with others in society.

Roger Endell has called for $140 million to keep people in prison. Alaskans can not afford to spend their tax money unnecssarily. The law needs to be changed so that those that are rehabilitated and ready for society can be released. Let them become taxpaying citizens supporting themselves and their families instead of a government expense.

Yours truly,

Barbara Brown

Barbara Brown

Michael G. Norbert
Bldg. 10, Chugach Ave.
Kenai, Alaska 99611

March 17, 1986

M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Miller,

This is a formal letter of complaint addressing the presumptive sentencing law that is currently in effect in the Alaskan Judicial System. Presumptive sentencing was proposed initially for repeat offenders because it was felt by the general public that repeat offenders were not being given adequate sentences. The legislature however, has taken the original idea of presumptive sentencing for repeat offenders and applied it for the first time offender as well.

By doing so, the presumptive sentencing law forces the court system to impose greater mandatory presumptive sentences on the first time offender, and/or because of any prior felonies, does not allow the sentencing court to take into account the nature of the prior felony conviction in second time offender cases. In essence, the very nature of the law prohibits the sentencing judge from invoking any judicial discretion that may reduce the impact of the sentence when the sentence is clearly unjust, therefore negating any factors of consideration that may have been used in the defense of the first time or repeat offender(s).

Under the current presumptive law, a convicted person cannot apply for parole until their presumptive term has been fulfilled; nor can a convicted person, under the law, apply for a sentence remodification hearing or any other form of sentence reduction regardless of any rehabilitation that person may have accomplished while incarcerated.

Therefore, a person convicted of a felony and serving a presumptive sentence, has no reason to even attempt rehabilitation, because the issue of rehabilitation no longer has an effect on the person. No matter how hard a person tries or what a person does, if he/she is serving a presumptive sentence there are no benefits, such as parole and sentence remodifications, just straight time, thereby remitting any reasons to work toward rehabilitation. There are no incentives to reform under the current presumptive law.

The law also slows down the ammount of prisoners released from custody in Alaskan jails by giving stiffer, longer sentences. A large part of the prison population in Alaska is currently serving presumptive time thereby enhancing over-crowded inmate populations in the Alaskan Correctional Centers. A large demand for more prisons has already arisen, and the need for more will continue to arise as more and more first time and repeat offenders are given presumptive sentences.

Sincerely,

Michael G. Norbert

Michael G. Norbert

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: ANTHONY ROGERS
8201 EAST 4TH AVE
ANCHORAGE 99504
337-7390

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

PLEASE WORK ON THIS BILL AND GET IT PASSED BEFORE THE END OF THIS 15TH SESSION. I FEEL IT IS A VIABLE AND IMPORTANT PIECE OF LEGISLATION. THANK YOU.

DATE: 03/27/86 TIME: 09:31:03 SENT BY: SOLDOTNA LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: MICHAEL BREWER
BUILDING 10 CHUGACH AVE.
KENAI 99611
N/A

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

I THROUGHLY SUPPORT THIS BILL AND I AM FURTHER REQUESTING YOUR SUPPORT FOR SWIFT PASSAGE WITH ALASKA'S OIL REVENUES DECLINING SO REPIDLY, AND PRISONS AND THE COURT SYSTEM EXPANDING WITH OVERCROWDING SOME RELIEF TO THIS PROBLEM NEEDS TO BE CONSIDERED. PRESUMPTIVE LAW NEEDS TO BE RESTRUCTURED OR TOTALLY BANNISHED.

DATE: 03/27/86 TIME: 09:42.25 SENT BY: SOLDOTNA LIO

COPIES TO: REPRESENTATIVE: ALBERT P. ADAMS
REPRESENTATIVE: H.A. "RED" BOUCHER
REPRESENTATIVE: SAM COTTEN
REPRESENTATIVE: JIM DUNCAN
REPRESENTATIVE: JOHN G. (JACK) FULLER
REPRESENTATIVE: ANDRE MARROU
REPRESENTATIVE: MIKE W. MILLER
SENATOR: BETTYE M. FAHRENKAMP
SENATOR: JAN FAIKS
HOUSE JUDICIARY

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: THOMAS GRIFFITH
BOX 80105
FAIRBANKS, AK 99708
452-2192

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

I SUPPORT HB 554 BECAUSE I STRONGLY FEEL THAT YOU CANNOT DETERMINE INDIVIDUAL CASES THROUGH LEGISLATIVE ACTION. JUDGES SHOULD HAVE MORE SENTENCING ROOM TO DETERMINE APPROPRIATE PUNISHMENT IN INDIVIDUAL CASES. THE WORLD IS NOT BLACK AND WHITE.

DATE: 03/25/86 TIME: 15:26:21 SENT BY: FAIRBANKS LIC

COPIES TO: HOUSE JUDICIARY
HOUSE FAIRBANKS DELEGATION
SENATE FAIRBANKS DELEGATION

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: CRAIG HOWARD
1671 GEORGE BELL CIRCLE
ANCHORAGE 99516
345-7457

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

I SUPPORT HB 554 BECAUSE THE STATE DOES NOT HAVE ENOUGH MONEY TO WAREHOUSE CRIMINAL ESPECIALLY FIRST TIME OFFENDERS.

DATE: 03/28/86 TIME: 12:05:46 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

March 25, 1986

Members of The Alaska Legislature
Pouch V MS3100
Juneau, Ak. 99811

Re: HB554 as relating to in-family Sexual Misconduct*

Dear Fellow Citizens:

Although I am not a citizen of the state of Alaska, I have a deep concern for the passage of HB554. One reason is that I am an American Citizen concerned about the welfare of families and keeping them together even when problems arise.

I feel the passage of this bill would enable a large step to be made in reducing crime not making it increase.

I base this one what many states are doing through social programs to help families to get counseling and come to a better understanding of their problems especially in child abuse and many professionals are now giving the entire family counseling without even a jail sentence being required.

I know I am writing about a very serious and complex problem in our country and I truly care about children and their mental health and their mixed emotions of putting...their parents away. Since your mandatory sentencing was passed in 1980, you still do not know what the future might hold as to how minors are going to be affected in the future as they mature.

I sincerely feel that the passage of HB554 COULD bring sexual misconduct in the home into the realm of mental health for healing and save money as well as homes from being destroyed.

Please give this your undivided attention because it is a human problem that affects many individuals and in caring families many have to suffer the consequences not just the accused and the victims but many become victims as they hurt emotionally when loved ones are sent to prison for many years when in most states this is not always true.

When I write you, I have not said all is perfect in my home state and I strive to be informed and to inform others of my findings.

Sincerely,

Carolyn Smith

Mrs. H. F. Smith, Jr. (Carolyn)
4818 Brookwood Dr.
Mableton, Georgia 30059

*this relates to first offense and those of no criminal record and out of character activity with good personal references deserves more humane consideration than a prison term in Alaska or any other state.

SOME REASONS TO PASS HB 554 IN THE STATE OF ALASKA FROM A VERY CONCERNED PERSON - Carolyn Smith (3-24-86) Please copy and give to your friends.

THE PASSAGE OF YOUR PRESUMPTIVE (MANDATORY) SENTENCING IN 1980 was to be a panacea.

TO TRY TO LEGISLATE A CURE FOR CANCER WOULD END IN DEAD FAILURE.

Many crimes or offenses are a result of mental illness just as serious as the disease of cancer.

WE CAN PASS LAWS UNTIL DOOMS DAY BUT UNTIL WE SEE THAT WE MUST ADMINISTRATE TREATMENT WE ARE BY OMISSION AND COMISSION GUILTY OF BLUNDERS AND WE TOO BECOME VICTIMS OF A SINKING SHIP AND DROWN IN THE SEA OF IGNORANCE.

To put all persons with cancer (or mental illness) in prison is compared to the misconceptions of the middle ages when millions died from plagues because no one knew what caused them. Many still view mental illness the same as those people did in the dark ages, saying such is caused by poor upbringing, personal weaknesses or even by divine intervention. Many persons are "thrown-away" because of those who continue to think their action is voluntary and many times THIS IS NOT SO. MANY STILL FEEL THESE PEOPLE DESERVE THEIR PAIN.

We need to send out a life line of healing and counseling to many suffering people especially families instead of issuing a death watch.

THERE MUST BE UNDERSTANDING AND HAVE THE ABILITY TO ABSOLVE HURTS AND WRONGS, PUT INTO ACTION HEALTH AND HEALING AND ADVANCE TO HOPE AND HARMONY WHICH WILL AFFECT HAPPINESS AND WHOLENESS AND HOLINESS AND ANSWER WHATEVER INFLUENCES THERE MAY BE THAT CAUSES ONE TO DECLINE OR ALTERS THEIR LIFE TO BRING DAMAGE. WE MUST NOT BE DEFEATED IN HATE BECAUSE THERE IS NO VICTORY IN HATE.

Harsh laws to suit our hates can someday come back to convict us. That is what justice is all about and is the wisdom of our U. S. Constitution that has lasted all of these years.

"A man should not allow himself to hate even his enemies, because if you indulge this passion on some occasions, it will rise of itself in others; if you hate your enemies, you will contract such a vicious habit of mind, as by degrees will break out upon those who are your friends, or those who are indifferent to you." Plutarch.

IT MUST BE SAID THAT MANY SUFFER MENTAL ILLNESS BECAUSE OF UNRESOLVED HATE AND ANGER. NONE OF US ARE IMMUNE TO MENTAL ILLNESS OR ITS CONSEQUENCES. WE MUST PASS LAWS WITH CARE AND COMPASSION.

PASS HB# 554 FOR ME AND MANY MORE.

April 14, 1986

Alaska State Legislature
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Committee Members:

Just a month left to consider HB#554 or any other legislation that might help families instead of hurting them.

If left undone again this year those that fight for them will gather more support and much of that support will have to come from outside of your state as myself and others who are learning of the uncalled for manner in which families are hurt and hurt.

There is no justification for abuse but there is also no justification to meeting abuse with abuse as I feel is done in the state of Alaska.

This should not be even a debated issue. How can so many people continue to think and react against what is in many cases a suffering family and because of your laws only bring that family more suffering instead of coming to the aid of that family?

As you may have gathered I support those in your state who want to bring about a more compassionate way of handling incest and family related abuse. It can be done and in most areas where compassion is applied the crimes or offenses become less not more. Freedom works that way.

For me immediate arrest that leads to long prison terms is unreal. No matter what a person has done in such incidents an opportunity for individual consideration is guaranteed by the U. S. Constitution but it is my opinion along with many others that a person in Alaska does not have that because of the attitude plus the prejudged sentence before a person is even allowed to contact an attorney. I feel under these circumstances that in Alaska for many they are innocent only until arrested. That is not American.

As an American citizen I am entitled to be a part of any legislation when I feel a person's civil rights are being violated but in my opinion this is not just for a few in your state but many and many more from outside of Alaska will have to become interested in how you make your laws.

People from New York care about what we do in Georgia and Georgians care about what you are doing in Alaska. People in Washington care about what is going on in Florida and there are those in Florida who care about what is going on also in Alaska and so on. That is one reason we are called the UNITED States of America.

Yes, Alaskans you are being watched and there are those who are reading and listening at the debates wondering if you will be willing to solve such an issue without truly calling for "outside" help.

For me I have opinions but for this letter I question your awareness of individual rights even those accused of the most repulsive activity still have all of the rights to be treated without assuming they are guilty until all of the facts are gathered and without emotion.

And if found guilty, the purpose of prison is rehabilitation to bring those persons back to society as whole human beings. In America we must care for all women, children and men. When we stop caring for anyone of them then the other is in danger of being mistreated.

I do care. I also care about our elected officials such as yourself who are put in such positions of making decisions for so many. It is a great task that you have assumed. I just ask you to apply the golden rule, "do unto others as you would have them to do unto you." What law would you want if your dearest one were to appear in court today? OR YOU? Please do not be so sure that it could not happen to you. Believe me it can.

Sincerely,

Ms. Carolyn Smith

Carolyn Smith
4818 Brookwood Dr.
Mableton, Ga.
30059

(404-948-6087)

1601 Anderson Mill Rd
Austell, Ga 30001
April 29, 1986

Representative M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Miller:

I wish to express my support for House Bill 554 as regards In Family Sexual Misconduct.

Harsh laws destroy families - in other states families can be put together on the average of two years with counseling and in most cases the father continues to support his family without being forced by law or even being jailed - Many people point out this fact - - - but it is ignored - Children in Alaska seem to suffer beyond what most do in other states at the loss and break-ups of their homes.

Please consider this on the grounds of helping Children - not making their hurt permanent.

Sincerely,
Mrs Ronald E. Myers

4-16-86 (THE TENTH MONTH ANNIVERSARY OF MY PLEADINGS.)

TO:

ALASKA STATR LEGISLATURE
HOUSE JUDICIARY COMMITTEE

POUCH V

JUNEAU, ALASKA 99811

FROM: CAROLYN WADE SMITH

4818 BROOKWOOD DR.

MABLETON, GEORGIA 30059

ATTENTION: M. MIKE MILLER, CHAIRMAN

IN THE PAST MENTAL PATIENTS WERE CHAINED AND BEATEN SO THAT VISITORS COULD BE ENTERTAINED. I AM NOT SAYING PHYSICAL MISTREAIMENT EXISTS IN ALASKA BUT I DO BELIEVE WELL MEANING PERSONS ARE IMPOSING FAR MORE PUNISHMENT THAN IS NECESSARY AND IT IS TO SATISFY THE HATES AND MISUNDERSTANDINGS OF MANY.

I REFER TO HOUSE BILL NUMBER 55'_.

IT SHOULD PASS WITHOUT AN AMENDMENT TO EXCLUDE SEXUAL MISCONDUCT.

I WOULD VENTURE TO SAY THAT AT LEAST 50% OF YOUR PRISONERS IN THE STATE OF ALASKA SHOULD BE OUT-PATIENTS AT SOME CARE FACILITY AND

STATE OF ALASKA SHOULD BE OUT PATIENTS AT SOME SAME FACILITY AND

NOT IN PRISON.

I BASE THIS ON THE ATTITUDES OF THOSE WHO MAKE BLANKET STATEMENTS ABOUT UNHEALTHY BEHAVIOR OF SOME WHO ALL OF THEIR LIVES HAVE BEEN EXAMPLES OF GOODNESS AND MORALITY.

PERHAPS EVEN MORE THAN 50 % SHOULD BE INCLUDED BUT REGARDLESS OF THE EXACT NUMBER, I FEEL CONFIDENT THAT THERE ARE MANY SUFFERING THE CONSEQUENCES OF THE THINKING OF UNINFORMED PERSONS.

I KNOW ONE AND THAT IS ENOUGH FOR ME TO EXPRESS TO YOU MY REGRETS

THAT YOU SEEM TO BE DETERMINED TO CONTINUE IN THE SAME PATH OF MANDATORY SENTENCING FOR THESE PEOPLE.

YOU HAVE THE INFORMATION AND YOU IGNORE IT.

IF YOUR DESIRE IS TO LISTEN TO THE CRY OF THE BITTER MOBS AND WILL NOT LISTEN TO THOSE WHO BEG FOR THEIR VOICE TO BE HEARD THEN YOU ARE NOT GOING TO LISTEN TO ME A SMALL VOICE ALL THE WAY FROM GEORGIA.

I AM NOT A CITIZEN OF ALASKA IN BODY BUT MY HEART IS THERE.

I CAN SAY NO MORE. EXCEPT GOD HAVE MERCY ON YOU.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 28, 1985

JAN 29 1985

Rick Gottardi
P.O. Box 309
Juneau, Alaska 99802

Dear Mr. Gottardi:

This is in response to your recent correspondence concerning presumptive sentencing laws in the State of Alaska.

I would like to be able to offer you an immediate solution to your problems, but I am unable to at this time. The issue of presumptive sentencing is of great concern to many legislators and I am sure the issue will be discussed at some point this legislative session.

Please be advised that I am forwarding copies of your letter to Senator Rodey, Chairman of the Senate Judiciary Committee, and Representative Mike M. Miller, Chairman of the House Judiciary Committee, so that they may notify you of any upcoming legislation and hearings.

Sincerely,

Bill Ray

Bill Ray
Senator
District C

Senator Mr, Bill Ray
165 Behrends Avenue
Juneau, Alaska 99801

January 17-1985

Rick Gottardi
P.O. Box 309
Juneau, Alaska 9980

Yes sir, I was wondering if you for-see in the future any modifications in the Justice system regarding the presumptive sentencing laws of the criminal Justice system, which doesn't let any person sentenced to a presumptive term, be eligible for parole, I think presumptive sentencing is, or should be un-constitutional, I believe any person should be afforded the right to be eligible for parole, even though that person may have made quite a few mistakes, he or she should by right be eligible for parole at some point in there sentence, plus it costs quite a bit to alaskans to have the presumptive sentencing in effect, because of the longer prison sentences and the more people each year that end up in prison for long terms, means more prisons have to be built more money spent, as it is prisons are filling up fast, and not enough prisoners are getting out to make room for the new, there coming in faster than there going out, due to the presumptive sentencing law now in effect since 1980, I think if the presumptive law were to change, or was cancelled out, where-in everyone would be eligible for parole at some point in there sentence, I think we would find a much smoother correctional system, people getting out to make room for the new, would slow the building of new correctional facility costs down, just one facility has many costs, the presumptive sentencing law should be abolished, which would make for a smoother operating Justice system, and would keep

the costs down to a good or fair level, The presumptive — sentencing laws or law is the most un-constitutional law — I've ever heard of, Is there any one you know of who might have more information on this subject??? ...

Any way I'm a prisoner at the Lemon Creek facility, I have been in prison for five years straight I'm never eligible for parole, my crimes are two burglaries, two escapes, one assault, two property damage charges in my five years in prison I've never gotten any rehabilitation education or life skills, this is wasting my life, I was age 20 when I first come to prison, I'm a hyper active individual, and prison life is eating me alive, since I've been in prison I've been beaten up, had my nose broken twice, stabbed in the back once, been sexually assaulted, I guess this is rehabilitation, I've had it real rough, I tried to run away from this situation a couple times, and I've caught more time in jail, I never ran with the intent to commit my crimes, I ran to save myself from more injuries, I sure wish I could go home from this nightmare, I've seen things in a different light, I only — started out with a one year prison term, and now have — 5 years, with no hope for parole, I've never asked for any real help to try to get out of here, because I don't know who to ask for help, I really need to get out of here, my family is falling apart emotionally, driven to drinking problems, due to my confinement, I come to Alaska when I was 8 years old and haven't been out of Alaska since that time, never been any where or seen any thing but Alaska, I'm now age 25, my Grandparents one of which passed away a couple years ago —

who I never even got to meet, another one is real ill, there thinking they will never see me before they pass away, I have to agree I probably never will even get out of prison alive, there just has to be some useful way besides prison that I can pay my debt to society like community services or join the service, something useful, prison is such a waste, there must be something I can do to get out of prison, I'm willing to do anything besides just sit and waste my life in prison, I'm not a dangerous offender, I'm wondering if you know of any one who might be able to help me get out of prison??? I have a real fear of dying in here before my term is up, I would appreciate any help, or information on how I can get help?

Sincerely

Rick Gottardi
P.O. Box 309
Juneau, Alaska 99802

OUTLINE OF THE MATERIAL CONTAINED IN THE LETTER TO THE GOVERNOR

I. Introduction

II. Separate incest from sexual assault because
   A. The important need to preserve the family unit
   B. Incest has been considered by some as a form of love rather than rape.
   C. Incest is considered by some to be worse than sexual assault because it involves the molest of a child by someone s/he loves and trusts.

III. The self referred offender
   A. Allow him to ask for help without requiring the counseling service to report him if
      1. he signs the contract
      2. he remains in the program
      3. he is a first time offender
      4. both the victim and the family want him to remain with them.

IV. Purpose and success of the CSATP

V. Safety guarantee for Alaska's children

VI. Outline of a mandatory counseling and probation program

VII. Comparison of the treatment vs. incarceration chart provided in the Incest: Family Treatment Model draft.

VIII. Comments on the "Offender Disposition Assessment" chart also from the Incest: Family Treatment Model draft.

IX. A comparison of how much money is spent to keep offenders in jail as compared to establishing and using the CSATP as an effective alternative.

X. Suggestion that a CSATP pilot program should be started in 1986 and run for 3 or 4 years to continue only if the results seem to be positive.

XI. Conclusion

Due to the length of the attached letter I have prepared this page as a quick Table of Contents to aid in finding the parts that are of most interest to you or to aid you in referring back to what you have read:

I. Separating incest and sexual assault and why 1

II. The self referred offender 2, 3

III. Placement of the offender in the Colorado diversion program. 3

IV. Purpose and success of the CSATP 4

V. Safety guarantee for the children. 4

VI. Outline of a mandatory counseling and probation program. . . . 5, 6

VII. Comparison of treatment vs. incarceration chart. 5, 6

VIII. Comments on the "Offender Disposition Assessment chart. . . . 6

IX. Comparison of money spent to jail offenders vs. CSATP cost. . . 7

X. Suggestion that a CSATP pilot program be established. 6, 8

Attachments: (1) Treatment vs. Incarceration chart
(2) "Offender Disposition Assessment" chart
(3) Information on the CSATP program: how it is suppose to be set up and operating to give the statisical results that it <u>can</u> only produce when operating correctly.

General Delivery
Wasilla, Alaska 99687
October 1, 1985

Bill Sheffield, Governor
Office of the Governor
Third Floor, State Capitol
Pouch A
Juneau, Alaska 99811

Dear Governor Sheffield:

This letter is in response to your letter received several months ago regarding what the state is THINKING about doing for incest offenders, their families and sexual assault offenders.

Although it is interesting to see the government so ambitious and involved with working on a solution to an epidemic problem, I think that the only way to eat an elephant is one bite at a time. It seems to me that you are trying to eat the whole elephant and I don't think that that is going to be an effective or thorough as if you did it a bite at a time.

I think it is extremely important and fundamental to whatever program you establish that you start by separating incest from sexual assault. Why? Because they are clearly different. Some of these differences are:

1) Incest occurs in the family and the family unit is so important that those offenders should be rehabilitated so that the family is preserved. Sexual assault occurs outside the family, therefore to incarcerate the offender does not destroy or separate the victim's family and thereby further traumatize the victim.

2) An incest offender rarely commits forcible rape using violence or threats. This has been expressed by the word love. In other words, the difference between incest and sexual assault is love. (I personally disagree with this, but that IS a difference.)

3) Another difference is that incest involves the molest of a child by an adult who the child trusts; therefore, it is considered by some to be a more serious crime than sexual assault or forcible rape is. (I don't agree with this viewpoint either, but it IS a distinguishable difference.)

So, I think that the first step is to separate incest from sexual assault because they ARE different and then take steps to work out solutions for both.

I can say very little to you about sexual assault, so I will leave that to those who are more knowledgeable than I am to handle that.

House bill 88 seems to be placing stricter enforcement on reporting and on child pornography and exploitation. I don't have a problem with that except that I think that reporting on incest should be handled differently than it is for sexual assault.

Recently I received a copy of Henry Giaretto's book, Integrated Treatment of Child Sexual Abuse and I am extremely impressed with the CSATP. I also read the proposed draft, Incest: Family Treatment Model, which you said is a possible treatment solution for sex offenders in this state. Except for a similarity in grammer, the two programs are barely related. I would propose that instead of chopping up Henry Giaretto's program into a number of peices that you use it the way that it was intended. Only 1/3 of it is being used because the other 2/3 needs funding in order to work.

Your letter outlines that self-referred offenders do not continue in treatment and that therefore holding incest as a crime is necessary in order to threaten, compel or force the offender to remain in the treatment program.

I disagree with this and in thinking of a solution to keeping a self-referred offending in the program, I happened onto an idea that comes from pages 34 & 35 of the CSATP manual: "There is a tendency in some families to slip away from the counseling plan or to pursue it less diligently after the prosecution period passes. This behavior is more likely to occur in those cases where the offenses were less severe and settled at the misdemeanor level. To forestall this, the counselor has the parents sign a contract in which they agree to continue with the counseling plan until the counselor decides to terminate it. The counselor answers all questions posed by the parents regarding the contract and why the terms are necessary. It is important for the clients to leave this session with the understanding that the services of the counselor and the CSATP are not provided solely for the purpose of tiding the family through the court process but largely for the purpose of teaching the members of the family--the parents in particular--the skills needed for forming a healthy family unit." I think that herein lies the provision (i.e. signing the contract) that would ensure that the self-referred offender would remain in the program until formally terminated. I think that there could also be other incentives that would encourage an offender or even a POTENTIAL offender to remain in a treatment program until he was officially terminated. I would like to go into these ideas in a little more detail.

An offender who walks into a counseling center, admits that he has just molested his daughter and asks for help has met at least 2 of the 4 goals that the CSATP counselor wants him to come to grips with sooner or later anyway:

1) Recognition that incest can't be condoned or rationalized and
2) Accepting the responsibility for his behavior/actions.

Should he not be encourage and rewarded for his honesty, for admitting that he is psychologically ill and needs help? I think so and I think that you will help MORE families by not pressing charges on those who ask for help. "When justice is distorted in incest cases by retribution in the form of long-term incarceration for the offender and separation of the child from her family, the effects are destructive and expensive both to the family and the community. PERHAPS EVEN MORE

DISTURBING IS THE FACT THAT, IN THOSE COMMUNITIES WHEREIN THE CRIMINAL JUSTICE SYSTEM HAS A REPUTATION FOR BEING CRUELLY PUNITIVE, FAMILIES TROUBLED BY INCEST WILL NOT REPORT THE SITUATION AND THE VICTIMS WILL CONTINUE TO BE VICTIMIZED." (CSATP Manual, page 57)

So an offender turns himself in, admits he molested his daughter and wants help. The counselor explains CSATP and explains to him that he has in fact committed a crime but that if he remains in the program until he is officially terminated, that no criminal charges will be filed against him provided that he has not been arrested or convicted on a similar offense. A similar offense means past incest offenses. If the person is a 2nd time offender he is reported to the authorities and it is then decided whether or not he should be allowed to qualify for the child abuse diversion program.

A person who voluntarily turns himself in or is seeking help through a counseling service should be automatically placed on the child abuse diversion program, after the entire family has been interviewed to determine if that is what the victim and the rest of the family wants. If the victim and the rest of the family wants the offender arrested OR a complete no contact established if the offender is not jailed, then the wishes of the family should be considered FIRST. Perhaps a hearing needs to be held, so that the question is decided by a judge, or perhaps we can agree that the non-offending parent either with or without counseling (as s/he wishes) IS an intelligent enough human being to make that decision. Someone has to make a judgement here; why not allow the person closest to the victim and the situation to have a primary role in that decision, instead of an elected or appointed governmental/political official?

If the family decides or wants to remain together and have gone to the counseling center to receive help and treatment, then the child abuse diversion program should be explained to them. (This is quoted from the Colorado statute "child abuse and neglect diversion program".)

"(1) The district attorney, upon recommendation of the county department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a non-judicial source of treatment or assistance, upon conditions set forth by the county department and the district attorney. If the person is so diverted from the criminal justice system, the district attorney shall not file charges in connection with the case if the person participates to the satisfaction of the county department and the district attorney in the diversion program offered."

There should be an agreement between the legal system and the CSATP counselor that if the family is assessed as treatable and the family WANTS help that the counselor will set up and explain the diversion program to the family. The counselor emphasizes that the family must: 1) remain in the counseling program until they are officially terminated and 2) participate to the satisfaction of the counselor. Failure to do this will result in the offender being reported and the possibility of criminal charges being filed. Periodic reports are made by the CSATP counselor to a probation officer and/or district attorney concerning the progress of the offender. The above, of course, is a form of reporting, but it is more of a reward to the offender who has the honesty and integrity to seek help rather than trying to hide the problem andignore it.

"(2) The initial diversion shall be for a period not to exceed two years. This diversion period may be extended one additional one-year period by the district attorney if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the district attorney and the county department."

According to the CSATP manual it takes about 18 months to 2 years to complete the program. Persons who complete the program and are officially terminated may still feel the need to attend the self help groups such as Parents United.

"(3) If the person diverted successfully completes the diversion program to the satisfaction of the county department and the district attorney, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him."

But the obvious question that may come to mind is, "but what if it happens again?" Part of the answer to that is found in the Oregon statutes ORS 135.886. "(c)...if the offender has previously participated in diversion, according to the certification of the Department of Justice, diversion shall not be offered..." That seems right to me, because if an incest offender has been offered diversion, completed the CSATP and then molests again, even if it is 10 to 15 years later, he has not gained anything from having gone through the program, and he deserves to be treated as a repeat offender, subject to a long jail sentence, with the possibility of a presumptive sentence attached.

The purpose of the CSATP is to restore the offender to health, mend the marital relationship and teach the parents how to be caring and effective. For the victim, the purpose of the program is to break the cycle of victim becomes molestor (according to a professional counselor nearly 90% of the molestors were once victims). The sucess of the CSATP is that less than 1% of the offenders ever repeat the offense and that "child victims treated by CSATP do not persist in self-abusive behavior (promiscuity and other sexual behavior problems, drug and alcohol abuse, marital difficulties, criminal activities etc.) reported by adults who were molested as children and who did not receive individual or family therapy." The above quote was taken from a CSATP fact sheet which was published in November 1984. These statements convince me that incest is not a recurring disease or that the person is a recovering offender, as your letter suggests, but rather can be treated and cured through the use of the CSATP. That is why I feel that if a remolest occurs even 10 to 15 years later that the offender should be prosecuted as a repeat offender because he obviously did not benefit from the CSATP, and could then be classed as not amenable to treatment.

Throughout your letter, I sense a great concern for the safety of Alaska's children, and I, too, am concerned and have spent many hours thinking, researching and considering the needs of both the parents, children, families and jail overcrowding before sitting down to write and share my solutions with you. It appears to me that the state seems to need an iron clad GUARANTEE that the children of this state are going to be safe from repeat occurrances of incestuous molesting. If I have failed to convince you that the CSATP run CORRECTLY AND EFFECTIVELY CAN CURE AN INCEST OFFENDER AND HIS FAMILY AND MAKE THE FAMILY AND HOME ENVIRONMENT A SAFE PLACE FOR THE CHILDREN, then I suggest that your

GUARANTEE be to require the offender to complete the CSATP to the satisfaction of the DA and/or other concerned individuals and then be placed on probation until the youngest child reaches the age of 18.

Attached to the draft, Incest: Family Treatment Model, were several charts. The most interesting and the most bothersome to me was the one that compared the effects of incarceration vs. the effects of treatment on the incestuous family. I will attach that chart to what I am writing here so that you may follow it as you read my comments on it. The chart compares the effects of incarceration to treatment in the following 4 areas: 1) victimized child, 2) family, 3) offender in treatment (or) jail and 4) society. I would ask you to note the results under #4, society: If the offender has been placed in treatment, the state of Alaska OPENLY ADMITS THAT: the family unit is maintained, the offender is under close court supervision, recidivism is less likely, more cost effective than jail, reduces the need for public assistance funds and may I add, for the benefit of the Cleary suit, that it would greatly relieve the jail overcrowding problem. With the legislative cuts, I wonder what sort of plan Commissioner Endell has to present the Judge about how he intends to relieve jail overcrowding. But the answer is so simple that it was completely ignored. I have lost the copy that I sent to him, but what I had outlined was a program of strict probation, which would need to be coupled with mandatory counseling.

I feel that this program is what should be done for those offenders who are presently serving time in jail as I have already outlined what should be done for future offenders.

First, you need to set up an organized system for interviewing the victims and the families of those incest offenders who are in jail. Ask them if they want the offender released. Ask them if he was released if they think the molesting would continue. Such questions as was the victim raped, how emotionally traumatized is the victim, why does the family want to remain together?, (if they do) will cause these families to objectively face some of the real issues surrounding the molestation and provide them an opportunity to think and consider what is in the best interest of first the victim and secondly, the rest of the family. Perhaps, in some cases, rather than releasing the offender immediately into strict probation and mandatory counseling, it would be better to have him go home on a gradual basis. The INDIVIDUAL NEEDS of EACH victim and her family MUST be considered FIRST.

Second, release into a program of mandatory counseling and strict probation those offenders WHOSE FAMILIES WANT them released. If the family does not feel comfortable having the offender released now, but wishes counseling and time to think about it, allow the offender to be released when the family decides they are ready for it.

The offenders who remain in jail should be required to receive mandatory counseling and when released, should be issued a restraining order if the victim and the family do not desire contact with them, until the youngest child is 18.

Third, strict probation for those offenders who are released could include:
1) Weekly or bi-weekly counseling sessions with a professional counselor.
2) Reporting to a probation officer at LEAST once a week.

3) Monthly interviews for the victim and the non-offending parent to ensure that no remolest had occurred. These interviews could be conducted by a social worker and should be taped and made available to the non-offending parent upon request. This would protect the social worker as well as the child.
4) Required of BOTH parents to take parenting classes to be followed up by monthly or bi-monthly counseling sessions to discuss parenting techniques.
5) Required of both parents to take a human sexuality class.
6) If the molestation was brought about because the offender was drinking or taking drugs, he should be monitored by TASK at least until he has completed the CSATP.
7) The offender as well as the victim, the non-offending spouse, and eventually the entire family should be required to complete all phases of the CSATP counseling program. Failure to do this, would, of course, be a violation of probation and would subject the offender to completing the program in jail. HOWEVER, ATTENDENCE AT THE GROUP SELF-HELP SESSIONS SHOULD BE OPTIONAL.
8) The offender should be required to remain on probation until the youngest child reaches the age of 18. This is to ensure to the state that if the offender messes up that he will spend the rest of the time (until the children are grown) in jail.

Going back to the chart that compares treatment to incarceration, look at 'society' under incarceration and these are the results (AGAIN OPENLY ADMITTED TO BY THE STATE): Family unit is destroyed, $31,000.00 per year cost for imprisonment (mandatory 8 year sentence is $248 thousand) PER offender, increased court costs, public assistance costs to support the family. Now since we have the state CLEARLY ADMITTING that treatment is not only better, but cost effective and still protects the child as well as preserving the families, how many more families do they intend to destroy before they will establish an effective treatment program, which the CSATP is?

The Arizona statutes ARS 8-261 provides for a pilot program for family counseling programs. This was set up in 1973, to be terminated in 1977 unless it was reenacted by the legislature. I looked through the statute update and could not determine if the program had been repealed or if it was still going on and have not written to the state of Arizona to find out if the program is still in effect. However, I think that the idea is a really good one. Begin a pilot program using the CSATP, strict probation, diversion and mandatory counseling for incest offenders. Make it retroactive so that you can ease the jail overcrowding problem, and save $248 thousand per inmate. Make this program available to every convicted (or pending conviction for those awaiting trial) person in jail and also for the potential or future molestor. Begin the program in 1986 when the legislature convenes and evaluate its effectives in 1988 or 1990. What have you got to lose?

The other chart that was attached to the Incest: Family Treatment Model draft, that I would like to comment about and is also attached to this proposal is called "Incest Offender Disposition Assessment." It is a comparison of evaluation criteria to decide if the offender (and family) should be put on a treatment program or if the offender should be kept in jail. I think it is very good except for one thing, which is also

my complaint against the presumptive sentence. Point #3 on both sides deals with past criminal record. I think that needs to be clarified. It this is a second or third offense on incest, and perhaps you might even want to extend that to include any sexual offenses, then the offender probably is not amenable to treatment, unless he has never received treatment before. But perhaps that should be argued in the courtroom and not here. However, if the offender committed a burglery, robbery, fraud etc. those types of offenses are not even related to incest and the offender should be offered a chance at the treatment program. I feel that this is more just, and is in keeping with the current statute regarding sentencing of repeat felons.

A judge can't do a thing with the presumptive 8 year sentence; however, if the offender is going to get 15 because he is a prior felon, then the judge can take certain mitigating factors into consideration and can reduce the sentence by half. One of these mitigating factors is that the prior felony is of a less serious nature. I propose that if the prior felony was unrelated to incest or perhaps to any sexual offense, that the offender should have the same chance to get into the treatment program as does a person who has never committed a crime.

I am also attaching with this letter, the CSATP as was developed by Henry Giaretto so that you can clearly understand how the program is suppose to work, and so that you can begin to implement it NOW in this state. Although it is long, please read it carefully. I am told by a local legislator that the state does not have the money to implement treatment programs. I think that the government is either blind or is enjoying wasting our money!

Bettye Fahrenkamp and several other legislators put together a package of bills to toughen up on the child abuse laws. In this package (she sent me one) it said that there are 400 sexual assault cases a year, and Parents United says that 85% of all sexual assault cases are incest. Assuning that this is correct, that would mean that there are 340 offenders who go to jail each year, costing the state, according to the Governor's comparitive chart on treatment vs. jail, $31 thousand EACH to be incarcerated for ONE YEAR; the total cost for one year to house in jail the 340 offenders is $10 million, $540 thousand. Let's not forget that we have a presumptive 8 year sentence for incest offenders. We've got it over 10 million for just ONE YEAR; for 8 years that is $92 million, $320 thousand to incarcerate those 340 offenders. Compare this to the CSATP. I would like to say that all I have been able to get from counselors in this area is a rough estimate, but that estimate is $10 thousand for the entire 2 year program or $5 thousand a year per family. Or for the 340 offenders that is $3 million, $400 thousand to be placed in the program from start to officially terminated. In some cases it only takes 18 months, so it might be even cheaper for some families.

Mat-Su Counseling Center, here in Wasilla wanted to do some sexual abuse counseling so they applied for a grant of $109 thousand. They were cut back to $35 thousand, but were told they were going to get it. And yet Parents United (the volunteer, non-professional, self-help group which is 1/3 of the program) got $42 thousand! The counseling organizations exist; provide them with funding so that in every city in Alaska where an incest offender lives and there are professional counselors available, the CSATP is funded and operable for those families.

If the family's income entitled them to a public defender instead of a private attorney, then the state should provide them with counseling free of charge. The others should be charged on a sliding scale and the state should pay the difference. After all, even if you provide free counseling to EVERY incest offender and his family in the state, you would still be saving considerably, comparing the counseling program to what it costs to house these inmates in the overcrowded jails.

So I suggest to you again to start a pilot program. What have you got to lose? You instead can GAIN (1) the restoration of the family to health, (2) less likelihood of there being a repeat of the offense, and (3) a savings of $89 million.

In my letter to Commissioner Endell as well as in this letter to you, I have outlined how to do this because it is also a solution to the jail overcrowding problem, that the Divison of Corrections is suppose to solve as Judge Serdahely wanted to know what they intend to do about it as a component to the Cleary suit. It is a simple, but I feel, workable solution and I think that every family in this state who is missing a parent because s/he is in jail for incest should be interviewed and asked if they want the offender released into a mandatory treatment program. If the answer is no, the offender stays in jail; if the answer is yes then release the offender on strict probation.

I feel that I have outlined some very basic ideas in both my letter to Commissioner Endell and in this letter, and if you do not feel that they adequately guarantee the safety of children in this state, then I would like to work with you, any probation officers, legislators, counselors, social workers or anyone else to find a WORKABLE PRO FAMILY solution to the problem of incest so that families are restored to health, rather than destroyed and fragmented.

I sincerely hope that I am not ignored, laughed at, or my letter is thrown in the trash can. If I have not objectively looked at this from every angle and you feel that my solutions contain loopholes, I would like very much to hear from you.

I think that Mr. Giarretto's program is inspired, cost effective and could reduce the amount of money it now takes to operate the jail system in this state.

I look forward to hearing from you at your earliest convenience and working with you to implement these programs. Thank you for considering my ideas.

Sincerely,

Lynette Drumbarger

cc: Any interested Alaskan

VOCAL
General Delivery
Wasilla, Alaska. 99687

Incest Offender Disposition Assessment

Evaluation Criteria Indicating Community Treatment:

- No physical force or threats of harm to victim
- Regressive behavior rather than chronic sexual fixation on children
- No other criminal record
- Offender takes responsibility for offense
- Offender concerned about impact on victim
- Offender genuinely distressed about his behavior
- Offender has dependable social and occupational skills
- Offender doesn't evidence other major psychopathology (psychosis, retardation, alcoholism, severe depression, organic brain dysfunction, etc.)
- The victim is assured protection and safety
- The mother is willing to invest emotional support to the child
- A treatment program exists
- There is consensus among child protective services workers, civil court and superior court that the offender and family are amenable to treatment

Evaluation Criteria Indicating Incarceration:

- Offender used threats or actual violence in committing offense
- Offender has chronic sexual fixation on children with progressive increase in aggression over time.
- Offender has multiple chronic difficulties with the law
- Offender continues to deny or minimize offenses or projects responsibility for behavior (such as blaming the victim or his state of intoxication
- Offender continues to be more concerned about consequences on himself than the victim
- Offender incapacitated victim with alcohol or drugs
- Offender used bizarre or ritualistic acts
- Offender forced victim into prostitution or pornographic activities
- Incestuous behavior compounded by evidence of serious psychopathology (psychosis, substance abuse, organic brain dysfunction)
- Multiple types of indiscriminate sexual activity evidenced by offender (such as exposing, peeping, sexual contact with animals, fetishisms, etc.)

Effects of Prosecution/Treatment Model

Victimized Child

Child is Protected
- °offender is out of home
- °or child is in substitute care

Lessens guilt for reporting
Immediate therapeutic support
Strengthens mother/child bond
Peer support
Less likely to recant

Family

Potential (hope) for intact family
Therapeutic Support
Less disruption of family unit
Husband continues financial support

Offender in Treatment:

Prosecution takes place
More likely to admit guilt
Will enter therapeutic process willingly and earlier
Receives support to change
Recidivism is less likely
Can continue employment
Can continue to support family
Can participate in the cost of treatment

Society:

Family unit is Maintained
Offender is under close court supervision
Recidivism is less likely
More cost effective than prison
Reduces need for public assistance funds

Effects of Prosecution/Punishment Model

Victimized Child

Child is Protected
- °offender is in prison
- °child may be in substitute care

Increases guilt for reporting
Older victimized child less likely to report (aware of consequences)
Increases guilt for father's imprisonment
Revictimization by court process
Blamed by mother and other family members for breakup of family
Isolation from family and peers
Increased possibility for acting out behavior
More likely to recant

Family

Reduced likelihood that family will reunite (pessimism)
Polarizes spouse to choose between victim and offender
Increased disruption and instability
Family loses financial support and may become dependent on public funds

Offender in Prison:

Prosecution takes place
More likely to intensify denial, justification, minimization, blame
Motivation to change lessened
Offender's self worth further reduced
Pathological behavior subsides only to reappear on release
Greater alienation from society
Recidivism is more likely
Treatment solely at state expense

Society:

Family unit is Destroyed
Offender is incarcerated and society is protected
Recidivism is more likely
$31,000 per year cost for imprisonment (5 years minimum)
Increased court costs
Public assistance costs to support family

INSTITUTE FOR THE COMMUNITY AS EXTENDED FAMILY
P.O. Box 952, San Jose, California 95108 (408) 280-5055

CHILD SEXUAL ABUSE TREATMENT/TRAINING PROGRAM FACT SHEET

The Child Sexual Abuse Treatment Program (CSATP) of Santa Clara County, California, started in 1971, by Hank Giarretto, Ph.D., has provided in-depth professional and self-help treatment to more than 6,000 sexually abused children and their families. Over 16,000 individuals have been served, many more than by any other single organization in the nation. In 1977, the CSATP staff began to conduct regularly scheduled training workshops which thus far have resulted in the establishment of 140 additional CSATPs in the U.S., Canada and Australia.

A CSATP is made up of three components: The first consists of the integrated interventions of the professional law enforcement, criminal justice and human services agencies; the second consists of the self-help groups known as Parents United, Daughters and Sons United and Adults Molested as Children United; and the third consists of the cadre of trained volunteers. The persons representing these components work cooperatively for the child-victim's best interests, i.e., with the common understanding that this objective is satisfied, in the majority of cases, if the child can be returned to his/her family—a family headed by parents who have been taught to be caring and effective.

Key features and results of the Santa Clara County CSATP approach are:

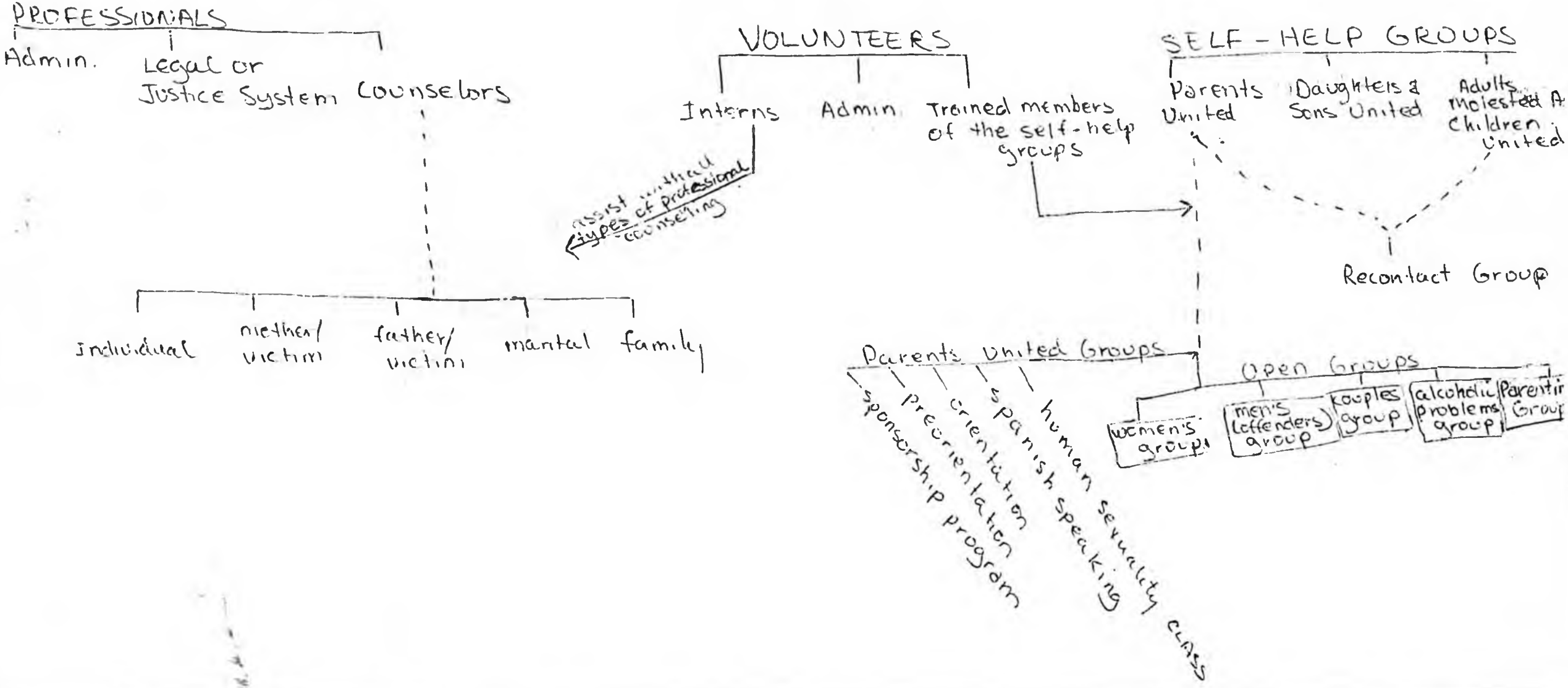
- The intensive public education effort encourages victims and their parents to report abusive situations. The annual referral rate has increased from 30 cases in 1971 to over 1,000 cases in 1984. (The current active caseload averages 1,000 individuals.)
- Repeated interrogation of the child is avoided since about ninety percent of father-offenders confess their sexually abusive behavior to the authorities.
- Over ninety percent of the children avoid foster or institutional placement and remain with their mothers and siblings (father-offenders are given no-contact orders and leave their home).
- After long term therapy, father-offenders are returned to their homes only if they are deemed both physically and psychologically safe for their children.
- The reported recidivism rate among father-offenders who have been treated has remained at less than one percent.
- Child-victims treated by CSATP do not persist in the self-abusive behavior (promiscuity and other sexual behavior problems, drug and alcohol abuse, marital difficulties, criminal activities, etc.) reported by adults who were molested as children who did not receive individual and family therapy.
- The CSATP method is cost-effective:
  a. Typically, a CSATP is coordinated by personnel in existing official agencies (child protective services, mental health agencies, probation and police departments).
  b. Due to the use of volunteers, especially in the crisis stages, the cost to the community for client contacts is very low (less than $3 per contact-hour).
  c. Most of the families are reconstituted and, therefore, the community is not saddled with costs of foster home and institutional placements and welfare payments.
  d. Because most of the fathers confess (about 90%), the costs due to prolonged court proceedings are sharply curtailed.
  e. The fathers usually are rehabilitated within the community and do not receive long prison sentences. Those serving short jail sentences are placed on work furlough. The county and the state, therefore, avoid the high costs of incarceration and of family upkeep.
  f. Since the fathers continue to work, there are no losses in federal and state tax revenues due to unemployment.

Above all must be stressed the ability of the CSATP to induce children and their parents to report the abusive situations and to treat them successfully. From a humane viewpoint, it is immensely gratifying to note that the children will not suffer lifelong devastation from the incestuous experience. From a social health viewpoint, it is also rewarding to realize that when treated early, abused children are not likely to become the future social derelicts and/or criminals of society, as attested to by recent studies indicating that about eighty percent of our prisoners were physically, and/or sexually abused as children. A detailed description of the principles, methods and results of the CSATP is given in the book, "Integrated Treatment of Child Sexual Abuse" by Dr. Giarretto.

MARCH 1985

This chart outlines or diagrams Chapter 4 "The Integrated Psychosocial Approach" from the CSATP manual

Child Sexual Abuse Treatment Program (CSATP)



Treatment Premises Regarding the Incestuous Family

From the working principles of humanistic psychology tested by firsthand experience with incestuous families, the following major premises regarding the interpersonal dynamics of the families were developed and are fundamental to the treatment approach.

1. The family is viewed as an organic system. Family members assume behavior patterns to maintain system balance (family homeostasis).
2. A distorted family homeostasis is evidenced by psychological and/or physiological symptoms in family members.
3. Incestuous behavior is one of the many symptoms of a dysfunctional family.
4. The marital relationship is a key factor in family organic balance and development.
5. Parent–child incestuous behavior is not likely to occur when parents enjoy mutually beneficial relations.
6. High self-concepts in the mates is a prerequisite for a healthy marital relationship.
7. High self-concepts in the parents help to engender high self-concepts in the children.
8. Individuals with high self-concepts are not apt to engage others in hostile, aggressive behavior. In particular, they do not undermine the self-concept of their mates or their children through incestuous behavior.
9. Conversely, individuals with low self-concepts are usually angry, disillusioned, and feel they have little to lose. They are primed for behavior that is destructive to others and themselves.
10. When such individuals are punished in the depersonalized manner of institutions, the low self-concept/high destructive-energy syndrome is reinforced. Even when punishment serves to frustrate one type of hostile conduct, the destructive energy is diverted to another outlet or turned inward.
11. Productive case management of the molested child and her family includes therapeutic procedures that alleviate the emotional stresses of the experience and the resulting punitive action of the community and that enhance the processes of self-awareness and self-management, as well as feelings of family unity and growth.

General Delivery
Wasilla, Alaska 99687
February 21, 1986

Dear Judiciary Committee Members:

I have a tape of the teleconference on House Bill 354 which I have listened to again and would like to make comments on it.

The women in Bethel, specifically Diane Carpenter seemed concerned that before this bill could be passed that rehabilitation programs needed to be established. Especially she seems critical of incest offenders and sexual assault offenders, as does Leslie Iron Mat-Su.

For that reason I am enclosing a letter that I wrote to the Governor which contains a CSATP attachment which explains the Giarretto model. I especially call your attention to the CSATP fact sheet (a diagram of how the entire program should be operating is on the back) and to page XIV, which immediately follows the fact sheet--the part titled "California State Assembly Bill 2208" as well as the next 2 pages 6 & 7, which starts with "The Problem". That problem exists in this state also:

1) Methods used by the criminal justice system to handle incest cases:
   (a) separation
   (b) punishment
   (c) interest in child and family stops after the father's conviction has been obtained
   (d) break up of family unit i.e. divorce

2) Counseling

On a personal note, my husband and I have tried to get counseling for 5 years: (a) a year before the arrest (b) during the prosecution period and (c) while a private attorney was filing an appeal. The private attorney told us that he could not advise us to get counseling (in fact he advised against it) because whatever my husband would say to the psychologist could be used against him in a trial.

If you will read the CSATP fact sheet you will note that the recidivism rate for this program is less than 1% and that child victims treated by this method do not persist in promiscuity neither do they have drug, alcohol or marriage difficulties as do victims who do not receive treatment.

I feel that this program needs to be established in its entirety across the entire state. (Only 1/5 of it--Parents United--is in operation.) It is only when the entire program is used that recidivism can be as low as the fact sheet declares it to be: less than 1%.

The doctor, Anthony Hance (?) from Juneau who is a sexual assault therapist and who testified at the Feb. 21st teleconference said that the Worse offenders, the repeaters or the most dangerous sexual assault offenders and he specifically said he was NOT speaking about 1st time offenders, had a repeat rate of 10-15%. It seems like we would draw a logical conclusion that a father (because he also said that the child molestor in most cases was also a good prospect for rehabilitation) who is an incest offender and a first time offender would not only be a good prospect for rehabilitation but would also be less likely to ever re-offend. I think that in the WORST and MOST DANGEROUS sexual assault offenders have a recidivism rate of 10-15% that it would be consistent to say that 1st time incest offenders would have a recidivism rate of less than 4% as the fact sheet states.

Mr. Hance (?) also said that other states gave long jail sentences unless the offender opted for a 2 year stay in a hospital in an in-patient facility followed by a relatively long term out-patient program and closely monitored probation period. I have been told that an excellent program of this type is in Oregon at the Oregon State Hospital in Salem. If Mr. Hance (?) has information on this program I would like to read it as I feel that this would do a great deal to help protect the children (an incest offender is generally a non-violent offender who is not a danger to society as a whole, but who needs to be taught to relate his love to his children in a healthy "normal" way so that he is not a danger to his family, and yet keep the family intact instead of destroying and fragmenting it which unfortunately happens in so MANY cases.

The chart before the fact sheet called Treatment vs. Prosecution was sent to me by Governor Sheffield and I hope you will take note that it admits that the effects of jail are generally destructive to those families troubled by incest and heaps on the victim continued abuse!

I am writing these things because you seemed to gather a great deal of criticism for HB 554, especially from the Bethel people, that the bill was premature because rehabilitation programs do not yet exist. They were especially critical of the sexual assault/incest offenders.

The members of YCCL strongly maintain that incest and sexual assault offenses are such distinct and different crimes that they need to be treated as separate crimes and that especially incest offenders, who have families who want to maintain the family relationship need the CSATP to help them.

If you decide to agree with the people in Bethel and begin to concentrate on rehabilitation programs for sex offenders, I ask you to please consider the enclosed CSATP ~~one~~ which SUCCESSFULLY operates in Calif., and has since 1971. It is for this reason that I have enclosed the CSATP information along with my ideas to incorporate it in this state. Due to the length of this information, it costs me nearly $5.00 a set to have them xeroxed and so I have enclosed only one. I hope that you are able to have it copied if you need additional copies. Also, if you are able to provide a copy to Dr. Hance (?), I would really appreciate it. I agree with everything he said and would appreciate his comments on the letter I wrote as well as on the CSATP itself.

(3)

Two more questions have come to mind since the teleconference:

1) Sec. 11 AS 33.15.180(a) on page 5--are you allowing 2nd and 3rd time offenders a parole option after 1/3 of their time is served? In other words would a 2nd time class A felon who gets a 9 year presumptive sentence, be allowed parole in 3 years if the parole board decided that he should? and

2) Some of my friends who could not make it to testify at this teleconference, and who were not in the legislative information offices would like to testify at the next teleconference. Is the next teleconference on this bill going to be for the general public or is it limited to just the people who attended the last teleconference, but didn't get to testify?

Please let me know and also on behalf of Al Sharp, myself and the other inmates, wives and supporters of VOCAL, we would all like Mr. Bloksin to know that we admire his courage in introducing such a controversial bill which would greatly aid in the restoration of families instead of their destruction. I asked my representative last year to do the same, and he refused, and so even though I cannot vote for you because I live in Wasilla, I thank you for introducing this bill.

Sincerely,

Lynette Drumbarger

Lynette Drumbarger

HB554

4/1/86

Lynnette Dumbarger -
sent ref.
child sexually Treatment program
by Henry Diolette -

only has less than 1% recidivism rate

diff for ord in jail to get counsel
only place in S Central Regional Center
run by guards, not counselors

counselors $90 p/hr - $80 at discount
in advance -

offenders victims family get counseling,
but not offender.

can't get counseling for 3 years possibility
of another trial - confidentiality law

Palmer highest paid inmate can't
afford counseling price

need sliding scale for counseling

offenders family need counseling as well as
victims family

File

JAN 24 1985

Alaska State Legislature

House of Representatives

RECEIVED
JAN 23 1985

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 23, 1985

Mrs. Brenda D. Palmer
4941 Wren Drive
Juneau, Alaska 99801

Dear Mrs. Palmer:

Thank you for your letter concerning Alaska's presumptive sentencing law.

Your comments have merit and I have taken the liberty of forwarding a copy of your letter to the House Judiciary Committee which is chaired by Representative Mike Miller of Juneau.

Please do not hesitate to contact me on any other matters of concern to you.

Sincerely,

Representative Jim Duncan

Mrs. Brenda D. Palmer
4941 Wren Drive
Juneau, Alaska 99801
Ph. 789-0772

January 7, 1985

Mr. Jim Duncan
Alaska State Legislator
P. O. Box 690
Juneau, Alaska 99802

Dear Mr. Duncan;

I am writing to you in regards to my husband Theadore R. Palmer, who was sentenced on October 25th, 1984 to a five year prison sentence by Superior Court Juder Walter Carpeneti. Judge Carpeneti imposed a five year sentence with one year suspended, to be served on probation. Ted was sentenced pursuant to the presumptive sentence laws of this state, Alaska Statutes AS 12.55.125-AS 12.55.175. My husband had two prior felony convictions and therefore he was subjected to a three year presumptive sentence for the class C felony that he was convicted on. My husband was also found not guilty of four burglarys during this same trial.

There was a co-defendant in this same case who had plead no contest to the thefts and also the burglarys that occurred on Colt Island in June of 1983, his name is Gerald Tauscher. Gerald Tauscher plead no-contest to these charges on July 25, 1983. He was also subjected to the presumptive sentencing laws of this state and he was also out of the Oregon State Prison on a seven (7) year parole. Mr. Tauscher plead no contest to these charges in July of 1983 and after just ~~a few days of~~ his no-contest plea he was allowed to be released from jail on a third party O.R. Gerald Tauscher was in his middle 40's and has an extensive felony ~~record of~~ twenty two (22) seperate felony convictions, the State of Oregon had not even put a parole hold upon Mr. Tauscher even after he was convicted of these charges on his no-contest plea of July 1983.

When it came time for Judge Carpeneti to sentence Gerald Tauscher for the class B and class C felonies, Mr. Carpeneti found that it would be manifestly unjust to sentence Gerald Tauscher to the presumptive thirteen (13) year prison sentence and Judge Carpeneti further found extraordinary circumstances in his case pursuant to AS 12.55.165 and referred Tauscher to a three Judge Sentencing panel. Tauscher was free for over a year awaiting sentencing. When the three Judge sentencing panel did sentence Gerald Tauscher, they gave him a nine(9) year suspended sentence, placed him on probation for five (5) years, and required him to spend four (4) months in jail. The jail term is to be served in the following manner, 60 days to be served starting December 1st,1984 and end on February 1985, and 60 days to be served starting December 1st, 1985, and end on February 1986. It is also important to note that in Gerald Tauschers case, the court had found that there were five (5) aggravating factors and no (0) mitigating factors. In my husbands case, the court only found three (3) aggravating factors, but also the court found one (1) mitigating factor, plus my husband was found not guity of the Colt Island burglarys and was in fact found guilty of a lessor degree felony than Tauscher was. Another thing that is important to note in my husbands case is that my husband helped the Alaska State Troopers recover almost

3/6/86

A SHORT NOTE



HOUSE OF REPRESENTATIVES
HOUSE JUDICIARY COMMITTEE

Subject HB 554

ON behalf of Those Serving Time UNDER The Presumptive LAW.

If the Principles of INCARCERATION ARE To PROVIDE ALASKA Prisoners with CONSTRUCTIVE rehabilitation, Than ANY NOTIONS of VINDICATING harsh PUNISHMENTS while dropping rehabilitation efforts ARE Counter-Productive Theories.

ACCORDINGLY, UNDER OUR OWN ALASKA Constitution, IT STATES, "THAT PENAL Administration SHALL be based ON The objectives of Reformation" This by itself, JUSTIFIES ANY reasoning behined repealing ALASKA'S Presumptive SENTENCING LAWS for FIRST-TIME offenders.

THANK YOU

Respectfully,
Frank Turney
Prisoner ADVOCATE

INSIDE IS A LETTER To the EDITOR regarding this HB 554

456-7362

APR - 2 1985

April 15, 1985

To Whom It May Concern:

I'm writing you in concern with the presumptive sentence that is now in effect. My main concern is that you are judging all First Degree Sexual crimes together when all crimes are different and should be judged as such.

To say that a person who has assaulted an older woman, anywhere from 20 yrs. and up and a person who has assaulted a child are not in the same category. The person who assaulted the child has definitely some kind of problem and should be given treatment. Where as in the other case, it could be more of a disagreement between the two people involved, and the sentence should reflect the circumstance surrounding the case. The judges should have the authority to discriminate between the two. He should be able to take the facts surrounding the case and decide how serious the crime is. This is the judge's job in the judicial system.

As in my case, I was picked up by a girl at a bar in Spenard and she drove us to my apartment. She says one thing happened and I say something different. Well, the D.A. took me to trial twice on this same charge with no new evidence. The first time, the jury decide 7-5 in my favor, and the second trial I was found guilty through Mr. Rothschild"s theatric characteristics.

Now, I'm awaiting a 8 year prison term for my first crime without any recourse in 28 years of my life. I have been in Alaska since 1968 and have no prior arrest record, with a very good work history. What I'm saying is that to judge me with this presumptive sentence is unjust. To take me out of society for 8 years will harm me more than anything.

I see the presumptive law as warhousing criminals and not rehabilitating them. Please give this some thought for other people who might have the same circumstances as me!

Larry A. Dely Jr.

Larry A. Dely Jr.
C.I.P.T.
P.O.Box 103155"L"
Anchorage, Ak.
99510

LETTERS IN OPPOSITION

SUSITNA

BUSINESS AND PROFESSIONAL WOMEN'S CLUB
P.O. BOX 104832 ANCHORAGE, ALASKA 99510

April 21, 1986

Don Clocksin, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99801

Re: House Bill 554 - Presumptive Sentencing

Rep. Clocksin:

The members of Susitna BPW are against passage of the referenced bill.

This bill, the members feel, gives the first offender too much of an advantage while the victim is most disadvantaged, not only in that the victim has been traumatized, but that the guilty person may very well not suffer any penalty whatsoever.

We feel that the bill, as written, gives judges a very limited choice of penalties that lean heavily toward benefit to first offenders, whether or not those offenders are guilty of misdemeanors or felonies.

Further, this is a bad time, financially, to suggest that more parole officers be hired to see that offenders on parole or probation are adhering to the provisions of their freedom.

Yours very truly,

Georgia Eastlund

Georgia Eastlund, Chairman
Legislative Committee

cc: Mike M. Miller
Robin Taylor
John Sund
Max Gruenberg
Fritz Pettijohn
Randy Phillips

Fairbanks
North
Star
Borough

Mayor: Juanita Helms

March 10, 1986

Honorable Don Clocksin
Alaska State Legislature
Pouch V (Mail Stop 3100)
Juneau, Alaska 99811

Dear Representative Clocksin:

The Fairbanks North Star Borough has reviewed HB 554, which addresses presumptive sentencing for certain felony crimes. We recognize the need for a means to reduce overcrowding the state jails. However, to be acceptable, any reduction in presumptive jail terms should be replaced with a suitable alternate sentence. We have investigated one alternative that may be suitable for some offenses, described in the attached program outline. The concept of Community Work Service has received support from the Fairbanks City Council, the Fairbanks North Star Borough Assembly, and the Greater Fairbanks Chamber of Commerce Board of Directors as shown in the attached resolutions.

While the program described is a locally run program, we subsequently held discussions with the Department of Corrections and the Department of Law's Pretrial Diversion Program, and currently feel the best way to implement such a program is through expansion of the current Pretrial Diversion Program. Such an expansion would require additional funding for both administration of the program and for direct supervision of the work performed. The direct supervision is essential to the success of this type of program, and could be contracted to an organization to avoid adding positions to the state payroll.

P.O. Box 1267 Fairbanks, Alaska 99707 (907) 452-4761

In summary, the Fairbanks North Star Borough urges you to consider such a program as a means of reducing overcrowding in the jails and would lend its support to a substitute measure including community work service in place of the reduced jail term.

Sincerely,

Juanita Helms

Juanita Helms
Borough Mayor

JH:rlf

Attachments

cc: Interior Delegation
Representative Albert Adams, Chairman, House Finance Committee
Senator Jan Faiks, Chairman, Senate Finance Committee
Representative Max F. Gruenberg, Jr., Co-chairman, House Health, Education and Social Services Committee
Senator Patrick Rodey, Chairman, Senate Judiciary Committee
Linda Anderson, Legislative Liaison

Introduced by: Council Member Whitney
Date : January 13, 1986

RESOLUTION NO. 2740

A RESOLUTION SUPPORTING COMMUNITY SERVICE WORK.

WHEREAS, overcrowding in Alaska's jails is becoming a problem of critical proportions; and

WHEREAS, for certain types of crimes, community service may be an appropriate alternative to jail time; and

WHEREAS, community work service programs can provide needed services to the community in addition to reducing incarceration costs to local and state agencies; and

WHEREAS, in this period of declining state and federal revenue income, programs which will result in long-term cost savings need to be implemented; and

WHEREAS, the Fairbanks North Star Borough proposes to operate a Community Service Work Program provided that start-up funds may be made available from the State of Alaska;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, that they endorse and support the concept of a Community Work Service Program to be operated by the Fairbanks North Star Borough; and

BE IT FURTHER RESOLVED, that the Fairbanks City Council recommends that the Alaska State Legislature supports and funds this program; and

BE IT FURTHER RESOLVED, that the Fairbanks City Council requests the Alaska State Legislature to explore possible legislation to permit structured community service in lieu of mandatory jail time for certain offenses.

PASSED and APPROVED this 16th day of January, 1986.

Bill Walley

BILL WALLEY, Mayor

ATTEST:

Helen B. Green

HELEN B. GREEN, Acting City Clerk

By: Juanita Helms
Introduced: 12/19/85
Adopted: 12/19/85

RESOLUTION NO. 85-099

A RESOLUTION SUPPORTING COMMUNITY WORK SERVICE

WHEREAS, overcrowding in Alaska's jails is becoming a problem of critical proportions; and

WHEREAS, for certain types of crimes, community service may be an appropriate alternative to jail time; and

WHEREAS, Community Work Service Programs can provide needed services to the community in addition to reducing incarceration costs to local and State agencies; and

WHEREAS, in this era of declining State revenues, programs which will result in long-term cost savings need to be implemented; and

WHEREAS, the Fairbanks North Star Borough proposes to operate a Community Work Service Program, provided that start-up funds are available from the State of Alaska.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly endorses and supports the concept of a Community Work Service Program operated by the Fairbanks North Star Borough; and

BE IT FURTHER RESOLVED that the Fairbanks North Star Borough Assembly recommends that the Alaska State Legislature support and fund this program; and

BE IT FURTHER RESOLVED that the Fairbanks North Star Borough Assembly requests the Alaska State Legislature to explore possible legislation to allow structured community service in lieu of mandatory jail time for certain offenses.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 1985.

Sandra Scott Stringer
Presiding Officer

ATTEST:

Nona Lisa Shuler
Clerk of the Assembly

Fairbanks
North
Star
Borough

Mayor: Juanita Helms

COMMUNITY WORK SERVICE PROGRAM

FAIRBANKS NORTH STAR BOROUGH

DECEMBER 1985

P.O. Box 1267 Fairbanks, Alaska 99707 (907) 452-4761

WHAT IS COMMUNITY WORK SERVICE?

Through Community Work Service Programs (CWSP), persons convicted of minor crimes are sentenced to perform useful service to the community instead of spending time in already crowded jails. Upon sentencing by the Court System, these persons are directed to the program office where they are scheduled to perform their required number of hours. Some sentences can be structured such that any hours not completed by a stated deadline must be served in jail. This eliminates the need for extensive follow-up. Community Work Service sentencing is appropriate for cases such as shoplifting, driving while intoxicated, littering, and other minor non-violent crimes.

HOW CAN COMMUNITY WORK SERVICE BENEFIT THE COMMUNITY AND THE STATE?

In this era of declining State revenues, innovative cost saving measures must be examined. Conditions in Alaska's jails are reaching crisis proportions. Overcrowding can be solved by construction of new facilities, however this is costly and time-consuming. Currently it costs the State of Alaska and the City of Fairbanks over eighty-five dollars a day to keep a prisoner in Fairbanks Correctional Center. Misdemeanants can be incorporated into a Community Work Service Program for about twenty-five dollars a day.

This year, the City of Fairbanks Police Department is anticipating a budget shortfall as a result of the expiration of their contract with the Fairbanks Correctional Center for the housing of City prisoners. With this expiration, the cost to the City unexpectedly increased from twenty-seven dollars per prisoner per day to over eighty-five dollars. CWSP would be an appropriate alternative to jail time for many City violations, thus reducing the City's incarceration costs.

In addition to the direct cost savings to the City and the State, the Fairbanks North Star Borough and other local agencies would benefit by using CWS labor to perform needed services to the community for which revenues are not available. Examples of tasks which could be performed by CWS labor are: litter pickup, weeding and watering of flowerbeds, painting of picnic benches and playground equipment, snow shoveling for the elderly, removing brush from ski and dog-mushing trails, major cleaning of public facilities such as swimming pools and ice arenas, and preparation of materials for mass mailings. Most of these tasks are services which would not otherwise be provided; therefore CWS labor would supplement rather than replace existing jobs. An additional benefit of CWS is that improved levels of maintenance in public facilities can increase facility life and therefore decrease need for capital funds for replacement or renovation of facilities.

WHAT IS THE HISTORY OF COMMUNITY WORK SERVICE PROGRAMS IN FAIRBANKS?

The need for a Community Work Service Program has evolved over the past several years as a result of other programs which have grown to unwieldy size. In the summer of 1982, a Litter Abatement Program was developed for the Fourth Judicial District in a cooperative effort by the Alaska State Troopers, the Fairbanks Police Department, the Alaska Department of Environmental Conservation, the Fairbanks North Star Borough Division of Environmental Services, and the Court System. Under this program, the Troopers and the City Police made an active effort to cite litter offenders. The Court System then referred these offenders to the FNSB Environmental Services Division to participate in litter pickup.

Soon, however, the judges started referring more than just litter offenders to the program. By the end of the summer of 1983, more offenders were referred to the Environmental Services Division than could be supervised by the existing staff. Early in 1984, the Greater Fairbanks Chamber of Commerce formed a Beautification and Litter Control Committee. Under the auspices of this committee, a temporary supervisor was hired to direct court referrals during the summer of 1984. These persons were used primarily for beautification and litter pickup projects. During the summer of 1985, the Fairbanks North Star Borough and the Beautification and Litter Control Committee hired a student intern from the University of Alaska to utilize court referred participants in beautification projects.

While these various programs have provided useful service to the community, they are at best a temporary stopgap to deal with a fulltime, year-round problem. As a result, the community and in particular, the Beautification and Litter Control Committee began to look for alternative methods to meet the needs of misdemeanants sentenced to community service, as well as to tap this large potential labor resource for appropriate community projects. By this time, the Municipality of Anchorage had developed a highly successful Community Work Service Program. Using this program as a guide, the outline for a Fairbanks CWSP was developed.

HOW WOULD THE COMMUNITY WORK SERVICE PROGRAM BE STRUCTURED?

The Community Work Service Program will be operated by the Fairbanks North Star Borough Parks and Recreation Division. Initially, a program director will be hired to finalize the details of the CWSP operation. This director will establish the necessary working relationships with the Court System and the City and State Prosecutor's offices. Upon initial implementation of the program, a minimal staff will be hired, a secretary and a work service supervisor.

The secretary will be required to answer phone calls, process paperwork, and make initial contact with the work service participants. Initially both the program director and the work service supervisor will spend most of their time in the field supervising workers. As the number of participants increases, more supervisors will be hired to handle the work load. In addition, public facilities may provide supervisors who will be trained by the CWSP in order to direct crews of work service participants.

Misdemeanants would be referred to the CWSP by the judges and magistrates, as well as by Pre-trial Diversion services. Upon initial contact with the program, the participants will be assigned a specific date to commence their service. Screening will be conducted at the beginning of their first day of work. Complete records of hours worked will be maintained for each participant. Follow-up contacts of participants who have not completed their assignments will be provided by the CWSP employees. Reports on each participant will be provided to the Court System when the hours are completed or the participants are disqualified from the program. Reasons for disqualification will include: fighting, possession or use of alcohol or drugs while working, refusal to follow orders, health problems, or repeated absences.

If the necessary agreements are instituted, the State of Alaska and the City of Fairbanks will be billed monthly for supervision and processing charges for each person sentenced to the program in lieu of jail time. These revenues will accrue to the General Fund of the Fairbanks North Star Borough until they are appropriated to the Community Work Service Program to cover the program

expenses. This method of charging will allow the flexibility for the program staff to be expanded or contracted as demand warrants. In addition, participants could be charged a $20 per person processing charge to defray some of the costs of the program.

WHAT RESOURCES ARE REQUIRED FOR THE COMMUNITY WORK SERVICE PROGRAM?

Although the ultimate goal of this program is to be self-supporting, funds to cover the start-up will be required. This funding proposal reflects the cost of a "bare-bones operation for the final four months of FY86, and for the entire FY87. The attached budget reflects the salaries of three employees (program director, work service supervisor, and secretary), commodities, and contractual services. In order to eliminate the need for immediate capital expenditure, the Fairbanks North Star Borough will provide hand tools for use by the participants, and surplus vehicles for transporting participants.

COMMUNITY WORK SERVICE PROGRAM BUDGET
MARCH 1, 1986 - JUNE 30, 1987

Personal Services (three employees)	$155,660
Commodities (office supplies, fuel, auto parts)	5,800
Contractual Services (communications, travel, auto repair)	5,000
Capital Outlay	0
Grant Indirect Charges	8,945
TOTAL	$175,405

Requested revenues:

CITY OF FAIRBANKS GRANT	$80,000
STATE OF ALASKA GRANT	$95,405

Other possible sources of revenues:

Processing charge - $20 per person paid by participants
City and State payments for sentences in lieu of jail time

RESOLUTION #3-385

RESOLUTION PERTAINING TO A FAIRBANKS COMMUNITY WORK SERVICE PROGRAM

WHEREAS, overcrowding in Alaska's jails is becoming a problem of critical proportions; and

WHEREAS, for certain types of crimes, community service may be an appropriate alternative to jail time; and

WHEREAS, Community Work Service Programs can provide needed services to the community in addition to reducing incarceration costs to local and State agencies; and

WHEREAS, in this era of declining State revenues, programs which will result in long-term cost savings and which will eventually be self-supporting need to be implemented; and

WHEREAS, the Fairbanks North Star Borough Administration proposes to operate a Community Work Service Program and is requesting $188,200 in start-up funds from the State of Alaska for this program,

NOW, THEREFORE BE IT RESOLVED, that contingent on Fairbanks North Star Borough Assembly approval, the Greater Fairbanks Chamber of Commerce endorses and supports the concept of a Community Work Service Program operated by the Fairbanks North Star Borough; and

BE IT FURTHER RESOLVED, that the Greater Fairbanks Chamber of Commerce recommends that the Alaska State Legislature support and fund this program.

DATED THIS 15 DAY OF March, 1985.

GREATER FAIRBANKS CHAMBER OF COMMERCE BOARD OF DIRECTORS

By _____

Title President and Chief Executive Officer

AND

By _____

Title Chairman of the Board of Directors

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET • ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500

TONY KNOWLES
MAYOR

BRIAN S. PORTER
CHIEF

March 20, 1986

The Honorable M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Miller,

I felt compelled to write to you and express our department's position on House Bill 554. We oppose this Bill. The Alaska Association of Chiefs of Police is also opposed to this proposed legislation.

H.B. 554 totally unbalances a criminal sentencing structure that was written to create uniform, fair but firm treatment of criminal offenders.

I have heard Representative Clocksin state that our current sentencing laws do not protect the public nor rehabilitate offenders as is required by our Constitution, thus this proposal. H.B. 554, it would appear, is designed to reduce sentences in almost all categories of crime.

Article 1, Section 12 of the Constitution of Alaska states ..."Penal administration shall be based on the principle of reformation and upon the need for protecting the public". The commentary following this statement discusses these principles in terms of goals and objectives not absolutes. The problem, though, is that <u>if</u> we are not rehabilitating, we would be <u>knowingly</u> failing in the protection of the public by shortening sentences. That, it would appear to me, would be unconstitutional. It should not be necessary to state that when a violent or habitual criminal is isolated, the public <u>is</u> being protected.

I have heard Representative Clocksin state, in effect, that persons released from jail in Alaska are more dangerous than before they entered. This I firmly doubt. All the studies I've seen can state only one predicator with certainty, and that is that people tend to reduce active antisocial behavior and violence with age, i.e. the longer a violent person is incarcerated the <u>less</u> likely he is to be a threat to the individual safety of others upon release.

The total provisions of H.B. 554 would remove presumptive sentencing in first offenses from <u>all</u> felony crimes except Murder 1 and Murder 2. It would further eliminate presumptive sentencing second and subsequent Class B and C felony crimes. The Bill adds to the few remaining presumptive sentences the mitigators that the sentencing judge must consider reduction of sentence for those "under 25 years of age" and those who demonstrate "sincere remorse".

As previously indicated and certainly evidenced recently in Alaska, violence is a product of youth. "Sincere remorse", I would submit, is impossible to determine and merely fodder for future defense motions and appeals. Youthful thespians would have an automatic sentence reduction. I have heard that the term "appears amenable to treatment" has been suggested as an additional or replacement mitigator. This term has the same inherent defects as "sincere remorse", and, not really facetiously, how could we ascertain that one is amenable to a function we can't perform?

Let's face it. This Bill is an attempt to reduce the operation costs of the State. There are alternatives in place, in the pipeline and yet to be tried that should occur before we merely throw up our hands and throw open the jail doors.

The fact is we are beginning to see a leveling of most serious offenses. No one could have predicted the explosion of sexual assault/incest cases we've experienced in the last few years, but [illegible] will peak. It could well be that our current sentencing structure has affected this leveling. Let's give it a chance and not throw the baby out with the bath-water.

Sincerely,

Brian S. Porter

Brian S. Porter
Chief of Police

BSP:vka

Soldotna Police Department
P.O.Box 2499
Soldotna - Alaska 99669

Duane Udland
Chief of Police

March 5, 1993

Representative Mike Miller
Chairman of the House Judiciary
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Miller:

I would like to express my opposition to House Bill 554 which is presently in your committee. This Bill, if enacted, would be a disservice to the citizens of the State of Alaska. House Bill 554 is so sweeping that it virtually eliminates presumptive sentencing. House Bill 554 would take us back to the days where sentences are arbitrary and unequal across the State.

In addition I believe that the mediating factors that are in House Bill 554 are inappropriate. For instance having a mediating factor that the defendant was under the age of 25 would give those persons under 25 a virtual license to commit crimes. The section where a defendant demonstrates sincere remorse for the commission of the offense would only cause defense attorneys to argue this point for every defendant that appeared at a sentencing.

I understand that there are primarily two reasons why this Bill has been brought to your committee. One reason is the overcrowding in the prisons and the other reason is that it is believed that there is not enough emphasis on rehabilitation under our present code. I like other Alaskans wish that we did not have to spend money on jail space however, we can't get away from the fact that we have a high crime rate in the State of Alaska and that this trend will probably continue for many years. We are simply going to have to provide more jail space for those persons who are sentenced for crimes. I do agree somewhat with the argument that our present presumptive sentencing provides little encouragement for rehabilitation, however I think that House Bill 554 goes too far in this direction. I would suggest that we look at

specific crimes and perhaps lower the presumptive sentence and then add on some probation or parole time.

I think there are many people in the State who believe that some modification to our presumptive sentencing needs to be made.

I believe that there are some areas that should be looked at in presumptive sentencing, but I would also submit that presumptive sentencing for the most part has done what it was designed to do and that is get criminals off the street.

I thank you for your consideration in this and hope that you and your committee do not pass this Bill in its present form.

Sincerely,

Duane L. Ueland

Chief Duane Ueland
Soldotna Police Department

DU/mt

S.T.A.R.

Bus. 276-7279
24-hr.
Crisis 276-RAPE

March 24, 1986

Representative Don Clocksin
Pouch V
Juneau, AK 99811

Representative Clocksin:

Standing Together Against Rape, Inc., (S.T.A.R.), is the Anchorage sexual assault crisis agency providing services which include a 24-hour crisis line, legal and medical accompaniment, and information on sexual assault to the municipality and the State since May 1978.

It is with great concern that we respond to your proposals in HB 554 which would abolish presumptive sentencing for sexual assault offenses in the first degree as well as reduce second and third felony convictions for sexual offenses in the second and third degree. The reasons for the proposals, as outlined in your letter to Representative Mike M. Miller, are: 1) first and foremost, a concern for Alaska's overcrowded prisons; 2) the need to allow more judicial discretion in sentencing, 3) the need to focus on rehabilitation; 4) the elimination of "excessive" sentences for first-time offenders; and, 5) to provide for increased reporting and prosecution of sexual assault offenses, particularly incest cases.

The following comments are in response to your proposals in HB 554. Sections 2, 3, 4, 5, and 7 will be addressed in the sequence of 5, 2, 3, 4, and 7.

Section 5. AS 12.55.125(i)

Section 5 proposes the removal of the eight year presumptive sentence for sexual assault in the first degree and sexual abuse of a minor in the first degree.

As with any crime, the severity and harshness of a sentence should be suited to the seriousness and gravity of the crime. Sexual assault is a serious crime which can include any or a combination of the following; sodomy, fellatio, cunnilingus, vaginal intercouse, and masturbation. Any of these may be accompanied by the transferral of sexually transmittable diseases and/or serious or permanent physical injury. Psychological scarring may also last throughout the life of the victim.

Currrent studies indicate that one in three girls and one in seven boys will be assaulted before eighteen years of age. Alaska continues to lead the nation with the highest figure of rape per capita, three times higher than the national average. According to statistics from the Division of Family and Youth Services, reports of child sexual abuse increased 530% from 1980-1984. The Anchorage Police Department's Child Sexual Assault Unit handled an average of 52 cases per month for 1985. That average has already increased by approximately 13% for the first two months of 1986. Under the Violent Crimes Compensation Program for 1985, sexual assault claims exceeded all other categories of claims, including homicide and other types of assault. Of the 91 claims filed, 67 were for sexual abuse of a minor. The impact of sexual assault has been so severe in our state that the creation of at least 20 agencies state-wide has resulted to provide necessary services to victims.

The tragedy of sexual assault for many families is often compounded by unexpected costs for counseling, medical attention, and leave from work. In Anchorage counseling and therapy per hour on the average* can run anywhere from $70.-125. Trauma often associated with sexual assault can place individuals in such emotional despair and anguish that jobs are lost or left behind and lives dramatically changed.

For society, the impact of sexual assault of children is often felt two-fold. First, when the crime is committed against a child and thus against the state (provided it is a criminal offense). Second, when some child victims grow into adulthood and become either offenders themselves or involved in illicit activities. 75% of one group of sex offenders was found to have been victimized themselves as children. Studies also reveal that a vast majority of prostitutes were also sexually abused as children.

Sexual assault reaches beyond the lives of innocent victims and its hard-felt consequences impact all of society. It shocks not only our communities' consciousness but the very fibre of societal morals and values we wish to uphold. It is a serious crime and a very serious problem in Alaska. Until the burden it imposes upon innocent victims and the severity it places upon our State can be lifted we must continue to regard it as a crime whose gravity warrants the present presumptive eight year sentence.**

Section 2. AS 12.55.125(d)

Section 2 reduces the terms for presumptive sentencing under class B felonies from four years to three for second felony convictions and from six years to five for third felony convictions.

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* Counseling and therapy for victims of sexual assault are also available on a sliding fee scale by some private individuals and some profit and non-profit organizations. S.T.A.R. offers short-term counseling for no fee. (Contingent upon available funding.)

** The present eight year presumptive sentence can be mitigated or aggravated. Good behavior also allows for release after approximately six years. The average length of incarceration for sex offenders under this term is between 4-8 years.

Sexul assault in the second degree, sexual abuse of a minor in the second degree, and unlawful exploitation of a minor are class B felonies.

Sexual assault in the second degree includes contact without consent and sexual penetration with a person suffering from a mental disorder, defect or one who is incapacitated. Sexual abuse of a minor in the second degree includes sexual penetration between an individual who is 16 years of age and older and a victim who is 13, 14, or 15 years of age; or an offender 18 years of age or older who aids, induces, causes, or encourages a person who is under 16 to engage in sexual contact.

Child sex offenders can involve children in sexual activity through fondling and manipulating the childs genitals or having the child fondle and manipulate their genitals. For many child sex offenders, sexual contact is only the initial sexual exploitation leading up to increased sexual activity or full penetration. Often acting through an authoritarian position (i.e., teacher, parent, guardian) the offender may use force, threats, misrepresent the touching as normal or unintentional, or a necessary precondition for parental love and security. Sexual contact for children can be scary, confusing, make them feel bad or guilty, or encourage the child to become involved in sexually precocious behavior. Many children "act out" assault(s) by engaging in sexual activity with other children.

For sex offenders who take a advantage of those suffering from a mental disorder, a mental defect or incapacitation, their actions can only be viewed as incomprehensible. Not only are they taking a advantage of a mentally defenseles or physically incapacitated individual, but their obvious lack of compassion and humanity toward the victim is paramount to the crime.

Due to the seriousness of crimes for sexual assault offenses under class B felonies, the present presumptive sentences should be maintained at a minimum---not reduced by the proposed one year reductions for second and third felony convictions.

Section 3. AS. 12.55.125(e)

This section reduces the terms for second felony convictions from two years to one year and for third felony convictions from three years to two years for class C felonies.

Sexual abuse of a minor in the third degree falls under a class C felony. The sexual offense involves an offender who is 16 years of age or older who engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

Forced sexual contact at any age is psychologically demoralizing and emotionally enervating. As presented in comments under Section 5 and 2, sexual assault is a serious and heinous crime. The degree of seriousness of sexual assault in the third degree warrants the present two year and three year sentences for second and third felony convictions respectively.

Section 4. AS 12.55.125(g)

Section 4 proposes the inclusion of the term "presumptive sentencing" for (c) and (i) of this bill, "except to the extent permitted under AS 12.55.155-12 55.175."

This section is not clear. This section proposes inclusion of the term "presumptive sentencing", while Section 5 of the bill proposes abolishing the presumptive term under (i). Therefore a presumptive term would not be used (as a starting point) from which to determine mitigating and aggravating factors.

Could we receive clarification on this section.

Section 7. AS 12.55.155(d)

Section 7 proposes the addition of eight mitigating factors to the existing fifteen. These mitigators would impact sentencing for sexual assault offenses that are unclassified, and class B and C felonies. (See attachment)

Comments for this section will address these mitigators in relation to sexual assault dynamics and why these mitigators may be unsuitable.

(17) defendant is under the age of 25

It is interesting that age should play a factor as a mitigator, especially in light of the fact that Alaska has the youngest population in the nation. The average mean age is 26. Therefore, it would seem highly likely that many offenders coming before the courts would be under 25 years of age.

Sex offender data taken by the Department of Corrections show that the largest (38.9%) age bracket for incarcerated inmates is 20-29. S.T.A.R. 1985 statistics also show that the largest age bracket for assailants identified by the victims is between ages 19-30. Because a young population is naturally representative in our state and because age 25 appears within the largest age group for offending, there seems no apparent reason to allow it as a mitigating factor.

It is also unclear why this particular age (25) has been selected as a factor. Currently the State recognizes the significance of age for two reasons: 1) the determination of minor status; and, 2) eligibility status to buy and consume alcohol. Ages 18 and 21 respectively.

If rehabilitative motives are the reasoning for this age, studies show that rehabilitation should take place during the teen years. Psychologis and researchers in the field suggest primary prevention before age 18 and before the adolescent becomes involved in single or repeated sex offenses. Many sex offenders begin to display deviant sexual behavior by age 15. Therefore, strong efforts should be placed on rehabilitating juvenile sex offenders. Follow-up studies in their mid-twenties and thirties would be useful information, however, in determining the success of juvenile sex offender treatment.

(18) the defendant has demonstrated good potential for rehablitation

Presently there is no known treatment model which provides an ascertainable success rate. Studies on the dynamics of sex offenders are presently underway and treatment programs are relatively new. Unfortunately, the prognosis so far has been rather alarming. There is no known treatment model which provides with certainty that a sex offender will not re-offend again. Although some treatment models offer some percentage of success, many of these models are based upon the word of the offender disclosing continued sexual offending.

Other studies which have not relied upon confirmation of the offender to disclose continued offenses indicate that recidivism is high. A 1980 study conducted by Atascardero State Hospital showed that 55% of treated mentally disordered sex offenders were subsequently convicted of new crimes less than five years after release. Keep in mind that approximately 90% of all sexual assaults go unreported and that only 1 in 60 sexual crimes actually lead to arrest.

Assuming the idea of sex offender "rehabilitation" is to restore behavior which is acceptable to society, it is difficult, if not downright impossible, to evaluate a sex offender's prognosis for rehabilitation since there is no known model upon which to base this prospect.

Even if it were possible to diagnose someone as an excellent candidate for rehabilitation, the fact remains that the individual has been found guilty of committing a serious crime. It is important to note that our justice system works to punish and deter as well as rehabilitate.

(19) the defendant has no record of criminal law violations

This was deleted according to the January teleconference on HB 554.

(20) the defendant has demonstrated sincere remorse for the offense

Clinically recognized dynamics of sexual offenders follow a pattern which demonstrates that most offenders: 1) are sexually attracted to the offense (i.e., the idea of rape, child sexual assault, incest); 2) carry out the sexual attraction or fantasy by committing the offense; 3) experience a period of regret, remorese and/or guilt; 4) rationalize the crime by denying or minimizing the offense and vowing "never to commit the crime again"; and, 4) go through a period of suppression where the desire is kept in check or controlled. This pattern is not necessarily sequential and some components may be left out. Because sincere "remorse" is schematic to the dynamics of sexual offenders there is no reason why it should be used as a mitigating factor for sexual assault offenses.

Despite apparent honesty and sincerity, statements from sex offenders concerning present/future behavior cannot be viewed as reliable indicators or truthful assertions. Plethysomographic* observations show that although an

* A plethysmograph is a device used to assess sexual arousal patterns.

offender may openly declare a lack of interest in a deviant offense, recorded bodily responses contradict these declarations. Sex offenders studied in one treatment program were confronted with statements made in the initial interview and ple hysmograph results which were contradictory. 62% recanted their original statements and admitted to sexual interest and arousal to deviant sexual behavior. So, even though sincere remorse may be expressed, it does not negate the fact that the offender may still retain a high interest in the criminally offensive behavior and be at high risk to re-offend.

In addition, this mitigator raises three questions: 1) What if one individual is able to express remorse more convincingly than another?; 2) Would this mitigator only serve to create incentives for theatrical flair in order to receive a lesser sentence; and, 3) What if our observations are those of sincere regret by the offender that his/her crime was discovered instead of sincere remorse?

(21) the offense was [illegible]ed and not premeditated

Studies by Gene Able, renowned psychiatrist and researcher in the field of sex offenders, indicate that most sexual assaults are not isolated and are premeditated: in a study of 411 incarcerated sex offenders, the average number of victims per offender before apprehension was 336. The average number of attempted assaults was 581.

First-time offenders are rarely one-time only offenders. For sex offenders, the probability of a new offense increases with each past offense. Popular opinion which holds that many incest offenders are first-time offenders and "incest" only a few time and never outside the home is negated by studies: Among 159 men who reported incest with girls and women, 49% had molested young girls and 12% young boys outside the home. The average number of completed incest acts with female children was 83.4 and for male children 51.3.

As a general rule, most sex offenders deny or minimize their crime when apprehended and will consequently repudiate not only the crime which has been discovered but also any other offenses preceeding thereof.

(22) the defendant's capacity to formulate the requisite culpable mental state for the offense was diminished to a degre insufficient to constitute a complete defense

This mitigator would seem to apply to any case where alcohol or drugs were proven to be used by the defendant. Presently, factors related to voluntary use of alcohol or drugs cannot be used as a defense during criminal trial proceedings.

It is unfortunate this mitigator is under consideration since alcoholism is considered a serious health problem in our state. The 1984 Annual Report to the Legislature by the Office of Alcoholism and Drug Abuse states that 55% of all crime in Alaska has been determined to be alcohol related. Our courts presently refer offenders to alcohol treatment programs during sentencing. This mitigator may serve only to overlook the problem by diminishing its

seriousness and minimizing its significance.

(23) the defendant sought counseling or other mental health treatment for the conduct underlying the criminal offense before discovery of the offense or apprehension of the defendant

Sex offenders typically do not volunteer for counseling or request assistance in prevention. Most who seek help are doing so because their crime(s) has been discovered.

Although the admittance of sexual deviant behavior by the offender is a necessary step in receiving and benefitting from treatment, it is important, nevertheless, to realize that a serious crime has been committed. For victims there is no turning back from the trauma, horror, guilt, self-blame, and self-abasement suffered. Counseling and mental health treatment programs are just as available before the offense as they are after the offense.*

It seems this mitigator would only serve to disregard the serious physical and/or psychological injury suffered by the victim during and after the commission of the crime. Under this mitigating factor, justice would not be served especially for those victimized repeatedly before the offender decided to seek counseling. (See statistics in comments for (21).)

(24) the defendant, before apprehension, notified law enforcement authorities of the defendant's involvement in the criminal conduct

Comments for proposed mitigator (22) also apply here.

The choice to offend or not to offend is present before the commission of the crime. The choice to offend should be penalized, not mitigated after the fact.

In conclusion of comments on HB 554, we urge reconsideration of Sections 2, 3, 5 and 7, which includes mitigators (17), (18), (20), (21), (22), and (23). These sections do not adequately reflect the serious impact of sexual assault on victims or the state of Alaska, nor address and acknowledge factors and dynamics related with sexual assault offenses. We also respectfully request clarification of Section 4.

As Alaskans, we share some of the concerns presented in your letter to Representative Mike M. Miller. These concerns were also the basis for HB 554. We differ, however, on solutions to address these concerns.

1). concern for Alaska's overcrowded prisons

Alaska's overcrowded prison condition is a challenge which cannot be ignored. reducing or providing for no sentences in order to alleviate prison populations is not the answer. Segregation and incarceration of sex offenders are essential

for three reasons: 1) the public is protected from further risk, harm or injury; 2) incarceration validates society's condemnation of sexual assault as a serious crime; and, 3) this provides for an opportunity for the offender to receive treatment. As a society, we must continue to gather data and information on sexual assault dynamics in order to gain a better understanding of the issue. Insight offered through research and study will enable us to evaluate the best means possible to serve the needs of the victim, the offender and the public. But until we have a greater understanding of this perplexing problem, we must work to protect the innocent from further risk.

In a time of declining oil revenues, creative measures must be taken to balance not only the budget but also the needs of communities. We urge all legislators to consider the responsibility of the state to protect the health, safety and welfare of its citizens. We also strongly urge for alternative measures, other than reduced prison terms, to alleviate our current prison overcrowding condition.

2.) The need to allow more judicial discretion

As indicated in the brief amount of information presented in these comments, sexual assault dynamics are complex and intricate. Unfortunately, most legal professionals who have the greatest impact on sexual assault cases have little or no knowledge of the issue. Presently legal professionals such as judges, probation officers (pre-sentencing officers) and parole board officials are neither required or provided with training on this issue. Judge Victor Carlson has submitted a letter with our comments to attest to this fact. If judicial discretion is to be considered, then information relative to the merits of sexual assault cases must be provided at the very least.

We encourage workshops, seminars, and trainings to judges and all legal professionals on the dynamics of sexual assault. This information should be provided regardless of whether or not presumptive sentencing is altered. If the citizens of the State wish to maintain the present presumptive terms, then elected public officials should not only consider those wishes but acknowledge them in the law.

3). The need to focus on rehabilitation

Treatment and counseling for sex offenders is a relatively new field of study. The most promising results so far have been those reflected in a study conducted by Abel, entitled The Treatment of Child Molesters. The 1984 study involved 86 non-incarcerated individuals who participated on a volutary basis. The treatment effects appear to recede over time yet a twelve-month follow up showed a success rate of 79.2%. It is important to note that the success rate is based almost entirely on the word of the offender. Success rates for rapists, particularly those who are aroused and engage in violent or sadistic sexual activity, are significantly lower.

If rehabilitation is possible, we must endeavor to study and provide treatment programs. But it is of utmost importance that we focus equally, if not more energetically, on the victims of sexual assault. If, as studies indicate, that the vast majority of offenders have been sexually abused themselves as children, then we must provide for victim treatment and counseling as a preventive measure as well as a necessary service. This point should be given considerable consideration due to the significant increase of child sexual abuse reporting over the past five years in our state. As stated in our comments for HB 554 for Section 7 (22), juvenile offenders should be provided with necessary treatment well before eighteen years of age.

We encourage mandatory treatment during incarceration and out-patient counseling after release for all sex offenders, and an equal, if not greater emphasis and support of programs, state agencies, and organizations which provide prevention and intervention in child sexual abuse as well as counseling for all vicitms of sexual assault.

4. The punishment is often excessive

Punishment for sexual assault is rarely, if ever, excessive. Memories of the physical and emotional trauma associated with the sexual assault will last throughout the victims' lifetime. For children who are victims, there is a chance that: 1) the deviant sexual behavior will be reenacted in adulthood; 2) some victims will continue to be victimized in battering relationships or illicit activities; 3) they will acquire acute psychological dissociative behaviors, such as multiple personalities; and, 4) their strongest childhood memories will be of their sexual service at the hands of a loved one, trusted adult or a stranger. For adult victims, there is a series of physiological and psychological hurdles to overcome in order to carry on with their lives. As indicated in comments for HB 554, sexual assault is a serious crime and one of Alaska's most serious social problems.

Since the Alaska Court of Appeals handed down Covington v. State, ____P.2d___, Opinion No. A-203, July 26, 1985, prosecution for sexual assault cases has been made more difficult and subsequently sentences for the crime more lenient. Covington requires a particular time, date and place for each single offense before a count can be listed. In cases involving children who have been abused repeatedly over a period of time, it is highly unlikely that the actual number of offenses will be listed due to the inability of the child to remember all the exact times, dates and places of the assaults. Instead, only a few are recalled, often based laregly on such memorable dates as birthdays, holidays, school breaks or especially traumatic episodes. Thus, not even the totality of the crime is punished.

As stated in our comments for HB 554, and the above, sexual assault is a serious and grave problem in Alaska. Present presumptive terms are not excessive. Any action taken to change presumptive terms should result in an increase---not a decrease in sentencing.

5. Abolishing presumptive sentencing will encourage the reporting and prosecution of sexual assault offenses, particularly incest.

Some professionals believe that the true trauma of child sexual victimization is not so much the actual abuse as the reaction from family members, friends and the community. And that trauma is especially experienced by incest victims who, after reporting, must now face subsequent prosecution of a family member. There is no way to determine from this claim, what the long-term effects of the victimization would be if the abuse is not reported v.s. the trauma associated with reporting.

Studies so far indicate that incest victims are more severely impacted psychologically and experience more pathological disturbances in later life due to sexual abuse than non-incest victims. Reporting laws serve to provide for intervention of the abuse; whereas prosecution not only allows the child to realize the wrongfulness of the act but also provides societal support by protecting the child from further harm. Incarceration of the offender also allows time for the incest victim to receive counseling as well as acquire an advance in years so that autonomy can be established. The earlier intervention and counseling is made available, the greater the childs ability to avoid further sexual abuse. Perhaps emphasis should be placed on various community systems (legal, medical, private programs, state agencies) to respond more positively to the victim to decrease the chance of re-victimization.

We support present presumptive terms for sex offenses, regardless of the relationship of the offender to the victim. It is conceivable that increased community awareness and understanding of sexual assault dynamics and trauma may prevent re-victimization. Therefore we encourage increased efforts to provide information to the community. As far as the concern for factors which discourage reporting, there is no study to date which supports the theory that incest victims are less likely to report due to presumptive sentencing.

Alaska is a young and growing state which appears to be beset by a quandary of societal ills which include aggressive crime rates, a high alcoholism rate and ever increasing reporting of sexual assault and child abuse. It is the responsibility of us all to accept not only the magnitude of these problems but also to seek viable solutions and answers. This will not be an easy task. But if we as Alaskans are to keep emphasizing our states great natural resources, then we must also begin to cultivate and nurture the needs of her greatest resource of all---her people. We must focus upon the symptoms and causes of our societal dilemma, not just the results. We must explore further than HB 554. As a program we offer our knowledge and experience on sexual assault dynamics, and as individuals we offer our interest and concern in making solutions possible.

Thank you for the opportunity to comment on HB 554 and your concerns.

Respectfully submitted,

Dana Cassidy
Executive Director

C. Longoria

Carrie Longoria
Legal Advocate

cc: House Judiciary Committee
Governor Bill Sheffield
Hal Brown
Co-Sponsors of HB 554
Senator Pat Rodey

CL/sjj

ATTACHMENTS

1) Changing A Lifetime of Sexual Crime

2) Covington V. State of Alaska, Opinion # A-203, July 26, 1983

3) Issues in the Evaluation of the Sex Offender

4) State Statutes on Sexual Offenses

5) The Teenage Sex Offender

6) The Treatment of Child Molesters

SOURCES

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Superior Court
State of Alaska

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501 2083

Chambers of
VICTOR D. CARLSON, Judge

March 14, 1986

The Honorable Don Clocksin
Alaska House of Representatives
Pouch V - Mail Stop 3100
Juneau, Alaska 99811

Re: House Bill No. 554

Dear Representative Clocksin:

This letter is to request that the Legislature encourage and provide incentives for police officers, prosecuting attorneys, defense attorneys, probation officers, Corrections personnel and judges to participate in training programs relating to child and adult victim sexual and physical abuse. Without an understanding of the dynamics of the crimes of sexual and physical abuse of minor and adult victims, the professionals may lack the necessary sensitivity to important aspects of these cases, thereby causing greater harm to the victims and possibly misjudging the seriousness of what occurred.

Personally, it has been helpful to me to participate in the five-day University of Washington Harborview Hospital program for lawyers, social workers, police officers and judges (I am the only Alaska judge to have participated). I paid my own tuition and expense to participate. I believe everyone involved in these cases should be exposed to a similar educational experience.

Thanking you for considering my comments, I am

Very truly yours,

Victor D. Carlson
Superior Court Judge

VDC:rw

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THE COURT OF APPEALS OF THE STATE OF ALASKA

CHARLES COVINGTON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

File No. A-203

OPINION

[No. 491 - July 26, 1985]

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Jay Hodges, Judge.

Appearances: Larry Cohn and Carl Forsberg, Birch, Horton, Bittner, Pestinger & Anderson, Anchorage, for Appellant. John A. Scukanec, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Norman C. Gorsuch, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

SINGLETON, Judge.

Charles Covington was convicted of two counts of lewd and lascivious acts towards a child, former AS 11.15.134, and four counts of sexual assault in the first degree, former AS 11.41.410(a)(4)(B). He received a composite sentence of forty years with ten years suspended. Covington appeals, challenging his conviction and sentence. We reverse Covington's conviction and remand for a new trial.

FACTS

Covington's victim was his natural daughter, D.C.O. She testified at trial that Covington began sexually abusing her when she was nine or ten years old. D.C.O. was eighteen years old at the time of trial. D.C.O. testified that Covington slept with her, touched her breasts, and penetrated her vagina with his finger. After D.C.O.'s mother's death in November 1977 when D.C.O. was thirteen years old, Covington told her that she reminded him of her mother and had D.C.O. sleep with him in his bed.

Shortly before D.C.O.'s sixteenth birthday, Covington began having sexual intercourse with her. D.C.O. testified that she had sexual intercourse with Covington "practically every night," until she moved out in March 1983. Covington allegedly told her that he did not want her to "grow up naive like [her] mother."

C.C., D.C.O.'s brother, the thirteen-year-old son of the defendant, also corroborated D.C.O., testifying that on Mother's Day 1982 he saw an empty condom package on the night table next to the bed in which Covington and D.C.O. were sleeping but that he could not see if they had clothes on, nor could he remember if the door of the bedroom had been shut. He also testified that throughout 1982 his father and sister were sleeping in the same bed.

Covington testified in his own defense. He conceded that he had slept in the same bed with D.C.O. from August or September 1979 until D.C.O. moved out in March 1983, but contended that he had never fondled or penetrated her with his fingers or penis. He stated that the

bedroom door was always open and that D.C.O. had slept with him at her own request and not because of anything he said or did. He also denied the truth of earlier out-of-court tape recorded statements in which he admitted having had sexual intercourse with D.C.O. after her sixteenth birthday. Covington's testimony also suggested that D.C.O. was motivated to lie in order to obtain custody of her younger sister and prevent Covington from moving out of state with her.

I.

Covington challenges the indictment and the trial court's refusal to grant him a bill of particulars. The indictment charged Covington as follows:

> Count I charged lewd or lascivious acts occurring "from on or about the month" of July 1978 through December 4, 1978, "at or near Fairbanks."
>
> Count II charged lewd or lascivious acts "from on or about" January 1, 1979, through December 4, 1979, "at or near Fairbanks."
>
> Count III charged sexual penetration "on or about" October 1, 1981, through December 4, 1981, "at or near Fairbanks."
>
> Count IV charged sexual penetration "on or about" January 1, 1982, through October 1, 1982, "at or near Fairbanks."
>
> Count V charged sexual penetration "on or about" October 2, 1982, through November 1, 1982, "at or near Fairbanks."
>
> Count VI charged sexual penetration "on or about" November 2, 1982, through December 4, 1982, "at or near Fairbanks."

Covington argues that the trial court abused its discretion in denying his pretrial motion for a bill of particulars or, in the alternative,

his motion to dismiss the indictment. He contends that the indictment violated due process because it was not sufficiently specific to inform him of the nature and cause of the accusation. Ak. Const. art. I, § 11; U.S. Const. amend. VI; see also AS 12.40.100; Alaska R. Crim. P. 7(c).[1]

Covington argues that the indictments must be sufficiently clear to avoid surprise as to the specific acts and specific dates upon which those acts occurred. He argues that he was prejudiced because D.C.O. testified for the first time at trial that sexual intercourse had begun in October 1980, a year earlier than alleged before the grand jury or in the indictment. He points out that D.C.O. testified before the grand jury

---

1. Alaska Statute 12.40.100 states:

> Contents of Indictment. (a) The indictment shall be direct and certain as it regards
>
> (1) the party charged;
>
> (2) the crime charged; and
>
> (3) the particular circumstances of the crime charged when they are necessary to constitute a complete crime.
>
> (b) The statement of the facts constituting the offense shall be in ordinary and concise language, without repetition, and in a manner which will enable a person of common understanding to know what is intended.

Alaska Rule of Criminal Procedure 7(c) states in pertinent part:

> The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged . . .

that sexual intercourse began in 1981.[2] The state argues that no bill of particulars was necessary and the indictment was sufficient in this case. It relies on authorities which hold that leeway is necessary in charging sexual abuse and sexual intercourse with minors because children who are the victims of abuse may find it difficult to recall precisely the dates of offenses against them months or even years after the offense has occurred. See People v. Fritts, 140 Cal. Rptr. 94 (Cal App. 1977); State v. Roberts, 610 P.2d 558, 559 (Idaho 1980); State v. Wonser, 537 P.2d 197 (Kan. 1975); Commonwealth v. Lamory, 436 N.E.2d 992 (Mass. App. 1982); Commonwealth v. Vernazzarro, 409 N.E.2d 1326 (Mass. App. 1980); State v. Healey, 562 S.W.2d 118, 129-30 (Mo. App. 1978); State Davis, 70 A.2d 761 (N.J. Super. 1950). The state quotes State v. Roberts, 610 P.2d 558 (Idaho 1980), for the proposition that allegations of lewd and lascivious conduct with a minor "on or about the months between June and September 1976," and "on or about the months of May, 1976 [and] June, 1976" were:

> set forth with sufficient specificity to allow [the defendant] to prepare his defense and to protect him from double jeopardy.

610 P.2d at 559. The state reasons that this is particularly true where the defense is a "blanket denial" of sexual activity with the victim as opposed to an alibi defense as to specific dates. State v. Roberts, 610 P.2d at 559; People v. Fritts, 140 Cal. Rptr. at 97. See also People v. Long, 370 N.E.2d 1315 (Ill. App. 1977).

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2. Covington was not convicted of any acts of sexual penetration of D.C.O. prior to October 1980.

A review of the transcript bears out the state's contention that no unfairness occurred here. In the instant case, D.C.O. testified at trial that her father began having sexual intercourse with her shortly before her sixteenth birthday. She became confused about whether it was 1980 or 1981 but remembered that it had started in October because her father later celebrated the occasion as their "anniversary." D.C.O. told the grand jury that the defendant began having sexual intercourse with her in October 1931. Covington testified that he had never had sexual intercourse or sexual contact with his daughter at any time. He admitted, however, that he had been sleeping with her on an almost nightly basis since 1979. Thus Covington's denial, in the state's view, was just as effective as it would have been if the indictment had been more specific. State v. Roberts, 610 P.2d at 559; People v. Long, 370 N.E.2d at 1322. We generally agree with the state, and the authorities cited by the state, that the indictment was sufficient to alert Covington to the elements of the offenses he allegedly committed and sufficiently informed him so that he could defend himself and protect himself against further prosecutions for the same offense. See, e.g., Russell v. United States, 369 U.S. 749, 763-64, 82 S. Ct. 1038, 1046-47, 8 L.Ed.2d 240, 250-51 (1962); Price v. State, 437 P.2d 330, 331 (Alaska 1968); Adkins v. State, 389 P.2d 915, 916 (Alaska 1964). We also agree with the state that the broad rights to discovery granted a criminal defendant under the Alaska Rules will render a bill of particulars unnecessary in most cases. See Alaska R. Crim. P. 16; Lupro v. State, 603 P.2d 468, 472 (Alaska 1979).

The facts of this case, however, raise a more significant issue--that of Covington's right to a unanimous verdict. In considering

this issue, we start with the premise that the accused has a right to a unanimous verdict: a conviction may properly be entered only if the jury unanimously finds that all essential elements of the offense charged were proved beyond a reasonable doubt. Thus all jurors must agree that the defendant committed a single offense. State v. James, 698 P.2d 1161 (Alaska 1985). Where one jury instruction may encompass two separate incidents, the trial judge must instruct the jury that if a guilty verdict is returned, the jurors must be unanimous as to the incident or incidents of which they find the defendant guilty. James, 698 P.2d at 1166, citing Burrell v. United States, 455 A.2d 1373, 1379 (D.C. App. 1983). See also Johnson v. Louisiana, 406 U.S. 356, 362, 92 S. Ct. 1620, 1624, 32 L.Ed.2d 152, 159 (1972). In James, the supreme court was concerned with the application of this rule to a charge of a single offense where the state introduced evidence indicating different means of committing the same offense. The court held that the jury need not be unanimous regarding the means used to commit a single offense, reversing James v. State, 671 P.2d 885 (Alaska App. 1983).

The situation is substantially different here. The state charged Covington with separate counts of lewd and lascivious acts and sexual assault but proceeded at trial to present evidence of numerous separate criminal acts. D.C.O. was unable to recall any specific events or dates which would distinguish the circumstances of one assault from another. C.C. did corroborate, in part, a separate incident on Mother's Day of 1982 when he observed the empty condom package. Under these circumstances, there is substantial doubt that the jury convicting Covington of each count had a specific incident in mind. While we agree with the state's

authorities that an indictment is sufficient which charges a specific incident, the precise date of which the witness is uncertain, the witness must nevertheless have a specific incident in mind. Sexual abuse of a minor is not a "continuing offense." See State v. Petrich, 683 P.2d 173, 176-77 (Wash. 1984) (where a number of sexual incidents occur at separate times and places, and the only connection between incidents is identity of the victim, a continuing offense has not been proved). In Petrich, the court reached the following conclusions regarding protection of the defendant's right to unanimous verdict:

> When the evidence indicates that several distinct criminal acts have been committed, but defendant is charged with only one count of criminal conduct, jury unanimity must be protected. We therefore adhere to the Workman rule, [State v. Workman, 119 P. 751 (1911) (where the evidence tends to show two separate commissions of the crime, prosecutor must elect between them)] with the following modification. The State may, in its discretion, elect the act upon which it will rely for conviction. Alternatively, if the jury is instructed that all 12 jurors must agree that the same underlying criminal act has been proved beyond a reasonable doubt, a unanimous verdict on one criminal act will be assured. When the state chooses not to elect, this jury instruction must be given to ensure the jury's understanding of the unanimity requirement.

683 P.2d at 178.

We also agree with the Washington court's reasons for adopting this rule:

> These options are allowed because, in the majority of cases in which this issue will arise, the charge will involve crimes against children. Multiple instances of criminal conduct with the same child victim is a frequent, if not the usual, pattern. Note, The Crime of Incest Against the Minor Child and the States' Statutory Response, 17 J. Fam. Law 93, 99 (1978-79). Whether the incidents are to be charged separately or brought as one charge is a decision within prosecutorial discretion. Many factors are weighed in making that decision, including the victim's ability to

> testify to specific times and places. Our decision in this case is not intended to hamper that discretion or encourage the bringing of multiple charges when, in the prosecutor's judgment, they are not warranted. The criteria used to determine that only a single charge should be brought, may indicate that the election of one particular act for conviction is impractical. In such circumstances, defendant's right to a unanimous verdict will be protected with proper jury instructions.

Id.

In the instant case, the state did not elect specific incidents, nor was a clarifying instruction given. Under these circumstances, we find reversible error and remand for new trial.[3]

II.

Covington filed a motion for a protective order prohibiting the state from introducing evidence of alleged sexual relations between Covington and D.C.O., occurring prior to July 1978 and after December 1982. The trial court denied Covington's motion in reliance on Burke v. State, 624 P.2d 1240 (Alaska 1980). In Burke, the supreme

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3. A number of courts have reached similar results utilizing slightly different legal theories. See, e.g., People v. Creighton, 129 Cal. Rptr. 249 (Cal. App.1976); People v. Abdullah, 25 P.2d 40 (Cal. App. 1933); State v. Pace, 212 P.2d 755 (Or. 1949). Cf. People v. Pries, 440 N.Y.S2d 116 (N.Y. App. 1981); People v. MacAfee, 431 N.Y.S.2d 149 (N.Y. App. 1980) (requiring specific acts and dates to be spelled out in the indictment).

court considered this issue in the context of Evidence Rule 404(b)[4] and Evidence Rule 403.[5] The court noted that where the specific crime charged was sexual abuse of a minor, the common law position supported by an overwhelming majority of states is that evidence of prior similar conduct with the same victim is admissible. 624 P.2d at 1247. The court affirmed admissibility of the evidence stressing that all of the acts involved the same victim. The court accepted two closely related rationales: first, the evidence tended to establish the ongoing relationship between the accused and the victim and explained, in part, the victim's inability to specifically describe separate incidents; and, secondly, it served to explain the victim's testimony in its context, particularly indicating why she might acquiesce in the defendant's demands. 624 P.2d at 1249-50. We believe both of those rationales are applicable here and justify the admission of the evidence. Given our holding today that the prosecution must either

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4. Alaska Rule of Evidence 404(b) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person or to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

5. Alaska Rule of Evidence 403 provides:

> Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

elect to prove a particular incident or that the jury must be instructed that it must unanimously agree on a particular incident, we believe the evidence is highly material to explain the witness' difficulties in specifying incidents so that her testimony may be considered in the context in which it arose. We find no error.

III.

Covington argues that the trial court erred in refusing to permit extrinsic evidence that D.C.O. had made false charges of sexual assault. During voir dire, D.C.O. admitted that she had made accusations against her grandfather and a man by the name of J.D. The trial court precluded the defense from calling the grandfather to deny the accuracy of the charges. Covington contends that the evidence was admissible to challenge D.C.O.'s credibility and its exclusion violated his sixth amendment right to confront the witnesses against him. See, e.g., Davis v. Alaska, 415 U.S. 308, 316, 94 S. Ct. 1105, 1110, 39 L.Ed.2d 347, 353-54 (1974). The state argues that the evidence was irrelevant since past incidents had nothing to do with whether the victim had been sexually assaulted by Covington. Further, the state argues that a swearing contest between the victim and her grandfather would not have assisted the jury in evaluating her credibility. See, e.g., A.R.E. 403; Dyer v. State, 666 P.2d 438 (Alaska App. 1983). This issue has received substantial attention in the reported cases. See, e.g., 3A Wigmore on Evidence § 963 (Chadbourn rev.ed. 1970). The state does not contend, and the trial court did not hold, that the evidence of prior accusations by D.C.O. was precluded by Alaska's rape-shield statute. See, e.g., AS 12.45.045; A.R.E. 404(a)(2). See Commonwealth v. Bohannon, 378 N.E.2d 987 (Mass. 1978).

A majority of the courts which have considered the issue permit such evidence only if the defendant makes a showing out of the presence of the jury that the witness' prior allegations of sexual assault were false, as, for example, where the charges somehow had been disproved or where the witness had conceded their falsity. See, e.g., State v. Hutchinson, 688 P.2d 209, 211-13 (Ariz. App. 1984); People v. Alexander, 452 N.E.2d 591 (Ill. App. 1st Dist. 1983); Commonwealth v. Bohannon, 378 N.E.2d at 991-92; State v. Anderson, 686 P.2d 193, 198-201 (Mont. 1984); State v. Demos, 619 P.2d 968, 970 (Wash. 1980). We find this approach appropriate and adopt this rule for Alaska. We hold that a defendant who wishes to use this kind of evidence at trial must obtain a preliminary ruling from the trial court that it is admissible. The matter should be brought up out of the jury's presence.

In the instant case, defendant's offer of proof did not establish the falsity of the alleged prior complaints. We assume that on remand Covington will be given a reasonable opportunity to attempt to show the falsity of the prior accusations.

The judgment of the superior court is REVERSED. This case is REMANDED for new trial.[6]

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6. Covington raises three other issues which our disposition makes it unnecessary to reach. He contends that, first, the trial court abused its discretion in denying him the opportunity to depose witnesses prior to trial; second, the trial court abused its discretion in denying a new trial; and third, the trial court imposed an excessive sentence.

Psychology Today
March 1985

Changing a Lifetime of Sexual Crime

CAN SEX OFFENDERS EVER ALTER THEIR WAYS? SPECIAL TREATMENT PROGRAMS PROVIDE SOME HOPE.

BY ROBERT E. FREEMAN-LONGO AND RONALD V. WALL



Fred was a hunter. On weekends he'd drive around the city looking for wooded areas with small footprints or listening carefully for the sounds of his prey. If he found a good spot, he'd park a few blocks away, walk back and wait excitedly for a child to come by. Fred would talk the child into disrobing—offering to pay for cooperation—so he could perform oral sex on the child while masturbating. Eventually, needing more excitement throughout the years, he would threaten uncooperative children with his hunting knife.

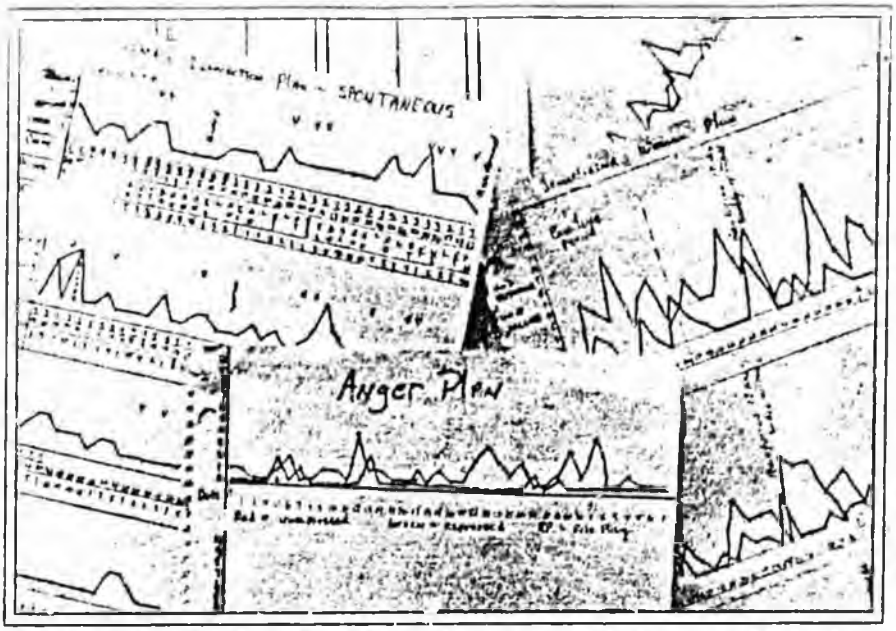
By the time Fred came into our treatment program for imprisoned sex offenders at Oregon State Hospital in Salem, he was 48 years old and had been fantasizing about molesting young boys and girls for 36 years. In one six-month period he molested an estimated 35 children; as with many other sex offenders, his total count of young victims—many forced into oral or anal intercourse—probably numbers in the hundreds.

Fred is an unusually compulsive and violent child molester, who has spent more than 25 years in prison, but in many ways he epitomizes the problem posed by all sex offenders (such as child molesters and rapists). We send many of them to jail when we can, both to protect ourselves and to punish them. But most return to the streets—sometimes quite quickly—and their imprisonment, far from being a deterrent, may have exacerbated their problems. Estimates of the recidivism rate among untreated sex offenders range between 35 and 80 percent. Not only do these people often go on to commit more sex crimes, but their behavior may help to create a future generation of sex offenders.

Fred is a good example of the progression from victim to victimizer. At the age of 6 he was molested by his stepfather, and at age 9 he was anally raped by a 17-year-old. When he was 10 he had intercourse with some female cousins, and by age 11, he had sexually molested two 8-year-old girls, an act that led to the first of his many incarcerations.

Breaking such a chain of victimization—which we have found in more than half of our clients—requires, we believe, not only imprisonment but

FOR 36 OF HIS 48 YEARS FRED HAD BEEN FANTASIZING ABOUT MOLESTING YOUNG BOYS AND GIRLS.



Prisoners develop plans for dealing with anger and deviant sexual behavior.

treatment. Sexually deviant behavior is usually deeply ingrained, and most sex offenders need extensive psychological help to change the thought and behavior patterns that lead them to insinuate or force themselves sexually upon other people, whether children or adults.

Our inpatient treatment program for imprisoned sex offenders is one of about 18 formal state-run intensive treatment programs for convicted sex offenders in the United States. Although the first program was launched in California in 1948, most current programs, like ours, were developed only during the past decade. They owe their existence to growing recognition that imprisonment alone is ineffective in preventing deviant sexual behavior.

A primary focus of our program is "relapse prevention." We provide intensive preparation for our clients' return to the community and offer continuing support after they return. Typically, after they have been inpatients in our program for 2 to 2½ years, they shift to "prerelease" status for six months (working or studying by day and returning to the hospital at night). Subsequently, while they're living full-time in the community on parole, they participate in our outpatient aftercare program for 18 months, receiving group counseling twice a week at first, then gradually decreasing visits to twice a month.

Prisoners who volunteer to participate in our program know that it has many psychologically difficult features, that their participation will not hasten their release and that our aftercare program has more restrictive requirements than normal parole does. They may, however, drop out of the inpatient program at any point and return to prison—an option chosen by more than half of those we accept.

To aid in selecting clients for our program—and in choosing and shaping their treatment, evaluating their progress and determining when they are ready for discharge from the inpatient program—we rely heavily on psychological and physiological assessment. The data we obtain are also used by parole and probation personnel to aid in determining an offender's risk to the community. While we can never be certain how a client will behave after release, our data can contribute to more accurate prediction.

One major assessment issue concerns the individual's pattern and intensity of sexual deviancy and aggressiveness. To determine this we use interview data, court and other records, as well as a battery of tests of personality, intelligence, self-esteem, depression, anger, cognitive processes and drug and alcohol abuse.

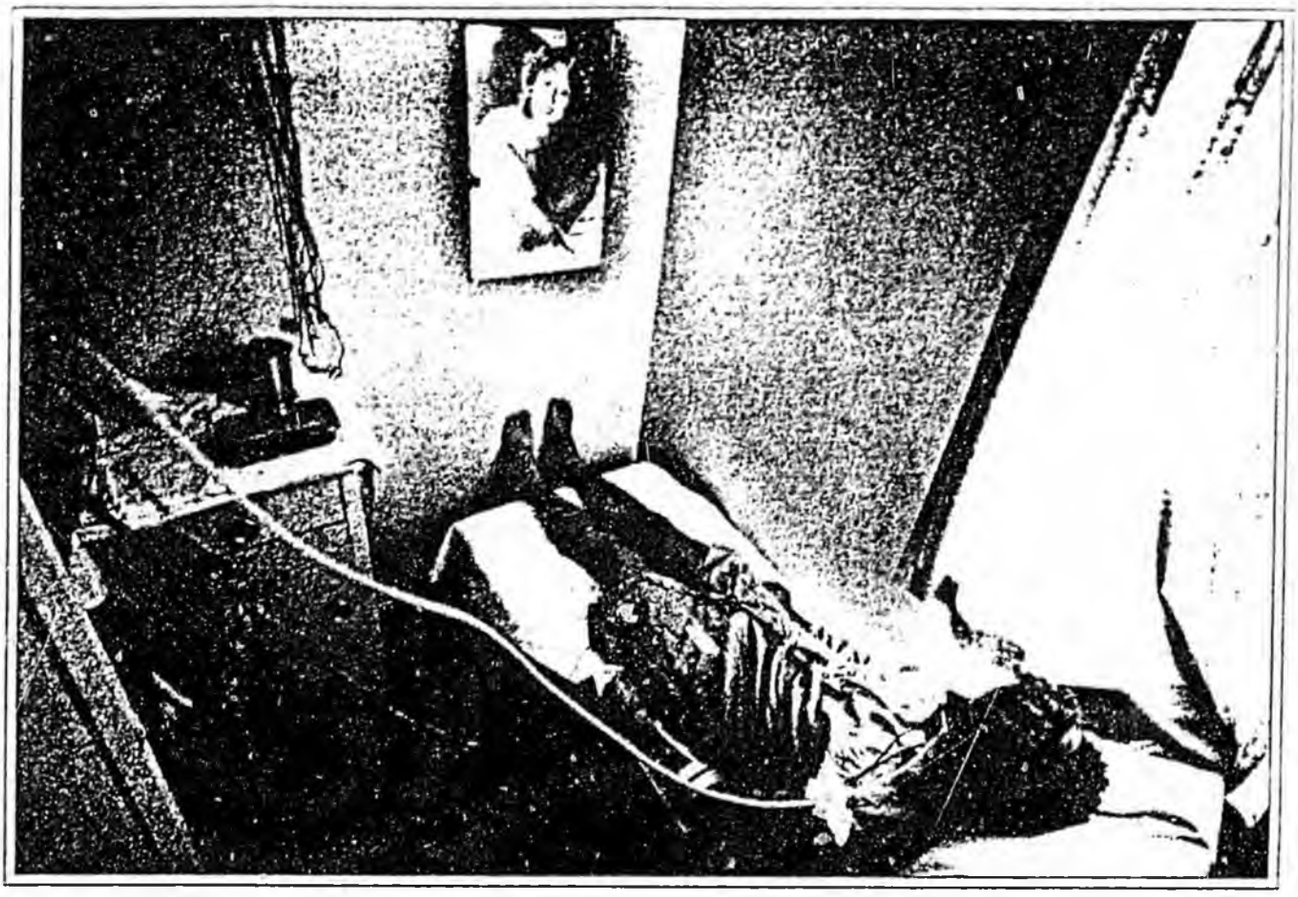
The offenders themselves are an important source of information concerning their backgrounds and their sexual, marital and family histories. But we also attempt to corroborate the information they provide, since most, if not all, offenders have been hiding or covering up their sexual deviancy problems for a long time and are well-practiced in lying about their lives.

They're more likely to be open with us if, when we interview them, we act as if we already know about their deviant behavior. For example, on the assumption that most sex offenders have a pattern of repeated offenses, we don't ask whether an offender committed the crime for which he was imprisoned, we ask him how many times he has committed it. And most often he will acknowledge more offenses than are on his record.

We ask prospective program participants to provide an autobiography detailing their sexual histories, noting particularly any incidents of sexual victimization as a child; when their deviant acts began; how often and when they took place; whether and under what conditions force was used; and whether there were any progressive or escalating patterns of deviant sexual behavior. We corroborate this information with police and court reports, interviews with family or relatives and with any documented past history.

One of the more difficult aspects of assessing and treating imprisoned sexual offenders is developing adequate behavioral measures of their deviance patterns and how these are affected by treatment. Since we cannot monitor their problem behavior or their progress in controlling it until they are back in the community and have opportunities for further abuse, we must use a variety of surrogate measures.

We test their responses to deviant and nondeviant sexual stimuli by presenting them with slides, audiotapes or videotapes of scenes likely to be arousing or with their own detailed de-



Prisoners' sexual responses to deviant sexual stimuli are tested with the penile plethysmograph. These responses can be lessened by pairing arousing pictures and aversive stimuli such as whiffs of ammonia.

scriptions of their sexual fantasies or actual sex crimes. To assess sexual arousal patterns, we rely primarily on the penile plethysmograph, a device that uses a strain gauge placed around the shaft of the penis in order to measure the degree of sexual arousal. Such measurements, although contrived, do provide useful data about offenders' specific sexual interests. However, since their accuracy is limited, we do not rely on plethysmograph records alone. Most machines only record the degree of penile tumescence, a response that can be inhibited by anxiety, nervousness or discomfort, aging, drugs or alcohol. Further, some offenders can suppress erections; in essence, a penis can "lie." Unfortunately, the higher the stakes for an offender, such as the risk of incarceration or rejection by family and friends if his sexually deviant interests are revealed, the less likely he is to respond freely and honestly to sexual stimuli during assessment.

Once clients are assessed and accepted, our treatment begins. We view sex offenders as people with a complex mix of social, psychological and, sometimes, biological problems. Thus, depending on the individual needs of each client, we use mixtures of group psychotherapy, education, behavioral therapy and possibly chemotherapy—nearly every technique currently being used to treat sex offenders. We also believe that sex offenders need to be accountable for their behavior, so our program is organized on a guided self-help basis. That is, it is largely client-run, directed by the clinical staff.

MORE THAN HALF OF THE SEX OFFENDERS WE TREAT HAD BEEN SEXUALLY VICTIMIZED THEMSELVES.

All participants begin their treatment with group psychotherapy, a technique more widely used among sex-offender treatment programs than individual therapy because it is usually more effective and less costly. The groups are run by a client-leader, under a therapist's supervision. These offenders know one another better than anyone else does and are astute in recognizing one another's techniques of denial and evasion.

Most clients are at first wary of the group and try to control it, but as they gradually learn to trust it, they become more emotionally honest. Group therapy helps them to examine their behavior critically and to identify, develop and practice methods of internal control. The group remains a support for them even after they return to the community.

Most of the sex offenders in our program lack the social skills needed for responsible community living—partic-

ularly skills in coping with the challenges of everyday life at work and at home. For example, some may be unduly passive in situations requiring more assertive behavior (such as handling a problem with a boss or a spouse), then may become angry and behave inappropriately and impulsively. One man, jealous when his wife went to work in an all-male office and upset that their sex life had diminished at about the same time, committed incest with his child instead of talking with his wife about his concerns.

Through a number of courses that combine classroom lessons with role-playing and practice, clients learn to understand themselves and their behavior better and acquire more socially acceptable coping patterns. The courses include rational emotive therapy, anger management, drug and alcohol education and even assertiveness training.

One course deals with sex-role stereotypes as well as myths, misconceptions and irresponsible thinking and behavior concerning human sexuality. We provide lectures and films by professional sex therapists on techniques of appropriate sexual behavior. In addition, we encourage clients to discuss and practice dating skills; they role-play in class with female hospital-staff volunteers such simple—but for some quite difficult—acts as asking a woman to join them for coffee or a movie.

To help offenders become more empathic and encourage the development of more caring, respectful relationships, we offer a course in which films (such as *Something About Amelia*), lectures, written assignments and discussion are used to stress how one's behavior affects others. To help offenders appreciate the impact of sexual assault on other people, we invite adult victims of sexual assault (not the offenders' own victims) to discuss how they felt about being abused. These often highly charged exchanges help break through the wall of denial that can make sex offenders believe their victims enjoy the experience.

Some prisoners in our program also participate in a special group therapy for offenders who themselves have been abused in one way or another. We encourage them to deal with their feelings surrounding their own victimization, while they learn that it is neither an excuse nor a sole explanation for their victimizing others. To prevent them from using their own victimization to rationalize their behavior, they are placed in this therapy group only after they have accepted responsibility for their crimes and have begun to deal adequately with their own victimizing behavior.

ONE MAN, JEALOUS OF HIS WIFE, WHO WORKED IN AN ALL-MALE OFFICE, HAD MOLESTED HIS CHILD IN RESPONSE.

Group psychotherapy and classroom approaches are augmented by behavioral therapy, which we, like many others, have found can often help clients control or reduce their deviant sexual behavior. But many sex offenders have been getting reinforcement (excitement, gratification and orgasm) from their deviant behavior for decades and it is difficult to counteract, especially in less cooperative or less motivated offenders.

We use several widely accepted behavioral treatment techniques, usually progressing from less- to more-psychologically and physiologically intrusive treatments. "Covert sensitization" is likely to be the first behavioral therapy used. It is designed to increase a client's awareness and understanding of how his sexually aggressive behavior affects himself and others. In theory, and usually in practice, when an offender becomes more aware of the consequences of his deviant behavior, he is likely to become uncomfortable or uneasy about such behavior.

The prisoner is first asked to write several scenarios of how he prepares for an assault—his emotions and behavior preceding the attack and, specifically, how he selects and "sets up" his victim. He also writes several scenarios describing the natural or social consequences of such an assault. At first these are likely to focus on the victim, later on the victim's family and, finally, on his own family. He then privately reads the scenarios into a tape recorder, repeatedly pairing the preassault descriptions and their consequences. A therapist reviews and critiques the tapes, which often provide new, in-depth information on the client's preassault behavior and may later be played and discussed in group therapy. In later sessions, after describing his preassault behavior, the offender will describe more appropriate behavior that might follow his preparations, such as walking away from a potential victim.



Group therapy can give sex offenders support and self-understanding.

Many sex offenders are obsessed with deviant sexual fantasies, sometimes so severely that they interfere with concentration on any task. We use "boredom tape therapy" to make them less interested in such fantasies. The offender writes out several of his most powerful and exciting fantasies, then breaks these down into very brief segments consisting of just a few sentences. He then tape-records while reading each segment aloud repeatedly for an hour, or until he's extremely bored. These tapes, like other therapy tapes, are also reviewed and critiqued by the therapist.

One of the more powerful behavioral techniques is aversive conditioning with odors and/or electric shock, which we use to reduce sexual arousal and interest in deviant sexual themes. During treatment sessions, the thera-

To help sex offenders gain empathy for others, victims of sex crimes tell them what it's like (right), and the offenders, often shaken, reply (below).





SESSIONS WITH VICTIMS MAY HELP ALTER SEX OFFENDERS' BELIEF THAT VICTIMS ENJOY THE EXPERIENCE.

pist presents slides or taped scenarios selected to be particularly arousing to the client. When the plethysmograph shows that sexual arousal is just beginning, we repeatedly present an unpleasant stimulus (such as ammonia vapors or a mild shock to the leg) until arousal is gone.

We also use "minimum arousal conditioning," a technique that combines both aversive and boredom tactics. Through this self-administered therapy, offenders learn to recognize and control low levels of arousal elicited by their deviant fantasies. They give themselves whiffs of an unpleasant-smelling liquid whenever they sense they are beginning to be aroused.

An even more powerful technique is "aversive behavior rehearsal," in which a client, using a mannequin, acts out his most recent sexual crime before a videocamera, knowing that the film will be shown later to others, such as members of his therapy group, other treatment staff, possibly friends and family. The client is first asked to talk in detail about his deviant sexual behavior and then to act it out with the mannequin, showing exactly how he "groomed," or manipulated, then sexually assaulted, his victim. He is also asked to describe his thoughts while role-playing so that the distorted thinking that led to his sexual offending can be aired.

When the offender views his deviant behavior on tape a few weeks later in the company of his peers, professionals and possibly those most important to him, he may be profoundly shaken in ways that can dramatically alter interest and excitement levels in that behavior. We often keep the videotapes as part of the person's records and may use them in later therapy as well.

In addition to behavior therapies, we sometimes use the drug Depo-Provera (medroxyprogesterone acetate), a powerful antiandrogen that can reduce a man's testosterone production to prepubertal levels. However, since this therapy has many side effects, it is used sparingly and only if other behavioral therapies fail to reduce deviant sexual arousal or if deviant fantasies are so intrusive that they interfere with therapy.

Large doses of the drug can inhibit sexual functioning to some degree, but more often it is given in moderate weekly doses to quiet clients' sexual fantasizing and daydreaming. Some clients, even in the first week of use, report a marked decrease in all fantasies, including sexual ones. Others, however, may take up to a year or more to respond fully.

The lessening of offenders' sexual thoughts and fantasies helps in therapy and in conditioning processes, especially for those who are very sexually compulsive. The more that sexuality—rather than anger or aggression—motivates a client's sexual offenses, the more useful Depo-Provera appears to be.

Most of our treatments are designed to reduce deviant sexual arousal and interest. But all adults—including sex

offenders—need some sexual outlets, and we believe that sex offenders are less likely to reoffend if they can develop more satisfactory sexual relationships with appropriate partners.

Many of our clients, in addition to their deviant arousal and behavior, have normal heterosexual arousal and relationships, and some are married. Others, however, who are barely aroused by normal sexual stimuli, may not have had normal sexual experience or may find appropriate sexual behavior very difficult. With them we function like sex therapists, using a variety of behavioral and cognitive techniques to enhance normal arousal and help clients overcome some of the psychological barriers to normal sexuality.

As sex offenders progress through our therapy program, we periodically reassess their deviant and nondeviant arousal patterns using the plethysmograph. We recommend that before offenders leave the inpatient program, their levels of deviant sexual arousal should be appreciably lower than their levels of nondeviant arousal. If this is accomplished, and if other areas of treatment have been successfully completed, the offender can be discharged from our inpatient program, paroled and followed for another 18 months in our outpatient aftercare therapy program.

How well do such treatment programs work? We can begin to answer this question by looking at untreated sex offenders. Our data show that, beginning in adolescence or even earlier and continuing into adulthood, many sex offenders had committed sexual crimes for 15 years or longer before their first arrest and conviction. Without intervention—whether incarceration or treatment or both—they would, in all probability, continue to create new victims indefinitely. A total of 53 sex offenders treated at our hospital reportedly had committed an estimated 25,757 sexual crimes, including rape, child molestation, exhibitionism, voyeurism, obscene phone calls and frottage (rubbing up against people). Psychiatrist Gene Abel of Emory University, who has accumulated data on more than 500 sexual offenders, also reports that the average number of sex crimes committed by an adult offender is usually in the hundreds (see "Discovering and dealing with deviant sex," *Psychology Today*, April 1985).

Most untreated sex offenders released from prison go on to commit more offenses—indeed, as many as 80 percent do. By contrast, the recidivism rate for sex offenders who have completed state-run treatment programs is estimated by the programs at between 10 and 25 percent. Of those who have completed all three phases of our treatment program, fewer than 10 percent have reoffended sexually. However, this figure does not take into account our dropout rate of more than 50 percent.

MOST UNTREATED SEX OFFENDERS GO ON TO COMMIT MORE OFFENSES—INDEED, AS MANY AS 80 PERCENT DO.

We believe that the dramatic difference in recidivism rates between treated and untreated offenders attests, in part, to the success of our collective efforts, even allowing for the fact that those who participate in voluntary programs such as ours may be somewhat more motivated to change than the average sex offender.

No responsible professional in our field would claim that sexual deviancy can now be cured. We can give sex offenders skills and methods for controlling their deviant behavior, but it seldom can be eliminated. They must be motivated and willing to use what they've been taught for life. Sex offenders may adapt their behavior superficially, but unless they develop noncriminal, even empathic, thinking patterns and can substantially appreciate how their behavior affects others, they are likely to revert to their deviant patterns.

The most challenging clients for our treatment program—and the ones most likely to reoffend—are those who are the most antisocial and sociopathic, whose deviant fantasies and behavior have dominated most of their lives and who have had the most frequent offenses. "Fixated pedophiles" such as Fred, men obsessed since early adolescence with the fantasy and reality of sex with children, are particularly difficult to treat successfully. Although Fred's deviant arousal has lessened somewhat during several years of treatment, he still clings to the delusion that if he found the "perfect" child, one who really enjoyed sex, that relationship would be legitimate. Some rapists, particularly those who are very antisocial and are highly aroused by deviant stimuli such as sadistic rape, are also likely to respond poorly to treatment or to drop out and reoffend.

Given the current limitations of our young field, we simply cannot guarantee absolute change in behavior or complete rehabilitation of sex offenders, any more than we can predict with certainty whether an individual is likely to commit another offense or become dangerous again. However, we are working to improve in all these critical areas.

Many state-sponsored treatment programs now exist tenuously, viewed with ambivalence by a public uncertain that sex offenders "deserve" more than the punishment of prison, concerned about the expense of treatment (which may be greater than the cost of imprisonment without treatment) and shocked that some of our clients, despite our best efforts, nonetheless commit further sexual offenses. The public and policymakers will have to decide whether the benefits—an appreciable reduction in recidivism and in potential victims who may later become victimizers themselves—outweigh these costs.

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Clipped from Psychology Today

PUBLIC SECTOR

Vi[illegible]s of child molesters

"I t[illegible]ght sex was a good thing, the more of it the better," says Jim, a child molester with more than 40 victims, many of whom were sons and daughters of friends. His and other men's sexual abuses of children are discussed in the April 16 PBS *Frontline* documentary *Men Who Molest.*

Despite the potential for exploitation, the show, to its credit, covers the topic with sensitivity and balance, and debunks some myths about offenders. They are not strange men in raincoats hanging out on street corners; molesters usually know their victims. And because offenders often seem so normal, people "try to find some other explanation than that the offender is turned on by children," says Lucy Berliner, a social worker who works with victims and their families at the Sexual Assault Center at Harborview Medical Center in Seattle.



LIGNESS FILMS

Lang Taylor, a therapist at Northwest Treatment Associates in Seattle, leads a group session for child molesters.

The program focuses on offenders who have been caught and prosecuted for their crimes and are receiving mandatory therapy—from behavior modification to group therapy—at Northwest Treatment Associates in Seattle, the nation's largest community treatment program for child molesters.

The sex offenders range in severity from Jim, who therapists admit may be untreatable, to Wayne, who molested his teenage daughter, but is now doing well in treatment and has begun to rebuild his relationship with her. The two are reunited on camera for the first time since the revelation of the sexual abuse—one of many emotional moments in a program that contains a great deal of powerful material. One wife listens to her husband describe how he molested their 3-year-old daughter; an offender is confronted in prison by his 7-year-old niece, whom he raped when she was 4; the same 7-year-old, during a therapy session, graphically reenacts her rape using dolls.

A cross-section of experts—from a judge who tries and sentences child molesters, to therapists at Northwest—all address the dilemma of what to do with offenders. Should they be treated or locked up? Those sent to prison will be back on the street sooner or later (according to the program, prison sentences for child molesters average less than one year), and even those in therapy may reoffend.

"He wants to help himself," says a woman whose brother is in prison for raping her daughter. "But I'm wondering how much of it he's doing because he knows he can get through the prison system quicker if he's cooperative."

The film's focus is on effects and treatment. It doesn't spend much time probing the psychological or biological reasons for why these men are attracted to children in the first place. Still, *Men Who Molest* raises questions about a disturbing issue. At the very least it may increase public awareness of the problem, alert people to protect their children and possibly encourage victims and offenders to seek help.

Men Who Molest was directed by Bobbie Birleffi, and produced by Rachel Lyons.

—Elizabeth Stark

Discovering and dealing with deviant sex

"Flashers" may expose their private parts, but they and other sex offenders are loath to reveal their private sex lives. Many either cannot or will not cooperate fully with the usual type of clinical interview. Further, those in jail typically conceal the full nature and extent of their sexual offenses for fear of new charges and lessened chances for parole.

Perhaps for these reasons, the traditional view among therapists and the police is that each sex offender typically has only one type of deviant arousal. But a recent study of outpatient sex offenders has come up with some disturbing data suggesting that multiple types of deviant arousa are common in this group, and the number of deviant sex acts committed by the average sex offender is far greater than had generally been believed.

In an 11-year period, a research

team studied men who were in outpatient programs for sex offenders at medical centers in Mississippi, Tennessee and New York. The men participated under a Federal Certificate of Confidentiality, which encouraged their candor.

During the assessment, the researchers fitted each man studied with a "circumferential transducer" that measured penile changes while he was exposed to movies or tapes of various types of sexual behavior such as rape, sex between consenting heterosexuals and sex with children. When confronted with recordings of penile arousal that contradicted what they had said at an initial clinical interview, more than half of the patients (62 percent) admitted to hitherto concealed sexual interests and behaviors. Nearly half reported engaging in more than one type of deviant sexual behavior, with the average offender engaging in three to four. For example, among 159 men who reported incest with girls and women, numerous additional offenses were reported: Forty-nine percent had molested young girls and 12 percent young boys outside the home; 6 percent were frotteurs (rubbing against people); 7 percent were voyeurs (peeking at people); 20 percent were exhibitionists; 19 percent were rapists of female adults; and 12 percent had committed homosexual incest at home.

The study revealed, as well, that the number of deviant sex acts committed by the average sex offender is far greater than had generally been believed. In the research sample, the average individual had committed 520 deviant sex acts by the time he was studied. On average, 12 years had elapsed between the first stirrings of interest and treatment.

The study also revealed differences in the ages at which various types of deviant arousal began. For half or more, voyeurism began before age 15, homosexual sex with children before age 16, frottage before age 17 and exhibitionism before age 18. (Most had developed deviant sexual interests and fantasies by age 12 or 13, before committing any sex crimes.) The age of onset is particularly important because it is related to treatment responses: Generally, the earlier the arousal starts, the more difficult it is to treat effectively.

The same research team has also conducted a study evaluating the efficacy of three different treatment "packages" that were used with 192 child molesters. Two treatment packages consisted of social-skills training plus assertiveness training, and a crash course in sex education combined with training to deal with cognitive distortions related to sexual involvement with children. A third treatment package—consisting of "covert sensitization plus satiation"—was designed to break the association between deviant fantasies, deviant arousal and orgasm. The researchers trained patients to pair their deviant arousal with images of unpleasant events and to pair their aberrant fantasies with the unarousable state after orgasm.

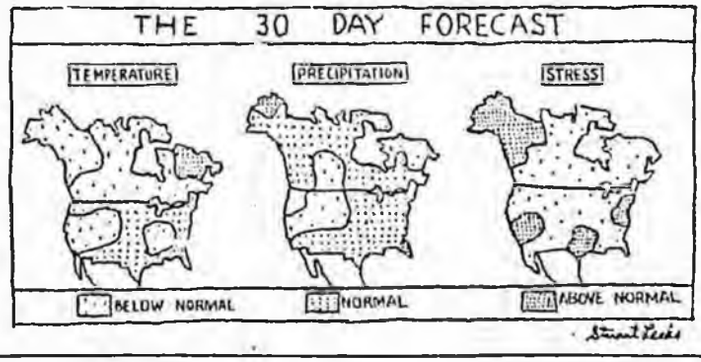
Preliminary results suggest that the third treatment package is the most effective, judging by self-reported behavior after treatment. Of the 65 percent of the patients who stayed in treatment, incest offenders had the best treatment response at a 12-month follow-up: Ninety-six percent had stopped their deviant behavior. Least responsive were those who molested children 14 and older, having only a 75 percent response rate. Among those who reported having committed offenses after treatment, only 11 percent targeted girls; the rest targeted boys.

The researchers believe, on the basis of patients' self-reports, that deviant sexual behavior, which begins with deviant sexual fantasies, develops when the fantasies become linked with masturbation and are "rewarded" through orgasm. It is not yet known what triggers overt devian sexual behavior, or whether there are people who, despite deviant arousal patterns, do not act on them with other people.

The investigators suggest that primary prevention efforts should focus on adolescents who develop deviant sexual arousal patterns at an early age. Help is needed well before age 18, before the adolescents become involved in single or repeated sex crimes. Most of these youngsters know their arousal patterns are unusual, but don't know what they mean and usually do not discuss their concerns with their parents. Thus, the researchers stress the importance of finding ways to provide children with information that can help them to understand the significance of what they are experiencing as well as their need for mental-health treatment.

The studies were conducted by psychiatrist Gene Abel, psychologist Judith Becker and epidemiologist Mary Mittelman at the Research Foundation for Mental Hygiene in New York, N.Y. Abel is now at Emory University in Atlanta, Ga.

—Anne H. Rosenfeld



3/21/1984

S-321

THE TREATMENT OF CHILD MOLESTERS

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Chapter I: Introduction

Treating Child Molesters

Child molestation is an exceedingly common sexual crime that affects one in four females in the United States. A variety of programs have been established to deal with the aftermath of child molestation, but few programs are focused on preventing child molestation by treating the child molester himself. If the incidence of child molestation is to be decreased, greater efforts need to be focused on treatment methods which will help the molester gain control over his deviant behavior.

This treatment manual has evolved from grant MH 36347 "The Treatment of Child Molesters," funded by NIMH: Center for Studies of Antisocial and Violent Behavior. This clinical treatment-research project is investigating the relative effectiveness of various treatment elements for child molesters (the details regarding the research design can be obtained by requesting the original grant application from the Center for Studies of Antisocial and Violent Behavior, Alcohol, Drug Abuse and Mental Health, Room 7-103, 5600 Fishers Lane, Rockville, Maryland 20852).

Demographics

The demographic characteristics of the subjects treated with this multicomponent treatment program are important because they identify who the treatment has been effective with, and therefore, the likelihood of generalization of this treatment package to other offender populations. The demographic characteristics can be found in Tables 1,2, and 3. For purposes of human investigation and the ability to give consent, this project requires all participants to be 18 years of age but there was no upper age limit on participants. Ages ranged from 18 to 76, with a mean of 34.4 years and a mode of 18 years.

Recruitment of participants was broad-based and involved notices in local papers, radio and television show interviews and presentations of the program to the courts and mental health groups. A severe limitation on the acceptance of subjects into the program was that they not be coerced into treatment. This requirement made subject recruitment more difficult since motivation for many sex offenders, especially those just released from prison, is poor. Given these limitations, Table 1 shows that 27.8% of referrals were from therapists, 19.6% from lawyers (involving cases in which conviction was not possible), 13.4% from parole (where it was not required that the parolee attend treatment in our specific program), 8.2% from other social services, and the remaining referrals came from a variety of other agencies.

The ethnic background of participants closely approximated the New York City census, with 60% of subjects being Caucasian, 20% Black, 15% Hispanic and the remaining groups from smaller ethnic minorities. The social class of participants was predominantly classes 3, 4, and 5 as determined by the Hollingshead socio-economic status rating. However, 9% of participants came from class 2 and 3% from class 1, demonstrating that problems of sexual deviation cut across all classes and ethnic backgrounds.

The majority of participants were single (47%), 29% were married and 13% were divorced or separated (frequently as a result of their past deviant behavior leading to disruption of the family in cases of incest, or a decision by the spouse that she could not tolerate the subject's deviant pedophilic behavior and wanted to separate).

Table 2 shows the educational background of participants to be relatively high, with 32% having at least one year of college (or completing) and 9% completing graduate school. The majority of participants were employed, with only 12% unemployed for less than a month.

Participants' religious preferences crossed all religions, with 34% Roman Catholic, 12% Baptist and a variety of other religious preferences as outlined in Table 2.

Table 3 indicates the motivational forces behind the participant seeking treatment, with 34% indicating that self-motivation was the key factor; 18% reported lawyers/legal aid were motivating, 15% said doctors/social workers were motivating, 12% said probation/parole motivated them and the remainder indicated various other reasons. Table 3 also indicates that 48% participated totally voluntarily, 25% through slight pressure from others, 14% through moderate pressure from others, 10% heavy pressure from others and 2% extreme pressure.

In conclusion, the demographic characteristics of our population confirmed that participants were drawn primarily from a younger population and through various referral routes. Participants were from all social classes and their ethnic backgrounds reflected that of New York City. Almost half of our participants were single, the majority were fully or part-time employed and they were well educated. They were self-motivated and participated voluntarily in the majority of cases.

Treatment Evaluation

Of major concern to any treatment project is the effectiveness of the treatment. This is a difficult problem for any treatment outcome study since there are multiple ways of evaluating treatment effectiveness. It is an especially difficult problem when treating sex offenders because their deviant sexual behavior is usually unknown to others. It is estimated conservatively that only 1 in 60 sexual crimes actually leads to arrest. Therefore, arrest records are very poor criteria for evaluating treatment outcome.

An alternate method is to develop a system that extensively protects the confidentiality of the subjects' records. We have taken this approach. Subjects were each given an identification number and all information pertaining to their deviant behavior was coded by number so that no names existed in the charts. Secondly, extensive consent forms were used which clarified that the participants were not to identify the specifics of any sex crime. Without the specifics of any sex crimes being recorded, the information in participants' charts is of minimal value to others and, therefore, is easier to protect. Thirdly, the project had a Certificate of Confidentiality from the Secretary of H.E.W. This certificate (an actual federal law) makes it illegal for any city, county, state or federal agency or agent to obtain information pertaining to the participants. Fourth, the code system that linked the participant's name with his identification number was held outside the United States by an individual not paid by the agency funding the treatment project. This allowed the holder of the identification number-names to operate independently of the treatment program and not to fear legal attempts to obtain the number-name link. Finally, interviewers and therapists acted as a filter system for data that should not enter the records. For example, if a participant inadvertently identified specifics of his sexual crime, these specifics were not written down in his chart.

The effectiveness of this confidentiality system is apparent since throughout the course of the project (and during the 18 years the investigators have worked with sexual offenders) there has been no breach of confidentiality and no one has gained information from our files.

Given all of the above steps to protect confidentiality, participants have entrusted the interviewers and therapists with extensive information regarding offenses and reoffenses. The large number of crimes and reoffenses revealed by participants demonstrates that participants felt free to report crimes previously unknown to others and certainly unknown to the criminal justice system.

Success Rates

To evaluate treatment success rates requires that participants complete the 30 week treatment program and sufficient time must pass for them to be evaluated 6 and 12 months after treatment is completed. As of this writing, data is available on 87 participants completing treatment (see Table 4) and as of the 31st week after treatment began (a 1-week follow-up), 86 of 87 offenders had stopped their deviant sexual behavior (98.9% success).

Six months following completion of treatment, 44 subjects have been reevaluated. Thirty-nine of 44 such individuals had stopped molesting children, a success rate of 88.6%. Twenty-four individuals have completed the 12 month reevaluation and 19 of 24 have stopped

molesting children during the 6 month interval, beginning 6 months after treatment and ending 12 months after treatment. The success rate during this interval was 79.2%.

Table 4 shows the specific details of these outcome results. To evaluate the impact of treatment on participants, the number of child molestations (primary diagnosis) were computed for the 6 month interval before treatment began. The 87 participants had committed 2,019 child molestations, for an average of 23.21 child molestations per offender in the six month interval just prior to treatment. During the 31st week after treatment began 2 molestations had been committed by 1 subject, 5 of the 44 participants reaching the post 6 month point had reoffended (the 5 had committed 73 child molestations between them). During the interval from 6 to 12 months post treatment, 5 of 24 participants reoffended (the 5 had committed a total of 116 child molestations, however; 1 subject had committed 67 of those crimes).

The effectiveness of the program is highlighted by examining the average number of child molestations (by primary diagnosis) in the 6 month period prior to treatment (23.21 molestations per offender), the number of molestations committed one week after completion of treatment (.02 molestations per offender), the number of molestations occurring in the 6 month interval immediately after treatment (1.66 molestations per offender) and the number committed during the 6 month interval from 6 to 12 months post treatment (4.83 molestations per offender).

The effectiveness of treatment is even more startling when one looks at the therapist hours needed per offender to complete the treatment. Less than 6.6 hours (per offender) of therapist time were needed to produce the above treatment effectiveness (see Table 5). Even with therapist time at $100 per hour, the total expense per offender amounts to less than $700. The current cost of incarceration ranges from $15,000 to $40,000 per offender per year in most states. The cost effectiveness of outpatient treatment is obvious.

Organization of Treatment

This manual describes six specific treatment elements that were used to treat child molesters on an outpatient basis. The treatment elements are equally applicable for any type of sexual deviation, not just child molestation. Each of the six elements is completed during five one and one-half hour treatment sessions.

The first two elements are those that assist the offender in decreasing his sexual arousal to young children, Covert Sensitization and Satiation. Satiation reduces arousal by satiating or boring the sex offender with his own deviant sexual fantasies. Covert Sensitization teaches the offender to disrupt fantasies of young children by replacing them with aversive images.

The next two elements involve Cognitive Restructuring and Sex Education. Many child molesters have faulty attitudes or beliefs

Table 4

Number of Completed Deviant Acts and Success Rates Post Treatment

	N	Subjects	Average
All completions committed before entering treatment	40,991	87	471.16
Completions, primary diagnosis 6 months pre-treatment	2,019	87	23.21
Completions, primary diagnosis 1 wk post treatment	2	87	.02
Completions, primary diagnosis 6 months post treatment	73	44	1.66
Completions, primary diagnosis 6-12 months post treatment	116*	24	4.83

	Did Not Molest	Total N	Success Rate
1) Number who did not molest (primary dx) 1 wk post treatment	86	87	(98.9%)
2) Number who did not molest (primary dx) 6 months post treatment	39	44	(88.6%)
3) Number who did not molest (primary dx) 6-12 months post treatment	19	24	(79.2%)

* Note: At post 12, 1 subject committed 67 crimes.

As of 3/21/84

THE TEENAGE SEX OFFENDER

1-781 D-516

Significant numbers of sexual offenders are teenagers. Studies of incarcerated offenders reveal a majority began to have problems in adolescence. Although not all teenagers who commit sexual offenses will become adult offenders, identification and intervention at an early age is very important. Teenage offenders may commit violent assaults on peers or adults, or, more commonly, may sexually molest a younger child. About one-third of known adolescent sex offenders molest young children in their own family, and two-thirds abuse children outside their family units.

Any sexual activity which is forced on another person, either by violence or threat, or in which there is a significant age difference between the two people involved, should be considered a sexual assault. It is not normal or healthy for a teenager to be sexual with a preadolescent child, and a professional evaluation should be done to ascertain the nature of the teenager's problem. When the sexual activity is between consenting peers (e.g., two five year olds playing doctor, or mutual masturbation between two twelve year olds) it is probably normal sexual experimentation.

The teenage *rapist* usually uses force or a weapon, and may injure the victim. He is dangerous and violent and must usually be removed from the community. Many of these boys appear quite appropriate in many ways, and may not have other problems in school, family or peer adjustment.

The teenage *child molester* is usually a boy, although a girl can be an offender, too. The victim is usually a boy or girl related to or known by the offender. Frequently, the assault occurs in a babysitting situation, but it may also happen during playtime, as part of "initiation" into a group, or as "sex education." Although usually this type of abuse is not physically violent, sometimes there is physical harm to the child victim or threat of violence to ensure cooperation. Other kinds of pressure may be used, such as bribes or trading favors in exchange for the sexual activity. In addition, children may be frightened by statements and actions which would not seem as serious to adults.

The teenage child molester can have other problems as well as the sexual problems. Adolescence itself is a hard time for many kids. Some of the common problems seen in teenage offenders are poor social development, like being shy or alienated from peers, or acting immature for his age. H/She may have little impulse control and be aggressive toward others. H/She often has developmental delays in school performance. There is almost always a

S.S.U.L.

1982

ISSUES IN THE EVALUATION OF THE SEX OFFENDER

A Presentation At
The Washington State Psychological Association Meetings
May, 1982

by
Irwin S. Dreiblatt, Ph. D.
Pacific Psychological Services
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Prior to the past few years, the evaluation of the sex offender has not been an area of assessment which has demanded much professional attention. There are several reasons why it has now become so prominent. The ubiquitousness of the offense has finally demanded much public attention. There also has been a growing attention in the community to the issues of sexual abuse. Increasingly, the Criminal Justice System has placed an importance on formal psychological assessment in deciding case disposition where there has been a sexual offense.

There is an increasing likelihood that many psychologists will be called upon to do this type of evaluation. Some of you have been asked to do assessments of this kind. Those who have conducted such evaluations, but have not yet established specialized credentials in this realm, may be aware that your reports are looked at, by some, with suspicion. You may have had your credentials carefully reviewed and, possibly, had your reports rejected as a basis for decision making. The evaluation of the sex offender has, by necessity, become a speciality area. Knowledgeable people who work within the Criminal Justice System have begun to place much emphasis on evaluators who have specialized training or a background of experience with this narrow population. It has become reasonably evident that competent mental health professionals without this specialized expertise are more prone to errors such as undercalling risk; inattention to, or over-simplification of the variables that are relevant; and making unrealistic and/or dangerous recommendations. My experience leads me to believe that this trend towards specialization is appropriate and necessary.

I would like to look with you today at what makes the assessment of the sex offender so different from the process of evaluating individuals who present with the more customary mental health problems. In that most sex offenders who are apprehended are males, we will be discussing this population. One major difference in evaluating the sex offender is the referral questions asked. Although usually some general assessment is required, the referral questions about the sex offender are frequently focused on specific issues: a) legal diagnosis, b) dangerousness, c) seriousness or relevancy of the offending behavior, d) treatment amenability, and e) specific recommendations for case disposition.

A second difference is that the sex offender is typically not a voluntary client. This person has not voluntarily sought assistance, nor have they defined their own problems or needs. Almost all are seeking help (and evaluation) because they are in trouble. A third party (police, Children's Protective Services, etc.) is most often leveraging the person to obtain a formal assessment. The client is on an adversarial footing with the authorities and, to some degree, with the examiner. Lying and deception

problem in the ability to form close relationships and communicate with others. Most have had little or no sex education, so h/she might have incorrect ideas about acceptable sexual development and behavior. Family relationships are often marked by poor communication. And many of the offenders have themselves been victims of emotional, physical or sexual abuse.

Most children are afraid to tell, especially if there has been some threat, so it may not come out right away. Sometimes the child doesn't tell at all, but something is noticed or changes occur in her/his behavior. Once the child(ren) tell of the abuse, it may be hard to believe that a teenager could be an offender. Initially, the offender's parents often cannot or will not believe that their child is a sexual offender. This denial often makes it difficult for the boy or girl to admit to the abuse because h/she fears his/her parents' reaction. In many cases the parents of the victim and the parents of the offender are acquaintances, friends or relatives. This can put a great strain on a relationship.

Since it is known that a teenage offender can become an adult sex offender if h/she is not helped, the importance of reporting cannot be overemphasized. Like the adult offender, the adolescent offender will not go to counseling without outside pressure. It is almost always necessary to have court monitoring of the treatment.

Prepared by:
The Sexual Assault Center
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February 1981

on the part of the client are typical. Compared to other circumstances, the context of a sexual offender examination is somewhat unique.

A third issue is that the sexual offense and sexual deviancy is defined legally; it is not defined by the person's subjective discomfort. It is nearly always a given, that at least to some degree, the behavior in question is ego-syntonic for the client. The hallmark of the sex offender is defensiveness. The offender's presentation of information is self-serving and often lacks objectivity and logic. Much of the individual's energy at the time of the evaluation is directed toward self-protection rather than designed to provide clarification. Although sexual offending is often a chronic behavior problem (even if the offense has been committed only against a single victim), the sexual offender is an extremely poor predictor of his future sexual behavior and a poor behavioral manager in that sphere of his life. Statements about future behavior (such as non-offending) cannot be viewed as reliable indicators, despite seeming honesty and sincerity. In explaining his behavior, sexual offenders often lean on social or religious biases and beliefs which have a ring of truth. Sex offenders are often otherwise law abiding citizens. It is very easy for that, alone, to color the examiner's assessment of risk about an offender. Our own biases about sexual abuse and deviant sexual behavior are strong, complex, and often contradictory. Working with the sex offender is an area of professional functioning where one's biases can easily intrude into one's decision making.

In almost all cases of sexual offending, there is an enormous amount at stake for the client; the client's family, the community at large, etc. There is also considerable at stake for the examiner, whose work moves into a public arena. The professional's responsibilities are multifaceted. They often seem contradictory and difficult to resolve. There are always enormous pressures on the examiner by individuals with a vested interest in the case.

Basically, what we as practitioners have generally learned in terms of working with a mental health population, does not serve us realistically with a sex offender or criminal population. With a mental health population, we are taught to rely on the patient's self-report, encourage the person to define his/her own problems, depend on his/her subjective discomfort as a motivator for treatment, and to have the person's future intentions and wishes guide us. In contrast, it can be all too easy to believe a sexual offender who states: 1) He feels very badly about molesting his daughter. 2) He only did it because of marital problems they were experiencing. 3) He had already stopped offending before being caught. 4) He had been, himself, on the verge of seeking assistance.

All of this takes on a different perspective when your experience demonstrates that: 1) Most offenders go through a cycle of being sexually attracted to offend: offending - feeling regret - promising themselves they will not reoffend - feeling confident that they are under control - feeling attracted to a deviant sexual choice - reoffending. 2) Marital troubles do not appear to cause sexual offending. In fact, many couples have marital problems and no offense occurs. 3) It is rare that sexual offending of this kind is transient; the problem typically becomes chronic.

Mental health practitioners are trained to adopt a helping, accepting, and caring posture. They are discouraged from taking an authoratative and controlling stance. The mental health approach emphasizes client support; one attempts to trust and believe one's client and have confidence in him. Although not completely so, this posture is the antithesis of the authority-based treatment approach one takes with a sex offender. Effective assessment and treatment of the offender requires a degree of skepticism and cynicism on the part of the professional. I tell my clients that I do not operate on a trust basis. Trust is what is abusable. I communicate to them that I have no intention of feeling confident in them. Feeling confident about them can be dangerous.

There are some additional things you need to know to do a good assessment of a sex offender. You must have an appreciation of the limits of risk prediction. For example, you must know that we are unable to identify sex offenders by any means in an open population. That is, there is no evidence that you can, in the absence of a finding of guilt or an admission of guilt, accurately identify those people in the community who are sex offenders. What we can do, is make refined predictions about an offender who we already know is a risk because of a demonstrated record of sexual deviance. To make adequate statements about risk you must define the specific risks involved and the situation to which you are predicting. Dangerousness is very much situationally determined. A man may be a very high risk to molest a child if he is living with youngsters, and a very nominal risk to offend against a child if he is living in an adults' only environment. One must also fully understand the importance of past behavior in risk prediction. There can be little question that the strongest predictor of future sexual offenses is past sexual offenses.

The practitioner must be knowledgeable about the controlling statutes in their jursidiction regarding sex offenders. In the State of Washington, that that means understanding: 1) the sexual psychopathy statutes, 2) the child abuse statutes, and 3) the statutes regarding establishing dependency for minors. Similarly, the psychologist needs to have an understanding of the Criminal Justice System and its operation. We are not dealing with a true system; the justice system can be quite unpredictable, inconsistent, and arbitrary; it is an adversarial arena where there are competing parties and lobbies.

You must know something about the base rate for the offenses with which you are dealing and the offending patterns for specific offense categories. Again, one must stress an appreciation for the predictive power of both past offending behavior and past apprehensions for those offenses. There is a very strong relationship between the number of past apprehensions and likely recidivism.

There is a need to appreciate the chronicity and dangerousness of this population, the damage that is done by their offenses, and have some knowledge about victims and victimology. For example, there must be an appreciation for the fact that people infrequently make allegations about someone's sexual conduct without there being some basis for this. Children very rarely will make this allegation about parents for secondary gains.

The examiner should be knowledgeable about resources available to serve the offending population and the importance of this availability in assessing risk and making good dispositional recommendations. A man may be a reasonable risk for community treatment in Seattle, Washington where there are fairly extensive, specialized treatment resources for the sex offender, while he may be very dangerous in Juneau, Alaska, where no such services exist.

To better understand the sex offender, one should also be aware of the following:

1. After the sex offender is apprehended, there is often a "suppression effect". That is, the offender appears to lose interest in offending. That is a transitory effect and should not be confused with a substantive change in behavior.

2. The population which commits sexual offenses is extremely heterogeneous. There is no succinct profile that describes a sex offender. The offenders cut across traditional diagnostic categories and vary across demographic variables.

3. One can work effectively with the sex offender by viewing his sexually deviant behavior as a highly habituated sexual preference -- a habit not very dissimilar than alcohol abuse. One must view the offender as vulnerable to his deviant sexual preference indefinitely; he will fall prey to reoffense if he does not respect this vulnerability and ceases to manage his life in the ways necessary to prevent reoffense. Such a vulnerability model emphasizes that there is no cure, but rather relative mastery of a serious behavioral problems. It also focuses on the problems inherent in long term maintenance and the risk of later relapse.

4. The phenomena of sexually deviant behavior and sexual offending is extremely complex. There are always multiple causes for this problem. It is erroneous to think of a singular cause, such as alcohol use, family dysfunction, or marital discord.

5. One central factor in sexual offending is that the person has learned a deviant sexual preference, which leads them to seek sexual satisfaction in illegal ways. Although that may seem all too simple, it is a variable which goes frequently unaddressed.

6. Most of the useful concepts and effective interventions for dealing with the sexual offender come from cognitive-behavior theory. However, there is relatively little written that helps prepare you with the practical problems in assessment and treatment.

7. Sexual offenders can be treated successfully if treatment selection is careful. I stress selectively to emphasize that certain, but not all, offenders can be effectively treated. Useful treatment must address the person's deviant sexual preference and help him develop and enhance more appropriate sexual preferences and skills. Therapy must also address restructuring of the personality style, attitudes, and the belief system permits the offending behavior, as well as helping the person learn better behavioral management skills. Treatment must stress the importance of the individual managing his situational environment if he is to avoid reoffending. Again, sexual deviancy is a complex problem and effective treatment requires a complex treatment package.

The complexity of these problems and the context in which assessment is conducted dictates that caution is used in selecting cases for evaluation and that thoroughness be a priority. It would contend that the evaluation of the sex offender is best done by collecting as broad a data base as possible. This includes obtaining as much collateral information as is available, e.g. police reports, victim reports, information from family members, etc. Interview material without collateral verification can be very misleading. Extensive interviewing is a necessity. Although this paper is too limited for dealing with the parameters of the interview, I would like to stress the importance of obtaining as much information about the instant offense as is possible. Psychological testing is another means on which one can broaden the data base and obtain another type of cross referencing. There is an increasing use of physiologic monitoring as a means of better assessing arousal patterns in offenders. Although this is mainly used in research settings, there is some use in treatment environments. Overall, good assessment is time consuming and costly.

In conducting the evaluation, itself, the examiner must be concerned that the client has a full understanding of the purpose of the assessment process, the implications of the reporting process, and who will be receiving the information. The client must understand the role of the examiner as an objective evaluation and reporter -- a person who is not part of the adversary system and no-one's advocate. The offender needs an awareness of not only the importance of honesty and cooperativeness but the implications of dishonesty and a noncooperative stance. The client need know that you will not be conned; that you are skeptical and doubting.

The posture and personal style of the examiner is an important variable. In my experience, one needs to take an authority-based position, staying in control of the assessment process and freely utilizing his or her knowledgeability about this type of problem. A direct, focused approach to the offense and other relevant issues. The examiner must be willing to be confrontative and challenging. Although we are often taught to focus on <u>why</u> behavior has occurred, your assessment will be more effective if you focus on <u>what</u> has happened. The tough minded approach outlined here requires concern about the offender and empathy for his situation to strike an even balance.

Whenever evaluation is involved, professionals want to know the relevant variables to consider. The effective evaluation of risk and treatability requires assessing a broad spectrum of information and variables. I would recommend the following parameters for your consideration:

1. Offender Characteristics
   A. Demographic considerations, such as age, education, employment, and marital status
   B. Previous criminal history
   C. The degree of preoccupation with deviant sexual behavior or the compulsive qualities of it
   D. The responsibility the offender takes for his offense
   E. Defensiveness and cognitive style demonstrated by the client
   F. Client's perspective on their victims or potential victims
   G. The degree to which they seem to have other sexual and social alternatives in their behavioral repetoire
   H. The degree to which there is evidence of an ability to manage and control one's behavior.

2. Offense Characteristics
   A. The type of offense, itself
   B. The base rates and pattern for that offense
   C. The amount of violence demonstrated
   D. The number of apprehensions for the offense
   E. Amount of risk taken
   F. Whether the offense seemed predatory, explosive, or opportunistic
   G. The use of disinhibitors, such as alcohol and drugs

3. Situational Considerations
   A. Access to victims
   B. How much there is at stake for the offender
   C. The legal hold over the offender
   D. The number of anchor points and natural monitors in his life, such as family, jobs, schooling
   E. The social and sexual alternatives readily available in his situation
   F. The attitudes of importance of people around him
   G. The amount of adversity in his life situation

4. His Victims
   A. Age of victim
   B. Vulnerability of victims
   C. The role the victims have played in discovery of the offender

5. Initiated Change

6. The Helping Resources Available
   Appropriate resources available for treatment and appropriate case management

In summary, my goal is to alert you to the uniqueness, complexity, and difficulty in doing comprehensive evaluations of sex offenders. I would like to see psychologists more involved in this type of work, but I am persuaded that it would be a mistake to believe that your generic skills are sufficient to do the job. They are necessary, but not sufficient. I hope I have helped direct you to the additional knowledge base necessary to do this work and the assistance you will require to do an effective job. If you are doing this kind of work, learn to be selective of the cases you accept for evaluation. Do not try to answer the unanswerable. Do not be a fourth or fifth opinion. Be aware of the inherent conflict of interest involved in your being the potential treating person when you are recommending treatment. Be conservative on the side of respecting risk. Let the past behavior of the client speak loudly. Attempt to answer the addressable questions directly and thoroughly, but do not make assertions that cannot be reasonably justified and substantiated. Do not make statements such as:

> "I know he will never do it again."
> "I'm sure this man could not have committed the alleged offenses."
> "I'm sure he has learned his lesson."
> "This man does not resemble the usual profile of sex offenders."
> "This is certainly the only time he has committed this type of offense."

Do not be reluctant to admit when no answer is available and remember that a conservative approach in assessment and decision making with the sex offender protects the client and the community.

JANUARY 1, 1985- DECEMBER 31, 1985

TOTAL NUMBER OF FEMALE VICTIMS..... 457

TOTAL NUMBER OF MALE VICTIMS..... 31

TOTAL NUMBER OF FEMALE SIGNIFICANT OTHERS..... 350

TOTAL NUMBER OF MALE SIGNIFICANT OTHERS..... 120

TOTAL NUMBER OF CLIENTS..... 958

VICTIM'S AGE

5 years and under	8%
6-11	12%
12-18	10%
19-25	24%
26-30	23%
31-39	8%
40-49	3%
50-59	1%
60-69	0%
Over 70	0%
UNKNOWN	1%

ASSAILANT'S AGE

5 years and under	1%
6-11	1%
12-18	10%
19-25	12%
26-30	18%
31-39	9%
40-49	11%
50-59	5%
60-69	2%
Over 70	0%
UNKNOWN	31%

REPORTING TIME

0-3 days	30%
4 days-1 week	3%
1 week - 1 month	11%
1 month - 6 months	9%
6 months - 1 year	3%
Over 1 year	4%
Over 2 years	3%
Over 3 years	2%
Over 4 years	3%
5-10 years	6%
10-15 years	5%
Over 15 years	9%
UNKNOWN	12%

VICTIM'S RACE

Asian	1%
Black	5%
Caucasian	66%
Hispanic	1%
Inidan (American)	1%
Native	18%
Other	1%
UNKNOWN	7%

ASSAILANT'S RACE

Asian	0%
Black	9%
Caucasian	47%
Hispanic	1%
Indian (American)	0%
Native	7%
Other	0%
UNKNOWN	34%

ASSAILANT'S RELATIONSHIP TO VICTIM

Stranger	16%
Acquaintance	20%
Friend	9%
Co-Worker	0%
Supervisor/Boss	1%
Partner/Lover	1%
Spouse	2%
Ex-Spouse	1%
Father	14%
Step-Father	4%
Other Relative	14%
Other	10%
UNKNOWN	8%

LOCATION OF ASSAULT

Victim's Home	13%
Assailant's Home	14%
Mutual Home	25%
Friend's Home	2%
Relative's Home	1%
Place of Work	1%
Public Place	8%
Victim's Vehicle	2%
Assailant's Vehicle	8%
Mutual Vehicle	0%
Other	8%
UNKNOWN	18%

TYPE OF FORCE USED

Witness to violence	1%
Implied Threat	15%
Verbal Threat	20%
Threat of Hurting Others	2%
Deprivation (Food, Medicine,etc.)	0%
Other Mental	1%
Destruction of Property/Pets	0%
Physical Force Used	30%
Use of Weapon/Object	8%
Other Physical	1%
Other	0%
UNKNOWN	22%

REPORTED TO POLICE

Yes	59%
No	29%
UNKNOWN	12%

PLEASE NOTE: Percentages are based on total number of victims.

Patricia M. Francis
815 Brown Deer Rd.
Ketchikan, Ak. 99901
907-225-5827

House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Ak. 99811

March 26, 1986

Dear Sirs:

Thank you for your timely response to my letter concerning House Bill No. 554.

I agree completely with you that this is a very difficult and controversial subject we are dealing with. However, each one of you declined to tell me exactly where you stand on this bill, which I am very interested in knowing. Also, I would be very interested in hearing why you feel the way you do about it.

Additionally I would like to address a few items in the bill that I am very concerned about.

First, I hope it is safe to say that every one of us knows that anyone who commits any type of sexual crime, be it incest, sexual abuse of a minor or rape, causes terrible and irreparable mental and sometimes physical injury to the victim. This being understood, I will not dwell on that aspect of your bill.

Of most concern to me are several items in section 7 of the bill which I would like to address individually.

#17 - Sexual crimes are very devistating to the victims irregardless of whether the defendant is 17 or 65 so an age limit of 25 makes no sense.

#18 - This sounds reasonable in theory, but only if it can be guaranteed and proven that rehabilitation is effective. This has not been the case in the past.

#19 - In most every case of sexual assault and in all cases of incest, the defendant has repeatedly committed the crime against his victim without being caught and may consequently have no prior record.

#20 - This stipulation astounds me! I cannot beleive you do not realize how easy it is to demonstrate total remorse if it means less time spent in jail!

#21 - Although it is very often hard to show, due to the large amount of humiliation and embarrassment to the victims, most all sexual assaults are not isolated and are often premeditated.

#22 - If a person of diminished capacity kills or injures another person on our highways, he is tried in our courts and being drunk or high on drugs is absolutely no excuse. A double standard for diminished capacity would lend a prejudice to victims of a crime just as incapacitating at times as death.

#23 - This stipulation weighs heaviest of all. As with my case for an example; my father had himself committed to a mental institution for his "problem", the result of this was that he spent 15 days in a hospital and I was taken away from my family and placed in a foster home for a year. I felt then and still do that I was the one punished. At the time of his arrest, he was trying to have himself committed again, this time in the V.A. Hospital-Mental Ward. If this amendment were in affect then, he most likely would have spent even less time in jail.

The last item I wish to address is Section 11: Anyone who commits such a horrendous act against another person obviously has no regard for any rules unless it is to their advantage to do so. I feel strongly that any person who so intrudes themselves upon another in such a demoralizing and degrading manner, effects that, for the victim last a lifetime, do not deserved to be released on parole to hurt other innocent people.

The victims themselves need to know that these "defendants" are going to be punished for their crimes.

I ask again that you leave the Presumptive Sentencing Law just as it is now.

Thank you for your time and once again I very much want to know how you stand on this Bill and why.

Sincerely,

Patricia M Francis

PATRICIA M. FRANCIS

VICTIMS for Justice
3100 Mountain View Drive
Anchorage, Alaska 99501

Dear Legislators,

I am sorry to see some of you want to change the presumtive sentencing . I seriously questions whether the prosecutors or police agencies would support this bill. A bill that makes it hard to get a dangerous person contained for serious crimes if he is a first offender.

Mr. Clocksin's philosophy that crowded prisions are due to presumptive sentencing does not coincide with many other people's philosophies.

Many people feel that the overcrowding of prisons occur when a person first chooses, or is influenced through peer pressure, to a life of crime. This person, through experience, if under 18 discovers that he does not have to pay any consequences for doing criminal activity. The first time he does something he may get his hands slapped and can continue doing what he or his friends wish. Each repeat performance ingrains a better way to persue this life style and makes it easier to do criminal acts. Then if under 18 he gets the opportunity to be contained. This person discovers that there are really nice facilities and caring people. He also associates with peers who are more experienced and learns better ways of conducting his criminal activities. This person has a lot of free time to think and to talk and to learn his" rights". (somehow the people who fight so hard for the criminals rights forget what these people have done to the victim. The victim pays his taxes and supports the system but has less rights than the criminal).

I know in the adult prisons that offenders have a lot of free time and if an offender has trouble with sex, violence etc., the things this persons chooses to put into his mind are sex, violence, etc. Our prison system allows cable T.V. which cost the tax payers. The prisoner is allowed to feed on sex and violence as well as read it. When they get out most offenders can then act out what they have put into their minds.

Why cannot our prisons be a place to help build up positive self images. I feel there should be a time of hard work and controlled input. An athlete works hard and taxes his body by putting it through great physical stress. The rewards are great. Why should we not allow these people to experience the opportunity to work and experience its physical gratification. We should also let them see another way of life, that of positive input, movies that are non-violent, and music that soothes.

We must remember that people who get into a jail situation have hurt other people or taken their property. Instead of supporting the criminal we should consider protecting the

tax supporting citizen. By treating the criminal as a criminal, by giving him some new experiences of positive and moral input while contained in an institution will do more for his chance of rehabilitation than our constant "rights issue". When someone takes away a persons rights their should also be taken away. They are lucky to live in a country who has such a regard of human life.

Alaska has statistically more young people than most states. It is strange that we do not have a juvenile prison. If we put this as a priority and started "nipping crime when it first begins our adult prisons would not be so full. I also feel that if we have this prison, and put a juvenile who commits a repeated offence into an institution that works them hard for part of the day, and keeps their time so filled that there is not time for the mind games that create more serious problems. A juvenile who spends one week in an institution that treats them like they are a prisioner instead of a poor deprived child will do more to re-habilitate; this in time will diminish the crowded prisons!

It is too late to solve the problems of criminals after the fact. Lets nip crime in the bud!

Janice Lenhart

ALASKA PEACE OFFICERS ASSOCIATION

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March 4, 1986

Honorable M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Miller:

The Alaska Peace Officers Association, representing 898 peace officers statewide, would like to make the following comments on House Bill 554.

1. Persons sentenced to presumptive sentences should not be eligible for parole.

2. At a time when the public feels that juveniles should be held accountable for their actions, the age of the defendant should hardly be a mitigating circumstance.

3. Most prisoners do demonstrate potential for rehabilitation when faced with jail time. However, they also faced jail time before they committed the offense, but the offense was still committed. Thus what are the real probability of rehabilitation.

   "After 20 years on the bench, I have concluded that many defendants find God while in jail, thus God must live in jail, thus go back to jail."

Ralph Moody
Superior Court Judge

In closing, I would note that there is contained in this proposed legislation 21 "IF's". Is this legislation going to instill faith in our judicial process?

Sincerely,

Rollie A. Port
President
Alaska Peace Officers Assn.

P.S. Steve Kalwara is our local contact in Juneau. If further input is requested, please contact Sgt. Kalwara at the Juneau Police Dept. The phone number is 586-5211.

cc: file
Governor's Office
chapter presidents
Attorney General Hal Brown
Dep. Commissioner Vaden
Steve Kalwara

WISH

Women In Safe Homes

A Safe Alternative to Family Violence

P.O. Box 6552
Ketchikan, Alaska 99901
(907) 225-9474

March 17, 1986

House Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: HB 554

Dear Members,

I am writing as a follow up to my teleconference testimony given on March 10, 1986. First, let me state that I recognize both the value and need for the rehabilitation of all who offend. I feel the Alaska Correctional System is well run and I support your continued effort to fund this system as it has come a long way. I would ask that if you are interested in reducing the cost of the system as a method to avoid greater expenditures, you might give some consideration to private enterprise both running a facility and/or building new ones. It is being done in other states at a considerable cost saving.

As to the sexual offender let me begin by stating that there is no real first offender, only that they have been caught for the first time. The study I referred to by Gene Abel in New York clearly reflects that even incest offenders commit upwards of 1 to 200 offenses other that those they are prosecuted for at the time. These offenders have long standing problems which means the patterns are there for years and are difficult to change - not impossible, but difficult. Both Gene Abel, Finkelhor and Northwest Associates out of Seattle clearly support the premise that it is a pattern and some offenders are changeable. They all agree it is a criminal act that must be sanctioned heavily by society, along with treatment while incarcerated as well as, follow up treatment and supervision.

I feel HB 554 would not only put offenders back on the streets but since there really is little if any treatment available in Alaska, many would have either poor counseling, or those that could not afford private treatment, none at all. I think it is important for you all to know that treating the sex offender is not well developed as a science. Part of the reason is that we know so little about the cause of this behavior as it is

just now being recognized as a problem. The other reason is that little money has been spent on research and the development of a treatment program because public support and/or outcry only reach a peak some 4 years ago. It wasn't long ago that many states had numerous programs designed to rehabilitate offenders of all kinds. Then the pendulum began to swing as these programs weren't successful enough in the public eye, so the public said lock them up. This movement in the lower 48 was pushed along because money was tight so, if cuts had to occur it was rehabilitation. California in the late 70's was a prime example of this swing. We now are seeing the move back to more rehabilitation programs.

The other issue here is that crimes committed against family members have always tended to be viewed differently by law makers. To allow flexibility in sentencing on incestor first offenders, would be more of a crime than the one the offender committed.

If first degree rape in your view is a serious crime, what is penal or digital penetration by a father with his daughter? We either believe that sexual violation of a female is serious or we don't. We must also remember the one thing we know about sexual offenders is that, it is a pattern much like an addiction that can not be broken with the normal therapy offered for other problems. I would refer you to the work being done in Oregon reported in Psychology Today, March 1986. The subtitle to the article is "Can sex offenders ever alter their ways? Special treatment programs provide some hope."

I also sense some form of backlash on the whole problem of sexual abuse of children in this proposed legislation. I know that as defense attorneys you have seen poor investigation work done, families broken up, and at times you have felt your clients were innocent of charges. We in the field of sexual abuse are also learning. Last year you passed legislation with dollars attached to train various entities in the investigation, intervention, and treatment of child sexual assault victims. The first of these trainings took place in Juneau and a good representation of players who deal with this problem were there. Give that training some time to work. Finally, as the Attorney General of the State indicated, dollars will be necessary to stamp this problem out on both ends of the issue- Victims and offenders.

I hope on my trip to Juneau in early April, I can discuss this issue with some of you personally. If I or the Alaska Network on Domestic Violence and Sexual Assault can be of any help on your obtaining information on this subject, please call on us.

Thank you for taking the time to read this, and your effort to be informed in all the ramification of this proposed legislation.

Sincerely,

Floyd H. Richmond
Executive Director

FHR/va

March 17, 1986

House Judiciary Committee
Chairman Mike M. Miller
P. O. Box V
Juneau, AK 99811

Dear Chairman Miller:

As a survivor of child abuse and a mother of two victims, I am addressing you, the Legislature and those that possess the power to structure our criminal justice system; you that have actively campaigned for the chance to serve the State and its people.

HB 554 is unacceptable. This law, if passed, will either credit or discredit those involved and could quite possibly cause a few to regret their decision for the change, if HB 554 is passed.

There are hundreds of innocent children in Anchorage that are being preyed upon daily behind open and closed doors. Some trust enough to tell, most others too afraid to say, too young and too confused, not understanding why they are subjected to this horrible and ugly punishment, and above all, their belief in adults becomes shattered.

Sex offenders are basically everyday, "average" people, often successful and highly accepted in the community. They are doctors, lawyers, priests, judges, law enforcement personnel, scout leaders, coaches, uncles, dads, friends, and in general, mostly citizens that have been placed in a position where our young will learn to trust. The average sex offender is and has been known to be "the NICEST" and most caring individual on the earth, only because they are laying the foundation that leads to trust and belief from a child's eye. Then, once they have that total and complete trust, they proceed to carry out their perverted sexual fantasies, inflicting pain and anguish upon an innocent child. THESE CHILDREN ARE NOT AWARE, NOR DO THEY HAVE THE EXPERIENCE TO KNOW, THAT THEY ARE VICTIMS OF AN INDIVIDUAL WHO WILL BE SEXUALLY AROUSED BY THEM.

The first incident is indented forever in a child's mind to such an extent that he or she may never be able to forget. On the average, a child is subjected to repeated assaults. Each assault creates ugly and hurtful memories that may stay with the child for a lifetime.

As a citizen, a victim, and a mother, I cannot believe that reasons for restructuring this presumptive law, HB 554, is only based on "overcrowded" prisons, financial strain upon the family and increased welfare assistance. We must do anything, other than return the offender to our community to again prey upon our young, even though undergoing treatment.

The Child Sexual Assault Treatment Program, in some very remote cases may work, however, the majority of those that have participated in this program have only learned how to respond to questions without incriminating themselves. I know, I've lived through this! My father was part of this program. He continued to molest my brother and I BEFORE, DURING and AFTER "treatment". He, to this day, is still an offender.

Current research on all types of sexual offenders, including first time offenders which comprise approximately 50% of the studied group, on the average attempted 581 crimes, completed 533 crimes, and had 336 victims. The average number of victims per child molester was 75. For incestuous offenders, the average number of crimes were 83.

HB 554 introduced by House Majority Leader Representative Clocksin, may, indeed, save the State of Alaska $48 million, and this is admirable. However, CAN YOU GUARANTEE THE SAFETY OF PROSPECTIVE VICTIMS OF THE FIRST TIME SEXUAL OFFENDERS???

The strict sentencing guidelines that are in effect now may have led to some of the overcrowded prisons, however, I am thankful that these offenders are incarcerated and away from our children!

HB 554 may be the answer to overcrowded prisons, but it is NOT the answer to the dilemma our children face. Our children rely on us to find a solution that will protect them and give them a chance to see that the justice system will work, if only they trust us enough to come forward. WE MUST FOCUS ON THE TRAUMA THE CHILD FACES AS A RESULT OF THIS SEXUAL OFFENSE AND NOT ON OVERCROWDED PRISONS!!

Juanita R. Lang
6900 Royal Court
Anchorage, AK 99503
279-6617

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: TERRY VRABEC
BOX 4251
SOLDOTNA 99669
262-2557

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

HONORABLE SENATORS AND REPRESENTATIVES:
AS A PEACE OFFICE, CITIZEN AND VOTER IN THE STATE OF ALASKA, I AM DEEPLY DISTURBED ABOUT THIS BILL. IN TAKING AWAY PRESUMPTIVE SENTENCING, THE DETERRENCE EFFECT OF THE LAW IS REDUCED. I SAY, LET THOSE WHO CHOOSE TO BREAK THE LAW, SERVE THE PENALTY.

DATE: 03/26/86 TIME: 08:55:38 SENT BY: SOLDOTNA LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: MARCIE CLARK
2814 ALDER DRIVE
ANCHORAGE 99508
279-7179

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

WE CAN NOT TOLERATE PRESUMPTIVE SENTENCING IN ALASKA. WE NEED TO BUILD MORE JAILS AND NOT LET THE CRIMINALS THINK THEY CAN GET AWAY WITH THERE CRIMES. PLEASE OPPOSE HB 554.

DATE: 03/26/86 TIME: 12:01:18 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

Patricia Francis
815 Brown Deer Rd.
Ketchikan, Ak. 99901

M. Mike Miller
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Ak. 99811

February 21, 1986
3:15 P.M.

Dear Sirs,

Today I attended a teleconference on Sexual Abuse and a proposed change in the Presumptive Sentencing laws. I was at that conference to testify as a victim. Attatched you will find a copy of the statement I had intended to make.

I now feel compelled to add to that statement. At this time I am so consumed with anger that it is unexplainable.

I listened to the testimony that was taken and all I basically heard was the great concern for the money that would be saved if the current law was changed and how unfair the law is to the criminals.

The overwhelming concern for these men who commit rape and incest was, to say the least astounding. Accordingly, it is unfair of us to ask them to sit in jail for any great length of time for their crimes are not violent, they use no weapons, so go easy on them! Rehabilitate them and they will do just fine.

I want to tell you that this is wrong. So wrong in fact that you will be doing an injustice to every woman and child who walks the face of the earth.

Imagine if you can, a young girl of 4 years being raped and sodomized on a regular basis of 2 nights per week. This by a person who she has been taught to trust and obey. Children are raised to respect and obey their father and mother. By the time they are old enough to know that something is not right, years of humiliation and fear keep them quite silent.

Imagine a young girl being forced to watch as her father blows the hind end of a pet off with a shotgun or watching him beat in the head of a calf with a sledgehammer and then turn to that child and say "that is what will happen to your mother if you tell." Can you feel the terror that that child is suffering?

Imagine a 16 year old girl being put on a witness stand to "Do the right thing" and then have someone tell her she is a tramp and a whore. That she herself is to blame, that actually she had been seducing the man for years. Now, because she is tired of him, this is the fastest way to get rid of him. Can you feel the humiliation and degradation she is feeling?

These are a few of the problems I have lived with for the last 30 years of my life. Never a day goes by that someone or something doesn't cause the memories to resurface.

Every woman and child who has been a victim of incest suffer from similar experiences and deal with reoccurring problems.

Now, imagine that this person suffering is someone you know or a person close to you. Do you like what you see? Can you live with what you see?

Think about it! Do you want these men loose on our streets without the proper and by the way proven rehabilitation. I know I don't and I can not, in all honesty think of one person, given the facts, who would.

Sincerely,

Patricia M. Francis

PATRICIA FRANCIS

Attatchments

From the age of 4yrs. to 16yrs. I was repeatedly raped and sodomized by my father. At age 16, someone stepped in and stopped him. But that did not stop the fear, guilt and mistrust that I had learned to live with every day of my life. At the time of his trial, the first ever in Oregon, I was called every name in the book, including a whore and a deceitful liar, just unhappy with life at home. Reporters were allowed to run wild with the story as well.

For the last 30 years, I have survived terrors and nightmares that, to say the least are unspeakable. So bad at times that I feared I would not survive, at other times I wished I wouldn't, so much so that at one point I attempted to take my own life. At another time I attempted to take my fathers life!

I was robbed of so much in my life because of incest. I had no childhood at all, I have had problems with sexual relations with my husband, I have no trust in father/daughter relationships at all. It has also affected my children. I'm very overprotective of my boys. I have always wanted to have a daughter, but was terrified that if I did, the same thing would happen to her. I knew if it did I would kill.

I can't even walk down the street and be safe from my fear, all it takes is to hear a child cry a certain way and all memories and terrors come flooding back as if it were only yesterday. When I see a father hold his daughter or kiss her or touch her, instantly, I am on my gaurd and very mistrusting.

All these feelings I live with every day of my life. For this, my father served 1 year in jail. He was released because his life was in danger. He has been remarried twice since then and in fact has molested his 6 stepdaughters and still he is free.

I beg you, please realize that the act of incest is a life long sentence for the victims of it and is so devistating that some of us do not survive. Do not change the law, don't let them get by with a slap on the hand for their crimes.

We victims need to know that at last, we <u>are</u> the victims and not the criminals.

Thank you.

REPORTS
+
ARTICLES

PAROLE ELIGIBILITY

Offense	DISCRETIONARY PAROLE ELIGIBILITY	MANDATORY PAROLE ELIGIBILITY
A felonies Repeat B & C felonies Sexual Assault 1° Sexual Abuse of Minor 1°	not eligible AS 33.16.090(b)	
1st Offenders B&C Felonies misdemeanants with over 180 days	eligible after 1/4 of term AS 33.16.100(c)	If offender is sentenced to serve mor than 180 days, then upon release from incarceration offender is on mandator parole for period of good time earned in prison. If offender is sentenced to serve les than 181 days, then upon release offe der is unconditionally discharged. AS 33.20.040(a)
Murder 1 & 2, Kidnapping, Misconduct involving a controlled substance 1°	eligible after 1/3 of term or mandatory minimum whichever is greater AS 33.16.100(d)	
Aggravated A felonies, repeat B & C offenders Sexual Assault 1° Sexual Abuse of Minor 1°	not eligible during initial pre-sumptive term, but eligible after 1/4 of aggravated portion of sentence AS 33.16.090(b) AS 33.16.100(c)	
Consecutive A felonies repeat B & C felonies Sexual Assault 1° Sexual Abuse of Minor 1°	not eligible during initial pre-sumptive term, but eligible after 1/4 of subsequent term.	

* Sentencing Judge may further restrict discretionary parole eligibility.
AS 12.55.115

as of 11-7-84

Class A Felonies

Manslaughter	43
Assault 1°	51
Robbery 1°	101
Arson 1°	2
Escape 1°	3
Misconduct Involving Controlled Substance 2°	7

Class B Felonies

	Nonpresumptive	Presumptive
Assault 2°	23	12
Sexual Assault 2°	20	2
Sexual Abuse of Minor 2°	*	*
Unlawful Exploitation of Minor	3	0
Robbery 2°	13	5
Theft 1°	6	0
Burglary 1°	34	32
Arson 2°	5	3
Forgery 1°	2	2
Bribery	1	0
Escape 2°	5	13
Misconduct Involving Controlled Substance 3°	25	9

Class C Felonies

Criminally Negligent Homicide	5	0
Assault 3°	20	9
Sexual Abuse of Minor 3°	*	*
Incest	4	0
Coercion	1	0
Theft 2°	20	18
Burglary 2°	26	25
Criminal Mischief 2°	2	2
Forgery 2°	4	6
Escape 3°	1	0
Misconduct involving weapon 1°	2	5
Misconduct Involving Controlled Substance 4°	4	1

* Sexual Abuse of Minor in 2° and 3° was a combined statistic with:

nonpresumptive	presumptive
37	10

** Nonpresumptive offenders may be parole eligible, but statistics do not reflect further restrictions on parole eligibility which may have been imposed by sentencing court under AS 33.15.230.

Introduction

History of the CSATP Training Project

The Child Sexual Abuse Treatment Program

In 1971, members of the Juvenile Probation Department (JPD) of Santa Clara County, California, decided that the case management of sexually abused children and their families needed to be drastically improved. The department's consulting psychiatrist asked a family counselor to volunteer his services for a pilot effort of eighty hours spread over ten weeks. Clients were counseled on-site at the JPD, and a close collaboration ensued between the counselor and the probation officers. Counseling was based on the principles and methods of humanistic psychology, emphasizing treatment for the victim and the mother. But it was soon discovered, particularly in father–daughter incest cases, that the victims' interests were best served if the mother, father, and the rest of the family were included in the counseling plan.

The pilot effort proved successful and in time developed into what is now known as the Child Sexual Abuse Treatment Program (CSATP). The CSATP has grown substantially over the years: the referral rate has jumped from thirty families in 1971 to over seven hundred families in 1980; the program is known nationwide for its success in resocializing sexually abusive families and in training other communities to set up similar programs.

The success of a CSATP depends on the effective interaction of its professional, volunteer, and self-help components. However, it is the self-help component, Parents United and Daughters and Sons United (PU/DSU), that assumes the pivotal position in a CSATP and contributes most heavily to the resocialization of clients.

California State Assembly Bill 2288.*

In May 1975, California Assemblyman John Vasconcellos introduced a bill requiring the state Department of Health to establish a demonstration and training center for the prevention of the sexual abuse of children. Many of the goals and functions stated in the proposed bill were modeled on the original goals and functions of the CSATP in Santa Clara County:

1. To provide counseling and practical assistance by on-site professionals to sexually abused children and their families, particularly to victims of incest;
2. To hasten, where in the interests of the child, the process of reconstitution of the family and marriage;
3. To marshal and coordinate the services of all agencies responsible for the sexually abused child and his or her family, as well as other resources to ensure comprehensive, systematic case management;
4. To employ a model that fosters self-managed growth (rather than a medical model based on curing disease) and avoids static theories and methods;
5. to respond to individual physical, emotional, and social needs of clients so that supportive services are individually tailored and applied as long as necessary;
6. to facilitate the expansion and autonomy of self-help groups and to provide training to the members in such areas as co-counseling.

*California Legislature, 1975–76 Regular Session, Assembly Bill 2288, Sacramento, CA.

self-management, intrafamily communication techniques, and locating community resources; and

7. to inform the public at large and professional agencies about the existence and supportive approach of the program with the aim of encouraging victims and offenders to seek the services of the program voluntarily.

Assembly Bill 2288 also proposed that this center should go beyond serving the needs of its own immediate community. The bill provided that the center should motivate and train other communities in the state to start similar programs of their own. The bill directed the center to develop "informational and training materials and seminars to enable emulation or adaptation of the program by other communities, emphasizing the program's stress on cooperation and coordination with all appropriate elements of the criminal justice system and law enforcement system."

AB 2288 was passed on the Assembly floor by a vote of sixty-six to one. It was approved unanimously by the state Senate and was signed into law by Governor Jerry Brown at the end of the session, October 1975. The designation "Demonstration and Training Center" was awarded to the Child Sexual Abuse Treatment Program in Santa Clara County.

2. History of the CSATP

In mid-1971, a pilot project was started to offer counseling to sexually abused children and their families in Santa Clara County. Most of the child sexual abuse cases referred to the project were cases of intrafamily sexual molestation—usually father–daughter incest. Because of the relatively large number of such cases (around thirty a year during the early 1970s) and because there was no other coordinated system of case management, the pilot project was continued and eventually grew into what is now known as the Child Sexual Abuse Treatment Program (CSATP). To understand the origin of this innovative resource, it is necessary first to look at the situation as it existed just before the project was formed.

The Problem

The population of Santa Clara County, California, in 1970 was approximately one million (322,870 households). The median educational level was quite high: 12.6 years. The population was 76.8 percent white, 17.5 percent hispanic, 4 percent oriental, 1.7 percent black and 1 percent other races. The county's economy before the Second World War had been primarily agricultural; by 1970, it was strongly based in the electronics, aerospace, research-and-development, and data-processing industries.

Along with this meteoric rise in industry had come a similar rise in population, and much of the county that had once been farmland and orchards was now given over to middle-income housing developments. The average household in Santa Clara County earned over thirteen thousand dollars a year, the highest median income of any metropolitan community in California. The county's main population center was and is the city of San Jose (population: 561,382).

No reliable statistics exist on the incidence of incest or of child abuse in general in Santa Clara County before 1971. Although the county was receiving around thirty referrals a year of cases involving sexual abuse of children, this figure did not include other cases in the juvenile justice system such as the so-called "beyond control" girls, many of whom, as it turned out, also were victims of incest. Despite the fact that the thirty reported cases a year in no way reflected the true number of ongoing cases, it was considered quite high in relation to the generally accepted estimate of one or two cases per million. (S. Kirson Weinberg had arrived at this estimate in 1955, citing 203 court cases over the period 1907–1938.[1] Other studies had substantiated Weinberg's figure, and it was regarded as the best statistic available.)

The reason that the CSATP was formed, however, was not so much the high number of child sexual abuse cases. More immediately pressing was the problem of how these cases were being handled by the criminal justice system at that time. Most often, the traditional tactics of law enforcement further aggravated the family's already deeply troubled state. The criminal justice system relied primarily on two devices: separation and punishment. It seemed that the courts' primary interest in the child had to do with what testimony she could give toward the conviction of the alleged perpetrator. In incest cases particularly, the whole family became entangled in the process of retribution. The damage to the family and the marriage was often irreparable.

In short, traditional community intervention added to the child-victim's fear, shame, guilt, and confusion, often ruined the father's career as well as his self-respect, and usually led to

[1] S. Kirson Weinberg, *Incest Behavior* (New York: Citadel Press, 1955), p. 36.

the break-up of the entire family. With these alarming consequences to be expected, it is no wonder that most families would not risk the danger of reporting their incestuous situation and did not receive the help and therapy they desperately needed.

In Santa Clara County, the Juvenile Probation Department (JPD) is the mandated reporting agency for child abuse cases; Child Protective Services is the agency usually responsible for this function elsewhere. The help the JPD offered was fragmented and complicated by bureaucracy, with the result that the already dysfunctional family dynamics were subjected to additional trauma.

The victim and her family were referred to one of the counseling agencies scattered over the county. Many clients resisted treatment because it was made so difficult for them. There were complicated eligibility requirements and long waiting lists. A counselor usually was assigned to a case on the basis of availability, rather than on the basis of training and skill. In fact, rather than receiving counseling, the client was often subjected to many diagnostic tests that would later be used in court.

Even when counseling was provided, there was little cooperation between mental health workers and probation officers. The supervising probation officer usually lacked the information, resources, and authority for proper case management. This poor management of reported cases of incest and child sexual abuse was not unique to Santa Clara County. In fact, it is a situation that still prevails in most communities throughout the United States.

The CSATP Is Started

In 1971, Eunice Peterson, supervisor of the Dependent/Placement section of the Juvenile Probation Department, and Robert S. Spitzer, M.D., the consulting psychiatrist for the JPD, contacted Hank Giarretto concerning the establishment of a pilot effort. Giarretto, a licensed marriage and family counselor, would provide counseling to sexually abused children and their families for a trial period of eighty hours spread over eight weeks. At the end of this period, the pilot program would be evaluated by Spitzer, Giarretto, and Peterson to determine if it should be continued. The initial ground rules of the pilot program were: the clients would be counseled on-site at the Juvenile Probation Department; the program would emphasize conjoint family therapy as developed by Virginia Satir; and the therapeutic approach would follow a growth model predicated on humanistic psychology.

Early Objectives

To provide immediate on-site counseling. The first objective of the pilot program was to provide counseling to sexually abused children and their families as soon as possible after their referral to the JPD. Consequently it was decided that clients would be counseled at the JPD, where the counselor could be readily available to them, rather than at his private office. It also was hoped that having the counselor there would help destigmatize the JPD, so that it could be regarded as an agency where people could get help rather than punitive treatment. It was anticipated that having the counselor on hand would facilitate communication and coordination among all those persons responsible for the cases.

By the time the pilot program had completed its eight weeks, Giarretto found that he was inextricably involved with many clients. It was apparent that each client required far more time than the traditional weekly hour. In addition to the hour devoted to counseling, for example, Giarretto had to spend an equal or greater amount of time consulting with juvenile and adult probation officers, police, lawyers, school teachers, and rehabilitation officers. All of this work could not be handled by Giarretto alone, especially since he had to continue his practice to supplement his income. Most of the clients could not afford to pay for the counseling, even when the fee was based on a sliding scale. They had already suffered sudden financial setbacks as a result of exposure (bail bonds, legal fees, separate housing for the father, and juvenile hall fees, for example). It was clear that the program had to be expanded in order to be fully effective.

To marshal and coordinate available services. It also became apparent during the pilot program that counseling alone was not enough; the family required a great deal of practical assistance to help them through this troubled period. They needed help in locating community resources for such pressing needs as housing, employment, financial advice, and legal assistance. This effort required close

collaboration between the counselor and the juvenile probation officer responsible for the case—another advantage of the counselor's working on-site at the JPD.

To hasten reconstitution of the family. It was decided at the outset that the counseling program would emphasize conjoint family therapy since incest was a family problem. However, it soon became clear that conjoint family therapy was inappropriate for the early stages of the incestuous family's crisis. The families were badly fragmented as a result of the incest and the dysfunctional family dynamics that preceded it; they were further fragmented by the trauma that accompanied the disclosure of their secret to civil authorities. If a daughter reported an incestuous situation with her father without consulting her mother, she usually was not ready to face her mother, or her father, nor was the wife ready to confront her child or her husband. Thus, it was decided that the child, father, and mother had to be treated separately before family therapy would work.

The pilot program of eight weeks had already proved effective with the families involved, and Spitzer, Giarretto, and Peterson had no difficulty in deciding that it should be continued and expanded. In time it became known as the Child Sexual Abuse Treatment Program. It soon captured the attention of the criminal justice system, the media, and the general public. The CSATP helped awaken these groups to the realities of child sexual abuse in our society. The program's growing reputation was based on several factors: it was the first program of its kind; it was providing counseling and support to more incestuous families than any other public agency in the country; it was winning the cooperation of both public and private agencies; and it was becoming an effective resource for the criminal justice system.

4. The Integrated Psychosocial Approach

The fundamental aim of the CSATP is to resocialize the families that come to the program. This is done by teaching the members of the family how to develop the attitudes and skills for personal growth both within the context of the family and within society as a whole. The CSATP relies on three complementary components to achieve that objective: the professional staff of administrators and counselors plus professional people from the various official agencies; the volunteer workers; and the self-help groups, known as Parents United and Daughters and Sons United. Together the three components create the regenerative human ecology in which the process of resocialization takes place.

The CSATP described in this chapter is that of Santa Clara County, California. At this writing, 65 other CSATPs throughout the country are in various stages of development.

The client population of the CSATP is made up of the following: children molested by fathers and a smaller number of children molested by grandparents, older siblings, and extrafamilial individuals; adults molested as children; and a few carefully screened individuals who molested children not related to them; and adolescents who molest much younger children.

The Professionals

Administrators. The administrative functions of the CSATP are performed by the program administrator, who supervises the personnel and activities of the CSATP. The program administrator is responsible for selection of personnel, defining staff functions, screening volunteers, coordinating the program with the criminal justice and human service agencies, guiding the development of Parents United and Daughters and Sons United, and ensuring that the program is compatible with the requirements, laws, and mandates of the federal, state, and local agencies. S/he works closely with the program coordinator, who screens all the referrals, assigns cases to the counselors, and coordinates cases with criminal justice and human services personnel. In most counties the CSATP's administrative and coordinating functions are performed by one person.

Counselors. The counselors design treatment plans based on their evaluation of the clients' needs as individuals and as members of the family. The counselors maintain the clients' treatment records and confer regularly with the program staff concerning the clients' needs. They make appropriate referrals to supportive services both within and outside the program. All professional counselors have master's degrees

in counseling or psychology, licenses in marriage, family, and child counseling or in clinical psychology, and at least three years' experience in counseling children and their families.

Interagency Cooperation. Client families are involved with a host of professional people in the criminal justice system and in human service agencies. Therefore, the professional component of the CSATP also includes all those members of the community who are responsible for the official processing of the troubled family: police, social workers, probation and rehabilitation officers, defense and prosecution attorneys, and judges.

To be effective, the CSATP must convince official interveners to agree on a consistent, humane approach typically aimed at returning child-victim to a safe and nurturing family environment. In addition to counseling and finally during the crisis period, family members usually need help with pressing practical problems: legal requirements, financial aid, food and clothing, housing, employment, job skill training, etc. The CSATP makes sure these services are provided to clients when they need them.

The need for interagency cooperation among professionals was apparent right from the beginning of the counseling effort. In fact, it was only after some measure of cooperation existed among the probation officers, police, and the courts, and only after the self-help component started (in other words, when clients were receiving more than traditional counseling) that it was decided to name the approach the Child Sexual Abuse Treatment Program.

Volunteers

Much of the staff of the CSATP is made up of volunteers. Some of the intern volunteers are graduate and postgraduate students working for their licenses in marriage and family counseling, some are undergraduates at local colleges and universities, and some are seasoned members of Parents United. There are usually between thirty and forty intern volunteers at any one time in the CSATP.

One of the major benefits of having such a volunteer program is that it draws on the community for much of the services. Thus, the community becomes directly involved with the program not only by receiving its services but also by providing helpers. The volunteer program has also proved a valuable and effective way of educating the community about the problem of incest and of the existence of the program.

Several of the volunteers in the Child Sexual Abuse Treatment Program are seasoned members of Parents United and Daughters and Sons United whose dedication exceeds that of the average member. They are often among the most valuable and effective members of the volunteer staff, providing countless hours of intense companionship to new clients and performing many tasks for the program. Those who have demonstrated in the individual and group sessions that they have grasped the basics of good communication and have shown leadership abilities can go into training to become group co-counselors and peer counselors. These members receive additional training in group facilitation and in the techniques needed to be an effective peer counselor. If their work or school schedules allow, PU/DSU volunteers also participate in the first three days of the training program, attend intern–staff meetings, and have a representative present at the professional staff meeting.

The special classes for Parents United volunteers cover such areas as parent effectiveness, human sexuality, transactional analysis, role-playing and role reversal, communications skills, and Gestalt techniques. This introduction to humanistic psychology gives the member a better understanding of the partnership between the professional staff and the self-help component and enables him or her to serve as a volunteer counselor with greater competence.

Trained members of Parents United/ Daughters and Sons United become invaluable to the CSATP. As sponsors for new members, they make the initial telephone contacts with the new members, invite them to the Wednesday night meetings of Parents United/Daughters and Sons United, and facilitate their initiation to the organization. The trained members serve as models to the initiates who know that these veterans have undergone the same terrible experiences, yet seem not only to have survived but to be coping very well with their lives.

The Self-Help Component

To a large degree, the success of the CSATP is due to the special regenerative climate that has developed in the program over the years. Everyone connected with the CSATP contributes to this climate, which in effect provides clients the opportunity to learn the attitudes and skills needed for leading productive lives in society. Certainly the most important aspect of this resocialization process is made up by the clients themselves; the unique energy provided by the members of the organizations called Parents United and Daughters and Sons United is essential both to the healthy growth of the individual family members and to the effectiveness of the CSATP.

The group process provides clients an opportunity to compare their view of reality with that of their peers, since all the people in the group share a highly stigmatized problem. This peer situation also has the effect of emphasizing increased self-direction and personal responsibility instead of reliance on authority figures who will "cure" them. The group milieu prepares members for positive social attitudes and more confidence in their ability to cope with social problems.

Parents United. Parents United is a nonprofit and nonsectarian volunteer organization open to all who have experienced intrafamilial and child sexual molestation. Formally launched in 1972, it incorporated in June 1975. To celebrate, its three charter mother-members wrote the following creed:

> To extend the hand of friendship, understanding, and compassion, *not* to judge or condemn.
>
> To better our understanding of ourselves and our children through the aid of the other members and professional guidance.
>
> To reconstruct and channel our anger and frustrations in other directions, *not* on or at our children.
>
> To realize that we *are* human and do have angers and frustrations; they are normal.
>
> To recognize that we do need help, we are all in the same boat, we have all been there many times.
>
> To remember that there is no miracle answer or rapid change; it has taken years for us to get this way.
>
> To have patience with ourselves, again and again and again, taking each day as it comes.
>
> To start each day with a feeling of promise, for we take only one day at a time.
>
> To remember that we *are* human, we will backslide at times. To remember that there is always someone willing to listen and help.
>
> To become the *loving, constructive* and *giving parents* or *persons* that we wish to be.

The PU board of directors includes several Parents United Members, some representatives of other chapters, a member of Daughters and Sons United, two lawyers, three psychiatrists, two members of the San Jose Police Department, and two community leaders.

The Santa Clara County chapter of Parents United has grown rapidly. The chapter now has over 200 members with an average attendance of 125 members at the weekly meetings. Meetings begin with a group centering exercise, followed by a brief conference to discuss progress in growth and effectiveness. The membership then breaks up into smaller groups jointly led by a staff member and a trained member of Parents United.

The number and focus of the small groups change periodically according to the needs expressed by the membership. The groups are started at the same time and run for eight sessions, after which the members are encouraged to join other groups.

General Description of PU/DSU Groups. The facilitators usually let the group start itself after each person says his or her first name aloud. Often there's a long silence until a member chooses to speak. Any member can begin by saying anything that comes to mind—a personal or affective statement or question, perhaps. Another member usually responds to the first member. Two members can have a dialogue for awhile. Or many members can enter in and express themselves in turn. The facilitators often intervene if people are interrupting each other or if more than one person is speaking at a time.

In most groups, the facilitators will note that only a few people speak. To involve all members, it is a good idea occasionally for one of the facilitators to start the discussion by saying, "I'd like each of you to say something about what's been happening to you this past week. Jane [pointing to the co-leader] will start." Later the first facilitator also takes a turn.

The emphasis in the groups is always on personal viewpoints and personal responses. Facilitators continually but gently remind the group members to make "I statements" rather than generalizations that shift responsibility for their own perceptions to others ("we know," "you should," "the experts say," etc.).

Sometimes one member will talk at length with no other members responding: a new member relating personal experiences in detail, for example. If the facilitators decide this monologue is productive for the group and/or for the person speaking, they don't shift attention from that member. When appropriate and productive for the group, the facilitators sometimes decide to intervene with an open or closed question, a paraphrase, or a reflection of feeling. Sometimes a facilitator will initiate an exercise, such as listening dyads or role playing.

One of the members usually will interrupt a member whom s/he feels has been talking too long. Even if one member talks for a long time, however, other members may be learning from, identifying with, or reacting to what is being said. A monologue can motivate the group process, even if it has a negative tone. For example, men in the group may tire of one member's constant lament and feel themselves getting annoyed. The facilitator may help them become aware of their own feelings and it will occur to some of them that this is how they probably sound to their families. They may think, "So this is how I've been sounding. No wonder my wife gets irritated."

Whether a session becomes volatile or emotionally charged depends on what mood the members create and what problems they bring to the group that evening. It must be remembered that groups differ and that the sessions relate to the unique "personality" and pace of the group. The group process should not be forced but encouraged to unfold at its own pace and inherent potential. Group leaders should keep an eye on each other to guard against one of them using the group as a means for displaying expertise as a group leader. The most effective CSATP group facilitators are those who participate in the group process and "facilitate" it unobtrusively and only when necessary.

The Sponsorship Program. Clients of the CSATP had a form of sponsorship right from the program's inception. The original three mothers, who eventually started Parents United, knew one another as sponsors before they met together as a group. As new mothers came into the program, the original three were able to offer their caring and support to help them through the initial days of their crises. Today's sponsors are seasoned members of Parents United, most of whom have been trained in peer counseling techniques and have learned the skills and attitudes needed to assume the role of peer counselor. Many of these veteran members are also co-facilitators of the groups which meet weekly.

The sponsor plays a key role when the new families enter the program. Often a sponsor is the first contact the new mother or father has with the program. When the police refer the family to Parents United (often the same day as the investigation), a sponsor meets and befriends the mother or father. The sponsor listens empathically and caringly to the concerns and fears of the new client, often spending hours during the first week with that person or other members of the family. Because the nature of the family problem has tended to isolate them, the new members find comfort in being able to share their feelings and perceptions with someone who has had the same problem. Because the sponsors appear to have coped successfully with their

problem, they offer motivation and hope to the newcomers that they can do the same. Because the sponsors and the new members share a unique problem, the sponsors can relate sensitively to the feelings of the new members, and are able to attend to them with a depth of caring that comes from shared experiences.

If face-to-face contact with the newcomer is not possible immediately, sponsors telephone parents who have been referred and invite them to Parents United. When new members arrive for their first meeting, the sponsor makes a point of greeting them and helping them feel welcome in the group. The sponsors introduce the new members to the Parents United hostess for the evening, who gives them tags (with their first names) to pin on their upper garments like the other members do.

A workshop led by a veteran sponsor is held each month for new sponsors in the Santa Clara County chapter and other nearby chapters to teach the basic skills needed to be an effective sponsor. Some of the subjects covered in the workshop are: empathetic listening; the right things to say to new members, and what to avoid saying; the importance of avoiding direct questioning of new members (particularly that which hints of curiosity-seeking); learning how to support the new members in their moments of crisis; making no promises as to what the program will do; checking to ascertain that each family has a counselor; making sure the offender is represented by counsel and, if not, recommending one of the competent attorneys checked out by Parents United; and assisting the family with special needs such as housing, financial aid, and transportation.

Sponsors check frequently with their families during the crisis period, expressing continued interest in them and encouraging them to call their sponsors when they feel like talking. A sponsor also gives the family the number of another sponsor to call if the assigned sponsor is unavailable. Sponsors keep records of new families they contact and submit the records to the head sponsor at the end of each month. If a sponsor contacts a family that has not been referred by the head sponsor, it is the sponsor's responsibility to inform the head sponsor. Every new family is listed in the sponsorship files.

Sponsors often accompany victims and/or others when they go to the police station for the investigation. At times a sponsor will be called on to be with a mother at the juvenile probation department when she learns for the first time about the molestation. Usually, the shock is so great and the anxieties, fears, humiliation, and guilt so overwhelming that riding it out with the mother becomes a total commitment often lasting two or three days. At times, a male and female sponsor will team up to help a couple in crisis. Many an hour has been spent in the PU kitchen or at members' homes drinking coffee and lending support to the newcomers. Nowhere does the healing power of caring manifest itself so clearly as in the relationship between the new member and the sponsor.

Preorientation Group. The Preorientation Group is composed of members on their first visit to Parents United. Formerly, new members went directly to the Orientation Group, but this group grew to a size that was often overwhelming to the new members. The Preorientation Group is smaller and more relevant to their present crisis and allows them to become acclimated to the program. The group leaders, aided by other veteran members, explain the philosophy of Parents United and the services available to the new members.

The new members often think of themselves as social lepers forever banished from society. It is immensely reassuring to them to be able to witness for themselves in this group that others have survived these same feelings of despair. The new members become even more hopeful as they learn from the older members that what is likely to happen to the family is much less damaging than they had anticipated. The new members are usually ready for the Orientation Group after about three meetings.

Orientation Group. The Orientation Group, the largest of the groups, is composed of newly arrived members, members who are not ready to move on to other groups, and members who return to the group to help the newer members. The group is composed of offenders, their nonoffending spouses, adults molested as children and their mates, siblings and other relatives of molested children, visitors, and the group facilitators. New members must attend the Orientation Group for at least one eight-week cycle before moving on to the more specialized types of groups. Adults molested as children who believe that the group will continue to be helpful to them may stay longer.

The group deals primarily with problems stemming from the exposure of the incestuous situation to the authorities. The facilitators and members answer questions from the offenders regarding the criminal justice system. Many have catastrophic expectations and are relieved to hear from the members whose cases have already been settled that they are likely to receive constructive treatment from the system. Many of the wives coming to the group indicate that they intend to divorce their husbands. They have come to this decision mainly through pressure by relatives and friends. But as they see that other couples are resolving their problems, they, too, soon seem more willing to work on their marriage either in trying to renew the relationship or ending it on amicable terms.

When an eight-week cycle ends, the group facilitators will encourage members who are ready to move on to other groups to make room for incoming members. A few members are reluctant to move from their "home base" since they have found a sense of security from building relationships with other members and the facilitators. A facilitator may consult with a member's individual counselor as to whether that member is ready to move from Orientation to the more specialized growth work. Some members return to the Orientation Group after attending several of the other groups but mainly to act as models for the new members.

Spanish-Speaking Group. Led by Spanish-speaking facilitators, this group relieves the added pressure a language barrier puts on those members of Spanish descent. The group can feel comfortable expressing themselves in language most familiar to them. It can be a discouraging impediment to a person trying to express deep feelings and receive messages from others if he cannot use his native language.

The hope is that with this burden removed members can gain more insight into themselves at a faster pace. At a time when they are feeling isolated and alienated from society, they can at least identify with their heritage and be nurtured by having their ethnic background acknowledged in a positive way.

The group concentrates on constructive help and understanding and gives members a chance to get their bearings and to get centered and grounded before attending the English-speaking groups. The facilitators serve as models to the group by teaching and demonstrating the methods and results of effective communication.

With the distraction of a language barrier removed, members relax and find a secure place for themselves in the organization. They concentrate more fully on working on themselves because they are less preoccupied with "editing" and rephrasing their sentences. They are able to listen to other members better and gain a deeper understanding of the Parents United philosophy.

Open Groups. Adults who have completed the Orientation Group sessions are eligible for the Open Group. Members learn to expand their points of view as they are introduced to new ways of thinking by members whose lifestyles, occupations, value systems, ages, and roles differ from their own. The group includes single men and women and people temporarily separated from their spouses. The members also discuss subjects not directly tied to child molestation. They discover that no matter how different other members appear externally, they share many common fears, problems, hopes, solutions, strengths, and experiences. The more varied the cross-section of people in the group, the more each member benefits, since the discussions cover a broad range of roles, opinions, feelings, etc.

As in all the groups, effective communication is also stressed. Many of the members begin to see clearly that at the core of their difficulties with their former or present marital partners was their inability to communicate honestly and openly.

Women's Group. This group is composed of mothers whose children were molested, usually by their mates. The group provides a supportive amosphere in which the members can discuss their concerns as individuals, mothers, and wives. The Women's Group offers some of the members their first experience in working with other women for mutual self-betterment. By practicing effective communications, they begin to see themselves and the roles they play more clearly. They learn how they are perceived by other people by getting feedback from members who may observe, for example, that they are annoyingly submissive or domineering. By understanding what motivates them and what barriers they set up for themselves, they can begin to change their behavior and to reshape their lives. The women find that they are able to bring up and discuss problems which they would not be able to introduce if their husbands were present.

In early group sessions the women are encouraged to express their outrage at their husbands and at the criminal justice system. The prominent grievances and issues brought up by the group are:

- the betrayal of their husbands
- their inability to stop the molestation
- the uncertainty of their futures and the anger they feel from being put in the position of keeping their family from falling apart
- the tendency to blame the victims for seductive behavior or not reporting the situation to them
- feelings of jealousy toward the victims
- the inclination to blame themselves for their husband's behavior
- whether to salvage or end their relationships, and the negative and positive consequences they can expect from either course of action
- fears about seeking jobs especially if they feel they are inadequately qualified
- whether they should pursue potential careers and training plans if they stay married.

The facilitator emphasizes that the reforming of the family nucleus with their children should be their primary objective. The father cannot rejoin his family successfully if the victim, in particular, feels unsure about her relationship with her mother. The child will resist the father's efforts to reestablish his paternal position in the family unless she feels totally supported by her mother.

The group is concerned with practical considerations as well as the psychological aspects of motherhood and wifehood. By the end of the eight-week session, many members begin to understand the objectives of the CSATP in the treatment of their family and what they must do personally to achieve those objectives. The women in the group often form lasting bonds of friendship with each other.

Men's Group. The typical Men's Group member is a father-offender, but the group often includes a small number of out-of-home offenders. During their first meetings the men are inclined to spend the time complaining about their mistreatment by the criminal justice system. The facilitator allows them to express their feelings knowing that the men do so, unconsciously, to alleviate the terrible guilt they feel for betraying their roles as fathers and husbands. The facilitator also knows that they will not discuss their disgust and loathing of themselves until they learn to trust one another. The men often have been physically or sexually abused or neglected by their own parents during childhood, and the facilitator may help them trace their current anger toward authoritative figures to the reactions they had toward their parents or other people holding authoritative positions over them during childhood.

The group is likely to have at least one member whose burden of shame is so great that he cannot wait until he can trust the group. When he relieves himself of it, his despair over his actions and his vulnerability will usually elicit spontaneous support and comfort from other members. It also encourages them to disclose their own feelings of self-hatred over their abusive behavior.

Not all of the members will quickly fall in line to accomplish the primary objective of the group, which is to have each offender admit unequivocally, with no reservations at all, that they were totally responsible for their exploitive behavior, must face the consequences, and must see to it that the behavior will never be repeated. Recalcitrant members are dealt with patiently but firmly by the others. Since they share a common problem, they talk to one another with rugged honesty, yet avoiding judgmental accusations. Many offenders have been loners and the group interaction is new to them. They will do little talking out of habit, not necessarily because they wish to avoid participating in the exchanges.

Often a father will fervently declare that he would like to talk to the child he molested, to explain face-to-face how terribly sorry he is for his exploitive behavior, and to say that he intends to spend the rest of his life making up for it. The fathers usually cannot communicate with their children because they were specifically ordered not to do so by the courts.

In the latter part of the eight-week cycle, the facilitator often invites a member of Daughters and Sons United who is not related to the fathers, but who wishes to talk to them so that s/he can come to some understanding of what motivated the fathers to abuse their children. The fathers willingly try to answer this person's questions and in turn a father may be allowed to apologize to the child and to express his deep anguish over his behavior as if s/he were his own child.

Couples Groups. Since the Santa Clara County chapter of Parents United has over 250 members, several Couples Groups are required. The groups are limited to five couples so that facilitators and members can give each couple more concentrated attention. The focus is more on the relationship between the two mates and less on each person as an individual. Usually, the group members will have already received individual attention for themselves through previous participation in the men's or women's groups.

The couples are married or unmarried and may or may not be living together. Most of the couples are the parents of children who were molested by their fathers. Since a healthy, mutually-nourishing marital relationship precludes incestuous activity between parent and child, the Couples Groups are perhaps the most important of the groups conducted by Parents United.

The objectives of this group are to teach the couples to:

- relate more productively with one another and to dispense with obscure verbal messages, game-playing, or other forms of manipulation
- state their needs and wishes directly
- revise unrealistic expectations of themselves and their mates
- keep the channels of communication open and clear between each other, i.e., to listen more attentively and to respond more honestly than they have heretofore
- discuss topics in the group that have formerly been "off limits," especially those regarding their sexual relationship
- acknowledge the positive aspects of their partnership and not to dwell continually on the negative aspects
- be capable of a better balanced relationship, i.e., neither of the partners needs to take on the role of the tyrant or slave
- become more sensitive to the nuances of voice tone, phrasing, and body stances, and how these affect their relationship
- fight fair, i.e., in accordance to rules they both agree to.

When the group members begin to trust one another, they begin to explore the conditions in their individual and marital histories that led to the incestuous behavior. Listening to other couples talk to each other allows members to see that they often behave the same way. A wife may comment aloud, for example, after listening to another member speak, "I never realized it, but I sound just that shrill when I complain to my husband that he is too easy on the children."

The couples groups contribute importantly to one of the major goals of the CSATP: to teach the members to become better spouses and parents.

Human Sexuality Class. This class is offered by a local college and is led by a licensed sex therapist. It is organized specifically for members of Parents United and the professional staff. The class meets for eight weeks on an evening other than Wednesday so that members do not have to miss attending the weekly meeting of Parents United.

The leader guides intensive, in-depth discussions on sex. All aspects of human sexuality are appropriate for discussion. Both men and women attend so that more information can be exchanged than in a single-gender class. The members discuss sexuality in general and sexuality related to their own personal and marital problems. The leader uses visual aids (photos, films, crayons, and paper) and group exercises.

Members become more comfortable acknowledging that all humans are sexual and do not need to deny or be embarrassed about that part of themselves. Time is devoted to improving sexual communication between partners. The leader also assigns homework that allows them to express their sexuality without exploiting their partners.

Parenting Group. This group is open to all parents: natural, step, foster, custodial or noncustodial parents. The purpose of the group is to improve parenting attitudes and skills so that mutually satisfying relationships can be achieved with children. It is hoped that as a result of this group experience the members will be better able to:

- rechannel their anger, frustration, and dependency so that it is not directed at their children
- recognize and stop selfish, manipulative behavior
- respect their children's needs and rights
- be patient about their progress as parents as well as the developmental progress of their children.

Of importance is that group members learn that their effectiveness as parents depends on how well they satisfy their other personal needs as individuals and their relationships with spouses, co-workers, relatives, and other key people.

Adults Molested as Children Group. This group is for adults who were molested as children by a family member. Usually the offenders were their fathers, but some of the members were molested by older siblings, the spouses of siblings, or grandparents. Only an extremely small number of the offenders were females. Also, this group is usually composed entirely of female victims and the following discussion is based on this typical victim.

Commonly, a group member is in her late twenties. The incestuous situation had not been reported to the authorities and she has not been able to resolve the experience either with her mother or offending father to her satisfaction. Both parents avoid or frustrate her attempts to confront them. Ever since her adolescence, the victim has abused herself unmercifully: by promiscuity often degenerating to prostitution, by substance abuse, and/or by sabotaging or not fulfilling the potential of intimate relationships. She comes to the group angry, guilty, self-pitying, fearful of authoritative figures, and apprehensive over her sexuality and her sexual identity.

It is crucial to involve adults molested as children in a mutual support group, because it is often the only way they will learn to trust and/or to become trustworthy themselves. Many have never received any counseling or other support for this problem. Almost all have "acted out" their sadness and anger in ways they deeply regret and need to discuss. Their painful feelings have festered for years and many have carried the burden completely alone through many stages of emotional and physical and social development. Their emotional development is likely to have been arrested at the stage and age of the incidents, so they often need to go through the stages of development they have not yet experienced, almost like giving themselves a second childhood.

Most of the groups have resisted attempts to involve male facilitators in the group. Although male offenders have been used successfully in the adolescent female groups of Daughters and Sons United, this has not been the case with groups for women molested as children. The women usually must spend at least two eight-week sessions in the group before feeling ready to form the Recontact Group (described later) which includes current offending parents as well as nonoffending parents.

During the early phases of the group, the facilitator encourages the women to voice and to act out, largely through bioenergetic exercises, their suppressed anger at their offending and nonoffending parents. This is often difficult to accomplish with women who are in withdrawn states. However, most of the women gradually are able to discharge at least some of their long-suppressed rage at their parents. The facilitator is aware that the women have different ways of avoiding this necessary first step. Some use intellectual explanations, some hide behind shyness, some feign anger, and some block out all overtures by group members. Eventually, most of the members are won over as participants in the group process.

The self-help group and the unique advantages won by bringing together people with alike problems are dramatically demonstrated in this group. It must be remembered that the incestuous experience left each of the members with unattended emotional wounds. The feelings of shame, guilt, and anger resulting from an experience, which they assumed was rare and could be due only to some unique aberrations in themselves and their families, prevented them from fully facing and resolving the experience. This has been true even for those members who had been given long-term psychotherapy. The group provides them the first real opportunity to deal with the experience and its characteristic aftermath, self-sabotaging behavior.

Most of the group members leave this group feeling greatly relieved. Some go on to the Recontact Group to prepare themselves for confrontation with their real parents. Others may join the Orientation Group for less intense interactions with incoming offending and nonoffending parents, but most adults molested as children are urged to attend the Recontact Group as soon as they feel ready to do so.

Recontact Group. The Recontact Group is composed of offending and nonoffending parents, and adults molested as children. Most of the adult victims have already attended the Adults Molested as Children Group. "Recontact" refers to group members becoming aware of and resolving repressed feelings, especially those originating from sexual exploitation during childhood. Recontact is accomplished by individualized personal awareness exercises (usually of the Gestalt variety) and by role-playing exercises between the victims and the parents.

The parents in the group usually are not related to the victims in the group. In the role-playing exercises the victims confront surrogate offending parents to vent their rage at their real parents for sexually abusing them. Similarly, they discharge their anger toward their nonoffending parents for their inability to protect them.

The group does not confine itself to the catharsis of anger. Members work toward attaining congruence and inner peace of mind. They begin to develop inner resources that will enable them to satisfy their needs in socially responsible ways. They strive toward depending less on others. They complete unfinished transactions with themselves and others. Members try to provide a safe, supportive atmosphere for each other not only to give credence to the anguish they experienced, but to validate fellow members evolving persons.

Victims form bonds with parents in the group and realize in doing so that these are worthwhile people. That opens the door for victims to relearn loving and feeling close to their own parents and seeing them with new eyes. Once they experience fulfilling, trusting, nonhierarchical communication with these parent figures and receive appropriate affection and attention from them, they are on the way to reestablishing the same kind of relationship with their own parents. They learn to interact with authority and parental figures from a firm position of strength in lieu of their former helpless, dominated position.

Victims who operated formerly from an aggressive, hostile position with their parents can learn to be strong in self-esteem and assertiveness and yet be soft, vulnerable, and nondefensive. The group works on refraining from blaming others and on feeling empathy for the people they had been blaming. As the members experience catharsis from letting out their secrets and their pain, they feel more control over their lives and more distant from the former pain. Some of them at this point choose to begin working toward contacting family members with whom they have severed contact or with whom they have had mostly painful contact.

The members practice recontacting their family members by doing roles plays with other members. The role play could be a mother or father practicing what they hope to say to their own daughter or son. Or it could be a molested daughter or son practicing what he or she would like to say to parents or other family members. They say to the members what they hope to express to their own families in the future. This is their opportunity to talk to people who feel much the same as their own family members. Members of the group give them feedback about how their words might be interpreted by their own family members.

The role-playing strongly affects both the participants and the members who are watching. Since most members have never expressed themselves in this fashion before, they are very emotional and even incoherent and therefore must rehearse what they need to say several times before they can communicate clearly. Members do many role plays in succeeding sessions and modify and rephrase their messages to make them more precise and to feel more comfortable saying what they want to say.

Once members have actually confronted their own family members, they can begin to assume responsibility for the other facets of their lives. Adults molested as children often say, "If I could master this, I can master just about any difficulty that comes my way."

Members who cannot recontact relatives because they have died or the damage to their relationship is irreparable still gain much benefit from the group. They have a chance to express their anger, realize they are not alone in their suffering, and develop close relationships with surrogate family members in the group.

Parents in the Recontact Group learn to understand the victim's point of view and complaints that victims received confusing double messages from parents. An example is that the parent who punished the victim for dressing immodestly in front of family friends or peers demanded that she undress completely for him. It is often easier for parents to listen with a more objective ear to a daughter who is not their own, since there is less emotional investment.

The molested members who have felt unfinished, stuck, and unheard finally feel they have been listened to sufficiently. The parents finally have a chance to ask questions of women molested as children that they have not been able to get answered. The molested women remind the parents of how their own molested daughters will think, feel, and behave if they do not receive sufficient counseling and other support. The molested members express anger, guilt, defenselessness, shame, loneliness, and hate of their own and/or others' bodies and minds. From hearing this, the parent members usually begin understanding their own child's position more fully. Parents who have wondered how well their own daughter can come out of this experience are greatly comforted when one of the molested members successfully recontacts her own family and is able to put the pain and anger behind her.

Alcoholic Problems Group. This group is for people who do or used to drink excessively. It also includes members who do not have alcoholic problems but who have important relationships with people who do have such problems. The group carries on extensive discussions directly related to alcoholism. Their goals are to become self-managing and to overcome the need to drink uncontrollably. They strive to gain insight into the physical and emotional problems that led to the drinking and aggravated the problems.

Members discuss in personal terms how drinking affects their lives, how the dependency immobilizes them, and the individual behavioral patterns that result. They begin to recognize that they make the choice to drink even though the choice is largely unconscious, and that others are not to blame. They take responsibility for the problem and support each other in many of the same ways Alcoholics Anonymous members do. But the group deals more with the fundamental emotional problems than with the symptoms of alcoholism so that the members can learn to attend to these problems personally. Group members relate how the drinking may have facilitated the molestations, but they also acknowledge that their drunken state does not excuse the molestations.

Printed material, films, and other visual aids are employed liberally. The group is facilitated by two people who also have drinking problems. The facilitators model the behavior they hope the members in this group will emulate, and they inspire the members to realize that each of them can clean up his life and serve as a model to the next person with a similar problem who enters the program.

Making Life Happen Your Way. This group is offered to young men and women in Parents United/Daughters and Sons United and held only if at least five individuals apply. The group deals with the experiences unique to people eighteen to twenty-five years old. They discuss how to cope with stress, interact effectively with others, and sort out and resolve conflicts. They help each other identify self-realizing vocations and what each much do to qualify for and attain that vocation. Practical skills are also taught: analysis of the job market; the writing of resumes; training opportunities; how to prepare for and to present themselves in job interviews; etc.

Daughters and Sons United. This organization, an adjunct of Parents United, is composed of children five to eighteen years of age, the majority of whom are girls who were molested by fathers. DSU also includes siblings of the victims and adolescent perpetrators. The two organizations work together and share many similarities.

Giarretto formed the first groups for children in 1972, one a play therapy group for children up to the latency period and the other for adolescent girls. Both were co-led by juvenile probation officers. Because the children's groups require much more attention and professional guidance than the adult groups and because of the press of an increasing caseload on a small staff, the children's groups did not grow as rapidly as Parents United. In late 1977, a young administrative intern, Cindy DeNoyer, was assigned the task of coordinating and expanding Daughters and Sons United. Since that time, the membership has grown to over 150 members, of which about three-fourths are active while the balance attend the meetings irregularly.

The self-expressed goals of Daughters and Sons United are:

1. To alleviate trauma experienced by the victim through intensive emotional support during the initial crisis;
2. To facilitate victim and/or sibling awareness of his or her individual feelings;
3. To promote personal growth and communication skills;
4. To alleviate any guilt the child may be feeling as a result of the sexual abuse;
5. To prevent subsequent destructive behavior such as running away, heavy drug abuse, suicide, prostitution, and promiscuity;
6. To prevent repeats of the offenses by increasing victims' independence, assertiveness, and self-esteem;
7. To prevent subsequent dysfunction of emotional and sexual relationships; and
8. To break the multigenerational abusive and dysfunctional pattern which is evident in many of these families.

Daughters and Sons United's decision-making body is the Task Force Committee. The committee is presently composed of six members who meet weekly with a Parents United representative and the Daughters and Sons United coordinator. The committee establishes goals, objectives, and projects geared to enhance the development, organization, and unity of the DSU program. The DSU coordinator and interns selected for this purpose implement the Task Force Committee's decisions.

The Task Force Committee assesses all new group formats and ensures that members who act as group facilitators with the professional group leaders are carefully selected and trained. DSU helps to organize and conduct a variety of groups. Basic groups are: adolescent girls' orientation group, adolescent groups, preadolescent groups, play-therapy groups, a transitional group (to adulthood) for young people, an adolescent offenders group, and a human sexuality group.

DSU participates in the following services:

1. A **Children's Shelter Liaison** makes initial contact with a child within one or two days after admission in order to provide crisis intervention, introduce the children to DSU groups, and provide continual support and counseling throughout protective custody.
2. A ***Juvenile Hall Liaison*** performs the same function for children in Juvenile Hall.
3. A ***Home Liaison*** makes initial contact during the crisis period with those children who remain in the home.
4. In the ***Sponsorship Program***, seasoned members make telephone contacts and facilitate new members' entry into the group.
5. A ***Time-Out Corner*** provides DSU members access to resources and reading materials that increase the children's knowledge in such areas as drug abuse, birth control, and communications skills.
6. A ***support system*** for police and juvenile investigations, medical exams, and court hearings means that interns accompany children through the various steps in the criminal justice system process.
7. In a ***Big Sister/Big Brother unit***, interns enter into one-to-one friend relationships with children requiring sustained support.
8. A ***Transportation unit*** provides transportation for children to weekly groups and counseling sessions; over 115 children are transported each month.

The DSU Task Force also organizes fund-raising activities and administers the money collected. To build morale and esprit de corps, birthdays are celebrated and visits are arranged to entertainment and cultural centers.

Members of Daughters and Sons United participate in a ten-week communication workshop; they receive a certificate and high school credits upon completion. The older members also receive co-counseling training. The members are extremely supportive of one another, especially through the crisis periods.

Like Parents United, DSU is interested in social action—in making the community aware of the problems of incest and of the existence of the program. Qualified members are selected and trained to give presentations with Parents United members to schools and various organizations and to make appearances on radio and television. Assisted by a volunteer, the group has created its own pamphlet on Daughters and Sons United and arranged to have the pamphlets distributed at junior high and high schools.

Members are becoming increasingly assertive in defense of children's rights in general; and they often come to the adult groups to argue for their specific rights within the CSATP. DSU does not regard itself as the lesser half of the self-help component but as a full partner in the aims and purposes of the CSATP. It is anticipated that DSU will soon develop into a national organization based on the concept of "children helping children."

The Private Counseling Sessions

As its title clearly specifies, the Child Sexual Abuse Treatment Program was started and developed for the welfare of the victims, and all actions by the staff are done with that purpose in mind. This primary objective is restated because the attention paid by the CSATP to fathers who have sexually exploited their daughters has been misconstrued by a few critics as being "too soft" on the offenders. However, it is important to remember that the offender is regarded by his daughter more as a father than as an offender —father of the family to which the typical victim wishes to return.

To provide for the child's emotional needs as well as her overall welfare, the CSATP must ensure that she is returned to a safe and nurturing home. Therefore, both the child and her parents must be treated. Although the treatment plan concentrates on the child, her mother, and their relationship, the father also is usually seen soon after his arrest and included in the treatment plan for the family. Again, the ultimate purpose of the attention paid to the offender is to teach him to become a caring and effective father and husband.

Since it became clearly evident that the typical victim of father–daughter incest wanted to go back to her own family rather than a surrogate family, the CSATP developed a family reconstruction strategy. This strategy has been applied to the majority of the families who have been treated over the past nine years. At this writing, over 90 percent of the children have been returned to their mothers; and over 80 percent of the children have been returned to both parents.

The private counseling sessions contribute to the family reconstruction strategy. The counselor prepares a treatment plan designed around the unique requirements of each child and her family and sees to it that the clients adhere to the plan. The counselor is not a therapist in the usual sense of the word, but rather a friend and teacher who joins the other members of the CSATP in facilitating the reconstitution of the family. As part of the treatment system, the counselor and the system become more effective as the professional, self-help, and volunteer components of the CSATP become more refined and integrated.

Initial Sessions. A supportive, optimistic climate must be established by the counselor before successful counseling can take place. This climate is especially vital in the treatment of families in which father–daughter incest has occurred and been exposed to the authorities. In the initial sessions, fear is the overriding emotion in the daughter, mother, and father. They are fearful of the unknown reactions of the criminal justice system: will the child and mother be separated? will the father be sentenced to a long prison term? The counselor listens intently to their fears and allows the clients full time to express them. After giving them ample time to do so, the counselor directly addresses the principal fears and informs them that it is extremely unlikely the child will be separated from her mother, if the father remains out of the home until the court permits him to return, or that the father will be sentenced to a long prison term. In the typical case, these predictions can be made at a high level of confidence.

The clients must be given hope and reassured that their situation is not as singular or as disabling as they believe. They are told that hundreds of families with similar experiences have been helped by the CSATP. They will meet some of the family members at meetings of Parents United and Daughters and Sons United and will see for themselves that many are now managing very well. Usually the child, mother, and father are already in contact with members of the self-help groups who serve as sponsors to incoming families, and this reinforces the encouraging remarks of the counselor.

Families troubled by incest often are socially isolated and therefore distrust outsiders, especially those in positions of authority. At first the CSATP counselor may be lumped with these potentially threatening outsiders. To allay this fear, the counselor must win their confidence and firmly tell them that s/he should be regarded as their friend and can be trusted with all disclosures. No information acquired during counseling sessions will be passed on to the authorities. The client–therapist confidentiality rule will hold fast unless new incidences of molestation are reported.

The counselors are usually able to quiet the clients' fears after one or two sessions, especially if the clients are in communication with members of the self-help groups and are attending the weekly meetings. When the clients are able to listen rationally, the counselor clearly outlines the services they can expect from the CSATP. The parents are informed that families fare best if they become involved in all aspects of the CSATP: the individual, couple, and family counseling as well as the group counseling and public relations effort of PU/DSU.

The counselor advises the father and mother that the CSATP will do its part if they do theirs. For instance, the father must attend all the private and group sessions prescribed by the counselor. If not, the progress report the counselor writes for the judge during sentencing will have a negative impact on the disposition of his case.

The father is informed that if he is charged with a felony, the judge may still order him to serve a few months at the local rehabilitation center. However, the rehabilitation officer will place him on work furlough and allow him to continue with his counseling program. Whether or not he receives a jail sentence, it is certain that he will be placed on probation for two or three years.

The father is told that he must persist in his counseling program if he wishes the CSATP to influence in his favor other decisions by the court such as permission to see his daughter and eventually to return to his family, reduction of the probationary period, and expungement of his name from the criminal records when the probation ends.

Thus, the counselor not only listens to their fears sympathetically but informs the clients of the most likely developments during the period of the family's involvement with the criminal justice system and what parents, and the father in particular, must do to help themselves.

There is a tendency in some families to slip away from the counseling plan or to pursue it less diligently after the prosecution period passes. This behavior is more likely to occur in those cases where the offenses were less severe and settled at the misdemeanor level. To forestall this, the counselor has the parents sign a contract in which they agree to continue with the counseling plan until the counselor decides to terminate it. The counselor answers all questions posed by the parents regarding the contract and why the terms are necessary.

It is important for the clients to leave this session with the understanding that the services of the counselor and the CSATP are not provided solely for the purpose of tiding the family through the court process but largely for the purpose of teaching the members of the family—the parents in particular—the skills needed for forming a healthy family unit.

Family Reconstruction Strategy. The reconstitution of the family starts with the effort to cement and enhance the mother–child bond. This step is taken for the sufficient reason that the child and mother usually wish to live together. But for those who require a theoretical rationale, there are sound genetic and social evolutionary reasons for this step. The survival of the human species is dependent on the family unit and the ability of the parents to provide for their offspring until they are able to fend for themselves. Beyond enabling their children to survive, effective parents teach their children to become self-realized, socially responsible human beings. The mother is the bearer and traditionally the principal caretaker/teacher of her children. Typically, children find it extremely difficult to attain their full potential as adults without a long-term committed relationship with their mothers.

Of course, the father has an important role in the rearing of well-balanced children, but the mother remains the essential and primary parent. If the victim of father–daughter incest and her mother want their father/husband back in the home, the CSATP bends every effort to satisfy this need. But the father cannot assume his dual role as father/husband successfully if the child doesn't want him back, and she will defeat his attempts to reestablish his function in the family if she feels insecure about her relationship with her mother.

This viewpoint is confirmed repeatedly as the staff of the CSATP monitors the progress of client families. The victims (and the families) who fare best are those whose mothers give principal support to their daughters rather than their husbands. The connection between the child and mother is strengthened when the mother tells the child that she believes her story and backs this up by choosing to keep the child in the home instead of her husband.

The decision to decide between the two is often forced on the mother by the investigating officer or the court to ensure the safety of the child. In the majority of the CSATP cases, the fathers leave the home voluntarily. Some fathers hesitate in doing so, however, and rationalize this position with excuses such as that the family cannot afford separate quarters for him, that the other children need him, or that he must remain in the home so that he and his wife can work on their marital problems. Whatever his excuses, his wife will act not only in the best interests of her child but of those of the marriage and family as well if she asserts herself first as a mother who must protect her children and backs this up by insisting that he—not the child—must leave the home.

In those instances where the father denies his daughter's accusations, the mother must accept the child's word and, above all, tell her that she is not to blame for the situation. Children rarely lie when they accuse their fathers of molesting them. A few may embellish the details but fully contrived accusations are extremely rare. Of the more than three thousand children referred to the CSATP, less than one percent fabricated their stories. Even if the mother has some doubts regarding the child's statements, she must give her the benefit of the doubt. If the child indeed is lying, it is unlikely that she will continue to lie to her trusting mother, and the mother will then discover why the child was forced to lie in the first place.

When the mother assumes her primary responsibility, she begins to feel much better about herself and is able to improve not only the relationship with her daughter but the relationships with her other siblings, relatives, and friends. She will also discover, often to her surprise, that she has strengthened her marital relationship. She has won her husband's respect and helped him to clarify for himself his own role as father.

Emotional States of Clients. To begin the process of reuniting the child and her mother and from that point to reconstitute the entire family, the counselor must listen to, identify, and understand the emotions being experienced by the child, mother, and father. These emotions vary in intensity and sequence depending on variables such as the age of the child when the abuses began; the frequency and extent of the acts; duration of the incestuous period; the age of the child when the molestation stopped; the overall quality of the relationships among the child, mother, and father; and perhaps most important of all, variables such as the reactions of relatives, friends, and official interveners.

The Child. The clients are usually seen separately before being counseled as dyads. The child whose feelings are typified here is a girl about thirteen years old who is not living at home. She reported that she was being abused and, although her mother is fairly supportive, the child is uncertain as to when she will be allowed to return home or even if she wishes to return.

It must be remembered that the child took a desperate leap into an unknown world when she reported the situation. As mentioned previously, fear is her dominant emotion. She is fearful of what might happen to her family as a result of the court process and may also feel despair over the thought that she may be disowned by her mother and family. This fearful state is likely to deepen and persist if her mother rejects her or is vague about her support or if the child cannot trust her counselor and the other interveners.

The ministrations of the counselors and members of DSU are extremely important. When the child begins to accept them as friends, her fears are allayed. But the greatest calming effect is produced by her mother's solid support, and this must be strongly encouraged by members of Parents United and the staff.

As the fear begins to abate, guilt takes over as the dominating emotional state. The guilty feelings are seldom acknowledged during this transitional phase since they stem from unconscious or subconscious messages from her superego accusing her of complicity in the incestuous relationship: she seduced her father or encouraged him; she derived pleasure from the sexual acts or would have resisted him; she was jealous of her mother; she enjoyed the secret trysts and even helped to arrange them —if not, she would have disclosed the situation to her mother; she is responsible for ruining her mother's marriage and for the demise of her family. The guilty feelings are especially strong if the offender is a stepfather, and even more so if he is a younger man with whom she had related more as a lover than as a paternal figure.

The guilty feelings are manifested indirectly in various ways. If the child has some ego strength and self-esteem, she may resort to defensive devices such as declarations of anger ranging from contempt to outrage toward the authorities for their harsh and insensitive handling of the situation; toward her father for exploiting her; and toward her mother for not protecting her. The deep, uncontrollable anger may also fuel outrageous but essentially self-punishing behavior: hostile acting-out at home and at school; promiscuity; and engaging in dangerous, often law-breaking activities with rebellious groups.

A much more serious emotional problem is one that develops in a child with very low self-regard and whose chronic feelings of guilt drive her into a withdrawal state. She cannot communicate with the counselor, avoids eye contact, and may occasionally mutter a barely audible, "I don't know." The child is lost in deep anguish and remorse because she has convinced herself that she is entirely to blame for the circumstances which led to the family's hopeless condition.

In checking the backgrounds of children who retreat into this state of despair, it is often found that they had taken on many of the responsibilities of the mother/wife. In attempting to keep the family from falling apart, they had given in to their father's sexual advances to stop him from deserting the family. Such children could not depend on their parents as parents and felt forced to assume their mother's role. They blame themselves for failing in this role, and whatever anger they feel is directed inward. To

sedate their painful emotional states, the children often become heavily dependent on drugs.

A counselor must be very patient with a child in a severe withdrawal state. Only by creating a reassuring, accepting climate during the sessions will the counselor be able to win the trust of the child. The trust becomes tangible when the child begins to communicate. Gradually, the counselor must convince the child that she is not to blame for the family's situation; that she was the victim of her father and not his accomplice; that she should have been protected by her mother instead of the other way around; that she has the right to be angry toward both of them.

The child's anger must be directed outward and the counselor must help the child discharge her justifiable anger toward her parents. The controlled environment of the individual and group counseling sessions provides the child the opportunity to expel her anger safely and without the repercussions that come from self-punishing acts or hostile behavior in the community.

The Mother. When the mother begins to adapt to the situation with the help of Parents United members, she too will experience guilt as the principal emotion. The mother may not always be aware of the sources of her guilty state, but in time she usually will admit to strong wrenches of guilt for not fulfilling her role as mother and wife. If she had ministered to the needs of her family instead of her own selfish wants, the incestuous events would not have occurred; had she met her husband's emotional and sexual needs, he would not have turned to her daughter for satisfying them; had she kept her ears and eyes open, she would have caught the situation and been able to protect her daughter. The guilty feelings are compounded in the mother who was aware of the sexual activities and allowed them to continue, or who suspects that she was jealous of her daughter and that this contaminated their relationship.

Reflecting their levels of self-esteem, mothers will manifest their guilty states in various ways. At one end of the continuum of possible reactions are mothers who will be in a rage against their husbands and other tormentors; at the other end are mothers who will withdraw into states of hopeless despair. Counselors facing clients in this latter category will often find that the mothers have taken on total responsibility for the survival of their families. Such mothers are parents to their husbands as well as their children. Since they assume the entire responsibility for the welfare of their families, they assume the entire blame for the present derelict states of the families. The mothers had been aware of the gradual erosion of the family's structure and were unable to stop the process. Now they have given up, feel completely defeated, and are often suicidal.

This family member, also, must be treated with extreme patience by the counselor. As the mother emerges from her mental and emotional paralysis and begins to communicate with the counselor, the latter slowly helps her to become aware of the suppressed rage she harbors against her husband in particular, and often her daughter as well, for conniving to betray her while she was absorbed in the task of keeping the family together.

The counselor must provide an opportunity for all family members to vent their anger freely in a controlled therapeutic setting. This should be a major objective especially during the early stages of counseling. It must be remembered that the mother, father, and daughter were all the unconscious victims of a dysfunctional system; they all would have preferred to be fully aware members of a healthy, well-functioning family. The counselor must help them clear their heads of the immobilizing anger, analyze rationally the parts they played in the dysfunctional family system, and then learn what each must do to contribute to a productive system.

The Father. Typically, the most difficult client for the counselor is the father. Acute dread of the reactions of the criminal justice system and of the unknown, long-term consequences of his acts to his daughter, wife, and family will persist in the father, particularly through the duration of the prosecution period but often for many months beyond. He is convinced that by breaking the incest taboo he has lost his place in society. The counselor must remember that this man is literally struggling for his survival and that his struggles are often ugly to behold. The father's fear is amplified by guilt, and this state may be revealed through declarations and behavior ranging from strong protestations of innocence or mitigating explanations for his behavior to severe disorientation and withdrawal.

The counselor will be hard put not to react with revulsion to the father who defends himself aggressively and who states that it was his wife's fault because she did not take care of him sexually; that his daughter seduced him or participated willingly; or that he did it because his daughter needed sexual education. If the counselor responds judgmentally, the client will not disclose his underlying feelings and the counseling will not be productive. The foundation for effective counseling is built as the counselor observes the client from the viewpoint that all his evasive reactions stem from fear and guilt.

The client will begin to interact with the counselor honestly when he realizes that the counselor is empathizing with him as a person in distress and fully intends to help him and his family. As the relationship strengthens, the counselor clearly explains his own position and intentions to the client:

1. Incestuous behavior cannot be condoned or rationalized.
2. The client, as father and guide, must assume the full responsibility for the incestuous situation.
3. The client must acknowledge that he had and still may have the problem of not being able to control his incestuous impulses.
4. Compulsive behavior originates from a self-punishing part of him, and client and counselor will work together to identify that part and to redirect its energy toward positive ends.

A father who sinks into a withdrawal state may pose an even more knotty problem to the counselor than a mother or daughter in a similar state. The counselor must guard against suicidal tendencies and/or substance abuse in the father. Gaining the withdrawn client's trust will usually be harder than with an aggressive father. The anger in withdrawn clients is deep-rooted and difficult to activate because it usually stems from repressed childhood experiences of parental abuse, neglect, and emotional deprivation. Nonetheless, the counselor must persevere toward the breakthrough that occurs when the father is enabled to discharge his long-held anger toward his abusive parents.

The ability to view the father as the victim of childhood abuse or deprivation is not easy to come by, despite the logical strength of the assumption that a father who abuses his child is driven by the self-hatred of the child within himself. A substantial clinical analogy exists between the behavior of an abusive parent and the behavior of an unloved child who destroys his or her most precious toys.

Methods

The methods used by the counselors are based on the humanistic principles discussed previously. Some of the techniques are adaptations of those commonly employed in Gestalt therapy, psychosynthesis, transactional analysis, and bioenergetics. Others have been invented by the staff to accommodate the special requirements of sexually abused children and their families.

Of all the CSATP counselor's techniques, however, it must be stressed that humanistic empathy is the key. More than a technique, it is an attitude that must be continually cultivated. During each session, the counselor must listen actively and be aware of not only the content but the underlying affect in the client's statements and body language; at the same time, the counselor must listen to his or her own thoughts and feelings as the counseling transactions proceed.

After the initial efforts to bring about a good working relationship, the counselor follows an iterative strategy in guiding the client through the concepts and processes of humanistic psychology. The phases are developed more in parallel than in serial fashion. A variety of techniques are used to implement the therapeutic model. None is used for its own sake or on a "let's try it and see" basis; instead, the counselor tries to respond to the client and the situation and to apply a fitting technique.

In most instances, experiential learning techniques are used to elicit affective responses; however, cognitive and spiritual needs are not neglected. To avoid professional distancing, the counselor discusses the strategy and progress of the counseling and answers questions from the client. Certain clients who begin to internalize and practice the techniques at home report profound self-enlightening experiences. These clients are given special exercises to help them to expand and integrate the breakthroughs.

Self-Assessment and Confrontation. Once a working relationship has been established and the highly charged emotional climate subsides, clients are usually ready to become aware of and begin to accept their current emotions in order to move on to the next phase of the treatment.

At this point, clients begin by taking an inventory of personal and family characteristics. Initially, during this "know thyself" exploration, the counselor underscores the positive traits. What does the victim, for example, like about herself? What does she appreciate in other family members and the family as a whole? Before she can be motivated to work actively for personal and family growth, she must believe that she and the family are worth the effort.

From this positive stance, the clients can then proceed to identify weaknesses and maladaptive habits that need to be improved or eliminated. These might include uncontrolled use of drugs, food, alcohol, and cigarettes; hostile, aggressive behavior that interferes with the progress in family, school, and work relations; inconsistent study and work habits; and, typically, the inability to communicate effectively, especially with important persons in their lives.

As the clients gain confidence in their search for self-knowledge, they begin to probe the painful areas connected with the incest. In what may be termed a confrontation–assimilation process, the counselor encourages the child, father, mother, and other family members to face and express the feelings associated with the incestuous experiences. Buried feelings such as fear, guilt, shame, and anger cannot be denied; somehow they will have their effect. If not confronted, those feelings will persist in repressed forms and will continue to harass them. With some clients, the pain-provoking memories can be dealt with fairly early in the therapy; with others the counselor finds it prudent to proceed more slowly.

In the treatment of the offender, care must be taken to avoid moralizing, no matter how subtle. From early childhood this client has had a full measure of accusations and preachments. He already feels like an outcast, and if this self-image is reinforced, the negative self-esteem that drove him to or could not control the incestuous behavior will persevere.

Moreover, a judgmental counselor may inadvertently provide an escape route to the offender if his guilt becomes intolerable. For example, he may retreat into superstition and believe he is cursed and was driven to the incestuous behavior by mysterious forces. Or the offender may convince himself that he suffers from an exotic mental disease and must rely on the doctors to cure him. The counselor's task is to guide the client to the simple fact that incest is one of the many types of dysfunctional behavior; he can learn to control this, as well as the other types, if he sets his mind to it.

It must be repeated that while listening with compassion and understanding to the father's feelings, the counselor in no manner condones the incestuous conduct or rationalization of it by the father. Sooner or later, most CSATP clients will admit to the counselor and to investigating officers that they performed the acts and were completely responsible for them. However, it must also be repeated that offenders are likely to admit to the charges only if they are convinced that the CSATP and the criminal justice system will help them and their families. If the offender and his wife anticipate destructive retribution from the court they will, of course, be inclined to deny the accusations.

Traditional counseling without a CSATP support system will seldom be effective in the treatment of incestuous families. The clients will be very guarded in revealing the details of the situation to the counselor, especially if they know that the counselor is mandated to report all child abuse cases to the police and may be subpoenaed by the court to provide incriminating evidence against them. This illustrates once again the interdependent relationship between the counselor and the criminal justice system and why it is important for the CSATP to be recognized by the system as an effective alternative to the usual devices of separation and incarceration.

The major objectives of the early stages of the counseling are to help the family through its crisis and to foster a trusting rapport with the counselor. In subsequent stages, the rapport is strengthened and the counselor facilitates awareness in the clients of personality traits and usually unconscious drives that have been negatively affecting their lives. The father, in particular, is induced to identify and control the parts in himself that have been sabotaging him and which impelled the incestuous behavior. In a more positive vein, the clients are coached in the techniques of self-awareness so that each can develop independently the ability to observe and direct his or her own growth process. The counselor employs techniques that are best described as combined methods of Gestalt awareness and transactional analysis. Certain clients are encouraged to read and to practice the exercises provided in introductory books on self-awareness.[1]

Self-Identification. The self, conceptualized as the control center of the personality, is more than the physical, emotional, and intellectual components of an individual which are continuously in states of flux. John Lilly has an excellent metaphor for the self: "the center of the cyclone" (which he also used as the title of a book).[2] It can be demonstrated that the self as a unique entity can observe the operations of the id, ego, and superego (or the child, adult, and parent, the analagous states employed in transactional analysis.[3] A technique for self-identification used with some clients in advanced stages of counseling involves a series of Gestalt-type exercises in which the client is asked to play out conversations between the parent and child, the adult and child, and the adult and parent while visualizing the self as observing and kindly analyzing the transactions. If the client is able to identify the self, the counselor may elaborate on this line of thought by pointing out that the self as a wise observer is not ensnared by the roles he or she may play as daughter, wife, husband, student, or worker.

[1]Muriel James and Dorothy Jongeward, *Born to Win: Transactional Analysis with Gestalt Experiments* (Reading, MA: Addison-Wesley, 1971); and Dorothy Jongeward and Dru Scott, *Women as Winners* (Reading, MA: Addison-Wesley, 1976).
[2]John Lilly, *Center of the Cyclone* (New York: Julian Press, 1972).
[3]Eric Berne, *Transactional Analysis in Psychotherapy* (New York: Grove Press, 1961).

Self-Management. Once the self is identified and distinguished from the changing elements of personality, the concept of self-management is introduced. The assumption is that everyone can learn to control the way s/he behaves and, ultimately, the course his or her life will take. Each person in the family can learn the attitudes and skills for leading self-actualizing lives. The marriage and family can also be given purposeful direction. A major milestone is reached when the client realizes that all past and current experiences can be assimilated for personal growth.

It must be noted that not all the clients are interested in these advanced concepts. Most of the clients learn intuitively some of the basic ideas but are not able to verbalize them. If the extremely low recidivism rate can be used as a reliable indicator, it appears that the majority of the fathers have learned how to control potential sexual impulses toward their children. It appears also that most of the clients have improved their marital relationships as well as their effectivity as parents.

Defending the accused child molester

by John M. Murtagh

Betsy: Well, I guess it's better to talk to you about this case than it is to deal with that no good mother who doesn't want to have to sell their home and live on welfare, or those squealing brats who think they want their father at home.

John: My basic purpose is to see if we can talk about this particular family as individuals and see if any of the impacts on people other than the offender are very important.

Betsy: It's cut and dried. If it happened while mom was in the home and she didn't know about it, she is no damn good, so I don't care what she says. If she did know about it and paid attention to what her 15 year old daughter said and what her father said and didn't want to have him in prison until after Anchorage gets the Olympics, then she's still no damn good.

John: I had thought the fact that the father tried to commit suicide and has finally shaken off years of alcohol dependency, as validated by the experts you suggested, was something we could consider in determining how to treat this family.

Betsy: What do you mean, treat? The only person I know who doesn't think they should get just eight years other than you, is some guy in Juneau by the name of H.B. What does he know about these things?

John: Well, Betsy, I've got to talk to my client and explain what roughly you have in mind.

Betsy: Well, he's got ten digits and a penis, and a tongue, and she has at least two orifices that he's violated, so that's 24 counts . . . 24 times 8 equals 192. . . I'll round it down to the nearest century by letting you mitigate one count. Be sure to tell your client if he doesn't plead to one count that encompasses all his sleazy rapes over the last ten years that he's going to get between 100 and 192.

John: Betsy, what about the *Andrews* decision where the court suggested that there is to be no objective price for asserting one's constitutional rights?

Betsy: They're as messed up as H.B.

John: On a different subject, I saw S.M.'s kid last week and things aren't going very well for them. They are having real trouble getting the hang of the welfare system and there doesn't seem to be much in vocational opportunities for mom.

Betsy: S.M.? S.M.? S.M.? Who's that?

John: That's the kid you were so nice to during the pretrial phase and indicated you were so concerned about at sentencing.

Betsy: Oh, them? That's the dingbat that still thinks he loves his father and wishes he and his mom lived in that nice house now that dad's stopped drinking?

John: That's the family. Besides, in the case that we've been talking about, the daughter told the grand jury that she knew that the incident took place over Christmas vacation here ...orage because all the trees were in bloom and they were playing softball on the parking lot. It seems to me you are having some problems with the dates.

Betsy: Well, didn't you read the indictment, it says on or about sometime during the life of the victim, this conduct took place. I figure half the jurors will know when Christmas is and the other half will know when the trees bloom. That's 12 jurors right there and that's all I need.

John: But, didn't you see that in *Covington*, we have to have some notice for the periods of time we can defend against? After all, my guy was in an iron lung at least five months every year since the kid was born.

Betsy: Yeah, but I know what he was thinking about when he was in it.

John: Isn't it important that the therapist for the mother, the therapist for the daughter and the therapist for the father have been arranging group therapy under approved settings?

Betsy: By whom?!? What neanderthal would permit these people to get together again just because they think they love each other and want to work through a problem?

John: The Department of Law (Attorney General's office).

Betsy: More do-gooders.

John: Well, my basic principle is that as advocates we probably have very little neutral information and very few neutral opinions on the subject. My suggestion is that since in his complete, candid, remorseful, post-suicide effort confession to everyone he could find, he acknowledged some conduct back in the pre-presumptive days. What about just pleading him to open sentencing on lewd and lascivious conduct, statutory rape, and anything else you can find back in there?

Betsy: What?! And give a judge the authority to decide what this man's sentence will be? Never! I'll see you in court.

A dialogue between Betsy, prosecutor of child molestors, and John,* a defense attorney who is one of the few people who can talk faster than Betsy. No name changes necessary. Neither one of them is an innocent.

John: I'm here to persuade you to give some consideration to my client.

Betsy: Is this the one who's been doing his teenage daughter since she was three? Or is this the one who can't seem to keep his hands off the church Boy Scout troop?

John: The former, of course. The Boy Scout leader has decided that he could get all the unnatural sex he wanted in jail. Besides, the victim's parents apparently have forgotten their deeply held religious beliefs and are ready to do a live production of Fox's *Book of Martyrs* with him as the star attraction.

Betsy: I see, we're here for the pitch on why are you prosecuting this nice man with no prior criminal record who just has this small sexual problem?[1] Whine away.

John: The way I see it, prosecution just punishes the victim. She doesn't want to see him go to jail.

Betsy: Funny, I talked to her the other day. Told her about the eight year prison term. She says, "Good. He can't get to my little sister now."

John: We're not quarreling with the need for criminal conviction. It's the jail term that's the problem. My man is willing to accept responsibility. But eight years is tough. Obviously a legislative oversight brought to you by the people who, in a fit of madness, brought you presumptive sentencing.

Betsy: Not likely.[2] Seems to me they view your incest defendant the same way we do—a la: pedophile."[3] By the way, did I tell you the grand jury's reaction when I told them your man could get an eight-year prison term? They said, "Is that all?"

John: Neanderthals. Why listen to the rabble? Your obligation is to do justice. Just look at this psych report. My man's not a pedophile. He just does this because of marital stress.

Betsy: Is this the shrink who says all these guys screw kids because of stress? Kind of ignores the sexual gratification angle, don't you think?

John: Incidental. I assure you. See where he says here that this "is an isolated incident and not a product of any mental illness."

Betsy: Isolated? Guess someone neglected to tell him about the two daughters he did from the prior marriage.[4]

John: Sorry. My oversight. Must have been marital stress fogging my brain. Listen. Here's the bottom line. This family wants to reunite eventually. The shrink says he is treatable. The children's court or probation officer will monitor the situation. Give it a chance.

Betsy: Who is your guy? Executive director of the Morris B. Chapter of the William Seymour Fan Club?[5] You expect the social worker or P.O. to live with this guy? The mother's been there and she hasn't been able to stop it. Besides, name one study that even says these guys can be treated at all. Could be they just like having sex with kids.

John: Parents United claims a 98% success rate—only 2% reoffend.

Betsy: My favorite study. Based on rearrest rates for a crime that is more underreported than any other.[6] How did they get a figure like that?[7] Ask the victims if dad is still at it? Fat chance the kid will report a remolest. It didn't help her to tell the first time and she knows the breadwinner goes bye-bye now if she does. Maybe you're relying on his lovely slightly obese wife to report a remolest? The lady who was in my office yesterday begging me not to prosecute her husband because she was going to lose her house because of the lies told by her runaway drug-addicted promiscuous daughter?

John: Okay. You win. My guy is willing to have no contact with children. Just let him work and get treatment.

Betsy: We could arrange a work release. How about a job at the Public Defender Day Care Center?[8] He'll get treatment anyway. He will just get it in jail—where he can trade "how to" stories with his fellow kiddie rapist and get his weekly "peter meter" check to make sure he's controlling those unwholesome thoughts.

John: But look at all these letters from his friends and family. They all say, he's real sorry for what he did. They all say, "There is nothing to be gained by putting him in jail with a bunch of criminals."

Betsy: Last time I heard, there aren't any kids in jail. So we get eight years of no new victims from this guy and he gets to catch up on his reading.

John: There you go again. Being overzealous and cynical. You never trust these experts or your own social workers . . . How about reduction to attempted first? Five years out of my man's life is enough, isn't it?

Convicting the accused child molester

by Elizabeth H. Shirley

FOOTNOTES

[1] The best retort came from retired Judge Ralph Moody, "Counsellor everyone has a sexual problem. The problem is how he handled it."

[2] In 1983 the legislature did a major revision of the child sexual abuse laws. They decided to retain the classifications in the prior law which treat serious incest offenders the same as people who molest children outside their family. The legislature also significantly increased the penalties for sexual contact within the family. Rumor has it that some poor soul who had the nerve to propose decreasing the eight year presumptive term to five years was laughed out of the House Judiciary Committee.

[3] A phrase coined by social worker Lucy Berliner of the Harborview Sexual Assault Center in Seattle. Ms. Berliner and others at Harborview believe it is not fair to treat the incest offender more leniently than the man who seeks his victims outside the home, especially since all the literature says that the average incest offender causes more damage to the victim. *See* D. Finkelhor, *Sexually Victimized Children* at 97-108 (1979).

[4] Child molesters are very prolific fellows. According to Dr. Nicholas Groth in his study of incarcerated offenders in Connecticut, the average age when offenders start committing sexual offenses is 16. A New York study a few years ago of incarcerated sex offenders shows an average of 68.3 victims can be expected in a study of a prison population. But counsellors of offenders who are not incarcerated also find that their clients have multiple victims. Steve Wolf, who treats child molestors as outpatients at Northwest Treatment Associates in Seattle, says in his years of practice he has yet to see someone who has molested only one child although they may have been convicted for only one child. He estimates the offenders he sees average five to six victims each.

[5] Morris B. is an Anchorage incest offender who was not prosecuted for years of fondling his daughter back in the old days before prosecution of these cases took over the court system, to wit, 1980. He was handled through the children's court system which returned him to the home because of the recommendation of his psychologist and that he would not reoffend. Within days of the reunification, he started having sex with his daughter—every night, for two years before she reported it. William Seymore of Fairbanks was prosecuted but given an SIS and no jail time so that the family could reunite since he was considered cure. He kept having sex with the same daughter following the reunification, who unfortunately did not report it until after Seymore "successfully" completed his probation. *Seymore v. State*, 665 P.2d 786 (Alaska App. 1983).

[6] Only between 6 to 10% of child sexual abuse crimes are reported to the police. D. Finkelhor, *sexually victimized children* at 137 (1979).

[7] The only study which claims any significant success in treating sexual offenders was one done by Henry Giarretto who was reviewing his own Parents United program which he founded. The 98% figure comes from his book, *Integrated Treatment of Child Sexual Abuse* (1982).

[8] The surest test of a defense attorney's commitment to his client is whether he or she would take the client into his or her own home. This test was aptly illustrated by a Bloom County cartoon from last year. Defense attorney Steve Dallas was arguing ardently for the bail release of his elderly ax-murdering client and he won. The judge released the old lady to Steve Dallas with the final parting, "Good luck, Mr. Dallas. Or should I say—good bye!" as the old woman swings her ax at her new custodian.

*John M. Murtaugh, Popular Anchorage Defense Counsel.

CLE

CLE WINTER SCHEDULE

January 11	Off the Record (Federal)
January 18	IRVING YOUNGER on Credibility and Cross-Examination and Jury Selection
February 11	Anticipating Proof Problems (Evidence Mini-Seminar, "Breakfast" Series)
February 17	Natural Resources and the Public Trust Doctrine
March 3-10	Trial Techniques and Tactics (Hawaii)
March 25	How to Get Documents Into Evidence (Evidence Mini-Seminar, "Breakfast" Series)

The Alaska Court of Appeals

The Lights Are On But Is Anyone Home?

by Walter Share

Arguing before Alaska's Court of Appeals reminds me of running rapids in a kayak after you've dropped your paddle. The Court of Appeals is unique and invigorating. You may not like the results of their opinions but one thing is clear: The lights are on and the Court of Appeals is alive and kicking. The Alaska Court of Appeals has written many an opinion over the last years with which I definitely disagree. However, it's clear that the Court of Appeals is a young court, still enthusiastic, well prepared, and in the process of maturing. Much like criminal law in Alaska, the court is still relatively wide open, and unsettled. When you add in the relative newness of the Alaska Criminal Code and Alaska law, arguing before the Court of Appeals can be anybody's guess and is often like a shooting match.

> "... in the last fiscal year, 40% to 50% of the cases that came before the Court of Appeals were either reversed, vacated or remanded for further findings."

The Court of Controversy

If you don't like controversy, then arguing before the Court of Appeals is an unsettling experience. The Court of Appeals is one of the most active and articulate courts in oral argument that I have been before. I have yet to see them unprepared on the facts or the law (I can't wait). They also have the cutting edge. They specialize purely in criminal law and write 90 percent of the criminal decisions. They certainly ought to know what they're doing. It's impossible to match their vast wealth of knowledge.

There are three judges of the Court of Appeals who are young, active and compulsive. Each judge has two law clerks, fresh out of law school and eager to prove their abilities by finding errors in counsel's cases and briefs. The court also has three full-time staff attorneys if the above isn't enough. If you are the type of attorney who likes to keep control of things and direct the flow of argument, don't go before the Court of Appeals. It's clear that you won't be steering the bus from the moment you walk into the room. The Court of Appeals is not predictable. You can't guess which issues the judges will choose to discuss or which arguments they might buy. You have to be prepared on every issue which has been raised.

Who Are These Guys Anyway?

It's impossible to "peg" the Court of Appeals. They are not as "liberal" as the Alaska Supreme Court used to be in the 1970's. I think I came here in part because in the 1970's the Alaska Supreme Court was well known and respected. Given a smaller caseload, there were law journal type decisions, usually on the liberal and cutting edge of the law. The court that brought us *Ravin v. State* (marijuana is constitutionally protected in the house) and repeatedly held that Alaska's constitution granted more protection than the stingy protections afforded by the federal constitution, was certainly one of the more liberal courts in the country.

Those days are no longer here, one must concede. But the Alaska Court of Appeals is still a "liberal" and open court by comparison to America. Compared to the courts outside, they still listen and can think, even if they don't always get the time to do so. They are a more technical court than the Alaska Supreme Court used to be. You can win or lose based on more analytical and rational arguments than ever before.

The old Supreme Court was more of an equity court by my memory, fully capable of finding "plain error" or reversing on an issue which neither side on appeal saw or raised. The new appellate court is more technical in that you have to dot your "i's" and cross your "t's" and play ball according to the rules more often. They are not likely to find "plain error" and not likely to fill in the blanks for errors made in the trial court below. If there is a way they can affirm a conviction they will do it.

It used to be, in the 70's, that the State Supreme Court was always more liberal than the federal court. If you lost in the Alaska Supreme Court you could hang up your spurs and go home because generally you weren't going to get anything out of the Federal District Court of Ninth Circuit. Now, the above is not always true. The relative trade-offs between state and federal courts have changed. The Federal District Court judges these days are growing more liberal and are listening to federal constitutional claims. The Ninth Circuit is now the most reversed circuit in the country. If you pull a liberal panel in the ninth circuit you might do much better than the Alaska Court of Appeals. If you pull an average or conservative panel on the ninth circuit, our appellate court looks brilliant and liberal, by comparison. While the Court of Appeals is on the more liberal, intelligent, and well prepared side of the spectrum, the time has come when they have become a "court system" and where the federal system might offer alternatives.

Can't Get No Satisfaction? Who Needs the Court of Appeals?

I must concede I am tired of attorneys saying "Why raise issues on appeal?" I have heard numerous attorneys scream, "You don't get anything from the Court of Appeals anyway." Gail Fraties (who has urged me to write this article for the last six months), finally blackmailed me by threatening to premise his readers that in the next issue I would come up with an article titled "The Court of Appeals Who Needs Them Anyway?" He threatened to tell readers that my article would be titled "Arguing Before Alaska's New Court: The Three Stooges" if I didn't come through for this month's publication. The fact is that lots of people need the Court of Appeals. Especially defendants and apparently those superior court judges who never took criminal or constitutional law in law school. To those who claim that you just don't get anything from the Court of Appeals anyway, I've got some news for you. You're wrong. If you look at the statistics, they show that in the last fiscal year, 40% to 50% of the cases that came before the Court of Appeals were either reversed, vacated or remanded for further findings. I doubt if you can find another court in the country where defendants do so well (with the exception of a tennis court where about 50% of the people win).

Statistics from the annual report for fiscal year 1985 show there were 103 published opinions. Of those 103, 51 were affirmed. Thirty-eight were reversed, remanded or vacated, and the remaining 8 to 14 were affirmed in part or reversed in part. In other words, approximately half of written opinions the court granted some relief to an appellant. This is not a court that is afraid to act.

The Court of Appeals also decided 238 memorandum opinions and judgments (MO & J). Of these 238, 164 were affirmed (approximately two-thirds). Combine all of the above, and of the 341 cases resolved on the merits about 40% were reversed or remanded. Two weeks ago the Court of Appeals reversed four of five. This week they reversed nine of 10, (albeit one was reversed *for* the state). Justice Berger and crew don't ever do that. Few courts do.

The above statistics reflect several things that are still true in Alaska. (1) the court is open to finding error if properly preserved and good issues are raised. They are still a relatively new and open court. (2) they are not a defendants' or prosecution court on appeal. While like most courts they tend to affirm, the status quo, all other things being equal, they are capable of understanding and following the constitution; (3) the law is still very undefined in Alaska and we are still litigating the new and foolishly drafted criminal code which was drafted, in my opinion, with a reckless mental state as defined in A.S. 11.81.900(a) and; (4) there are still some judges on the Superior Court and District Court in Alaska who think that the term "constitution" is limited to their digestive tracts. While I could rant and rave about particular decisions, the Court of Appeals is a valuable alternative which many attorneys are not taking seriously enough.

Your Guess Is as Good as Mine

Based on the above statistics, I'm constantly unable to predict the outcome of my case. My clients always want to know, "Are we going to win?" "What are my chances on appeal?" That's when I take out the Ouija board. To this I am usually incapable of giving answers. I'd rather bet on when the ice will break in the Nenana Ice Classic than how the Court of Appeals is going to rule on most issues. I have never been in an oral argument where I haven't been asked numerous questions that I've never dreamed the court would think of no matter how much I prepared. I've never come out of oral argument with any better idea of how the Court of Appeals is going to rule than when I went in. I've seen the Court of Appeals completely obliterate one side (often myself) only to turn around and rule for that side. I've seen them turn around and argue inconsistently right in the middle of argument. Those people who seem to have pegged the Court of Appeals as a liberal court or a conservative court seem to know something I don't know. I spend 90 percent of my time doing only appellate work, and on many cases, your guess is as good as mine.

Are Three Heads Better Than One?

The other intriguing matter is that when you argue to our appellate court you're not arguing to one court. You've got three distinctive judges who are fully capable of disagreeing and coming to different views.

> "the court is open to finding error if properly preserved and good issues are raised."

None of the three judges can be termed either "liberal" or "conservative" and all of them are capable of changing their minds in a flash. They are feisty, and as a general rule, their confrontive and argumentative nature is not to be taken personally. They just like to argue.

Link to Old England

As you look at the bench, on your left is Judge James K. Singleton. He is neither liberal nor conservative. He lives for the world of concepts and legal constructs, well removed from the mundane directives of mere politics. He is highly intellectual and very historical. He is rarely concerned with what century we are in when he asks questions. Of the three judges on the bench he is definitely the most academic.

In one oral argument, the issue turned on the fact that the trial court had a secretary gather some evidence outside the presence of counsel and outside of court. This, it was suggested, was a rather adversarial role for a judge. Defense counsel was in the midst of expressing a most compelling display of disdain, shock, horror, chagrin and constitutional repugnance when Judge Singleton noted, "Of course counsel, judicial gathering of evidence is only contrary to the Anglo-American tradition. In the accusatorial system (i.e., France and no doubt Cambodia and Iran) judges often take an investigative role." There was a small silence in the courtroom. Indeed it was hard to respond to that point. Counsel regained composure in time to ask Judge Singleton to take judicial notice that Alaska is no longer Russian ... it now falls within the jurisdiction of *AMERICA*, and to volunteer supplemental briefing since neither side had researched that issue.

Judge Singleton is also the master of the reference to the undiscovered law review articles, cases or statutes which nobody in their right mind could find but Judge Singleton. You often see him in the law library doing his own research, probably because he likes it. Usually he's reading those books which crumble in your hands if handled without great care. The ones with yellow pages and broken bindings. I recall the middle of one argument, where the dialogue went almost as follows:

> JUDGE SINGLETON: Excuse me counsel, what do you think about the legislative draft of the 1947 model penal code which was adopted by the Michigan State Senate, but rejected by the Michigan State House? Does this legislative history help at all in defining the legislative intent in our criminal code? Does this provide a clue for why the drafter of our model penal code chose not to put any criminal mental state into this provision of Alaska statutes?
>
> COUNSEL: Had I read the first draft (which neither side cited in their briefs) I might be in a position to argue from that. Judge Singleton, ... does it support the defense on appeal?
>
> JUDGE SINGLETON: Basically, it could be construed to assist your argument.
>
> COUNSEL: Then I think it controls.

Judge Singleton, as noted above, is also the master of the five-minute question, oft times more of a speech with a slight rise in inflection at the end than actually a question. Oft times counsel is left helpless watching valuable time tick away as Judge Singleton's questions take us back to 18th Century England. Judge Singleton is not shy. He'll jump right into the middle of an argument and let you know exactly what the concerns are. His historical and academic approach to the law does add a necessary balance to the court. This necessary "balance" is great if it helps your side. It's difficult, however, explaining to your client that you just lost the appeal because the judge who authored your opinion finds your argument inconsistent with a decision of the Queen's bench.

The Chief Judge

Judge Alexander O. Bryner sits in the middle and is the chief judge. He has a much different approach, less historic, and more directly to the point. He is active in argument and always well prepared. He has a tendency with his questions to cut directly to the jugular. While Judge Singleton is capable of taking one back several centuries, Judge Bryner always manages to get things back to the present tense, and keep the issue focused. In one argument the exchange went as follows:

> COUNSEL: May it please the court. I represent the appellant and my name is ...
>
> JUDGE BRYNER: Mr. Share, in your first argument of your brief you ask for reversal. How can you even make such an argument when it wasn't objected to in the trial court, counsel below seems to have waived any possible objection, the prejudicial evidence was cumulative, and the four eyewitnesses would render any error harmless to begin with?
>
> COUNSEL: I'm glad you asked that question, Judge Bryner. Moving on to argument II of my brief ...

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Inside the Appeals Court. . .Continued from p. 7

Judge Bryner just like Judge Singleton tends to zero in on his major concerns and while you can never guess what his vote will be, at least you know from his questions the major issues he believes will turn the case one way or the other. You had better figure out in advance what issue you have to concede on. If you are forced to argue an illogical or absurd position, Judge Bryner isn't going to let you go far with it, and can make a paper shredder look tame. He can be both caustic and logical, which is great if you've got a strong issue. Look out if you don't. I wouldn't try selling Judge Bryner a used car hoping he won't look under the hood. Again, it's impossible to suggest that Judge Bryner is a liberal or conservative. I've seen him come down with decisions that amazed me on both ends of the spectrum.

The Judge of Few Words

Judge Robert G. Coats is once again a different question. He appears to believe that he should give counsel a chance to speak their mind and tends to listen more and question counsel less than the other judges. Perhaps this is because he never needs to ask questions since both Judge Singleton and Judge Bryner are usually busy grilling counsel. In any event, Judge Coats tends to sit there with a cheshire grin and just listen. It's impossible to tell his concern sometimes since he is equally polite to both sides (as opposed to Judge Singleton and Judge Bryner who are equally confrontive to both sides). One might think from his silence that Judge Coats is unprepared. But he is not. At least once per argument he will ask a question that's so on the money that you realize he is right on top of both the facts and the law. Perhaps it's better I don't always know what he's thinking. He is neither liberal nor conservative, and tends to respond more to the practical than the academic.

I usually try to split my time: 20 minutes in opening and 10 minutes for rebuttal. The argument is the last thing the Court of Appeals is going to hear before they conference and make a tentative vote. The argument can impact the decision. The Court of Appeals is extremely well prepared and always appears to have read all of the briefs. Nevertheless, that oral argument can sometimes make the difference. If you make the mistake of using all 30 minutes in opening, you can be in big trouble if the State gets up and misrepresents the facts while you sit there silently burning. In the first 20 minutes, the object appears to be to quickly frame the facts (if the Court of Appeals doesn't stop you) and then jump on my strongest issue to find out if or where there are problems in the court's mind. I'm always prepared for a full 20 minutes of silence, but I'm always interrupted in the first few minutes. One has to be prepared to swap issues, jump out of order, and attempt to direct the court's attention on the issues you feel are the strongest.

The 10-minute rebuttal is usually saved to correct the State's representations or to counter their arguments. To the extent that's not required, it's time to hammer home your strongest pitch, and throw in the American flag. Problems always arise, however, when nearing the end of the 20 minutes of opening, one of the judges asks a five-minute question which you have to ask him to repeat. "This time please using commas and punctuation." If a three-minute debate follows, you have approximately one minute for rebuttal. Once I remember talking Judge Bryner into two extra minutes, based on the above problem, but it was not an easy task (in fact it took me two minutes of argument to get him to agree). The biggest challenge of arguing before the Court of Appeals is getting their attention onto your issues and where you think you have the best chance, without offending anybody.

> "One has to be prepared to swap issues, jump out of order, and attempt to direct the court's attention. . ."

There Are No Time Outs in Argument

The biggest problem I have with the Court of Appeals is the inflexible time limitations. Judge Bryner runs the clock with little mercy since there are usually other cases to follow. Unlike football, you can't call time out following tough questions and run to the sideline for consultations. Judge Bryner won't even stop the clock for injuries.

Opening counsel gets 30 minutes as the appellant. The appellee then gets 30 minutes. The appellant gets to split time between opening and rebuttal. Unlike trial work, the defendant on appeal is usually the moving party. We get to organize the issues, set the tone, frame the arguments, and attempt to make the facts compelling and crystal clear. The State by contrast usually plays the more traditional role of the defense attorney by trying to confuse and obfuscate the facts, and convince the court "Come on . . . it's not so bad."

The Opinions, Assembly Line Justice

The opinion-writing stage is a different question. There is an enormous diversity in the quality of the opinions that are rendered. Sometimes we get the Cadillac: a 40-page opinion which is well documented and footnoted. Sometimes we get the economy class, a one-page short decision or "Memorandum, Order & Judgment."

Under the rules, the court may write a short memorandum order and judgment "MO & J" (which really refers to "Maybe our judgment") where the issue is one that's already been resolved and there is no new or novel issue before the court. The practice, however, goes well beyond the intent of that rule. The Court of Appeals as noted above is issuing a substantial amount of "MO & J's." These decisions are not published and the Court of Appeals appears to feel less accountable for these decisions since their grandchildren won't be reading them when they go to law school. An "MO & J" might issue if the three judges can't agree that the law should be binding or an unsettled and do not want to give the case precedential value. I've seen 35 page MO & J's (hardly a "short" decision) on questions of first impression where all three judges disagree on the reasoning of the case. It is becoming a quick ticket to resolving a case without any form of judicial accountability.

As you can tell, I disagree with the concept of the MO & J. I think all decisions should be published, and courts should be publicly accountable for the actions. I don't think a criminal case should be decided without that form of accountability and I don't think that important issues should be resolved and "swept under the mat" without publication.

> ". . .all decisions should be published, and courts should be publicly accountable for the actions."

By the same token I take objection to the one- and two-page decisions which are per curium and assure counsel that the court has "reviewed the record" and the case is affirmed. I think if the court has indeed "reviewed the record" as it suggests, and has reasons, it can't be that much of a burden to put the reasons down on paper so that my client can understand why he's on his way to Lemon Creek. Such statements as "We have carefully reviewed the record and find there is sufficient evidence to sustain a conviction" is not in my mind judicious unless supported by an opinion indicating what evidence is sufficient. Even my dumbest clients complain that if the court has indeed "carefully reviewed the record" and there are reasons, why not put them on paper? A good question.

Sometimes I think the Court of Appeals is caught in the assembly line of justice and seems to forget that attorneys have clients who are real people and deserve reasons. Incorrect reasons or poor reasons are even better than none. One of the functions of the court system is to assure the litigants that they've had their days in court. Even if they lose, it assures them that three judges have reviewed the matter and have reasons for affirming a conviction. And while it is true that some arguments may not deserve the time of day, still, a litigant, especially one who is on his way to jail, deserves to be told why. That function is sadly lacking in some of the decisions that come down, and leaves litigants with the wrong impression that the lights are on but nobody's really home.

Keep It Simple and Brief

Although the above is beyond a doubt my strongest complaint, the problem results from a burgeoning caseload. The complaint I have lodged above, while not excusable, nevertheless reflects the fact that the caseload before the Court of Appeals has jumped significantly over the last years. If you want to get your case across, you've got to stay simple and brief on most cases.

Cases take from six months to 1½ years to decide after argument. In fiscal year 1985, the recent annual report reflects 103 published opinions and 238 MO & J's, for a total of 341 opinions. The Court of Appeals also disposed of 120 cases by petition for review. That's a total of 461 cases per year. The Court of Appeals must resolve 461 cases and actually write 341 opinions. That's almost one written opinion a day (if you count weekends) and well over that if you consider cases denied without opinions. The above statistics mean the Court of Appeals obviously has no choice but to allocate its resources in a reasonable and limited fashion. They simply can't write a law review on every, let alone most, cases.

From the point of view of litigants, the lesson is simple. Stick to the basics, focus on your strongest claims, and to the extent your client will let you, weed out the losers. Overlength briefs are a thing of the past. I've had overlength briefs rejected by the court under circumstances where in the past they would have welcomed the help. If you can, stick to the 50-page limit for openings and 20 pages for reply. If the issue can't be fully explained in 70 pages, you're probably in deep trouble to begin with. When you think about the fact that the State also gets 50 pages, if you take your full 70 pages, that totals 120 pages of briefing before the court even gets to the law clerk's pre-oral memorandum. It makes it kind of impossible for a judge to digest that much briefing at the rate of one case per day.

Humoring the Court

The Alaska Court of Appeals, while an open court has become a "court system." Due to the increase in the caseload, you should try and stand out to the extent you can and make your case notable. Be it by humor, juggling, standing on your head, screaming, or emphasizing the more intriguing parts of your gruesome criminal facts, you've got to catch the Court of Appeals' attention, or you could fall between the cracks.

My favorite example was in argument for *Arnold v. State*. Jeff Feldman, counsel for the defense was arguing ineffective assistance of counsel, mandated reversal. The court asked Mr. Feldman if they should write a "short unpublished decision" or if ineffective assistance of counsel was widespread enough to merit a full opinion. The dialogue went:

> THE COURT: Do you think the issue of ineffective assistance of counsel is so widespread as to merit a broad precedential ruling?
>
> MR. FELDMAN: Well, it's kind of like AIDS. It's not so common, but when it hits it's lethal to a fair trial.

When the room stopped laughing and the argument was over, that case no doubt stood out above the others. And while Mr. Feldman's AIDS analogy was not adopted in the full decision, I'm sure the Court of Appeals was wearing gloves when they authored the opinion.

The Gateway to the Ninth Circuit

From the point of view of defense counsel, it's true, you do lose a lot of cases in the Court of Appeals (about half). But the attorney who writes off the Court of Appeals as a half fruitless asset and fails to properly raise or think about the appellate record, is doing a client a great injustice and possibly pitching away an important chance at getting a fair trial. To the extent that criticism of the Court of Appeals holds true, I have a simple suggestion. Make your objections in the trial court bel[illegible] based on state *and* federal grounds. That way if the Court of Appeals doesn't give you what you want, you can always go to the Ninth Circuit. The restaurants in Seattle and San Francisco are far superior to Alaska, if not the quality of law.

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"You do what you can do. I might worry, afterwards, if I've done all I could, but in no way am I a perfectionist. I'm realistic. I do the best I can."

Dana Fabe

but nobody disputes Alaska's public defender when she says she does her best. From the student lawyer who interned at Fabe's agency to the prosecutor who opposed her in court, Fabe is known as the fast-thinking, fair-minded lawyer who likes a good fight.

Born and raised in Cincinatti, Ohio, Fabe, 34, is the oldest of five children, the daughter of a real estate developer. She went to private schools before entering Cornell University in Ithaca, N.Y. She played piano and harpsichord, and studied art and

Public defender battles odds

Continued from page B-1

music history.

Fabe graduated from Cornell nine months early and decided to enter law school, more to enhance her career choices than because she always wanted to be a lawyer.

She chose Northeastern University, a Boston law school known for requiring student lawyers to intern before graduating. By the time she graduated in 1976, she had worked in Boston, Montana, Hawaii and Kentucky. And she knew she wanted to be a criminal defense attorney.

She is a new mother, a former public radio volunteer, a decent boss, a party-giver, a dog-lover. So how can she defend the drunks, molesters and murderers who are the public defenders' clients? And how is it possible not to grow discouraged when the jury seldom acquits?

"I know," she says, from her office above the Tiki Cove, "the question always is, 'If you're so people-oriented, how can you defend these guys?' But it's no more a moral dilemma to me than representing a corporation in, say, the Dalkon Shield case. Both parties are entitled to their defense.

"In fact, for me, it's a much easier thing to represent a criminal defendant than a corporation that negligently or recklessly lets a defective product on the market."

Juries seldom agree with the public defenders. But it's also true, Fabe says, that the deck is amply stacked.

"The prosecution's got the police working for them, the money to fly in experts," she says. "And juries aren't neutral — they come in ready to convict this guy because they think he wouldn't be here if he hadn't done something wrong."

Since it's hard not to lose, Fabe adjusts what it means to win. "Sometimes," she says, "a win means getting your client into some treatment program, or conviction on a lesser included offense."

Fabe came to Alaska in 1976 when state Supreme Court Justice Edmond Burke hired her as his law clerk. "She had common sense," says Burke, who has since listened to his former clerk argue before the state's highest court. "I wanted a damn good lawyer, and that's what I got."

From Burke's office, she went to the public defender's agency. In four years, she advanced from a staff attorney to head of the 12-office agency, which last year handled 13,500 cases at an average cost of $393 each. Appointed by Gov. Jay Hammond, she is the fourth person in her job and the first woman.

"This is a true rubber band operation," she said. "Our caseload from 1984 to 1985 jumped by 30 percent. We're seven-and-a-half attorney's short. The ABA (American Bar Association) says attorneys can handle something like 200 felonies a year. We've never met that. We're always over."

As she prepares to meet the 1986 legislature, the challenge on Fabe's mind is keeping up with cases, within budget and without reducing her staff to cinders. Courthouse talk is that lawyers like working for Dana Fabe — and she works to keep them happy. At eye-level over her desk is a sign: A Sufficient Measure of Civilization is the Influence of a Good Woman. Civilizing her agency meant seeing that every lawyer got an office window and introducing job-sharing, a flexible plan in which two attorneys split one job.

Fabe is the administrator with a heart, the expert who likes to be consulted, the public official who enjoys explaining the system. For instance, at least twice in the past six months, she has spoken out against efforts to automatically send youths into adult court for certain violent crime. This idea, she said, coupled with Alaska's presumptive sentencing laws, will strip judges of discretion. She says judgment will go, unchecked, to prosecutors because deciding on a charge will simultaneously determine how a defendant is tried and the length of imprisonment.

Presumptive sentencing means jail terms for some crimes are fixed by the legislature, not the judge. It is intended to protect the public by sending convicts away for ce tain terms. In Fabe's opinion, hasn't worked.

"There's no parole or prob tion (under presumptive senten ing), so when these people g out there's no carrot-and-stick keep them from offending agai And there's nothing to gain b not going to trial. You get th same amount of time if yo plead. I'm sure that's why w have so many more cases."

Assistant District Attorne Julie Werner-Simon wanted t know all she could about Dan Fabe. It was October, 1985, an Werner-Simon was about to pro ecute Abidin Zeciri, an Albania immigrant accused of killing hi wife. Fabe was his lawyer.

"Normally, you do all th homework you can on your oppo nent," Werner-Simon said re cently. "We all knew she ran a good office, but she hardly take cases any more. No one knew what she was like in court."

Werner-Simon learned. "Th same things that make Dana a good administrator make her an excellent trial lawyer," she said "She's organized, logical, intelli gent, obviously concerned about her client.

"And it was interesting to try that case against another woman. Here we were, prosecuting or defending a man who was accused of killing a woman. I remember asking her what she was going to wear for closing argument. We have a similar suit. We didn't want to look the same."

If bringing in the unknown Fabe was defense strat failed. Zeciri was con first degree murder. He ntencing next month.

's best friend, and former gue from her clerking is District Court Judge Elaine Andrews, who says Fabe herself would make a good judge. But Fabe says she hasn't yet looked past 1988 when her public defender appointment expires.

"I like my job," she said. "It's diverse enough to keep me challenged. When it's not challenging any more, I'll think again. But right now, I'm doing what can be done. And I'm doing my best."

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"SEXUAL PSYCHOPATHY" AND CHILD MOLESTERS: THE EXPERIMENT FAILS

BY IRVING PRAGER*

INTRODUCTION

The idea that mental disease is the wellspring of much serious criminality has intrigued reformers throughout the twentieth century and has provided the theoretical basis for "sexual psychopath" statutes in the United States. Hospitalization of sex offenders in lieu of imprisonment, it was thought, would be humane, therapeutic and safe. The sexual psychopath experiment would be the first step toward a future in which all criminals would be cured rather than punished.

At the time, it seemed to make sense to implement the first substantial societal experiment with psychiatric criminology in the area of sex crimes, particularly the area of sex crimes against children. After all, what class of criminals was more obviously sick than those men who subjected young children to sexual relations?[1] The idea that we could take these men out of society and cure them in hospitals appealed to citizens who feared these offenders and to psychiatrists who wanted to change them. Consequently, beginning in the 1930's, legislatures enacted statutes allowing convicted sex offenders, particularly child molesters, to receive mental treatment at state hospitals and to remain at

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Prior to 1981, the author was Deputy District Attorney, Ventura County, California, in charge of the sex crimes and career criminal sections and personally prosecuted the case of Theodore Frank, discussed *infra*.

After successfully prosecuting Frank, Mr. Prager helped form S.L.A.M. (Concerned Citizens for Stronger Legislation Against Child Molesters) and is currently Vice President of that organization. After extensive study and research of the problem, Mr. Prager led the successful effort to abolish California's MDSO hospitalization program, institute mandatory imprisonment of convicted molesters and provide assistance for victims of child molestation. He is currently working with the California Legislature on these subjects as well as assisting groups in other states which are seeking to revise laws relating to sex crimes.

At the University of La Verne, Mr. Prager is organizing a research center on children's rights which primarily deals with the problems of child molestation.

1. Reference to sex offenders as males is utilized in this article because almost all reported cases involve male offenders.

ATT. 21

the hospitals until no longer dangerous to themselves or others. The sex criminal avoided prison, but, because his dangerous propensities would be eliminated, society avoided the recurrence of his criminal behavior.

The sexual psychopath[2] experiment has failed. In September, 1981, the California Legislature acknowledged this failure by overwhelmingly voting to abolish the "Mentally Disordered Sex Offender" (MDSO) program.[3] Citizen outrage at what was seen as leniency shown to child molesters, the main beneficiaries of the MDSO statutes, and effective criticism of the program by some psychiatrists and psychologists were funneled into an organized statewide campaign against these laws by a grass roots citizen's group, S.L.A.M.,[4] which convinced the Legislature to act. After an eighteen-month campaign by S.L.A.M., the Legislature agreed to replace the MDSO statutory framework with laws which made relatively long terms of imprisonment mandatory for a large percentage of convicted child molesters and only allowed hospitalization during these prison terms.[5]

In California, hospitalization of a convicted sex offender is no longer a potential short cut to freedom. Convicted child molesters and rapists may be hospitalized only after the offender is sent to prison rather than as an alternative to a prison sentence.[6] The imprisoned sex

2. The term "sexual psychopath" is used advisedly. Most psychiatrists agree that it has no useful medical meaning. See discussion *infra*.

3. Cal. S.B. 278 (Rains) (effective Jan. 1, 1982) Stat. 1981 Ch. 928 § 2. *See also* CAL. WELF. & INST. CODE § 6300-6330 (West 1981).

4. Concerned Citizens for Stronger Legislation Against Child Molesters.

5. Cal. S.B. 586 (Roberti-Imbrecht-Rains-Goggin Child Sexual Abuse Prevention Act) (Amending CAL. PENAL CODE § 288 and § 1203.065, adding § 667.51 and § 1203.066) and Cal. S.B. 776 (Ellis) (Amending CAL. PENAL CODE § 266h, 266i, 311.4 and 1203.065, adding § 266j). *See*, note 59, *infra* for a detailed description of this legislation. The Penal Code still defines child molestation as "willfully and lewdly committing any lewd or lascivious act . . . upon or with . . . any part of the body of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust of passions or sexual desires . . . of the perpetrator or such child." CAL. PENAL CODE § 288 (West 1976).

6. CAL. PENAL CODE § 1364 (Deering 1982) now provides, in pertinent part, "When any person is convicted of a sex offense against a person under the age of 14 years or of a sex offense accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person there shall be no hearing to determine whether the person is a mentally disordered sex offender.

"The Court, after imposing sentence for such a conviction, shall order the delivery of the convicted person to the Department of Corrections. The Department of Corrections shall inform such convicted persons of the state hospital program established pursuant to this section.

"If the convicted person has no more than two prior felony convictions for a non-sex crime, consents to evaluation, and has a sentence of three or more years, the Department of Corrections, at the beginning of the third year prior to release shall transfer the person to an appropriate state hospital for an evaluation of up to thirty (30) days duration. At any time

offender must meet certain criteria in order to receive hospital treatment, must desire treatment, and will receive it only if, after evaluation, the Director of Mental Health concludes that he needs treatment.[7] Even then, the hospitalized prisoner may not be released, on out-patient status or otherwise, until he finishes his prison term.[8]

Although some commentators may consider California's abandonment of the philosophy on which the MDSO system was based as a regressive surrender to the unenlightened will of the public, such criticism overlooks the logic of a realistic new approach to dealing with criminals convicted of sexual offenses against children. This approach is based on the realization that there is no substantial evidence that child molesters commit their crimes due to mental disease, that the mental conditions of molesters can be cured, or that mental health professionals can accurately predict that sex offenders will not reoffend in the future. Thus, selecting this group of criminals for treatment and relatively less incarceration was, at best, illogical. If, as substantial evidence indicates, most child molesters and rapists are less susceptible to treatment, more likely to repeat their crimes and more dangerous than many other criminals, the MDSO system was not only illogical, it was bizarre.

I. Sexual Psychopath Statutes And The California Experiment

A majority of states have enacted sexual psychopath legislation.[9] These statutes first appeared in the 1930's and 1940's and were based on general assumptions that the type of behavior classified as sexually psychopathic was curable and that, until cured, the offender was too dangerous to be released.

Most statutes define a "psychopathic" sex offender, in general, as

during the thirty (30) day evaluation the directory of the state hospital shall provide a diagnostic report to the Director of Corrections with a recommendation for or against placement of the person in a treatment program.

"The Director of Corrections shall, if he or she receives a recommendation for such treatment, and with the consent of the convicted person, transfer the person to an appropriate state hospital designated by the Director of Mental Health for treatment. In no event shall the person be placed on outpatient status pursuant to such treatment. In no event shall the person be released prior to his or her determinate sentence date, nor shall treatment pursuant to this section exceed the term of imprisonment imposed. The Director of Mental Health shall make a recommendation prior to the person's release date whether the person should receive outpatient treatment as a condition of parole."

7. *Id.*

8. *Id.*

9. *See generally*, Swanson, *Sexual Psychopath Statutes: Summary and Analysis*, 51 N.W. L.J. 215 (1960); Annot., 24 A.L.R.2d 350, 351 (1952).

one who lacks control over his sexual desires or the commission of sex offenses. Some add that, in order to be hospitalized, the offender must be a physical threat to others. Most require a criminal conviction as prerequisite to hospitalization. All of the statutes either require or allow psychiatric evaluation prior to commitment and provide for a court hearing to decide whether or not the offender should be hospitalized. Once the offender is hospitalized, his case must be reviewed periodically by hospital officials and he must be provided periodic opportunities to secure his release, either on out-patient basis or outright.[10]

California first enacted sexual psychopath legislation in 1939, limiting the ambit of these statutes to child molesters.[11] Although a criminal conviction was not originally a statutory prerequisite to hospitalization (a pending criminal charge sufficed), it was made so by a 1949 amendment.[12] This amendment also expanded the scope of the statutes to include persons convicted of all other types of crimes involving sexual activity. In 1963, the Legislature changed the medically incomprehensible designation sexual psychopath to the somewhat less incomprehensible designation, "mentally disordered sex offender" (MDSO), which was defined as ". . .any person, who by reason of mental defect, disease or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others."[13]

Although incarceration of dangerous sex criminals in order to protect society was one of the goals underlying the California MDSO statutes, the Legislature placed great emphasis on the therapeutic purpose of these laws, declaring that MDSOs were to "be treated not as criminals, but as sick persons."[14] Under this general guideline, more child molesters were hospitalized in California than were imprisoned and the California program became "the most extensively utilized program in the United States."[15] MDSO treatment was rendered to 1,000 offenders yearly (since 1949) mainly at Atascadero State Hospital where, by 1982, it cost approximately $35,000 per year for each of these offenders.[16]

Early criticism of the MDSO program did not involve protests that

10. *Id.*
11. CAL. WELF. & INST. CODE § 5000 et. seq. (West 1969).
12. 1949 Cal. Stat. Ch. 1325 § 1.
13. CAL. WELF. & INST. CODE § 6300 (West 1972).
14. CAL. WELF. & INST. CODE § 6250 (West 1972).
15. Dix, *Differential Processing of Abnormal Sex Offenders*, 67 J. CRIM. L. & CRIMINOLOGY, 233 (1976).
16. Information received from Department of Mental Health Office of Forensic Services.

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hospitalized sex offenders were incarcerated for a shorter period of time than comparable prisoners or that the hospital staff was effecting the release of individuals who remained dangerous. Instead, the program was criticized by civil libertarians who, when it appeared to them that hospitalized offenders could possibly spend more time incarcerated pursuant to MDSO procedures than comparable imprisoned offenders, protested this potential disparity as prohibited incarceration for status and a violation of equal protection guarantees.[17] They also strongly criticized the denomination of MDSO procedures as "civil" resulting in fewer procedural rights than in criminal proceedings and pointed out the anomaly inherent in keeping some molesters in custody as dangerous mentally disordered sex offenders although they had been deemed unamenable to treatment.[18] Joined by many psychiatrists and psychologists, they contended that mental health professionals in the state hospital system could unfairly increase hospitalization time by erroneously predicting that molesters were dangerous when in fact it was impossible to accurately make this prediction.[19]

Although civil libertarian legal attacks on the MDSO system were initially unsuccessful,[20] courts eventually became more receptive to arguments that the MDSO system deprived sex offenders of important constitutional rights. In a case raising issues somewhat analogous to the issues raised by indeterminate confinement of hospitalized sex offenders, the California Supreme Court ruled that it was cruel and unusual punishment to impose a potential life prison sentence on a

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17. *See, e.g.*, Comment, *Toward a Less Benevolent Despotism: The Case for Abolition of California's MDSO Laws*, 13 SANTA CLARA LAW. § 79, 592-593, 608-610, (1973). *Cf.* Robinson v. California, 370 U.S. 660 (1961) (prohibiting punishment for status). *See also*, Baxtrom v. Herold, 383 U.S. 107 (1966) (hospital commitment and Equal Protection).

18. *See generally*, Comment, *Evolution of a Procedural Hybrid: The Sexual Sociopath Statutes and Judicial Response*, 13 CAL. WEST L. REV. 90, 97 (1976); *see also* Santa Clara Law. *supra* note 17; Hacker and Frym, *The Sexual Psychopath Act in Practice: A Critical Discussion*, 43 CAL. L. REV. 766 (1955).

19. *See, e.g.*, Diamond, *The Psychiatric Prediction of Dangerousness*, 123 U. PA. L. REV. 439 (1975); Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 CAL. L. REV. 693 (1974).

20. Courts rejected claims that indeterminate confinement of sex offenders who were deemed dangerous was cruel and unusual punishment. *See, e.g.*, People v. Rancier, 240 Cal. App. 2d 579, 49 Cal. Rptr. 876 (1966). Procedural disparity relative to criminal proceedings was upheld on the ground that MDSO proceedings were civil, not criminal in nature. *See* People v. Succop, 67 Cal.2d 785, 433 P.2d 473 (1967); People v. O'Lea, 17 Cal. App. 3d 834, 95 Cal. Rptr. 287 (1971). The courts initially seemed to recognize that the primary justification for MDSO statutes was protection of society and that rehabilitation through hospitalization was only a secondary purpose of the statutes. *See, e.g.*, In re Bevill, 68 Cal. 2d 854, 858, 442 P.2d 679, 681, 69 Cal. Rptr. 599, 601 (1968); People v. Resendez, 260 Cal. App. 2d 1, 66 Cal. Rptr. 818 (1968); People v. Schalezke, 239 Cal. App. 2d 881, 49 Cal. Rptr. 275 (1966)

defendant upon his second conviction of indecent exposure.[21] This ruling had potential ramifications for the MDSO system despite the classification of these proceedings as civil; the Court previously had concluded that when liberty is at issue, fundamental rights could not be denied by labelling the proceedings "civil" in nature.[22] Subsequently, the sex offender was given the right to a jury trial, rather than merely a court hearing, on the question of whether or not he was a mentally disordered sex offender.[23] Moreover, in 1975, the California Supreme Court declared that the standard of proof at this jury trial must be "beyond a reasonable doubt."[24]

In 1975, two California Supreme Court rulings, *People v. Burnick*,[25] and *People v. Feagley*,[26] not only made clear that the full panoply of due process rights afforded in criminal cases applied to MDSO cases,[27] but also "cast substantial doubt"[28] on the continued legal efficacy of indeterminate MDSO commitments. *Burnick*, which granted procedural rights to MDSOs, also indicated that, in the court's view, the MDSO system embodied a punitive rather than a rehabilitative approach to dealing with child molesters. *Feagley* held that a molester could not be confined in a prison setting (a treatment facility on prison grounds), and the court noted that "adequate. . .medical treatment" was the "sole constitutional justification" of MDSO incarceration.[29] The majority in *Feagley* also severely criticized MDSO confinement of "dangerous" offenders, observing that the evidence was overwhelming that mental health professionals could not accurately determine that an offender would be dangerous if released.[30]

Legislative response to judicial criticism of the MDSO system soon followed. In 1976, the Legislature limited potential MDSO confinement to the length of time which could be imposed in a prison sentence.[31] As a result, the only way that a convicted sex offender could spend more time in the hospital than he would have spent in prison was by virtue of a cumbersome and, ultimately, rarely used extension procedure.[32]

21. In re Lynch, 8 Cal.3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972).
22. In re Gary W., 5 Cal.3d 296, 486 P.2d 1201 (1971), 96 Cal. Rptr. 1 (1971).
23. *See*, People v. Allen, 29 Cal. App. 3d 932, 106 Cal. Rptr. 43 (1973).
24. People v. Bonneville, 14 Cal. 3d 384, 535 P.2d 404, 121 Cal. Rptr. 540 (1975).
25. 14 Cal.3d 306, 535 P.2d 352, 121 Cal Rptr. 488 (1975).
26. 14 Cal.3d 338, 535 P.2d 373, 121 Cal. Rptr. 509 (1975).
27. *Cf.* Specht v. Patterson, 386 U.S. 605 (1967).
28. In re Moye, 22 Cal.3d 457, 584 P.2d 1097, 149 Cal. Rptr. 491 (1978).
29. People v. Feagley, 14 Cal.3d at 359.
30. People v. Feagley, 14 Cal.3d at 338.
31. CAL. WELF. & INST. CODE § 6316 (West 1970).
32. CAL. WELF. & INST. CODE § 6316.2, *amended* Cal. Stat. Ch. 988. If, at a full-fledg-

Even prior to the 1976 statutory time limitation on MDSO hospitalization, the average time of incarceration spent at the hospital by an offender was much less than that spent by his imprisoned counterpart. Professor George Dix of the University of Texas, who completed an in-depth study of Atascadero State Hospital in 1976, found "no extremely long-term detention" of MDSOs at Atascadero and concluded that hospitalized offenders "tended to spend significantly less time institutionalized than did similar offenders sentenced to imprisonment."[33] Dix's study revealed that approximately one-half of the Atascadero MDSOs were released within twelve months and none stayed as long as two years.[34]

Despite the fact that, in practice, hospitalization had already generally become the shortest route to freedom for convicted molesters who could not (as the vast majority did) receive probation, the Legislature had guaranteed this result in 1976.[35] Moreover, in 1977, the Legislature went even further by enacting an out-patient program whereby hospitalized sex offenders could be released into the community after three months in the hospital.[36]

Within approximately two years after California drastically modified its sex offender laws to preclude hospital confinement beyond the maximum allowable prison term and to allow out-patient release long before that time, several brutal murders committed by sex offenders who had been treated as MDSOs and released by hospitals served to focus attention on the issue of whether or not these laws provided adequate protection to society.[37] The most notorious of these, the case of

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ed trial by jury (if requested), the MDSO was proven beyond a reasonable doubt, to be dangerous he could be returned at the hospital for one more year. This process could be repeated yearly. In 1980, the Legislature allowed such extensions for two years at a time. David Guthman, the Los Angeles County Deputy District Attorney in charge of the section handling all MDSO extensions, reports that his office only handled one such extension during 1981. (A majority of all California sex crimes prosecutions usually occur in Los Angeles County.)

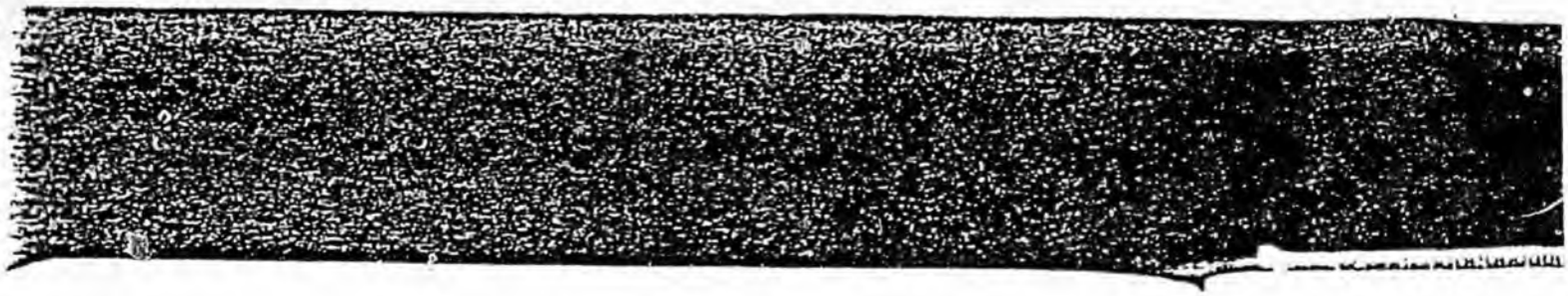
33. Dix, *supra* note 15 at 233.

34. *Id.* After 1976, the average length of incarceration at Atascadero increased to eighteen months by 1978 and to approximately two years by 1980.

35. Approximately two-thirds of all offenders convicted of felony child molestation were granted probation from 1977-1979. An even greater percentage of offenders convicted of misdemeanor child molestation were granted probation during this time frame.

36. CAL. WELF. & INST. CODE § 5316, 6325.1 and 6325.3 (West 1970).

37. A sample of only some of the Southern California murder convictions involving previously hospitalized MDSO's during this period of time: William Bonin (the "freeway killer") accused of killing 21 boys; Robert McFarland, who killed a six-year old boy; Richard Thomas, who killed a 14 year old girl; Rodney Alcala, who killed a 12 year old girl; Joseph Poggi, who killed a woman; and Theodore Frank (see text). Each of these 26 murders involved brutal sexual assaults and most involved extremely sadistic acts. These sample cases were obtained by a random review of some Los Angeles Times reports of



Theodore Frank, not only involved the gruesome death of a two-year old girl but also sparked the public movement to abolish the MDSO system.

II. THE *FRANK* CASE

Theodore Frank came to California from Missouri in 1973, bringing with him a lengthy record of sex crimes against children. He had, after approximately fifteen arrests and seven convictions, been imprisoned twice and hospitalized twice. When he left Missouri, he was a fugitive from Illinois charges of crimes involving abducting children and then combining forcible sex acts with acts of extreme brutality on his victims.[38]

After the abduction and sexual attack (forced oral copulation) of a six-year old Bakersfield girl, Frank entered a guilty plea, pursuant to a plea bargain, to a charge of child molestation and was sent to Atascadero State Hospital in November, 1974, as a mentally disordered sex offender. At the hospital, he candidly discussed his exploits with the staff, relating, according to hospital records, that he had molested "probably 100 to 150 children. . .employ[ing] methods such as bondage. . .physically striking his victims and inserting various items in his female victims' vaginas . . .".[39] He also provided a detailed account of some of his crimes, including the insertion of a knife into an abducted four-year old girl's vagina. Discussing his previous hospitalizations, he "admitt[ed] that he manipulated both times to gain release."[40]

By 1977, the hospital staff considered Frank a model patient who had responded very well to various types of treatment. Consequently, the staff decided that he was no longer dangerous and should be granted early release under the newly-enacted out-patient program. After the hospital director wrote a letter to the Illinois authorities attesting to Frank's reformation, which prompted dismissal of all pending charges against him, he was released in January, 1978. Shortly thereafter, Frank was invited to visit the Atascadero institution as a guest speaker and excellent example of the efficacy of extensive therapy.

Southern California murders; more murders by previously hospitalized MDSOs almost certainly occurred during this time span. No effort was made to compile a list of the even more numerous non-fatal sexual assaults by MDSOs released from state hospitals.

38. The author, who prosecuted the *Frank* case in Orange County (after a motion for change of venue was granted), obtained information relating to this case in the course of the investigation and prosecution of Frank. Most of this information is contained in the court record of the case, People v. Frank, (Orange County Superior Court No. C-42956) (1980).

39. *Id.*

40. *Id.*

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43. *Id.*

44. *Id.* Imprisonment
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Six weeks after Frank's release from the hospital, the nude body of a two-year old girl who had been abducted from the yard of her aunt's home in Camarillo was found next to a road in the Topanga Canyon area near Los Angeles. Forensic experts would later establish that she had been raped, sodomized, cut with a knife, mutilated by the removal of her nipples with a pair of locking pliers, (vise grips) while she was still alive, and had finally died of asphyxiation.

Frank was arrested four months later, after abducting, seriously molesting and brutalizing an eight-year old girl. He became a suspect in the murder of the two-year old girl and, after evidence was obtained linking him to the murder, he was convicted and sentenced to death in February, 1980.[41]

III. The Citizen Reaction

Approximately one week after Frank's death sentence, citizens of the area where his murder victim had lived met and decided to form S.L.A.M. After substantial investigation, the group concluded that the MDSO system was ineffective in attempting to change the criminal behavior of molesters and in preventing the release of those molesters who were dangerous. S.L.A.M. also discovered that the vast majority of convicted molesters were placed on probation and that during 1977, 1978 and 1979 only approximately ten percent of convicted molesters were imprisoned (the average length of imprisonment was approximately three years in California).[42] A convicted rapist was four times more likely to receive a prison sentence than a convicted child molester.[43]

During 1980 and 1981, S.L.A.M. organized widespread support for the repeal of MDSO statutes and the enactment of laws which would prohibit probation in child molestation cases where either the seriousness of the offense[44] or the likelihood of repetition would justify lengthy imprisonment. Thus, S.L.A.M. proposed that prison (for a

41. Frank's appeal was argued before the California Supreme Court on June 2, 1982.

42. Information received from the California Department of Justice, Bureau of Criminal Statistics and Special Services. The Bureau reported that only 57 molesters were imprisoned in 1979, and even fewer were imprisoned in 1977 and 1978. While approximately fifteen percent of those persons convicted of felony child molestation were imprisoned, many (probably most) of the molesters who were convicted (almost always after a plea bargain) of misdemeanors were involved in precisely the same type of crime as the felons but could not be sent to prison.

43. *Id.*

44. *Id.* Imprisonment for forcible rape and violent child molestation had been mandatory in California since 1979. Cal. Penal Code § 1203.065 (Deering 1982).

three, six, or eight-year term)[45] would be mandatory in felony cases where the convicted molester either:

-had been previously convicted of any sex offense (felony or misdemeanor); or
-had engaged in "substantial sexual contact" (penile or object penetration of the vagina or rectum, oral copulation, masturbation) with a victim less than eleven years old; or
-was a stranger who befriended or kidnapped the victim for the purpose of child molestation; or
-occupied a position of "special trust" (e.g., coaches, youth activities personnel, teachers, counselors, doctors, religious leaders, foster parents) in relation to the victim; or
-molested more than one victim; or
-molested the same victim on numerous occasions; or
-utilized undue influence, intimidation or coercion to accomplish his aims (making irrelevant, in these cases, the issue of "consent" where the victim's compliance was equivocal);[46] or
-caused any physical or substantial psychological injury to the victim; or
-used a weapon; or
-used the victim in pornography or prostitution; or
-made the victim available to engage in sexual activity or urged the child to engage in this activity.

S.L.A.M.'s proposed legislation also included provisions mandating a life term (without possibility of parole for twenty years) where the molester suffered a felony conviction and had two previous convictions or had one prior conviction and was previously convicted either of one of

45. The potential penalties were 3, 5 or 7 years when modified, effective January 1, 1982. *See*, CAL. PENAL CODE § 288 (Deering 1982).

46. Force or violence necessary to overcome an adult's will obviously is not necessary to secure a child's obedience to adult sexual demands. "Children are small and compliant . . . The authority and power of persuasion held by an adult are usually adequate to establish the sexual contact." D. FINKELHOR, SOCIAL FORCES AND FORMULATION OF THE PROBLEM OF SEXUAL ABUSE (1978). One expert has pointed out that

> The child has no power to say 'no' and has no information on which to base a decision. Since the long-term psychological effects are so uncertain and since the adult has such a vested interest in minimizing those risks, no modern concept of ethics, liability, or consumer protection could ever endorse such a lopsided contract. The child is just as powerless within the intimidating or ingratiating relationship as the adult rape victim would be at the point of a knife.

R. Summit, *Recognition and Treatment of Child Sexual Abuse*, to be published in 1982 in textbook PEDIATRIC CONSULTATION-LIASON PSYCHIATRY, (Hollingworth ed., Spectrum Publishers N.Y.).

Although the issue of consent does not pertain to a child for purposes of criminal culpability of the offender, entirely eliminating the issue in constructing mandatory imprisonment categories would make prison mandatory for all sexually motivated contact with a child. Many citizens would support legislation effecting this result. Considering the broad range of activity within the California definition of child molestation (*see*, note 5 *supra*), however, it seems clear that requiring imprisonment without any consideration of the circumstances would sometimes result in unnecessarily harsh sentences.

the mandatory prison molestation offenses or the present offense involved this conduct.[47]

Within one year after its formation, S.L.A.M. became an effective statewide coalition of concerned citizens of diverse political leanings. By utilizing the force of critical conclusions reached by noted psychiatrists and psychologists, the assistance of legal advisors, the publicity value of effective spokespeople from the entertainment field,[48] the advantage of sympathetic media exposure and, most importantly, the power of thousands of ordinary citizens, S.L.A.M. prompted the Legislature to action. After several legislative hearings, most of S.L.A.M. proposals were enacted into law. The MDSO program was abolished. Imprisonment of serious offenders and recidivists was mandated, but because treatment of fathers and step-fathers was regarded by many mental health professionals as potentially very successful, exemptions from some of the mandatory prison categories were allowed in cases where rehabilitation appeared feasible in family treatment programs.[49]

47. The mandatory sentencing legislation ultimately enacted is described in note 49 *infra*. S.L.A.M. also originated or provided the primary support for legislation which allowed inspection of criminal records of applicants for positions of "special trust" (Cal. S.B. 277); extending the Statute of Limitations in molestation cases from three to six years (Cal. S.B. 276); and granting funds to police and prosecutors for specialized training and to counselling centers to assist victims (Cal. S.B. 588). All of these bills were enacted into law, effective January 1, 1982.

48. Noted actor Robert Vaughn and wife, Linda, became particularly active advocates of S.L.A.M.'s legislative efforts.

49. Imprisonment is now mandatory upon conviction where the molester

"(1) [Used] force, violence, duress, menace or threat of bodily harm.
(2) . . . caused bodily injury on the child victim . . .
(3) . . . was a stranger to the child victim or made friends with the child victim for the purpose of committing child molestation . . . unless the defendant honestly and reasonably believed the victim was 14 years old or older.
(4) . . . used a weapon during the commission of [the crime].
(5) . . . had a prior conviction of . . . [rape, rape by object, incest, child molestation, sodomy or oral copulation by force, assault with intent to commit these crimes or a conviction for prostitution offenses] . . .
(6) . . . kidnapped the victim for the purpose of committing [child molestation.
(7) . . . is convicted of molesting more than one victim at the same time or in the same time or in the same course of conduct.
(8) . . . has substantial sexual conduct with a victim under the age of 11 years.
(9) [is] A person who occupies a position of special trust and commits an act of substantial sexual conduct. 'Position of special trust' means that position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the victim. Position of authority includes, but is not limited to, the position occupied by . . . [an] adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.
. . . 'Substantial sexual conduct' means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation or masturbation of either the victim or the offender.

CAL. PENAL CODE § 1203.066(a) and (b) (Deering 1982). Prison is also mandatory where the defendant "gives, transports, provides or makes available" a child to be molested or

IV. MDSO-Sexual Psychopath Approach—An Analysis Of Its Failure

At first glance, California's large scale involvement in the sexual psychopath experiment might have seemed to be a balanced combination of attempts to rehabilitate while providing adequate protection to society. This conclusion, however, not only presupposes that certain sexual offenders are highly likely to continue their illegal behavior and should be kept away from potential victims for the duration of their dangerousness, but also necessarily assumes that these offenders:

(1) commonly share a definable well understood mental illness which causes this behavior;
(2) are "curable" to the extent that once treated, they will no longer engage in the conduct caused by illness;
(3) can be determined, with substantial accuracy, to be rehabilitated and no longer dangerous to others; and
(4) will be treated by those mental health professionals who best understand the illness, the cure and the means for determining that the offender is no longer dangerous.

By enacting sexual psychopath legislation implicitly based, at least in part, on these latter four assumptions, the Legislature necessarily presumed professional knowledge and expertise on the part of the mental health profession which simply did not exist.

Psychiatric criminology, whatever its merit, has no practical efficacy unless its premises—the correct definition of specific mental illnesses causing crime and mental treatment which effectively prevents recurrence of criminal behavior—are established. Many leading mental health experts now conclude that the child molester is somewhat of an enigma and that the psychiatric solution to this perplexing problem is not currently available. Although the solution was not available, the MDSO concept assumed the opposite. Lacking concrete solutions, the administrators of the program were compelled to settle for the search for these solutions as an adequate response to the problem. Speculative theory was substituted for practical knowledge and the distinction between experiment and proof was often overlooked.

Although much has been written about child molesters, the literature in this area usually suggests, but does not establish, the validity of various hypotheses—an inevitable result of limited research and, sometimes, faulty assumptions by analysts. A sexual psychopath program based on scant knowledge arguably might be tolerable only if its inade-

"causes, induces or persuades" a child to engage in sexual acts with another person in violation of § 288 or who uses a child in prostitution activities, in making pornographic materials or in performing sex acts in public. CAL. PENAL CODE § 1203.065 (Deering 1982). *See also*, §§ 266h, 266i, 266j, 311.4(c).

quacies did not exacerbate the exceptionally serious problem which child molestation presents for society.

A. The Child Molester

The stereotype of the molester as a mysterious stranger who engages in fleeting, non-harmful, touching of children generally is not accurate. Although minimal reporting of child molestation makes accurate classification somewhat uncertain, it appears that most one-third of molesters are strangers to the victims,[50] more than one-third are non-family members known to victims (neighbors, friends, coaches, youth workers, teachers, doctors, etc.)[51] and almost one-third are family members (step-fathers, natural fathers, "live-in" boyfriends of the victim's mother, other relatives).[52]

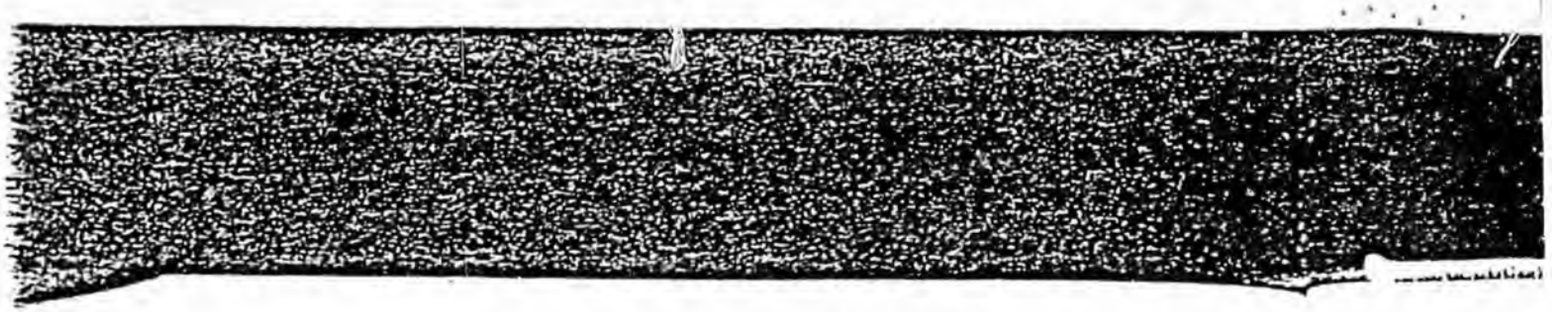
Although broad legal definitions of child molestation sometimes may encompass other offenders, many molesters are "pedophiles"[53] whose sexual orientation cannot be realigned by any known method of treatment. Most pedophiles will engage in their preferred sexual activity throughout their lifetimes. The results are often devastating. Victims who have been subjected to substantial sexual contact frequently suffer long-term psychological harm and may become molesters or other types of criminals. These facts should be of paramount significance in assessing whether or not long-term segregation of molesters

50. A retrospective study of 795 college students revealed that in cases where the females had been sexually victimized during their childhood, the offender was a total stranger in 25 percent of the cases, (a higher percentage for boys). Finkelhor, *Risk Factors in the Sexual Victimization of Children* in SEXUALLY VICTIMIZED CHILDREN. A study of more than 2,000 molested children in Philadelphia revealed that the molester was unknown to the victim in 22% of the cases. Peters, *Children Who Are Victims of Sexual Assault and the Psychology of Offenders* 30 AMER. J. PSYCHOTHERAPY 398, 416 (1976). Twenty-nine percent of 148 convicted molesters in a Massachusetts study were complete strangers to the victim. Groth *et al. A Study of the Child Molester: Myths and Realities*, 41 LAW J. OF THE AM. CRIM. J. ASSOC. 17 (Spring 1978). A British study of convicted molesters, however, revealed that a majority were strangers to the victim and the vast majority of male victims were molested by strangers. McGeorge, *Sexual Assault on Children*, MEDICINE, SCIENCE AND LAW 250, 252 (1964).

51. One extensive study revealed that 59 percent of more than 2,000 victims were molested by a man who was known but not related to the child. Peters, *supra*, note 50 at 416.

52. *See e.g.* McGeorge, *supra* note 50 at 252. Finkelhor reported that 22% of the female college students who had been molested as children were victimized within the nuclear family. Finkelhor, *supra* note 50. Only 14 percent of convicted molesters in a 1978 Massachusetts study were members of the victim's immediate family. Groth, *supra* note 50 at 18. It can be argued that molestation within the family is more likely to be "hushed up" than other types of molestation. On the other hand, since molestation within the family commonly involves repetitive victimization over a long period of time, it is conceivable that the child's need to escape recurring molestation might make this type of victim more likely than other victims to report molestation

53. *See infra*, page 66



who engage in serious sexual contact with children or who repeat their crimes, and extensive treatment for their victims present preferable alternatives to ineffective hospitalization and early release of molesters.

B. The Frequency Of Child Molestation

It appears that no more than six percent of child molestations are reported to law enforcement.[54] Moreover, even this "tip of the iceberg" is virtually impossible to quantify since neither the Federal Bureau of Investigation nor many of the State agencies which compile criminal statistics report this offense in a separate category. Nevertheless, retrospective studies of groups of adults who are asked to confidentially report whether or not they were sexually victimized as children indicate that "between ¼ to ⅓ of our entire population has been sexually exploited while growing up."[55] It is probable that more than one-half of the victims are under the age of ten.[56] Although molestation of boys is much less frequently reported than that of girls, there is evidence that boys are in fact molested nearly as often as are girls.[57] If only the most substantial molestations (e.g., assault, intercourse, sodomy, oral copulation) are considered, some studies support the conclusion that boys actually may be seriously victimized more often than girls.[58]

It is quite possible that molesters almost exclusively come from the ranks of boys who were themselves molested. Many molesters eventu-

54. Summit and Kryso, *Sexual Abuse of Children: A Clinical Spectrum*, 48 AMER. J. ORTHOPSICHIATRY, 238 (1978).

55. Swift, *Research Into Violent Behavior: Overview of Sexual Assaults, Hearings Before House Subcommittee on Domestic and International, Scientific Planning, Analysis and Cooperation*, 95th Cong. 2d Sess. 352 (1978). It has been estimated that perhaps twenty-eight million of our male and female population will experience a sexual encounter with an adult during childhood. F. RUSH, THE BEST SECRET: SEXUAL ABUSE OF CHILDREN (1980). Kinsey found after interviewing 4,000 women that 25 percent of them had been sexually victimized by an adult before age thirteen. A. KINSEY, SEXUAL BEHAVIOR OF THE HUMAN FEMALE, 121 (1953).

One analyst concluded that one-half million children were molested each year. Chanales, *Child Victims of Sexual Offenses*, 31 FED. PROB. 52 (1967). Another study concluded that, in 1965, 2 million American families concealed the crime of incest alone. AMIR, THE ROLE OF THE VICTIM IN SEX OFFENSES IN SEXUAL BEHAVIOURS: SOCIAL, CLINICAL AND LEGAL ASPECTS, 135 (1972). *See generally* R. GEISER, HIDDEN VICTIMS: THE SEXUAL ABUSE OF CHILDREN 75 (1979); Landis, *Experiences of 500 Children with Adult Sexual Deviation*, PSYCHIATRIC QUARTERLY SUPPLEMENT 30, 91-109 (1956).

56. Almost one-half of the reported cases involve victims less than eleven years old. Geiser *supra* note 55. Since young children are relatively unlikely to understand that they have been victimized or, in the case of infants, to even communicate this fact, these cases are rarely reported. It is, therefore, likely that there are far more victims under the age of ten than are apparent from the statistics relating to reported cases.

57. Swift, *supra* note 55; Geiser, *supra* note 55.

58. Swift, *The Prevention of Sexual Child Abuse: Focus on the Perpetrator*, J. OF CLINICAL CHILD PSYCHOLOGY, 134-135 (1979).

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ally victimize a large number of children. Thus, the number of molesters and molested children most likely increases geometrically each year so that the previous estimates soon become obsolete.

C. *The Serious Effects Of Child Molestation*

It is now generally accepted that an adult rape victim is often severely traumatized by the event and that it is not uncommon for the resulting psychological scars to seriously affect the victim throughout her life. Molestation which involves sodomy, oral copulation, intercourse and/or masturbation, particularly where very young children or repeated incidents are involved, is often the functional equivalent of rape. The children who are victimized in these types of cases are more likely than women to be at a state of psycho-sexual development where trauma from substantial sexual contact might have severe and long-lasting effects. Our laws, sentencing practices and even methods of gathering crime statistics often do not adequately reflect this view of the relative seriousness of child molestation. Most states provide for significantly more lenient punishment for child molesters than for rapists. The vast majority of states and the Federal Bureau of Investigation do not list child molestation in their indexes of "serious" crimes. Statistical bureaus in many states virtually ignore this serious crime by not even considering child molestation as a separate crime category.

Child molestation is similar to rape in the nature of the activity involved, the motivations of the offender and the serious effects on victims. One distinguishing factor, however, is that unlike rape, child molestation frequently involves victimization by a parent or step-parent.[59] Molestation by a parent or step-parent, is often more traumatic to the child than many of the cases involving non-family molesters. In the latter case, sexual contact may consist of a single event; in the former it often involves repeated instances of sexual abuse for a child who is being harmed by the person whom he or she loves, trusts and has learned to regard as protector.[60] Nor is molestation by a parent or step-

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59 *See*, Swift, *Sexual Victimization of Children: An Urban Mental Health Center Survey*, VICTIMOLOGY: AN INTERNATIONAL JOURNAL, 322-27 (1977); DeFrancis, *Protecting Child Victim of Sex Crimes Committed by Adults*, 35 FED. PROB. 17 (1971).

60. "Sexual relations with a parent are regarded as potentially more traumatic than sexual relations with a stranger. . . . [An] ongoing sexual relationship with a victim involving repeated contacts over a period of time is seen as potentially more traumatic than a single instance of sexual contact." Groth, *Guidelines for the Assessment and Management of the Offender* in SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS, 28 (1978). *See also*, Peters, *supra* note 50; Geiser, *supra* note 55 at 30, 46-47. The typical incest case involves approximately two years of constant sexual activity and the psychological effects on the child are "usually devastating." Id. at 46-47.

parent an act of love or tenderness. Parental sexual abuse, like rape, is often motivated, at least in part, by desire to control sexually, to dominate, humiliate, and degrade.[61]

It should not be surprising that molested children often become "psychological time bombs," suffering from: "self-hate, self destructive, anti-social behaviors, substance abuse, runaway tendencies, prostitution, somatic complaints, sexual dysfunctions, hysterical seizures, dissociative disorders including multiple personality states and homicidal frenzies, affective disorders and schizophrenia."[62]

The conclusion that most victims of child molestation are affected more severely by the crime than are the victims of most crimes is supported by distressing statistics relating to these victims. Studies have revealed that a majority of prostitutes were molested as children.[63] Female molestation victims often become drug abusers: studies have indicated that anywhere from forty-four to eighty percent of these drug abusers were molested during their youth.[64] Not surprisingly, a large proportion of female patients in mental hospitals were molested as children.[65] One researcher has estimated that "upwards of 80 percent of the kids at Juvenile Hall had been sexually molested regardless of the reason that placed them there."[66] Some opponents of lengthy incarceration of molesters who imply that this activity is generally not very harmful to children are apparently overlooking the evidence of the human devastation wrought by the molester on his victim.

Although victims of serious child molestation are often harmed more severely than victims of almost any other crime, perhaps the most frightening consequences of this behavior are found in the potential for harm to persons other than the immediate victims. The most shocking statistic of all is the probability that the overwhelming majority (75% according to one study)[67] of child molesters (and most rapists) reported that they were molested during their childhood.[68] If the statistics documenting prior molestation of men who become molesters are accurate,

61. *See, e.g.*, Summit & Kryso, *supra* note 54 at 240-241; Summit, testimony at hearings before the California Assembly Committee on Criminal Justice at 83 (1980).

62. R. Summit, *Recognition and Treatment of Child Sexual Abuse*, *supra* Note 46.

63. S. FORWARD AND C. BACH, BETRAYAL OF INNOCENCE, 23 (1978). *See also*, Rush, *supra* note 55.

64. *See, e.g.*, Forward and Bach, *supra* note 63; *see also* Benward & Gerber, *Incest as a Causative Factor in Antisocial Behavior: An Exploratory Study*, 4 CONTEMP. DRUG PROB. 323-340 (1975).

65. Summit & Kryso, *supra* note 54 at 248.

66. Remarks of Dr. Pasco, Professor of Pediatrics at the University of California, reported by Rush, *supra* note 55 at 5.

67. Serrill, *Treating Sex Offenders in New Jersey*, 1 CORRECTIONS 13-24 (1974).

68. *See, e.g.*, Swift, *supra* note 57 at 113-135; Geiser *supra*, note, 55 at 32, 89-91, 160.

the release of molesters to again molest *might actually guarantee an incessant increase, of geometric proportion, in the number of child molesters*. Any program designed to reduce the apparently increasing frequency of child molestation must confront and deal with this frightening phenomenon.

Female victims also may later victimize children. Some studies have strongly indicated a potential correlation between child molestation of females and physical child abuse by these victims in later life. One study, for instance, revealed that ninety percent of the female abusers analyzed were molested as children.[69]

D. The Mental Condition of the Child Molester

Since no mental characteristics are uniform among child molesters, the designation of this type of offender as a "sexual psychopath" is essentially mythical. After an exhaustive study of sexual psychopath programs, 300 prominent psychiatrists, the Group for the Advancement of Psychiatry, concluded that

> [t]he notion is naive and confusing that a hybrid amalgam of law and psychiatry can validly label a person as a "sex psychopath" or "sex offender" and then treat him in a manner consistent with a guarantee of community safety. The mere assumption that such a heterogeneous legal classification could define treatability and make people amenable to treatment is not only fallacious; it is startling. It is analagous to approaches that would create special categories of "burglary offender" statutes or "white collar" offender statutes and then provide for special commitments, much as to burglary psychopath hospitals.[70]

It is far from surprising to learn that people who are repelled by the idea of sexual relations with children easily assume that child molesters are "sexual psychopaths" who are obviously mentally ill. To assume otherwise might tend to lessen our high regard for the essential goodness of mankind. Psychiatrists, however, now recognize that "few sexual offenders against children are demonstrably psychotic in any apparent way."[71] Child molestation probably does not even stem from any mental abnormality in the medical sense. One commentator has noted

> The view that sexual crime is usually the expression of mental abnormality is often incorrect—although the intensity of the sexual urge is sometimes sufficient to cause the sexual offender to defy the

69. Summit & Kryso, *supra* note 54 at 248.

70. Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation: The 30's to the 80's*, 935 (MENTAL HEALTH MATERIALS CENTER, N.Y. 1977).

71. Groth, *supra* note 60 at 30. *See also*, Henn *et al*, *Forensic Psychiatry: Profiles of Two Types of Sex Offenders*, AMER. J. OF PSYCHIATRY 694 (1976).

> penalty he may incur, the same choice is made by many thieves and fraudulent persons and by many aggressive offenders who are rightly held to be responsible. It is unfortunate that academic theorists whose knowledge is culled from books and not from experience are not aware of these simple facts.[72]

In 1976, Professor Dix's study of hospitalized molesters at Atascadero State Hospital led him to conclude that "very few of the traditional psychiatric symptoms associated with serious mental illness were apparent"[73] in these cases. A similar conclusion was reached by the director of Wisconsin's sexual psychopath program, the program more extensively utilized than programs of any other state except California.[74]

Many child molesters are labelled as "pedophiles," a designation which is probably not much more precise or meaningful than "mentally disordered sex offender." The American Psychiatric Association has described pedophilia in a rather circular manner as ". . . a sexual deviation involving the use of children for sexual purposes"[75] and more recently as ". . . the act or fantasy of engaging in sexual activity with prepubertal children as a repeatedly preferred or exclusive method of achieving sexual excitement."[76] While classifying pedophilia as a personality disorder, the Association notes that it is characterized by behavorial patterns "perceptively different in quality from psychotic and neurotic symptoms."[77]

The causes of pedophilia are not known. As one expert concludes, "theories of etiology remain diverse and controversial."[78] Some commentators theorize that something initially causes many pedophiles to develop an intense fear of rejection and humiliation, in turn causing them to focus attention on children as a safe means of meeting sexual needs.[79] To the extent that this theory seems to emphasize choice in selecting sexual objects according to their seeming availability rather than on compulsion stemming from a sexual orientation and desire to

72. McGeorge, *supra* note 50 at 250 (quoting Norwood East).

73. Dix, *supra* note 15 at 236.

74. *See, Comment, Repeal of the Wisconsin Sex Crimes Act*, 1980 WIS. L. REV. 941, 970 (1980). Wisconsin abolished its sexual psychopath laws for reasons somewhat similar to those which motivated the California Legislature's action.

75. AMERICAN PSYCHIATRIC ASSOCIATION, A PSYCHIATRIC GLOSSARY 90 (1969).

76. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 271-72 (1980).

77. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 41, 44 (1968).

78. Summit, *supra* note 46; *See also*, Rosenfeld, *Sexual Abuse of children*, J. OF THE AMER. MED. ASS'N. 43 (1978).

79. *See, e.g.*, Peters, *supra* note 50. *See also*, DIAGNOSTIC AND STATISTICAL MANUAL, *supra* note 76 at 271.

dominate, it might not be entirely realistic. It is difficult to perceive that these offenders basically have a strong desire for sexual relations with adults, as do "normal" men, but reluctantly turn to otherwise abhorrent sexual contact with children because of their lack of courage to satisfy their real preference for adult relationships. Similarly it may be somewhat simplistic to conclude, as some analysts apparently have, that since molesters, like rapists, often are men who have a great need, due to impaired masculinity, to dominate, humiliate and degrade others, this desire is the cause of pedophilia. This view of pedophilia does not satisfactorily explain how subjecting children to sexual victimization restores a sense of masculinity nor why acts which normally appear to be repugnant are selected as an outlet for frustration.

The fact that the vast majority of molesters apparently were themselves molested most likely provides a substantial clue as to a cause of pedophilia, but nobody fully understands why this traumatic event might lead the victim to become an offender.

Searching for causes of pedophilia assumes that "something went wrong" which brought about this mental state. Yet, although it is somewhat frightening to consider, perhaps we should confront the possibility that, like heterosexuality and homosexuality, pedophilia is neither a disease nor a mental abnormality; it may simply be a permanent sexual orientation. This orientation may have developed, in part, as a consequence of the early victimization of the offender, but, once established, it may not be any more subject to realignment than heterosexuality, homosexuality or any other sexual orientation.

E. "Curing" Molesters

Since nobody has established with any substantial degree of certainty what it is that causes a person to molest children, it would not appear likely that a cure for that which is unknown can itself be known. So little is now known about pedophilia that it is far from certain that a demonstrably effective cure will ever be developed. If pedophilia is a basic sexual orientation, "curing" pedophilia might be as improbable as "curing" heterosexuality.

Psychiatrists now widely agree that early claims that treatment of pedophilia was effective were unfounded. The Group for the Advancement of Psychiatry concluded that ". . . [a]t one time, pedophilia was thought to be highly treatable; in retrospect, this optimism appears to have confused social policy needs with actual therapeutic effectiveness."[80]

80. Group for the Advancement of Psychiatry, *supra* note 70 at 871.

Few knowledgeable psychiatrists now claim that they can "cure" sexual offenders. Despite widespread early optimism in the profession, some psychiatrists took a more cautious approach. One warned that

> [t]he difficulty is that we have no way of successfully treating the sexual psychopath. Cures, if any, must be extremely rare. The demand, therefore, that these offenders be "treated" is a sterile one. Why do we want jurisdiction in these cases transferred from the courts to the psychiatrists? It looks as if we have talked ourselves into the privilege of holding the bear by the tail.[81]

Unfortunately, not all psychiatrists subscribe to such modest views. Many, while abandoning claims that cures are available, contend that to concede that sexual preference cannot be realigned does not mean that treatment cannot deter the offender from giving in to his fundamental and strong compulsion for sexual relations with children. Perhaps overlooking the inescapable conclusion that it must be eminently less difficult to talk a burglar, robber or check forger out of his way of life than to convince a man to forego action impelled, at least in part, by one of the strongest impulses known—the instinctual urge for sexual relations—these psychiatrists provide the primary support for statutorily sanctioned treatment for pedophiles in lieu of incarceration.

Some mental health professionals prefer distinguishing the "fixated" (generally unamenable to treatment) from the "regressed" (sometimes amenable to treatment) pedophile, the former designated as a life-long pedophile, the latter, a person not uncommonly a father or step-father[82] with a "normal" sexual orientation who turns to children usually somewhat late in life, due to stress, a feeling of powerlessness or other factors.[83] It would appear that there are problems in attempting to sort out these two categories—do we take the pedophile's word that he never did it before?[84] Although the assumption that many "normal" men would turn to pedophilia under stressful conditions may be questionable, this categorization has many prominent adherents. Not all of these professionals agree, however, on the extent to which even supposedly "regressed" pedophiles are amenable to treatment, and it is important to recognize that whatever degree of unanimity exists among those

81. H. Davidson, quoted in LAW OF CRIMINAL CORRECTION 479 (1973).

82. "Incest" offenders may be "fixated" or "regressed." Separate categorization of them as simply "regressed" offenders, in general, might sometimes reflect undue optimism by family therapists. *Cf.*, Summit & Kryso, *supra* note 54 at 241-47 (listing ten different behavioral categories relating to these offenders).

83. *See*, N. GROTH, PATTERNS OF SEXUAL ASSAULT AGAINST CHILDREN IN SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS *supra* note 60 at 6-11.

84. "[The] clinical specialist has no power to penetrate a man's deliberate lie, no power to diagnose behavior that a man chooses to conceal." Summit, *supra*, hearings, note 61 at 80.

who argue the treatability of any sex offender, little unanimity exists in regard to the appropriate method of treatment.

Methods of treating sex offenders, like the theories on which they are based, are diverse, often controversial and sometimes seemingly bizzare. Hospitals and other treatment centers commonly utilize therapy by discussion, in a group and/or in an individual setting. Depending on the assessment of the offender (and, usually, the beliefs of the therapist as to which type of therapy he or she favors) various other treatment approaches may be utilized. Behavioral modification may be attempted by involving the molester in "role-playing" (attempting to teach appropriate behavioral responses),[85] "assertiveness training" (attempting to teach purposeful assertive social responses) and/or "aversion therapy" (electric shocks or noxious odors viewing child pornography). "Rehabilitation therapy" (which in the California hospital system usually entailed playing softball, dancing and weight lifting), vocational therapy and hypnosis are also utilized in the attempt to change sexual preference. Various combinations of these methods were employed in rendering treatment to California's MDSOs.[86] After more than forty years of experimentation, the MDSO system failed to produce substantial evidence that these treatment methods were successful. In fact, the available evidence strongly indicates that no known method of therapy has any significant effect on the sexual preferences of child molesters.[87]

The treatment methods utilized are not analogous to medical prescriptions. Even their practitioners shy away from claiming that their favorite methods are known to effect cures. These methods are com-

85. This type of therapy encompassed "outings" arranged by staff members of Patton State Hospital (where some of California's MDSOs were housed), during which unsuspecting women and children were contacted by sex offenders. After newspaper accounts of convicted rapists dancing with women and engaging in other social contacts with them and after numerous escapes during these outings, this type of "role-playing" therapy was discontinued in late 1981.

86. Theodore Frank was involved in almost all of these programs while hospitalized and the staff considered this treatment to be very successful in his case. After Frank's release, his out-patient therapist added a new type of therapy by suggesting that he should get interested in "swinging" activities. In a letter to the sentencing judge after Frank's mid-1978 abduction of an eight-year-old girl, Frank's wife bitterly complained about this suggestion.

87. Although "incest offenders" do not fall into one homogenous behavioral category (*see supra* note 82) and despite the fact that many of these offenders are involved in frequent repetitive victimization of children over a period of years (Geiser *supra* note 55), they are now regarded by many therapists as unlikely to repeat their conduct after treatment. *See* Giaretto & Sgroi, *Coordinated Community Treatment of Incest* in SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS, 231, 233 (1976); Giaretto, *Humanistic Treatment of Father-Daughter Incest* in CHILD ABUSE AND NEGLECT, (1976). This contention, however has yet to be proven.

monly used not because they are generally known to be highly effective, but in order to discover if they *might* be effective (and perhaps because giving no treatment at all might represent to some psychiatrists an admission of failure).[88]

The lack of a specific effective treatment method for sex offenders and the diversity of the highly theoretical methods utilized belie the contentions that these offenders share a common mental illness and that any method has been proven to be effective in most cases. The argument is sometimes presented that the treatment of sex offenders is analogous in a sense to treatment of cancer patients which, although it often fails to cure, is better than nothing. This argument ignores the distinction that while non-successful cancer treatment cannot increase harm to society, treatment which replaces or lessens the sex offenders separation from his victims does just that. Innocent carriers of serious contagious diseases are not free to mingle with those they may harm after experimental treatment which is not guaranteed to succeed. Why should those sex offenders who present a substantial risk of significant harm to particular vulnerable potential victims be singled out for this largesse? Nobody has presented a convincing argument that allowing the freedom of sex offenders because of treatment which has not been demonstrably proven to be successful is consistent with society's paramount need to protect children.

Even if a cure were available, its effectiveness would probably be limited to a pedophile who requested and desired it. Pedophiles, however, do not voluntarily request treatment.[89] They are not motivated to change their behavior by pangs of conscience. "Genuine remorse or shame is uncharacteristic"[90] of the pedophile. Almost all pedophiles who have been given treatment have been offenders who never sought psychiatric help but accepted treatment in order to avoid incarcera-

88. "Most, if not all, of the treatments offered for sex offenders can be considered 'experimental'." Group for the Advancement of Psychiatry, *supra*, note 59 at 870.

The recently stated position of the California Psychiatric Association reflects the frustration of many psychiatrists in dealing with sexual offenders:

> [We] . . . don't know of a specific treatment for a sexual psychopath. If the person is mentally disordered because of schizophrenia, we can treat that with medication. If he's mentally disordered because of a manic depressive illness, we can treat that with specific medication. If he's depressed we can treat that. But if his propensity to offend children is based on some personality quirk or disturbance, we don't have a specific treatment.

Testimony of Dr. Captane Thompson, Director of Mental Health, Yolo County, representing the California Psychiatric Association at hearings, *supra* note 61.

89. Groth reports that "[i]t is significant that in over twelve years of work in this field, we have yet to encounter a single case of self-referral on the part of a child molester." Groth, *supra* note 60 at 32. *See also*, McGeorge *supra* note 50.

90. Groth, *supra* note 60 at 23.

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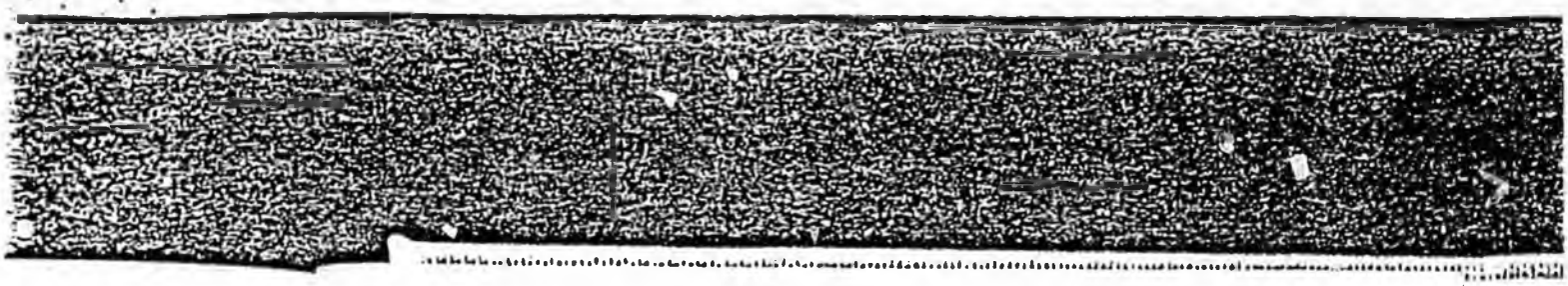
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tion.[91] The cathartic effect of complete confession and a genuine desire to change, usually considered as essential prerequisites for effective treatment, are absent in most cases involving pedophilia.

Even those who do not perceive that treatment is generally ineffective in changing the sex offender into a law-abiding citizen, should recognize that the treatment they have in mind usually is not available either in or out of an institution. Although treatment in lieu of incarceration is frequently ordered by courts, relatively few psychiatrists specialize in this area. The meager facilities that exist are almost always understaffed and underfunded.[92] If a psychiatrist or psychologist wishes to work at a state hospital, he will make much less money than elsewhere, will discover that these hospitals are often located in undesirable or remote areas and that his work load does not allow for adequate opportunity to render more than superficial treatment.

In 1978, only three psychiatrists and two psychologists were on the Atascadero staff to treat 1,000 patients.[93] At Patton State Hospital, 200 MDSOs convicted in California were treated by one psychologist who later observed. . ."I don't know how you call that treatment."[94] At these hospitals, social workers and "psychiatric technicians" (who often did not have a college degree) either made or significantly affected all of the important decisions: who was treatable, what type of treatment should be utilized and whether or not offenders would be released as no longer dangerous. This system did not come cheaply; by 1980, the average yearly cost per MDSO patient was $30,000 (now more than $35,000), while the yearly cost for imprisonment at the psychiatric facility in Vacaville was $16,000.[95] Similar disparity existed elsewhere. In Maryland, for example, hospital commitment for offenders cost five times as much as imprisonment in 1970.[96]

Those adherents of treatment who contend that the problems of

91. "In most cases, the offender is not someone who is complaining about his own behavior. He may be upset about some of its consequences, but the behavior is sufficiently rewarding s. that it is perpetuated or resorted to when he is under stress . . . [t]here has often not been an acceptance within himself that something really does need changing with respect to his sexual proclivities. . . ." Group for the Advancement of Psychiatry, *supra* note 70 at 884-885.

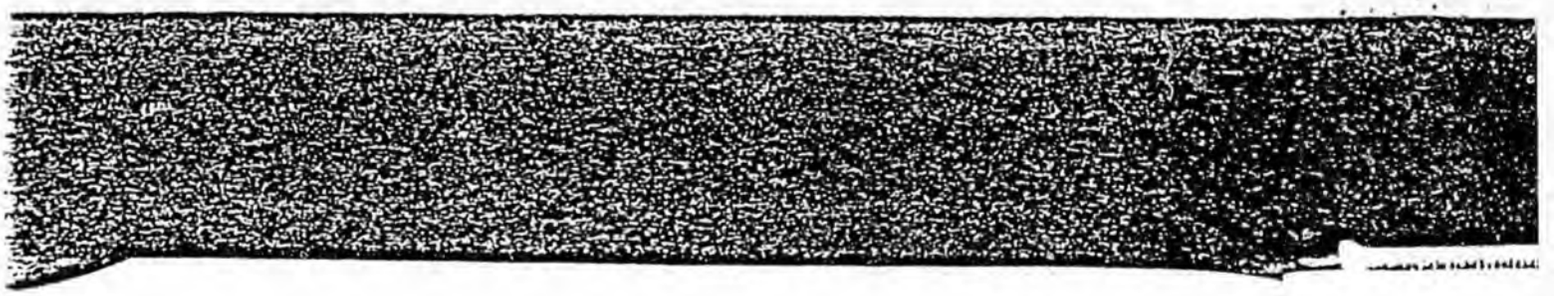
92. "Successful treatment is beyond the capability . most public welfare agencies or others to whom sexual abuse is reported." D. WALTERS, PHYSICAL AND SEXUAL ABUSE OF CHILDREN: CAUSES AND TREATMENT, 111 (1975).

93. Emmons, *Sex Offenders: A Problem in Search of a Solution*, Los Angeles Times, (Orange County ed.) 2-5 (August 27, 1978).

94. Testimony of Dr. Steven Morgan (see Hearings, *supra* note 61 at 13[illegible].

95. Harrigan, *State's Program to treat Sex Offenders Faces Scrutiny of Courts and Legislators*, Los Angeles Times 30 (April 3, 1980).

96. *See*, Tippit v. State, 436 F.2d 1153, 1157 (1971).



the system should be solved by devoting more enormous sums of money to training and treatment while the treatment has yet to be specified and has not been shown to be highly successful should reconsider their position in light of current and foreseeable financial realities. An honest appraisal of the alternatives should lead to the conclusion that, in light of the potential negative consequences to society, long term segregation of sex offenders who are likely to repeat their crimes is far better than granting them freedom.

F. Recidivism

The question of whether or not a criminal has repeated his crime cannot be answered in the negative unless there is an effective way to determine the fact of repetition. Since more than ninety percent of all child molestations apparently go unreported and those that are reported sometimes do not involve an arrest and often do not lead to a criminal conviction, any reliance on statistical evidence of recidivism confined to criminal convictions or even arrest records is certainly erroneous.[97] Nevertheless, advocates of treatment for molesters sometimes rely on this method of reporting to justify claims that treatment reduces recidivism.

In addition to the guaranteed gross inaccuracy of the "conviction" or "arrest" method of measuring recidivism, most studies which are based on this method are flawed by limiting the time span for recidivism to a very few years. It is also frequently overlooked that, once convicted and placed in an environment with other molesters, the offender may learn sufficient caution to decrease the risk of further apprehension.[98]

There are many common threads in criminal investigations and prosecutions of child molesters which affect the statistics relating to this crime. The molester escapes arrest because the child either does not report the crime, or the child and parents, wanting to forget the horror of the event, refuse to cooperate in the investigation or prosecution. Reporting failure may also result from the severely traumatized condition of the child, the age disqualification of the victim (few children under age six are allowed to testify[99]), the apparently inconsistent story

97. Determining the incidence of those types of criminal acts which are seldom reported by counting arrests or convictions is irrational. No one claims that the amount of drunk driving, tax evasion or drug possession convictions, for instance, meaningfully reflects the number of times that these criminal acts actually occur.

98. *See*, Summit, hearings *supra* note 61.

99. A child may be deemed incompetent to testify unless a judge, usually after a hearing, determines that the child understands the meaning of an oath and has sufficient capacity

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of the frightened victim (although children very seldom fabricate this type of story[100]), or, intimidation by the molester (particularly in cases where the offender is a family member[101]). The molester who has been arrested, assuming he is then represented by a competent attorney, will not infrequently succeed in obtaining a plea bargain involving a guilty plea to a non-sexual crime (e.g., false imprisonment, assault, battery, contributing to the delinquency of a minor, or even disorderly conduct) in order to avoid notoriety, registration as a sex offender, or incarceration. Consequently, this conviction will not be realistically appraised in recidivism studies which are based on criminal records. The few child molesters who must stand trial almost invariably accuse the victims of lying and, through their attorneys, subject the confused, frightened child to searching cross-examination, and thus may avoid conviction, although guilty. Because these factors lead to results which may incorrectly reflect the truth about a molester's activities, they tend to skew even those scanty statistics relating to the fewer than ten percent of incidents reported.[102]

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to perceive, recollect and communicate. *See generally*, PARKER'S EVIDENCE CODE OF CALIFORNIA, LAW REVISION COMMISSION COMMENT, § 701.

100. "[I]t is exceedingly rare for a child to falsify a sex report." F. INBAU & J. REID, CRIMINAL INTERROGATIONS AND CONFESSIONS 111 (1976). "[C]hildren cannot and do not make up stories outside the realm of actual experience." Rush, *supra* note 55 at 156.

101. Since they necessarily are based primarily on either the molester's volunteered confession or on reporting by a child fully aware that previous disclosure led to the offender's return to the family to molest again, statistics relating to the recidivism rate of incest offenders should be viewed even more warily than those relating to other offenders.

102. Although it is inconceivable that low re-arrest rates for convicted and treated "incest offenders" provide significant evidence that treatment of these offenders is effective, it is conceivable that *some* types of incest offenders actually do have a low recidivism rate, at least during and shortly after treatment. Whether or not this is due to treatment or to other factors is debatable. Some, perhaps many, incest offenders either do not dare or do not desire sexual contact with children outside their home. If this type of molester is apprehended and fears reporting by the child (who may be periodically questioned by probation, police or mental health officials), rejection by his wife and/or imprisonment for his second conviction, he may be subjected to greater restraining influence than other types of molesters who correctly consider the risk of apprehension and imprisonment to be minimal. Treatment programs for incest offenders, however, are now viewed by many with great optimism, in large part because the administrators of these programs claim that the relatively small amount of reported cases of incest offenders who repeat their crimes during or shortly after treatment indicates that the programs are successful. These "family treatment" programs are relatively new, and thorough objective investigation of their long-term effectiveness apparently is non-existent.

"Incest offenders" is not a separate homogeneous behavioral classification. Even if, however, it logically could be regarded as a somewhat homogeneous group, it remains to be seen if this group actually has the low recidivism rate claimed and, if so, whether this is due to the long-term effects of treatment or to a combination of the (often temporary) practical unavailability to the molester of alternative victims and the deterrent effect of his perception of the increased probability of apprehension and incarceration upon reoffense.

The conclusion that pedophiles often engage in their illicit activity without detection is not based on mere speculation. For instance, Professor Dix's Atascadero study revealed that almost eighty-five percent of the hospitalized child molesters admitted to prior separate undetected molestations. Nonetheless, two-thirds of these molesters were officially considered to be first-time offenders.[103] Not surprisingly, Dix concluded that the lack of criminal convictions for child molestation "is a poor indicator" of incidents of this crime.[104]

The actuality of recidivism almost certainly dwarfs statistical reports in this area. Since pedophilia is a self-reinforcing lifestyle producing satisfaction to the pedophile, repetition increases the probability of repetition.[105] Pedophilia is probably as potent a compulsive force as other sexual orientations. Thus, some pedophiles admit to molesting hundreds, even thousands of children. Estimates, by experts on the subject, concluding that recidivism among child molesters is at least five times greater than is reflected in official criminal records may indeed be conservative.[106]

Even the most recent statistical study of post-treatment criminality conducted by Atascadero State Hospital tends to confirm an exceptionally high rate of recidivism among pedophiles. This study revealed, in the words of one commentator, that "an astonishing 55% of MDSOs released were subsequently *convicted* of a new crime against the person"[107] during less than five years after treatment and release. This percentage becomes even more "astonishing" when considered in conjunction with the previously cited estimates that less than 10 percent of molestations are reported and even fewer lead to convictions. Considering the factors which make it virtually certain that conviction statistics reflect only a small portion of actual recidivism and also considering the relatively short time that the offenders were at liberty, it is not unthinkable that 55% may translate into almost 100% actual recidivism during these offenders' lifetimes.

An interesting but inconclusive method of judging recidivism from statistics involves comparing detected recidivism of previously hospitalized molesters with that of previously imprisoned molesters. One study

103. Dix, *supra* note 15 at 236-37.

104. *Id.* at 236.

105. Groth, *supra* note 60 at 26.

106. A. GROTH & B. LONGO, UNDETECTED RECIDIVISM AMOUNG RAPISTS AND CHILD MOLESTERS 23 (1980).

107. Guthman, *MDSO Law: The Assumption Challenged*, 2 CRIM. JUST. J. 1 (1980). *See* Sturgeon & Taylor, *Report of a 5-year Follow-up Study of Mentally Disordered Sex Offenders*, released from Atascadero State Hospital in 1973; *Id.* at 31; *Cf.* Geiser, *supra* note 55 at 37. (The sex offender recidivism rate is approximately 60%.)

of molesters released from Atascadero State Hospital which endeavored to make this comparison revealed that about one-third of those released from the hospital after treatment were detected engaging in the same conduct within five years of release while approximately the same proportion of detected recidivism was reported among molesters who had been imprisoned and released (and who had received no treatment) within the same time frame.[108] Imprisoned molesters usually have committed more serious crimes and have lengthier criminal records than the average hospitalized molester.[109] Thus the prisoners ordinarily would be expected to be more likely to reoffend than the hospitalized offenders, even if the latter group received no treatment.[110] Equal rates of recidivism between the two groups after the MDSOs received treatment strongly indicate the relative ineffectiveness of this treatment in preventing recidivism.

G. Predicting Non-Dangerousness

The pedophile is motivated by a particularly demanding compulsion, perhaps a biological need, to repeat his criminal behavior. Since pedophilia is currently incurable, most pedophiles are consistently dangerous in the sense that their conduct is almost inevitably repetitious upon the recurrence of its easily met prerequisites: the pedophile's strong urge to have sexual relations with a child, availability of a potential victim, lack of self-restraint and minimal risk of apprehension and incarceration.[111]

Some criminals may be motivated to cease their dangerous behavior by remorse, a desire to change their life style, fear of probable apprehension and severe punishment or, simply, the effects of aging. Pedophiles, however, unlike most other criminals, remain dangerous partly because they are rarely remorseful or desirous of changing their behavior, knowing that apprehension and severe punishment are high-

108. Emmons, *supra* note 93 at ..

109. The small number of convicted molesters imprisoned in California (*see, supra* note 42), supports the understanding by experienced officials within the criminal justice system that it is rare for a molester to be imprisoned upon his first felony conviction. The author's review of 1976-1979 felony child molestation cases in Ventura County failed to reveal a single case of first conviction imprisonment.

110. Researchers have concluded that sexual offenders who have one or more previous convictions are about three times more likely to commit another offense than first offenders. Gray & Mohr, *Follow-up of Male Sexual Offenders* in SEXUAL BEHAVIOR AND THE LAW 742-56 (1965).

111. Of course it is probable that some pedophiles can resist the recurring urge to satisfy their strong desires. Celibacy is not impossible and it is conceivable that a few pedophiles with great will power, combined with fear of lengthy incarceration, actually succeed in abstinence throughout their lifetimes.



ly improbable, and do not lose their urge to commit their crimes even when approaching old age.[112]

While knowledgeable mental health professionals may concede the general probability of future dangerousness of pedophiles, some do not concede that the utilization of treatment programs does not alter the condition which makes future harm almost inevitable. Since, as the Group for the Advancement of Psychiatry concludes, "most, if not all, of the treatments offered for sex offenders can be considered 'experimental'" and "on the basis of subsequent sexual offenses (recidivism rates), treated and untreated groups do not appear to differ,"[113] predictions of non-dangerousness based on treatment are not likely to be accurate.

There is no known method of scientific computation of mental health variables which reveals to the mental health professional the likelihood of future repetition of a molester's behavior. Medical textbooks and medical school curricula contain little or no guidance on how to predict the dangerousness of sex offenders.[114] The determination of the probability of future danger, therefore, is necessarily influenced primarily by the clinician's subjective assessment of the efficacy of his own favored treatment methods in general and, specifically, the degree to which the patient has apparently responded to treatment. No medical litmus test for determining therapeutic success applies. The therapist, hoping he has succeeded, listens to the patient who hopes to convince the therapist that the latter has been successful. These highly subjective determinations coupled perhaps with false assumptions based on misleading reports of recidivism, are bound to lead to unjustified predictions of success which might reflect hope more than fact.

The consensus among mental health professionals is that there is no appreciable psychiatric ability to predict future behavior.[115] More-

112. On the basis of his experience in supervising all career criminal and sex crime prosecutions at the Ventura County District Attorney's office, the author estimates that, while more than five percent of the prosecuted molesters were more than fifty years old, the percentage of other serious felons over that age was statistically insignificant. One study revealed that 19 per cent of the convicted molesters in the study group were 50 years old or older. McGeorge, *supra* note 50 at 248.

113. Group for the Advancement of Psychiatry, *supra* note 70 at 870.

114. *See, e.g.*, Ennis & Litwack, *supra* note 19 at 693.

115. *See, e.g.*, Diamond, *supra* note 19; Summit hearings, *supra* note 61 at 88-89; Thompson hearings, *supra* note 88 at 110. *See also*, Dix, *Determining the Continued Dangerousness of Psychologically Abnormal Sex Offenders*, J. OF PSYCHIATRY AND LAW 235 (1975). For a collection of authorities attesting to psychiatric incapability in predicting future behavior, *see* People v. Burnick, 14 Cal. 3d 306 at 327 (1975), n. 21 of case. Although the frequent release of sex offenders from Atascadero State Hospital based on predictions that they would no longer be dangerous suggests a position conflicting with the psychiatric profession's admission of inability to make this type of prediction, the Director of the Atas-

over, psychiatrists and psychologists are trained to attempt to help patients enjoy their lives rather than to help society to the possible detriment of their patients. Many of these professionals consequently find the job of predicting future dangerousness (and thereby supporting incarceration of offenders) on the basis of mental health variables not only almost impossible but ethically irreconcilable with a basic premise of their professions.

CONCLUSION

Society cannot afford the consequences of allowing dangerous pedophiles to be treated (in the words of the California statute) "not as criminals."[116] Child molestation, at least when it involves substantial sexual contact with prepubertal children, is one of the most serious crimes confronting society. Considering the likelihood that the molester will repeat this crime and that many of his victims will later engage in criminal conduct, there should be no crime more deserving of massive efforts to prevent it. Even if allowing the freedom of much less dangerous criminals as part of an experiment with psychiatric criminology arguably might be defended as socially useful in order to assess the relative merits of the experiment, the harm done by freed molesters is much too high a price to pay for the sexual psychopath experiment. Those sexual psychopath programs and similar programs throughout the United States which, in effect, allow or assist convicted molesters to be free among children more often than would otherwise occur should be abolished.

Successful reformation of the criminal usually requires comprehension of why he is a criminal. Absent this revelation, efforts to change offenders into law-abiding citizens rarely succeed. Even if the psychodynamics of pedophilia were understood, sexual psychopath programs would not succeed because they attempt to cure without knowing how to cure and their patients generally are unwilling participants. These programs are not only expected to reform offenders but also are expected to provide safety from dangerous sex criminals. Placing this responsibility with the mental health profession, a profession lacking comprehensive knowledge about causes and cures and trained to strive for the comfort and happiness of emotionally troubled individuals rather than to protect others from them, inevitably leads to decisions which are detrimental to societal safety.

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cadero program admitted, in 1978, that "we can't predict anything. It's a fallacy." Emmons, *supra* note 93 at 5.

116. *See, supra* note 14.

Until extensive research into the etiology and psychodynamics of child molestation produces demonstrably effective mental health treatment methods for offenders, the mental health profession should not influence criminal justice decision-making in this area beyond attesting to the gravity of the problem and conceding the need to gain substantial knowledge about it. Because of the serious effects of child molestation on victims, however, the mental health profession should strongly support and implement the reallocation of resources previously directed at ineffective experimental treatment for molesters to programs devoted to effective treatment of victims.

If childhood victimization is often a substantial cause or catalyst of subsequent pedophilia and other harmful activity, effective psychological counselling of victims and long-term segregation of pedophiles are the logical components of a successful response to the problem of child molestation.

Abolition of sexual psychopath programs, by itself, does not accomplish removal of pedophiles from the presence of children. The enactment of statutes which mandate long-term confinement of repetitive molesters and of molesters who have substantial sexual contact with children is necessary to insure incarceration of dangerous offenders who would otherwise be hospitalized. Since California's new statutory approach to child molestation impliedly rejects claims that molesters can be cured and also serves to substantially segregate them from children, this legislative action is a realistic and necessary first step in solving this difficult problem.

Imprisoned pedophiles who are still clearly dangerous must be released at the end of their prison terms, even under California's new statutes. One of the original basic goals of sexual psychopath statutes was that molesters would remain segregated from children while dangerous. This goal is equally valid today. Either indeterminate sentencing or extensions of prison terms for continually dangerous pedophiles is an appropriate alternative to releasing them to be amidst children.[117] Although it is now apparent that mental health professionals are un-

117. Although opponents of lengthy incarceration of dangerous individuals inevitably invoke the Constitutional prohibition against preventive detention of individuals based on their "status," *Cf.* Robinson v. California, 370 U.S. 660 (1961), this argument should not apply to an offender whose dangerousness has been demonstrated by his criminal acts and his mental condition, who has not become less dangerous with the passage of time and to whom reasonable rehabilitative opportunities have been afforded. Otherwise, all indeterminate sentencing (which conditions release on lack of dangerousness) and, perhaps habitual criminal statutes (which base lengthy confinement on dangerousness rather than seriousness of the instant offense), would be unconstitutional and any parole of non-dangerous prisoners while continuing to confine dangerous prisoners might violate Constitutional guarantees of equal protection.

able to accurately predict dangerousness by means not available outside of their profession, no specialized knowledge is required to make this type of determination.[118] The conclusion that the best predictor of future behavior is past behavior, although sometimes elevated to the level of a "clinical maxim,"[119] is simply good common sense. Predicting dangerousness based on proven facts (prior dangerous activity) is more likely to be reliable than predicting nondangerousness based on subjective speculation which is allowed to outweigh the facts.

As one noted psychiatrist admits:

> When the facts of the present and previous sexual offenses are known, it hardly requires a psychiatrist to determine that the accused is an habitual sex offender. When the actual facts are not fully known, the psychiatrist, despite all of his clinical acumen, can seldom make a precise determination.[120]

Increased public awareness of the child molestation problem will inexorably lead to relatively greater reporting of this often hidden crime. As the dimensions of the problem become increasingly apparent throughout the United States, the need for an effective approach which recognizes the limitations of psychiatry will become more pressing. The most realistic approach combines extensive treatment of victims, long-term incarceration of offenders who present a risk of continued victimization of children, and research into the vaguely understood psychodynamics of pedophilia. Restraint of the molester is not punitive; it provides necessary protection of children. While common humanity might justifiably evoke concern for the well-being of even the most despised elements of society, common sense should compel the realization that a system which allows the freedom of men who prey on children is not only ineffective but also is morally indefensible.

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118. No one familiar with the criminal justice system could rationally argue that most decisions made by police officers, prosecutors, probation officers and judges which relate to offender incarceration are not greatly influenced by an assessment of the offender's dangerousness. Police officers and prosecutors, sanctioned by legislation (*see, e.g.*, CAL. PENAL CODE § 999b et. seq.) target "career criminals" for apprehension, conviction and lengthy sentencing without plea-bargaining on the ground that certain types of criminals will continue to be more dangerous than others. Probation officers recommend and judges impose more lengthy sentences on those criminals who are considered dangerous, exempting less dangerous violators from this stern treatment. Parole officials are similarly primarily motivated by their assessment of the dangerousness of prisoners when making release decisions.

119. Statement of Alan Stone, President of the 1979-80 American Psychiatric Association, in Comment, *Estelle v. Smith and Psychiatric Testimony: New Limits on Predicting future Dangerousness*, 33 BAYLOR L. REV. 1015, 1027 (1981).

120. Diamond, *The Psychiatric View*, in PSYCHIATRIC ASPECTS OF CRIMINOLOGY 40, 46 (1968).

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FROM INTEGRATED TREATMENT OF CHILD SEXUAL ABUSE, Henry (Arretto

Treatment Premises Regarding the Incestuous Family

From the working principles of humanistic psychology tested by firsthand experience with incestuous families, the following major premises regarding the interpersonal dynamics of the families were developed and are fundamental to the treatment approach.

1. The family is viewed as an organic system. Family members assume behavior patterns to maintain system balance (family homeostasis).
2. A distorted family homeostasis is evidenced by psychological and/or physiological symptoms in family members.
3. Incestuous behavior is one of the many symptoms of a dysfunctional family.
4. The marital relationship is a key factor in family organic balance and development.
5. Parent–child incestuous behavior is not likely to occur when parents enjoy mutually beneficial relations.
6. High self-concepts in the mates is a prerequisite for a healthy marital relationship.
7. High self-concepts in the parents help to engender high self-concepts in the children.
8. Individuals with high self-concepts are not apt to engage others in hostile, aggressive behavior. In particular, they do not undermine the self-concept of their mates or their children through incestuous behavior.
9. Conversely, individuals with low self-concepts are usually angry, disillusioned, and feel they have little to lose. They are primed for behavior that is destructive to others and themselves.
10. When such individuals are punished in the depersonalized manner of institutions, the low self-concept/high destructive-energy syndrome is reinforced. Even when punishment serves to frustrate one type of hostile conduct, the destructive energy is diverted to another outlet or turned inward.
11. Productive case management of the molested child and her family includes therapeutic procedures that alleviate the emotional stresses of the experience and the resulting punitive action of the community and that enhance the processes of self-awareness and self-management, as well as feelings of family unity and growth.

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THE CHARACTERISTICS OF MEN WHO MOLEST YOUNG CHILDREN

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PRESENTED AT THE WORLD CONGRESS OF BEHAVIOR THERAPY, DECEMBER 10, 1983
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ATT. 2

SUMMARY

CHILD MOLESTERS WHO VOLUNTEERED TO PARTICIPATE IN A CLINICAL RESEARCH PROJECT WERE EVALUATED AS TO THE PRESENCE OF OTHER PARAPHILIA (SEXUAL DEVIATIONS) AND THE FREQUENCY OF THEIR VARIOUS DEVIANT SEXUAL ACTS. RESULTS INDICATE A TREMENDOUS OVERLAP ACROSS CHILD MOLESTATION DIAGNOSES (OFFENDERS TARGETED MALE OR FEMALE CHILDREN, WITHIN OR OUTSII OF THEIR FAMILIES) AND ACROSS NON-CHILD MOLESTATION DIAGNOSES, ESPECIAL RAPE AND EXHIBITIONISM. THESE FINDINGS SUGGEST THAT CLINICIANS SHOULD DO A VERY THOROUGH ASSESSMENT OF ALL CHILD MOLESTERS TO IDENTIFY OTHER TYPES OF UNDISCLOSED MOLESTATION AND PARAPHILIAS. RESULTS FROM THE MOLESTER'S REPORTS OF COMPLETED PARAPHILIAC ACTS INDICATED THE FREQUENC OF CHILD MOLESTATION TO BE MUCH HIGHER THAN SUGGESTED IN THE LITERATURE ESPECIALLY IN CASES WHERE THE TARGET WAS A MALE CHILD OUTSIDE OF THE FAMILY:

TARGET	MEDIAN	MEAN
FEMALE CHILD, NON INCEST	1.7	24.9
MALE CHILD, NON INCEST	9.8	278.7
FEMALE CHILD, INCEST	3.6	83.4
MALE CHILD, INCEST	2.3	51.3

THESE RESULTS SUGGEST THAT GREATER EFFORTS NEED TO BE MADE TO TREAT CHILD MOLESTERS TO PREVENT THEIR HIGH RATES OF MOLESTATION.

METHOD

CONSECUTIVE REFERRALS TO THE CHILD MOLESTER TREATMENT PROGRAMS AT THE NEW YORK STATE PSYCHIATRIC INSTITUTE AND THE MEMPHIS MENTAL HEALTH INSTITUTE WERE EVALUATED BY CLINICIANS EXPERIENCED IN THE ASSESSMENT AND TREATMENT OF PARAPHILIAS. SUBJECTS WERE 18-76 YEARS OLD, NON-PSYCHOTIC AND ABLE TO GIVE INFORMED CONSENT. EACH WAS INFORMED OF THE EXTREME CONFIDENTIALITY OF THEIR RECORDS AND PROTECTION OF THEIR DATA BY A CERTIFICATE OF CONFIDENTIALITY FROM THE U.S. GOVERNMENT.

DETAILED HISTORIES WERE OBTAINED OF PARAPHILIAC BEHAVIOR DURING VARIOUS STAGES OF THE MOLESTER'S LIFE. ADDITIONAL EVIDENCE OF PARAPHILIAC DIAGNOSIS WAS OBTAINED FROM PAPER AND PENCIL TESTS AND ERECTION MEASUREMENT. IRRESPECTIVE OF THE DEGREE OF EVIDENCE SUPPORTING A PARAPHILIAC DIAGNOSIS, THE DIAGNOSIS WAS ONLY MADE IF THE SUBJECT ADMITTED TO THE PARAPHILIA. WHEN THE REPORTED FREQUENCY OF BEHAVIOR INCLUDED A RANGE OF INCIDENTS, THE LOWEST FREQUENCY OF PARAPHILIAC BEHAVIOR IN THAT RANGE WAS USED.

RESULTS

TABLE 1 SHOWS THE SPECIFIC CHILD MOLESTATION DIAGNOSIS AND THE OTHER CATEGORIES OF PARAPHILIAC DIAGNOSES ALSO HELD BY THESE SUBJECTS. THERE IS OBVIOUSLY A TREMENDOUS OVERLAP ACROSS CHILD MOLESTATION DIAGNOSES; SUBJECTS MOLESTED BOTH FEMALE AND MALE CHILDREN, WITHIN OR OUTSIDE OF THEIR FAMILIES. CHILD MOLESTERS ARE NOT SIMPLY INTERESTED IN ONE CATEGORY OF PARAPHILIA.

TABLE 2 SHOWS THE FREQUENCIES OF VARIOUS PARAPHILIAC ACTS COMMITTED BY THE FOUR MAJOR CATEGORIES OF CHILD MOLESTERS. THERE IS CONSIDERABLE VARIABILITY IN THE NUMBERS OF SEX CRIMES COMMITTED, BUT 'T IS OBVIOUS THAT THE HOMOSEXUAL PEDOPHILE (WHOSE TARGETS ARE YOUNG BOYS OUTSIDE OF THE FAMILY) HAS OFFENDED AT THE HIGHEST FREQUENCY. IF CHILD MOLESTATION IS TO BE PREVENTED, TREATMENT NEEDS TO FOCUS PRIMARILY ON THE HOMOSEXUAL PEDOPHILE.

CHILD MOLESTATION DIAGNOSES	ADDITIONAL DIAGNOSES									
	PED. FEM.	PED. MALE	PED. FEM. INCEST	PED. MALE INCEST	RAPE	EXHIB.	VOYEUR	FROTTAGE	SADISM	PARA
PED. FEMALE NON INCEST										
NUMBER	208	76	63	21	41	59	28	21	8	4
% OF ROW	100%	37%	30%	10%	20%	28%	14%	10%	4%	2
PED. MALE NON INCEST										
NUMBER	76	146	16	23	14	28	15	8	8	23
% OF ROW	52%	100%	11%	16%	10%	19%	10%	6%	6%	16
PED. FEMALE INCEST										
NUMBER	63	16	142	16	25	25	13	7	5	30
% OF ROW	44%	11%	100%	11%	18%	18%	9%	5%	4%	21%
PED. MALE INCEST										
NUMBER	21	23	16	37	7	7	5	3	1	7
% OF ROW	57%	62%	43%	100%	19%	19%	14%	8%	3%	19%

RELATIONSHIP BETWEEN PARAPHILIAS: COMPLETED ACTS

NUMBER OF COMPLETIONS BY DIAGNOSIS

DIAGNOSIS		PED. FEM.	PED. MALE	PED. FEM. INCEST	PED. MALE INCEST	RAPE	EXHIB.	VOYEUR	FROTTAGE	SADISM	OTH PARA
PED. FEMALE NON-INCEST (N=208)	MEAN	24.9	128.3	33.1	0.5	1.7	82.7	16.7	95.9	2.7	41.(
	MEDIAN	1.7	0.2	0.2	0	0.1	0.2	0.1	0.1	0	0.3
PED. MALE NON-INCEST (N=146)	MEAN	14.8	278.7	11.2	12.7	1.5	36.7	5.5	7.5	3.6	7.3
	MEDIAN	0.3	9.8	0.1	0.1	0	0.1	0.1	0.1	0.1	1.3
PED. FEMALE INCEST (N=142)	MEAN	17.2	9.8	83.4	2.6	0.6	95.1	9.5	13.5	1.0	58.3
	MEDIAN	0.2	0.1	3.6	0.1	0.1	0.1	0	0	0	1.6
PED. MALE INCEST (N=37)	MEAN	10.4	99.1	8.4	51.3	0.8	36.4	19.8	31.5	1.6	97.4
	MEDIAN	0.4	1.1	0.3	2.3	0.1	0.4	0.1	0.1	0.8	0.3

U.S. Department of Justice
Bureau of Justice Statistics

Bureau of Justice Statistics
Special Report

Sentencing Practices in 13 States

By Herbert Koppel
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October 1984

A fundamental issue in the administration of justice concerns the type and length of sentences given to convicted offenders. In this Special Report, the Bureau of Justice Statistics reports findings from a survey of selected States.

Among key findings are the following: despite the wide diversity among States in their sentencing systems, there appears to be a reasonable consistency in the end results produced; incarceration is much more likely for serious crimes against the person than for property crimes or drug crimes; the likelihood of incarceration increases markedly with increasing severity of the offense and increasing seriousness of the offender's criminal history; and rates of incarceration and sentence lengths appear comparable from State to State for similar crimes committed by persons with similar criminal records, when differences among sentencing systems are taken into account. In most cases, these data were obtained from criminal justice Statistical Analysis Centers in the States. Such centers have been established with support from the Bureau of Justice Statistics in 40 States, the District of Columbia, Puerto Rico, and the Virgin Islands. In addition to providing data to BJS, their functions are the gathering, analysis, and dissemination of statistical information pertaining to crime and criminal justice in their States for the benefit of decisionmakers, criminal justice practitioners, and the public.

The Bureau of Justice Statistics will continue to report on sentencing practices in the States as further changes occur and will attempt to expand the data base to include all States.

Steven R. Schlesinger
Director

The sentencing of a convicted offender is a key event in the complex process by which criminals in the United States are brought to justice. The judge is acting for society in determining whether or not the offender will go to prison and, if so, for how long. This report will examine the sentencing of convicted felons in several States with respect to whether or not they are sent to prison and the lengths of their sentences.

State law and policies

Every State has its own set of laws and practices for sentencing criminals, and the differences among them are substantial. An earlier brief overview of sentencing practices, Setting Prison Terms (Bureau of Justice Statistics Bulletin, NCJ-76218, August 1983), presents much useful descriptive information, as does a recent report by the New York State Division of Criminal Justice Services.[1] However, it requires more than 200 pages to describe the basic features of the sentencing laws in each State.[2]

In addition to the different laws that govern sentencing, there are differences in how specific offenses are defined and classified by the criminal code in each State.

In some States, the law specifies a rather wide range of sentence lengths for each crime; the judge has broad discretion in selecting a sentence from within that range. In other States, the judge's discretion is limited by law to a relatively narrow range of sentence lengths.

The judge usually is empowered to decide whether or not an offender will be sent to prison at all; he can suspend a prison sentence, impose a sentence of probation or a fine or, in some cases, select an alternative to incarceration such as requiring the offender to make restitution or to perform community service. This discretionary power, however, is far from absolute; as of January 1983, 48 States and the District of Columbia had enacted laws mandating a prison sentence for certain serious offenses or under certain aggravating circumstances.[3] Examples include use of a firearm in committing a felony, certain violations of drug laws, and a history of prior felony convictions.

The judge's sentence is not the only factor that determines the length of an offender's stay in prison. The parole board often has considerable discretionary power in deciding when a prisoner will be released. In some States, the board can release a prisoner at any time after incarceration. In at least nine States, parole board discretion has been abolished completely.[4] Most parole boards have discretionary authority that falls between these limits. In addition, 47 States, the District of Columbia, and the Federal system have provisions that enable an inmate to earn "good time"; that is, a reduction in the length of the prison stay through good behavior or participation in certain programs.

Sentencing systems

Differences among sentencing systems are so great that any comparison of sentence lengths among States is nearly meaningless unless the sentencing systems are taken into account. In some States, sentences may be relatively short, but with a high probability that all or nearly all of the sentence actually will be served. In other States, the sentences may be very long, but most offenders will be released after serving only a fraction of the sentence imposed by the courts.

There has not been complete consistency in defining the various types of sentencing systems that are used by the States. The following definitions have been adapted from those developed by the New York State Division of Criminal Justice Services.[5]

Indeterminate sentencing. In jurisdictions that use indeterminate sentencing, the court sets upper and lower bounds on the time to be served. The lower bound may be explicit or implicit. The actual release date (and therefore the time actually served) is determined subsequently by parole authorities.

With minimum/maximum indeterminate sentencing, the court specifies both minimum and maximum prison terms, but the parole board determines the actual release date within those limits. The States vary as to whether "good time" may be deducted from the minimum, the maximum, or both.

With fixed indeterminate sentencing, only a single prison term is specified by the court, but it is treated as a maximum for which an associated minimum automatically is implied. The implied minimum might be zero for all sentences, one year for all sentences, or a fixed proportion of the maximum.

Determinate sentencing. The court specifies a fixed term of incarceration which must be served in full (less any "good time" earned in prison). There is no discretionary parole release.

Mandatory sentencing. The court is required to impose an incarcerative sentence, often of specified length, for certain crimes or certain categories of offenders. There is no option of probation, suspended sentence, or immediate parole eligibility.

Presumptive sentencing. The judge's discretion is constrained by a sentence length that is set by law for each offense or class of offense. This sentence must be imposed in all unexceptional cases. When there are mitigating or aggravating circumstances, however, the judge is allowed to shorten or lengthen the sentence within specified boundaries, usually with written justification being required.

In recent years, a number of States have reformed their sentencing systems, most often changing from indeterminate sentencing to a determinate system in which presumptive or mandatory provisions are included and parole discretion is eliminated or drastically curtailed.

The judge's role

Individual judges differ in the rationales, attitudes, and beliefs that affect their sentencing decisions. A survey in Delaware[6] asked judges of the Superior Court to assign priorities to five possible rationales for sentencing decisions: rehabilitation; deterrence of the offender from further criminality through fear of punishment; deterrence of others; retribution; and incapacitation (protection of the public while the offender is incarcerated). The survey found "an absence of a common philosophy or rationale for punishment" among the judges and concluded that "the dispersion of action and opinion in the judiciary is as diverse as would be found in the general population."

It may be that, in at least some instances, the judge making a sentencing decision takes into account the possibility of early release through parole and the accumulation of "good time." As an illustration, the Delaware survey states that a judge would have to impose a sentence of 19 years to be sure that the person would remain incarcerated for at least 5 years. A striking example occurred recently in Maryland. A man who had murdered three people and wounded several others at his former place of employment was convicted on 75 charges and sentenced to 3 consecutive life terms plus 1,080 years.

Several States have instituted or are considering the use of sentencing guidelines. Such guidelines are aimed at improving the consistency and rationality of sentencing by basing sentencing decisions upon offense severity, the offender's criminal record, prevailing sentencing patterns, or some combination of these factors. The guidelines may be advisory, or they may be prescriptive and presumptive, requiring the judge to explain sentences outside the specified ranges.

Incarceration rates

When a convicted person is sentenced, the most fundamental decision is whether or not he or she will be incarcerated. The judge usually is free to make this decision but, in many States, incarceration is mandatory for certain serious offenses or for persons with prior felony convictions. Also, the judge may be required to provide written justification for any departure from presumptive guidelines.

Not every sentence to incarceration involves a substantial term of confinement in a State prison. In some States, a very short term may be imposed, which may be served in a county jail or State prison, in cases where the offender does not have a significant criminal record and where the offense was not especially serious or significant mitigating factors were involved. Such short sentences often are combined with other sanctions such as fines, restitution, performance of community service, or participation in drug or alcohol treatment programs. Several States make use of split sentences, which consist of a short prison term to be followed by an extensive period of supervised probation. Some sentences provide for part-time incarceration; typically, the person is released during the day to work at an outside job, but spends nights and weekends in confinement. In most of the data that follow, a sentence is considered incarcerative if it involves any amount of confinement.

Specific offenses. Table 1 shows the incarceration rates (percentage of convictions that resulted in sentences of incarceration) for certain categories of offenses in six States.

Because of the different ways that offenses are defined by statute in the various States and the different formats in which the States provided their data, and because of the different ways individual statutory offenses had to be combined to fit generic crime categories, the comparability of this information is somewhat limited. In particular, where different States show significantly different incarceration rates for the same crime category, this may be caused by differences in the specific offenses that were included in

Table 1. Incarceration rates for specific crime categories

Crime type	Iowa[a] 1980-83		New York 1982		Oklahoma 1978-82		Pennsylvania 1981		Washington 1971-82		Wyoming 1981-84	
	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
All felonies	2,125	39.3%[b]	22,7[illegible]	44.5%	•	•	37,147	35.0%[b]	78,036	20.3%	•	•
Serious violent crimes[c]	161	74.5	7,380	67.7	7,472	57.3%	4,507	59.7	14,854	38.3[d]	427	56.7%
Criminal homicide[e]	22	86.4	893	90.6	599	78.1	484	73.3	1,834	52.8	72	88.9
Rape	28	92.9	224	97.8	618	71.0	198	77.3	4,530	27.2[d]	86	68.6
Robbery	38	100.0	5,290	67.4	2,506	79.2	2,010	73.4	3,464	56.1	111	57.7
Aggravated assault	73	50.7	973	41.5	3,749	37.2	1,815	39.1	5,026	30.8	158	34.8
Serious property crimes[f]	849	31.2	6,585	36.2	19,822	36.5	9,131	43.9	40,506	19.3	1,309	35.0
Burglary	351	35.5	5,124	38.8	9,168	43.6	3,165	61.3	•	•	731	37.4
Larceny	382	25.4	1,235	24.8	7,895	25.1	5,393	33.7	•	•	381	28.1
Auto theft	98	33.7	g	g	2,379	46.9	447	41.6[h]	•	•	152	42.1
Arson	18	36.8	226	40.7	380	37.6	126	53.2	•	•	45	31.1
Drug crimes	148	29.7	3,168	38.9	6,982	33.9	3,606	26.9	13,911	12.1	253	43.9

• Data not available.

[a] Three counties.

[b] Includes certain misdemeanors which would be classified as felonies in many other states.

[c] Criminal homicide, rape, robbery, and aggravated assault.

[d] Includes other sex crimes in addition to rape.

[e] Includes murder and non-negligent manslaughter.

[f] Burglary, larceny, auto theft, and arson.

[g] Auto thefts in New York are included with larceny.

[h] Due to statutory changes, many auto thefts in Pennsylvania are included with larceny.

the category rather than by differences in sentencing policy.

For example, drug offenses may range from smoking marijuana to the large-scale distribution of heroin. In the case of robbery, most States define several separate statutory offenses of different degrees of severity, depending upon such considerations as whether a weapon was used and the extent of injury to the victim. Incarceration is more likely (and sentence lengths are greater) for the more serious statutory offenses within a given category. When data for the various statutory offenses are aggregated, the combined incarceration rate for the entire category can be affected significantly by which statutory offenses are included and their relative prevalence.

Despite these limitations, table 1 shows quite clearly that incarceration is much more likely for serious crimes against the person than for property or drug crimes.

Offense severity and criminal record. It is useful to examine incarceration rates in terms of offense severity and the offender's criminal record, instead of relying upon definitions of specific offenses that are difficult to reconcile among the different States. In several States, the law groups offenses into classes of different severity, and in some cases the statutes define categories of offenders in terms of their prior criminal records. Where such legal categories do not exist, researchers have devised similar categories for use in their investigations.

The data in table 2 are presented separately for each State because of the different ways that offenders and offenses have been grouped into categories. These data show the percent of convictions that resulted in incarcerative sentences.

Table 2 shows that, in virtually all cases, the likelihood of incarceration increases markedly with increasing severity of the offense and increasing seriousness of the offender's criminal history.

For the data from Illinois, New York, and Connecticut, the felony classes are defined by statute and are listed in decreasing order of severity. For Minnesota, the three tabulated severity categories are condensed from the ten levels of severity defined by the State's sentencing guidelines. For North Carolina and Maryland, offenses have been classified by the nature of the crime (violent crimes, property crimes, drug crimes, etc.), and these categories are listed in what is generally perceived to be the order of decreasing severity.

All of the offender classifications in table 2 are based on the number and seriousness of the person's previous convictions. The classifications in New York are defined by statute. Minnesota's sentencing guidelines define seven levels of criminal history scores; these have been condensed into the three levels used in the tabulation. The offender classifications were defined by researchers for Connecticut and by the sentencing guidelines advisory board for Maryland.

Effects of guidelines and changes in sentencing laws. The Minnesota guidelines were designed to embody retribution as the primary purpose of sentencing.[7] Because of this, they place more emphasis upon the seriousness of the current offense and less upon the offender's criminal history than usually had been the case in the past. The data in table 2 show that this objective was achieved. For example, in the case of the most severe offenses being committed by those with the least serious criminal histories, the incarceration rate increased from 47.4% to 79.0%. For those with moderately serious criminal histories who were convicted of the least severe offenses, the incarceration rate dropped from 38.4% to 9.6%.

The preguidelines data for Maryland were not used because of the small sample size (339 cases) and because no significant difference in incarceration rates had been observed between corresponding portions of the preguidelines and postguidelines samples. This similarity is not surprising, since the guidelines that were tested in Maryland were intended to reduce unwarranted variations in sentencing rather than to bring about a change in the aims or philosophy of sentencing.[8]

In North Carolina (table 2) incarceration rates increased for all types of felonies (except "morals" offenses) after determinate sentencing was instituted. This is somewhat surprising because the new legislation did not affect the judge's power to decide whether or not a convicted person would be incarcerated. It has been conjectured that the judges may have been influenced by the legislation in interpreting the specified prison terms as a tacit recommendation by the legislature for incarceration, or that the increased incarceration rates were merely the continuation of a previous trend toward more frequent use of imprisonment.[9]

Arrest offense vs. charged offense vs. conviction offense. The data for Connecticut (table 2) include some

misdemeanor convictions that resulted from plea bargaining where the original charge had been a felony. Plea bargaining, with respect to the charge and the sentence, is prevalent in many jurisdictions. The aggregate data from Connecticut for 1976-77 and 1979-80 cover 2,756 convicted persons. Only 92 were tried; the other 2,664, or 96.7%, were convicted as the result of guilty pleas. For the Maryland postguidelines sample of 2,928 convicted persons, 74.9% were convicted through guilty pleas.

Plea bargaining is not the only reason that the level of the offense may be reduced between arrest and conviction. Often the formal charge filed by the prosecutor is for a lesser offense than the one for which the police had made the arrest. The police need only show "probable cause" when making an arrest; the prosecutor must be prepared to prove guilt "beyond a reasonable doubt."

Table 3 shows data from Oregon covering persons who were arrested in 1979.[10] These data provide information on the relationship between incarceration rates and whether or not the conviction offense was the same as the arrest offense. These data also include the percentage of convicted persons who were sentenced to any incarceration and the percentage who were sentenced to at least 1 year. Incarceration rates were higher, for both violent crimes and property crimes, when the arrest offense and the conviction offense were the same.

Table 2. Percent of convictions resulting in incarceration for selected States based on offense and criminal history classifications

Illinois, 1979-81

Offense class[a]	Number of convictions	Percent
All felonies	**76,787**	**79.3%**
M (murder)	1,092	99.9[b]
X	6,713	100.0
1	1,748	57.0
2	26,591	37.7
3	31,547	26.5
4	9,096	21.0

[a] By statute, there are six classes of felony offenses that are based on the severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[b] Does not include 54 death sentences.

New York, 1982

	Offender classification							
	Youthful		First offender		Repeat[a]		All offenders	
Felony class[b]	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
All felonies	**2,722**	**7.5%**	**16,987**	**42.2%**	**2,578**	**99.1%**	**22,287**	**44.5%**
A	2	50.0	439	95.7	25	100.0	466	95.7
B	165	23.0	2,116	94.1	371	99.7	2,652	90.5
C	587	14.3	2,780	77.2	507	99.4	3,874	70.6
D	1,341	5.0	6,686	29.7	937	99.4	8,964	33.3
E	627	2.2	4,966	12.7	738	98.3	6,331	21.6

[a] Includes persons classified as second felony offenders, persistent felony offenders, second violent felony offenders, and persistent violent felony offenders.

[b] By statute, there are five classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. Violent and property offenses appear in all classes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

Connecticut, 1979-80 (statewide sample)

	Criminal history[a]							
	None		Moderate		Serious		All offenders	
Felony class[b]	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
All felonies	**377**	**45.1%**	**303**	**58.1%**	**327**	**77.8%**	**1,007**	**59.6%**
A	1	100.0	2	100.0	3	100.0	6	100.0
B	111	53.2	92	69.6	108	87.0	311	69.8
C	78	48.7	58	62.1	69	79.7	205	62.9
D	95	49.5	104	61.5	95	76.8	294	62.6
Misdemeanor[c]	92	27.2	47	21.3	52	55.8	191	33.5

[a] Based on number and seriousness of previous convictions.

[b] By statute, there are four classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[c] Misdemeanor convictions resulting from plea bargaining where original charge was a felony.

Sentence lengths

Average (mean) sentence lengths for various offenses and groups of offenses are shown in tables 4, 5, and 6. The three tables cover, respectively, minimum/maximum indeterminate sentences, fixed indeterminate sentences, and determinate sentences. As noted earlier, extreme caution must be used in making comparisons among the different States because of differences in the statutory definitions of offenses and in the ways individual offenses have been aggregated. In general, the tables show that the longest sentences are imposed for serious crimes against the person.

Data for Illinois are shown for minimum/maximum indeterminate sentences (table 4) and for determinate sentences (table 6) during the years 1978-82. Determinate sentencing was initiated near the beginning of that period, but persons whose offenses were committed when the indeterminate sentencing laws were in effect were subject to punishment under those laws. The average lengths of determinate sentences tend to fall between the average minimum and maximum lengths of corresponding indeterminate sentences. This is to be expected, since the latter represented only upper and lower bounds on the time that the convicted persons would serve.

There is a noticeable exception in the case of serious violent crimes as a group. For indeterminate sentences, the average minimum and maximum sentences were 131 months and 277 months; the average determinate sentence was only 102 months. This may be because the crimes in this group for which extremely long sentences are imposed, criminal homicides, take longest to process in the courts. A large percentage of such cases go to trial rather than being settled through guilty pleas, and it often takes considerable time to prepare and conduct the trials. As a result, a large number of homicide sentences were for offenses that dated back to the era of indeterminate sentencing, while sentencing had not yet occurred for many homicides committed after determinate sentencing was instituted. The tables show that, for serious violent crimes as a group, 25% of the indeterminate sentences were for criminal homicide, in contrast to only 16% of the determinate sentences. This may account for the disproportionately long minimum/maximum indeterminate sentences.

Data for North Carolina show sentence lengths for fixed indeterminate sentencing in 1979 (table 5) and for determinate sentencing in 1981-82 after the enactment of the State's "Fair Sentencing Act" (table 6). The determinate sentences are shorter; this is

Table 2. (Continued)

Minnesota, 1978 and 1980-81

Offense severity*	Criminal history score*: None/Low Number of convictions	None/Low Percent incarcerated	Moderate Number of convictions	Moderate Percent incarcerated	High Number of convictions	High Percent incarcerated	All offenders Number of convictions	All offenders Percent incarcerated
Before the introduction of presumptive sentencing guidelines								
All felonies	**3,326**	**9.9%**	**732**	**16.2%**	**307**	**70.5%**	**4,365**	**20.2%**
Low severity	1,872	4.7	385	38.4	162	62.2	2,420	13.9
Moderate severity	1,210	10.5	273	46.7	109	73.1	1,592	21.0
High severity	244	47.4	73	85.5	36	100.0	353	60.6
After the introduction of presumptive sentencing guidelines								
All felonies	**4,031**	**6.5%**	**1,018**	**24.3%**	**451**	**70.7%**	**5,500**	**15.0%**
Low severity	2,122	0.6	478	9.6	222	50.4	2,822	6.0
Moderate severity	1,680	4.0	443	24.4	186	88.2	2,309	14.7
High severity	229	79.0	97	95.9	43	100.0	369	85.9

Note: Under Minnesota law, both before and since introduction of sentencing guidelines, a convicted person may have to spend up to a year in jail or workhouse as a condition of a stayed felony sentence. Incarceration rates shown above do not include such confinement.

* The sentencing guidelines in Minnesota use 7 levels of criminal history scores and 10 levels of offense severity, which have been condensed into 3 levels each for this table.

North Carolina, 1979 and 1981-82 (statewide sample)

Offense class	Before Fair Sentencing Act*: Number of convictions	Before Fair Sentencing Act*: Percent incarcerated	After Fair Sentencing Act*: Number of convictions	After Fair Sentencing Act*: Percent incarcerated
All felonies	**9,752**	**5[illegible] 7%**	**3,034**	**62.8%**
Class 1 (violent felonies)	2,231	79.5	666	84.5
Class 2 (felonious larceny, breaking or entering, receiving stolen goods, etc.)	4,481	5[illegible] 2	1,452	65.3
Class 3 (fraud, forgery, embezzlement, etc.)	1,061	39.1	336	44.6
Class 4 (drug felonies)	1,642	30.9	515	39.6
Class 5 ("morals" felonies)	117	71.8	25	68.0
Class 6 (other felonies)	220	35.9	40	60.0

* North Carolina's "Fair Sentencing Act" instituted determinate sentencing in July 1981.

Maryland, 1981-82 (entire postguidelines sample)

Type of offense	Prior criminal record: None No. of convictions	None Percent incarcerated	Minor No. of convictions	Minor Percent incarcerated	Moderate No. of convictions	Moderate Percent incarcerated	Major No. of convictions	Major Percent incarcerated	All offenders No. of convictions	All offenders Percent incarcerated
Total	**1,311**	**39.7%**	**973**	**65.2%**	**443**	**84.6%**	**201**	**89.1%**	**2,928**	**58.3%**
Person	551	55.9	334	76.6	160	91.3	70	87.1	1,115	69.1
Property	449	35.4	440	68.9	219	83.1	104	91.3	1,212	61.0
Drug	311	17.0	199	37.7	64	73.4	27	85.2	601	32.9

consistent because the earlier indeterminate sentences represented only an upper bound on the amount of time that would be spent in prison.

Offense severity and criminal record. As would be expected, average sentence lengths are longest for the most severe offenses and for those offenders with the most serious prior criminal records. This is illustrated by the data for Illinois and New York in tables 7 and 8. The offense classes in both States and the offender classifications in New York are defined by statute.

Conclusions

While the most prominent characteristic of the sentencing systems used by the States is their wide diversity, there appears to be a reasonable consistency in the end results produced. The highest rates of imprisonment and the longest sentences accrue to those who have been convicted of the most severe crimes and to those whose prior criminal histories are most serious. Rates of incarceration and sentence lengths are comparable from State to State for similar crimes committed by persons with similar criminal records, when differences among the sentencing systems are taken into account with regard to the meaning of the sentence in determining how long the offender actually will be imprisoned.

Many States have made fundamental changes in their sentencing systems in recent years, and this trend appears to be accelerating. No fewer than 5 of the 13 States that provided data for this report instituted comprehensive changes in their sentencing laws immediately before, during, or since the periods covered by the data. Connecticut, Illinois, North Carolina, and Washington went from indeterminate to determinate sentencing, and Minnesota instituted the use of presumptive sentencing guidelines. At least two other States, Maryland and New York, are evaluating the use of sentencing guidelines. The changes from indeterminate to determinate sentencing and the introduction of guidelines appear to signal the intention of the States to make punishment more certain, more consistent, and more in keeping with their perceptions of the basic purposes of imprisonment.

Sources of data

Descriptions of the sentencing systems in the States that provided data for this report and characteristics of the data are critically important to the interpretation of the numerical information in this report. It is imperative that no attempt be made to interpret the numbers or to make comparisons between States without thoroughly considering this information. Different sentencing systems lead to sentence lengths that have widely different practical meanings. For example, a person sentenced to 10 years in California will serve all or nearly all of the 10 years; in Iowa or Maryland, there is a possibility of release after serving only a fraction of a similar 10-year sentence. In addition, there are substantial differences in how offenses are defined and classified in different States, as well as significant differences in the ways that the data from the States have been collected and aggregated.

California. The judge imposes a determinate term based on presumptive sentence lengths that are set by legislation. Three presumptive sentence lengths are specified for each class of offense; the middle one must be imposed unless there are mitigating or aggravating circumstances. The sentence must be served in full minus any "good time" reduction. There is no early parole release.

Data on sentence lengths for number of offenses were obtained from two reports with the same title, Sentencing Practices under the Determinate Sentencing Law, by the California Board of Prison Terms. The data cover all persons in the State who entered prison from February 1979 through January 1980 (report dated February 11, 1981) and during calendar year 1981 (report dated February 10, 1983). Offenses such as murder, for which life imprisonment or the death penalty can be imposed, are not included. (Some sentences for second degree murder are included in the 1979 data. The penalty for that offense was

Table 3. Oregon: Incarceration rates for persons arrested in 1979

Conviction type	Incarceration rates for persons arrested for: Violent Crimes[a] Number of convictions	Violent Crimes[a] Percent of convictions	Violent Crimes[a] Percent incarcerated	Property crimes[b] Number of convictions	Property crimes[b] Percent of convictions	Property crimes[b] Percent incarcerated
All convictions	858	100.0%		2,815	100.0%	
Percent of all convictions resulting in:						
Any incarceration sentence			62.5%			38.3%
Incarceration sentence of at least one year			51.9			22.2
Convictions where arrest offense and conviction offense are the same	323	37.6		1,650	58.6	
Percent of these convictions resulting in:						
Any incarceration sentence			73.4%			40.5%
Incarceration sentence of at least one year			69.7			27.2
Convictions where arrest offense and conviction offense are different	535	62.4		1,165	41.4	
Percent of these convictions resulting in:						
Any incarceration sentence			55.9%			35.0%
Incarceration sentence of at least one year			41.1			15.2

[a] Criminal homicide, rape, robbery, and aggravated assault.

[b] Burglary, larceny, auto theft, and arson.

changed in November 1978; these data are for persons whose offenses were committed before that date, but who entered prison in 1979.)

Connecticut. The data used in this report cover sentences that were imposed during years when the State used minimum/maximum indeterminate sentencing with wide judicial discretion.

Subsequently, in July 1981, legislation was enacted to require the imposition of a determinate prison term. The judge selects the sentence length within wide limits defined by statute for each class of offense. Parole has been abolished; the entire term, less "good time," must be served.

Data were provided by the Connecticut Statistical Analysis Center in a report entitled Sentencing Patterns in Connecticut. The data cover samples of 1,749 persons who were convicted in 1976-77 and 1,011 who were convicted in 1979-80. Each jurisdiction in the State was sampled randomly: in some

Table 4. Minimum/maximum indeterminate sentences, average (mean) sentence length in months

Type of felonies	Connecticut,[a] 1976-77 and 1979-80: Number of incarcerative sentences	Connecticut,[a] 1976-77 and 1979-80: Minimum	Illinois, 1978-82[b]: Number of incarcerative sentences	Illinois, 1978-82[b]: Minimum	Illinois, 1978-82[b]: Maximum	New York, 1982: Number of incarcerative sentences	New York, 1982: Minimum	New York, 1982: Maximum	New York, 1982: Number of maximum life imprisonment sentences
All felonies	•	•	4,429	80 mos.	173 mos.	9,930	40 mos.	79 mos.	495
Serious violent crimes[c]	•	•	2,229	131	277	4,999	53	99	359
Criminal homicide[d]	22	91 mos.	564	346	743	809	130	156	304
Rape	•	•	125	154	356	219	67	156	10
Robbery	337	42	1,292	55	108	3,567	38	91	44
Aggravated assault	125	24	248	29	79	404	28	69	1
Serious property crimes[e]	•	•	•	•	•	2,388	25	59	8
Burglary	175	24	1,057	21	60	1,990	25	61	8
Larceny	246	23	370	16	40	306	18	42	
Auto theft	•	•	•	•	•	[f]	[f]	[f]	
Arson	•	•	•	•	•	92	29	81	
Drug crimes	213	22	•	•	•	1,233	26	59	117

Type of felonies	Pennsylvania,[g] 1981: Number of incarcerative sentences	Pennsylvania,[g] 1981: Minimum	Pennsylvania,[g] 1981: Maximum	Pennsylvania,[g] 1981: Number of maximum life imprisonment sentences[h]	Wyoming, 1981-84: Number of incarcerative sentences	Wyoming, 1981-84: Minimum	Wyoming, 1981-84: Maximum	Wyoming, 1981-84: Number of minimum life imprisonment sentences	Wyoming, 1981-84: Number of maximum life imprisonment sentences
All felonies	13,004	14 mos.	39 mos.	121	•	•	•	•	•
Serious violent crimes[c]	2,813	25	70	121	242	69 mos.	112 mos.	24	31
Criminal homicide[d]	476	42	112	121	64	146	195	23	30
Rape	153	53	136		59	70	127	1	1
Robbery	1,475	24	68		64	56	99		
Aggravated assault	709	13	40		55	29	61		
Serious property crimes[c]	4,008	13	38		458	25	55		
Burglary	1,940	19	52		273	28	58		
Larceny	1,815	7	25		107	21	47		
Auto theft	186	7	26[i]		64	22	54		
Arson	67	17	51		14	29	61		
Drug crimes	969	9	26		111	19	43		

Note: Life sentences not included in computing mean maximum and mean minimum sentence lengths.

• Data not available.

[a] Maximum-sentence and life-sentence data not available for Connecticut; "criminal homicide" data are for manslaughter only.

[b] Illinois life-sentence data not available.

[c] Criminal homicide, rape, robbery, and aggravated assault.

[d] Includes murder and non-negligent manslaughter.

[e] Burglary, larceny, auto theft, and arson.

[f] New York's auto theft included with larceny.

[g] Pennsylvania data include certain misdemeanors that would be classified as felonies in many other States.

[h] In Pennsylvania, a life sentence has no associated minimum term. Release requires commutation by the Governor.

[i] Because of statutory changes, many auto thefts in Pennsylvania are included with larceny.

cases, small jurisdictions were oversampled. Connecticut law defines four categories of felonies, Class A through Class D, in decreasing order of seriousness. Most of the data are presented in terms of these classes, although information on sentence length is available for certain specific crimes. Some misdemeanor convictions appear in the data; these result from plea bargaining when the initial charge was a felony.

Illinois. The judge sets a determinate term based upon a sentence range prescribed by legislation for each class of offense. There is no early release on parole, but "good time" can be earned.

Incarceration rates for persons convicted of felonies in 1979-81, obtained from the Administrative Office of the Illinois Courts, were provided by the Illinois Statistical Analysis Center. Because of differences in reporting by individual counties, these data are a mix of charge-based and offender-based information. That is, where a person was convicted on more than one charge, in some instances the data include each charge separately, while in other instances the person is represented only once in the data. Sentence lengths are derived from a report, Statistical Presentation 1982, published by the Illinois Department of Corrections in April 1983. These data are charge-based; each sentence is included separately where a person was sentenced on more than one charge. The data cover sentences that were imposed from 1978 through 1982. During those years, there was a transition from minimum/maximum indeterminate sentencing to determinate sentencing, and the report shows sentence lengths for both types of sentences. (The determinate sentencing law took effect in February 1978. Because a convicted person is subject to the penalties that were in effect when the crime was committed, however, a number of sentences in the 1978-82 period were imposed under the old indeterminate sentencing laws.)

Illinois law defines six categories of felony offenses. They are, in order of decreasing seriousness: Class M (murder), Class X, and Classes 1 through 4. Although for some specific offenses there is information on average sentence lengths, in most cases the data are broken down by class of felony.

Iowa. A prison sentence, when imposed, is automatically for a fixed indeterminate term prescribed by statute for each class of offense. The actual release date is determined by the parole board, but the prison stay cannot exceed the statutory sentence length.

Table 5. Fixed indeterminate sentences, average (mean) sentence length in months

Crime type	North Carolina, 1979 Statewide sample		Oklahoma, 1978-82			
	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)	Number of life sentences	Number of death sentences
Serious violent crimes[a]	•	•	**4,367**	**123 mos.**	**179**	**24**
Murder[b]	160	552 mos.	291	168	150	24
Manslaughter	147	164	177	81		
Rape	•	•	443	168	6	
Robbery	681	224	2,017	157	12	
Aggravated assault	176	63	1,439	57	11	
Serious property crimes[c]	•	•	**7,591**	**46**	**5**	
Burglary	1,486	68	4,201	53	2	
Larceny	443	52	2,077	31		
Auto theft	•	•	1,163	49	2	
Arson	•	•	150	55	1	
Drug crimes	**178**	**55**	**2,405**	**39**		

Note: Life sentences not included in computing mean sentence lengths.
• Data not available.
[a] Murder, manslaughter, rape, robbery, and aggravated assault.
[b] North Carolina data are for second degree murder only. Oklahoma data include accessory to murder as well as first and second degree murder.
[c] Burglary, larceny, auto theft, and arson.

Data were furnished by the Iowa Statistical Analysis Center and cover incarceration rates for persons convicted in three counties in 1981-83. These counties contain slightly less than 10% of the State's population. "Aggravated misdemeanors" are included as well as felonies; such misdemeanors in Iowa are punishable by incarceration for up to 2 years and would be classified as felonies in most other States.

Maryland. For each offense, an upper limit to the sentence length is prescribed by statute. The judge imposes a fixed indeterminate sentence that may not exceed that limit. For some offenses the statute also prescribes a lower limit, and the imposed sentence may not be less than that amount. Release prior to expiration of the sentence can take place through action of the parole commission, commutation of the sentence by the Governor, or court order.

Data were provided in a report by the Maryland Statistical Analysis Center.[11] The data cover four jurisdictions in which sentencing guidelines have been tested since June 1981. The four jurisdictions (Harford, Montgomery, and Prince George's counties and Baltimore City) account for 60% of the reported serious crimes in the State and 68% of the commitments to prison. The preguidelines sample consists of 339 cases that were selected randomly from those cases that had sentencing dates within an 8 month period in 1980-81, and for which (a) there had been a conviction on only one count and (b) a presentence investigation (PSI) report had been prepared. The postguidelines data set consists of the 2,928 single-

Table 6. Determinate sentences, average (mean) sentence length in months

	California, 1979 and 1981		Illinois, 1978-82		North Carolina, 1981-82 Statewide sample	
	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)
Serious violent crimes[a]	**8,981**	**59 mos.**	**14,641**	**102 mos.**	•	•
Murder[b]	180	91	820	332	165	453 mos.
Attempted murder	107	130	767	161	•	•
Manslaughter	730	60	701	61	144	82
Robbery	5,418	56	8,919	89	544	135
Aggravated assault	1,730	48	2,253	40	114	38
Serious property crimes[c]	•	•	•	•	•	•
Burglary	5,973	31	10,494	47	1,352	47
Larceny	1,228	27	6,458	33	350	38
Auto theft	976	26	•	•	•	•
Drug crimes	**1,646**	**36**	•	•	**157**	**40**

Note: Data on life sentences not available.
• Data not available.
[a] Murder, attempted murder, manslaughter, rape, robbery, and aggravated assault.
[b] Includes only second degree murder for California (1979 only) and for North Carolina.
[c] Burglary, larceny, auto theft and arson.

Table 7. New York: Average (mean) sentence lengths in months, by class of felony and offender classification, 1982

Felony class[b]	Offender classification: Youthful[a] — Number of incarcerative sentences	Youthful — Minimum (months)	Youthful — Maximum (months)	First offender — Number of incarcerative sentences	First offender — Minimum (months)	First offender — Maximum (months)	First offender — Number of maximum life imprisonment sentences
All	203	14 mos.	43 mos.	7,171	40 mos.	82 mos.	390
A	1	12	36	420	182	87	390
B	35	14	44	1,991	49	128	
C	84	14	43	2,145	29	79	
D	66	13	41	1,985	19	51	
E	14	14	43	630	15	40	

Felony class[b]	Offender classification: Repeat[c] — Number of incarcerative sentences	Repeat — Minimum (months)	Repeat — Maximum (months)	Repeat — Number of maximum life imprisonment sentences	All offenders — Number of incarcerative sentences	All offenders — Minimum (months)	All offenders — Maximum (months)	All offenders — Number of maximum life imprisonment sentences
All	2,556	42 mos.	76 mos.	105	9,930	40 mos.	79 mos.	495
A	25	243	108	24	446	184	86	414
B	370	91	177	47	2,399	55	133	47
C	504	51	97	19	2,733	33	81	19
D	931	29	58	14	2,982	22	53	14
E	726	19	38	1	1,370	17	39	1

Note: Life sentences not included in computing mean sentence lengths.

[a] Persons classified as youthful offenders generally are sentenced as though the offense had been a Class E felony, regardless of the actual offense.

[b] By statute, there are five classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. Violent and property offenses appear in all classes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[c] Includes persons classified as second felony offenders, persistent felony offenders, second violent felony offenders, and persistent violent felony offenders.

count cases (1,760 with PSI's and 1,168 without) for which conviction and sentencing took place from June 1981 through April 1982.

The data provide information on incarceration rates for certain categories of offenses and offenders. Data from the preguidelines sample have not been used in this report because of the small sample size and the restriction of the sample to cases with PSI's.

Minnesota. The judge sets a determinate prison term based on sentencing guidelines that took effect in May 1980. The guidelines use information about the seriousness of the offense and the offender's criminal history to indicate whether the offender should be incarcerated and, if so, the presumptive range of sentence lengths. These ranges are quite narrow. If the judge departs from the guidelines, written justification must be presented. Parole release has been abolished, but the prison stay can be shortened through "good time." When the offender enters prison, a prescribed amount of "good time" is credited that can be reduced or eliminated as the result of unsatisfactory behavior while incarcerated.

The sentencing guidelines were designed to reflect retribution or "just deserts" as the primary aim of sentencing. Other objectives were uniformity in sentencing and avoiding an increase in prison population. The guidelines currently measure criminal history in terms of the number of prior felony convictions, but they are being revised to take into account the severity of these prior offenses.

Data were taken from a report that investigates the impact of the sentencing guidelines.[12] The data show incarceration rates, in terms of the offender's criminal history and the seriousness of the offense, for a preguidelines group of 4,369 persons and a postguidelines group of 5,500 persons. The preguidelines group includes all persons who were convicted of felonies from July 1977 through June 1978; the data are based on a sampling of approximately 50% of that group. The postguidelines group consists of all persons convicted under the guidelines, from their inception in May 1980 until the fall of 1981.

New York. For most felonies, the judge imposes a minimum/maximum indeterminate sentence within limits that are specified by statute for each class and type of offense. The minimum term must be at least 1 year and not more than one-third of the maximum term. The minimum for repeat offenders is generally half of the maximum term. The offender can be considered for parole after serving the minimum term.

New York defines five basic classes of felonies, Class A through Class E, in decreasing order of seriousness. Classes B through E are subdivided into violent and nonviolent felonies with different statutory sentence ranges. For a number of relatively serious offenses, imprisonment is mandatory, especially when the offender has a prior record of felony convictions.

Under New York law, there are different sentencing provisions for each of six categories of offenders. For a first offender, no special provisions apply; sentencing is governed only by the offense. A "youthful offender" is subject to relatively mild sentencing provisions under certain circumstances. Generally a youthful offender is sentenced as though the offense had been a Class E felony, regardless of the actual offense. The other four categories cover persons with prior felony convictions (second felony offender, persistent felony offender, second violent felony offender, persistent violent felony offender) and are subject to much harsher penalties.

The data for New York were provided by the New York Statistical Analysis Center and cover 22,287 felony convictions in calendar year 1982 that resulted from 1982 felony indictments. This is a subset of all 29,330 felony convictions in 1982, and could be biased by underrepresentation of cases with long processing times. The data include incarceration rates and sentence lengths broken down by offense, class of felony, and offender category. The unit of count is the indicted defendant; if there were several indictments of the same person, they are included separately in the data.

North Carolina. North Carolina used indeterminate sentencing until July 1981. The judge imposed a maximum sentence that could not exceed an upper limit prescribed by statute for each offense. In many cases, a minimum sentence also was imposed. There was wide parole discretion and generous provision for earning "good time" credit. In most cases, an inmate became eligible for parole after serving either the imposed minimum sentence or a fifth of the statutory upper limit, whichever was less.

Determinate sentencing was instituted by legislation that took effect on July 1, 1981. A presumptive sentence length is provided by statute for each offense. The court must impose a fixed determinate sentence of that length un-

less there are significant mitigating or aggravating circumstances. "Good time" credit can be accumulated but, until July 1984, there was no discretionary parole except for certain youthful offenders. Discretionary parole release was partially reinstated on July 1, 1984. Certain offenders considered to be good risks can be released into rigidly supervised community programs after serving at least half of their sentences.

A report evaluating the change to determinate sentencing provided data on incarceration rates and sentence lengths for a number of offenses, based on statewide samples of several thousand persons each in 1979 and in 1981-82, before and after the determinate sentencing legislation became effective.[13]

Oklahoma. The judge imposes a fixed indeterminate sentence that is the maximum amount of time for which the offender can be imprisoned. The sentence may not exceed an upper limit that is stipulated by statute for each offense. The actual date of release is determined by the parole board, which can release the offender at any time before the expiration of the imposed sentence. The initial parole hearing must take place before a third of the imposed sentence has been served.

Data covering each year from 1978 through 1982 were provided by the Oklahoma Statistical Analysis Center. The data include information on incarceration rates and sentence lengths for specific offenses. The offenses are those for which charges were filed originally; changes due to plea bargaining are not reflected in the data. A case-based system is used; that is, each charge is covered separately in the data, and so a person sentenced on more than one charge will account for several data entries.

Oregon. The judge imposes a fixed indeterminate sentence that may not exceed the maximum prescribed by statute for each class of offense. The sentence is the maximum duration of imprisonment. The parole board sets the actual release date, using guidelines that it has developed.

A report by the Oregon Statistical Analysis Center provided information on incarceration rates in 1979 for certain categories of offenses, broken down by whether or not the most serious conviction offense was the same as the most serious offense for which the person had been arrested.[14]

Pennsylvania. The judge imposes a minimum/maximum indeterminate sentence. For sentences with a maximum of 2 years or more, the parole board determines the actual date of release, but release cannot occur before the expiration of the minimum sentence. Offenders generally are released at the expiration of the minimum term. When the maximum term is less than 2 years, release by court order may take place prior to the expiration of the minimum term.

The Pennsylvania Statistical Analysis Center provided data in a tabulation entitled Pennsylvania Judicial Sentencing Practices, 1978-1981. Information is given on incarceration for specific offenses. The data for 1981 are used in this report; these data are more complete and are estimated to be more reliable than the data for earlier years.

In addition to felonies, some offenses are included that are classified as misdemeanors under Pennsylvania law, but are punishable by more than 1 year in prison and would be considered felonies in many other States.

The data do not include those cases in which Accelerated Rehabilitative Disposition (ARD) was used. This is a type of probation that can be imposed by the court without a formal finding of guilt. It usually is used with nonviolent first offenders. If this option were not available, most ARD cases probably would have resulted in convictions with no incarceration.

Washington. During the period covered by the data in this report, Washington used fixed indeterminate sentencing. The law defined three classes of felonies, each with a prescribed upper limit on sentence length. Where a prison sentence was imposed, it was for a fixed indeterminate term equal to the statutory maximum. The paroling authority determined the actual sentence length and the release date. The only restriction was that period of imprisonment could not exceed the statutory maximum sentence length.

Table 8. Illinois: average (mean) sentence length in months, by class of felony, 1978-82

Felony[a] class	Minimum/maximum indeterminate sentences: Number of incarcerative sentences	Minimum (months)	Maximum (months)	Determinate sentences: Number of incarcerative sentences	Sentence length (months)
All felonies	**4,429**	**80 mos.**	**173 mos.**	**41,317**	**67 mos.**
M (murder)	347	495	1,047	820	332
X	1,111	100	194	8,227	132
1	141	65	156	1,816	83
2	1,727	22	62	15,682	48
3	983	23	55	12,750	34
4	124	16	39	2,022	24

Note: Data on life sentences not available.

[a] By statute, there are six classes of felony offenses that are based on the severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

A determinate sentencing law was enacted in July 1984. It provides for judicial consideration of the specific offense characteristics and the offender's prior record in selecting a determinate sentence from within a narrow statutory range.

The Washington Statistical Analysis Center provided data covering incarceration rates for certain offenses in 1971-82.

Wyoming. The judge sets a minimum/maximum indeterminate sentence within limits fixed by statute for each offense. The parole board establishes the actual release date from within the range of the sentence.

Data were furnished by the Wyoming Statistical Analysis Center, covering persons sentenced from January 1, 1981, through June 30, 1984. The data are offender-based; each convicted person is represented once in the data. Where a person was convicted on several charges, the data cover the most serious charge. The data were taken from two independent information systems, one covering probation and the other imprisonment. As a result, any person receiving a sentence other than probation or imprisonment is not covered by the data. Since other types of sentences are rarely used in Wyoming, these omissions are not believed to be significant.

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[4]These States include California, Colorado, Connecticut, Illinois, Indiana, Maine, Minnesota, New Mexico, and North Carolina. See Bureau of Justice Statistics Bulletin, Probation and Parole, 1982, September 1983, NCJ-89874.

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[11]See footnote 8.

[12]See footnote 7.

[13]See footnote 9.

[14]See footnote 10.

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Special Report

Presumptive and mandatory sentencing impact

On January 1, 1980, a comprehensive revision of Alaska's Criminal Code became effective. The four most important features of the new code were:

- The criminal code was completely revised and a new sentencing scheme was adopted to accompany the substantive revisions.
- All crimes, with the exception of murder and kidnapping, were classified on the basis of their seriousness as Class A, B, or C felonies or Class A or B misdemeanors. Uniform penalty provisions apply to the five classes of crimes.
- The sentencing provisions left judicial discretion intact in the sentencing of misdemeanants and most first-time felony offenders. Judicial discretion, however, was substantially restricted by the specification of presumptive sentences for repeat felons.

Since 1980, several significant changes have been made to the revised Criminal Code. They include:

- The State's drug laws were completely revised and classified according to the uniform penalty provisions of the Criminal Code.
- Sexual Assault I was reclassified as an Unclassified felony.
- The new offense of Sexual Abuse of a Minor I was classified as an Unclassified felony.
- Class A felonies were made subject to the presumptive sentencing provisions.

In order to evaluate the impact of these changes on Alaska's correctional system, a preliminary and tentative study was conducted by the Department of Corrections. The study compared the prisoner population during November 1979 with the prisoner population during November 1984 in an attempt to determine whether a signifi[illegible]ber of persons was being convicted for spec[illegible]es and whether these were crimes falling u[illegible]e provisions of presumptive sentencing, thereby having a substantial effect on the size of the correctional population.

Overview of findings

- Felons sentenced under the presumptive sentencing provisions of the revised Criminal Code for A, B, or C felonies are serving 29 percent more man-years than those sentenced non-presumptively.
- Felons sentenced presumptively to serve time for unclassified crimes will serve 39 percent more man-years than those sentenced non-presumptively.
- The additional 496 man-years to be served by those ineligible for an early release program converts into 181,040 man-days to serve. At the current $84.72 per day cost of supervision in an institution, the total cost will be $15,337,700.
- The estimated costs to construct beds to hold prisoners for the extended period of time is $40,734,000.
- A full and careful study of the impact of presumptive and mandatory sentencing should be completed by an objective, competitively selected study team funded under contract to the Department of Corrections. The results of the study should then be reported to the legislature.

The data leading to these findings are presented in the following tables.

1979 versus 1980 prisoner populations

The following table presents a comparison of the prisoner population immediately preceding the implementation of the Revised Criminal Code with the prisoner population on November 7, 1984, five years after the implementation.

Comparison of sentenced prisoner populations, most serious offense committed November 1979 versus November 1984

Offense	November 1979 #	%	November 1984 #	%	Difference
Attempt to commit felony	14	3	15	1	+ 1
Murder I	26	5	80	6	+ 54
Murder II	22	4	61	4	+ 39
Manslaughter	33	6	42	3	+ 9
Negligent homicide	6	1	5	•	− 1
Assault	47	8	132	10	+ 85
Kidnapping	9	2	27	2	+ 18
Sexual assault	45	8	276	20	+231
Robbery	60	11	119	9	+ 59
Coercion			1	•	+ 1
Theft	34	6	51	4	+ 17
Issuing bad checks	1	•	2	•	+ 1
Fraud	3	•	2	•	− 1
Burglary	58	10	117	8	+ 59
Arson	4	1	7	1	+ 3
Criminal mischief	6	1	7	1	+ 1
Forgery	10	2	14	1	+ 4
Bribery	1	•	+	1	
Escape	5	1	22	2	+ 17
Interfere official proceedings			1	•	+
Terroristic threatening			1	•	+
Misconduct weapons			7	1	+ 7
Promote prostitution I			1	•	+ 1
Drugs — possession and sale	24	4	67	5	+ 43
Probation	62	11	105	7	+ 43
Parole	14	3	18	1	+ 4
Misdemeanors, other	72	13	195	14	+123
Totals	555	100%	1,376	100%	+821

• = Less than 1%.

The categories showing the greatest increases in the number of prisoners are Sexual assault (+231), Assault (+85), Robbery (+59), Murder I (+54), Drugs (+43) and Murder II (+39). The increases have occurred in the violent crime categories and are primarily Unclassified or A felonies.

Prisoners serving presumptive sentences

In order to identify prisoners serving presumptive sentences under the Revised Criminal Code, the sentence records for sentenced prisoners incarcerated on November 7, 1984 were reviewed, and the length and type of sentence data was collected and analyzed. The following table presents the results of this analysis.

Impact of presumptive sentencing
on man-years to be served by crime class
November 7, 1984

Class	Felons with presumptive sentences #	Total man-years to serve	Eligibility of early release program Total man-years to serve	Difference in man-years to serve	Percent change
Unclassified	12	114	82	+ 32	+39%
A Felony	202	1,472	1,143	+329	+29%
B Felony	85	346	269	+ 77	+29%
C Felony	69	278	220	+ 58	+27%
Total	368	2,210	1,714	+496	+29%

The total number of man-years to be served is calculated based upon the amount of actual jail time imposed less good time provisions. It was found that 368 felons were sentenced presumptively under the revised Criminal Code and that they had a total of 2,210 man-years to serve.

To determine the impact of presumptive sentencing on the actual jail time to be served by these 368 prisoners, calculations were made to ascertain the amount of jail time which would be served if they were eligible for an early release program after serving one-third of the sentences. This is the criteria for Parole Board consideration of felons serving non-presumptive sentences.

These calculations show that an estimated 496 fewer man-years would be served by the 368 prisoners if an early release mechanism were available. Felons serving time under presumptive sentences are serving 27 to 39 percent more jail time than felons serving non-presumptive sentences.

Overview of sentences being served on November 7, 1984

The average sentence being served for all sentenced prisoners incarcerated in Alaska's correctional institutions and the Federal Bureau of Prisons is presented in the following table. Within each crime category, the number of prisoners and the average sentence being served is shown. The data are also broken down to show the number of prisoners and the average sentence for those sentenced under the previous criminal code and those sentenced presumptively or non-presumptively under the revised Criminal Code.

More detailed charts showing sentences received by year of sentencing are available upon request.

See Susan Knighton 3376, for explanation.

Sentenced prisoners by
most serious offense committed as of November 7, 1984
Average sentence length

Offense	Non-presumptive sentence #	Non-presumptive sentence Average sentence	Presumptive sentence #	Presumptive sentence Average sentence	Old case #	Old case Average sentence	Total #
Attempt to commit misdemeanor	1	75D					1
Attempt to commit felony	7	5Y	8	5Y			15
Solicit to commit crime	1	3Y					1
Murder I — Life and 50Y	30		2		17		49
Murder I	21	30Y	4	14Y	5	39Y	30
Murder II — Life and 50Y				4		4	
Murder II	30	29Y	4	13Y	23	23Y	57
Manslaughter	24	7Y	12	7Y	7	17Y	43
Negligent homicide	5	4Y					5
Assault I	15	5Y	28	9Y	8	16Y	51
Assault II	23	3Y	12	6Y			35
Assault III	20	3Y	9	4Y			29
Assault IV	17	5M	1	3Y			18
Kidnapping — Life					2		2
Kidnapping	17	20Y	4	11Y	4	28Y	25
Sexual assault I	96	10Y	88	11Y	15	17Y	199
Sexual assault II	18	4Y	2	4.5Y	2	20Y	22
Sexual assault III	1	6M					1
Sexual abuse of a minor	37	4Y	10	6Y			47
Incest	4	2Y					4
Exploitation of minor	3	15Y					3
Robbery I	27	6Y	69	9Y	5	12Y	101
Robbery II	13	4Y	5	6Y			18
Coercion	1	1.5Y					1
Theft I	5	5Y			1	10Y	6
Theft II	20	3Y	18	4Y			38
Theft III	1	1Y	1	3Y			2
Theft IV	4	82D					4
Theft of service			1	6Y			1
Issuing bad checks	1	8Y	1	7Y			2
Fraud use of credit card	1	95D	1	3Y			2
Burglary I	33	3Y	32	5Y	1	15Y	66
Burglary II	26	2Y	25	4Y			51
Trespass III	1	1.5Y					1
Arson I	1	15Y			1	20Y	2
Arson II	4	3Y			1	12Y	5
Criminal mischief II	2	1.5Y	2	3Y			4
Criminal mischief III	2	3M	1	2Y			3
Forgery I	2	7Y	2	1.5Y			4

Sentenced prisoners by
most serious offense committed as of November 7, 1984
Average sentence length

Offense	Non-presumptive sentence #	Non-presumptive sentence Average sentence	Presumptive sentence #	Presumptive sentence Average sentence	Old case #	Old case Average sentence	Total #
Forgery II	4	5Y	6	10Y			10
Bribery	1	3Y					1
Escape I	2	5Y	1	10Y			3
Escape II	5	4Y	13	7Y			1
Escape III	1	4Y					1
Promoting contraband I	1	3Y	1	5Y			2
Promoting contraband II	1	6Y					1
Interfere official proceedings	1	5Y					1
Terroristic threatening	1	2Y					1
Disorderly conduct	1	50D					1
Misconduct weapons I	2	11Y	5	12Y			7
Misconduct weapons II	2	6M					2
Misconduct weapons III			1	1Y			1
Prostitution	1	50D					1
Promote prostitution I			1	4Y			1
Controlled substance I	16	4Y					16
Controlled substance II	3	6Y	4	7Y			7
Controlled substance III	25	3Y	9	5Y			34
Controlled substance IV	4	2Y	1	5Y			5
Controlled substance V	2	5M					2
Probation							105
Parole							18
DWI							108
Alcohol, other							5
Other jurisdiction case							36
Drugs, other							1

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Special Report

Felony Sentencing in 18 Local Jurisdictions

May 1985

This report presents sentencing outcomes in the felony courts of 18 predominantly urban jurisdictions for the offenses of homicide, rape, aggravated assault, burglary, and drug trafficking.[1]

An earlier Bureau of Justice Statistics report described aggregate statewide data on sentencing practices.[2] To examine sentencing outcomes in more detail, this study collected and analyzed case-specific data on the sentences imposed in 1983 on more than 15,000 felony offenders.

The 18 jurisdictions range in size from Lancaster County (Lincoln, Neb.) with a population of 192,884 to Los Angeles, Calif., with a population of 2,966,850. The average population is nearly 900,000, and the median population is about 660,000. The jurisdictions are located in 15 different States and are distributed across the major geographical regions of the country: three are in the northeast, seven in the south, five in the midwest, and three in the west. The study includes such major cities as Baltimore, Miami, Denver, Minneapolis, Los Angeles, Phoenix, Milwaukee, and New Orleans. No claim is made here, however, that the findings presented statistically represent sentencing patterns in all felony courts in the Nation or in all urban jurisdictions.

One of the most serious gaps in our knowledge of the criminal justice system in the United States is reliable multijurisdictional data on the sentencing of convicted felons. The Bureau of Justice Statistics began to fill this informational need in 1984 with Sentencing Practices in 13 States, a report on aggregate statewide data on felony sentencing. The current special report presents a wealth of additional data on felony sentencing in 18 mostly urban jurisdictions, including such major cities as Baltimore, Denver, Los Angeles, Miami, Milwaukee, Minneapolis, New Orleans, and Phoenix.

By collecting case-specific data on the sentences imposed on more than 15,000 felony offenders in 1983, this study was able to measure the use of different kinds and degrees of sanctions for seven major felonies in a variety of large jurisdictions throughout the country. It was also able to analyze the impact on sentencing patterns of such factors as crime severity, different types of sentencing systems, the number of conviction offenses, and the use of pleas vs. trials.

Special thanks are due to the National Association of Criminal Justice Planners, which conducted the research under a cooperative agreement with the Bureau of Justice Statistics, and to the many individuals in the 18 jurisdictions who assisted in the collection of the data.

Steven R. Schlesinger
Director

(See appendix table 1 for a list of the participating jurisdictions.)

Highlights

Principal findings from these 18 counties include the following:

- Forty-five percent of the sentences for the felonies studied were to State prison; 26% were to local jail (with or without an additional probation sentence); and 28% were to probation only.

- Those convicted of homicide were most likely to be sentenced to prison (85%) and those convicted of drug trafficking were least likely (23%).

- Average prison sentences for each crime varied greatly among the jurisdictions, but within each jurisdiction sentence lengths were ordered with great consistency.

- The use of jail in felony sentencing varied substantially among the participating jurisdictions, ranging from less than 1% of the sentences in Baltimore City to half of the sentences in Hennepin County (Minneapolis).

- The average prison term imposed in determinate sentencing jurisdictions

[1] This study is drawn from a longer report, Sentencing Outcomes in 18 Felony Courts, NCJ-97690 (forthcoming).

[2] Bureau of Justice Statistics Special Report, Sentencing Practices in 13 States, NCJ-95399, October 1984.

was 40% to 50% shorter than in jurisdictions using indeterminate sentencing.

• Nearly three-fourths (74%) of the sentences to life imprisonment or death were for those convicted of homicide; 26% of all homicide sentences were to life in prison or death.

• For robbery and burglary, those convicted of an attempted offense were less likely to be sentenced to prison and received shorter average prison terms than those convicted of the completed offense.

• The number of charges on which a person was convicted affected sentencing outcomes. Forty percent of those convicted on a single charge received prison sentences, averaging 5.3 years; in contrast, 69% of those convicted on four or more charges received prison terms averaging 13.5 years.

• About 1 in 9 of those convicted of multiple charges and sentenced to prison received consecutive rather than concurrent sentences. The average prison term imposed on those with consecutive sentences was 18.9 years; for those with concurrent sentences it was 8.9 years.

• Nearly six times as many offenders were convicted on the highest original charge as on a lesser charge (85% vs. 15%).

• There were about five times as many convictions through guilty pleas as by trial. About five-sixths (83%) of all guilty pleas were to the highest original charge. Those pleading guilty were slightly less likely to be sentenced to prison (44%) than those found guilty at trial (51%). Those pleading guilty also received shorter average prison terms than those found guilty at trial for each of the crimes studied.

Overview of sentencing outcomes

While a felony sentence is sometimes thought of as a term of incarceration in a State prison imposed by a judge on the convicted felon, sentencing actually involves a broader range of outcomes. If a defendant is convicted of a felony, the judge must make up to three major sentencing decisions. The first decision is whether to incarcerate. If the decision is to incarcerate, the judge must decide whether the offender should be sent to a State facility (prison) or to a local facility (jail). Finally, the judge must determine the sentence length. Although judges have considerable flexibility in these decisions State law may 1) mandate incarceration for certain crimes, 2) require that longer sentences (e.g., 1 year or more) be served in State prisons rather than local jails, and 3) set a minimum sentence length in certain cases.

Incarceration was the sentence in 71% of all of the felony convictions studied (26% to jail and 45% to prison, figure 1). Nearly all of the remaining sentences (28%) were to probation only. Approximately 1% of convicted persons received a sentence other than that of incarceration or probation, normally a fine or restitution to the victim.

Persons convicted of a felony are usually viewed as a State responsibility. With 1 out of 4 felony offenders sentenced to jail, however, local correctional institutions play a prominent role in the incarceration of convicted felons. (Persons sentenced to the jail should not be confused with others who are sentenced to a State facility and are held in a local jail until space becomes available at the State prison.)

Jail sentences can be imposed by the courts in several different ways. In some cases the offender receives a straight jail term, while in others part of the sentence is a jail term and part is probation: Straight jail terms constituted 30% of jail sentences imposed; 68% of the felons sentenced to jail also received a probation sentence. In another 2% of the cases, the jail sentence was to time served, i.e., the sentence of incarceration was made to equal the amount of time the offender had already spent in pretrial detention.

Those sentenced to a straight jail term received a longer average jail sentence, 12 months, than those sentenced to jail as part of a split sentence, in which cases the jail term averaged 7 months. The shorter term for felons serving a split sentence is offset by the period of probation that also must be served. The average probation term for those serving a split sentence was 3 years and 2 months, 1 month longer than the average for those sentenced to straight probation.

Offense differences

Overall, 45% of the felony offenders received prison sentences. (Because nearly half of the cases—48%—involved the property crimes of burglary and larceny, the overall sentencing outcomes are heavily influenced by the patterns found for these crimes.) The likelihood of a prison sentence was highest for those convicted of homicide (85%), rape (69%), and robbery (65%); it was lowest for those convicted of drug trafficking (25%) and larceny (29%) (table 1). For the purposes of this study, drug trafficking includes "possession with intent" to sell, manufacture or distribute. The relatively low percentage of drug offenders sentenced to prison may be explained by the fact that the threshold weight for "possession with intent" generally involves ounces, not pounds. Consequently, many of the drug trafficking cases involve small-time dealers.

The use of jail varied across the different crime categories. Jail was not a common sanction for murder, rape, or robbery. It was a much more prevalent sanction for aggravated assault, burglary, larceny, and especially for drug trafficking, with 41% of drug dealers sentenced to jail. With larceny the use of jail is equally striking: for each convicted felon sent to prison, another is sent to jail (29% and 32% respectively).

Straight probation was rarely used for the crimes of homicide, rape, or robbery. It was a more frequently used sanction for aggravated assault, burglary, larceny, and drug trafficking. Indeed, for larceny, where straight probation was imposed in 38% of the

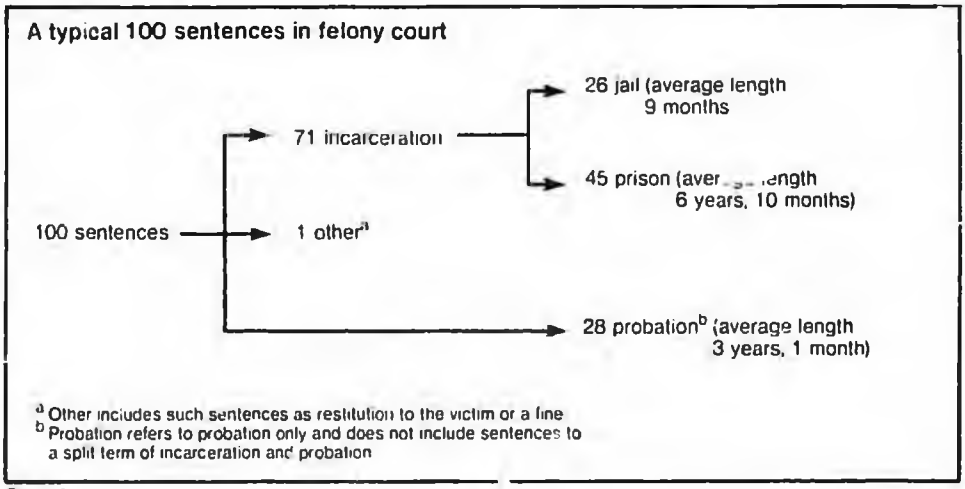


Figure 1

Table 1. Distribution of sentences, by type of sentence and conviction offense

Conviction offense	Prison	Jail only	Jail and probation	Probation only	Other	Total
Total	**45%**	**8%**	**16%**	**28%**	**1%**	**100%**
Violent						
Homicide	85	1	5	9	—	100
Rape	69	2	10	18	1	100
Robbery	65	4	12	17	1	100
Aggravated assault	39	11	19	31	2	100
Property						
Burglary	46	8	17	28	1	100
Larceny	29	15	17	38	2	100
Other						
Drug trafficking	23	6	35	35	2	100

Note: May not add to 100% because of rounding.
— Less than 0.5%.

cases, it was the most frequently used sanction.

Sentence lengths

The average sentences imposed were longest for prison sentences and shortest for jail sentences (table 2). Prison sentence length, like the proportion of offenders sentenced to prison, was longest for the crimes of homicide, rape, and robbery and shortest for larceny and drug trafficking.

Average jail terms for the different crime categories varied less than prison terms. Only those sentenced to jail for larceny and drug trafficking had average jail sentences shorter than the range of 0.8 years to 1 year.

Average terms of probation fell in the fairly narrow range of 2.6 to 3.7 years for all crime categories other than homicide and rape. The length of the probation term, however, is only one consideration in viewing what is to be accomplished with probation. Judges often impose conditions with probation such as restitution, drug and alcohol counseling, and community service. The convicted felon's progress in meeting those conditions and keeping out of trouble are indicators of whether or not probation is succeeding. These considerations do not necessarily correlate directly with time. This may explain why there is no strong pattern between the average duration of probation and the nature of the offense.

Prison sentences

Among the 18 jurisdictions studied, there was substantial variation in the average prison sentences imposed for the seven felony crime categories (table 3). Robbery, for example, varied from 3.8 years to 20.6; aggravated assault from 3.7 years to 14.4; and burglary from 2.2 years to 10.2. Nonetheless, there was great consistency in how sentence lengths were ordered across crimes within each jurisdiction. In 15 of the 18 jurisdictions rape sentences were longer than robbery sentences; in 13, robbery sentences were longer than those for aggravated assault; in 14, aggravated assault sentences exceeded the average length of burglary sentences; and in 17, the average sentence for burglary was greater than that for larceny.

The homicide data cannot reasonably be compared to that for other crimes since the sentence length calculations exclude sentences to life in prison or to death, which constitute 26% of all homicide sentences but no more than 2% of the sentences for any of the other crime categories. In a few other cases sentence lengths for a particular crime that seem out of step with others in the same jurisdiction—e.g., 3.5 years for rape in Jefferson County—may be attributable to a very small number of cases or to a disproportionate number of attempts rather than completed crimes.

Table 2. Average sentence length, by conviction offense

Conviction offense	Average sentence length		
	Prison	Jail	Probation only
Violent			
Homicide	14.9 yrs.	.9 yrs.	5.6 yrs.
Rape	12.6	.8	5.4
Robbery	8.7	.0	3.7
Aggravated assault	6.7	.8	3.4
Property			
Burglary	4.6	.8	2.9
Larceny	3.3	.6	2.6
Other			
Drug trafficking	4.2	.4	3.1

Note: Persons receiving life or death sentences (less than 2% of all cases but 26% of all homicide cases) were excluded in the computation of the average prison terms. Information on persons receiving life or death sentences is provided elsewhere in this report. Jail column includes those sentenced to jail and probation.

Table 3. Average prison sentence length in years for each conviction offense, by jurisdiction

Jurisdiction	Average prison sentence length in years for:						
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking
Average for all jurisdictions	**14.9**	**12.6**	**8.7**	**6.7**	**4.6**	**3.3**	**4.2**
Determinate sentencing jurisdictions							
Hennepin County	10.0	5.8	4.1	3.7	2.2	2.1	1.5
Los Angeles	6.5	11.5	3.8	5.2	2.5	2.1	2.6
Riverside County	5.2	9.7	4.6	3.8	3.0	2.6	3.1
Kane County	9.3	8.6	5.8	4.0	4.2	2.2	5.4
Denver	7.6	11.8	7.1	5.7	4.8	4.7	4.5
Median	7.6	9.7	4.6	4.0	3.0	2.2	3.1
Indeterminate sentencing jurisdictions							
Maricopa County	11.2	7.6	7.4	5.3	3.9	3.1	5.4
Milwaukee County	12.7	8.3	7.6	9.1	4.0	3.3	3.6
Lancaster County	7.5	11.0	4.6	6.8	2.7	2.0	2.4
Davidson County	15.4	12.1	13.2	7.9	5.8	5.0	5.8
Philadelphia	14.7	11.9	8.4	5.3	5.8	3.9	5.7
Jefferson Parish	11.6	3.5	16.8	11.3	4.7	2.9	7.6
New Orleans	15.4	18.4	9.8	9.3	4.7	2.6	5.0
Oklahoma County	13.7	21.3	13.5	10.0	6.2	4.1	4.9
Lucas County	22.5	18.2	20.6	11.4	10.2	4.2	9.2
Baltimore City	17.4	11.2	6.7	14.4	3.3	*	*
Baltimore County	25.3	20.3	10.4	10.5	6.3	2.0	3.5
Dade County	28.7	26.2	15.6	4.3	5.9	3.3	6.4
Jefferson County	13.9	15.7	13.7	7.1	7.4	4.1	4.9
Median	14.7	12.1	10.4	9.1	5.8	3.3	5.0/5.4

Note: Persons receiving life or death sentences (less than 2% of all cases but 26% of all homicide cases) were excluded in computing the average prison terms.
*Sentencing data were not collected for these crimes in Baltimore City.

The differential use of jail

Another substantial difference in sentencing patterns among the 18 jurisdictions was the use of jail as a sanction for convicted felons.

At one extreme were Baltimore City and Denver, where only about 1% of felons received a jail sentence; at the other extreme were Hennepin County (Minneapolis) and Los Angeles,[3] where about half the sentenced felons received some type of jail term (table 4).

Generally, the more frequent the use of jail, the higher the incarceration rate for a jurisdiction. Hennepin County and Los Angeles, for example, were among the top three jurisdictions with the highest overall incarceration rates (table 5). Denver, on the other hand, one of the jurisdictions that imposed jail sentences least often, had the lowest overall incarceration rate.

Other jurisdictions where jail was rarely used for felons, such as Baltimore City and Jefferson County (Louisville), imposed prison sentences on relatively high percentages of offenders (66% and 64%, respectively).

The differential use of jail among these jurisdictions reflects differences in how State and local authorities have elected to deal with convicted felons. Denver, for example, has a fairly extensive community-based residential corrections program, which tends to take the place of jail in the sentencing of convicted felons. In Minnesota, on the other hand, jail is used extensively to divert convicted felons from prison, especially by using short or part-time stays such as weekends in jail. In other States the criminal codes have been revised to permit judges to sentence felons to local jails for more than a year. A judge in Louisiana, for example, may sentence a person up to 12 years in the parish (county) jail.

But even where no State program exists and no code revisions have taken place, judges often retain wide discretion in deciding the type of sentence to be imposed. A judge, believing that a sentence to prison might be inappropriate but that the offender should do some time in an institution, can combine a jail term with a period of probation.

In addition to variation among the jurisdictions in how frequently jail is used, there is also considerable variation in the length of jail sentences.

[3]Los Angeles refers to the Central District Court of Los Angeles County, which generally conforms to the boundaries of the City of Los Angeles.

Table 4. Proportion of jail sentences and average jail sentence length, by jurisdiction

Jurisdiction	Percent of all sentences to: Straight jail	Jail and probation	Average jail sentence length for: Straight jail	Jail and probation
Baltimore City	—	—	23 weeks	9 weeks
Baltimore County	13%	14%	37	44
Dade County	13	10	32	32
Davidson County	13	7	55	23
Denver	—	1	31	19
Hennepin County	1	50	22	15
Jefferson County	1	2	57	12
Jefferson Parish	17	—	61	52
Kane County	1	32	5	12
Lancaster County	19	12	22	6
Los Angeles	4	40	36	29
Lucas County	—	26	13	14
Maricopa County	4	19	14	16
Milwaukee County	3	24	45	22
New Orleans	13	5	40	25
Oklahoma County	4	9	29	24
Philadelphia	23	11	84[a]	86[a]
Riverside County[b]	1	1	36	30

Note: This table includes those who received "time serve" sentences.
— Less than 0.5%.
[a] Philadelphia judges impose maximum and minimum jail terms, unlike any of the other 17 jurisdictions. Average minimum jail sentences are shown here.
[b] Because the record source used in Riverside County did not always indicate when a jail term was imposed along with a probation sentence, the number of jail sentences in Riverside County is most probably understated.

Table 5. The use of incarceration, by jurisdiction

Jurisdiction	Percent of all sentences to: Incarceration (jail and prison)	Jail[a]	Prison
Los Angeles County	88%	44%	44%
Kane County	85	33	52
Hennepin County	82	50	32
Dade County	80	23	57
Davidson County	77	19	58
Lancaster County	76	31	45
Lucas County	74	27	47
Milwaukee County	68	27	41
Jefferson County	67	3	64
Philadelphia	67	34	33
Baltimore City	66	—	66
New Orleans	64	18	46
Oklahoma County	61	13	48
Riverside County[b]	57	3	54
Baltimore County	57	26	31
Maricopa County	55	22	33
Jefferson Parish	43	17	26
Denver	42	1	41
Average for all cases	71%	26%	45%

— Less than 0.5%.
[a] Includes those sentenced to "time served."
[b] See table 4, footnote b.

With the exception of Philadelphia (discussed below), average terms ranged from 5 weeks in Kane County (suburban Chicago) to 61 weeks in Jefferson Parish (suburban New Orleans) for straight jail terms and from 6 weeks in Lancaster County (Lincoln, Neb.) to 52 weeks in Jefferson Parish for jail terms coupled with probation (table 4).

Interestingly, three of the four jurisdictions—Kane, Lucas (Toledo, Ohio), and Hennepin—that most often used split sentences (to both jail and probation), had very similar average jail sentence lengths: between 12 and 15 weeks. The fourth, Los Angeles, had a substantially higher average jail sentence of 29 weeks.

The average jail terms for Philadelphia—84 weeks for straight jail terms and 86 weeks for those receiving jail and probation—were by far the longest imposed among the participating jurisdictions. Unlike any other jurisdiction encompassed by this study, however, judges in Philadelphia impose a minimum as well as a maximum term on those sentenced to jail. Table 4 shows the average maximum jail sentences. Because most offenders sentenced to jail in Philadelphia are released shortly after serving their minimum sentence

(about a third of the maximum), the average jail sentences in table 4 for Philadelphia overstate the time that the sentenced felon actually serves in jail.

Probation

Straight probation constituted more than a fourth (28%) of sentences imposed for the felonies examined in this study. Probation sentences imposed with jail constituted another 18% of felony sentences (table 1). Thus, probation was a factor in 46% of the felony sentences covered by this study.

Total use of probation varied considerably among the 18 jurisdictions, from fewer than 1 out of 4 sentences in Dade County (Miami) to more than 2 out of 3 sentences in Hennepin County. The length of the average probation term ranged from 2.0 years in Kane County to 4.8 years in Jefferson County.

Within jurisdictions the average terms of probation did not differ substantially between offenders receiving straight probation and those receiving probation with jail: for no jurisdiction was the difference greater than 0.8 years.

Sentencing systems

While sentencing practices may vary, the concepts of incarceration and probation do not change their meaning from one jurisdiction to another. Even the time periods associated with jail and probation are a relatively stable concept from one jurisdiction to another. This is not true, however, with prison terms. Prison sentences have different meanings in different jurisdictions based on what State law permits with regard to correctional and parole board discretion, minimum terms, earned time, and time off for good behavior (good time).

There are two general legislative schemes that guide sentencing in the United States. One is determinate sentencing, under which a judge imposes a specified sentence not later reviewable by another body. The other type of sentencing scheme—indeterminate sentencing—does permit review of the judicially imposed sentence; this review function is usually performed by a parole board. Although parole boards have discretionary release authority under indeterminate sentencing systems, the scope of that discretionary power can vary substantially from State to State.

The primary mechanism for the control of parole board discretion is the use of minimum terms. Either the judge or the law specifies a minimum term of incarceration that must be served before the prisoner can be considered for parole. The shorter the minimum (including no minimum at all in some States), the greater is the discretion afforded the parole board. Conversely, the longer the minimum the more constrained the paroling authority's discretion.

Another distinguishing characteristic of the two sentencing systems is in the sentence lengths set by legislation. The legislatively prescribed penalties in determinate sentencing States generally have shorter time spans than those in indeterminate sentencing States. For example, in California, a determinate sentencing State, the prescribed penalties for robbery range from 2 to 6 years. On the other hand, in Kentucky, an indeterminate sentencing State, the prescribed penalties for robbery range from 5 to 20 years. This difference between the two States likely reflects the desire of State legislatures in determinate sentencing States to have greater certainty in the time served in prison for criminal violations.

Another factor that affects the time that actually will be served is the practice known as "good time." In all but five of the jurisdictions involved in this study (New Orleans, Jefferson Parish, Davidson County, Oklahoma County, and Philadelphia are the exceptions), State law specifies the rate at which prison terms can be reduced by the convict's good behavior in the correctional institution.[4] The rate at which good time can be accumulated varies among the jurisdictions; the average sentence reductions range between 25% and 33%. Generally, good-time reductions affect only the maximum term to be served. Two States, however, Ohio (Lucas County) and Nebraska (Lancaster County), permit good-time reductions of the minimum term.

Finally, sentences can be reduced in some jurisdictions through the discretion of correctional officials for time spent in prison industries or educational programs.

Sentence length and actual time served

Average sentence lengths were considerably lower in the 5 determinate sentencing jurisdictions than in the 13 indeterminate sentencing jurisdictions (table 3). This was true for each of the crime categories, with the biggest difference for the violent crimes. Because the two kinds of jurisdictions operate under different kinds of prison release mechanisms, the longer sentences in indeterminate sentencing jurisdictions do not necessarily translate into stiffer criminal penalties (i.e., more time actually served in prison).

Figure 2 shows how the average prison sentence for burglary can be affected by minimum terms, parole board discretion, correctional official discretion (earned time for time spent in prison industry and educational programs) and the behavior of the inmate (good time). The jurisdictions are grouped by the type of sentencing system under which they operate: determinate or indeterminate. Within each group jurisdictions are listed in descending order of the percentage of the maximum term that must be served before the convicted felon can be considered for release from prison.

The two determinate sentencing jurisdictions with the longest average terms (Denver and Kane County) also have the most generous good time rate (50%, or one day off the sentence for every day of good behavior). Denver is also in a State that awards earned time based on the inmate's work or educational advancement at the rate of 8% or 1 day off the sentence for every 12.5 days of involvement in correctional programs. Earned time is also a factor in California (Los Angeles and Riverside County), where it can be awarded at the rate of 17%. In Minnesota (Hennepin County) the State awards good time at a rate of 33%.

In these jurisdictions, therefore, the minimum amount of time that must be served by the sentenced burglar has a much narrower range than the range of the average maximum sentence imposed. Thus, it is likely that the differences in the average amount of time actually served in prison for burglary among these five jurisdictions will be a matter of months rather than years.

Among the indeterminate sentencing jurisdictions there is no consistent relationship between sentence length and minumum terms. Nonetheless, as figure 2 shows, the eight indeterminate jurisdictions that require more than 20% of the maximum sentence to be served have much less variation in mimumum sentence lengths than in the maximum sentence imposed. Indeed, these minumums are quite similar to those found in the five determinate

[4]The State of Louisiana does allow good time for those convicted of some felonies, but the crimes encompassed by this study do not fall into any of the eligible crime categories. Consequently, for the purposes of this study, Louisiana law does not provide for good-time credits.

sentencing jurisdictions. Altogether, 14 of the 18 jurisdictions had minimum terms between 1.25 and 2.32 years; average maximum sentences imposed in these same jurisdictions fell in the much wider range of 2.2 to 10.2 years.

This finding suggests that judges may adjust their sentences to compensate for the sentence reduction policies and practices operating in their States by giving relatively shorter sentences in jurisdictions where the proportion of sentence that must be served is greater and giving relatively longer sentences in jurisdictions where the proportion of sentence that must be served is less. (In the two jurisdictions, for example, where the minimum is zero, average sentence lengths were among the top 5 of the 18 jurisdictions.)

It follows, then, that focusing on average prison sentence length can be misleading for assessing the variation in the criminal penalties imposed for similar crimes in different jurisdictions. A more useful indicator may be the actual minimum term that must be served before possible release from prison. At least for the crime of burglary, there was much less variation among most of the jurisdictions studied in the minimum time that must be served on an average sentence than in the sentence lengths themselves. Consequently, the average time served by imprisoned felons in different jurisdictions may vary less than the impression given by differences in average maximum sentences.[5]

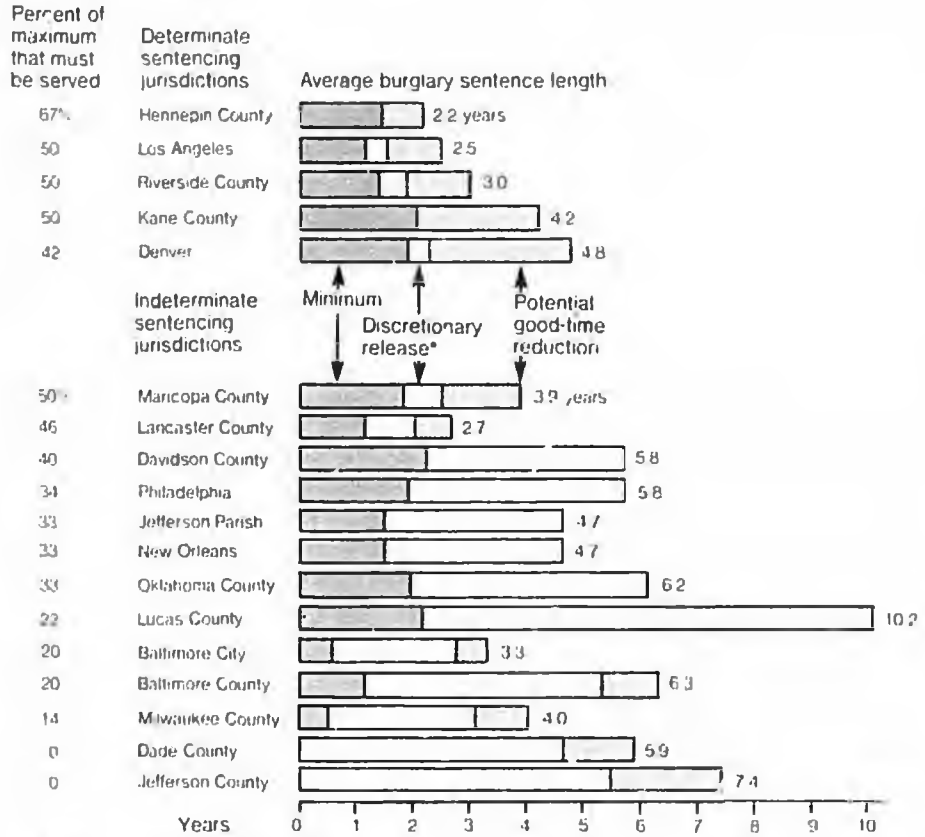
Table 6 presents additional data on the differences in sentencing patterns for burglary in determinate and indeterminate jurisdictions. In the determinate jurisdictions 89% of the burglary sentences were in the range of 1 to 4 years. Less than 2% of the sentences were to terms of 10 years or more. In the indeterminate jurisdictions, on the other hand, only 55% of the maximum sentences imposed were in the range of 1 to 4 years, and 13% were to 10 years or more (including 8 life sentences).

Sentences to life imprisonment and to death

For the purposes of this study, a life sentence is defined as any prison sentence with a maximum term of life in prison, regardless of the possibility of parole. (Only about 5% of the life sentences imposed did not allow for parole.)

[5]For data on actual time served in prison by convicted felons, see Bureau of Justice Statistics Special Reports, Time Served in Prison, NCJ-93924, June 1984, and Prison Admissions and Releases, NCJ-95043, September 1984.

Average burglary sentence lengths and potential reductions in 18 jurisdictions



* Discretionary release includes earned-time credits as well as the parole board's authority to release

Figure 2

Table 6. Distribution of sentences for burglary, by type of sentencing system

Maximum sentence length	Number of sentences to a specified maximum length: Determinate sentencing jurisdictions	Indeterminate sentencing jurisdictions
Less than 1 year	0	33
1 year	201	363
2	357 median	321
3	90	435
4	203	278 median
5	22	522
6	40	117
7	4	115
8	17	41
9	2	63
10	10	105
11	1	0
12	2	16
13	2	3
14	1	8
15	1	135
16	0	3
17	0	1
18	0	2
19	0	0
20	0	23
21 or more	0	28
Life	0	8
Average burglary sentence	2.9 years	5.2 years

Note: Sentence lengths include fractions of a year. For example, a sentence to 1 year and 9 months would be classified as 1 year.

For the crimes and jurisdictions studied here, there were 445 life sentences and 12 sentences to death, or about 2% of all sentences imposed. Though a very small proportion of all sentences, these constituted 26% of homicide sentences. After homicide, the proportion of sentences to life imprisonment or death for a particular crime category falls to 2% of rape sentences, less than 2% of robbery sentences, and well under 1% for the other crimes.

The following table examines the distribution of the total 457 sentences to life imprisonment and death across the various crime categories:

	Percent	Number
Total sentences to life in prison or death	100%	457
Homicide	74	336
Rape	5	23
Robbery	18	84
Aggravated assault	1	5
Burglary	2	8
Larceny	0	0
Drug trafficking	—	1

— Less than 0.5%.

Nearly three-fourths of all the sentences to life in prison or death were for homicides; and nearly 1 in 5 were for robbery. Although the proportion of all such sentences imposed for rape (about 1 in 20) was much lower than for robbery, as shown above a slightly higher percentage of all rape sentences were to life in prison than of all robbery sentences.

While some States allow a judge to impose a life sentence on a first-time rapist or robber, most of the life sentences for crimes other than homicide were imposed under authority of habitual offender laws.

Degrees of severity within crime categories

Most State penal codes recognize degrees of severity or aggravating circumstances within general crime categories. Many penal codes, for example, authorize (or mandate) a more severe penalty for armed robbery than for robbery without a weapon. Similarly, some States penalize burglars who break into residences or who carry weapons more severly than those who burglarize commercial establishments or who operate unarmed. Finally, all States prescribe different degrees of punishment for different kinds of homicides, usually distinguishing murder, where there is intent to kill, from manslaughter, where there is no premeditation, and from negligent manslaughter, where death is attributable to the negligence or recklessness of the offender.

In the 18 jurisdictions studied here there was a direct relationship between the likely sentence and the kind of homicide, robbery, or burglary for which the offender was convicted (table 7). The proportion of sentences to prison and the average prison sentence length were higher for the more serious crime within each crime category. Of those convicted of homicide, for example, 93% were sentenced to prison for an average term of 17.3 years if the offense was murder, while 41% were sentenced to prison for an average term of 3.9 years if the conviction offense was negligent manslaughter. (Note that sentence length data exclude life sentences. Moreover, because the definition of murder varies considerably among the 15 States in the study, some of the murder convictions included in table 7 would be classified as manslaughter in other States.)

Similar patterns exist for robbery and burglary. Those convicted of armed robbery were much more likely to be imprisoned (81%) than those convicted of the less serious offense of unarmed robbery (57%); and those convicted of either armed or residential burglary were substantially more likely to receive a prison sentence (67% and 65%) than those convicted of nonresidential burglary (38%).

Penal codes are written to reflect differences in the severity of different kinds of crimes (e.g., rape vs. burglary) as well as the elements that can aggravate or mitigate the severity of a particular kind of crime (e.g., armed vs. unarmed robbery). These findings on how punishments vary both across and within the major crime categories (especially tables 1, 2, 3, and 7) illustrate how the sentencing practices of judges reflect these legal distinctions.

Completed vs. attempted offenses

Nearly all the State penal codes for the jurisdictions participating in this study have provisions that lower the penalty if the offender is convicted of an attempted rather than completed crime. Most States have gradations of felonies (e.g., 1 to 5 or A to E) and assign a different penalty range to each gradation. Moreover, most penal codes specify that the criminal penalty be lowered by one gradation for an attempted crime. For example, in Arizona (Maricopa County), armed robbery is a class 2 felony with a presumed sentence of 7 years for a first offender. If the charge is attempted armed robbery, however, Arizona reclassifies the offense as a class 3 felony, which carries a presumed sentence of 5 years, or 2 years less than that for the completed crime. Some State codes, Wisconsin for example, go as far as cutting the potential maximum sentence in half if the conviction is for an attempted rather than completed crime.

To examine the impact of this distinction on sentencing, the study compared sentences for attempted robberies and burglaries with those for the completed crimes (table 8). For both crimes the likelihood of going to prison and prison sentence length were less for those convicted of attempts. Those convicted of attempted burglary, for example, were only about half as likely to be sentenced to prison as those convicted of the completed crime (26% vs. 49%).

Multiple conviction offenses

In two-thirds of the felony convictions studied the offender was found guilty of a single offense (figure 3). In 28% of the cases the offender was convicted on more than one charge: 17% of the cases involved convictions on two crimes and 11% involved convictions on three or more crimes. In the remaining cases (5%) the study was not able to ascertain the number of crimes on which the offender was convicted. Multiple-charge convictions occurred most frequently when the highest conviction offense was homicide (39%) or rape (37%) and least frequently when it was larceny (22%) or drug trafficking (19%).

The number of conviction offenses had a significant impact on the like-

Table 7. For homicide, robbery and burglary, distribution of sentences, by type of sentence and average prison sentence length

Conviction offense	Percent of sentences to: Probation only	Jail	Prison	Total	Average prison sentence length
Homicide					
Murder	1%	3%	93%	100%	17.3 years
Manslaughter	17	8	75	100	9.2
Negligent	30	29	41	100	3.9
Robbery[a]					
Armed	11	8	81	100	11.2
Unarmed	28	15	57	100	7.9
Burglary[b]					
Armed	22	11	67	100	9.5
Residential	17	18	65	100	4.4
Nonresidential	39	23	38	100	3.3

[a] Table presents data only for those 63% of the cases where the distinction between armed and unarmed robbery could be made.

[b] Table presents data for those 50% of the cases where the distinction between the three classes of burglary could be made.

Table 8. Sentences to prison for attempted and completed robberies and burglaries

	Robbery	Burglary
Percent of sentences to prison terms for:		
Attempted crime	58%	26%
Completed crime	69	49
Average prison term for:		
Attempted crime	3.6 yrs.	2.8 yrs.
Completed crime	5.6	4.3

Note: Table shows only those cases where information on whether the crime was completed or attempted was available: 62% of the robbery cases and 65% of the burglary cases.

Table 9. Sentences to prison, by the number of conviction charges

Number of conviction charges	Percent of all sentences to prison	Average prison terms
One	40%	5.3 years
Two	56	8.3
Three	60	10.3
Four or more	69	13.5

Note: Table does not show those cases where number of charges were not ascertained.

Table 10. Average prison sentence length, by the number of conviction charges and conviction offense

Conviction offense	Number of conviction charges			
	One	Two	Three	Four or more
Violent				
Homicide	11.2 years	18.1 years	23.0 years	34.5 years
Rape	8.8	14.7	18.8	23.2
Robbery	6.4	10.5	11.4	17.6
Aggravated assault	5.9	7.3	8.6	9.3
Property				
Burglary	3.8	5.8	7.3	6.1
Larceny	2.8	4.4	4.4	4.0
Other				
Drug trafficking	3.4	5.3	6.0	7.5

Note: Sentences were classified according to the most serious conviction offense. Offenses are listed in order of seriousness. In addition to the most serious conviction charge, multiple convictions charges may include lesser offenses not covered in the study, including misdemeanors.

lihood of receiving a prison sentence, ranging from 40% of those convicted of one offense to 69% of those convicted of four or more (table 9). Similarly, average prison sentence length was directly related to number of convictions, from 5.3 years for one offense to 13.5 years for four or more.

For homicide, rape, and robbery average prison sentence length consistently increased with the number of conviction offenses (table 10). For each of these three crimes, average prison sentences were about three times higher for those convicted of four or more charges than for those convicted on a single charge.

Aggravated assault and drug trafficking evidence a similar pattern, differing only in degree: the average prison sentence for those convicted on four or more charges was about twice as long as for those convicted of only one charge. For burglary and larceny the biggest jumps in sentence length occurred between those convicted on a single charge and on two charges.

Consecutive sentences

When a person is convicted of two or more crimes, the judge must decide whether to sentence the offender to concurrent or consecutive terms. A concurrent sentence means that the convicted felon is able to satisfy the time requirements on each charge at the same time; a consecutive sentence means that the sentences on each charge must be served sequentially. For example, if a person is convicted on two counts of burglary and sentenced to 2 years on each count, the sentence will be satisfied in 2 years if the sentences are concurrent, but will take 4 years if the judge made the terms consecutive.

Consecutive sentences were analyzed only when a single case led to a conviction on multiple charges. Excluded were instances where the judge made the sentence consecutive with another sentence previously passed on the same convicted felon. (For example, a person convicted of a new crime while on parole might have the new sentence added to the unexpired previous sentence.)

Consecutive sentences constituted a very small proportion (2%) of all sentences imposed (figure 3). Indeed, consecutive terms were rarely imposed even when the prerequisite condition (a multiple-charge conviction) was met. About 1 out of every 9 offenders convicted of multiple charges and sentenced to prison (513 out of 4,604) was required to serve consecutive sentences.

Consecutive sentences may be rare, but when invoked they carry significantly longer prison terms. The average prison term for offenders receiving consecutive sentences (18.9 years) was more than twice as long as those with concurrent sentences (8.9 years) and nearly three times as long as the average prison sentence for all cases studied (6.8 years).

Conviction on original charge

Conviction on the highest original charge occurred nearly six times as often as convictions on a lesser charge (85% versus 15%). The data reveal a fairly narrow range (83% to 89%) in the frequency of convictions on the highest original charge for all of the crime categories except larceny (78%). The following are the proportions for each crime category of offenders convicted of the highest original charge:

Total convicted on highest original charge	85%
Homicide	83
Rape	87
Robbery	89
Aggravated assault	84
Burglary	86
Larceny	78
Drug trafficking	89

The overall difference in imprisonment between those convicted on the highest original charge compared to

The number of concurrent and consecutive sentences to prison resulting from 100 typical sentences

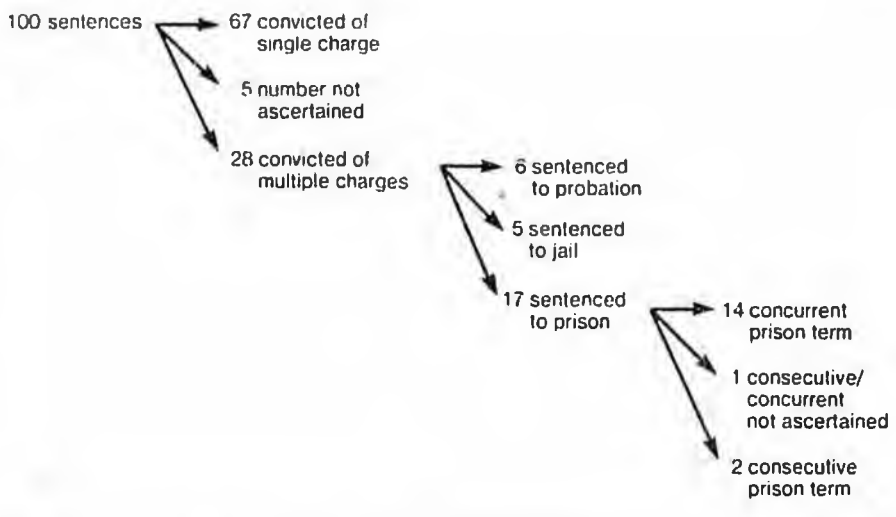


Figure 3

Table 11. Sentences to prison for those convicted on the highest original charge or a lower charge

Conviction offense	Percent of sentences to prison for those convicted on: Highest original charge	Lower charge	Average prison sentence length for those convicted on: Highest original charge	Lower charge
Total	**48%**	**35%**	**7.1 years**	**5.9 years**
Violent				
Homicide	87	80	16.3	10.8
Rape	70	59	13.9	7.9
Robbery	66	59	9.0	6.5
Aggravated assault	40	32	6.7	6.3
Property				
Burglary	50	30	4.7	4.4
Larceny	32	23	3.3	3.3
Other				
Drug trafficking	24	15	4.2	4.4

Note: Table excludes those cases (9%) where the study could not ascertain whether or not the felon was convicted on the highest original charge. Lower charge may be for a lower grade of the same general offense class: for example, a 2nd-degree murder conviction on an original 1st-degree murder charge.

those convicted on some lower charge was substantial (48% vs. 35%, table 11). This difference in imprisonment was also present for each of the crimes separately. Overall, prison sentences were longer for those convicted on the original charge. This difference was considerable for the violent crimes of homicide, rape, and robbery but disappeared for the property crimes.

Pleas vs. trials

A person may be found guilty of a crime either through admitting guilt—a guilty plea—or as a result of a trial before a judge or a jury. Information on pleas versus trials was available in 91% of the cases. An analysis of these cases reveals that conviction by trial in the felony courts studied was the exception rather than the rule. Only one out of every six felony convictions (16%) was the result of a finding by a judge or jury.[6]

The rate at which trials took place varied substantially among the crime categories studied. Generally, the more serious the crime, the greater the proportion of trials. For the less serious offenses of burglary, larceny, and drug trafficking, about 1 out of 10 convictions was the result of a trial. For aggravated assault and robbery this ratio was 1 out of 5. For rape it rose to 1 out of 4. Finally, for homicide about 3 out of 8 convictions resulted from trials.

Overall, defendants who pled guilty were somewhat less likely to be sentenced to prison than those found guilty at trial (44% vs 51%, table 12). This was not true, however, for all seven crime categories in the study. The reverse relationship held for burglary and larceny, and there was virtually no difference for robbery.

For all the crimes studied the average prison sentence lengths were shorter for those who pled guilty. Overall, those who pled guilty and were sentenced to prison received an average sentence of 6.0 years; those found guilty at trial and sentenced to prison averaged 10.7 years.

Although average homicide prison sentences were only slightly longer for those found guilty by trial (16.6 years) than for those who pled guilty (14.2 years), the former were much more likely to receive a sentence to life in prison or death (46%) than the latter (22%).

Pleas and conviction offense

In 7 out of 8 cases (88%), information on the manner in which the person was convicted (trial vs. plea) and the charge on which the person was convicted (highest original charge vs. a lower charge) was available. For the overwhelming share of these cases (70%) the offender pled guilty to the highest original charge. Much smaller proportions were offenders found guilty of the highest charge at trial (15%), offenders who pled guilty to a lesser charge (14%), and offenders found guilty at trial of a lower charge (1%). Considering only those who pled guilty, about five-sixths (83%) pled to the highest original charge.[7]

Those who pled guilty to a lower charge were less likely to be sentenced to prison (33%) than those who pled guilty to the highest original charge (47%) (table 13). The difference, however, in average prison sentence lengths for these two groups was only half a year.

[6]Other data on plea-to-trial ratios are presented in the Bureau of Justice Statistics Special Report, The Prevalence of Guilty Pleas, NCJ-96018, December 1984. For the 14 jurisdictions examined in that report, the median ratio of pleas to trials was 11 to 1, varying from a high of 37 pleas for every trial to a low of 4 pleas per trial.

[7]Data from The Prevalence of Guilty Pleas, op. cit., for eight jurisdictions showed a mean percentage of guilty pleas to the top charge of 60%.

Table 12. Sentences to prison, by method of conviction

Conviction offense	Percent of sentences to prison for those convicted by: Trial	Guilty plea	Average prison sentence length for those convicted by: Trial	Guilty plea
Total	**51%**	**44%**	**10.7 years**	**6.0 years**
Violent				
Homicide	92	82	16.6	14.2
Rape	81	65	16.2	10.9
Robbery	66	65	12.7	7.3
Aggravated assault	47	36	9.8	5.6
Property				
Burglary	42	48	6.4	4.3
Larceny	24	30	4.2	3.1
Other				
Drug trafficking	27	21	5.7	3.8

Note: Table excludes those cases (9%) where the study could not ascertain how the person was convicted.

Table 13. Sentences to prison for those convicted on the highest original charge or a lower charge, by method of conviction

Method of conviction	Percent of sentences to prison terms for those convicted on: Highest original charge	Lower charge	Average prison sentence length for those convicted on: Highest original charge	Lower charge
Trial	52%	55%	10.8 years	8.7 years
Guilty plea	47	33	6.0	5.5

Methodology

Geographical coverage. For all the jurisdictions participating in the study (appendix table 1) the sentencing data come from the entire county or independent city except in Los Angeles County. In Los Angeles multiple prosecutorial offices and courts are scattered throughout the county. Because the data had to be verified against the original court record as well as supplemented from the original court record, the decision was made to simplify this task by limiting the scope of the study in Los Angeles to the Central District Court, which serves the City of Los Angeles.

Frame of reference. Exception for Baltimore County, Dade County, and New Orleans, the data in this report represent all of the sentences imposed during calendar year 1983 for the crimes under study. Baltimore County provided sentencing data for the period 4/1/83 through 3/31/84. On October 1, 1983, the State of Florida implemented new sentencing procedures. In the interest of obtaining a full year's worth of data under a single sentencing approach, Dade County information was collected on sentences from 10/1/82 through 9/30/83. In New Orleans the nature of the record system necessitated studying cases initiated in 1983, resulting in the inclusion of some sentences imposed in 1984.

Crime definitions. The penal codes from each of the participating jurisdictions provided the basis for defining the seven crimes analyzed in this study; i.e. homicide, rape, robbery, aggravated assault, burglary, larceny, and drug trafficking. Project staff specified which penal code citations applied to these various crime types and in some instances specified what citations did not. These exclusions took place where the participating jurisdiction's penal code could lead to potential confusion with the general parameters that were laid down for the study. For example, a number of States have statutes dealing with criminal trespass, a crime that could easily be confused with burglary. Project staff made explicit that criminal trespass should be excluded from the data collection effort.

Project staff compiled a listing of all statutes falling into the study in a separate publication titled, "Penal Code Citations: Guidelines for BJS Sentencing Project Participants," which shows the differences in how the crimes are defined from jurisdiction to jurisdiction. Such differences are to be expected with each State legislating its own code. For the seven crimes in this study, the differences do not seriously impair the ability to obtain comparable definitions.

Sampling. Whether sampling was used and its extent varied by jurisdiction and crime category (appendix table 2). In 11 of the 18 jurisdictions there was no sampling at all. In the other seven jurisdictions sampling was used when the volume of sentences was large. This applied to fewer than half of the crimes in these seven jurisdictions and in no case included homicide or rape. A total of 15,018 cases were examined in the study. These were adjusted by their sampling ratio to represent 27,641 weighted cases. The analysis throughout this report is based on weighted cases.

Appendix table 1. Jurisdictions that participated in the study

Jurisdiction	Population	Major city
Baltimore City, Maryland	786,775	Baltimore
Baltimore County, Maryland	655,615	Towson (suburban Baltimore)
Dade County, Florida	1,625,781	Miami
Davidson County, Tennessee	455,651	Nashville
Denver, Colorado	492,365	Denver
Hennepin County, Minnesota	941,411	Minneapolis
Jefferson County, Kentucky	685,004	Louisville
Jefferson Parish, Louisiana	454,592	Kenner (suburban New Orleans)
Kane County, Illinois	278,405	Geneva (suburban Chicago)
Lancaster County, Nebraska	192,884	Lincoln
Los Angeles County, California	2,966,850	Los Angeles
Lucas County, Ohio	471,741	Toledo
Maricopa County, Arizona	1,509,052	Phoenix
Milwaukee County, Wisconsin	964,988	Milwaukee
New Orleans, Louisiana	557,515	New Orleans
Philadelphia, Pennsylvania	1,688,210	Philadelphia
Oklahoma County, Oklahoma	568,933	Oklahoma City
Riverside County, California	663,166	Riverside

Note: Los Angeles population is for the Central Court District only.

Appendix table 2. Distribution of the number of sentences, by jurisdiction

Jurisdiction	Total	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking
Total	27,641[a]	1,268	1,144	5,460	2,698	7,740	5,401	3,930
Baltimore City	1,713	118	102	792[b]	119	582[b]	[c]	[c]
Baltimore County	633	11	16	133	12	102[b]	276[b]	83
Dade County	3,715	231	97	711[b]	226	1,148	1,020[b]	282[b]
Davidson County	964	53	65	216	98	269	156	107
Denver	697	33	14	106	61	254	60	169
Hennepin County	834	18	69	117	78	280	216	56
Jefferson County	945	53	69	177	89	224	175	158
Jefferson Parish	610	25	10	68	54	167	245	41
Kane County	330	8	12	29	21	122	85	53
Lancaster County	146	3	13	15	12	39	25	39
Los Angeles County[d]	5,772	303	172	1,155[b]	680[b]	1,068[b]	604[b]	1,790[b]
Lucas County	471	15	13	54	50	125	154	60
Maricopa County	3,000	73	105	224	432[b]	970[b]	975[b]	221
Milwaukee County	1,324	33	107	238	52	496[b]	191	207
New Orleans	800	20	9	120	37	249	251	114
Oklahoma County	1,204	64	45	133	103	341	264	254
Philadelphia	3,549	169	119	999[b]	450[b]	1,040[b]	651[b]	121[b]
Riverside County	934	38	107	173	124	264	53	175

[a] The study used 15,018 cases that were adjusted by their sampling ratios so as to produce 27,641 weighted cases.
[b] For these crimes and jurisdictions, a sample of all cases was drawn for this study.
[c] Sentencing data not collected for these crimes in Baltimore City.
[d] Data from Central Court District only.

Bureau of Justice Statistics Special Reports are prepared principally by BJS staff under the direction of Joseph M. Bessette, deputy director for data analysis, assisted by Marianne W. Zawitz. This report was written by Mark A. Cunniff of the National Association of Criminal Justice Planners under the direction of Carla K. Gaskins, program manager, BJS adjudication unit, and was edited by Benjamin H. Renshaw, deputy director for management. Marilyn Marbrook, publications unit chief, administered report production, assisted by Millie Baldea and Joyce M. Stanford.

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SENTENCES FOR SEX-RELATED OFFENSES: 1982-1984

EXECUTIVE SUMMARY

Alaska Judicial Council
February 1986

EXECUTIVE SUMMARY

SENTENCES FOR SEX-RELATED OFFENSES: 1982-1984

INTRODUCTION. The following report is based on an analysis of sentences imposed in Alaska Superior Courts during calendar years 1982-1984 for conviction of offenses initially charged as sex-related felonies. (See Appendix A for definition of data) For analytical purposes, data collected in this study were compared to data from earlier Judicial Council sentencing studies.

PURPOSES. The purposes of this study are to:

A. Describe sentences imposed for sex-related offenses statewide; and

B. To provide a basis for assessing the impact on sentencing patterns of social and legal policy changes.

SUMMARY OF FINDINGS.

A. DESCRIPTION OF SENTENCES IMPOSED:

1. As might be expected, defendants convicted of the most serious offenses served the longest terms (50% of all those convicted of the most serious sex offenses served six years or more); and those convicted of the least serious offenses served the shortest sentences (90% of all those convicted of the least serious sex offenses served less than three years) (see Figure 1);

2. Thirty-seven percent (37%) of all sex-related convictions occurred in the north and west parts of the state, an area which has twenty-three percent of the population; while forty-three percent of the total number of convictions occurred in Southcentral Alaska, a region with about sixty-five percent of the state's population (Figure 2);

3. Alaska Natives constituted thirty-eight percent of the total number of defendants convicted, as compared to sixteen percent of the state's population; and Caucasians accounted for fifty-two percent of the total number of persons convicted as compared to seventy-eight percent of the state's population (Figure 3); and

4. Most (ninety to ninety-five percent) persons convicted of sex-related offenses had no prior felony record (Figure 4).

B. SOCIAL AND LEGAL POLICY CHANGES. Sex-related offense data may be useful in assessing the impacts of the following three legal and social policy changes:

1. Increased reporting and enforcement of sex-related offenses.

2. Adoption by the Legislature of the presumptive sentencing scheme in 1980; and

3. (Upward) reclassification by the Legislature of most sex-related offenses over the last four years.

Each of these issues will be treated separately below.

1. Increased reporting and enforcement of sex-related offenses: Alaska has experienced a three hundred percent (300%) increase in the number of defendants convicted of all sex-related offenses over the past five years. At the same time, the percentage of all such offenses which can be characterized as "most serious" increased by twenty-five percent, from forty percent (40%) to fifty percent (50%) of the total (Table 1).

2. Adoption of Presumptive Sentencing. The impact of this change can be evaluated in terms of impact on judicial resources (trial rate) and impact on jail capacity.

a. Impact on Judicial Resources. Of all those convicted of sex-related offenses, twenty-nine percent were initially charged with offenses carrying presumptive terms, while seventy-one percent were charged with offenses carrying non-presumptive terms. Thirty percent (30%) of those facing presumptive terms were convicted at trial, while fourteen percent of those facing non-presumptive terms were convicted at trial. In other words, persons convicted of offenses originally charged as presumptive went to trial at slightly more than twice the rate as convicted defendants charged with offenses carrying non-presumptive terms (Table 2).

However, it is important to note that the trial rates for defendants convicted of "most serious" offenses (such as violent offenses) have always been about twice the rate for defendants convicted of "less serious" (such as property crimes) cases. (Figure 5)

One conclusion which might reasonably be drawn from the above is that presumptive sentencing has replaced, rather than significantly added to the trial demand increase which resulted from the plea bargaining ban.

b. Impact on Jail Population. Sentence length for most sex-related offenses was similar in 1982-1984 to sentence lengths imposed prior to the adoption of the presumptive scheme. For example, the mean sentence for rapes/sexual assault I from 1974-1980 was similar to the period 1982-1984 (i.e., seven to nine years) (Table 3).

In addition, the proportion of defendants sentenced to probation for sex-related offenses during 1982-1984 was only slightly lower than the proportion sentenced to probation in the period 1976-1979 (Table 4).

Thus, at least as to sex-related offenses, the adoption of the presumptive sentencing scheme appears to have contributed only slightly and indirectly to the prison overcrowding problem. Presumptive sentences for most sex-related offenses essentially codified the mean sentences imposed prior to adoption of the scheme; and the proportion of the total convicted defendant population sentenced to no jail time is only slightly lower during 1982-1984 than 1976-1979.

Reclassification of Sex-Related Offenses. Reclassification presumably accounts for most of the 25% increase in the percentage of cases charged as "most serious" (Table 1).

Conclusions.

1. The most important factor in accounting for the increased demand on justice system resources to respond to sex-related offenses has been the three hundred percent (300%) increase in the total number of defendants prosecuted for such offenses.

2. Upward reclassification of most sex-related offenses has resulted in an increase in the number and percentage of persons facing presumptive terms and therefore most likely to proceed to trial.

3. The presumptive scheme, per se, appears to have had only limited impact on the percentage of convicted defendants sentenced to serve jail time, and little effect on mean sentence for most types of offenses (except for conduct reclassified from "least serious" to "most serious".)

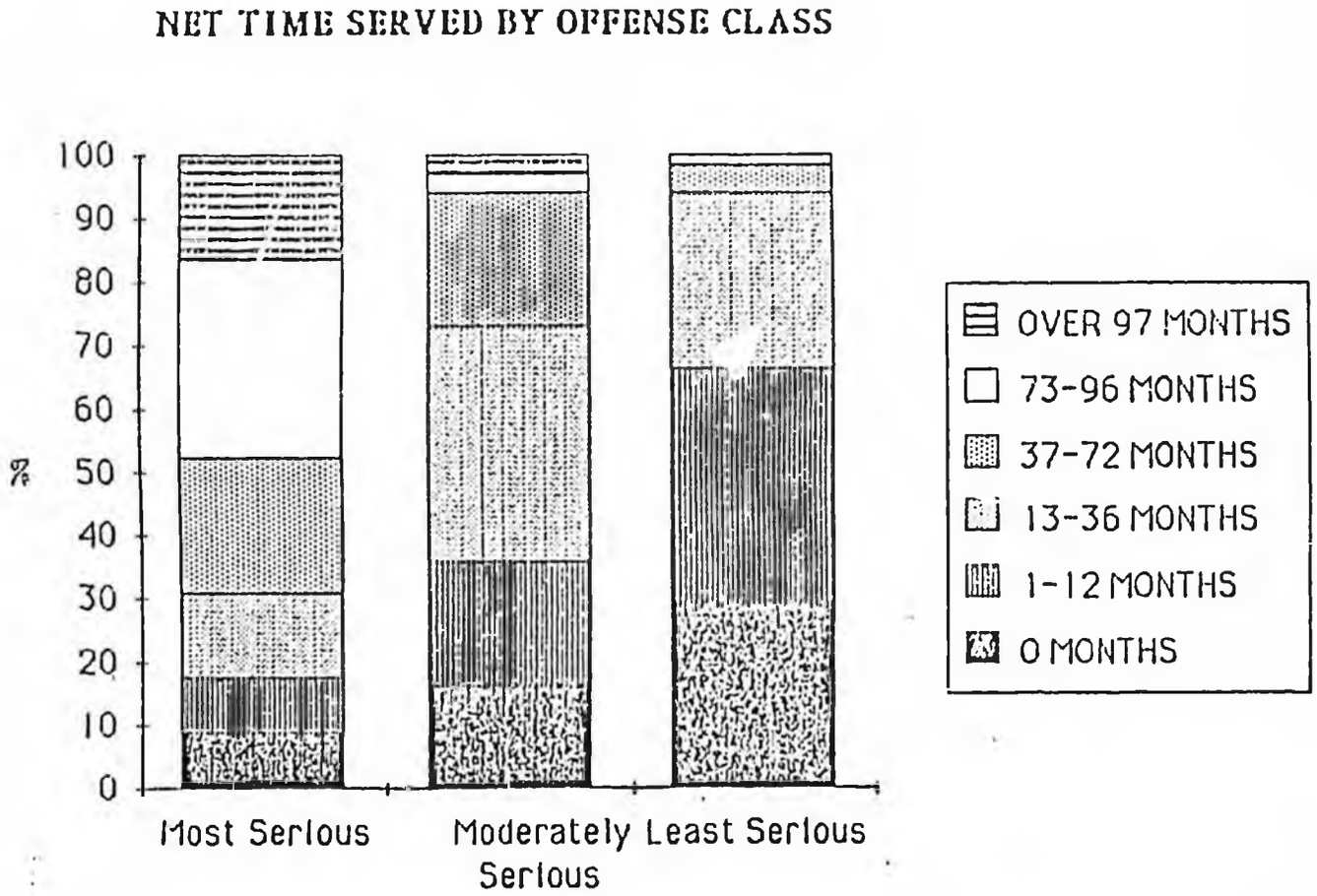


FIGURE 1

SENTENCING OF SEX-RELATED OFFENSES: 1982-1984

FIGURE 2

SENTENCING OF SEX-RELATED OFFENSES: 1982-1984

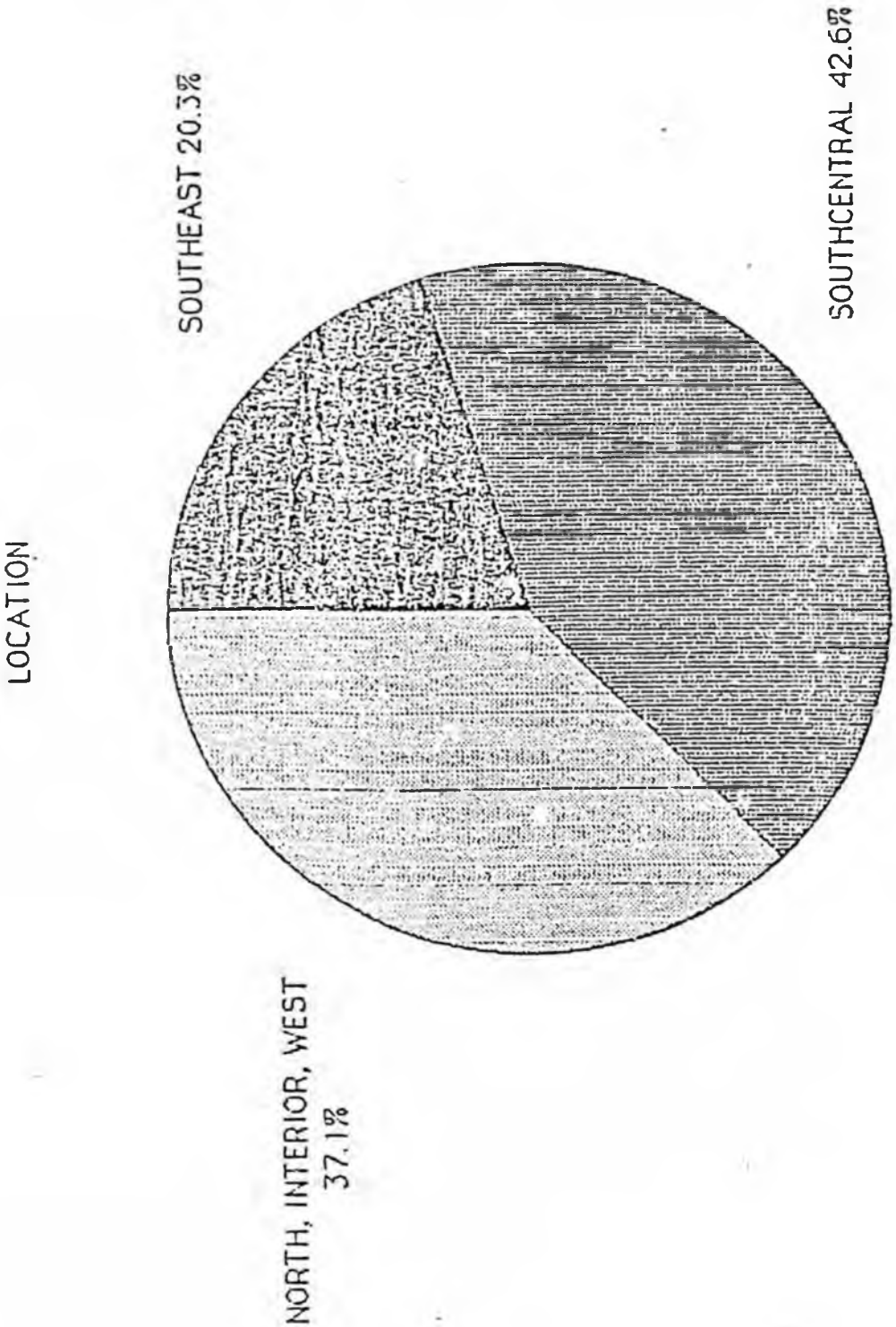


FIGURE 3

SENTENCING OF SEX-RELATED OFFENSES: 1982-1984

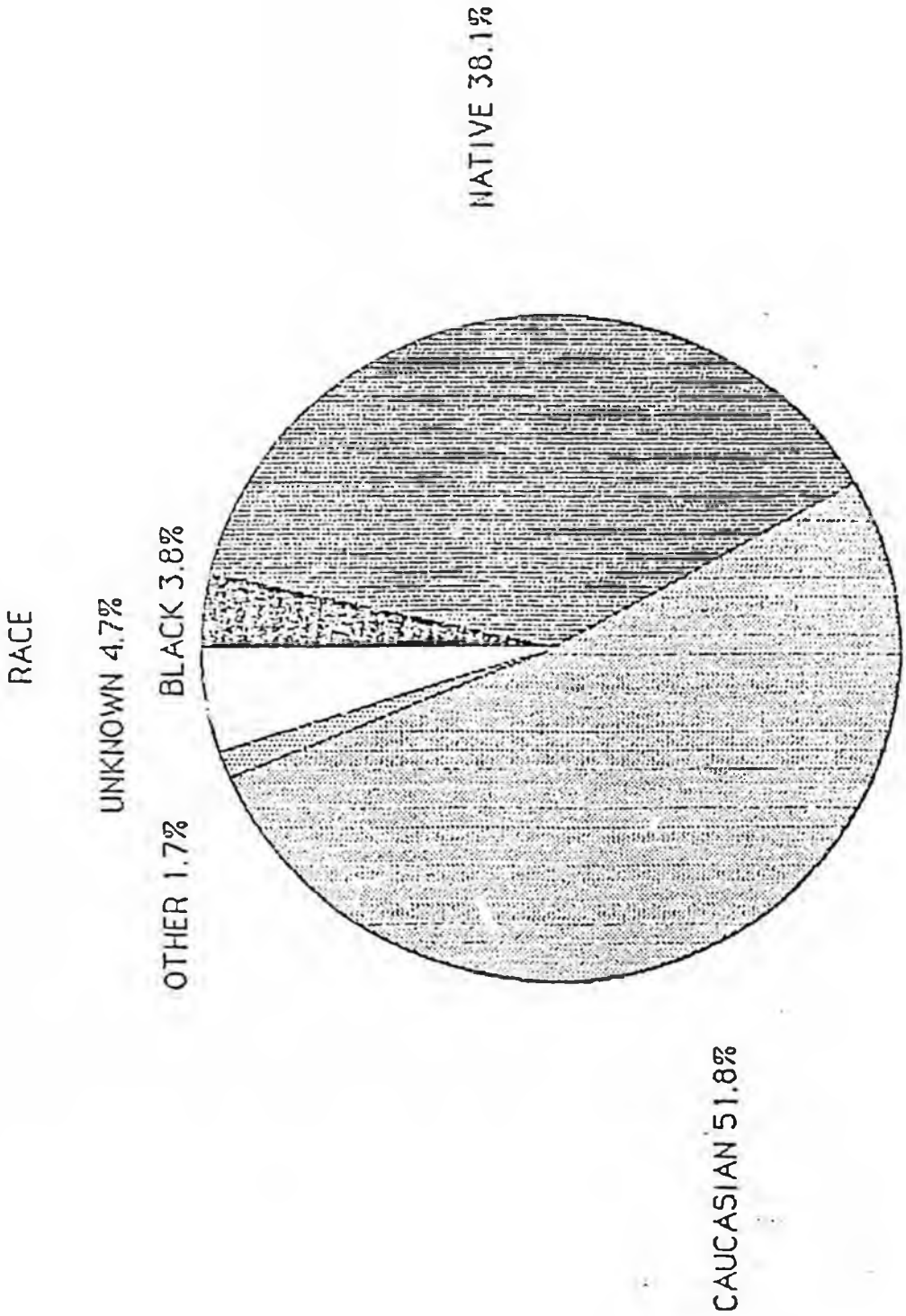


FIGURE 4

SENTENCING OF SEX-RELATED OFFENSES: 1982-1984

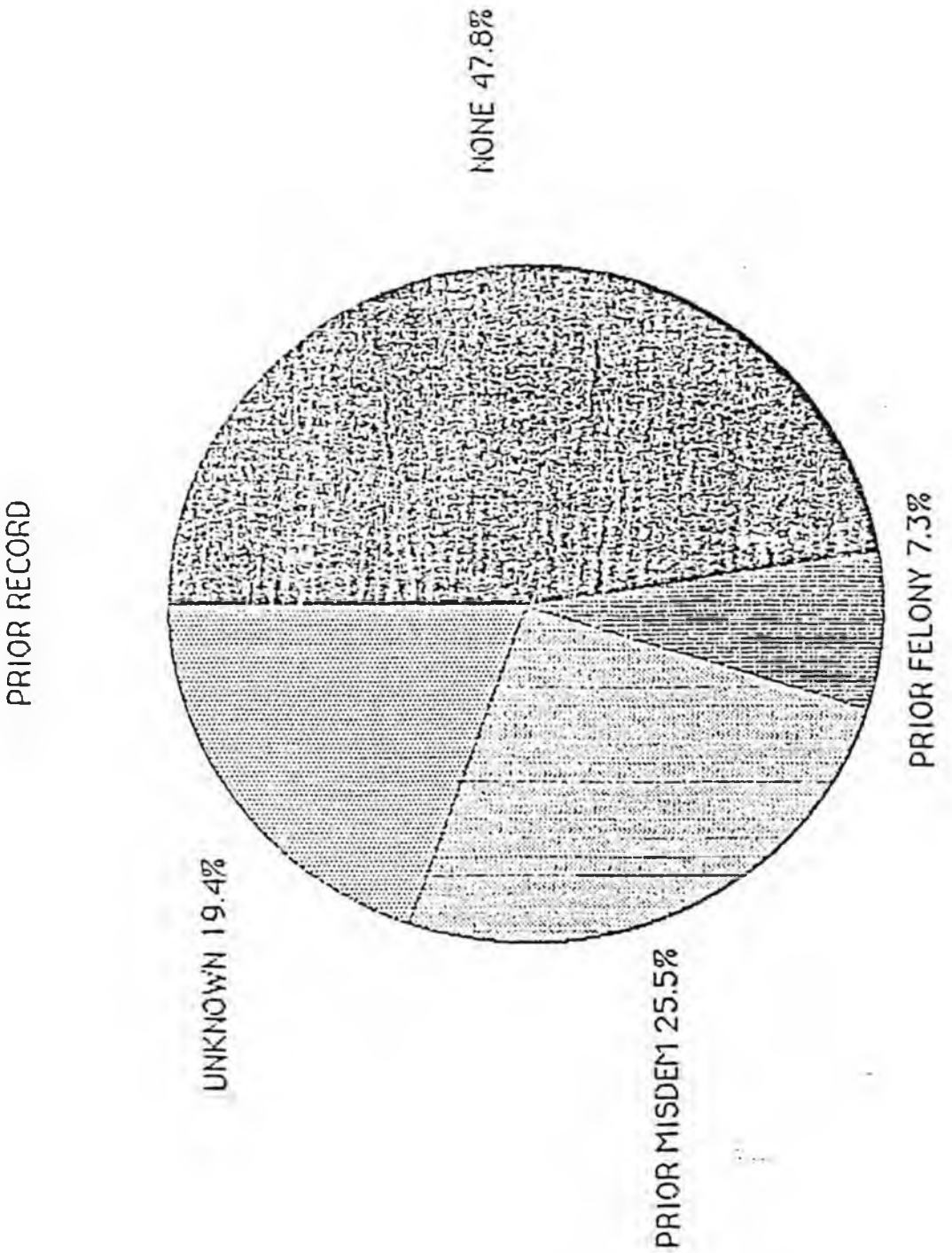
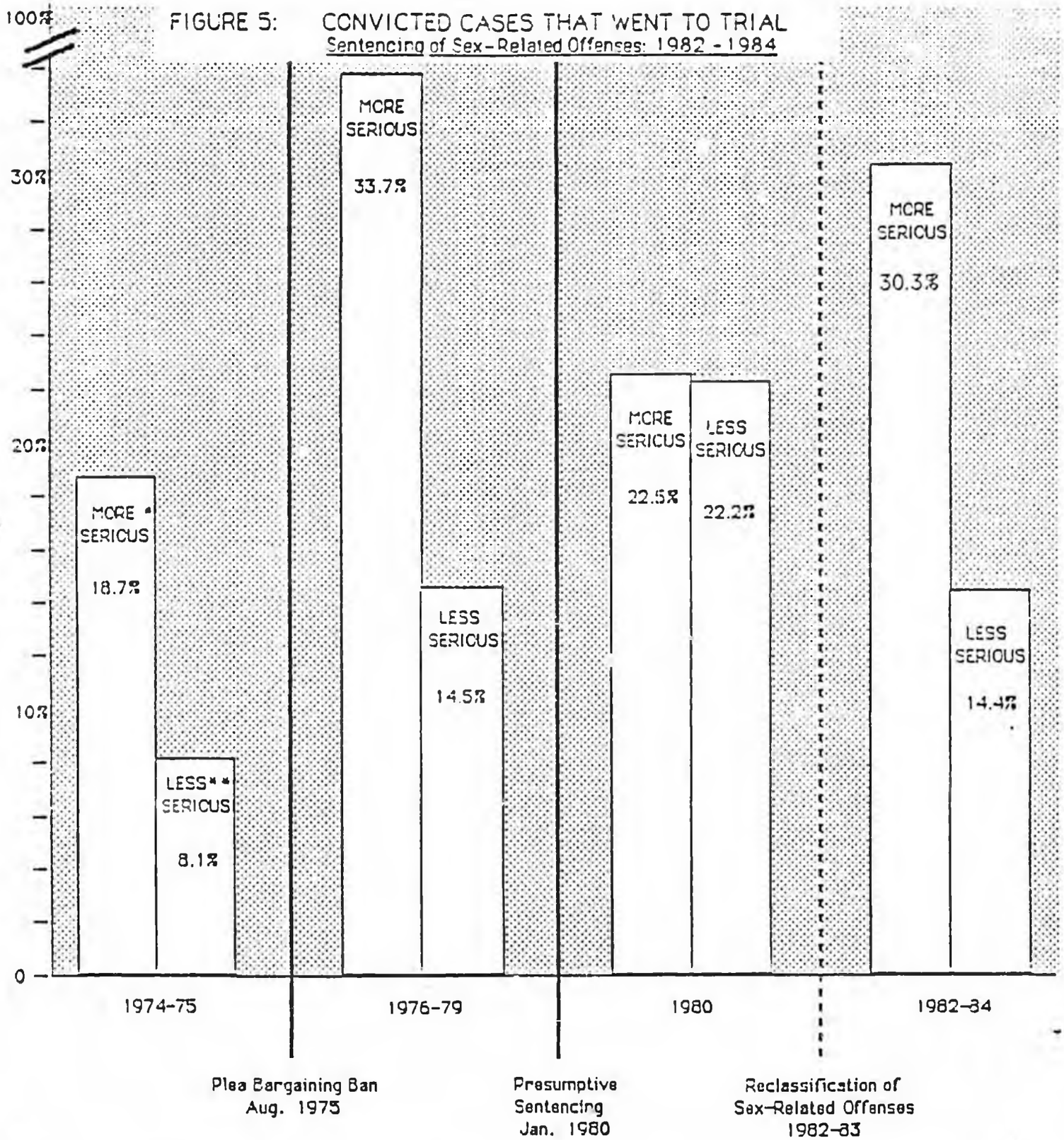


FIGURE 5: CONVICTED CASES THAT WENT TO TRIAL

Sentencing of Sex-Related Offenses: 1982 - 1984



* "More Serious" includes all violent offenses, such as rape, robbery and serious assaults, for 1974 through 1980. For 1982-84 data, it includes all sex-related offenses for which the defendant received a presumptive sentence.

** "Less Serious" includes all child sex abuse cases from 1974 through 1980, such as Lewd and Lascivious Acts, Statutory Rape and Sex Abuse of a Minor. For 1982-1984, it includes all sex-related offenses for which the defendant received a non-presumptive sentence.

Table 1

NUMBERS OF SEX-RELATED CASES CONVICTED
AND PERCENTAGE OF "MOST SERIOUS" CHARGES

Sentencing of Sex-related Offenses: 1982-1984

	1976-79 Study	1980 Study	1982-84 Study
Numbers of Convictions	35 (average, per year)	55	141 (average, per year)
% of "Most Serious" charges*	40%	40%	50%

* This figure shows the percentage of the total number of cases for the year(s) constituted by the "Most Serious" charges, i.e., Rape, Sex Assault I and Sex Abuse of a Minor I.

Table 3

SENTENCE LENGTH
(mean sentence, in months)

Sentencing of Sex-related Offenses: 1982-1984

	"Most Serious" Offenses*	"Less Serious" Offenses**
1974-76 Urban	94.0 mo.	21.1 mo.
1976-79 Urban	154.6 mo.***	44.0 mo.***
1976-79 Rural	106.5 mo.	15.7 mo.
1980 Urban	106.0 mo.	16.7 mo.
1980 Rural	47.5 mo.	16.8 mo.
1982-84 All	80.3 mo.	17.9 mo.

* "Most Serious" offenses are Rape (1974-79), Sex Assault I (1980 through 1985), and Sex Abuse of a Minor I (Oct., 1983 - 1985).

** "Less Serious" offenses include a) 1974-79: Lewd and Lascivious Acts, Statutory Rape and Incest; b) 1980-1983: Sex Abuse of a Minor, Incest, Attempted Sex Abuse of a Minor; and c) Oct. 1983 and after: Sex Abuse of a Minor III, Incest, and Att. Sex Abuse of a Minor II.

*** Sentences were higher for nearly all types of offenses during 1976-79 than during the preceding two years, or during 1980.

Table 4

PROPORTION OF DEFENDANTS RECEIVING JAIL SENTENCES

Sentencing of Sex-related Offenses: 1982-1984

	"Most Serious" Offenses*	"Less Serious" Offenses**
1974-76	no data	44%
1976-79	3%	33%
1980	5%	56%
1982-84	0%***	29%

* "Most Serious" offenses are Rape (1974-79), Sex Assault I (1980 through 1985), and Sex Abuse of a Minor I (Oct., 1983 - 1985).

** "Less Serious" offenses include a) 1974-79: Lewd and Lascivious Acts, Statutory Rape and Incest; b) 1980-1983: Sex Abuse of a Minor, Incest, Attempted Sex Abuse of a Minor; and c) Oct. 1983 and after: Sex Abuse of a Minor III, Incest, and Att. Sex Abuse of a Minor II.

*** It is assumed that all probationary sentences were imposed in cases in which the original charge had been amended to a lesser final charge.

Definition of Data

To study patterns of sentencing for sex-related offenses, data were gathered from the Prosecutors' Management Information System (PROMIS), the Department of Public Safety, and the Department of Corrections. The data set consisted of all cases recorded on the PROMIS system for the years 1980 through 1985, for which a conviction had been obtained on a sex-related charge. The final data set included 423 defendants, most of whom had been charged with offenses in 1982, 1983 and 1984 (only a few cases were recorded for 1980, 1981, and 1985).

The cases studied included offenses against both children and adults. The age of the victim was unknown for 29% of the 423 cases. The cases had been filed in all areas of the state, with the exception of Nome, Kotzebue and Kenai where information about cases had not yet been entered on the PROMIS system.

Offenses were classified for purposes of study into three groups: "Most Serious" (Sex Assault I and Sex Abuse of Minor I), "Class A and B" (all class A and B felonies for which the classification was known), and Class C felonies (also referred to as "less serious" offenses). The classification was based on the original charge filed by the prosecutor since the final offense of conviction was unknown. About 22% of all the offenses studied were amended or reduced prior to conviction. Each defendant was characterized by the single most serious charge against him or her.

APPENDIX A

Please consider the statistics & successes presented in these pages? What have you got to lose if you just try it? Do a pilot program for 2 or 4 years & see if it works?

AB554 House Judiciary Pg 1 of 4

THE COMMUNITY AS EXTENDED FAMILY

...e, California 95108 (408) 280-5055

...USE TREATMENT/TRAINING PROGRAM FACT SHEET

...ent Program (CSATP) of Santa Clara County, California, started in ... has provided in depth professional and self-help treatment to more ...dren and their families. Over 16,000 individuals have been served, ...ingle organization in the nation. In 1977, the CSATP staff began to ..., ... training workshops which thus far have resulted in the establishment of 140 additional CSATPs in the U.S., Canada and Australia.

A CSATP is made up of three components: The first consists of the integrated interventions of the professional law enforcement, criminal justice and human services agencies; the second consists of the self-help groups known as Parents United, Daughters and Sons United and Adults Molested as Children United; and the third consists of the cadre of trained volunteers. The persons representing these components work cooperatively for the child-victim's best interests, i.e., with the common understanding that this objective is satisfied, in the majority of cases, if the child can be returned to his/her family—a family headed by parents who have been taught to be caring and effective.

Key features and results of the Santa Clara County CSATP approach are:

- The intensive public education effort encourages victims and their parents to report abusive situations. The annual referral rate has increased from 30 cases in 1971 to over 1,000 cases in 1984. (The current active caseload averages 1,000 individuals.)
- Repeated interrogation of the child is avoided since about ninety percent of father-offenders confess their sexually abusive behavior to the authorities.
- Over ninety percent of the children avoid foster or institutional placement and remain with their mothers and siblings (father-offenders are given no-contact orders and leave their home).
- After long term therapy, father-offenders are returned to their homes only if they are deemed both physically and psychologically safe for their children.
- The reported recidivism rate among father-offenders who have been treated has remained at less than one percent.
- Child-victims treated by CSATP do not persist in the self abusive behavior (promiscuity and other sexual behavior problems, drug and alcohol abuse, marital difficulties, criminal activities, etc.) reported by adults who were molested as children who did not receive individual and family therapy.
- The CSATP method is cost-effective:
  a. Typically, a CSATP is coordinated by personnel in existing official agencies (child protective services, mental health agencies, probation and police departments).
  b. Due to the use of volunteers, especially in the crisis stages, the cost to the community for client contacts is very low (less than $5 per contact hour).
  c. Most of the families are reconstituted and, therefore, the community is not saddled with costs of foster home and institutional placements and welfare payments.
  d. Because most of the fathers confess (about 90%), the costs due to prolonged court proceedings are sharply curtailed.
  e. The fathers usually are rehabilitated within the community and do not receive long prison sentences. Those serving short jail sentences are placed on work furlough. The county and the state, therefore, avoid the high costs of incarceration and of family upkeep.
  f. Since the fathers continue to work, there are no losses in federal and state tax revenues due to unemployment.

Above all must be stressed the ability of the CSATP to induce children and their parents to report the abusive situations and to treat them successfully. From a humane viewpoint, it is immensely gratifying to note that the children will not suffer lifelong devastation from the incestuous experience. From a social health viewpoint, it is also rewarding to realize that when treated early, abused children are not likely to become the future social derelicts and/or criminals of society, as attested to by recent studies indicating that about eighty percent of our prisoners were physically, and/or sexually abused as children. A detailed description of the principles, methods and results of the CSATP is given in the book, "Integrated Treatment of Child Sexual Abuse" by Dr. Giarretto.

MARCH 1985

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Page 2 of 4

Treatment Premises Regarding the Incestuous Family

From the working principles of humanistic psychology tested by firsthand experience with incestuous families, the following major premises regarding the interpersonal dynamics of the families were developed and are fundamental to the treatment approach.

1. The family is viewed as an organic system. Family members assume behavior patterns to maintain system balance (family homeostasis).
2. A distorted family homeostasis is evidenced by psychological and/or physiological symptoms in family members.
3. Incestuous behavior is one of the many symptoms of a dysfunctional family.
4. The marital relationship is a key factor in family organic balance and development.
5. Parent–child incestuous behavior is not likely to occur when parents enjoy mutually beneficial relations.
6. High self-concepts in the mates is a prerequisite for a healthy marital relationship.
7. High self-concepts in the parents help to engender high self-concepts in the children.
8. Individuals with high self-concepts are not apt to engage others in hostile, aggressive behavior. In particular, they do not undermine the self-concept of their mates or their children through incestuous behavior.
9. Conversely, individuals with low self-concepts are usually angry, disillusioned, and feel they have little to lose. They are primed for behavior that is destructive to others and themselves.
10. When such individuals are punished in the depersonalized manner of institutions, the low self-concept/high destructive-energy syndrome is reinforced. Even when punishment serves to frustrate one type of hostile conduct, the destructive energy is diverted to another outlet or turned inward.
11. Productive case management of the molested child and her family includes therapeutic procedures that alleviate the emotional stresses of the experience and the resulting punitive action of the community and that enhance the processes of self-awareness and self-management, as well as feelings of family unity and growth.

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2. History of the CSATP

In mid-1971, a pilot project was started to offer counseling to sexually abused children and their families in Santa Clara County. Most of the child sexual abuse cases referred to the project were cases of intrafamily sexual molestation—usually father-daughter incest. Because of the relatively large number of such cases (around thirty a year during the early 1970s) and because there was no other coordinated system of case management, the pilot project was continued and eventually grew into what is now known as the Child Sexual Abuse Treatment Program (CSATP). To understand the origin of this innovative resource, it is necessary first to look at the situation as it existed just before the project was formed.

The Problem

The population of Santa Clara County, California, in 1970 was approximately one million (322,870 households). The median educational level was quite high: 12.6 years. The population was 76.8 percent white, 17.5 percent hispanic, 4 percent oriental, 1.7 percent black and 1 percent other races. The county's economy before the Second World War had been primarily agricultural; by 1970, it was strongly based in the electronics, aerospace, research-and-development, and data-processing industries.

Along with this meteoric rise in industry had come a similar rise in population, and much of the county that had once been farmland and orchards was now given over to middle-income housing developments. The average household in Santa Clara County earned over thirteen thousand dollars a year, the highest median income of any metropolitan community in California. The county's main population center was and is the city of San Jose (population: 561,382).

No reliable statistics exist on the incidence of incest or of child abuse in general in Santa Clara County before 1971. Although the county was receiving around thirty referrals a year of cases involving sexual abuse of children, this figure did not include other cases in the juvenile justice system such as the so-called "beyond control" girls, many of whom, as it turned out, also were victims of incest. Despite the fact that the thirty reported cases a year in no way reflected the true number of ongoing cases, it was considered quite high in relation to the generally accepted estimate of one or two cases per million. (S. Kirson Weinberg had arrived at this estimate in 1955, citing 203 court cases over the period 1907–1938.[1] Other studies had substantiated Weinberg's figure, and it was regarded as the best statistic available.)

The reason that the CSATP was formed, however, was not so much the high number of child sexual abuse cases. More immediately pressing was the problem of how these cases were being handled by the criminal justice system at that time. Most often, the traditional tactics of law enforcement further aggravated the family's already deeply troubled state. The criminal justice system relied primarily on two devices: separation and punishment. It seemed that the courts' primary interest in the child had to do with what testimony she could give toward the conviction of the alleged perpetrator. In incest cases particularly, the whole family became entangled in the process of retribution. The damage to the family and the marriage was often irreparable.

In short, traditional community intervention added to the child-victim's fear, shame, guilt, and confusion, often ruined the father's career as well as his self-respect, and usually led to

[1] S. Kirson Weinberg, *Incest Behavior* (New York: Citadel Press, 1955), p. 56.

the break-up of the entire family. With these alarming consequences to be expected, it is no wonder that most families would not risk the danger of reporting their incestuous situation and did not receive the help and therapy they desperately needed.

In Santa Clara County, the Juvenile Probation Department (JPD) is the mandated reporting agency for child abuse cases. Child Protective Services is the agency usually responsible for this function elsewhere. The help the JPD offered was fragmented and complicated by bureaucracy, with the result that the already dysfunctional family dynamics were subjected to additional trauma.

The victim and her family were referred to one of the counseling agencies scattered over the county. Many clients resisted treatment because it was made so difficult for them. There were complicated eligibility requirements and long waiting lists. A counselor usually was assigned to a case on the basis of availability, rather than on the basis of training and skill. In fact, rather than receiving counseling, the client was often subjected to many diagnostic tests that would later be used in court.

Even when counseling was provided, there was little cooperation between mental health workers and probation officers. The supervising probation officer usually lacked the information, resources, and authority for proper case management. This poor management of reported cases of incest and child sexual abuse was not unique to Santa Clara County. In fact, it is a situation that still prevails in most communities throughout the United States.

The CSATP Is Started

In 1971, Eunice Peterson, supervisor of the Dependent/Placement section of the Juvenile Probation Department, and Robert S. Spitzer, M.D., the consulting psychiatrist for the JPD, contacted Hank Giarretto concerning the establishment of a pilot effort. Giarretto, a licensed marriage and family counselor, would provide counseling to sexually abused children and their families for a trial period of eighty hours spread over eight weeks. At the end of this period, the pilot program would be evaluated by Spitzer, Giarretto, and Peterson to determine if it should be continued. The initial ground rules of the pilot program were: the clients would be counseled on-site at the Juvenile Probation Department; the program would emphasize conjoint family therapy as developed by Virginia Satir; and the therapeutic approach would follow a growth model predicated on humanistic psychology.

Early Objectives

To provide immediate on-site counseling. The first objective of the pilot program was to provide counseling to sexually abused children and their families as soon as possible after their referral to the JPD. Consequently it was decided that clients would be counseled at the JPD, where the counselor could be readily available to them, rather than at his private office. It also was hoped that having the counselor there would help destigmatize the JPD, so that it could be regarded as an agency where people could get help rather than punitive treatment. It was anticipated that having the counselor on hand would facilitate communication and coordination among all those persons responsible for the cases.

By the time the pilot program had completed its eight weeks, Giarretto found that he was inextricably involved with many clients. It was apparent that each client required far more time than the traditional weekly hour. In addition to the hour devoted to counseling, for example, Giarretto had to spend an equal or greater amount of time consulting with juvenile and adult probation officers, police, lawyers, school teachers, and rehabilitation officers. All of this work could not be handled by Giarretto alone, especially since he had to continue his practice to supplement his income. Most of the clients could not afford to pay for the counseling, even when the fee was based on a sliding scale. They had already suffered sudden financial setbacks as a result of exposure (bail bonds, legal fees, separate housing for the father, and juvenile hall fees, for example). It was clear that the program had to be expanded in order to be fully effective.

To marshal and coordinate available services. It also became apparent during the pilot program that counseling alone was not enough; the family required a great deal of practical assistance to help them through this troubled period. They needed help in locating community resources for such pressing needs as housing, employment, financial advice, and legal assistance. This effort required close

Table 4

PROPORTION OF DEFENDANTS RECEIVING JAIL SENTENCES

Sentencing of Sex-related Offenses: 1982 4

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STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

Discussion Paper:

An Analysis of Correctional Bed Space Needs, 1986-1991

Roger V. Endell
Commissioner

February 10, 1986

Background

Since 1980 the State's correctional system has had to cope with a rapidly escalating prisoner population. The incarcerated prisoner population tripled over the past five years (770 at year end 1980 to 2311 at year end 1985), and is expected to double again between 1986 and 1991, the next five year period. Department of Corrections' population projections, used to compute prisoner population growth, have been based conservatively upon a relatively simple linear trend model and the actual inflow over the past four years of 300 new prisoners received each year above and beyond those released. Additional and more sophisticated projections have recently been published by the School of Justice at the University of Alaska, Anchorage. The bed space needs for the correctional system are herein calculated at, or between, the Department of Corrections and School of Justice population projections for each of the next five years.

Since January 1983, the Department has constructed or otherwise added over 800 new institutional beds to the correctional system. Additionally, the Department has maintained just under 200 state prisoners within the Federal Bureau of Prisons at a variety of locations around the nation and recently reached a new high of nearly 300 state prisoners maintained via private sector contracts in a variety of community residential centers within the state.

The Department of Corrections withstood a comprehensive class action lawsuit (Cleary v. Smith) in which the court did not find the state short of either constitutional or statutory mandates. The court expressed real concern, however, related primarily to the state's ability to continue to provide sufficient bed space for the burgeoning prison population.

The Department of Corrections currently has under contract the construction of 436 additional beds which will be "on-line" in calendar years 1986 and 1987. (See table following for present and future bed space summary.) These new beds, however, will be insufficient to house the continually growing prisoner population.

The Problem

The State of Alaska will need to obligate approximately $140 million in capital funds over the next three fiscal years in order to bring approximately 2100 new prisoner beds on line over the next five calendar years if it is to keep up with the influx of offenders into the state's correctional system. While a combination of new facility construction, additions to existing facilities, and conversions of former military or construction camp sites can be utilized to control capital costs to some degree, it is estimated that approximately $25 million will need to be allocated in FY 87, $57 million in FY 88, and another $57 million in FY 89 in order to keep even with prisoner population growth. The FY 87 figure ($25 million) does not include the $22.7 million needed for construction of phase two of the Spring Creek Correctional Center at Seward. It has been assumed that funding for the second half of the Seward project will be based upon city, not State, financing and, upon completion of construction, the city-built facility would be leased to the State. These figures do not

reflect the staffing and other operating costs which follow upon completion of facility construction.

Alternatives

There are two principal policy choices available to the State of Alaska for managing the rapidly expanding prisoner population. Each major policy choice has within it some flexibility. First, the State can elect to dedicate $25 million to $57 million per year over the next three fiscal years for capital construction of new correctional bed space. Second, the state could choose to modify the criminal law which feeds offenders into the correctional system.

The latter policy option does not necessarily have to eliminate the concept of presumptive sentencing, but could modify various aspects of it. It appears that even if the presumptive sentencing provision of the criminal code were totally repealed immediately, it would take seven years before a noticeable impact would be felt by the correctional system. Therefore, the FY 87 capital improvements will be necessary whether policies and laws are changed or not.

For example, the following modifications to criminal justice policy and law could have a dramatic and less costly affect than continued high rates of incarceration:

1. Increased good time provisions for good behavior;
2. An expansion of prisoners eligible for parole consideration;
3. Increased prisoner furlough programs;
4. Additional private sector contracting authority for holding and treating prisoners;
5. Improved emergency release provisions at times of system overcrowding;
6. Intensive probation/parole supervision in lieu of incarceration;
7. Incentives for guilty pleas in lieu of trial;
8. Increased use of citations in lieu of arrest for minor offenders;
9. Elimination of misdemeanant offenses and offenders from state responsibility except in those areas of the state lacking any other form of governmental authority;
10. Increased use of restitution sentences including development of a day-fine system in which non-violent offenders make restitution to the victim and/or the state based upon the offender's legal income computed on a daily basis, i.e., certain crimes are valued at two days' pay, other crimes five days' pay, still others thirty days' pay, etc., similar to the Scandinavian concept of social justice. The day-fine is an economic sanction which affects offenders equally based upon their ability to pay.

Any, or most, if not all, of the foregoing 10 examples could be incorporated into bills now before the current legislature, especially HB 114 and HB 141, both of which have passed the House and now reside in the Senate.

If the executive and legislative branches of government do not agree to these or similar such changes in policy and law, the Department of Corrections will, of necessity, require funding for both substantial

capital improvements and operating expenses for these improvements. Even if substantial changes in policy and law were to be made immediately, there remains the need for construction of additional beds to house long term violent offenders and the over 500 sex offenders serving sentences or now entering the correctional system.

Summary

In spite of the tremendous effort of the state to keep abreast of the rapidly escalating prisoner population, that population which tripled in the past five years, is expected to double again by 1991.

In order to continue to cope with the continuing influx of prisoners, the state will either have to commit funds (approximately $140 million) for construction of approximately 2100 prisoner beds over the next five years, or it must make immediate and substantial changes to criminal policies and laws.

Even if rapid and substantive changes to the criminal law were possible, the need still exists for the addition of a substantial number of new correctional beds to house the high number of sex offenders and long term violent offenders.

In summary then, because it is criminal policy and law which determines and drives the size of the correctional population, the state must either pay for the confinement of the offenders it sends to prison, or it must provide improved mechanisms (i.e., policy and law) for adjusting the number of persons who enter into and exit from the state correctional system each year. Based upon the assumption that major law and policy changes will not soon be forthcoming, the following table of bed space needs through 1991 is provided. A brief description of each asterisked project follows the table.

Finally, it must be recognized that there is the possibility of a third and fourth option from which the state may proceed. The third option would realistically include a combination of construction and criminal law and policy change. The last and most dangerous option is inaction if for no other reason than approximately 2100 new inmates will be sent into the correctional system over the next five years whether the correctional system is prepared for them or not.

January 1986

ALASKA DEPARTMENT OF CORRECTIONS
Institutional Operational Capacities

On Line Bed Space Needs Summary:

	1985	1986	1987	1988	1989	1990	1991
1. Cook Inlet Pre-Trial	397						
2. Sixth Avenue	100					*(FY88) 320	
3. Hiland Mtn/Meadow Creek	216		22				
4. Palmer Medium	100		40				
Palmer Minimum	130						
Mat-Su Pre-Trial			62				
5. Goose Bay	108						*(FY89) 320
6. Wildwood	300						*(FY89) 240
7. Fairbanks	232	(44)			*(FY87) 240		
8. Anvil Mtn.	88						
9. Yukon-Kuskokwim	72	24					
10. Lemon Creek	162					*(FY88) 232	
11. Ketchikan	63						
12. Spring Creek			288	*(FY87) 320			
13. Delta		*(FY87) 200		*(FY87) 300			
14. CRC	260	35					
15. FBP	200			(188)			
Sub-Total	2428	215	412	432	240	552	560
TOTAL BEDS	2428	2643	3055	3487	3727	4279	4839
POP Projections:							
UAA[1]	2344	2709	3070	3469	3907	4375	4889
DOC[2]	2311	2600	2900	3200	3500	3800	4100

* (FY) Represents year of capital funding request

1 UAA -incarcerated plus community residential center offenders.

2 DOC figures do not include a backlog of 575 short term offenders in the Anchorage area and 36 in the Ketchikan area.

Capital Projects Description by Fiscal Year

The following provides, in outline form, a brief description of each of the seven asterisked capital projects from the Table. The projects are prioritized by fiscal year and are required to be ready for occupancy in the column year indicated in the Table in order to meet the population pressure projected for that year.

FY 87

Project:	Delta Pipeline Camp
Offenders:	Up to 500 medium security inmates, including 350 sex offenders.
Estimated Costs:	$8 million to re-open, renovate, repair, convert to correctional center. $3 million to purchase numerous buildings on approximately 135 acres, or a least of same at $600,000 per year for 10 years after which state owns.
Critical Factors:	Lowest cost, most rapid development possible anywhere in Alaska. Potential to hold large number of prisoners over 10-year period at least. Must develop perimeter fence and start-up utilities in early summer 1986 or lose entire year of construction. Work-oriented facility where offender population will do most of the renovation and repair work.
Project:	Seward-Spring Creek Phase II
Offenders:	320 long term high security offenders, total at Seward nearly 640.
Estimated Costs:	$22.7 million, to be financed and built by the City of Seward, and leased upon completion to the State, the same as Phase I now under construction.
Critical Factors:	Phase I of the Spring Creek facility will be full when it opens in 1987. Phase II will hold 320 similar long term high security offenders and prevent the need to expand all other correctional centers in order to hold high security sentenced offenders. In order to save construction dollars, Spring Creek Phase II should be approved in FY 87 and the City of Seward notified to proceed.
Project:	Fairbanks Correctional Center-Double Housing Unit and Remodeling
Offenders:	240 pre- and post-trial offenders from the Fairbanks area.
Estimated Costs:	$12.8 million on existing site.

Critical Factors: Continued overcrowding in the Fairbanks facility and the growth of the Fairbanks area including the Light Infantry expansion at Fort Wainwright; utilization of the double housing unit prototype will save design costs, construction time, and operational costs. New kitchen, dining, and food storage space will be built and present dining/kitchen and dorm areas converted to essential inmate program space.

FY 88

Project: Anchorage-Replacement of Sixth Avenue-Classification and Diagnostic Center

Offenders: 320 pre- and post-trial Anchorage area offenders, classification, diagnostic center.

Estimated Costs: $40.3 million (land not identified)

Critical Factors: The Municipality of Anchorage owns the present Sixth Avenue facility which it leases to the State. The MOA has notified the State that it should plan to give up the facility sometime during the next few (unspecified) years.

A classification and diagnostic center will replace the current Sixth Avenue facility and will provide mental health care.

Project: Juneau-Lemon Creek Correctional Center Expansion

Offenders: 232 pre- and post-trial offenders from the Southeastern Region.

Estimated Costs: $15.5 million on existing site.

Critical Factors: Utilization of the double housing unit prototype will save design costs, construction time, and operational costs. Some institutional remodeling (i.e., kitchen) and conversion of existing dormitory space to essential inmate program space. Facility is at or above capacity at all times and will be able, with expansion, to house increasing pre-trial and local relatively short term sentenced populations.

FY 89

Project: Kenai-Wildwood Correctional Center Expansion

Offenders: 240 post-trial medium security offenders.

Estimated Costs: $15.5 million on existing site.

Critical Factors: Utilization of double housing unit prototype will save design costs, construction time, and operational costs. Regional as well as statewide growth and inmate program space will be the driving force for Wildwood expansion.

NOTE: Wildwood is currently a leased facility. It could and should be purchased for approximately $5 million as early as possible in order to preserve the State's current and substantial but sound investment.

Project: Wasilla-Goose Bay Correctional Center-New Facility

Offenders: 320 sentenced medium security offenders.

Estimated Costs: $40.3 million on existing site.

Critical Factors: By 1991 this facility will be required in order to accommodate the increased number of inmates generated in the Southcentral area of Alaska and statewide. The totally new correctional facility would supplement, not replace, the existing minimum security facility at the Goose Bay site.

Summary Capital Projects

FY 87		FY 88		FY 89		Total
Delta	11.0	Anchorage	40.3	Kenai	15.5	
Seward	(22.7)*	Juneau	15.5	Goose Bay	40.3	
Fairbanks	12.8	Ren & Rep	1.0	Ren & Rep	1.0	
Ren & Rep	1.0					
	24.8		56.8		56.8	138.4

*to be financed by the City of Seward and leased to the State upon completion.

ALASKA DEPARTMENT OF LAW - CRIMINAL DIVISION

A Briefing Paper On Presumptive Sentencing Prepared For The House and Senate Judiciary Committees

February 13, 1985

OVERVIEW: PRESUMPTIVE SENTENCING

1. What is Presumptive Sentencing?

In 1978, as part of the comprehensive revision of the criminal code, the Alaska legislature adopted an equally sweeping revision of the state's sentencing laws. The most significant aspect of the sentencing revision was the enactment of presumptive sentencing.

Presumptive sentencing is a system in which judicial discretion is channeled by the legislature. The legislature sets a specific term of imprisonment which is "presumed" to be appropriate for the average offender (thus the use of the term "presumptive") in the absence of specific aggravating or mitigating factors. If such factors are present the sentence may be varied by the court within a designated range. Other features of the system are ineligibility for parole, increasingly higher presumptive sentences for repeat offenders, and a "safety valve" that allows deviation from the presumptive sentence in extraordinary and unanticipated circumstances before a three-judge sentencing panel.

When Alaska adopted presumptive sentencing in 1978, six other states had already adopted similar sentencing schemes: Arizona, California, Colorado, Illinois, Indiana and New Mexico. Today, seven additional states have also adopted presumptive sentencing schemes: Florida, Minnesota, New Jersey, North Carolina, Pennsylvania, South Carolina, and Washington.

The two most frequently asked questions about presumptive sentencing are (1) why do we need presumptive sentencing; and (2) are the numbers which have been set by the legislature (i.e., the specific presumptive terms) too high or too low as to a particular offense or a particular group of offenses? To answer these questions we have to take a look at how sentencing works, why presumptive sentencing was developed, and how the specific terms were arrived at.

2. Why Presumptive Sentencing?

To understand why presumptive sentencing was adopted, one has to understand how sentencing works without a presumptive system. Prior to 1980, sentencing in Alaska (and in most other states) was indeterminate and solely at the judge's discretion up to a statutory maximum. A judge could impose any sentence, ranging from zero to the maximum allowed under the law. (In cases where the person was convicted of more than one offense, the judge could also impose "consecutive" sentences which meant that the maximum sentence in many cases was almost unlimited.) This type of sentencing system works fine in a perfect world but judges are subject to the same human frailties that affect us all. They therefore make mistakes and are subject to being influenced, either consciously or unconsciously, by inappropriate considerations.

However when an improper sentence is imposed, it is often difficult if not impossible to correct that sentence. The courts have told us that, although an excessive sentence

can be lowered, a sentence which is too lenient cannot be increased. With sentences that are too lenient, the only thing that the appellate court can do is "disapprove" of the sentence. Even with sentences that many people would find to be improper (either too harsh or too light), the appellate court will require that the sentence be reduced only if the court is convinced that the judge was "clearly mistaken" in imposing the sentence. Thus the legal system as certain inherent limitations on its ability to change a sentence that has been lawfully imposed.

This kind of system with unlimited discretion inevitability leads to widely varying sentences in similar types of cases. In the mid-70's the Alaska Judicial Council conducted two studies of felony sentencing practices in Alaska. Several hundred cases were analyzed from all over the state and with all types of crimes. The conclusion reached by these studies was that the two most significant factors affecting a person's sentence were (1) the race of the defendant, and (2) the identity of the sentencing judge. The summary section of the council's 1975 study noted that

> [a] higher percentage of some groups of persons were convicted or sentenced more harshly than other groups, however. Even when many other factors were held equal, some groups of persons still appeared to receive disparate treatment. For example, two-thirds of all Blacks sentenced for robbery received sentences of five years or greater, while less than one-third of Caucasians did, even though twice as many Caucasians sentenced for robbery had prior felony records as Blacks.

ALASKA JUDICIAL COUNCIL, SENTENCING IN ALASKA: A DESCRIPTION OF THE PROCESS AND SUMMARY OF STATISTICAL DATA FOR 1973 (1975) (B. Cutler, Research Attorney), page 175.

The Judicial Council's studies directly led to the consideration and adoption of a system that would channel the judge's discretion toward uniform sentences based on appropriate sentencing criteria, and away from disparate sentences that were potentially affected by inappropriate criteria. The purpose of Alaska's presumptive sentencing system was made clear in the legislative commentary that accompanied the passage of the criminal code: "the elimination of unjustified disparity in sentences imposed on defendants convicted of similar offenses - disparity which is not related to legally relevant sentencing criteria." ALASKA SENATE J. SUPP. NO. 47, at 148 (June 12, 1978).

Alaska's presumptive sentencing system still leaves a great deal of discretion with the sentencing judge. With few exceptions, presumptive sentencing only applies to repeat felons. There is no mandated presumptive term for first time offenders except in cases of (1) sexual assault in the first degree or sexual abuse of a minor in the first degree; (2) class A felonies, i.e., robbery, arson, assault with serious physical injury, manslaughter; and (3) assaults on peace officers and other emergency service providers.

With this discretion still remaining under Alaska law, trial judges at times continue to sentence too harshly or

too leniently in the view of the appellate courts. In Langton v. State, 662 P.2d 954 (Alaska App. 1983), the Alaska Court of Appeals was faced with 3 similar cases of child abuse where one defendant got 6 years, one got no jail time at all, and one got 20 years. (At the time, such offenses were not subject to presumptive sentencing.)

Judge Singleton's concluding paragraphs in Langton concisely summarized the three disparate sentences imposed on each defendant and the unsatisfactory modifications of the sentences that the court of appeals was able to affect.

> Langton, Doe and Joe were convicted of sexual assaults of children. Of the three, Langton was the worst offender since he committed many separate assaults over a long period of time. Doe assaulted two children on one occasion and Joe committed a single assault. In all other respects, the offenses are virtually indistinguishable. In a rational system seeking to eliminate disparity and attain reasonable uniformity, Langton should have received the most severe sentence and Doe and Joe similar and substantially less severe sentences. In actuality, Langton received a much less severe sentence than Joe, and Doe received no period of imprisonment at all. While we have modified two of the sentences, the modified sentences still leave substantial disparity in place. This unsatisfactory result is a necessary concommitant of the substantial trial court discretion which still exists for first-felony offenders where the ultimate decision must rest upon an application of the clearly mistaken standard.

Id. at 962-63 (footnotes omitted, emphasis added).

Under a discretionary sentencing system, it is not surprising that the sentencing disparities described in Langton occurred. In such systems some defendants are treated much differently than other similar defendants based on a judge's

individual sentencing attitudes, and this serves to undermine public confidence in the entire criminal justice system. Presumptive sentencing minimizes, if not eliminates, these unjustified disparities. It was for this reason that in 1978 the legislature enacted presumptive sentencing for all repeat felony offenders. Cases such as Langton serve to emphasize the continued need for presumptive sentencing.

3. The Specific Presumptive Terms

The original presumptive sentencing system enacted in 1978 (with an effective date of January 1, 1980) has only been modified slightly since then. The specific presumptive terms enacted by the legislature were the result of a great deal of careful thought and study, and in some instances were based on information provided by the Alaska Judicial Council relating to past sentencing practices in Alaska. The various proposals for presumptive terms considered by the legislature in 1978 appear in Chart A (Criminal Code Revision Subcommission version) and Chart B (House Judiciary version, Terry Gardiner, Chairman). The final version as adopted in 1978 is set out in Chart C and the present system is displayed in Chart D. In addition, a comparison of Alaska's system with the systems in other states shows that the specific terms imposed under Alaska law are consistent with, and in many cases lower, than those imposed by the laws of other states. The Arizona scheme (one of the original presumptive sentencing states) appears in Chart E.

The present sentencing system in Alaska is based on the need for uniformity, certainty, and equal treatment. The specific presumptive terms have been based on past sentencing practices, sentencing systems from other states, and the legislature's assessment of sentences which are appropriate to the crime committed. However, these same considerations can and should be periodically reviewed in light of actual practice to determine whether there is any need for modification. For example, in 1982 and 1983 the legislature provided for additional specific presumptive terms when the defendant possessed a firearm, assaulted a peace officer, or committed a crime of sexual assault in the first degree. If it is determined that the presumptive sentencing system is in need of change then there are several ways to go about it:

(1) the specific presumptive terms can simply be reduced or increased, or a narrow range can be substituted for a specific number of years;

(2) additional mitigating or aggravating factors, which are precisely worded to avoid overbroad interpretations, can be considered;

(3) parole eligibility can be expanded or limited; and

(4) sentence reductions based on "good time" credit can be expanded or limited.

The most important thing to keep in mind, however, is that any change in the presumptive sentencing system should be

made with the same degree of careful study, consideration, and debate that accompanied its original adoption.

PROPOSAL OF CRIMINAL CODE REVISION SUBCOMMISSION: HB 661 (1978)

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Class A Felony	0 - 15	3-7 (7-11) 11-16	7-11 (11-18) 18-30
Class B Felony	0 - 7	1-3 (3-5) 5-7	3-7 (7-11) 11-16
Class C Felony	0 - 3	0-3mo. (3mo.-3) 3-4 1/2	1-3 (3-5) 5-7

Presumptive range is circled. Numbers to right is range of sentence if factors in aggravation are established. Numbers to left is range of sentence if factors in mitigation are established.

CHART "A"

HOUSE JUDICIARY PROPOSAL: CSHB 661

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Class A Felony	3 - 15* 0 - 15	5 (10) 15	7 1/2 (15) 22 1/2
Class B Felony	0 - 7	2 1/2 (5) 7 1/2	5 (10) 15
Class C Felony	0 - 3	1 (2) 3	2 (4) 6

* If firearm used.

Presumptive terms are circled. Number to right is highest sentence for factors in aggravation; number to left is lowest for factors in mitigation.

CHART "B"

PRESUMPTIVE SENTENCING AS ENACTED IN 1978

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Class A Felony	0 - 20 3 - (6*) - 20	5 (10) 20	7 1/2 (15) 20
Class B Felony	0 - 10	0 (4) 10	3 (6) 10
Class C Felony	0 - 5	0 (2) 5	0 (3) 5

Number in circle is presumptive sentence. Number to left is lowest mitigated sentence; number to right is highest aggravated sentence.

Only if firearm used or if victim suffers serious physical injury and offense is not manslaughter.

CHART "C"

PRESUMPTIVE SENTENCING TODAY

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Sexual Assault or Sexual Abuse of a Minor in the First Degree	4 (8) 30 5 (10*) 30	7 1/2 (15) 30	12 1/2 (25) 30
Class A Felony	2 1/2 (5) 20 3 1/2 (7**) 20	5 (10) 20	7 1/2 (15) 20
Class B Felony	0 (2***) 10 0 - 10	0 (4) 10	3 (6) 10
Class C Felony	1/2 (1***) 5 0 - 5	0 (2) 5	1 1/2 (3) 5

* Ten year presumptive term only applies in cases where the defendant possesses a firearm, uses a dangerous instrument, or causes serious physical injury during the offense. All other cases are subject to the eight year presumptive term.

** Seven year presumptive term only applies if crime is a class A felony other than manslaughter and the defendant possesses a firearm, uses a dangerous instrument, causes serious physical injury or knowingly directed the conduct constituting the offense at a uniformed or otherwise identified peace or correctional officer, fire fighter, ambulance attendant, or other emergency responder engaged in official duties. All other cases are subject to the five year presumptive term.

*** Presumptive term of imprisonment only applies if defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise identified peace o correctional officer, fire fighter, ambulance attendant, or other emergency responder engaged in official duties. All other cases are not subject to presumptive sentencing and the defendant faces a maximum term of imprisonment of ten years for a class B felony and five years for a class C felony.

CHART "D"

PRESUMPTIVE SENTENCING IN ARIZONA

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Class 2 Felony	5 (7) 14	7 (12) 21	14 (19) 28
(residential burglary, sexual assault, arson	7 (12) 21	14 (19) 28	21 (28) 35
Class 3 Felony	4 (5) 10	5 (9) 15	10 (14) 20
(manslaughter, armed robbery, aggravated assault)	5 (8) 15	10 (14) 20	15 (20) 25
Class 4 Felony	2 (4) 5	4 (6) 8	8 (6) 12
(negligent homicide, perjury, unarmed robbery)	4 (6) 8	8 (10) 12	12 (14) 16
Class 5 Felony	1 (2) 3	1 (3) 4	4 (5) 6
(credit card theft, shoplifting)	2 (3) 4	2 (5) 6	6 (7) 8
Class 6 Felony	3/4 (1 1/2) 2	1 (2) 3	3 (4) 5
(animal fighting, jury tampering, false swearing)	1 1/2 (2) 3	3 (4) 4 1/2	4 (5) 6

Numbers below broken line involve offense committed with deadly weapon or a victim who suffers serious physical injury. Parole eligibility for all offenders is restricted to last half or third of sentence, depending on length of sentence. Probation is precluded for second and third felony offenders.

TERMS OF IMPRISONMENT AND AUTHORIZED FINES
FIRST OFFENSES UNDER CRIMINAL CODE

FELONY	TERMS OF IMPRISONMENT
"A" felony	2½ - [5-7]* - 20
"B" felony	0 - [2]** - 20
"C" felony	0 - [1]*** - 5

KEY

Number in bracket is presumptive sentence.
Number to left is lowest mitigated sentence.
Number to right is highest aggravated sentence.

*Five year presumptive term if first offense; a seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm or used dangerous instrument or caused serious physical injury during the offense or knowingly directed the conduct at a uniformed peace officer or emergency responder engaged in official duties.

**Two year presumptive sentence applies if first B felony conviction and defendant knowingly directed the conduct at a uniformed peace officer or emergency responder engaged in official duties.

***One year presumptive sentence applies if first C felony conviction and defendant knowingly directed the conduct at a uniformed peace officer or emergency responder engaged in official duties.

MISDEMEANOR	MAXIMUM TERM
A misdemeanor	1 year
B misdemeanor	90 days

MAXIMUM FINES-PERSONS

OFFENSE	FINE
Sexual assault I, misconduct involving a controlled substance, murder or kidnapping	$75,000
A, B, or C felony	$50,000
A misdemeanor	$ 5,000
B misdemeanor	$ 1,000
Violation	$ 300

MAXIMUM FINES-ORGANIZATIONS

All offenses - $100,000 or 3 times pecuniary gain - whichever is greater

CLASSIFICATION OF OFFENSES IN CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder I
AS 11.41.100
20 - 99 years

Murder II
AS 11.41.110
5 - 99 years

Kidnapping
AS 11.41.300
5 - 99 years

Misconduct involving controlled substance I
AS 11.71.010
5 - 99 years

Sexual assault I or sexual abuse of minor I
AS 11.41.410 & AS 11.41.434

First offense not involving firearms, use of dangerous instrument, or causing serious injury
[8] - 30 years

First offense involving one of the above
[10] - 30 years

CLASSIFIED FELONIES

A	B	C
Attempted murder I, sexual assault sexual assault of minor, misconduct involving a controlled substance I, 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, sexual assault I, sexual assault of a minor, misconduct involving a controlled substance II, 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)
	Assault II AS 11.41.210	Criminally negligent homicide AS 11.41.130
	Sexual assault II AS 11.41.420	Custo ial interference I AS 11.41.320

CLASSIFIED FELONIES

A	B	C
Manslaughter AS 11.41.120	Unlawful exploitation of a minor AS 11.41.455	Sexual assault III AS 11.41.430
Assault I AS 11.41.200	Sexual abuse of minor II AS 11.41.436	Assault III AS 11.41.220
Robbery I AS 11.41.500	Robbery II AS 11.41.510	Sexual abuse of a minor III AS 11.41.438
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 checks, $25,000 or more AS 11.46.280(a)(1)	Theft II AS 11.46.130
Promoting person under 16 to engage in prostitution AS 11.66.110(a)(2)	Burglary I AS 11.46.300	Concealment of merchandise, $500 or more AS 11.46.220(c)(1)
Misconduct involving controlled substance II AS 11.71.020	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	

CLASSIFIED FELONIES

B	C
Scheme to defraud AS 11.46.600	Issuing a bad check, $500 or more AS 11.461280(d)(2)
Defrauding creditors, $25,000 or more AS 11.46.730(c)(1)	Fraudulent use of a credit card, $500 or more AS 11.46.285(b)(1)
Bribery AS 11.56.100	Obtaining a credit card by fraudulent means AS 11.46.290
Receiving a bribe AS 11.56.110	Burglary II AS 11.46.310
Perjury AS 11.56.200	Criminal Mischief II AS 11.46.482
Escape II AS 11.56.310	Forgery AS 11.46.505
Interference with official proceedings AS 11.56.510	Criminal posession of forgery device AS 11.46.520
Receiving a bribe by Witness or juror AS 11.56.520	Criminal simulation $500 or more AS 11.46.530(b)(1)
Criminal possession of explosives with intent to commit A felony AS 11.61.240(b)(2)	Offering a false instrument for recording AS 11.46.550
Promoting prostitution I AS 11.66.110	

CLASSIFIED FELONIES

B	C
Misconduct involving controlled substance III AS 11.71.030	Misapplication of property $500 or more AS 11.46.620
Delivery of imitatin controlled substance AS 11.73.030	Falsifving business records AS 11.46.630
	Commercial bribe receiving AS 11.46.660
	Commercial bribery AS 11.46.670
	Defrauding creditors, $500 - $25,000 AS 11.46.730(c)(2)
	Criminal use of computer AS 11.46.740
	Endangering welfare of minor AS 11.51.100
	Perjury by inconsistent statements AS 11.56.230
	Escape III AS 11.56.320
	Permitting an escape AS 11.56.370
	Promoting contraband I AS 11.56.375

CLASSIFIED FELONIES

C

Tampering with witness I
AS 11.56.540

Jury tampering
AS 11.56.590

Misconduct by a juror
AS 11.56.600

Tampering with physical evidence
AS 11.56.610

Harming a police dog I
AS 11.56.705

Hindering prosecution I
AS 11.56.770

False Accusation
AS 11.56.805

Terroristic threatening
AS 11.56.810

Riot
AS 11.61.100

Distribution of child pornography
AS 11.61.125

Promoting an exhibition of
fighting animals
AS 11.61.145(a)(1) & (2)

CLASSIFIED FELONIES

C

Misconduct involving weapons I
AS 11.61.200

Criminal possession of explosives with intent to commit B felony
AS 11.61.240(b)(3)

Unlawful furnishings of explosives
AS 11.61.250

Promoting prostitution II
AS 11.66.120

Promoting gambling I
AS 11.66.210

Possession of gambling records I
AS 11.66.230

Misconduct involving controlled substance IV
AS 11.71.040

Manufacture or delivery of imitation controlled substances
AS 11.73.010

Possession of substance with intent to manufacture imitation controlled substance
AS 11.73.020

Advertisement to promote delivery of controlled substance
AS 11.73.040

ARTICLES

PRESUMPTIVE SENTENCING IN ALASKA

BARRY JEFFREY STERN*

As part of its comprehensive revision of the Criminal Code in 1978, the Alaska legislature adopted a sweeping revision of the state's sentencing laws.[1] The most significant aspect of the sentencing revision was the enactment of a presumptive sentencing system. Presumptive sentencing substantially restricts judicial sentencing discretion by specifying in advance the presumptive term of imprisonment that the typical defendant convicted of an offense should receive.[2] Legislative

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1. Act of July 17, 1978, ch. 166, 1978 Alaska Sess. Laws 219 (effective Jan. 1, 1980) [hereinafter referred to as the Criminal Code].

2. The presumptive term of imprisonment is set by the legislature, or other body designated by the legislature, and may be varied by the trial court within a designated range if the presence of aggravating or mitigating factors is established at sentencing. Other features of a presumptive sentencing scheme include: the specification of increasingly severe presumptive terms of imprisonment based on the prior criminal history of the defendant; provisions allowing deviation from the presumptive term of imprisonment in extraordinary and unanticipated circumstances; and significant restrictions on the authority of a parole board or other administrative agency to release a prisoner before the expiration of his sentence. *See generally* TASK FORCE ON CRIMINAL SENTENCING, TWENTIETH CENTURY FUND, FAIR AND CERTAIN PUNISHMENT 19-22 (1976) [hereinafter cited as TASK FORCE REPORT].

Thirteen states in addition to Alaska have now adopted some form of presumptive sentencing system. ARIZ. REV. STAT. ANN. §§ 13-601 to -604, 13-701 to -709 (1978 & Supp. 1984-1985); CAL. PENAL CODE §§ 1170-1170.95, 12022-12022.7 (West 1982 & Supp. 1984); COLO. REV. STAT. § 18-1-105 (Supp. 1984); FLA. STAT. ANN. § 921.001 (West Supp. 1984); ILL. ANN. STAT. ch. 38, §§ 1005-5-3 to -3.2, 1005-8-1 to -7 (Smith-Hurd 1982 & Supp. 1984-1985); IND. CODE ANN. §§ 35-50-1A-1 to -2-9 (Burns 1979 & Supp. 1984); MINN. STAT. ANN. § 244 (West Supp. 1984); N.J. STAT. ANN. §§ 2C:43-1 to :44-5 (West 1982 & Supp. 1984-1985); N.M. STAT. ANN. §§ 31-18-15 to -20 (1981 & Supp. 1984); N.C. GEN. STAT. §§ 15A-1340.1-.7 (1983); 42 PA.

commentary[3] makes it clear that the purpose of the presumptive sentencing system is "the elimination of unjustified disparity in sentences imposed on defendants convicted of similar offenses — disparity which is not related to legally relevant sentencing criteria."[4]

Studies of felony sentencing practices published by the Alaska Judicial Council[5] dramatically brought the problem of unjustified disparity in sentencing to the attention of the state legislature. The studies' most disturbing finding was that for some crimes, all other factors being equal, the defendant's race was a significant factor affecting both

CONS. STAT. ANN. § 9721 (Supp. 1982); S.C. CODE ANN. §§ 24-27-10 to -70 (Law. Co-op. Supp. 1983); WASH. REV. CODE ANN. § 9.94A.010-.910 (Supp. 1985).

The Criminal Code Revision Subcommission which proposed the Criminal Code to the legislature, *see infra* note 62, relied on a report by the Task Force on Criminal Sentencing, established by the Twentieth Century Fund, *see* TASK FORCE REPORT, *supra* in drafting its version of a presumptive sentencing system. *See* ALASKA CRIMINAL CODE REVISION SUBCOMMISSION, ALASKA CRIMINAL CODE REV. pt. 6, at 9 (Tent. Draft 1978) (citing the reader to the task force report for a "full discussion of presumptive sentencing.") [hereinafter cited as ALASKA CRIMINAL CODE REVISION]; *see also* Heathcock v. State, 670 P.2d 1155, 1159 n.2 (Alaska Ct. App. 1983) (Singleton, J., concurring and dissenting).

The task force recommended presumptive sentencing as an alternative to what it referred to as the then existing "dominant sentencing structure currently employed in the United States . . . based on the indeterminate sentence." TASK FORCE REPORT, *supra* at 11. Additionally, the task force viewed presumptive sentencing as a preferable alternative to proposals for flat-time or mandatory minimum sentencing. *Id.* at 15-18.

3. The Alaska Senate published the commentary to the Criminal Code as a supplement to its daily journal. ALASKA SENATE COMM. ON THE JUDICIARY, COMMENTARY ON THE ALASKA REVISED CRIMINAL CODE, ALASKA SENATE J. SUPP. NO. 47 (June 12, 1978) [hereinafter cited as ALASKA SENATE COMMENTARY]. The Alaska House of Representatives subsequently adopted this commentary. ALASKA HOUSE COMM. ON THE JUDICIARY, COMMENTARY ON THE ALASKA REVISED CRIMINAL CODE, ALASKA HOUSE J. at 1716 (June 16, 1978). The Alaska Court of Appeals has frequently referred to the commentary in determining the legislature's intent in enacting particular sections of the Criminal Code. *See, e.g.*, State v. Rastopsoff, 659 P.2d 630, 635-36 (Alaska Ct. App. 1983); Wasson v. State, 652 P.2d 117, 119 (Alaska Ct. App. 1982).

4. ALASKA SENATE COMMENTARY, *supra* note 3, at 148 (citations omitted). *See also* Juneby v. State, 641 P.2d 823, 829-30 (Alaska Ct. App. 1982), *modified*, 655 P.2d 30 (Alaska Ct. App. 1983).

5. ALASKA JUDICIAL COUNCIL, ALASKA FELONY SENTENCING PATTERNS: A MULTIVARIATE STATISTICAL ANALYSIS (1974-1976) (Prelim. Report 1977) [hereinafter cited as ALASKA FELONY SENTENCING]; ALASKA JUDICIAL COUNCIL, SENTENCING IN ALASKA: A DESCRIPTION OF THE PROCESS AND SUMMARY OF STATISTICAL DATA FOR 1973 (1975) (B. Cutler, Research Attorney) [hereinafter cited as SENTENCING IN ALASKA]. These studies are cited in the legislative commentary to the Criminal Code immediately following the legislature's declaration that the purpose of the sentencing revisions is to eliminate unjustified disparity in sentencing. ALASKA SENATE COMMENTARY, *supra* note 3, at 148.

the type of sentence imposed and its length.[6] The studies also showed that the sentencing judge's character as a "strict" or "lenient" sentencer was another critical factor influencing sentence length for some crimes.[7] Surprisingly, the studies showed that factors usually expected to play a significant role in determining sentence length were of little importance.[8]

6. The summary section of the council's 1975 study noted that:

> A higher percentage of some groups of persons were convicted or sentenced more harshly than other groups, however. Even when many other factors were held equal, some groups of persons still appeared to receive disparate treatment. For example, two-thirds of all Blacks sentenced for robbery received sentences of five years or greater, while less the one-third of Caucasions did, even though twice as many Caucasians sentenced for robbery had prior felony records as Blacks.

SENTENCING IN ALASKA, *supra* note 5, at 175.

The council found that the incidence of probation sentences varied more by race than by any other factor. *Id.* at 139. "Statewide, only 23% of Blacks and only 25% of Alaska Natives received probation, while 43% of Caucasians received probation." *Id.* The council cautioned that the apparent disparities highlighted in its 1975 study could be "the correct result of differences in individual sentencing needs." *Id.* at 175-76. Nevertheless, it concluded that "disparities of such great proportion as noted [in the study], especially among racial groups, suggests strongly an anomalous influence in the sentencing process that warrants careful follow-up investigation." *Id.* at 176.

The "follow-up investigation" called for was conducted in the subsequent council study of statewide felony sentences in Alaska between August, 1974 and August, 1976. ALASKA FELONY SENTENCING, *supra* note 5. This report confirmed at least some of the fears first raised in the 1975 study.

> One of the most disturbing findings of the study concerned the impact on sentence length of membership in the black race. After taking into account the independent contribution of all other factors in the study, being black in and of itself contributed an estimated 11.9 months to drug felony sentences and 6.5 months to sentences for crimes of theft or unlawful entry. This independent "blackness factor" survived both statistical tests and was shown to increase the severity of sentences entirely aside from such considerations as employment history, educational level, occupation, income, prior criminal history and probation or parole status. Blackness was not a factor, however, in crimes of violence or in frauds, forgeries or embezzlements.

Id. at v-vi.

The council noted that the average additional 11.9 months imposed upon blacks convicted of drug felonies "is more than the estimated contribution of a record of three or more prior misdemeanors, or that of being convicted of sale of narcotics (the most serious drug felony studied)." *Id.* at 43. The council further found that for those defendants convicted of burglary, larceny, and receiving and concealing stolen property, blacks received sentences averaging about 6.4 months longer than whites. *Id.* at 28. "This estimate takes all other factors recorded in the study into account. In other words, entirely apart from criminal record, type of offense charged, income, etc., being black was associated with a significantly higher sentence." *Id.* The council suggested that this "disturbing" finding may be interpreted either as a reflection of minority group disadvantages, or as evidence "that the criminal justice system in Alaska discriminates against blacks." *Id.* at 28-29.

7. ALASKA FELONY SENTENCING, *supra* note 5, at 20-22, 40-46.

8. The council found "that in the violent crime category, neither extent of physi-

Presumptive sentencing has now been in effect in Alaska for five years.[9] During that period, the legislature has made several significant amendments to the statutory scheme and Alaska's appellate courts have decided numerous cases interpreting the scope of individual sections. This article examines Alaska's presumptive sentencing system in light of the legislative and judicial developments since enactment. The article is divided into three sections. The first section provides an overview of the presumptive sentencing system. The second section examines in greater detail two of its key components: the use of prior convictions to establish repeat felony offender status, and the aggravating and mitigating factors used by courts to adjust the presumptive term. The third section discusses how presumptive sentencing has affected appellate review of sentences imposed on first felony offenders[10] not covered by presumptive sentencing.

I. An Overview of Presumptive Sentencing

A defendant is subject to presumptive sentencing if he is convicted of a crime classified as a class A felony,[11] sexual assault in the

cal injury to the victim (short of death) nor the use of a firearm by the defendant had any significant independent impact on sentence length." Alaska Felony Sentencing, *supra* note 5, at ii. Only where the victim died did injury to the victim affect the length of the offender's sentence. *Id.* at 24.

9. Although the legislature passed the Criminal Code in 1978, the Code did not take effect until January 1, 1980. Act of July 17, 1978, ch. 166, 1978 Alaska Sess. Laws 219. This article will examine legislative and judicial developments pertaining to presumptive sentencing occurring before April 12, 1985.

10. The term first felony offender will hereinafter be used to refer to a defendant who has no prior felony convictions that a court can consider for purposes of presumptive sentencing. The term second felony offender will hereinafter be used to refer to a defendant who has one prior felony conviction that can be considered for purposes of presumptive sentencing. *See infra* note 24 (defining the terms third felony offender and repeat felony offender for the purposes of this article).

11. Alaska Stat. § 12.55.125(c) (1984). The Criminal Code classifies the overwhelming majority of offenses into six categories according to the seriousness of the conduct defined — class A, B, and C felonies; class A and B misdemeanors; and violations. *Id.* § 11.81.250(a)(1)-(6) (1983). A limited number of the most serious offenses defined in the Criminal Code are not classified under this structure, *see id.* § 11.81.250(a), and are referred to as unclassified felonies.

Class A felonies are the most serious classified offenses in the Criminal Code and "involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person." *Id.* § 11.81.250(a)(1). *See, e.g., id.* § 11.41.120 (1983) (manslaughter); *id.* § 11.41.500 (1983) (robbery in the first degree).

When it enacted the Criminal Code, the legislature did not reclassify offenses defined outside the Criminal Code under the classification scheme specified in Alaska Stat. § 11.81.250 (1983). In subsequent years, however, the legislature used the Criminal Code's classification scheme in authorizing penalties for crimes defined outside the Criminal Code. *See, e.g., id.* §§ 04.16.180-.200 (1980 & Supp. 1984) (classifying crimes pertaining to the violation of Title 4 of the Alaska Statutes (concerning

first degree,[12] or sexual abuse of a minor in the first degree.[13] Presumptive sentencing also applies to defendants convicted of class B felonies[14] or class C felonies,[15] but as a general rule, only if the defendant has previously been convicted of another felony.[16] The presumptive sentencing statutes, however, do not apply to sentencing for three categories of crimes: (1) misdemeanors;[17] (2) felonies defined outside the Criminal Code that carry their own specified penalties and are not classified as class A, B, or C felonies;[18] and (3) the unclassified felonies in the Criminal Code of murder in the first degree, murder in the second degree, kidnapping, and misconduct involving a controlled substance in the first degree.[19]

A defendant subject to presumptive sentencing faces a term of imprisonment that varies according to the crime he committed and his

alcoholic beverages) under the classification scheme of the Criminal Code). Once a felony is classified as a class A, B, or C felony, the terms of imprisonment specified in Alaska Stat. § 12.55.125 (1984), including any prescribed presumptive term of imprisonment, apply to persons convicted of that felony.

12. Alaska Stat. § 12.55.125(i) (1984). The crime of sexual assault in the first degree is defined in *id.* § 11.41.410 (1983).

13. Alaska Stat. § 12.55.125(i) (1984). The crime of sexual abuse of a minor in the first degree is defined in *id.* § 11.41.434 (1983).

14. Class B felonies "involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order." Alaska Stat. § 11.81.250(a)(2). *See, e.g., id.* § 11.46.300 (1983) (burglary in the first degree); *id.* § 11.56.200 (1983) (perjury).

15. Class C felonies "involved conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies." Alaska Stat. § 11.81.250(a)(3). *See, e.g.,id.* § 11.41.530 (coercion); *id.* § 11.46.520 (criminal possession of a forgery device).

16. *See* Alaska Stat. § 12.55.125(d)-(e) (1984). A very limited category of class B and C felonies is also subject to presumptive sentencing, regardless of whether the defendant has previously been convicted of a felony. *See infra* note 155 (discussion of Alaska Stat. § 12.55.125(d)(3), (e)(3) (1983). The type of prior felony conviction that can satisfy the previous felony conviction requirement is discussed *infra* text accompanying notes 63-105.

17. The Criminal Code specifies two classes of misdemeanors, class A and class B. Alaska Stat. § 11.81.250(a)(4)-(5) (1983). Class A misdemeanors are punishable by a maximum term of imprisonment of one year while class B misdemeanors are punishable by a maximum term of imprisonment of 90 days unless otherwise specified in the provision defining the offense. *Id.* § 12.55.135(a)-(b) (1984).

18. Since presumptive terms of imprisonment are specified only for class A, B, and C felonies, and for the crimes of sexual assault in the first degree and sexual abuse of a minor in the first degree, unclassified crimes outside the Criminal Code are not subject to presumptive sentencing. *See* Alaska Stat. § 12.55.125(c)-(e), (i) (1984). If, however, a felony defined outside the Criminal Code does not include a penalty provision, it is automatically classified as a class C felony, *id.* § 11.81.250(b) (1983), and consequently, is subject to the presumptive terms of imprisonment specified in *id.* § 12.55.125(e).

19. *See* Alaska Stat. § 12.55.125(a)-(b) (1984).

prior criminal history.[20] The sentence length equals an amount "the average defendant convicted of an offense should be sentenced to, absent the presence of legislatively prescribed factors in aggravation or mitigation or extraordinary circumstances."[21] For example, a defendant sentenced for a class C felony who has one prior felony conviction[22] faces a presumptive term of imprisonment of two years.[23] A defendant sentenced for the same felony but with two or more prior felony convictions[24] faces a presumptive term of imprisonment of three years.[25]

The trial court may increase or decrease a presumptive term of imprisonment depending on the presence of certain aggravating or mitigating factors.[26] The legislature has identified twenty-six aggravating and fifteen mitigating factors.[27] The trial court may consider only these forty-one factors in adjusting a presumptive term of imprisonment.[28] The parties must establish the presence of any aggravating

20. *See id.* § 12.55.125(c)-(e), (i). A defendant who is subject to presumptive sentencing but is sentenced without regard to the requirements of presumptive sentencing is sentenced illegally. On appeal, the sentence will be vacated. Kelly v. State, 663 P.2d 967, 974-75 (Alaska Ct. App. 1983).

21. ALASKA SENATE COMMENTARY, *supra* note 3, at 153.

22. The type of prior felony conviction that can be considered for purposes of presumptive sentencing is discussed *infra* text accompanying notes 63-105.

23. ALASKA STAT. § 12.55.125(e)(1) (1984).

24. The term third felony offender will hereinafter be used to refer to a defendant who has two or more prior felony convictions that can be considered for purposes of presumptive sentencing. The terms first felony offender and second felony offender, *see supra* note 10, as well as the term third felony offender are frequently used by the Alaska Court of Appeals to describe the status of a defendant subject to presumptive sentencing. *See, e.g.*, Shaw v. State, 673 P.2d 781, 785 (Alaska Ct. App. 1983); Fry v. State, 655 P.2d 789, 791 (Alaska Ct. App. 1983).

The term repeat felony offender will hereinafter be used to refer to a defendant who is a second or third felony offender, if, in the context in which the term is used, it is not necessary to distinguish between a second and third felony offender.

25. ALASKA STAT. § 12.55.125(e)(2) (1984).

26. *Id.* § 12.55.155(a) (1984). If the trial court imposes a sentence different from the presumptive term of imprisonment without having found aggravating or mitigating factors, it has imposed an illegal sentence that will be vacated on appeal. *See* State v. LaPorte, 672 P.2d 466, 467-68 (Alaska Ct. App. 1982); *see also* McManners v. State, 650 P.2d 414, 416 (Alaska Ct. App. 1982) (irrelevant that sentence in excess of the presumptive term is suspended).

The inability of a trial court to reduce a presumptive term of imprisonment unless mitigating factors are established does not violate the separation of powers doctrine or the constitutional requirement that "[p]enal administration shall be based on the principle of reformation and upon the need for protecting the public." Koteles v. State, 660 P.2d 1199, 1200 n.1 (Alaska Ct. App. 1983) (citing ALASKA CONST. art. I, § 12).

27. ALASKA STAT. § 12.55.155(c)-(d) (1984).

28. Juneby v. State, 641 P.2d 823, 831-32 (Alaska Ct. App. 1982) (citing ALASKA SENATE COMMENTARY, *supra* note 3, at 160), *modified*, 665 P.2d 30 (Alaska Ct. App. 1983). If the trial court adjusts the presumptive term of imprisonment for aggravating or mitigating factors that have not been specified by the legislature, the sentence imposed will be vacated on appeal. *See* Woods v. State, 667 P.2d 184, 186-87 (Alaska 1983).

and mitigating factors at the sentencing hearing by clear and convincing evidence.[29] The court may rely on evidence presented at trial as well as additional information presented at the sentencing hearing in determining whether any aggravating and mitigating factors are present.[30]

Voluntary drug or alcohol intoxication or addiction is specifically excluded from consideration as an aggravating or mitigating factor.[31] Additionally, an aggravating factor may not be used to increase the presumptive term if the same factor was used previously to trigger presumptive sentencing or to require a higher presumptive term of imprisonment for the crime, or if the factor is a necessary element of the offense in question.[32] Similarly, a mitigating factor may not be used to

29. ALASKA STAT. § 12.55.155(f) (1984).

30. Wolf v. State, 647 P.2d 609, 610-11 (Alaska Ct. App. 1982).

31. ALASKA STAT. § 12.55.155(g) (1984). The exclusion of voluntary intoxication from consideration as a mitigating factor does not violate equal protection. Wright v. State, 656 P.2d 1226, 1227-28 (Alaska Ct. App. 1983); *see also* State v. Ahwinona, 635 P.2d 488, 491 n.3 (Alaska Ct. App. 1981).

Since only the aggravating and mitigating factors listed in ALASKA STAT. § 12.55.155(c)-(d) (1984) may be considered by the trial court in adjusting the presumptive term of imprisonment, *see supra* note 28 and accompanying text, it might be argued that it was unnecessary to specifically exclude voluntary intoxication or addiction from consideration as an aggravating or mitigating factor. Nevertheless, the specific exclusion of intoxication or addiction as a sentencing consideration probably reflects the legislature's intent to prevent courts from using those factors as a basis for a finding of manifest injustice authorizing referral of a case to a three-judge sentencing panel under ALASKA STAT. §§ 12.55.165-.175 (1984). *See infra* text accompanying notes 43-59.

32. ALASKA STAT. § 12.55.155(e) (1984). *See* Woods v. State, 667 P.2d 184, 187-88 (Alaska 1983) (causing physical injury can be used to increase presumptive term for sexual assault in the first degree because physical injury is not a necessary element of sexual assault); Roberts v. State, 680 P.2d 503, 508 n.13 (Alaska Ct. App. 1984) (aggravating factor of causing physical injury can be used to increase presumptive term for robbery in the second degree because physical injury is not a necessary element of robbery).

The prohibition specified in section 12.55.155(e) does not "preclude the use of a prior conviction to invoke presumptive sentencing when that prior conviction is a necessary element of the present offense." *Fry*, 655 P.2d at 791.

In *Juneby*, the court of appeals cited ALASKA STAT. § 12.55.155(e) in support of its holding that conduct for which a defendant has been separately convicted and sentenced may not be considered to establish an aggravating factor to increase the presumptive term imposed for another crime. 641 P.2d at 842-43. The trial court had ruled that Juneby's unlawful entry into the victim's home "was among the most serious conduct included in the definition" of sexual assault. *Id.* at 842. Juneby had also been convicted and sentenced for burglary for that same unlawful entry. *Id.* The court of appeals ruled that it was improper to use the illegal entry to increase Juneby's presumptive term for sexual assault, *id.* at 842-43, stating that the legislative policy of

decrease the presumptive term if previously used at trial to reduce the charge to a lesser included offense.[33]

If the prosecution establishes an aggravating factor, the trial court may increase the presumptive term of imprisonment, provided that the sentence imposed does not exceed the statutory maximum sentence for the crime.[34] If the defendant establishes a mitigating factor, the trial court may reduce the presumptive term of imprisonment by a maximum amount that depends upon the length of the presumptive term of imprisonment.[35] A presumptive term of imprisonment of four years or less can be reduced by any amount.[36] A court may reduce a presumptive term of greater than four years to no less than one-half the presumptive term.[37]

In the vast majority of cases subject to presumptive sentencing, the trial court cannot suspend imposition of a sentence.[38] Furthermore, the power of the trial court to suspend even a portion of the sentence or to place the defendant on probation is substantially restricted.[39] The extent of this restriction depends on whether the trial court used aggravating or mitigating factors to impose a sentence other than the presumptive term of imprisonment. If neither party established aggravating or mitigating factors, the presumptive term must be imposed and no portion of it may be suspended.[40] If only aggravating factors are established and the court imposes a term of imprisonment in excess of the presumptive term, the court may suspend a portion of that sentence, but the unsuspended portion must be at least equal to the presumptive term of imprisonment.[41] If mitigating factors are established, the court may suspend all or a portion of the term, provided that the remaining term is not less than the minimum sentence allowed by establishment of mitigating factors.[42]

The following chart shows the presumptive terms of imprisonment in years (circled) authorized for defendants subject to presumptive sentencing classified according to the offense for which sentence is to be imposed and whether the defendant is a first, second, or third felony offender. The figure to the right of the presumptive term specifies the maximum term of imprisonment that a court can impose if factors in aggravation are established, and the figure to the left of the presumptive term specifies the minimum term of imprisonment a court can impose if factors in mitigation are established.

ALASKA STAT. § 12.55.155(e) sought to "avoid double punishment for the same conduct." *Id.* at 842. Thus, "[t]he judge's finding that Juneby's sexual assault was the most serious within the definition of the offense . . . amounted to punishing Juneby twice for the same conduct: first, by imposing the sentence for burglary; second, by aggravating his presumptive term for sexual assault." *Id.*

33. ALASKA STAT. § 12.55.155(e).

34. *Id.* § 12.55.155(a) (1984). Guidelines that a trial court must use when varying a presumptive term to account for aggravating factors are discussed *infra* text accompanying notes 121-45.

35. ALASKA STAT. § 12.55.155(a).

36. *Id.* § 12.55.155(a)(1). Guidelines that a trial court must use when varying a presumptive term to account for mitigating factors are discussed *infra* text accompanying notes 129-41.

37. ALASKA STAT. § 12.55.155(a)(2).

38. *Id.* § 12.55.155(g)(2) (1984). The restrictions on the trial court's ability to vary the presumptive sentence discussed *infra* text accompanying notes 39-42, do not apply in the very limited number of cases where a first felony offender convicted of a class B or C felony is subject to presumptive sentencing. *See infra* note 155. When the legislature created this category of first felony offenders subject to presumptive sentencing in 1983, it neglected to make a conforming amendment to the statute which restricts a trial court's ability to suspend imposition of sentence, place a defendant on probation, or otherwise reduce a term of imprisonment when the defendant is subject to presumptive sentencing. ALASKA STAT. § 12.55.125(g). *See* Act of July 3, 1983, ch. 92, § 1-3, 1983 Alaska Sess. Laws 1, 1-2. This group of first felony offenders is apparently subject to presumptive sentencing but the trial court's ability to suspend imposition of sentence or place the defendant on probation for any or all of the sentence remains unrestricted. *See infra* note 60 (discussing the parole eligibility of these offenders). Furthermore, these restrictions only apply to the *trial court's* ability to suspend imposition of sentence or impose probation. If the trial court finds that manifest injustice would result from its inability to exercise one of these sentencing options, and the three-judge panel agrees with that finding, the panel may suspend imposition of sentence or impose probation. *See infra* text accompanying notes 43-59; *see also* ALASKA STAT. § 12.55.015(a)(2), (a)(7), (a)(8) (1984).

39. *See* ALASKA STAT. § 12.55.125(g)(1); *see also* Lacquement v. State, 644 P.2d 856, 862-64 (Alaska Ct. App. 1982).

40. *Lacquement*, 644 P.2d at 863.

41. *Id.* at 863, n.17.

42. *Id.* at 863. For example, a second felony offender convicted of a class B felony could possibly have the entire four-year presumptive term of imprisonment specified in ALASKA STAT. § 12.55.125(d)(1) (1984) suspended if mitigating factors are established, since the trial court may reduce a presumptive term of four years or less by an amount as great as the presumptive term for factors in mitigation. *See supra* note 36 and accompanying text. By contrast, if a third felony offender is convicted of a class B felony and factors in mitigation are established, the court may suspend a portion of the sentence that is imposed, provided that the offender would still be required to serve at least three years of imprisonment. The presumptive term of imprisonment for a third felony offender convicted of a class B felony is six years, ALASKA STAT. § 12.55.125(d)(2), and under section 12.55.155(a)(2) the court may not reduce that sentence below three years for factors in mitigation. *See supra* note 37 and accompanying text. A trial court's decision to suspend any portion of the sentence because of factors in mitigation is nevertheless subject to compliance with the *Juneby* guidelines discussed *infra* text accompanying notes 131-45.

Current Offense	First Felony Offender			Second Felony Offender			Third Felony Offender		
Sexual Assault or Sexual Abuse of a Minor in the First Degree	4	(8)	30	7½	(15)	30	12½	(15)	30
	5 *	(10)	30						
Class A Felony	2½	(5)	20	5	(10)	20	7½	(15)	20
	3½ **	(7)	20						
Class B Felony	0	(2) ***	10	0	(4)	10	3	(6)	10
		0 - 10							
Class C Felony	½	(2) ***	5	0	(2)	5	1½	(3)	5
		0 - 5							

Explanatory Notes

* Ten year presumptive term only applies if the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the offense. ALASKA STAT. § 12.55.125(i)(2) (1984). All other cases are subject to the eight year presumptive term.

** Seven year presumptive term only applies if the crime is other than manslaughter and the defendant possessed a firearm, used a dangerous instrument, caused serious physical injury or knowingly directed the conduct constituting the offense at a uniformed or otherwise identified peace or correctional officer, firefighter, ambulance attendant, or other emergency responder engaged in official duties. ALASKA STAT. § 12.55.125(c)(2) (1984). All other cases are subject to the five year presumptive term.

*** Presumptive term of imprisonment only applies if the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise identified peace or correctional officer, fire fighter, ambulance attendant, or other emergency responder engaged in official duties. ALASKA STAT. § 12.55.125(d)(3), (e)(3) (1984). All other cases are not subject to presumptive sentencing and the defendant faces a maximum term of imprisonment of ten years for a class B felony and five years for a class C felony. ALASKA STAT. § 12.55.125(d)-(e) (1984).

The presumptive sentencing system limits judicial sentencing discretion and minimizes the possibility that a sentence will reflect considerations other than the nature of the offense and the prior criminal history of the defendant. Since presumptive sentencing so significantly restricts a trial court's sentencing discretion, however, the possibility exists that the required sentence would be clearly inappropriate in a particular case. "Wisely, [the legislature] included a safety valve to deal with situations where the statute rigidly applied would work an

injustice."[43] That "safety valve" is a panel of three superior court judges which may sentence the defendant without regard to the presumptive sentencing system.[44]

In order for a defendant to be sentenced by the three judge panel, the trial court must first find by clear and convincing evidence that manifest injustice[45] would result from imposing the sentence required by the presumptive sentencing statutes.[46] Injustice could result from the trial court's inability to consider a relevant circumstance at sentencing because it had not been included in the list of aggravating or mitigating factors.[47] Manifest injustice could also result if the presumptive term of imprisonment, even after it is adjusted for all relevant aggravating and mitigating factors, is clearly inappropriate considering the nature of the offense and the offender.[48]

The legislature anticipated that only rarely would compliance with the presumptive sentencing statutes produce manifest injustice.[49] While the court of appeals has concluded that it would be inconsistent with the purpose of presumptive sentencing for trial courts to routinely send cases to the three-judge panel,[50] it also has stated that "where the issue of manifest injustice appears to be a close one, we would urge sentencing judges to resolve any doubt in favor of a referral" to the panel.[51] If a party disagrees with the trial court's finding on manifest injustice, it may appeal that determination to the court of appeals, but that court will reverse only "clearly mistaken" decisions.[52]

The three-judge panel may review the sentencing issue *de novo* and consider evidence that was not before the trial court.[53] If the

43. Heathcock v. State, 670 P.2d 1155, 1166 (Alaska Ct. App. 1983) (Singleton, J., concurring and dissenting).

44. *See* ALASKA STAT. §§ 12.55.165-.175 (1984).

45. The term manifest injustice was not defined by the legislature. *See id.* It may, however, be equated with the concept of "shocking to the conscience" or "obvious unfairness." Lloyd v. State, 672 P.2d 152, 154 (Alaska Ct. App. 1983).

46. ALASKA STAT. § 12.55.165; *see also Heathcock*, 670 P.2d at 1156-57.

47. ALASKA STAT. § 12.55.165. A trial court may not base a finding of manifest injustice on the nature of the prior convictions which made the defendant a repeat felony offender. *See* Walsh v. State, 677 P.2d 912, 919 (Alaska Ct. App. 1984).

48. ALASKA STAT. § 12.55.165 (1984); *see also Heathcock*, 670 P.2d at 1157; *LaPorte*, 672 P.2d at 468 & n.4.

49. ALASKA SENATE COMMENTARY, *supra* note 3, at 162. The legislature, when it enacted section 12.55.165 (1984) "recognize[d] that in rare situations, imposition of a presumptive term of imprisonment, whether or not adjusted for aggravating or mitigating factors, [might] result in manifest injustice . . . . The legislature expect[ed], however, that the probability of such a result [would] be minimal." *Id.*

50. *Walsh*, 677 P.2d at 919.

51. *Lloyd*, 672 P.2d at 155.

52. *Walsh*, 677 P.2d at 918.

53. ALASKA STAT. § 12.55.175(b) (1984); *see also Shaw*, 673 P.2d at 784.

panel disagrees with the trial court's finding of manifest injustice, it must remand the case to the trial court for imposition of the sentence required by the presumptive sentencing system.[54] If, however, the panel agrees with the trial court's finding of manifest injustice, the panel may sentence the defendant to any term authorized for the crime by statute.[55] Consequently, if the trial court found that the requirements of presumptive sentencing would cause manifest injustice by mandating the imposition of too lenient a sentence, the panel, if it agrees with that finding, may sentence the defendant to any term of imprisonment up to the maximum sentence for the crime.[56] On the other hand, if the trial court found that the requirements of presumptive sentencing would cause manifest injustice by requiring the imposition of too severe a sentence, the panel, if it agrees with that finding, may impose a less severe sentence.[57] The sentence imposed by the panel may be less than that required by the presumptive sentencing system, or it may be any other available sentencing option including probation or a suspended imposition of sentence.[58] The panel's findings may be appealed to the court of appeals, which again may reverse only "clearly mistaken" decisions.[59]

Most defendants sentenced under presumptive sentencing are not eligible for parole.[60] The length of a term of imprisonment imposed under presumptive sentencing can only be reduced for good behavior while in prison. For every three days of good conduct served, the defendant will receive a one day reduction in the sentence required to be served.[61]

54. ALASKA STAT. § 12.55.175(b); *see also Shaw*, 673 P.2d at 786.

55. ALASKA STAT. § 12.55.175(b)-(c) (1984). The panel may not sentence the defendant if it merely finds that manifest injustice would result from imposition of the sentence required under the presumptive sentencing statutes. It must also agree with the trial court's finding on *why* manifest injustice would result. For example, if the trial court finds that manifest injustice would result because the required sentence is too *high*, a finding by the panel that manifest injustice would result because the sentence is too *low* would not constitute an agreement with the trial court's finding of manifest injustice. Under such circumstances, the panel must remand the case to the trial court for sentencing consistent with the presumptive sentencing scheme. *See Heathcock*, 610 P.2d at 1158; *see also* Winfree v. State, 683 P.2d 284, 286 (Alaska Ct. App. 1984).

56. ALASKA STAT. § 12.55.175(c); *see also* ALASKA SENATE COMMENTARY, *supra* note 3, at 162.

57. ALASKA STAT. §§ 12.55.015, 175(c) (1984).

58. *Id.*

59. *Shaw*, 673 P.2d at 784.

60. *See* ALASKA STAT. § 33.15.180 (1982). This restriction does not apply in the very limited number of cases where a first felony offender convicted of a class B or C felony is subject to presumptive sentencing. *See infra* note 155 and accompanying text. When the legislature created this category of first felony offenders subject to presumptive sentencing, it neglected to make a conforming amendment to the parole eligibility statute, ALASKA STAT. § 33.15.180 (1982), to preclude parole for this category of offenders. *See* Act of July 3, 1983, ch. 92, 1983 Alaska Sess. Laws 1, 1-2.

II. TWO KEY FEATURES OF PRESUMPTIVE SENTENCING

Two components of the presumptive sentencing system proposed by the Criminal Code Revision Subcommission[62] were the subject of substantial scrutiny when the legislature adopted the Criminal Code. Not surprisingly, these areas have also been subject to considerable legislative amendment and judicial review since enactment.

A. Prior Felony Convictions Used to Establish Status as a Repeat Felony Offender

Proof that the defendant has previously been convicted of a felony is critically important under the presumptive sentencing system. The length of the presumptive sentence varies directly with the number of the defendant's previous felony convictions.[63] Additionally, most class B and C felony convictions are not even subject to presumptive sentencing unless the defendant is a repeat felony offender.[64]

The Alaska legislature specified the type of prior convictions that can be used to establish the defendant's status as a repeat felony offender.[65] The legislature also specified the procedures for establishing prior convictions at sentencing.[66] The Alaska Court of Appeals subse-

61. *See* ALASKA STAT. § 33.20.010 (1982).

62. In 1976, the legislature established the Criminal Code Revision Subcommission and charged it with the responsibility of recommending "a comprehensive revision of the state's criminal laws including, but not limited to, necessary and topical revisions of crimes, criminal procedure, sentencing, and parole and probation of offenders, for submission to the legislature" by December 1, 1977. Act of June 3, 1976, ch. 114, §§ 2-4, 1976 Alaska Sess. Laws 1, 2-4. The Subcommission's proposed statutes and accompanying commentary appear in a six-part Tentative Draft of the Criminal Code published between February, 1977 and February, 1978. ALASKA CRIMINAL CODE REVISION SUBCOMMISSION, ALASKA CRIMINAL CODE REV., pt. 1-6 (Tent. Draft 1977-1978). Legislation encompassing the recommendations of the subcommission was introduced in the Alaska House of Representatives on January 19, 1978. H.R. 661, 10th Leg., 2d Sess. (Alaska 1978).

63. *See* ALASKA STAT. § 12.55.125(c)-(e), (i) (1984).

64. *See supra* notes 14-16 and accompanying text.

65. Act of July 17, 1978, ch. 166, 1978 Alaska Sess. Laws 108-09 (amended 1982). The restrictions on using prior convictions to establish that the defendant is a repeat felony offender do not otherwise limit the ability of a trial court to consider prior convictions in imposing sentence. *See* Lee v. State, 673 P.2d 892, 895 (Alaska Ct. App. 1983) and cases cited therein; *see also* Bloomstrand v. State, 656 P.2d 584, 591 (Alaska Ct. App. 1982).

66. Act of July 17, 1978, ch. 166, 1978 Alaska Sess. Laws 109-10 (amended 1982). The legislature made several amendments to the prior conviction statute in 1982. *See infra* note 67. The statute now provides that "prior convictions not expressly admitted by the defendant must be proved by authenticated copies of court records served"

quently interpreted these specifications and the Alaska legislature amended some of them in 1982.[67]

1. *Type of Prior Conviction a Court May Consider.* As originally proposed by the Criminal Code Revision Subcommission, a prior conviction could not be used to establish the defendant's status as a repeat felony offender unless it was of the same or more serious class of crime than the crime for which sentence was to be imposed.[68] For example, a defendant to be sentenced for a class B felony would be considered a second felony offender only if previously convicted of a class B or class A felony. The subcommission's proposal, however, was rejected by the legislature, which decided that the classification of the prior conviction under the Criminal Code was irrelevant.[69] Instead, the legislature merely required that the prior conviction, whether it occurred in Alaska or in another jurisdiction, be for an offense "having elements similar to those of a felony defined as such under Alaska law."[70]

One of the first issues to arise in applying the legislature's standard for identifying prior convictions was whether the elements of the

at least 20 days before sentencing. ALASKA STAT. § 12.55.145(b) (1984). *See* Huitt v. State, 678 P.2d 415, 422 (Alaska Ct. App.1984) (failure of defendant to object at sentencing hearing to lack of notice of prosecution's reliance on defendant's prior conviction, absent any indication that defendant lacked opportunity to contest issue, or suggestion that prior conviction is not a felony conviction, does not invalidate sentence imposed); *see also* Maldonado v. State, 676 P.2d 1093, 1094-95 (Alaska Ct. App. 1984); Kelly v. State, 663 P.2d 967, 974 (Alaska Ct. App. 1983).

A defendant may contest the authenticity of a prior judgment or other matters pertaining to why the prior conviction should not be considered for repeat felony status. ALASKA STAT. § 12.55.145(c) (1984). The defendant's objections are heard by the court sitting without a jury. *Id.* § 12.55.145(d). The court of appeals has held that the denial of a jury determination on whether a prior conviction can be used to establish that the defendant is a repeat felony offender does not violate the constitutional right to trial by jury. *Huitt*, 678 P.2d at 422-23.

67. Act of July 3, 1982, ch. 143, §§ 32-35, 1982 Alaska Sess. Laws 1, 26-27 (effective Oct. 1, 1982).

68. *See* ALASKA CRIMINAL CODE REVISION, *supra* note 2, at 8, 71-72.

69. *See* ALASKA STAT. § 12.55.145(a)(2).

70. *Id.* The statutory definition of a prior conviction does not require that the prior conviction be for a felony. *Id.* Indeed, one judge on the court of appeals has concluded that the definition should be read "literally so that conviction of any offense, whether classified as a misdemeanor or a felony in another jurisdiction, which had elements substantially identical to those of a felony defined as such under Alaska law, would qualify as a prior felony conviction." Wells v. State, 687 P.2d 346, 352 n.5 (Alaska Ct. App. 1984). While the court of appeals left this issue unresolved in *Wells*, *id.* at 352, and despite the absence of the requirement within the statute, the legislature clearly intended to require that the prior conviction be a felony conviction. *See, e.g.*, ALASKA STAT. § 12.55.125(d)(1) (1984) (specifying a four year presumptive term "if the offense is a second *felony* conviction" (emphasis added)); *id.* § 12.55.185(7) (1984) (defining second felony conviction to mean "that the defendant previously has been convicted of a *felony*" (emphasis added)).

prior offense were to be compared to the elements of a felony in existing law or in the law that existed when the prior offense was committed. In *Wasson v. State*,[71] the defendant argued that his prior Alaska felony conviction for the theft of $387 under the repealed grand larceny statute could not be used to establish that he was a third felony offender.[72] The repealed statute set a dividing line between felony and misdemeanor larceny at $250.[73] The present Criminal Code, effective at the time Wasson was sentenced, sets the dividing line at $500.[74] Since the theft of $387 is only a misdemeanor under current law,[75] Wasson argued that he had not been convicted of an offense that had "elements substantially identical to those of a felony defined as such under Alaska law,"[76] and that, therefore, the grand larceny conviction could not be used to establish that he was a third felony offender.[77]

Relying in part on the legislative commentary to the Criminal Code, the court of appeals ruled that Wasson's grand larceny conviction was improperly used to establish that he was a third felony offender.[78] Its holding, however, does not appear to be based on the fact that the theft of $387 is a misdemeanor and not a felony under existing law. Instead, after comparing the elements of Wasson's offense under the former and current codes, the court of appeals concluded that the value of the stolen property was an element of the prior offense and, therefore, "it necessarily follows that a former statute providing a lesser value for . . . felony grand larceny does not 'have [elements] substantially identical to those of a felony defined as such under [current] Alaska law.' "[79] Subsequent cases emphasized that the court must examine the specific elements of the prior felony for which the defendant was convicted, and not the defendant's actual conduct in committing that crime. If the specific elements were substantially

71. 652 P.2d 117 (Alaska Ct. App. 1982).

72. *Id.* at 118. Wasson conceded that another prior felony conviction could be used to establish that he was a second felony offender. *Id.*

73. ALASKA STAT. § 11.20.400 (1976) *repealed by* ALASKA STAT. § 11.46.130 (effective Jan. 1, 1980).

74. *See* ALASKA STAT. §§ 11.46.130-.140 (1983).

75. *See id.* § 11.46.140.

76. *Id.* § 12.55.145(a)(2).

77. *Wasson*, 652 P.2d at 118.

78. *Id.* at 119. The court of appeals cited the legislature's commentary that a conviction "will be considered a prior felony conviction if the crime is defined by elements substantially identical to a felony *under the Code*." *Id.* (quoting ALASKA SENATE COMMENTARY, *supra* note 3, at 157 (emphasis added by the court)). The court of appeals concluded that "[i]n context, it is clear that it is the revised code to which the comment refers." *Id.*; *see also* Wright v. State, 656 P.2d 1226, 1228 (Alaska Ct. App. 1983).

79. 652 P.2d at 119.

identical to an existing Alaska felony, the prior conviction would be considered a prior felony conviction under presumptive sentencing.[80]

While the holding in *Wasson* may have been a correct interpretation of the legislature's intent when it adopted presumptive sentencing in 1978, the holding did not reflect the intent of a subsequent legislature. In 1982, the prior conviction definition was amended to require only that the prior offense have "elements similar to those of a felony defined as such under Alaska law *at the time the offense was committed.*"[81] In the commentary that accompanied the amendment, the legislature clarified the type of prior conviction that could be used to establish repeat felony status under presumptive sentencing:

> [A] prior offense will be considered a prior felony conviction for purposes of presumptive sentencing if the conduct was similar to a felony in Alaska at the time the offense was committed, regardless of whether the offense is classified as a felony under existing law. For example, if the defendant was convicted of the felony offense of grand larceny in Oregon in 1962 for stealing $400, and that conduct would have been a felony in Alaska in 1962, that offense may be counted as a prior felony conviction under [ALASKA STAT. §] 12.55.145 even though the revised Criminal Code now requires that a felony theft involve property in an amount of $500 or more.[82]

Under this definition then, Wasson's prior conviction would make him a third felony offender since it was for an offense that was a felony under Alaska law at the time it was committed.[83]

2. *When a Conviction is Obtained "Prior" to the Current Offense.* Assuming that a conviction can otherwise be used to establish the defendant's status as a repeat felony offender, the requirement that it be obtained prior to the offense for which sentence is to be imposed would not seem to present difficult interpretative questions for the sentencing court. Indeed, the terms first, second, and third felony conviction are defined in a manner that appears to state the obvious.[84] A second felony conviction, for example, "means that the defendant previously has been convicted of a felony."[85] Nonetheless, the meanings of the terms first, second, and third felony convictions are not free from ambiguity.

In *State v. Rastopsoff*,[86] the defendant argued that a conviction could not be used to establish repeat felony offender status if he was convicted after he committed the offense for which sentence was to be imposed.[87] Rastopsoff faced sentencing for four crimes at a time when he had already been convicted of a felony.[88] That conviction, however, was not entered until *after* Rastopsoff had committed the four crimes for which he currently faced sentencing.[89]

Despite the apparently unambiguous definition of repeat felony offender status,[90] which both the superior court and the three-judge sentencing panel had held applied to Rastopsoff,[91] the court of appeals agreed with Rastopsoff's argument. Relying in part on a decision by the Alaska Supreme Court interpreting the scope of Alaska's repealed habitual criminal statute,[92] the court of appeals held that Rastopsoff

80. *See, e.g., Wells*, 687 P.2d at 351 ("We have consistently interpreted ALASKA STAT. § 12.55.145(a)(2) to apply to the statute establishing the elements of the offense for which the defendant was previously convicted."); Garroutte v. State, 683 P.2d 262, 268-69 (Alaska Ct. App. 1984) (prior Alaska conviction for the felony of receiving stolen property cannot be used to establish that the defendant was a second felony offender since statute under which defendant was convicted did not require proof of value of property involved, while comparable current statute requires that the property have value of $500 or more; trial court had found value of property stolen to exceed $500).

81. Act of July 3, 1982, ch. 143, § 32, 1982 Alaska Sess. Laws 1, 2-6 (effective Oct. 1, 1982). The amendment has been referred to as "a change rather than a clarification of existing law." Walsh v. State, 677 P.2d 912, 914 n.1 (Alaska Ct. App. 1984). In *Lee*, the court of appeals noted that the amendment was "to resolve future problems of the type involved in this case and in *Wasson*." 673 P.2d at 895 n.4.

82. ALASKA SENATE COMM. ON THE JUDICIARY, COMMENTARY ON THE ALASKA REVISED CRIMINAL CODE, ALASKA SENATE J. SUPP. No. 64, 21-22 (June 2, 1982).

83. *See supra* text accompanying note 72.

84. *See* ALASKA STAT. § 12.55.185(4), (7), (9) (1984).

85. *Id.* § 12.55.185(7).

86. 659 P.2d 630 (Alaska Ct. App. 1983).

87. *Id.* at 633.

88. In June of 1980, Rastopsoff committed forgery in the second degree, a class C felony. *Id.* at 631-32. On August 26, 1980, he committed a burglary in the first degree and a robbery in the second degree, both class B felonies. *Id.* Rastopsoff committed another burglary in the first degree on September 13, 1980, during which he also committed assault in the third degree, a class C felony. *Id.* Indicted for all five crimes, he pleaded guilty to the June forgery in October, 1980, and was sentenced. *Id.* at 632. On February 24, 1981, he pleaded *nolo contendere* to the remaining four charges. *Id.*

In sentencing Rastopsoff for the August and September crimes, the superior court found that the October conviction for the June forgery was Rastopsoff's first felony conviction, the August offenses constituted his second felony conviction, and the September offenses his third felony conviction. *Id.* The court, however, found that it would be manifestly unjust to sentence Rastopsoff as a repeat felony offender on the August and September crimes and referred the case to the three-judge panel. *Id.* The panel agreed with the superior court's classification of the August and September convictions, and held that this application of presumptive sentencing violated the equal protection clause of the Alaska Constitution. *Id.* The state subsequently appealed the three judge panel's constitutional holding to the court of appeals. *Id.* at 633.

89. *See supra* note 88.

90. *See supra* notes 83-85 and accompanying text.

91. *See supra* note 88.

92. In State v. Carlson, 560 P.2d 26 (Alaska 1977), the Alaska Supreme Court held that a defendant could not be sentenced under the provision of Alaska's former habitual criminal statute, ALASKA STAT. § 12.55.050 (1976) (repealed 1978), when he was convicted of two felonies on the same day. 560 P.2d at 28-29. The former statute

must be treated as a first felony offender for each of the four crimes that occurred before he was convicted of his previous felony.[93] In a subsequent case, the court of appeals held that a defendant is not convicted of a prior offense until sentenced for that offense.[94] Consequently, a conviction cannot be used to establish repeat felony offender status unless the defendant was sentenced for that conviction before committing the offense for which sentence is to be imposed.

3. *Miscellaneous Issues Pertaining to Prior Convictions.*

a. Statute of limitations for use of prior convictions. In 1978, the legislature provided that a prior conviction could not be used to establish that the defendant is a repeat felony offender "if a period of seven or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense."[95] The seven-year period did not begin to run until the defendant completed all of the requirements of the prior sentence, including any probationary or parole period.[96] Under this standard, for example, a defendant sentenced in 1985 would be a second felony offender if he had been convicted of a felony in 1970 but did not complete the parole period for that felony until 1979. Additionally, so long as the most recent prior conviction falls within the seven year period, any conviction otherwise eligible as a prior conviction, no matter how old, can be used to establish third felony offender status.[97]

In 1982, the legislature made two amendments to the statute of

specified an increased sentence for a defendant who is convicted of felony and "who *has been previously convicted* of a felony." *Id.* at 27 n.2 (emphasis added). As the court of appeals noted in *Rastopsoff*, the highlighted language in the former habitual criminal statute is virtually identical to the definition of "second felony conviction" in the Criminal Code. *Rastopsoff*, 659 P.2d at 634.

The court of appeals placed significant emphasis on the rule of statutory construction that "when a legislature adopts specific statutory language that has previously been interpreted by the high court of the state in connection with other statutes involving a similar subject matter, the legislature is presumed to have intended to adopt the court's interpretation of that language, unless otherwise expressly indicated." *Id.* at 635 (citation omitted). The court of appeals dismissed the state's argument that an intent to reverse the *Carlson* approach to the use of prior convictions was apparent from the "just deserts" sentencing philosophy in the Criminal Code, *id.* at 637-40, and the legislative commentary to the prior conviction statute. *Id.* at 635-37.

93. 659 P.2d at 641.

94. Sawyer v. State, 663 P.2d 230, 232 (Alaska Ct. App. 1983).

95. ALASKA STAT. § 12.55.145(a)(1) (1980) (amended 1982).

96. *Id.* § 12.55.185(10) (1984).

97. Griffith v. State, 653 P.2d 1057, 1058 (Alaska Ct. App. 1982) (per curiam). The court of appeals noted that if the application of this rule results in manifest injustice, the case could be sent to the three-judge panel under ALASKA STAT. §§ 12.55.165-.175 (1984). 653 P.2d at 1058.

limitations provision that expand the category of prior convictions that can be used to establish repeat felony offender status.[98] First, the legislature increased the seven year limitations period to ten years.[99] Second, the legislature provided that a court must consider an unclassified felony or a class A felony conviction as a prior conviction no matter when it occurred.[100]

b. Significance of the pendency of an appeal from a prior conviction. The legislature has never addressed the issue of whether a prior conviction on appeal can be used to establish that the defendant is a repeat felony offender. The court of appeals, however, held that the pendency of an appeal does not prevent the court from using the conviction to establish repeat felony offender status.[101]

c. Prior suspended imposition of sentence. In *Shaw v. State*,[102] the court of appeals held that a conviction resulting in a suspended imposition of sentence can be used to establish repeat felony offender status.[103] In a subsequent case, however, the court of appeals held that a prior conviction that was subsequently set aside cannot be used to establish repeat felony offender status.[104]

d. Juvenile status at time of prior conviction. The fact that the defendant was convicted of a prior offense in another jurisdiction as an adult is irrelevant even if, at the time he committed that offense, he would have been treated as a juvenile under Alaska law. Under such circumstances, an otherwise eligible prior conviction can be used to establish repeat felony offender status.[105]

98. Act of July 3, 1982, ch. 143, § 33, 1982 Alaska Sess. Laws 1, 26 (effective Oct. 1, 1982) (codified as amended at ALASKA STAT. § 12.55.145(a)(1) (1984)).

99. ALASKA STAT. § 12.55.145(a)(1) (1984).

100. *Id.*

101. *Wright*, 656 P.2d at 1229; *see also* Bell v. State, 658 P.2d 787, 789 (Alaska Ct. App. 1983). Of course, if the prior conviction is reversed on appeal, the sentence imposed in the case where the prior conviction was used to establish repeat felony status could be challenged as an illegal sentence. *See Wright*, 656 P.2d at 1229.

102. 673 P.2d 781 (Alaska Ct. App. 1983), *modified on other grounds*, 677 P.2d 259 (Alaska Ct. App. 1984).

103. *Id.* at 786.

104. Larson v. State, 688 P.2d 592, 597 (Alaska Ct. App. 1984). ALASKA STAT. § 12.55.085(e) (1984) permits a court to "set aside the conviction and issue to the person a certificate to that effect," after the defendant has completed the conditions of a suspended imposition of sentence.

105. McManners v. State, 650 P.2d 414, 415-16 (Alaska Ct. App. 1982); *see also Wells*, 687 P.2d at 352.

B. Aggravating and Mitigating Factors: Adjustments to the Presumptive Term

In its tentative draft of the Criminal Code, the Criminal Code Revision Subcommission proposed the establishment of an Advisory Commission on Prison Terms and Parole Standards to specify the factors for adjusting a presumptive term of imprisonment.[106] The subcommission, of course, recognized the importance of aggravating and mitigating factors under its proposed presumptive sentencing system.[107] The commentary to the tentative draft, for example, even included a list of the aggravating and mitigating factors that the subcommission had considered adopting.[108] However, the subcommission decided that aggravating and mitigating factors should not be statutorily prescribed, and the bill introduced in the legislature did not list any of these factors.[109] The legislature disagreed with the subcommission and decided to statutorily prescribe aggravating and mitigating factors.[110]

As enacted in 1978, the Criminal Code included a list of eighteen aggravating and thirteen mitigating factors.[111] In subsequent years, as the number of crimes subject to presumptive sentencing increased[112] and oversights in the original lists were noted,[113] the list of aggravating and mitigating factors grew. The statute now recognizes twenty-six aggravating factors and fifteen mitigating factors.[114] These factors frequently have been used to adjust presumptive terms of imprisonment, and Alaska appellate courts have had numerous opportunities to determine whether particular aggravating[115] and mitigating[116] factors were present and properly applied at sentencing.

106. ALASKA CRIMINAL CODE REVISION, *supra* note 2, at 72.

107. *See* PROPOSED ALASKA STAT. § 11.36.270(b)-(j), ALASKA CRIMINAL CODE REVISION, *supra* note 2, at 61-64.

108. *See* ALASKA CRIMINAL CODE REVISION, *supra* note 2, at 72-74.

109. *See* H.R. 661, 10th Leg., 2d Sess. (Alaska 1978). The Subcommission concluded "that by their nature [aggravating and mitigating factors] were susceptible to change and that a legislatively prescribed list was too inflexible." ALASKA CRIMINAL CODE REVISION, *supra* note 2, at 72; *see* [illegible] Hirsch & Hanrahan, *Determinate Penalty System in America: An Overview*, 27 [illegible]E & DELINQ. 289, 300 (1981) ("A legislature, given the other demands on its [illegible] will seldom be able or willing to devote much effort to . . . revising, and fine tuning a sentencing code approved in recent session."). *But see infra* notes 111-14 and accompanying text.

110. *See* ALASKA STAT. § 12.55.155(c)-(d) (1984).

111. *Id.* § 12.55.155(c)-(d) (1980) (amended 1982 & 1983).

112. The most significant increase in crimes covered by presumptive sentencing occurred in 1982 when the legislature comprehensively revised the laws pertaining to controlled substances offenses. Act of May 20, 1982, ch. 45, 1982 Alaska Sess. Laws 1, 1-8 (effective January 1, 1983). The legislature transferred controlled substances offenses from title 17 of the Alaska Statutes into the Criminal Code and classified the newly created offenses under the classification scheme in the Criminal Code. *See* ALASKA STAT. §§ 11.71.010-.070 (1983). Sections 19 and 20 of the Act added four aggravating and three mitigating factors to ALASKA STAT. § 12.55.155(c)-(d) (1984) which apply in the sentencing of controlled substances offenses. *See* ALASKA STAT. § 12.55.155(c)(23)-(c)(26), (d)(14)-(d)(16) (1984).

113. *See, e.g.*, Heathcock v. State, 670 P.2d 1155, 1160 n.2 (Alaska Ct. App. 1983) (Singleton, J., concurring and dissenting), in which Judge Singleton noted that it was an oversight not to include the commission of an offense while on probation in the original list of aggravating factors. The legislature subsequently rectified this oversight. *See* ALASKA STAT. § 12.55.155(c)(20) (1984).

114. *See* ALASKA STAT. § 12.55.155(c)-(d) (1984).

115. Alaska's appellate courts have applied the following aggravating factors:

"(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;" ALASKA STAT. § 12.55.155(c)(1) (1984). In Juneby v. State, 641 P.2d 823 (Alaska Ct. App. 1982), *modified*, 665 P.2d 30 (Alaska Ct. App. 1983), the court of appeals held that in a prosecution of sexual assault in the first degree under ALASKA STAT. § 11.41.410(a)(1) (1983) "the mere fact of some physical injury to the victim as a result of the defendant's conduct, though technically an aggravating factor . . ., will not justify a significant increase in the presumptive term." *Id.* at 839. More substantial increases in presumptive terms are reserved for cases where serious physical injury is inflicted. *Id.* However, "where the crime charged is one that does not ordinarily involve the use of force or violence in its perpetration, the fact that a person sustains injury — even if the injury is relatively slight — assumes considerable importance as an aggravating factor." *Id.* at 838.

The continued validity of the court of appeals' conclusions in *Juneby* is questionable after the decision of the Alaska Supreme Court in Woods v. State, 667 P.2d 184 (Alaska 1983). In *Woods*, the court stated that in a prosecution for sexual assault in the first degree, the trial court may properly consider physical injury to the victim as an aggravating factor and that "[t]he weight to be assigned to this aggravating factor is a question which is committed to the sentencing court's discretion." *Id.* at 187-88. The court noted that to the extent that this holding "is inconsistent with *Juneby*, 641 P.2d at 837-40, and *Juneby II*, 665 P.2d 30 at 34-37 (Alaska Ct. App. 1983), those opinions of the court of appeals are hereby modified." *Id.* at 188 n.13. On rehearing in *Juneby*, the state had argued that the court of appeals' "treatment of the aggravating factor of physical injury is inconsistent with the basic holding of the *Juneby* opinion that the amount by which presumptive sentences should be increased or decreased in light of aggravating or mitigating factors must be determined by applying the *Chaney* criteria, as stated in ALASKA STAT. § 12.55.005, to the specific factors established in each case." *Juneby*, 665 P.2d at 36-37. *See also infra* notes 131-34 and accompanying text.

"(2) the defendant's conduct . . . manifested deliberate cruelty to another person;" ALASKA STAT. § 12.55.155(c)(2) (1984). In *Juneby*, the court of appeals stated that

> the term 'deliberate cruelty,' as used in ALASKA STAT. § 12.55.155(c)(2) must be restricted to instances in which pain — whether physical, psychological, or emotional — is inflicted gratuitously or as an end in itself. Conversely, when the infliction of pain or injury is merely a direct means to accomplish the crime charged, the test for establishing the aggravating factor of deliberate cruelty will not be met.

Id. at 840.

For a particularly appropriate application of this factor, see Larson v. State, 688 P.2d 592 (Alaska Ct. App. 1984); *see also* Peetook v. State, 655 P.2d 1308, 1311 (Alaska Ct. App. 1982).

"(3) The defendant was the leader of a group of three or more persons who participated in the offense;" ALASKA STAT. § 12.55.155(c)(3) (1984). *See* Willard v. State,

When the legislature adopted the original list of aggravating and

662 P.2d 971, 980 (Alaska Ct. App. 1983) (factor established in prosecution for sexual assault in the first degree of defendant not subject to presumptive sentencing).

"(4) the defendant employed a dangerous instrument in furtherance of the offense;" ALASKA STAT. § 12.55.155(c)(4) (1984). *See* Linn v. State, 648 P.2d 150, 153-54 (Alaska Ct. App. 1983) (factor not established by proof of mere possession of a dangerous instrument).

"(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;" ALASKA STAT. § 12.55.155(c)(5) (1984). *See* Carlson v. State, 696 P.2d 178, 179 (Alaska Ct. App. 1985); Goenett v. State, 695 P.2d 243, 245 (Alaska Ct. App. 1985); Depp v. State, 685 P.2d 712, 721 (Alaska Ct. App. 1984) (factor established in prosecution of defendant not subject to presumptive sentencing convicted of sexual assault of a ten-year old boy); Hasslen v. State, 667 P.2d 732, 732-33 (Alaska Ct. App. 1983); State v. Coats, 669 P.2d 1329, 1332-33 (Alaska Ct. App. 1983) (in case where presumptive sentencing did not apply, court of appeals cited this factor in discussing appropriate sentence for defendant who had sexually abused twelve-year old step-daughter); *Peetook*, 655 P.2d at 1311 (factor established in prosecution for sexual assault in the first degree of defendant not subject to presumptive sentencing who attacked victim while she was sleeping); Koganaluk v. State, 655 P.2d 339, 341 & n.4 (Alaska Ct. App. 1982).

"(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;" ALASKA STAT. § 12.55.155(c)(8) (1984). In *Larson*, 688 P.2d at 597, the court of appeals held that it was proper to consider prior conduct resulting in an assault conviction under this factor even though the conviction had been set aside. *Larson* was decided under a prior enactment of this factor, but the court of appeals viewed the current version as a clarification of the prior version. *Id.* In *Larson*, the court of appeals also confronted the issue of the appropriate relation of juvenile adjudications to this factor. While the court of appeals left open the issue of whether prior juvenile adjudications can be used to initially establish this factor, it did hold that once the factor is otherwise established, prior juvenile adjudications can be used in determining the weight to be given to the factor. *Id.* at 598.

"(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;" ALASKA STAT. § 12.55.155(c)(10) (1984). In *Juneby*, 641 P.2d at 8[illegible] the court of appeals interpreted legislative intent to require that a finding of this factor "be based on an assessment of the specific facts of each case, viewed in relation to the most serious potential conduct constituting the offense charged." (footnote omitted)

In Brezenoff v. State, 658 P.2d 1359 (Alaska Ct. App. 1983), this factor was established in a prosecution for theft in the first degree of a defendant not subject to presumptive sentencing who stole $140,000 in 133 separate thefts during approximately one year. *Id.* at 1362. The court of appeals noted that this aggravating factor "stresses the conduct involved in the specific offense under consideration rather than the personal characteristics of the offender and requires comparison of the conduct constituting the crime in question with other conduct which would satisfy the elements of the offense." *Id.* at 1363.

The court of appeals has had many opportunities to apply this factor in sexual assault cases. *See* Bolhouse v. State, 687 P.2d 1166, 1174 (Alaska Ct. App. 1984) (factor established in prosecution for attempted sexual assault in the first degree, when attempt "came very close to constituting a completed rape."); *Hasslen*, 667 P.2d at

mitigating factors, it also included a formula for determining the extent to which a presumptive term could be varied once the presence of

732-33 (factor established in prosecution for sexual assault in the first degree and assault in the first degree where victim was assaulted in her own home, entry into house was premeditated, victim's dog was killed, telephone was rendered inoperable and victim was shot while attempting to escape); Langton v. State, 662 P.2d 954, 955-56 (Alaska Ct. App. 1983) (factor established where defendant, not subject to presumptive sentencing, convicted of sexual assault in the first degree on his eight-year old step-daughter); Hansen v. State, 657 P.2d 862, 864 (Alaska Ct. App. 1983); *Peetook*, 655 P.2d at 1311; *Koganaluk*, 655 P.2d at 341 n.4; Ecker v. State, 656 P.2d 577, 577-78 (Alaska Ct. App. 1982); *see also Goenett*, 695 P.2d at 245 n.2; Theodore v. State, 692 P.2d 987, 988 (Alaska Ct. App. 1985) (Singleton, J., concurring); *Walsh*, 677 P.2d at 917-18; *Shaw*, 677 P.2d at 260; *Larson*, 688 P.2d at 598; *Lee*, 673 P.2d at 896; Gilbreath v. State, 668 P.2d 1354, 1358 (Alaska Ct. App. 1983); Karr v. State, 660 P.2d 450, 452 & n.4 (Alaska Ct. App. 1983); Kimbrell v. State, 647 P.2d 618, 622-23 (Alaska Ct. App. 1982) (Coats, J., concurring).

"(12) the defendant was on release under [ALASKA STAT. §] *12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;"* ALASKA STAT. § 12.55.155(c)(12) (1984). See Roberts v. State, 680 P.2d 503, 508 n.13 (Alaska Ct. App. 1984), where the court of appeals held that the requirement that the prior offense have assault as a necessary element applies only when the defendant was on release for a misdemeanor. This factor is also established when a defendant commits an offense while on release on a charge of attempted sexual assault even though assault was not a necessary element of the sexual assault.

"(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;" ALASKA STAT. § 12.55.155(c)(13) (1984). In *Gilbreath*, 668 P.2d at 1354, this factor was established in the prosecution of a defendant for misconduct involving weapons in the first degree. *Id.* at 1357. The defendant argued that even though he had pointed a gun at a police officer, the aggravating factor did not apply because his offense was "one of possession" and, therefore, could not have been "directed at" a law enforcement officer. *Id.* The court of appeals rejected this characterization, holding that the factor applied because the defendant's "conduct" during the possessory offense was directed at a police officer. *Id.* at 1357-58. The court of appeals noted that the defendant's conduct harmed the public interest in "having the duties of public safety officers carried out efficiently and free from hindrance" and avoiding the "possibility of public danger generated wherever a public safety officer is challenged or hindered in the execution of his duties." *Id.* at 1358.

"(18) the offense was a crime specified in [ALASKA STAT. §] *11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant;"* ALASKA STAT. § 12.55.155(c)(18) (1984). In *Carlson*, the court of appeals held that in a prosecution for sexual assault in the first degree under former ALASKA STAT. § 11.41.410(a)(4) "the fact that Carlson's victim was a member of his family is typical of the specific crime for which he was convicted and therefore did not warrant an increase in the presumptive term." *Id.* at 179 (footnote omitted). *But see Woods*, discussed *supra* in this footnote under aggravating factor (1), where the Alaska Supreme Court emphasized that the amount by which a presumptive term should be increased once an ag-

gravating factor is established, "is a question which is committed to the sentencing court's discretion." 667 P.2d at 187-88.

"(20) the defendant was on furlough under [ALASKA STAT. §] *33.30 or on parole or probation for another felony charge or conviction;"* ALASKA STAT. § 12.55.155(c)(20) (1984). See Kuvaas v. State, 696 P.2d 684, 684-85 (Alaska Ct. App. 1985), in which a defendant was convicted of robbery in the first degree. At the time he committed the robbery in question, the defendant was on felony probation from Oregon for offenses that were not felonies under Alaska law at the time the defendant committed them. *Id.* at 684. The court of appeals accepted the defendant's argument that this factor should "apply only to defendants who were on probation for a charge or conviction which would have been a felony charge in Alaska." *Id.* The court applied the definition of "felony conviction" set out in ALASKA STAT. § 12.55.145(a)(2), defining those felony convictions the trial court may consider for purposes of presumptive sentencing. *Id.* at 685; *see supra* text accompanying notes 81-83.

"(22) the defendant knowingly directed the conduct consituting the offense at a victim because of that person's race, sex, color, creed, ancestry, or national origin;" ALASKA STAT. § 12.55.155(c)(22) (1984). *See* Gregory v. State, 689 P.2d 508, 509 (Alaska Ct. App. 1984) (factor found in prosecution for murder in the second degree, ALASKA STAT. § 11.41.110 (1983), a crime not subject to presumptive sentencing).

"(25) the defendant is convicted of an offense specified in [ALASKA STAT. §] *11.71 [any offense involving controlled substances] and the offense involved large quantities of a controlled substance;"* ALASKA STAT. § 12.55.155(c)(25) (1984). *See* Lausterer v. State, 693 P.2d 887, 890-92 (Alaska Ct. App. 1985) ("It would ordinarily be appropriate to regard eight ounces or more of cocaine as a large quantity — one that is indicative of commercial activity at the wholesale level.").

116. The following mitigating factors have been applied by Alaska's appellate courts:

"(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected his conduct;" ALASKA STAT. § 12.55.155(d)(3) (1984). In *Bell,* the court of appeals found that the legislature intended that duress under this factor be interpreted more broadly than the defense of duress. 658 P.2d at 790. "Evidence the defendant in good faith subjectively believed facts which if true would have established one of the defenses justifying his conduct under the revised code, but which the judge or jury concludes would have been unreasonable under the circumstances, may warrant mitigation of a presumptive sentence." *Id.* at 791; *see also Langton* 622 P.2d at 960 ("We apply a subjective standard in interpreting [this factor] and do not require that the person allegedly 'coerced' act reasonably." (citation omitted)); Whitmore v. State, 657 P.2d 859, 860-61 (Alaska Ct. App. 1983) (factor not established in prosecution for escape); *Lee,* 673 P.2d at 896 (factor not established by "behavior that is merely impulsive or the result of emotional stress"; there must be evidence that the defendant acted under "a good faith but unreasonable belief" that conduct was necessary).

"(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;" ALASKA STAT. § 13.55.155(d)(9) (1984). *See Woods,* 680 P.2d at 1198 (a single incident of sexual abuse is not a mitigated offense); *Walsh,* 677 P.2d at 916-18. In *Walsh,* the court of appeals rejected the argument of a defendant convicted of manslaughter that because his conduct was only reckless, as opposed to intentional or knowing, the mitigating factor of least serious conduct should apply. The court of appeals noted that there is no indication that the legislature intended to treat manslaughter committed recklessly any less severely than manslaughter committed intentionally or knowingly. The court of appeals, however, did discuss how this factor, or its opposite aggravating factor, ALASKA STAT. § 12.55.155(c)(10) (1984), *see supra* note 115, might be established in driving-while-intoxicated manslaughter cases; *Shaw,* 677 P.2d at 160 (in prosecution for misconduct involving weapons in the first degree for possessing a firearm capable of being concealed on one's person and where defendant had previously been convicted of a felony, court of appeals noted that "examples of the least serious conduct contemplated by the statute might include a case in which a defendant finds a weapon and possesses it briefly before returning it to its owner or turning it over to the police, or one in which a defendant, without illegal purpose, briefly acts as custodian of a weapon on behalf of its owner." *Id.*); *see also* Dunlop v. State, 691 P.2d 689, 691-92 (Alaska Ct. App. 1983); *Carlson,* 696 P.2d at 179; Koteles v. State, 660 P.2d 1199, 1201 (Alaska Ct. App. 1983) (factor not established in prosecution for burglary in the second degree); *Bell,* 658 P.2d at 789-90 (factor not found in escape case); *Fry,* 655 P.2d 789, 793 (Alaska Ct. App. 1983); Born v. State, 635 P.2d 1021, 1026 n.5 (Alaska Ct. App. 1981).

"(13) the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;" ALASKA STAT. § 12.55.155(d)(13) (1984). In *Shaw* the court of appeals stated that this factor is not established when the defendant's conduct "exhibits contempt for the law and law enforcement warranting a substantial sanction." 673 P.2d 781, 785 (Alaska Ct. App. 1983). *See also Gilbreath,* 668 P.2d at 1358-59 (factor not established in prosecution of defendant for misconduct involving weapons in the first degree, "[g]iven the circumstances of the instant offense and the nature of Gilbreath's original felony, an assault with a dangerous weapon," trial court's refusal to find this factor not clearly mistaken); *Koteles,* 660 P.2d at 1201 (factor not found in prosecution for burglary in the second degree).

117. ALASKA STAT. § 12.55.155(a) (1984). *See supra* notes 34-44 and accompanying text.

118. *See* ALASKA STAT. § 12.55.125(d)(1) (1984).

119. *See id.* § 12.55.155(a)(1) (1984).

120. *Id.* § 12.55.155(b) (1984).

121. 641 P.2d 823 (Alaska Ct. App. 1982), *modified,* 665 P.2d 30 (Alaska Ct. App. 1983).

122. 641 P.2d at 833.

one or more of those factors was established.[117] That formula apparently leaves substantial discretion to the trial court. For example, if both aggravating and mitigating factors are established for a second felony offender convicted of a class B felony,[118] the court can reduce the four-year presumptive term by any amount or can increase it by any amount up to the maximum sentence of ten years.[119] Aside from the general direction that "[s]entence increments and decrements . . . shall be based on the totality of the aggravating and mitigating factors,"[120] the legislature has provided little guidance on the specific amount a presumptive term of imprisonment should be modified once these factors are established.

In *Juneby v. State,*[121] the court of appeals adopted general guidelines for adjusting a presumptive term of imprisonment for factors in aggravation and mitigation.[122] In doing so, the court helped insure

that the discretion permitted under the presumptive sentencing system once aggravating and mitigating factors are established does not defeat the purpose of the 1978 sentencing revisions — the elimination of unjustified disparity in sentencing.[123]

Juneby was convicted of sexual assault in the first degree, which at that time was a class A felony, and burglary in the first degree, a class B felony.[124] Since Juneby was a second felony offender, he faced a presumptive term of imprisonment of ten years for the sexual assault.[125] At sentencing, the trial court found several aggravating factors to be present and increased the ten year presumptive term to twenty years, the maximum sentence for a class A felony.[126] Juneby appealed his sentence for the sexual assault, arguing that the trial court gave too much weight to the aggravating factors and that his twenty year sentence was excessive.[127]

The court of appeals conducted a comprehensive review of the structure and purpose of presumptive sentencing.[128] It found that "[t]he presumptive sentencing provisions . . . reflect the legislature's intent to assure predictability and uniformity in sentencing by the use of fixed and relatively inflexible sentences, statutorily prescribed, for persons convicted of second and subsequent felony offenses."[129] Based on this interpretation of the legislative intent, the court adopted general guidelines for modifying a presumptive term of imprisonment for factors in aggravation and mitigation. The court stated it expected

> that sentences equalling or varying only slightly from the presumptive terms will generally be suitable when presumptive sentencing applies. Minor adjustments for aggravating or mitigating circumstances might be appropriate in a significant number of cases; only in unusual cases, however, can it be anticipated that substantial deviation from the presumptive term will be called for.
>
> . . . If sentencing courts were permitted, under the presumptive sentencing scheme, to deviate routinely and substantially from the presumptive terms prescribed by law, the fundamental purposes of eliminating disparity and establishing reasonable uniformity in sentencing would be completely undermined. Unless the provisions of ALASKA STAT. § 12.55.155 are adhered to strictly, and unless a measured and restrained approach is taken in the adjustment of presumptive sentences for both aggravating and mitigating factors, then the prospect of attaining the statutory goal of uniform treatment for similarly situated offenders would quickly be eroded, the potential for irrational disparity in sentencing would threaten to become reality, and the revised code's carefully fashioned system of escalating penalties for repeat offenders would be rendered utterly ineffective.[130]

123. *See supra* text accompanying note 4.

124. 641 P.2d at 828. Sexual assault in the first degree was subsequently made an unclassified felony, punishable by a maximum term of imprisonment of 30 years and subject to presumptive sentencing regardless of the prior criminal history of the defendant. Act of July 3, 1982, ch. 143, § 30, 1982 Alaska Sess. Laws 1, 25 (effective October 1, 1982) (codified as amended at ALASKA STAT. § 12.55.125(i) (1984)).

125. 641 P.2d at 829.

126. *Id.*

127. *Id.* at 828-29. Juneby had also been sentenced to eight years imprisonment on the burglary conviction but did not appeal that sentence. *Id.* at 828.

128. *Id.* at 829-33.

129. *Id.* at 830.

While the court of appeals called for "a measured and restrained approach" to the adjustment of a presumptive term of imprisonment for aggravating and mitigating factors,[131] it refused to adopt "a mechanistic approach toward determining the amount by which a presumptive sentence should be adjusted in light of aggravating or mitigating factors."[132] Instead, it held that once aggravating or mitigating factors are properly established, the sentencing criteria set out in *State v. Chaney*[133] should be applied to the "totality of the aggravating and mitigating factors" to determine the sentence to be imposed.[134]

130. *Id.* at 833. On rehearing, the court of appeals phrased these guidelines somewhat differently, but the general thrust remained the same:

> It can thus be expected that, in the great majority of cases, the appropriate sentence will be one that does not depart significantly from the specified presumptive term. The process of adjusting presumptive sentences for aggravating or mitigating factors is one that, while procedurally complex, must not be applied inflexibly or mechanistically. In each case, a realistic assessment of the totality of the evidence relating to aggravating and mitigating factors must be made in order to determine the extent to which the case may fairly be said to be more aggravated or more mitigated than the average for the particular offense. Increasingly larger adjustments to presumptive terms will be justified as cases deviate farther from the norm for a given offense. The most significant upward or downward adjustments must be reserved for those cases that are truly atypical or unusual in severity or lack of severity.

Juneby v. State, 665 P.2d 30, 39 (Alaska Ct. App. 1983) *modifying* Juneby v. State, 641 P.2d 821 (Alaska Ct. App. 1982).

131. *See Juneby*, 641 P.2d at 847; *see also supra* text accompanying note 130.

132. 641 P.2d at 835 n.21.

133. For a discussion of the *Chaney* sentencing criteria, *see infra* text accompanying notes 178-81. *See also* ALASKA STAT. § 12.55.005(2)-(6) (1984), which sets out the factors that a court should consider in imposing a sentence. In its commentary to the Criminal Code the legislature noted that these legislative guidelines are "largely a restatement of the Alaska Supreme Court's interpretation of the mandate of article 1, section 12 of the Alaska Constitution which provides that '[P]enal administration shall be based on the principle of reformation and upon the need for protecting the public.' State v. Chaney, 447 P.2d 441 (Alaska 1970)." ALASKA SENATE COMMENTARY, *supra* note 3, at 148. *See also* Nell v. State, 642 P.2d 1361, 1369 (Alaska Ct. App. 1982) (noting that the *Chaney* criteria have essentially been incorporated into the Criminal Code as ALASKA STAT. § 12.55.005).

134. 641 P.2d at 835 & n.21. The court of appeals, however, added the following caution:

> When applied to the adjustment of a presumptive sentence, however, the *Chaney* analysis should not be broadened into a consideration of all the circumstances of the offense, as if the sentence were being imposed anew, with-

Turning to Juneby's sentencing proceeding, the court of appeals noted that both the state and Juneby had given the required notice of an intent to raise aggravating and mitigating factors at sentencing.[135] The trial court had found that three aggravating factors and one mitigating factor were established.[136] The trial court "then engaged in an extensive consideration of the *Chaney* sentencing criteria,"[137] after which it followed the recommendation of the presentence report and sentenced Juneby to twenty years in prison.[138] The court of appeals found this sentencing proceeding improper because the trial court had never referred to the ten year presumptive term that applied to Juneby nor did it explain why the established aggravating and mitigating factors justified an increase in the presumptive term to the maximum sentence of twenty years.[139] The court of appeals cited the statutory requirement that all findings of aggravating and mitigating factors "must be set out with specificity,"[140] and held that specificity requires

> sentencing judges to include, in their remarks on the record, the following specific information: (1) the specific factors in aggravation and in mitigation found to have been established by clear and convincing evidence; (2) the evidence upon which the court has relied in finding the existence of aggravating or mitigating factors; (3) an explanation of the weight given by the court to each aggravating or mitigating factor, and the relative importance of each factor in comparison with other aggravating or mitigating factors established; and (4) an evaluation of the totality of the aggravating and mitigating factors in light of the *Chaney* criteria, as expressed in [ALASKA STAT. §] 12.55.005, in order to determine the amount by which the presumptive sentence for the particular offense should be adjusted.[141]

Of the many appellate decisions interpreting the presumptive sentencing statutes, *Juneby* is the most significant. Faced with a sentencing system designed to eliminate unjustified sentencing disparity by limiting judicial sentencing discretion,[142] the court of appeals instead found a statutory scheme that still left substantial discretion to a trial court once aggravating or mitigating factors were established.[143] In calling for a measured and restrained approach to adjustment of presumptive terms,[144] and by requiring trial courts to articulate their reasons for modifying the presumptive terms,[145] the court of appeals insured that the discretion permitted under presumptive sentencing could not be used to subvert the purpose of presumptive sentencing.

III. SENTENCE REVIEW OF FIRST FELONY OFFENDERS NOT COVERED BY PRESUMPTIVE SENTENCING

The legislature in 1978 decided to apply presumptive sentencing only in cases where the defendant was a repeat felony offender.[146] The

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out regard for the presumptive term. Instead, consideration of the *Chaney* criteria should focus specifically on the aggravating or mitigating conduct in the particular case. The presumptive term should remain as the starting point of the analysis, and the *Chaney* criteria should be employed for the limited purpose of determining the extent to which the totality of the aggravating and mitigating factors will justify deviation from the presumptive term.

Id. at 835 n.21.

An example of a proper application of the *Chaney* criteria to adjust a presumptive term appears in *Nell*, 642 P.2d at 1371 n.18; *see also Lloyd*, 672 P.2d at 155 (trial court can consider defendant's lack of criminal record in determining extent of deviation from presumptive term once mitigating factors are established since "lack of any prior record is highly relevant to a proper application of the *Chaney* sentencing criteria" (footnote omitted)).

One option available to the trial court is to decide that the particular factors established, after considering the *Chaney* criteria, do not justify adjustment of the presumptive term. See ALASKA STAT. § 12.55.155(c), (d) (1984) (emphasis added), which provides that aggravating and mitigating factors "*shall* be considered by the sentencing court and *may*" aggravate or mitigate the presumptive term of imprisonment. In *Juneby*, the court stated that "[t]he mere proof of an aggravating or mitigating factor cannot be deemed sufficient, in and of itself, to justify an increase or decrease of a presumptive term." 641 P.2d at 838; *see also* Staael v. State, 697 P.2d 1050, 1058 (Alaska Ct. App. 1985); *Heathcock*, 670 P.2d at 1158 n.1 (Singleton, J., concurring and dissenting).

135. *Juneby*, 641 P.2d at 836. ALASKA STAT. § 12.55.155(f) (1984) provides that "[i]f the state seeks to establish a factor in aggravation at sentencing or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence." *See* Nukapigak v. State, 645 P.2d 215, 218-19 (Alaska Ct. App. 1982) (presentence report does not provide the required notice); Hartley v. State, 653 P.2d 1052, 1056 (Alaska Ct. App. 1982) (trial court may *sua sponte* consider an aggravating factor or mitigating factor in imposing sentence so long as it provides the required notice to the parties); *see also Hesslen*, 667 P.2d at 733 (upholding trial court's *sua sponte* finding of an aggravating factor without notice to the parties when the defendant did not claim surprise or prejudice as a result of the lack of notice).

136. 641 P.2d at 836.

137. *Id.*

138. *Id.* at 836-37.

139. *Id.* at 837.

140. ALASKA STAT. § 12.55.155(f) (1984).

141. 641 P.2d at 846 (footnote omitted). In subsequent cases brought before the court on appeal, all of which involved sentences imposed before *Juneby* was published, the court of appeals found that the sentencing proceedings failed to comply with the *Juneby* requirements and were thus unlawful. *See Linn*, 658 P.2d at 153; *Fry*, 655 P.2d at 793; Dunn v. State 653 P.2d 1071, 1091 (Alaska Ct. App. 1982); *Nukapigak*, 645 P.2d at 218.

142. *See supra* text accompanying note 4.

143. *See supra* notes 117-20 and accompanying text.

144. *See supra* text accompanying note 130.

145. *See supra* text accompanying note 141.

146. *See* Act of July 17, 1978, ch. 166, 1978 Alaska Sess. Laws 107 (amended 1982 & 1983). The type of prior felony conviction that can be used to establish that the

single exception was for a first felony offender convicted of a class A felony other than manslaughter, who had possessed or used a firearm or caused serious physical injury during the commission of the offense.[147] Except in these limited circumstances, first felony offenders were not covered by the presumptive sentencing system enacted in 1978.[148]

At first glance, it might seem surprising that the legislature, which specifically found "that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute,"[149] would have exempted the vast majority of first felony offenders from presumptive sentencing. On the other hand, the institution of presumptive sentencing was a sharp break from the existing sentencing practices.[150] The legislature was thus somewhat cautious in applying this new sentencing system.

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defendant is a repeat felony offender is discussed *supra* text accompanying notes 63-105.

147. Act of July 17, 1978, ch. 166, 1978 Alaska Sess. Laws 107 (1980) (amended 1982). The current version of this section is discussed *infra* at note 154.

148. The court of appeals has rejected and termed as frivolous the contention that the distinction between first and second felony offenders under the presumptive sentencing system violates a second felony offender's consitutional rights of equal protection and due process. Koteles v. State, 660 P.2d 1199, 1200 (Alaska Ct. App. 1983).

149. ALASKA STAT. § 12.55.005 (1984).

150. In its report proposing a presumptive sentencing system, the Task Force on Criminal Sentencing observed that:

> The dominant sentencing structure currently employed in the United States is based on the indeterminate sentence, so called because it is characterized by wide separations between the legislatively authorized minimum and maximum sentences for generally defined crimes. There is an absence of articulated criteria for determining sentences. Judges are given vast discretion in sentencing offenders, and parole boards have like discretion in releasing them . . . .
>
> . . .Generally, there are few if any rules, standards, or guidelines, formally established through mandatory legislation, rule making, or regulation, to guide the exercise of judicial or administrative sentencing discretion. Nor are discretionary decisions on sentencing generally subject to judicial review, except in cases of clear abuse, which reviewing courts are reluctant to find. Simliarly, the courts or administrative agencies generally have not articulated guidelines for sentencing typical offenders. Every judge and parole board member has his own notion of what a fairly typical crime "deserves" — and these notions are of course disparate in the extreme.

TASK FORCE REPORT, *supra* note 2, at 11-13.

The task force's characterization of the "dominant sentencing structure in the United States" also describes the indeterminate sentencing system that existed in Alaska before the enactment of the Criminal Code. Surveying the penalty provisions under the former Criminal Code, the Criminal Code Revision Subcommission highlighted the wide range of judicial sentencing discretion authorized by the legislature.

> While many substantive offenses appear to carry mandatory minimum prison terms and fines, [ALASKA STAT. §] 11.05.150 nonetheless permits a judge to suspend all or part of the minimum prison term and impose a lesser sentence, either of a fine or imprisonment or both.
>
> Prison terms in existing law evidence a wide variety of minimum and maximum sentences, ranging from 20 years to life for first degree murder ([ALASKA STAT. §] 11.15.010), 10 years to 20 years for assault on an officer in jail ([ALASKA STAT. §] 11.30.160), to 0 to 25 years for a second conviction on use of firearms during the commission of certain crimes ([ALASKA STAT. §] 11.15.295). Sentences in the range of 1-20, 1-10 and 1-5 appear more frequently than do other combinations but no particular combination of minimum and maximum prison terms and fines is common to title 11. The variety is endless.

ALASKA CRIMINAL CODE REVISION, *supra* note 2, at 4.

In addition to the courts' considerable discretion in imposing sentences, the parole board had substantial flexibility in determining the length of the sentence that a defendant would actually serve. Except when the court required a defendant to serve a specified portion of a sentence before being eligible for parole, the parole board had the authority to release a prisoner at any time after one-third of a sentence had been served. ALASKA STAT. §§ 33.15.080, .180, .230(a) (1982). The parole board frequently exercised its discretionary release authority.

The task force's observations on the lack of sentencing criteria and guidelines limiting judicial sentencing discretion, and the absence of effective judicial review of sentencing practices accurately described the sentencing structure existing in Alaska before 1969. Indeed, until it enacted the Criminal Code, the legislature had never specified the factors that should be considered by a court in imposing sentence. Additionally, in Bear v. State, 439 P.2d 432 (Alaska 1968), the Alaska Supreme Court had held that absent statutory authority, it lacked "jurisdiction to review and remand or to review and revise a criminal sentence for abuse of discretion." *Id.* at 435. Absent that authority, the court could not hope to specify the criteria that should be considered at sentencing.

In 1969, the legislature responded to *Bear* by authorizing appellate review of sentences on the ground that the sentence was either too lenient or too excessive. ALASKA STAT. § 12.55.120 (1984). The Alaska Supreme Court articulated guidelines for determining whether a sentence is too strict or too lenient in State v. Chaney, 477 P.2d 441 (Alaska 1970). For a discussion of what became known as the *Chaney* criteria, *see infra* text accompanying notes 177-81.

The judicial effort to articulate sentencing criteria and guidelines through appellate review of sentences under *Chaney* was insufficient to address all of the problems inherent in Alaska's indeterminate sentencing system for several reasons. First, since a "clearly mistaken" standard of review applied in sentence appeals, only the most serious sentencing errors could be corrected through the appellate process. Second, while a defendant's successful appeal would result in the imposition of a less severe sentence, if the state brought a successful appeal, and the defendant had not also appealed, the appellate court could only express its disapproval of the sentence. *See* ALASKA STAT. § 12.55.120(a)-(b) (1984). Thus, while appellate review of sentences offered some protection to a defendant who received an excessive sentence, it offered no protection to the public in insuring that a defendant who had been sentenced too leniently would receive an appropriate sentence. For example, upon application of the *Chaney* criteria, the courts found eight clearly mistaken lenient sentences imposed in prosecutions for crimes under the former Criminal Code. In each case, however, the appellate court was unable to impose an appropriate sentence. *See* Putnam v. State, 629 P.2d 35, 44-45 (Alaska 1980); State v. Wassilie, 578 P.2d 971, 972-75 (Alaska 1978); State v. Abraham, 566 P.2d 267, 270-71 (Alaska 1977); State v. Lancaster, 550

When it decided to exempt most first felony offenders from pre-

sumptive sentencing, the legislature largely followed the recommendation of the Criminal Code Revision Subcommission which proposed that presumptive sentencing only apply to repeat felony offenders.[151] The subcommission, however, had been divided on this issue. The competing viewpoints were summarized in its Tentative Draft of the Criminal Code:

> A closely divided Subcommission then agreed to limit the application of presumptive sentencing to those defendants with prior felony convictions. While aware that this decision could result in some continued amount of sentencing disparity, those who favored the majority position were of the opinion that a new program as radical in concept as presumptive sentencing ought to be implemented slowly. They reasoned that if presumptive sentencing presented no problems in its areas of application, then the legislature could always later move to expand its applicability to all offenders.
>
> Those in the minority argued that the concept was not so radical or complex, that it could eliminate a greater amount of potential or real disparity if applied across the board to all felony offenders, and that the failure to apply presumptive sentencing to those with no prior convictions could result in first time felony offenders receiving longer sentences than second or subsequent offenders.[152]

When it adopted the Criminal Code in 1978, the legislature departed from the majority view of the subcommission by applying presumptive sentencing to a limited category of first felony offenders convicted of class A felonies.[153] In 1982 the legislature expanded the category of first felony offenders subject to presumptive sentencing to include all first felony offenders convicted of class A felonies.[154] Additionally, during that same 1982 session, the legislature further expanded the scope of presumptive sentencing to include first felony offenders convicted of class B or class C felonies, provided that the felony was knowingly directed at a limited category of public officials or emergency personnel engaged in the performance of their duties.[155]

In support of the view that presumptive sentencing should apply to first felony offenders, a minority on the Criminal Code Revision Subcommission argued that the failure to do so could result in a first felony offender being sentenced more severely than a second felony offender.[156] Theoretically, at least, this result is possible under the statutory scheme.[157] In *Austin v. State*,[158] the Alaska Court of Appeals considered whether a first felony offender should ever receive a harsher sentence than a second felony offender. The *Austin* decision insured that the sentencing of first felony offenders who were not covered by presumptive sentencing would nevertheless be directly affected by the presumptive sentencing scheme.

Austin was convicted of second degree criminal mischief, a class

P.2d 1257, 1258-60 (Alaska 1976); State v. Wortham, 537 P.2d 1117, 1118-19 & n.4 (Alaska 1975); *Chaney*, 477 P.2d at 445 & n.19, 446; State v. Jensen, 650 P.2d 422, 423-25 (Alaska Ct. App. 1982); State v. Doe, 647 P.2d 1107, 1107-11 (Alaska Ct. App. 1982).

Finally, the process of appellate sentence review failed to correct the disparities that can arise in an indeterminate sentencing system where the trial court is given substantial unguided discretion in imposing sentence. Indeed, little significance was placed on uniformity as a goal of sentence review. Laquement v. State, 644 P.2d 856, 861 (Alaska Ct. App. 1982); Juneby v. State, 641 P.2d 823, 830 & n.8 (Alaska Ct. App. 1982), *modified*, 665 P.2d 30 (Alaska Ct. App. 1983). Considering that uniformity in sentencing was not an important goal of appellate sentence review and also that only "clearly mistaken" sentencing errors would be corrected on appeal, it is not surprising that the appellate process did not correct the types of sentencing disparities noted by the judicial council, *see supra* notes 6-8 and accompanying text.

151. ALASKA CRIMINAL CODE REVISION, *supra* note 2, at 70.

152. *Id.*

153. *See supra* text accompanying notes 146-47.

154. Act of July 3, 1982, ch. 143, 1982 Alaska Sess. Laws 1 (effective October 1, 1982). The Act provides a five-year presumptive term of imprisonment for a first felony offender convicted of manslaughter. *See id.* § 28, at 24. Any other first felony offender convicted of a class A felony is subject to a five-year presumptive term unless "the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense," in which case the presumptive term is set at seven years. *Id.* The provisions of section 28 of the Act are codified in ALASKA STAT. § 12.55.125(c)(1)-(2) (1984).

155. Act of July 3, 1983, ch. 92, 1983 Alaska Sess. Laws 1. The Act provides that a first felony offender faces a presumptive term of two years if convicted of a class B felony, and a one year presumptive term if convicted of a class C felony, if the offender "knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense." *Id.* The provisions of the Act are codified in ALASKA STAT. § 12.55.125(d)(3), .125(e)(3) (1984). Committing a class A felony under these circumstances subjects a first felony offender to the seven year presumptive term of imprisonment specified in ALASKA STAT. § 12.55.125(c)(2) (1984).

As noted, *supra* notes 38 & 60, the legislature failed to make conforming amendments to the statutes restricting judicial discretion to suspend imposition of sentence or to grant probation to first felony offenders convicted of class B or C felonies despite the fact that they were made subject to presumptive sentencing in the 1983 Act. It also did not restrict the parole eligibility of those offenders.

156. *See supra* text accompanying note 152.

157. For example, consider a second felony offender convicted of a class B felony. Assuming that no aggravating or mitigating factors are established, the presumptive term of imprisonment that must be imposed, absent a finding of manifest injustice, is four years. See ALASKA STAT. § 12.55.125(d)(1) (1984). On the other hand, consider a first felony offender who commits the same class B felony under identical circumstances as the second felony offender. Since presumptive sentencing does not apply to the first felony offender, *see id.* § 12.55.125(d), the trial court may impose a term of imprisonment up to the statutory maximum sentence of ten years. *See id.*. This hypothetical assumes, of course, that the offender does not fall within the category of first felony offenders described in *id.* § 12.55.125(d)(3). *See supra* note 155.

158. 627 P.2d 657 (Alaska Ct. App. 1981) (per curiam).

C felony.[159] Since he was a first felony offender, Austin faced a maximum term of imprisonment of five years but was not subject to presumptive sentencing.[160] Austin was sentenced to three years imprisonment and appealed his sentence as excessive on the ground that the presumptive term of imprisonment for a second felony offender convicted of a class C felony was only two years.[161] The court of appeals held that Austin's sentence was not excessive. The court stated that

> [n]ormally a first offender should receive a more favorable sentence than the presumptive sentence for a second offender. It is clear that this rule should be violated only in an exceptional case. However, it is also clear that the legislature did not intend to say that a first offender could never receive more time to serve than the presumptive sentence for a second offender, since the statute easily could have been written to accomplish that result.[162]

The court of appeals cited several reasons why Austin's situation presented an exceptional case under its new sentencing guideline. Austin's extensive and continuous series of juvenile offenses,[163] his numerous probation violations,[164] and the aggravated nature of his crime,[165] led the court of appeals to conclude that Austin's three year sentence was appropriate even though it was greater than the presumptive term of imprisonment for a second felony offender convicted of the same felony.[166]

The court of appeals made two important clarifications of the *Austin* sentencing guideline in subsequent cases. First, in *Tazruk v. State*,[167] it held that for purposes of comparing the sentence received by a first felony offender with the presumptive sentence for a second felony offender,[168] a court should focus primarily on the period of imprisonment actually imposed on the first felony offender.[169] Tazruk, as a first felony offender convicted of a class B felony, had been sentenced to eight years imprisonment but had five years of that sentence suspended.[170] Since the presumptive term for a second felony offender convicted of a class B felony is four years,[171] the court of appeals held that Tazruk's sentence of three years of actual confinement complied with the requirements of *Austin*.[172]

The second clarification of the *Austin* guideline concerned the standard for determining whether a first felony offender's conduct presented an exceptional case justifying the imposition of a more lengthy sentence than the presumptive sentence for the second felony offender. In *Neakok v. State*,[173] the court of appeals held that an exceptional case finding "must be justified either by specific aggravating factors under the criminal code, . . . or else by aggravating factors which would . . . justify a repeat offender receiving an enhanced sen-

159. *Id.* at 657. Austin had unlawfully taken a car and caused damages to it in an amount exceeding $500, thus violating ALASKA STAT. § 11.46.482(a)(4) (1983). 627 P.2d at 657.

160. 627 P.2d at 657. *See* ALASKA STAT. § 12.55.125(c) (1984).

161. 627 P.2d at 657 & n.2; *see* ALASKA STAT. § 12.55.125(c)(1) (1984).

162. 627 P.2d at 657-58.

163. *Id.* at 658. The court of appeals observed that "Austin's record is so extensive and involves so many offenses that it is difficult to list them all." *Id.* at 658 n.3.

164. *Id.* at 658.

165. *Id.* The court noted that Austin fled in the stolen car when he was spotted by an officer, crashed into two parked cars, causing considerable damage to all three cars, and then ran away from the collision. *Id.*

166. *Id.*

167. 655 P.2d 788 (Alaska Ct. App. 1982).

168. When it has applied the *Austin* guideline, the court of appeals has compared the actual sentence of the first felony offender to the presumptive term of imprisonment for a second felony offender convicted of the same crime *without* adjusting the presumptive term for mitigating or aggravating factors. *See, e.g.*, Shaisnikoff v. State, 690 P.2d 25, 27-28 (Alaska Ct. App. 1984); Nashoalook v. State, 663 P.2d 975, 980 (Alaska Ct. App. 1983); Brezenoff v. State, 658 P.2d 1359, 1362 (Alaska Ct. App. 1983). *But see* Hernandez v. State, 691 P.2d 287, 291 n.1 (Alaska Ct. App. 1984) ("in *Austin v. State*, . . . we held that a first offender should receive a more favorable sentence than a *similarly situated* second offender who was subject to presumptive sentencing." (citation omitted) (emphasis added)).

The court of appeals has conceded that in focusing on the presumptive term of imprisonment for a second felony offender, the *Austin* guideline fails to acknowledge the possibility that the presumptive term might have been reduced because of mitigating factors. *See* Langton v. State, 662 P.2d 954, 962 n.5 (Alaska Ct. App. 1983).

169. 655 P.2d at 789; *see also* Pickens v. State, 675 P.2d 665, 671-72 (Alaska Ct. App. 1984); *Nashoalook*, 663 P.2d at 980.

170. *Tazruk*, 655 P.2d at 789.

171. ALASKA STAT. § 12.55.125(d)(1) (1984).

172. 655 P.2d at 789. In *Brezenoff*, however, the court of appeals restated the *Austin* guideline as clarified in *Tazruk* as follows:

> Where the total sentence received by a first offender exceeds the presumptive sentence for a second offender but the period of actual imprisonment is *substantially* less, we will conclude that the total sentence meets the *Austin* requirement of a *substantially* more favorable sentence for the first offender.

658 P.2d at 1362 (emphasis added). Neither *Austin* nor *Tazruk*, however, requires that the term of imprisonment imposed on a first felony offender be *substantially* less than the presumptive sentence for a second felony offender. *Austin*, 627 P.2d at 657-58; *Tazruk*, 655 P.2d at 789. *Austin* merely required that the sentence normally be "more favorable" for the first offender, *see supra* text accompanying note 162, while in *Tazruk* the court held that the sentence for a first felony offender complied with *Austin* because it was "less" than the presumptive term of imprisonment for a second offender. *Tazruk*, 655 P.2d at 789.

The courts have generally not used the "substantially less" language in subsequent applications of *Austin*. *See, e.g.*, Short v. State, 676 P.2d 612, 614 (Alaska Ct. App. 1984); *Nashoalook*, 663 P.2d at 980. *But see Shaisnikoff*, 690 P.2d at 28 (unsuspended sentence for a first felony offender "should be substantially more favorable" than presumptive term for second felony offender).

173. 653 P.2d 658 (Alaska Ct. App. 1982).

tence by a three-judge panel."[174]

Alaska's appellate courts have had many opportunities to review a sentence for a first felony offender that was more severe than the presumptive sentence for a second felony offender. In some cases, the appellate court explicitly determined whether aggravating factors or extraordinary circumstances were present which rendered the case exceptional under *Neakok* and *Austin*.[175] In other cases, the appellate court simply cited *Austin* and decided whether the case was exceptional without specifically finding that aggravating factors were present or that the case could have been sent to the three-judge panel if presumptive sentencing had applied to that case.[176]

The inconsistent application of the *Neakok* exceptional case standard may be explained by the fact that the "[s]entencing of first felony offenders to whom presumptive sentencing does not directly apply must be accomplished, primarily, by a careful balancing of the sentencing goals set out in *State v. Chaney*."[177] In *Chaney*,[178] the court adopted a "clearly mistaken" standard for determining whether an imposed sentence was either too excessive or too lenient.[179] The court also articulated sentencing goals to be used in evaluating whether a sentence was clearly mistaken.[180] These goals became known as the *Chaney* criteria. The court stated that:

> [u]nder Alaska's Constitution, the principles of reformation and necessity of protecting the public constitute the touchstones of penal administration. Multiple goals are encompassed within these broad constitutional standards. Within the ambit of this constitutional phraseology are found the objectives of rehabilitation of the offender into a noncriminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves.[181]

While the *Austin* guideline has proven to be a useful device to alert an appellate court to sentences which may be clearly mistaken under the *Chaney* criteria,[182] compliance with the *Austin* guideline does not automatically guarantee that the sentence will be affirmed on appeal.[183] On the other hand, the court of appeals has never upheld a sentence for a first felony offender that violated the *Austin* guideline as clarified by *Neakok* and *Tazruk*.[184] Consequently, it is necessary to consider whether the *Austin* guideline is an appropriate standard to highlight sentences that may be excessive under the *Chaney* criteria.

While comparing nonpresumptive sentences imposed on first felony offenders with presumptive sentences for second felony offenders is useful to highlight excessive sentences, the *Austin* guideline fails to take one significant factor into consideration: defendants subject to presumptive sentencing are not eligible for parole while other defend-

174. *Id.* at 662 (citation omitted). Actually, the court of appeals first applied this standard less than two weeks before *Neakok* was published. Sears v. State, 653 P.2d 349, 350 (Alaska Ct. App. 1982). However, in *Sears*, the court of appeals did not state the exceptional case standard with the same clarity as it did two weeks later in *Neakok*.

If the *Neakok* clarification of exceptional cases under the *Austin* guideline were applied to the facts in *Austin*, the particularly aggravated nature of Austin's crime, *see supra* note 165, most likely would have established the aggravating factor that "the conduct constituting the offense was among the most serious conduct included in the definition of the offense." ALASKA STAT. § 12.55.155(c)(10) (1984). Additionally, the court of appeals has noted that "[i]mplicit in our decision in *Austin* was the recognition that a particularly bad juvenile or misdemeanor record characterized by offenses similar to the offense currently under consideration might warrant referral to a three-judge panel." Erhart v. State, 656 P.2d 1199, 1201 (Alaska Ct. App. 1982).

175. *See, e.g., Shaisnikoff*, 690 P.2d at 27; Goenett v. State, 695 P.2d 243, 244-45 (Alaska Ct. App. 1985); Lausterer v. State, 693 P.2d 887, 890-92 (Alaska Ct. App. 1985); Theodore v. State, 692 P.2d 987, 988 (Alaska Ct. App. 1985); Smith v. State, 682 P.2d 1125, 1126-27 (Alaska Ct. App. 1984); Maul v. State, 670 P.2d 708, 710-11 (Alaska Ct. App. 1983); Willard v. State, 662 P.2d 971, 979-80 (Alaska Ct. App. 1983); *Brezenoff*, 658 P.2d at 1361-63; Peetook v. State, 655 P.2d 1308, 1310-11 (Alaska Ct. App. 1982).

176. *See, e.g.*, Karr v. State, 686 P.2d 1192, 1195-96 (Alaska 1984); Jacko v. State, 689 P.2d 506, 507 (Alaska Ct. App. 1984); Mathison v. State, 687 P.2d 930, 931 (Alaska Ct. App. 1984); Winslow v. State, 685 P.2d 1273, 1275 (Alaska Ct. App. 1984).

177. *Peetook*, 655 P.2d at 1310; *see also Karr*, 686 P.2d at 1194 ("The standards under which sentences are to be reviewed were established in *State v. Chaney*." (citation omitted)). *But see Maul*, 670 P.2d at 711-12 (in light of "just deserts" theory of punishment adopted by the Criminal Code, "inordinate emphasis must not be placed on predictions of possible future misconduct" in imposing sentence).

178. 477 P.2d 441 (Alaska 1970).

179. *Id.* at 443-44.

180. *Id.* at 443.

181. *Id.* at 444 (footnotes omitted).

182. *See, e.g.*, Kimbrell v. State, 647 P.2d 618, 622 (Alaska Ct. App. 1982).

183. *See, e.g., Maul*, 670 P.2d at 711 (*Austin* guideline satisfied but sentence nevertheless held to be clearly mistaken and vacated); Hansen v. State, 657 P.2d 862, 864 (Alaska Ct. App. 1983) (sentence clearly mistaken despite compliance with *Austin* guideline).

184. In *Erhart*, 656 P.2d at 1201, the court of appeals noted that it had never upheld a term of imprisonment for a first felony offender that exceeded the presumptive term of imprisonment for a second felony offender absent a finding of aggravating factors or extraordinary circumstances. Since *Erhart*, the court of appeals has vacated as excessive every sentence which it has found to be in violation of the *Austin* guideline as clarified by *Neakok*. *See, e.g., Shaisnikoff*, 690 P.2d at 27-28; *Jacko*, 689 P.2d at 507.

ants may generally be paroled after serving one-third of their sentences.[185] Indeed, between 1970 and 1979, approximately two-thirds of felony offenders not sentenced to life terms were released by the board of parole before the expiration of their sentences, including eighty percent of those prisoners sentenced to terms of three years or more. The average prisoner released on parole during that period served slightly more than a third of the sentence imposed by the trial court.[186]

The courts' failure to consider parole eligibility in applying the *Austin* guideline is surprising since the court of appeals has acknowledged that "a prison sentence imposed prior to enactment of the [Criminal Code] is by no means equivalent to a sentence presumptively imposed."[187] Particularly in the case of "lengthy" sentences,[188] the court of appeals noted that a sentence imposed presumptively "must be regarded as significantly more severe than [the identical sentence] imposed under prior law, when early parole in cases involving lengthy sentences was the order of the day."[189] Since first felony offenders who are exempt from presumptive sentencing have the same parole eligibilty as defendants sentenced under prior law,[190] these observations by the court of appeals appear equally applicable in comparing presumptive sentences with nonpresumptive sentences.

Consider, for example, a four year sentence for the same crime committed under identical circumstances imposed on both a first felony offender not subject to presumptive sentencing and a second felony offender sentenced presumptively. Assume further that no aggravating factors or extraordinary circumstances are present in either case. While the second felony offender is required to serve the entire four year sentence, minus a maximum good conduct credit of one-fourth of the sentence imposed,[191] the first felony offender is eligible for release by the parole board after serving sixteen months, or one-third of the four year sentence.[192] Although the court of appeals referred to a lengthy sentence imposed under presumptive sentencing as "significantly more severe" than the same sentence imposed on an

185. *See* ALASKA STAT. §§ 33.15.180(a), .080 (1982); *see also supra* text accompanying note 60.

186. *Juneby*, 641 P.2d at 845 n.37 (citing ALASKA BOARD OF PAROLE, PAROLE GUIDELINES FOR ALASKA, SUPPLEMENTAL REPORT, TIME SERVED COMPONENT (September 1980)).

187. *Juneby*, 641 P.2d at 845.

188. Though the court of appeals did not specifically define what constitutes a lengthy sentence, it cited parole statistics which equated "long terms of incarceration" with sentences in excess of three years. *Id.* at 845 n.37.

189. *Id.* at 845 (footnote omitted).

190. *See* ALASKA STAT. § 33.15.180 (1982).

191. *See supra* text accompanying notes 60-61.

192. *See* ALASKA STAT. § 33.15.080 (1982).

offender who is eligible for parole,[193] the four year sentence imposed on the first felony offender violates the *Austin* guideline as currently applied because it is not more favorable in length.[194] More significantly, the court of appeals has vacated, as excessive, every sentence which it has found to violate the *Austin* guideline.[195]

The consequences of failing to consider parole eligibility in applying the *Austin* guideline were highlighted recently in *Shaisnikoff v. State*.[196] Shaisnikoff was convicted of criminally negligent homicide committed during a drunken bar room fight and was sentenced to five years imprisonment with three years suspended.[197] The presumptive term of imprisonment for a second felony offender convicted of criminally negligent homicide is two years.[198] No aggravating factors or extraordinary circumstances were established at Shaisnikoff's sentencing hearing.[199] The court of appeals held that Shaisnikoff's sentence violated the *Austin* guideline because it was less favorable to him than the presumptive sentence for a second felony offender and because Shaisnikoff's situation did not present an exceptional case.[200] The court then found the sentence to be clearly mistaken and ordered that

193. *See supra* text accompanying note 189.

194. This sentence would violate the *Austin* guideline since no aggravating factors or extraordinary circumstances had been established and the term of imprisonment the first felony offender would be required to serve is not more favorable than the presumptive sentence for the second felony offender. *See supra* text accompanying notes 162-76.

The court of appeals has recognized that a sentence imposed on a second felony offender subject to presumptive sentencing is not the equivalent of an identical sentence imposed on a first felony offender exempt from presumptive sentencing. It has not, however, taken this recognition into account in applying the *Austin* guideline. *See* DeMan v. State, 677 P.2d 903 (Alaska Ct. App. 1984). In *DeMan*, the court of appeals noted in applying the *Austin* guideline that the defendant, a first felony offender, received a sentence equal to the presumptive sentence for a second felony offender. *Id.* at 912. In the accompanying footnote, the court of appeals acknowledged that the defendant's sentence is "not the precise equivalent of" the presumptive sentence for a second felony offender since if the defendant had been subject "to presumptive sentencing, he would have been ineligible for parole." *Id.* at 912 n.5. The sentence was upheld because the defendant's situation presented an exceptional case. *See also* Gibbs v. State, 676 P.2d 606, 608 (Alaska Ct. App. 1984) (parole eligibility taken into consideration in determining whether sentence for first felony offender, which complied with *Austin*, was excessive); Ecker v. State, 656 P.2d 577, 578 (Alaska Ct. App. 1982) (nonpresumptive sentence is "potentially more lenient" than identical sentence imposed presumptively because of parole eligibility).

195. *See supra* notes 183-84 and accompanying text.

196. 690 P.2d 25 (Alaska Ct. App. 1984).

197. *Id.* at 26.

198. Criminally negligent homicide is a class C felony. ALASKA STAT. § 11.41.130(b) (1983). The presumptive term for a second felony offender convicted of a class C felony appears in ALASKA STAT. § 12.55.125(e)(1) (1984).

199. 690 P.2d at 27.

200. *Id.* at 27-28.

on remand it be reduced to three years imprisonment with two years of that suspended,[201] thus requiring Shaisnikoff to serve only one year of imprisonment.

To the extent that the goal of the court of appeals is to insure an appropriate relationship between sentences for first felony offenders not subject to presumptive sentencing and presumptive sentences for second felony offenders, decisions such as *Shaisnikoff* are inconsistent with that goal. Not only did the court of appeals reduce Shaisnikoff's initial sentence to one-half the presumptive term for a second felony offender, but it failed to consider that Shaisnikoff would be eligible for parole after serving four months of his sentence. Acknowledging these circumstances, it is difficult to understand why the sentence imposed by the trial court was clearly mistaken and why the sentence imposed by the court of appeals was appropriate. Indeed, the only justification the court of appeals cited for its sentence reduction was that Shaisnikoff's sentence violated the *Austin* guideline.[202]

Recognizing the effect of parole eligibility on the actual time served by an offender raises questions concerning the appropriateness of the court of appeals' reliance upon the *Austin* guideline as determining, at least in practice, when a sentence is excessive under *Chaney*.[203] Of course, the courts could consider parole eligibility when applying the *Austin* guideline. This approach, however, would be subject to the criticism that, despite statistical data strongly indicating that eligible offenders are likely to receive an early parole,[204] a case-by-case assumption of parole eligibility in applying the *Austin* guideline would render the comparisons speculative.

A more direct approach to ensure an appropriate relationship between sentences imposed on first and second felony offenders is to apply presumptive sentencing to all felony offenders. This uniform approach would eliminate the need for an increasingly complex and sometimes inaccurate comparison of sentence lengths imposed on defendants sentenced under two different sentencing systems. Moreover, applying presumptive sentencing to all felony offenders would allow courts to focus on the *Chaney* criteria in making appropriate adjustments of presumptive terms for aggravating and mitigating factors.

IV. CONCLUSION

The 1978 revision of the state's sentencing laws attempted to eliminate unjustified disparity in sentencing.[205] This purpose has been well served by legislative amendment and judicial interpretation of the presumptive sentencing statutes. The legislature has gradually increased the number of crimes and offenders subject to presumptive sentencing[206] and has added to the list of the aggravating and mitigating factors that can be considered by a trial court in adjusting a presumptive term of imprisonment.[207] These amendments guide judicial sentencing discretion in a greater number of cases and insure that appropriate factors are taken into account during sentencing. At the same time, the expansion of presumptive sentencing reduced the possibility that improper sentencing considerations, such as the race of the defendant[208] or the sentencing attitude of a particular judge,[209] will affect the sentence imposed.[210] Appellate interpretations of ambiguous provisions in the presumptive sentencing statutes consistently rec-

201. *Id.*
202. *Id.*
203. *See supra* note 183 and accompanying text.
204. *See supra* note 186 and accompanying text.
205. *See supra* text accompanying note 4.

206. *See supra* text accompanying notes 153-55.
207. *See supra* text accompanying notes 111-14.
208. *See supra* note 6 and accompanying text.
209. *See supra* text accompanying note 7.
210. Langton v. State, 662 P.2d 954 (Alaska Ct. App. 1983), provides a graphic illustration of the extreme sentence variations that can occur when defendants convicted of the same crime, committed under essentially identical circumstances, are not sentenced under the presumptive sentencing system. *Langton* involved three separate sentence appeals which were consolidated for review. *Id.* at 955-56. Each defendant had been convicted of a sexual assault in the first degree on a young child under former ALASKA STAT. § 11.41.410(a)(3) (repealed 1983). *Id.* at 955. At the time the offenses were committed, sexual assault in the first degree was a class A felony. Offenders who had not previously been convicted of a felony were exempt from presumptive sentencing and faced a sentence that could be as high as twenty years imprisonment. *Id.* at 961.

The three *Langton* defendants, Langton, Doe, and Joe, were first felony offenders and therefore not covered by presumptive sentencing. *Id.* at 955. Each was sentenced by a different judge. *Id.* Langton was sentenced to ten years imprisonment with four years suspended and appealed the sentence as excessive. *Id.* Doe was not required to serve a single day of imprisonment and the state appealed the sentence as too lenient. *Id.* Joe was required to serve a sentence of twenty years imprisonment and appealed the sentence as excessive. *Id.*

Langton had pleaded guilty to two counts of sexual assault in the first degree and was sentenced to two concurrent ten-year terms of imprisonment with four years of each term suspended. *Id.* at 955. The court of appeals affirmed Langton's sentence, characterizing Langton's conduct as "the most serious" conduct included in the definition of the offense, in light of his history of sexual abuse, his disregard of the court order to avoid contact with the victim, and his unwillingness to seek counseling. *Id.* at 956. The court of appeals concluded that the circumstances of the case justified a sentence of at least six years imprisonment. *Id.*

Unlike Langton's conduct, Doe's conduct appeared to be an isolated event. *Id.* at 957. After pleading guilty to the assault of his sons, Doe was sentenced to five years imprisonment, all of which was suspended. *Id.* Doe was placed on probation and ordered to seek psychological counseling. *Id.* at 955. The trial court justified this sentence by characterizing the assault as an isolated incident brought on by a stressful marital relationship, noting Doe's history as a steady worker and a good provider. *Id.* at 957. The court of appeals disapproved of Doe's sentence as being too lenient, but

ognize the legislature's purpose in enacting presumptive sentencing and attempt to apply the statutes to further the legislative goal of eliminating unjustified sentencing disparity.[211]

In light of this background, presumptive sentencing may eventually apply to all felony offenders. Indeed, of the fourteen states which have adopted presumptive sentencing systems,[212] Alaska is unique in exempting from presumptive sentencing first felony offenders who would be subject to presumptive sentencing if they were repeat felony offenders.[213] Including all felony offenders under presumptive sentencing will complete the effort begun in 1978 to establish a rational, predictable, and uniform sentencing system in Alaska.

lacked the ability to increase the sentence. *Id.* at 959; *see also supra* note 158 (explaining the court of appeals' inability to increase sentences it finds too lenient).

Like Doe's conduct, Joe's sexual assault was also an apparently isolated event. *Id.* at 961. Like Doe, Joe also had a good employment history and, additionally, had a stable relationship with his wife and three children. *Id.* at 961. The judge who sentenced Joe, however, characterized him as a "dangerous offender" and sentenced him to the statutory maximum sentence of twenty years. *Id.* The court of appeals held that his sentence was excessive. *Id.* at 955. Citing the isolated nature of Joe's act, the court of appeals rejected the characterization of Joe as a "dangerous offender." *Id.* at 961. Holding that Joe should be sentenced to no more than ten years imprisonment, the court of appeals remanded the case for resentencing. *Id.*

Judge Singleton's concluding paragraphs in *Langton* concisely summarized the three disparate sentences imposed on each defendant and the unsatisfactory modifications of the sentences that the court of appeals was authorized to effect:

> Langton, Doe and Joe were convicted of sexual assaults of children. Of the three, Langton was the worst offender, since he committed many separate assaults over a long period of time. Doe assaulted two children on one occasion and Joe committed a single assault. In all other respects, the offenses are virtually indistinguishable. *In a rational system seeking to eliminate disparity and attain reasonable uniformity, Langton should have received the most severe sentence, and Doe and Joe similar and substantially less severe sentences. In actuality, Langton received a much less severe sentence than Joe, and Doe received no period of imprisonment at all. While we have modified two of the sentences, the modified sentences still leave substantial disparity in place.* This unsatisfactory result is a necessary concommitant of the substantial trial court discretion which still exists for first-felony offenders where the ultimate decision must rest upon an application of the clearly mistaken standard.

Id. at 962-63 (footnotes omitted) (emphasis added). Subsequent to the sentencing in the *Langton* cases, the legislature applied presumptive sentencing to all offenders convicted of sexual assault in the first degree. *See* ALASKA STAT. § 12.55.125(i) (1984); *Langton*, 662 P.2d at 956 n.3.

211. *See, e.g.*, Maldonado v. State, 676 P.2d 1093, 1094 (Alaska Ct. App. 1984) ("A major purpose in enacting the revised Criminal Code was to eliminate unjustified disparity in sentencing."); Juneby v. State, 641 P.2d 823, 830 n.11 (Alaska Ct. App. 1982) ("[I]t is manifest that the legislature's focus on eliminating disparity and achieving uniformity in sentences was calculated to significantly restrict the trial court's traditionally broad sentencing discretion."), *modified*, 665 P.2d 30 (Alaska Ct. App. 1983).

212. *See supra* note 2.

213. *See* ARIZ. REV. STAT. ANN § 13-701 (1978); CAL. PENAL CODE § 1170(a)(2) (West. Supp. 1985); COLO. REV. STAT. § 18-1-105(1)(a)(II)-(b) (Supp. 1984); FLA. STAT. ANN. § 921.001(4)(a) (West Supp. 1984); ILL. ANN. STAT. ch. 38, § 1005-8-1(a) (Smith-Hurd 1982); IND. CODE ANN. §§ 35-50-2-4 to -7 (Burns 1979 & Supp. 1985); MINN. STAT. ANN. § 24 (West Supp. 1985); N.J. STAT. ANN. § 2C:44-1(f) (West Supp. 1985-1986); N.M. STAT. ANN. § 31-18-15 (1981); N.C. GEN. STAT. § 15A-1340.4 (1983); 42 PA. CONS. STAT. ANN § 9721 (Purdon 1982); S.C. CODE ANN. § 24-27-30(1) (Law. Co-op. Supp. 1984); WASH. REV. CODE ANN. §§ 9.94A.120, .310 (Supp. 1985).

Dr. Stanley Yolles, then director of the National Institute of Mental Health, testified against mandatory minimum sentences before the House Select Committee on Crime in the fall of 1969:

> This type of law has no place in a system devised to control an illness. It has no place being used for individuals who are addicted to drugs.
>
> This type of law angers us as doctors, because it should not apply to people who are sick. It destroys hope on the part of the person sentenced—hope of help, hope for starting a fresh life. It's totally contradictory to the whole concept of medicine. A prison experience is often psychologically shattering. The young person is exposed to sexual assault. He may for the first time in his life learn criminal ways. Such mandatory sentences *destroy* the prospects of rehabilitation.
>
> . . . I feel that judges have to be free to deal with violators of drug laws as individuals, not as a class of criminals. In my field, treatment is always tailored to the individual's needs. I feel the same should be true in dealing, under the law, with addicts and drug abusers. Why on earth must we class the street addict, who sells to support his habit, with the big operator who pushes the narcotics wholesale? The former is a sick person who needs medical help and rehabilitation. The latter is a criminal who is living off the misery of the addicts. Many laws on the books don't allow for this distinction.
>
> As a result, what we have in our prisons and Federal hospitals, like Lexington, are many young people serving *irrationally* long sentences, some up to 20 years. In no other field has there been such a punitive approach. And let's not forget this is an illness mainly of young people—the very age group with the highest potential for rehabilitation, yes, and cure.
>
> These laws came about by sometimes well-intentioned people who placed too much confidence in the principle of deterrents. But if mandatory penalties were that effective, what is the rationale for limiting them only to drug abuse offenders? Why not extend them to thieves, burglars, murderers? Even murderers with life sentences can come up for parole after about seven years.[6]

Could this apply in OUR STATE?

drug addict

Just why the alcoholic is tolerated as a sick man while the opiate addict is persecuted as a criminal is hard to understand. There is, in the present attitude of society in the United States toward opiate addicts, much the same hysteria, superstition, and plain cruelty as characterized the attitude of our forefathers toward witches. Legislation reflects this cruelty and superstition. Prison sentences up to 40 years are now being imposed and the death sentence has been introduced. Perhaps one should feel thankful that the legislators have not yet reached the point of burning addicts alive. If one insists on relying on terrorism to cope with a problem which is essentially medical one may as well be logical and "go the whole hog."[19]

change to sick offender

Presumptive sentencing

Feb. 24, 1986
P.O. Box 83997
Fairbanks, AK 99709

To the Editor:

House Bill 554, an act relating to sentencing that would change the presumptive sentencing law, has been introduced by House Majority leader Don Clocksin, D-Anchorage.

Hearings were scheduled for this bill Friday, Feb. 21, at the Legislative Information Office.

A handful of Fairbanks citizens were ready to testify, but instead listened to others testify throughout Alaska. Because of lack of time, Fairbanks will have its chance next in line.

It was somewhat ironic that two hearings were being heard at the same time that day. The other hearing was an overview about hazardous waste. It was ironic because my testimony was all about "hazardous waste," the presumptive sentencing law.

The Department of Corrections and lawmakers have anticipated that it will cost $140 million for expansion for more prison facilities in the future. That's a hazardous waste.

1. The current presumptive sentencing statute as applicable to first offenders is in direct opposition to the Alaska constitutional requirement which commands that penal administration be based upon the principle of reformation.

2. The current presumptive statute discriminates against first-time offenders by eliminating parole eligibility, also denying the opportunity for rehabilitation, if rehabilitation exists.

3. For 20 years the state of Alaska depended on judicial sentencing, this gave the judge the discretion upon sentencing, especially in the case of the first offender, who by the very nature of being first offenders are the prime target of rehabilitation, again, if rehabilitation exists.

4. If our judges were to be elected by the people of Alaska rather than appointed by the governor, I believe we could have a more sound and fair sentencing for offenders who break the law.

I stand behind House Bill 554 because it is a beginning in the right direction of reform of the presumptive sentencing. But, if the lawmakers are serious about wanting to relieve overcrowding in our prison system and save the state $140 million, then, simply abolish the hazardous waste, and that's the current presumptive sentencing statute.

Respectfully,
Frank Turney
Prisoner Advocate

DANY NEWS MINER
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