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Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 102

Sponsor: GOVERNOR

Date referred to committee: 1/25/85

Synopsis completed: 1/28

Fiscal note: Rept. of Law 2010 ✓

Further referrals: Judiciary

CONTACTS:

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: SB 102
 Title: "An act relating to criminal sentences."
 Sponsor: Rules/Governor
 Requestor: Governor
 Date of Request: 1/24/85

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: _____
 Administration of Justice
 BRU, Program or Subprogram(s) Affected: Northern Region, Southcentral Region, Southeast Region, Admin. & Support BRU's

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						287.7
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL				29.6	41.4	54.3
400 SUPPLIES				24.2	33.9	46.5
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	53.8	75.3	386.5

CAPITAL	-0-	-0-	-0-	1,515.9	-0-	-0-
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	1,569.7	75.3	386.5
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	1,569.7	75.3	386.5

POSITIONS:

FULL-TIME				0		5
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

See Attached Narrative.

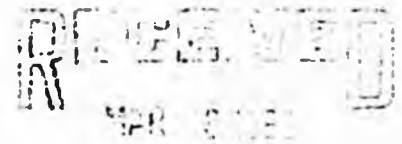
Prepared By: William W. Ladwig
 Division: Deputy Commissioner for Administration

Phone: 465-3376
 Date: February 26, 1985

Approved by Commissioner: [Signature]
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 27, 1985

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



HAND DELIVERED 7/1/84
 GOVERNOR'S OFFICE

ANALYSIS:

Persons serving time for Attempt to Commit A Felony now have average jail sentences of five years. There are eight persons serving presumptive sentences and seven serving non-presumptive sentences for a total of 75 man-years. If the proposed sentencing sanctions were applied, a total of 101 additional man-years would be served. It would cost the State \$2,348,800 in operating expenditures to house these persons for the additional 101 man-years.

There is currently one person serving a three year jail sentence for Solicitation to Commit a Crime, under the proposed sentencing sanctions five additional years would be served for an operating cost of \$133,000.

Five persons are serving an average jail sentence of four years for Negligent Homicide. Twenty-four additional man-years would be served under the proposed sentencing sanctions for an operating cost of \$531,800.

Persons serving time for Manslaughter now have an average jail sentence of seven years. There are 12 persons serving presumptive sentences and 24 persons serving non-presumptive sentences. If the proposed sentencing sanctions were applied, a total of 60 additional man-years would be served at an operating cost of \$1,418,100.

If the profile of Alaska's prison population continues to evolve as it has over the last five years, it is estimated that it will cost the Department \$3,358,500 in capital expenditures if these sentencing changes are made. An additional twenty beds would have to be constructed, ten of which would need to be in place initially and the rest spread out over the remaining future years.

The total cost for housing these inmates the additional man-years would be approximately \$6,000,000.

Breakdown of costs are as follows (in thousands):

<u>Year</u>	<u>Operating</u>	<u>Capital</u>	<u>Total</u>
1986	-	-	-
1987	-	-	-
1988	53.8	1,515.9	1,569.7
1989	75.3	-	75.3
1990	386.5	-	386.5
1991	424.5	-	424.5
1992	467.5	1,842.6	2,310.1
1993	513.7	-	513.7
1994	587.5	-	587.5
TOTAL	2,508.8	3,358.5	5,867.3

ASSUMPTIONS:

- Assumes this bill takes effect July 1, 1985. This will cause inmates who would have been released in July 1988 being continued in custody.
- Assumes that these changes will cause an increase of 10 inmates by FY90 and an increase of an additional 10 inmates by FY94. These increases were prorated as follows: +6 in FY88, +2 in FY89, +2 in FY90, +2 in FY91, +2 in FY92, +2 in FY93, and +4 in FY94.
- The average cost per inmate for commodities, medical and education is \$22.28 per day (FY84 rate).
- Cost of new bed construction is \$137,500 per bed.
- Inmate costs in successive years assumes a 5% cost of living increase.
- In 1990 additional security staff would be required.

COMPUTATIONS:

Calculating operating costs for fiscal years are as follows:

Yearly Cost Formula = Inmate count X 365 days X average cost to house inmate/day plus any new position costs.

1988	-	6	X	365	X	24.56		=	53.8
1989	-	8	X	365	X	25.79		=	75.3
1990	-	10	X	365	X	37.08	+ 287.7	=	386.5
1991	-	12	X	365	X	28.43	+ 300.0	=	424.5
1992	-	14	X	365	X	29.85	+ 315.0	=	467.5
1993	-	16	X	365	X	31.34	+ 330.7	=	513.7
1994	-	20	X	365	X	32.90	+ 347.3	=	587.5

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: SB102
 Title: "An Act relating to criminal sentences."
 Sponsor: By Request of the Governor
 Requestor: Governor's Ofc./OMB
 Date of Request: 12/19/84

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING		-				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would amend existing sentencing laws by raising the criminal penalties for attempted murder, solicitation to commit murder, manslaughter, and criminally negligent homicide, and it would make some badly needed "housekeeping" amendments to sentencing laws. Because the bill affects sentencing and not the number of prosecutions, it will not have a fiscal impact on the Department of Law's operations.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 12/19/84

Richard I. Pegues / JCR

Approved by Commissioner: Norman C. Gorsuch Date: 12/19/84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 25, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will increase the penalties for the crimes of attempted murder, solicitation to commit murder, manslaughter, and criminally negligent homicide. The bill also makes some badly needed "housekeeping" changes to existing sentencing laws.

Under present law, a person who attempts to commit or solicits another to commit murder, an unclassified felony, is guilty of only a class A felony. If it is the defendant's first felony conviction, he will be subject to a presumptive term of either five or seven years imprisonment, depending upon the facts of the offense. (AS 12.55.125(c)(1), (c)(2).)

A deliberate, intentional attempt to kill another person, or the deliberate, intentional solicitation of someone else to commit a murder, are among the most heinous crimes that a person can commit. Only the completed murder itself could be more serious. The penalties prescribed under existing law do not reflect the seriousness of this conduct. Under present law, for example, a parent who improperly touches his eight-year-old child's genitals receives a more severe sentence than that imposed upon a person who deliberately, but unsuccessfully, attempted to kill the child. Sections 1 -- 4 and 10 of this bill cure this anomaly by raising the crimes of attempted murder and solicitation to commit murder to the "unclassified" level. The crimes will carry a presumptive sentence equal to that now provided for the unclassified felonies of sexual assault in the first degree or sexual abuse of a minor in the first degree. (See AS 12.55.125(i).)

Manslaughter is a class A felony. Under current law, a person convicted of a first offense class A felony faces a presumptive term of seven years if the person knowingly directed his conduct to a uniformed police officer, possessed a firearm, used a dangerous instrument, or caused serious physical injury during the crime, unless the conviction was for manslaughter. AS 12.55.125(c)(2). A defendant convicted of manslaughter is subject to a presumptive term of only five years.

This sentencing "exception" for manslaughter has created an incredible anomaly in existing law. For example, an intoxicated driver who causes a traffic accident in which another person is seriously injured has committed assault in the first degree under AS 11.41.200(a)(1), a class A felony. The drunk driver, if convicted for the assault, faces a presumptive term of seven years. If, however, the victim dies, and the drunk driver is convicted of manslaughter, the defendant's presumptive sentence decreases to five years. This result is one that is difficult to understand, and even more difficult to explain to a deceased victim's family. Section 8 of this bill removes this "exception", and treats manslaughter the same as any other class A felony.

Section 5 of the bill reclassifies the crime of criminally negligent homicide from a class C to a class B felony level. This raises the maximum possible penalty from five years to 10. (Before the new criminal code took effect in 1980, negligent homicide was considered a form of manslaughter, and carried a penalty of up to 20 years imprisonment). Under present law, the disparity between manslaughter (a class A felony with a maximum term of 20 years) and criminally negligent homicide (a C felony, five year maximum) is too great. The difference between the two crimes is the defendant's mental state at the time of the killing -- "reckless" for manslaughter, "criminally negligent" for criminally negligent homicide. These mental states are defined in AS 11.81.900(a), and the difference between them is not great. Criminally negligent homicide is the unlawful killing of another. Reclassification of this crime to the B felony level will bring the penalty level in line with the seriousness of the offense. In appropriate cases a sentencing court could decide not to impose any jail sentence at all, as a first offense B felony conviction does not carry a presumptive term.

Sections 6 and 7 make some badly needed "housekeeping" amendments to the sentencing laws. When the present criminal code was enacted in 1978, there were only three "un-

classified" offenses: murder in the first degree, murder in the second degree, and kidnapping. These three crimes were originally listed, by name, in several places in the code as exceptions to the general classification and sentencing scheme. In the intervening years, other crimes have been raised to the unclassified level, including sexual assault in the first degree, sexual abuse of a minor in the first degree, and misconduct involving a controlled substance in the first degree. In addition, this bill raises attempted murder and solicitation to commit murder to the unclassified level.

It has become increasingly impractical to list all unclassified offenses by name whenever the statutory reference is to the group of offenses. The present system presents the danger that necessary conforming amendments will inadvertently be overlooked when a new crime is added to the unclassified group. This is exactly what happened when the legislature amended the criminal code in 1983 to strengthen the laws against sexual abuse of children. A new unclassified crime, sexual abuse of a minor in the first degree, was created (AS 11.41.434). Through a drafting oversight, however, a reference to this crime was not added to AS 12.55.035, the general provision that specifies the fines authorized for given offenses. Thus, although a person convicted of sexual abuse in the first degree faces a presumptive term of eight years in prison under AS 12.55.125(i), existing penalty provisions do not include a fine for this offense.

To remedy this oversight, and to ensure that similar errors do not occur in the future, this bill substitutes a reference to unclassified crimes as a group wherever the offenses in this group are now specifically listed by name in the statutes.

The amendments contained in secs. 9, 11, 13, and 15 of the bill are needed for a similar reason. Presumptive terms under the new criminal code were originally imposed under a few subsections of AS 12.55.125. These few subsections were specifically cited in many general provisions that dealt with some aspect of presumptive sentencing (in, for example, the list of aggravating or mitigating factors and the section creating the three-judge sentencing panel). As the criminal code has been amended over the years, however, and presumptive penalties have been added or changed, necessary conforming amendments were not always made, or were not always made completely. This bill cures past discrepancies, and eliminates the problem for the future, by simply substituting a general reference to

"presumptive terms" in statutes that now refer to specific subsections under which a presumptive sentence is imposed.

In 1982 the language of AS 12.55.145(a) was amended to provide that a criminal conviction in another jurisdiction would be considered a "prior conviction" for presumptive sentencing purposes in this state if the out-of-state offense had elements "similar to" those of a crime defined as a felony in Alaska. As the result of a drafting oversight, the language of a companion subsection dealing with procedural matters was not amended. Section 12 of this bill cures this discrepancy by amending AS 12.55.145(c).

The amendments included in this bill are needed to improve existing sentencing laws, and to recognize the seriousness of taking a human life.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor