

SB

4

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 4

Sponsor: Kelly

Date referred to committee:

Synopsis completed: 1/10/85

Fiscal note:

Further referrals:

HB 85 identical
(info. by H. Judd)

CONTACTS:

(2/7 hearing)

- testify Sen. Kelly (Mark) 3770
- testify Dept Corrections - Bill Ladung 3376 Cindy Nelson - will attend
- WILL TESTIFY Karla Forsythe, Court System 264-0346-
- ~~testify~~ ^{migstark} Dean Guinelli, Dept Law 3428 - out of town
- attend Keith Levy, Leg Legal 2450 = will attend
- Kevin Bruce 274-1867 = ~~OK~~

STATE OF ALASKA
THE LEGISLATURE

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

May, 1988

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

Mary Van Nimwegen

HESS 2-12-85 1:38pm

COMMITTEE REPORT
SENATE

FURTHER: JUDICIARY
FINANCE

1/14/85

Date 2-12-85

Mr. President

The Committee on HESS considered SB 4
relating to correctional restitution centers

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 4
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" [] NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Charles Sturgis

Paul A. D'Amico

John De Vito

Joe P. Josephson

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

SB 4, Relating to correctional restitution centers.

SB 4 would establish correctional restitution centers and authorize the courts to recommend that non-violent offenders serve time in such centers. Prisoners would be required to maintain or secure employment in the community and wages earned would be applied to room and board, support of dependents, and restitution to victims.

Offenders are currently housed in 15 prisons throughout the state, and become eligible for partial incarceration in privately run halfway houses within 6 months of their final release date.

SB 21, Relating to background checks on certain employees who come into contact with children.

AS 12.62.035 was enacted in 1982 to allow employers of persons who have supervisory or disciplinary power over minors access to records of convictions involving sex crimes and contributing to the delinquency of a minor. SB 21 would make such background checks mandatory before hiring employees for boarding homes, foster homes, group homes, nurseries, institutions, or other places that provide regular care for children or dependent adults.

Current statute specifies the Governor's Commission on the Administration of Justice as the source of conviction records. Since termination of the federal law enforcement grant program four years ago, the commission has been dormant and the oversight of criminal justice information systems has been assumed by the Attorney General's office, with the actual record checks being performed by the Department of Public Safety. To date, the Department has processed approximately 1500 requests for background checks, and has another 1000 pending. No fee is charged for the state record check, but the \$12.00 F.B.I. fee is passed on to the requester.

A list of those crimes for which the Department can provide conviction information is attached. Separate legislation (HB 88) has been introduced which would 1) broaden the records which may be requested to include convictions of any crime that might pose a risk to a child (including child abuse, kidnapping, manslaughter, and driving while intoxicated), and 2) allow access to outstanding arrest warrants.

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Introduced: 2/11/85
Referred: Health, Education & Social
Services, Judiciary and Finance

1 IN THE HOUSE

BY M.M. MILLER, CLOCKSIN,
MARROU, PIGNALBERI AND SUND

2

HOUSE BILL NO. 188

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to alternative correctional facilities for prisoners participating in community service or employment programs."

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

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* Section 1. AS 11.56.340(a) is amended to read:

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(a) A person commits the crime of unlawful evasion in the first degree if the person fails to return to official detention on a charge of a felony following temporary leave granted for a specific purpose or limited period, including privileges granted under AS 33.30.150, 33.30.250, [OR] 33.30.260, or 33.30.288.

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* Sec. 2. AS 11.56.350(a) is amended to read:

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(a) A person commits the crime of unlawful evasion in the second degree if the person fails to return to official detention on a charge of a misdemeanor following temporary leave granted for a specific purpose or limited period, including privileges granted under AS 33.30.150, 33.30.250, [OR] 33.30.260, or 33.30.288.

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* Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

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(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term in a correctional restitution center. The term of service in a correctional restitution center may not exceed the maximum term of imprisonment that could have been imposed.

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* Sec. 4. AS 12.55.055(d) is amended to read:

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(d) The court may offer a defendant convicted of an offense the

1 option of performing community work in lieu of a sentence of imprison-
2 ment. Substitution of community work shall be at a rate of eight
3 hours for each day of imprisonment. A court may not offer substitu-
4 tion of community work under this section for any mandatory minimum
5 period of imprisonment or for any period of a presumptive term of
6 imprisonment.

7 * Sec. 5. AS 12.55.086(a) is amended to read:

8 (a) When the imposition of sentence is suspended under AS 12.-
9 55.085, the court may require, as a special condition of probation,
10 that the defendant serve a definite term of continuous or periodic im-
11 prisonment, and may recommend imprisonment in a correctional restitu-
12 tion center, not to exceed the maximum term of imprisonment that could
13 have been imposed.

14 * Sec. 6. AS 28.15.291(a) is amended to read:

15 (a) A person may not drive a motor vehicle on a highway or
16 vehicular way or area at a time when that person's driver's license,
17 or privilege to drive has been canceled, suspended or revoked in this
18 or another jurisdiction, or when driving in violation of a limitation
19 placed upon that person's license or privilege to drive in this or
20 another jurisdiction. Except as provided in (c) of this section, upon
21 conviction of a violation of this section, the court shall impose a
22 sentence of imprisonment of not less than 10 days. The execution of
23 sentence may not be suspended nor may probation or parole be granted
24 until the minimum imprisonment provided in this section has been
25 served; nor may imposition of sentence be suspended. The sentence may
26 be served in a correctional restitution center if recommended by the
27 court under AS 12.55.015. In addition, the person's license or privi-
28 lege to drive shall be revoked, and the person may not be issued a new
29 license nor may the privilege to drive be restored for an additional

1 period of not less than one year after the date that the person would
2 have been entitled to restoration of driving privileges.

3 * Sec. 7. AS 28.35.030(c) is amended to read:

4 (c) Upon conviction under this section the court shall impose a
5 minimum sentence of imprisonment of not less than 72 consecutive hours
6 and a fine of not less than \$250 if the person has not been previously
7 convicted in this or another jurisdiction of driving while intoxicated
8 under this or another law or ordinance with substantially similar
9 elements or refusal to submit to a chemical test under AS 28.35.032 or
10 another law or ordinance with substantially similar elements. Upon
11 conviction under this section the court shall impose a minimum sen-
12 tence of imprisonment of not less than 20 consecutive days and a fine
13 of not less than \$500 if, within the preceding 10 years, the person
14 has been previously convicted once in this or another jurisdiction of
15 driving while intoxicated under this or another law or ordinance with
16 substantially similar elements or refusal to submit to a chemical test
17 under AS 28.35.032 or another law or ordinance with substantially
18 similar elements. Upon conviction under this section the court shall
19 impose a minimum sentence of imprisonment of not less than 30 consecu-
20 tive days and a fine of not less than \$1,000 if, within the preceding
21 10 years, the person has been previously convicted in this or another
22 jurisdiction of more than one of the following offenses or has more
23 than once been previously convicted of one of the following offenses:
24 (1) driving while intoxicated under this or another law or ordinance
25 with substantially similar elements; (2) refusal to submit to a chemi-
26 cal test under AS 28.35.032 or another law or ordinance with substan-
27 tially similar elements. The execution of sentence may not be sus-
28 pended nor may probation be granted except on condition that the
29 minimum imprisonment provided in this section is served. Imposition of

1 sentence may not be suspended. The sentence may be served in a cor-
2 rectional restitution center if recommended by the court under AS 12.-
3 55.015. In addition, if the offense involved driving a motor vehicle
4 for which a driver's license is required, the person's driver's
5 license shall be revoked in accordance with AS 28.15.181 and the
6 vehicle used in commission of the offense may be forfeited under
7 AS 28.35.036. In addition, the court shall order, and a person con-
8 victed under this section shall undertake, for a term specified by the
9 court, that program of alcohol education or rehabilitation that the
10 court, after consideration of any information compiled under (d) of
11 this section, finds appropriate.

12 * Sec. 8. AS 28.35.032(g) is amended to read:

13 (g) Upon conviction of a person under this section, the court
14 shall impose a minimum sentence of imprisonment of not less than 72
15 consecutive hours and a fine of not less than \$250 if the person has
16 not been previously convicted in this or another jurisdiction of
17 driving while intoxicated under AS 28.35.030 or another law or ordi-
18 nance with substantially similar elements or refusal to submit to a
19 chemical test under this section or another law or ordinance with
20 substantially similar elements. Upon conviction under this section the
21 court shall impose a minimum sentence of imprisonment of not less than
22 20 consecutive days and a fine of not less than \$500 if, within the
23 preceding 10 years, the person has been previously convicted once in
24 this or another jurisdiction of driving while intoxicated under AS 28.
25 35.030 or another law or ordinance with substantially similar elements
26 or refusal to submit to a chemical test under this section or another
27 law or ordinance with substantially similar elements. Upon conviction
28 under this section the court shall impose a minimum sentence of
29 imprisonment of not less than 30 consecutive days and a fine of not

1 less than \$1,000 if, within the previous 10 years, the person has been
2 previously convicted in this or another jurisdiction of more than one
3 of the following offenses or has more than once been previously con-
4 victed of one of the following offenses: (1) driving while intoxicated
5 under AS 28.35.030 or another law or ordinance with substantially
6 similar elements; (2) refusal to submit to a chemical test under this
7 section or another law or ordinance with substantially similar ele-
8 ments. The execution of sentence may not be suspended nor may proba-
9 tion be granted except on condition that the minimum imprisonment
10 provided in this section is served. Imposition of sentence may not be
11 suspended. The sentence may be served in a correctional restitution
12 center if recommended by the court under AS 12.55.015. If the offense
13 involved driving a motor vehicle for which a driver's license is
14 required, the person's driver's license shall be revoked under AS 28.-
15 15.181. In addition, the court shall order, and a person convicted
16 under this section shall undertake, for a term specified by the court,
17 that program of alcohol education or rehabilitation that the court,
18 after consideration of any information compiled under (h) of this
19 section, finds appropriate. The sentence imposed by the court under
20 this subsection shall run consecutively with any other sentence of
21 imprisonment imposed on the committed person.

22 * Sec. 9. AS 33.30 is amended by adding new sections to read:

23 ARTICLE 3A. CORRECTIONAL RESTITUTION CENTERS.

24 Sec. 33.30.261. CORRECTIONAL RESTITUTION CENTERS. (a) The
25 commissioner shall establish correctional restitution centers in the
26 state. The purpose of the centers is to provide certain nonviolent
27 offenders with rehabilitation through community service and employment
28 while protecting the community through partial incarceration of the
29 offender.

1 (b) The commissioner shall adopt regulations setting standards
2 for the operation of the centers including

3 (1) requirements that the centers be secure and in compli-
4 ance with state and local safety laws;

5 (2) standards for disciplinary rules to be imposed on
6 prisoners confined to the centers;

7 (3) standards for the granting of emergency absence to
8 prisoners confined to the centers;

9 (4) standards for classifying prisoners to the centers;

10 (5) standards for periodic review of the performance of
11 prisoners confined to the centers; and

12 (6) standards for a mandatory employment and community
13 service program in each center to be supervised by a program adminis-
14 trator employed by the division.

15 Sec. 33.30.262. CONTRACTS FOR OPERATION OF RESTITUTION CENTERS.
16 The commissioner may enter into an agreement with a public or private
17 agency to provide necessary facilities under AS 33.30.261 - 33.30.288.
18 The commissioner may not enter into an agreement with an agency that
19 is unable to provide a degree of custody, care, and discipline similar
20 to that required by the laws of the state.

21 Sec. 33.30.263. ELIGIBILITY TO SERVE TIME IN A CORRECTIONAL
22 RESTITUTION CENTER. (a) The commissioner may not allow a prisoner to
23 serve time in a correctional restitution center unless the commis-
24 sioner specifically finds that the prisoner meets the eligibility
25 requirements imposed by this section.

26 (b) To be eligible to serve time in a correctional restitution
27 center, the prisoner

28 (1) must be employable, agree to obey the rules of the
29 center and agree to participate in an assigned program of gainful

1 employment or to participate in a community service program without
2 pay; persons sentenced to serve no more than five days must agree to
3 perform up to eight hours of community service daily; persons sen-
4 tenced to more than five days must agree to participate in work as
5 assigned;

6 (2) may not have been convicted of an offense involving
7 violence or the use of force, as defined in AS 11.81.900, and may not
8 have a history of violence; in this section, violence or the use of
9 force includes possession of a dangerous instrument, as defined in
10 AS 11.81.900, in the commission of an offense, whether or not the
11 dangerous instrument was actually used; and

12 (3) may not have been convicted of an offense under AS 11.-
13 41.410 - 11.41.470 or an offense in the state or another jurisdiction
14 having elements substantially identical to an offense under AS 11.41.-
15 410 - 11.41.470.

16 Sec. 33.30.264. COMMUNITY ADVISORY COMMITTEES. The commissioner
17 shall appoint a community advisory committee for each center, to
18 consist of five members of the community in which the center is locat-
19 ed. The committee shall act as a liaison between the community and
20 the department regarding community concerns with the center.

21 Sec. 33.30.266. EMPLOYMENT AND COMMUNITY SERVICE PROGRAM ADMIN-
22 ISTRATOR. Duties of the employment and community service program
23 administrator in each correctional restitution center shall include

24 (1) determining the acceptability of each person recom-
25 mended for confinement in the correctional restitution center;

26 (2) identifying or creating employment or community service
27 projects suitable for prisoner involvement;

28 (3) placing suitable prisoners into positions of employ-
29 ment;

1 (4) placing other prisoners into community service proj-
2 ects, when available; and

3 (5) promoting public understanding and acceptance of the
4 employment and community service programs.

5 Sec. 33.30.268. CONDITIONS FOR RESIDENCE IN CORRECTIONAL RESTI-
6 TUTION CENTER. (a) A center prisoner is required to maintain gainful
7 employment or satisfactorily participate in a community service proj-
8 ect when available.

9 (b) A first offender under AS 28.15.291, AS 28.35.030 or 28.35.-
10 032 is required to participate in a community service project, when
11 available, while in the center.

12 (c) A center prisoner who violates any law, rule of the center
13 or specific condition applicable to that prisoner is subject to imme-
14 diate transfer from the center to a conventional penal institution for
15 the remainder of the prisoner's term.

16 * Sec. 10. AS 33.30 is amended by adding new sections to read:

17 Sec. 33.30.282. STATUS OF ENROLLEES. (a) A prisoner enrolled
18 in the employment and community service program is not an agent,
19 employee or servant of a correctional institution, the department or
20 the state.

21 (b) A prisoner going to and from and participating in a com-
22 munity service project is subject to the provisions of AS 11.56.

23 Sec. 33.30.284. MEDICAL BENEFITS FOR ENROLLEES. Medical bene-
24 fits for an individual injured while performing community service at
25 the direction of the state shall be assumed by the state to the extent
26 not covered by collateral sources. When the state pays medical bene-
27 fits under this subsection, a claim for medical expenses by the in-
28 jured individual against a third party is subrogated to the state.

29 Sec. 33.30.286. DISTRIBUTION OF PRISONER'S SHARE. The employer

1 of a gainfully employed prisoner confined to a center shall pay the
2 prisoner's earnings to the commissioner. The commissioner shall
3 deposit the earnings in a fund to be paid to the prisoner upon release
4 from the center after making and distributing deductions for

5 (1) an amount determined by the commissioner for the cost
6 of the housing, food, and clothing provided to the prisoner;

7 (2) necessary travel expenses to and from work and other
8 incidental expenses of the prisoner;

9 (3) an amount determined by the commissioner to be neces-
10 sary for the support of the prisoner's dependents; and

11 (4) an amount determined by the commissioner to be neces-
12 sary for payment of court ordered fines and restitution to the victims
13 of an offense committed by the prisoner.

14 Sec. 33.30.288. CONFINEMENT TO THE CENTER. A prisoner shall be
15 confined to the center at all times except while

16 (1) seeking work;

17 (2) at work and traveling to and from work;

18 (3) attending and traveling to and from a community service
19 project approved by the commissioner;

20 (4) attending and traveling to and from educational, train-
21 ing, medical, psychiatric, or other rehabilitation programs approved
22 by the commissioner; or

23 (5) on emergency absence.

24 * Sec. 11. AS 33.30.900 is amended by adding new paragraphs to read:

25 (10) "center" means a correctional restitution center;

26 (11) "community service" means work on projects designed to
27 reduce or eliminate environmental damage, protect the public health,
28 or improve public lands, forests, parks, roads, highways, facilities,
29 or education; community service may not confer a private benefit on a

1 person except as may be incidental to the public benefit.

SB 4

be considered in determining recklessness with regard to circumstances surrounding one's conduct. *Neitzel v. State*, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Assault with a dangerous weapon. — The supreme court declined to hold that

intoxication ought to be considered with respect to the general criminal intent necessary to the commission of the former crime of assault with a dangerous weapon. *Menard v. State*, Sup. Ct. Op. No. 1623 (File No. 2865), 578 P.2d 966 (1978), decided under former AS 11.70.030.

Collateral references. — Drunkenness as affecting murder in second degree, 8 ALR 1052.

Intoxication as affecting deliberation, 79 ALR 904.

Modern status of rules as to voluntary intoxication as defense to criminal charge. 8 ALR3d 1236.

Drug addiction or related mental state as defense to criminal charge, 73 ALR3d 16.

When intoxication deemed voluntary so as to constitute a defense to criminal charge, 73 ALR3d 95.

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630. AS 11.81.600 — 11.81.630 apply only to this title. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Stated in *Neitzel v. State*, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Article 6. Definitions.

Section

900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person is unaware of a circumstance described by a provision of law defining an offense when the person is unaware of the existence of that circumstance; the person is unaware of a circumstance if the person is unaware of the existence of that circumstance; the person is unaware of a circumstance if the person is unaware of the existence of that circumstance; the person is unaware of a circumstance if the person is unaware of the existence of that circumstance;

(4) a person is unaware of a circumstance described by a provision of law defining an offense when the person is unaware of the existence of that circumstance; the person is unaware of a circumstance if the person is unaware of the existence of that circumstance; the person is unaware of a circumstance if the person is unaware of the existence of that circumstance;

(b) In this section, "beneficiary" means a person who is entitled to receive a benefit under a contract, trust, or other arrangement.

(1) "affirmative defense" means a defense that requires proof of a fact that negates an element of an offense.

(A) some defenses are affirmative defenses; and

(B) the defense of self-defense is not an affirmative defense.

(2) "beneficiary" means a person who is entitled to receive a benefit under a contract, trust, or other arrangement.

(3) "building" means a structure that is used for human habitation, whether or not it is occupied; it includes a mobile home, a trailer, or a houseboat.

(4) "cannabis" means the plant *Cannabis sativa* L., its chemical constituents, or any preparation of the plant or its constituents.

(5) "conduct" means an act or omission.

(6) "control" means the power, authority, or ability to direct or influence the actions of another person.

(7) "corrective institution" means a state institution for the confinement, treatment, or rehabilitation of persons who are convicted of crimes.

(8) "credit card" means a card issued by a financial institution that is used for the purchase of goods and services; it includes a card issued under another name, but does not include a card issued to a cardholder in name only.

(9) "crime" means an act or omission that is prohibited by law and is punishable by a fine, imprisonment, or both.

considered with
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essary of the former
dangerous weapon.
Act. Op. No. 1623
2d 966 (1978),
11.70.030.

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§ 11.630. AS
(SLA 1978)

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(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(7) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(8) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(9) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(10) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(11) "dangerous instrument" means any deadly weapon or anything which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(12) "deadly force" means force which the person uses with the intent of causing, or uses under circumstances which he knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(13) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(14) "deception" means to knowingly

(A) create or confirm another's false impression which the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression which the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance which the defendant does not intend to perform or knows will not be performed;

(15) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense: and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(16) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(17) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(18) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

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(19) "felony" means a crime for which a sentence of imprisonment for a term of more than one year is authorized;

(20) "fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person carrying on functions of trust on behalf of another person or organization;

(21) "firearm" means a weapon, including a pistol, revolver, rifle, or shotgun, whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury;

(22) "force" means any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement, "force" includes deadly and nondeadly force;

(23) "government" means the United States, any state or any municipality or other political subdivision within the United States or its territories; any department, agency, or subdivision of any of the foregoing; an agency carrying out the functions of government; or any corporation or agency formed under interstate compact or international treaty;

(24) "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities;

(25) "includes" means "includes but is not limited to";

(26) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(27) "intoxicated" means intoxicated from the use of a drug or alcohol;

(28) "law" includes statutes and regulations;

(29) "leased" includes "rented";

(30) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(31) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(32) "nondeadly force" means force other than deadly force;

(33) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(34) "official detention" means custody, arrest, surrender in lieu of arrest, or confinement under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(35) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(36) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(37) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(38) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(39) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(40) "physical injury" means a physical pain or an impairment of physical condition;

(41) "police dog" means a dog used in police work under the control of a peace officer.

(42) "possess" means having physical possession or the exercise of dominion or control over property;

(43) "premises" means real property and any building;

(44) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(45) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a computer program, system, or network, real property, a credit card, a domestic pet or livestock regardless of value, choses-in-action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, or water constitutes property but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(46) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(47) "public record" means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational

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value in it; it also includes staff manuals and instructions to staff that affect the public;

(48) "public servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person who participates as an advisor, consultant, or assistant at the request or direction of the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) — (C) of this paragraph, but who does not occupy the position;

(49) a "renunciation" is not "voluntary and complete" if it is substantially motivated, in whole or in part, by

(A) a belief that circumstances exist which increase the probability of detection of apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(50) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

(51) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and the supplying of equipment for use;

(52) "sexual contact" means

(A) the intentional touching, directly or through clothing, by the defendant of the victim's genitals, anus, or female breast; or

(B) the defendant's intentionally causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(53) "sexual penetration" means genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body; each party to any of the acts defined as "sexual penetration" is considered to be engaged in sexual penetration;

(54) "solicits" includes "commands";

(55) "threat" means a menace, however communicated, to engage in conduct described in AS 11.41.520(a)(1) — (7) but under AS 11.41.520(a)(1) includes all threats to inflict physical injury on anyone;

(56) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

(57) "voluntary act" means a bodily movement performed consciously as a result of effort and determination, and includes the possession of property if the defendant was aware of the physical possession or control for a sufficient period to have been able to terminate it. (§ 10 ch 166 SLA 1978; am §§ 29 — 32 ch 102 SLA 1980; am §§ 12 — 14 ch 45 SLA 1982; am §§ 12 — 15 ch 143 SLA 1982; am § 2 ch 54 SLA 1983)

Revisor's notes. — Paragraphs (41)-(57) were renumbered in 1983 in order to achieve alphabetical order.

Cross references. — See general definitions in AS 01.10.060.

Effect of amendments. — The 1980 amendment, in subsection (b), inserted "any deadly weapon or" preceding "anything which" near the beginning of paragraph (11), and deleted "'dangerous instrument' includes 'deadly weapon'" at the end of paragraph (11); inserted "or pointing" preceding "a firearm" near the middle of paragraph (12), and added "and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument" at the end of paragraph (12); rewrote paragraph (21); and substituted "body member or" for "bodily" preceding "organ" near the end of present paragraph (50).

The first 1982 amendment, in subsection (b), substituted "AS 11.71.900(10), (11), and (14)" for "AS 17.12.150" in paragraph (4) and rewrote paragraphs (6) and (16).

The second 1982 amendment, in subsection (a), added the language beginning

"when intentionally causing a particular result" to the end of paragraph (1), and in subsection (b), inserted "government" in paragraph (37), inserted "including data or information stored in a computer program, system, or network," "a domestic pet or livestock regardless of value," and "a" preceding "public utility" in present paragraph (45), added the subparagraph (A) and (B) designations in present paragraph (50), substituted "caused by an act performed under circumstances that create" for "which creates" in present paragraph (50)(A), and substituted "physical injury that" for "which" and "that unlawfully terminates" for "physical injury which unlawfully terminates" and deleted "or" preceding "protracted loss" in present paragraph (50)(B).

The 1983 amendment added present paragraph (41).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

Editor's note. — The notes below AS 11.75.030, in connection with the definition of "crime," meanors.

Mere civil criminal conduct. — The conduct contained in this section (paragraph (a)) requires "gross" carelessness, would be considered "gross" civil negligence, a criminal conviction. App. Op. No. 1063 (1982).

Paragraph intoxication. — The process is not a paragraph (a) and (b) be considered "with regard to one's conduct." Op. No. 172 (1982).

Applicability of murder statute. — The statute is not used "with respect to conduct which results in death." Ct. App. Op. No. P.2d 325 (1982).

Applicability of statute. — The statute is applicable to the AS 11.46.190 statute. Andrew 164 (File No. 6).

Failure to constitute plan of "recklessly." — The failure to constitute plan of "recklessly" is not average. Ct. App. Op. No. P.2d 603 (1982).

Dangerous instrument. — The instrument may become so used in such a way as to cause death. *Wettanen v. St.*



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 29, 1985

MEMORANDUM

To: Sandra Shubert
Senate HESS Committee

From: *Mark K. Johnson*
Mark K. Johnson
Counsel
Senate Rules Committee

Subject: Changes to SB 4, "An Act relating to restitution centers".

Attached are suggested sponsor's amendment to this legislation for inclusion in the HESS committee substitute.

Senator Kelly does not believe that the proposed restitution centers need be limited to those individuals ordered by a court to pay restitution as part of their sentence. The addition of a paragraph (5) to that effect in the proposed AS 12.55.021 is not requested.

A new provision giving the Department of Corrections the authority to contract with public and private entities for the operation of the restitution centers is included.

Please let me know if you have additional concerns regarding this legislation.

Attachment

CC: Cindy Nelson, Special Assistant to the Commissioner,
Department of Corrections
Mike Stark, Assistant Attorney General,
Department of Law

HESS C.S.

Sponsor's Suggested Amendments to SB 4

An Act relating to Correctional Restitution Centers

1. Delete Section 2.

2. Amend Section 3 to read:

✓ (a) When the imposition of sentence is suspended under AS 12.55.085, the court may require, as a special condition of probation, that the defendant serve a definite term of continuous or periodic imprisonment, not to exceed the maximum term of imprisonment that could have been imposed. The court may recommend that the defendant serve all or part of the term in a correctional restitution center.

3. Amend Section 4, on page 3 by adding the following new material:

✓ Sec. 33.30.283. ELIGIBILITY TO SERVE TIME IN A CORRECTIONAL RESTITUTION CENTER. (a) The commissioner may not allow a prisoner to serve time in a correctional restitution center unless the commissioner

specifically finds that the prisoner meets the eligibility requirements imposed by this section.

(b) To be eligible to serve time in a correctional restitution center, the prisoner

(1) must be employable and agree to secure employment and obey the rules of the center;

~~(2) must be an individual who otherwise would have been sentenced to imprisonment in a prison facility;~~

✓ (2) (3) may not have been convicted of an offense involving violence or the use of force, as defined in AS 11.81.900, in this state or another jurisdiction and may not have a history of violence; in this section, violence or the use of force includes possession of a firearm, as defined in AS 11.81.900, in the commission of an offense, whether or not the firearm was actually used; and

(3) (4) may not have been convicted of an offense under AS 11.41.410 - 11.41.470 or an offense in the state or another jurisdiction having elements substantially identical to an offense under AS 11.41.410 - 11.41.470.

4. Amend section 4, on page 3 at line 13 by adding a new section to read:

✓ Sec. 33.30.285. CONTRACT FOR OPERATION OF RESTITUTION CENTER. The commissioner may enter into an agreement with a public or private agency to provide necessary facilities under AS 33.30.282 - 33.30.288. The commissioner may not enter into an agreement with an agency unable

to provide a degree of custody, care, and discipline similar to that required by the laws of this state.

5. Amend section 4, on page 3 at line 24:

✓ Delete "court" and insert "commissioner"

6. Amend section 4, on page 3 at line 24:

✓ Delete paragraph 4 and insert: "(4) a fine or restitution ordered by the court."

7. Amend Section 4, on page 4 by adding the following new material:

✓ (4) attending and traveling to job interviews.

8. Amend Section 4, on page 4 at line 3:

✓ Delete paragraph (b). Re-letter accordingly.

9. AMEND SECTION 4, Line 2, Page 25 to read:

✓ "offender, and to create a means to provide restitution to victims of crimes."

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: S.B. 4
 Title: "An Act relating to Correctional
 Restitution Centers"
 Sponsor: Senator Kelly
 Requestor: Senate H.E.S.S.
 Date of Request: January 18, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: _____
 Administration of Justice _____
 BRU, Program or Subprogram(s) Affected: _____
Offender Confinement, Reformation
 and Supervision

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		426.8	443.9	461.7	480.2	499.4
200 TRAVEL		-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL		7.9	8.2	8.5	8.8	9.1
400 SUPPLIES		97.4	101.3	105.3	109.5	113.9
500 EQUIPMENT		11.0	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	543.1	553.4	575.5	598.5	622.4

CAPITAL						
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REVENUE	-0-	117.0	122.9	129.0	135.5	142.3
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	543.1	553.4	575.5	598.5	622.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	543.1	553.4	575.5	598.5	622.4

POSITIONS:

FULL-TIME	10	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

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

Phone: 465-3376
 Date: January 23, 1985

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

Date: January 23, 1985

Distribution (by Agency preparing fiscal note):

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

ANALYSIS

Assumptions

The Department of Corrections will develop a pilot Correction Restitution Center by changing the mission of the Ridgeview Correctional Center. Ridgeview will be converted from a 60 person holding facility to a 100 person restitution center. The current inmate population would be dispersed amongst other Anchorage area facilities. Present staff at Ridgeview would be augmented by the addition of ten (10) new staff to provide security, education, program assistance and clerical support necessary to accomplish this new program.

It can be assumed that approximately 50% of the 100 inmates will be employed immediately while the remaining inmates are developing resumes' and other work search skills. The Department would retain 25% of a prisoners income to off-set the cost of care. Most of those employed will earn close to the minimum wage, although some may be expected to earn slightly more.

Therefore, we calculate 50 inmates working full-time (40 hours per week) at \$4.50 per hour (the minimum wage of \$4.35 per hour plus a \$.15 adjustment for the few that could earn more) would mean a total cost of care reimbursement to the state of \$117,000.

50 inmates X 40 hours X 52 weeks = 104,000
104,000 hours X \$4.50 an hour = \$468,000
\$468,000 X .25 = \$117,000

A cost of living increase of 5% per year was assumed to increase revenues in subsequent years.

Program Summary

The current operating budget for Ridgeview will be increased by costs associated with the new positions, increased population and special program needs. Future fiscal year impact for recurring items is assumed to increase at the rate of 4% per year.

Positions:

3 Correctional Officers III	\$157.7
1 Educational Associate III	43.8
2 Probation Officers III	85.2
2 Social Workers III	85.2
2 Clerk Typists III	54.9
	<u>54.9</u>
	\$426.8

Other Expenses:

Contractual Services - 2 leased vehicles at \$330/mo. ea. = \$7,920

Supplies - consumables for new positions 10 X \$400 = \$4,000;

food, clothing, etc., for new populations \$6.40/day X 40 new inmates
X 365 = \$93,440

Equipment - one time costs associated with new positions = \$11,000

Economic Impact:

Having prisoners who would otherwise be confined to a correctional center employed outside of the institution would provide a means for payment of restitution, reimbursement for partial cost-of-care, and support of dependents.

1.	POSITION TITLE Education Associate III				RANGE/STEP 17/A	BARG. UNIT G	PAGE/LINE	GOV.	APPROV	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary	\$2,894	34,728							
6.	Benefits		4,331							
7.	Supplemental Benefits		2,129							
8.	Fixed Benefits		2,630							
9.	TOTAL PERSONAL SERVICES		01		43,818					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04		400					
13.	Equipment		05		1,000					
14.	Other		06		45,218					
15.	TOTAL COST									
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			45.2					
19.		I-A Receipts 1005								
20.		Program Receipts 1006								
21.		Other								
For B&M USE ONLY KEY NUMBER _____										

This position will provide educational guidance for persons in the Correctional Restitution Center in ABE/GED and other levels so they can develop knowledge/skills that will enhance their employability.

REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
Offender Confinement, Reformation
PROGRAM and Supervision
BRU Southcentral Region
COMPONENT Ridgeview Correctional Center

FY 86

1.	POSITION TITLE Probation Officer II				RANGE/STEP 16/A	BARG. UNIT G	PAGE/LINE	APPROV	DISAPP																								
2.	TYPE OF POSITION PFT	STAFF MONTHS 24	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	GOV.	LEG.																								
3.	CONTINUATION LEVEL				JUSTIFICATION																												
4.	TYPE OF EXPENDITURE				AMOUNT																												
	1		2		3																												
	PERSONAL SERVICES																																
5.	Salary		64,824																														
6.	Benefits		11,158																														
7.	Supplemental Benefits		3,974																														
8.	Fixed Benefits		5,260																														
9.	TOTAL PERSONAL SERVICES		01		85,216																												
10.	Travel		02																														
11.	Contractual		03																														
12.	Commodities		04		800																												
13.	Equipment		05		3,000																												
14.	Other		06																														
15.	TOTAL COST				89,016																												
<p>These positions will provide counseling to inmates in dealing with problems that arise during incarceration and that lead to incarceration.</p> <p>Single Position Costs:</p> <table> <tr> <td>\$2701 month X 12</td> <td>=</td> <td>\$32,412</td> </tr> <tr> <td>SBS @ .0613</td> <td>=</td> <td>1,987</td> </tr> <tr> <td>Var Ben @ .047408</td> <td>=</td> <td>1,537</td> </tr> <tr> <td>Pers @ .1247</td> <td>=</td> <td>4,042</td> </tr> <tr> <td>Health Ins. @ \$219.20/mo.</td> <td>=</td> <td>2,630</td> </tr> <tr> <td></td> <td></td> <td><u>\$42,608</u></td> </tr> <tr> <td></td> <td></td> <td>X 2</td> </tr> <tr> <td></td> <td></td> <td><u>\$85,216</u></td> </tr> </table>										\$2701 month X 12	=	\$32,412	SBS @ .0613	=	1,987	Var Ben @ .047408	=	1,537	Pers @ .1247	=	4,042	Health Ins. @ \$219.20/mo.	=	2,630			<u>\$42,608</u>			X 2			<u>\$85,216</u>
\$2701 month X 12	=	\$32,412																															
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		X 2																															
		<u>\$85,216</u>																															
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16.		Federal Receipts 1002																															
17.		G.F. Match 1003																															
18.		General Funds 1004		89.0																													
19.		I-A Receipts 1005																															
20.		Program Receipts 1006																															
21.		Other																															
<p>For B&M USE ONLY KEY NUMBER _____</p>																																	

REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
Offender Confinement, Reformation
PROGRAM and Supervision
BRU Southcentral Region
COMPONENT Ridgeview Correctional Center

FY 86

1.	POSITION TITLE Social Worker III				RANGE/STEP 16/A	BARG. UNIT G	PAGE/LINE	GOV.	APPROV	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 24	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		64,824							
6.	Benefits		11,158							
7.	Supplemental Benefits		3,974							
8.	Fixed Benefits		5,260							
9.	TOTAL PERSONAL SERVICES		01		85,216					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04		800					
13.	Equipment		05		3,000					
14.	Other		06							
15.	TOTAL COST				89,016					
	RECEIPT CODE				FUNDING SOURCE					
16.					Federal Receipts 1002					
17.					G.F. Match 1003					
18.					General Funds 1004 89.0					
19.					I-A Receipts 1005					
20.					Program Receipts 1006					
21.					Other					
For B&M USE ONLY KEY NUMBER _____										

These positions will provide assistance for inmates in locating work and in using community resources to develop their own job referrals.

Single Position Costs:

\$2701 month X 12	=	\$32,412
SBS @ .0613	=	1,987
Var Ben @ .047408	=	1,537
Pers @ .1247	=	4,042
Health Ins. @ \$219.20/mo.	=	2,630
		\$42,608
		X 2
		\$85,216

REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
PROGRAM Offender Confinement, Reformation
and Supervision
BRU Southcentral Region
COMPONENT Ridgeview Correctional Center

FY 86

1.	POSITION TITLE Correctional Officer III				RANGE/STEP 15/A	BARG. UNIT G	PAGE/LINE	GOV.	APPROV	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS .36	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL ADDITION A..				JUSTIFICATION These positions will provide added security for the increased offender population when this facility is converted to a Correctional Restitution Center. Single Position Cost: $\$2,870 \text{ month} \times 12 = \$34,440$ $\text{Shift Diff. @ } .0375 = 1,291$ $\text{Overtime @ } \$24.82 \times 100 = 2,482$ $\$38,213$ $\text{SBS @ } .0613 = 2,342$ $\text{PERS @ } .1979 = 7,562$ $\text{Var Ben @ } .047408 = 1,812$ $\text{Health Ins. @ } \$219.20/\text{mo.} = 2,630$ $\$52,559$ $\times 3$ $\$157,677$					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	103,320	Shift Diff.							
6.	Benefits	28,122	\$3,873							
7.	Supplemental Benefits	7,026	Overtime							
8.	Fixed Benefits	7,890	\$7,446							
9.	TOTAL PERSONAL SERVICES	01	157,677							
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04	1,200							
13.	Equipment	05								
14.	Other	06								
15.	TOTAL COST		158,877							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004 158.9								
19.		I-A Receipts 1005								
20.		Program Receipts 1006								
21.		Other								
For B&M USE ONLY										
KEY NUMBER - - - - -										

REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
Offender Confinement, Reformation
PROGRAM and Supervision

BRU Southcentral Region

COMPONENT Ridgeview Correctional Center

FY 86

1.	POSITION TITLE Clerk Typist III				RANGE/STEP 8/B	BARG. UNIT G	PAGE/LINE	GOV.	APPROV	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 24	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		40,248							
6.	Benefits		6,926							
7.	Supplemental Benefits		2,468							
8.	Fixed Benefits		5,260							
9.	TOTAL PERSONAL SERVICES		01		54,902					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04		800					
13.	Equipment		05		4,000					
14.	Other		06							
15.	TOTAL COST				59,702					
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			59.7					
19.		I-A Receipts 1005								
20.		Program Receipts 1006								
21.		Other								
	For B&M USE ONLY									
	KEY NUMBER - - - - -									

These positions will provide clerical support for Institutional Counselors.

Single Position Costs:

\$1677 month X 12	=	\$20,124
SBS @ .0613	=	1,234
Var Ben @ .047408	=	954
Pers @ .1247	=	2,509
Health Ins @ \$219.20/mo.	=	2,630
		<u>\$27,451</u>
		X 2
		<u>\$54,902</u>

REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
PROGRAM Offender Confinement, Reformation
and Supervision
BRU Southcentral Region
COMPONENT Ridgeview Correctional Center

FY 86

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 6, 1985

REQUEST:

Bill#: CS SB 4 (H.E.S.S.)
 Title: "An Act relating to correctional
 restitution centers."
 Sponsor: Senator Kelly
 Requestor: (S) H.E.S.S.
 Date of Request: February 1, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation and
 Supervision

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		* 864.8	1128.4	1184.8	1244.0	1306.2
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	* 864.8	1128.4	1184.8	1244.0	1306.2

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	117.0	122.9	129.0	135.5	142.3
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	* 864.8	1128.4	1184.8	1244.0	1306.2
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	* 864.8	1128.4	1184.8	1244.0	1306.2

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

See attached.

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

Phone: 465-3376
 Date: February 6, 1985

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

Date: February 6, 1985

Distribution (by Agency preparing fiscal note):

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

ANALYSIS

Assumptions:

Department of Corrections will develop a pilot Correctional Restitution Center by changing the mission of the Ridgeview Correctional Center. Ridgeview will be converted from a 60 person holding facility to a 100 person Correctional Restitution Center.

The Department of Corrections will continue to lease the Ridgeview facility and will contract for operation of the Correctional Restitution Center. This contract will include all administrative, security, program, culinary, clerical, and maintenance operations.

It can be assumed that approximately 50% of the 100 inmates will be employed immediately while the remaining inmates are developing resumes' and other work search skills. The Department would retain 25% of a prisoner's income to off-set the cost of care. Most of those employed will earn close to the minimum wage, although some may be expected to earn slightly more.

Therefore, we calculate 50 inmates working full-time (40 hours per week) at \$4.50 per hour (the minimum wage of \$4.35 per hour plus a \$.15 adjustment for the few that could earn more) would mean a total cost of care reimbursement to the state of \$117,000.00.

50 inmates X 40 hours X 52 weeks = 104,000
104,000 hours X \$4.50 per hour = \$468,000.00
\$468,000.00 X .25 = \$117,000.00

A cost of living increase of 5% per year was assume to increase revenues in subsequent years.

Program Summary

The Department of Corrections estimates that a contract to operate this Correctional Restitution Center would cost \$1,074,701. These costs were calculated using FY 85 costs for similar services and adding a 5% inflation factor to estimate FY 86 costs. A break down of these costs follows:

Personal Services

1 - Director	= \$ 29,500
1 - Assistant Director	= 24,150
12 - Security Staff @ \$17,825	= 213,900
5 - Counselors @ \$20,700	= 103,500
2 - Job Development Specialists @ \$23,00	= 46,000
1 - Education Coordinator	= 23,000
4 - Security Supervisors @ \$23,460	= 93,800
2 - Cooks @ \$19,550	= 39,100
2 - Clerk Typists @ \$12,000	= 24,000
1 - Maintenance/Janitorial	= <u>19,550</u>
TOTAL	\$616,500

Care

Food (\$7.50 per day X 100 = \$750.00 X 365)	=	\$273,750
Supplies	=	22,000
Lab Expenses	=	12,000
Miscellaneous Resident Needs	=	<u>3,000</u>
TOTAL		\$310,750

Maintenance and Operation

Utilities	=	\$ 31,400
Telephone	=	9,000
Insurance (liability, auto, bonding)	=	12,000
Equipment/Maintenance (vehicles)	=	16,500
Travel (local)	=	27,375
(250 miles/day X .30 miles = \$75.00 X 365)		<u> </u>
TOTAL	=	\$ 96,275

Total Costs (FY 85) = \$1,023,525
 + 5% Inflation = 51,176

TOTAL CONTRACTUAL COSTS \$1,074,701

* Reductions for FY 86 Operating Budget Request
 Minus Personal Services Costs

02 Travel	3.8	
03 Contractual	95.7	
04 Commodities	102.6	
07 Grants/Claims	<u>7.8</u>	
TOTAL	209.9	[209,900]

TOTAL CONTRACTUAL COSTS (FY 86) \$ 864,801

CS SB 4 (HESS)

Prisoner Profile Summary of the 180 prisoners who meet the criteria of offenses not involving violence or use of force.

	<u>Work History at time of arrest</u>
165 (92%) Felony	119 (66%) Unemployed
<u>15 (8%) Misdemeanor</u>	38 (21%) Employed by business or agency
	<u>23 (13%)</u>
180 (100%)	180 (100%)
<u>Employment Skills</u>	<u>Place of Residence</u>
58 (32%) General Labor	59 (33%) Anchorage
17 (9%) Mechanics	29 (16%) Fairbanks
17 (9%) Fishermen	9 (5%) Juneau
19 (11%) Carpenters	<u>83 (46%) Other</u>
53 (30%) Misc. other skills	180 (100%)
<u>16 (9%) No job skills</u>	
180 (100%)	

Projected population profiles and growth rates indicate that the population of sentenced offenders who meet this criteria will remain constant at 15%. This will result in the following population being eligible for Correctional Restitution Center placement.

December '84 - 180
 December '85 - 220
 December '86 - 250
 December '87 - 280
 December '88 - 310
 December '89 - 340

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

FISCAL NOTE: 1 of 2

Revision Date: February 11, 1985

REQUEST:

Bill/: CS SB 4 (HESS)
 Title: "An Act relating to correctional
 restitution centers."
 Sponsor: Senator Kelly
 Requestor: (S) HESS
 Date of Request: February 7, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: _____
 Administration of Justice
 BRU, Program or Subprogram(s) Affected:
Southcentral Region, Ridgeview
Correctional Center Component

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		(984.0)				
200 TRAVEL		(3.8)				
300 CONTRACTUAL		979.0	1128.4	1184.8	1244.0	1306.2
400 SUPPLIES		(102.6)				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		(7.8)				
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	(119.2)	1128.4	1184.8	1244.0	1306.2

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	117.0	122.9	129.0	135.5	142.3
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	(119.2)	1128.4	1184.8	1244.0	1306.2
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	(119.2)	1128.4	1184.8	1244.0	1306.2

POSITIONS:

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

ANALYSIS: This fiscal note reflects the total cost savings to the state if funding for the 19 positions currently budgeted to the Ridgeview Correctional Center were deleted and the operation of the Correctional Restitution Center was contracted to the private sector. In addition to these savings, the Department would gain the services of 13 staff and would gain 40 beds. However, pursuant to Legislative Intent attached to this budget component, the Department requests authorization to disperse these 19 positions and their funding to other institutions within the Southcentral BRU.

Prepared By: Cynthia S. Nelson
 Division: Special Assistant

Phone: 465-3376
 Date: February 11, 1985

Approved by Commissioner: _____
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 11, 1985

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Impacted Agency (ies)

Requestor: (S) HESS
 Office of Management and Budget

ANALYSIS

Assumptions:

Department of Corrections will develop a pilot Correctional Restitution Center by changing the mission of the Ridgeview Correctional Center. Ridgeview will be converted from a 60 person holding facility to a 100 person Correctional Restitution Center.

The Department of Corrections will continue to lease the Ridgeview facility and will contract for operation of the Correctional Restitution Center. This contract will include all administrative, security, program, culinary, clerical, and maintenance operations.

It can be assumed that approximately 50% of the 100 inmates will be employed immediately while the remaining inmates are developing resumes' and other work search skills. The Department would retain 25% of a prisoner's income to off-set the cost of care. Most of those employed will earn close to the minimum wage, although some may be expected to earn slightly more.

Therefore, we calculate 50 inmates working full-time (40 hours per week) at \$4.50 per hour (the minimum wage of \$4.35 per hour plus a \$.15 adjustment for the few that could earn more) would mean a total cost of care reimbursement to the state of \$117,000.00.

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\$468,000.00 X .25 = \$117,000.00

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Program Summary

The Department of Corrections estimates that a contract to operate this Correctional Restitution Center would cost \$1,074,701. These costs were calculated using FY 85 costs for similar services and adding a 5% inflation factor to estimate FY 86 costs. A break down of these costs follows:

Personal Services

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1 - Assistant Director	= 24.2
12 - Security Staff @ \$17,825	= 213.9
5 - Counselors @ \$20,700	= 103.5
2 - Job Development Specialists @ \$23,00	= 46.0
1 - Education Coordinator	= 23.0
4 - Security Supervisors @ \$23,460	= 93.8
2 - Cooks @ \$19,550	= 39.1
2 - Clerk Typists @ \$12,000	= 24.0
1 - Maintenance/Janitorial	= 19.6
TOTAL	\$616.6

Care

Food (\$7.50 per day X 100 = \$750.00 X 365)	=	\$273.8
Supplies	=	22.0
Lab Expenses	=	12.0
Miscellaneous Resident Needs	=	<u>3.0</u>
TOTAL		\$310.8

Maintenance and Operation

Utilities	=	\$ 31.2
Telephone	=	9.0
Insurance (liability, auto, bonding)	=	12.0
Equipment/Maintenance (vehicles)	=	16.5
Travel (local)	=	27.4
(250 miles/day X .30 miles = \$75.00 X 365)		<u>27.4</u>
TOTAL	=	\$ 96.1

Total Costs (FY 85)	=	\$1,023.5
+ 5% Inflation	=	<u>51.2</u>
CONTRACTUAL COSTS		\$1,074.7

Adjustments to FY 86 Operating Budget Request

01 Personal Services	(984.0)		(984.0)
02 Travel	(3.8)		(3.8)
03 Contractual	(95.7)	+ \$1,074.0 =	979.0
04 Commodities	(102.6)		(102.6)
07 Grants/Claims	<u>(7.8)</u>		(7.8)
TOTAL	(1,193.9)		

TOTAL GENERAL FUND (FY 86)		<u><u>(119.2)</u></u>
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Fiscal Note
CS SB 4 (HESS)

ATTACHMENT

CS SB 4 (HESS)

"An Act relating to Correctional Restitution Centers."

The operating costs of the Ridgeview Correctional Center are \$1,193.9. For the state to operate this Correctional Restitution Center (as reflected in our fiscal note of January 23, 1985) 10 additional staff would be required for and additional cost of \$543.1. This would bring the operating costs up to a total of \$1,737.0.

We are estimating that the operation of this facility could be contracted to the private sector for \$1,074.1. Savings to the state would be \$662.9.

The 19 positions currently funded at the Ridgeview Correctional Center would be disbursed throughout the Southcentral Region pursuant to Legislature Intent included in our FY 85 operating budget for this facility.

Prepare By: Cynthia Nelson
Cynthia Nelson
Special Assistant

Date: February 7, 1985

Approved By: Roger V. Endell
Roger V. Endell
Commissioner

Date: February 7, 1985

lease

where locate? spell out in fiscal note? budget?
facilities available?

practical application? how find jobs for the prisoners?
have to have job before qualify for center?

modeled after something in other states?
operation standards to be set in reg. = leaving too much
to discretion? are there not standards for existing
admin position? correctional system that would apply?

1 IN THE SENATE

BY KELLY

Keith Levy, Leg. Legal
SENATE BILL NO. 4

how many people,
what type of
offenders are we
talking about?
Average sentence
length?

(most incarcerated are
Class C felons.)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

differ from work
release program

4 FOURTEENTH LEGISLATURE - FIRST SESSION

1. alleviate crowding
2. repeat/reddition

5 A BILL

Won't affect Admin current plan to
provide new
prison
facility.

6 For an Act entitled: "An Act relating to correctional restitution cen-
7 ters."

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

9 * Section 1. AS 12.55.015 is amended by adding a new subsection to
10 read:
sentencing + probation
authorized sentences

AS 12 =
Code of
Criminal
Procedure

11 (e) If the defendant is ordered to serve a definite term of
12 imprisonment, the court may recommend that the defendant serve all or
13 part of the term in a correctional restitution center. The term of
14 service in a correctional restitution center may not exceed the maxi-
15 mum term of imprisonment that could have been imposed.

Eligibility should
be determined at
sentencing hearing
Karla

16 * Sec. 2. AS 12.55 is amended by adding a new section to read:

17 ^{move to 33.30}
(Sec. 12.55.021.) ELIGIBILITY TO SERVE TIME IN A CORRECTIONAL
18 RESTITUTION CENTER. (a) The ^{commissioner} court may not allow a defendant to serve
19 time in a correctional restitution center unless the court specific-
20 ally finds that the defendant meets the eligibility requirements imposed
21 by this section. ^{the commissioner shall} To determine eligibility, the court shall hold a
22 ^{in accordance with} hearing ^{procedures adopted by the commissioner.} at which the defendant and the prosecution are allowed to
present evidence.

Policy question
commissioner
unilateral decision?
Commissioner could
hold hearing
"Admin."
have designation
& classification
hearing.

23 (b) To be eligible to serve time in a correctional restitution
24 center, the defendant

25 (1) must be employable and agree to secure employment and
26 obey the rules of the center;

27 (2) must be an individual who otherwise would have been
28 sentenced to imprisonment in a prison facility;

- Court system (Jud Branch)
- Corrections (Bill drafting)

-1- SB 4
make state
meeting Commissioner
Endell This A.M.
to discuss changes.

could be commissioner

burglar

*Sexual assault
Sexual abuse of minor
incest
indecent exposure
unlawful exploitation
of a minor*

not defined (3) may not have been convicted of an offense involving violence or the use of force, as defined in AS 11.81.900, and may not have a history of violence; in this section, violence or the use of force includes possession of a dangerous instrument, as defined in AS 11.81.900,⁽¹¹⁾ in the commission of an offense, whether or not the dangerous instrument was actually used; and

(4) may not have been convicted of an offense under AS 11.-41.410 - 11.41.470 or an offense in the state or another jurisdiction having elements substantially identical to an offense under AS 11.41.-410 - 11.41.470.

* Sec. 3. AS 12.55.086(a) is amended to read: *Impersonation as condition of suspended imposition of sentence.*

(a) When the imposition of sentence is suspended under AS 12.-55.085, the court may require, as a special condition of probation, that the defendant serve a definite term of continuous or periodic imprisonment, including imprisonment in a correctional restitution center, not to exceed the maximum term of imprisonment that could have been imposed.

*delete.
The court may recommend serve time in center, but decision would still be made by commissioner.*

* Sec. 4. AS 33.30 is amended by adding new sections to read:

*Prison Facilities
Prisoners*

ARTICLE 3A. CORRECTIONAL RESTITUTION CENTERS.

Sec. 33.30.282. CORRECTIONAL RESTITUTION CENTERS. (a) The commissioner shall establish correctional restitution centers in the state. The purpose of the centers is to provide certain nonviolent offenders with rehabilitation through community service and employment while protecting the community through partial incarceration of the offender.

(b) The commissioner shall adopt regulations setting standards for the operation of the centers including

(1) requirements that the centers be secure and in compliance with state and local safety laws;

1 (2) standards for disciplinary rules to be imposed on
2 prisoners confined to the centers;

3 (3) standards for the granting of emergency absence to
4 prisoners confined to the centers; and

5 (4) standards for periodic review of the performance of
6 prisoners confined to the centers.

7 Sec. 33.30.284. COMMUNITY ADVISORY COMMITTEES. The commissioner
8 shall appoint a community advisory committee for each center, to
9 consist of five members of the community in which the center is locat-
10 ed. The committee shall consider complaints made against prisoners
11 confined to a center and shall make recommendations to the commis-
12 sioner.

13 Sec. 33.30.286. DISTRIBUTION OF PRISONER'S EARNINGS. The em-
14 ployer of a prisoner confined to a center shall pay the prisoner's
15 earnings to the commissioner. The commissioner shall deposit the
16 earnings in a fund to be paid to the prisoner upon release from the
17 center after making and distributing deductions for

18 (1) an amount determined by the commissioner for the cost
19 of the housing, food, and clothing provided to the prisoner;

20 (2) necessary travel expenses to and from work and other
21 incidental expenses of the prisoner;

22 (3) an amount determined by the court to be necessary for ^{at the sentencing hearing,} ~~at~~ ^{recommen} ~~time~~ ^{go to center}
23 the support of the prisoner's dependents; and

24 (4) an amount determined by the court to be necessary for
25 restitution to the victims of an offense committed by the prisoner.

26 Sec. 33.30.288. CONFINEMENT TO THE CENTER. (a) A prisoner
27 shall be confined to the center at all times except while

28 (1) at work and traveling to and from work;

29 (2) attending and traveling to and from a community service

yes.
when would
determination
be made?
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project approved by the commissioner; and

(3) on emergency absence.

(b) The commissioner may grant an emergency absence to a prisoner confined to a center to obtain medical treatment or diagnosis.

* Sec. 5. AS 33.30.900 is amended by adding a new paragraph to read:

(10) "center" means a correctional restitution center.

*10-day DWI
shoplifters*

*pre-trial diversion
program*

TO: BETTYE
FROM: SANDRA

1/22/85

SB 4 CORRECTIONAL RESTITUTION CENTERS

1. WHAT TYPES OF FACILITIES ARE CURRENTLY USED TO HOUSE PRISONERS?

15 jails and several halfway houses operated by the private sector.

2. WHAT TYPES OF PRISONERS ARE ELIGIBLE FOR HALFWAY HOUSE INCARCERATION?

Any offender who is within 6 months of final release date. Currently 190 prisoners (of the 2000 in the state) are in halfway houses.

3. HOW WOULD THE RESTITUTION CENTER DIFFER FROM THE HALFWAY HOUSE?

Sponsor envisioned offenders being assigned directly to the center so offenders could keep their jobs. However, the way the bill is written, the court can only recommend that someone go to a center; the actual determination would be made by the Corrections Commissioner. Which means that between the time of sentencing and the Commissioner's decision on where an offender should serve time, the offender would be incarcerated in the standard jail system.

4. WHAT IS THE COST COMPARISON PER PRISONER PER DAY?

Jails (average statewide)	\$85/day
Halfway Houses (urban average)	\$51/day

5. HOW MANY OF OUR CURRENT PRISONERS APPEAR ELIGIBLE FOR ASSIGNMENT TO RESTITUTION CENTERS?

180 (approximately 15%).

6. WHAT TYPES OF OFFENDERS QUALIFY (I.E. NONVIOLENT CRIMES THAT REQUIRE INCARCERATION)?

Burglars (felony); shoplifting, DWI, trespassing (misdemeanors).

7. WHAT IS THE PRACTICAL APPLICATION OF THE CENTER? CAN WE EXPECT CONVICTED OFFENDERS TO REMAIN EMPLOYABLE?

Interesting statistic: 61 of the 180 people who currently meet eligibility criteria were employed at the time of the crime. Under current halfway house structure, the offender is granted a work release which would allow him to work in the community. Reality is it often takes a long time to find work, and many don't.

8. IF STATE CONTRACTS FOR OPERATION OF RESTITUTION CENTERS WERE AVAILABLE, WOULD THE SPACE BE AVAILABLE IN THE PRIVATE SECTOR?

9. WHAT OTHER ALTERNATIVES ARE BEING LOOKED AT AS WAYS OF REDUCING PRISON OVERCROWDING AND REDUCING THE COST OF HOUSING OFFENDERS?

Governor recently introduced a rewrite of Title 33 (Dept. of Corrections). This bill contains the authority to contract with the private sector to house misdemeanants. It does not require restitution (payment of room and board costs) to the State.

(continued)

10. HOW SEVERE IS OUR CURRENT CROWDING SITUATION?

State's maximum prisoner capacity is 1,684. Currently house 2000. Are handling by putting 2 or 3 beds in a single room.

11. WHAT IS THE STATUS OF THE SEWARD PROJECT, AND HOW WILL THIS ADDRESS THE OVERCROWDING SITUATION?

\$19 million appropriated so far (site survey, ground preparation) \$10 million in this year's budget. Hope to pour concrete this spring; completion and occupancy 24 months after pour concrete. \$44 million is total project cost.

Hope to house 320 prisoners, but actual capacity will depend on amount of funding forthcoming.

12. BY ALLOWING FACILITY OPERATIONS STANDARDS TO BE SET IN REGULATION, ARE WE LEAVING TOO MUCH TO THE DISCRETION OF THE DEPARTMENT? ARE THERE NOT STANDARDS FOR EXISTING CORRECTION FACILITIES THAT COULD BE APPLIED?

The concept of alternative incarceration facilities seems to be well accepted. How to best make this fit into our existing prison system is the subject of discussion.

Incest as included within charge of rape. 76 ALR2d 484.

Criminal responsibility of husband for rape, or assault to commit rape, on wife. 84 ALR2d 1017.

Fraud or impersonation, rape by. 91 ALR2d 591.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape. 23 ALR3d 1351.

Rape or similar offense based on intercourse with woman who is allegedly mentally deficient. 31 ALR3d 1227.

Liability of parent for injury to unemancipated child caused by parent's negligence. 41 ALR3d 904.

Seizure or detention for purpose of com-

mitting rape, robbery, or similar offense as constituting separate crime of kidnapping. 43 ALR3d 699.

Consent as defense in prosecution for sodomy. 58 ALR3d 636.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape. 81 ALR3d 1228.

What constitutes offense of "sexual battery." 87 ALR3d 1250.

Constitutionality of rape laws limited to protection of females only. 99 ALR3d 129.

Validity and construction of statute defining crime of rape to include activity traditionally punishable as sodomy or the like. 3 ALR4th 1009.

Sec. 11.41.410. Sexual assault in the first degree. (a) A person commits the crime of sexual assault in the first degree if,

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

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

(3) [Repealed, § 10 ch 78 SLA 1983.]

(4) [Repealed, § 10 ch 78 SLA 1983.]

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 143 SLA 1982; am § 10 ch 78 SLA 1983)

Cross references. — For evidence of past sexual conduct in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12.45.045.

Effect of amendments. — The 1980 amendment inserted "or aids, induces, causes or encourages a person under 13 years of age to engage in sexual penetration with another person" near the end of paragraph (3) in subsection (a).

The 1982 amendment substituted "an

unclassified felony and is punishable as provided in AS 12.55" for "a class A felony" at the end of subsection (b).

The 1983 amendment repealed paragraphs (3) and (4) of subsection (a).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

I. General Consideration.

II. Former Law.

- A. Generally.
- B. Age of Consent.
- C. Procedure.

I. GENERAL CONSIDERATION.

History of first-degree sexual assault statute. — See Reynolds v. State, Ct. App.

Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Constitutionality. — In order to prove a violation of AS 11.41.410(a)(1), the state

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Construing concurrent a tences together has n distinguish be and the pena offenses provi not subject det punishment o process or the Reynolds v. S (File No. 6890)

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And none others. — Not tory language tive history of the type of co subsection ta meant to be in any of the oth grouping of the duct together heading, with class A felonie the legislature paragraphs we involving equal v. State, Ct. A 5606), 641 P.2d other grounds App. Op. No. 25 30 (1983).

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applicable to the crime of rape of a
man under 16 years by a person 19 years
older, made punishable by former AS
11.15.130(a) by "any term of years."
Edenshaw v. State, Ct. App. Op. No. 095
File No. 5239, 631 P.2d 506 (1981).

What must be reflected in sentence
for forcible rape. — Although the perpe-
trator of such a crime as forcible rape may
not be beyond rehabilitation, the crime
itself deserves community condemnation;
in addition to serving rehabilitative
purposes the sentence must reflect such
condemnation as well as act as a deterrent
to the offender and to others. Newsom v.
State, Sup. Ct. Op. No. 1136 (File No.
2189), 533 P.2d 904 (1975).

Sentence for rape upheld. — See
Gordon v. State, Sup. Ct. Op. No. 831 (File
No. 1535), 501 P.2d 772 (1972); Torres v.
State, Sup. Ct. Op. No. 1031 (File No.
1951), 521 P.2d 386 (1974); Newsom v.
State, Sup. Ct. Op. No. 1136 (File No.
2189), 533 P.2d 904 (1975); Ames v. State,
Sup. Ct. Op. No. 1137 (File No. 2145), 533
P.2d 246, modified on rehearing, 537 P.2d
1116 (1975); Coleman v. State, Sup. Ct.
Op. No. 1288 (File No. 2331), 553 P.2d 40
(1976); Nukapigak v. State, Sup. Ct. Op.
No. 1410 (File No. 2915), 562 P.2d 697
(1977), aff'd on rehearing, 576 P.2d 982
(1978); Bordewick v. State, Sup. Ct. Op.
No. 1500 (File No. 3341), 569 P.2d 184
(1977); Morrell v. State, Sup. Ct. Op. No.
1577 (File No. 2790), 575 P.2d 1200 (1978);
Alexander v. State, Sup. Ct. Op. No. 1622
(File No. 3505), 578 P.2d 591 (1978); State
v. Wassilie, Sup. Ct. Op. No. 1630 (File No.
3691), 578 P.2d 971 (1978); Moore v. State,
Sup. Ct. Op. No. 1880 (File No. 4032), 597
P.2d 975 (1979); Wagner v. State, Sup. Ct.
Op. No. 1897 (File No. 4381), 598 P.2d 936
(1979); Wikstrom v. State, Sup. Ct. Op. No.
1987 (File No. 4535), 603 P.2d 908 (1979);
Tate v. State, Sup. Ct. Op. No. 2020 (File
No. 4550), 606 P.2d 1 (1980); Mallott v.
State, Sup. Ct. Op. No. 2027 (File No.
3364), 608 P.2d 737 (1980); Alexander v.

State, Sup. Ct. Op. No. 2077 (File No.
3522), 611 P.2d 469 (1980); Cochrane v.
State, Sup. Ct. Op. No. 2086 (File No.
4531), 611 P.2d 61 (1980); Heimer v. State,
Sup. Ct. Op. No. 2181 (File No. 4383), 616
P.2d 884 (1980); Tuckfield v. State, Sup.
Ct. Op. No. 2266 (File No. 4569), 621 P.2d
1350 (1981); Edenshaw v. State, Ct. App.
Op. No. 005 (File No. 5239), 631 P.2d 506
(1981); Kompkoff v. State, Ct. App. Op. No.
015 (File No. 5324), 626 P.2d 1091 (1981);
Williams v. State, Ct. App. Op. No. 139
(File No. 5676), 652 P.2d 478 (1982).

Sentence for rape held excessive. —
See Ahvik v. State, Sup. Ct. Op. No. 2123
(File No. 4556), 613 P.2d 1252 (1980);
Hintz v. State, Sup. Ct. Op. No. 2334 (File
No. 3541), 627 P.2d 207 (1981); Qualle v.
State, Ct. App. Op. No. 138 (File No. 5666),
652 P.2d 481 (1982).

Sentences of 15 years for rape of one
victim; 10 years concurrent with the
15-year term for burglarizing her resi-
dence; 10 years for burglarizing another
victim's residence; six months concurrent
with the 10-year burglary term for assault
on the second victim; 15 years for rape of a
third victim; and 10 years concurrent with
the 15-year sentence for burglarizing the
third victim's residence, for a total of 40
years incarceration, was error. Nix v.
State, Ct. App. Op. No. 157 (File No. 5481),
653 P.2d 1093 (1982).

Sentence for rape too lenient. — See
State v. Lancaster, Sup. Ct. Op. No. 1247
(File No. 2571), 550 P.2d 1257 (1976);
State v. Wassilie, Sup. Ct. Op. No. 1630
(File No. 3691), 578 P.2d 971 (1978); State
v. Jensen, Ct. App. Op. No. 126 (File No.
5879), 650 P.2d 422 (1982).

Sentence for attempted rape upheld.
— See Shelton v. State, Sup. Ct. Op. No.
2074 (File No. 3908), 611 P.2d 24 (1980)
(decided under former AS 11.15.130).

Sentence for assault with intent to
rape upheld. — See Fomin v. State, Sup.
Ct. Op. No. 2214 (File No. 5013), 619 P.2d
718 (1980).

Sec. 11.41.420. Sexual assault in the second degree. (a) An
offender commits the crime of sexual assault in the second degree if the
offender engages in

(1) sexual contact with another person without consent of that per-
son; or

(2) sexual penetration with a person who the offender knows

(A) is suffering from a mental disorder or defect which renders the
person incapable of appraising the nature of the conduct under circum-
stances in which a person who is capable of appraising the nature of the
conduct would not engage in sexual penetration; or

(B) is incapacitated.

(b) Sexual assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 78 SLA 1983)

Effect of amendments. — The 1983 amendment rewrote subsection (a).

NOTES TO DECISIONS

For cases construing former crime of rape, see notes to AS 11.41.410.

Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. *Nicholson v. State*, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Constitutionality of conviction where original charge was under AS 11.41.410. — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the two offenses, and his conviction for the latter offense did not violate due process. *Nicholson v. State*, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Evidence. — Where victim woke up in the early morning hours to find defendant

in her bed and fondling her breast, and where she testified that she was temporarily in shock and afraid he would hurt her, a jury could find that victim's momentary acquiescence in defendant's fondling her breast constituted second-degree sexual assault. *Nicholson v. State*, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Instructions. — The trial judge did not err in refusing to instruct on the lesser included offense of attempted sexual contact in the second degree. *Johnson v. State*, Ct. App. Op. No. 267 (File No. 6662), 665 P.2d 566 (1983).

Sentence upheld. — Sentence of eight years with three years suspended for sexual assault in the second degree was not clearly mistaken. *Howard v. State*, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Cited in *Stores v. State*, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980).

Sec. 11.41.430. [Repealed, § 10 ch 78 SLA 1983. For current law, see AS 11.41.420(a)(2).]

Sec. 11.41.434. Sexual abuse of a minor in the first degree. (a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person; or

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 2 ch 78 SLA 1983)

Editor's note below 11.15.134

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Consent may forbid child under regardless the act. And 1407 (File

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Sentence upheld. — No. 1286 (1 (1976); Buc

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NOTES TO DECISIONS

Editor's notes. — The cases cited in the note below were decided under former AS 11.15.134 and former AS 11.41.410(a)(4).

For cases construing former rape statute, see AS 11.41.410, Notes to Decisions, analysis line II.

State's authority to control sexual conduct of children. — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

As to constitutionality of former statute making lewd and lascivious acts toward children a crime, see *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Physical conduct punished under former statute. — See *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977); *Smiloff v. State*, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Former section prohibited fellatio. — See *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Consent is not at issue. — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Mitigating Factors. — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year old daughter) was not a mitigating factor. *Hodges v. State*, Ct. App. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

Sentence under former AS 11.15.134 upheld. — See *Noble v. State*, Sup. Ct. Op. No. 1286 (File No. 2468), 552 P.2d 142 (1976); *Buchanan v. State*, Sup. Ct. Op.

No. 1316 (File No. 2553), 554 P.2d 153 (1976); *Morgan v. State*, Sup. Ct. Op. No. 1908 (File No. 4187), 598 P.2d 952 (1979); *Baker v. State*, Sup. Ct. Op. No. 1968 (File No. 4631), 602 P.2d 797 (1979); *Alvarado v. State*, Sup. Ct. Op. No. 2323 (File No. 5133), 626 P.2d 582 (1981).

Sentence for assault upheld. — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. *Hodges v. State*, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault. *Langton v. State*, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence under AS 11.15.134 held excessive. — See *Qualle v. State*, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sentence for assault held excessive. — Sentence of 20 years imprisonment for first-degree sexual assault of two-year old child was excessive and case was remanded for resentencing not to exceed 120 years. *Langton v. State*, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence for assault held too lenient. — Suspended five-year sentence for first-degree sexual assault of defendant's four-year old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. *Langton v. State*, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Applied in *Seymore v. State*, Ct. App. Op. No. 196 (File No. 6995), 655 P.2d 786 (1982).

Sec. 11.41.436. Sexual abuse of a minor in the second degree.
 (a) An offender commits the crime of sexual abuse of a minor in the second degree if

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(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes, or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in the conduct described in AS 11.41.455(a)(2) — (6).

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.438. Sexual abuse of a minor in the third degree. An offender commits the crime of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender 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.

(b) Sexual abuse of a minor in the third degree is a class B felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree. (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 16 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 3 ch 166 SLA 1983)

Effect of amendments. — The 1983 amendment rewrote subsection (b).
Legislative history reports. —

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Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.
Applied in *Goulden v. State*, Ct. No. 201 (File No. 6465), 656 P.2d 633.

Collateral references. — Civil liability for sexual knowledge with actual consent of girl under age of consent, 45 ALR 1229.
Assault with intent to ravish or seduce a consenting female under age of consent, ALR 599.

Parent or person in loco parentis, li...

Sec. 11.41.445. General provisions. 11.41.410 — 11.41.440 it is an alleged offense, the victim is under 18 years of age.

(1) the spouses were living as husband and wife;
(2) the defendant caused physical injury to the victim;
(3) In a prosecution under A.S. 11.41.445, the provision of law defining an offense under a certain age, it is an affirmative defense that the alleged offense, the defendant was 18 years of age or older, unless the victim was under 16 years of age at the time of the alleged offense. (§ 3 ch 166 SLA 1983)

Sec. 11.41.450. Incest. (a) A person commits the crime of incest if, being 18 years of age or older, the person engages in sexual penetration with another who is related to the person illegitimately, as

(1) an ancestor or descendant;
(2) a brother or sister of the whole or half blood;
(3) an uncle, aunt, nephew, or niece;
(b) Incest is a class C felony. (§ 3 ch 166 SLA 1983)

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§ 11.41.440

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(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 9 ch 102 SLA 1980; am § 3 ch 78 SLA 1983)

Effect of amendments. — The 1980 amendment rewrote subsection (a).

The 1983 amendment rewrote this section.

Legislative history reports. — For a

report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Applied in *Goulden v. State*, Ct. App. Op. No. 201 (File No. 6465), 656 P.2d 1218 (1983).

Cited in *Stores v. State*, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980); *Hodges v. State*, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

Collateral references. — Civil liability for carnal knowledge with actual consent of girl under age of consent, 45 ALR 780; 79 ALR 1229.

Assault with intent to ravish or rape consenting female under age of consent, 81 ALR 599.

Parent or person in loco parentis, liabil-

ity for rape of minor child, 19 ALR2d 460.

Assault with intent to commit unnatural sex act upon minor as affected by latter's consent, 65 ALR2d 748.

Applicability of rape statute covering children of a specified age, with respect to a child who has passed the anniversary date of such age, 73 ALR2d 874.

Sec. 11.41.445. General provisions. (a) In a prosecution under AS 11.41.410 — 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless

(1) the spouses were living apart; or

(2) the defendant caused physical injury to the victim.

(b) In a prosecution under AS 11.41.410 — 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older, unless the victim was under 13 years of age at the time of the alleged offense. (§ 3 ch 166 SLA 1978)

Sec. 11.41.450. Incest. (a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Death of defendant abated prosecution under former section. *Hartwell v. State*, Sup. Ct. Op. No. 391 (File No. 704), 423 P.2d 282 (1967), decided under former AS 11.40.110.

Collateral references. — Aiding and abetting offense of incest by one not related to party, 5 ALR 784; 74 ALR 1110; 131 ALR 1322.

Relationship created by adoption as within statute regarding incest, 151 ALR 1146.

Consent as element of incest, 36 ALR2d 1299.

Sexual intercourse between persons related by half blood, 72 ALR2d 706.

Prosecutrix as accomplice or victim, 74 ALR2d 705.

Rape, incest as included within charge of, 76 ALR2d 484.

Sec. 11.41.455. Unlawful exploitation of a minor. (a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality; or
- (6) the lewd exhibition of the child's genitals.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 57 SLA 1983)

Cross references. — For crime of distribution of child pornography, see AS 11.61.125.

Effect of amendments. — The 1983 amendment, in subsection (a), substituted "magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person" for "or

magazine that depicts such conduct, the person," substituted "18 years" for "16 years" in two places, and added "the following actual or simulated conduct" to the end, all in the introductory paragraph; substituted "lewd" for "obscene" in paragraphs (2), (3) and (6), and deleted "female" preceding "breast" in paragraph

(3). The amendment substituted "or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person" for "or

Applied in *Reynolds v. State*, Sup. Ct. Op. No. 138 (File No. 704) (1982).

Sec. 11.41.455. crime of unlawful exploitation of a minor, offender's offense, person.

(b) Indecent exposure. A misdemeanor. An offender under 18 years of age is a child.

Sec. 11.41.470.

(1) "incautious nature of unwillingness to consent to sexual assault."

(3) "with a person or imminent danger to the person."

(B) is included in SLA 1978:

Cross references. terms used in effect of amendment preceding "to

Applied in *Reynolds v. State*, Sup. Ct. Op. No. 193 (File No. 704) (1982); Juneby 259 (File No. 704) (1982); *Reynolds v. State*, Sup. Ct. Op. No. 138 (File No. 704) (1982).

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(3). The amendment also redesignated former subsection (b) as subsection (c) and added present subsection (b).

NOTES TO DECISIONS

Applied in *Qualle v. State*, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sec. 11.41.460. Indecent exposure. (a) An offender commits the crime of indecent exposure if the offender intentionally exposes the offender's genitals to another person with reckless disregard for the offensive, insulting, or frightening effect the act may have on that person.

(b) Indecent exposure before a person under 16 years of age is a class A misdemeanor. Indecent exposure before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983)

Sec. 11.41.470. Definitions. For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct and physically unable to express unwillingness to act;

(2) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(3) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant. (§ 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

Effect of amendments. — The 1983 amendment deleted "that a person is" preceding "temporarily incapable" and substituted "one's own conduct and" for "his conduct and is" in paragraph (1) and deleted "imminent" preceding "death" and preceding "kidnapping" in paragraph (3)(A).

NOTES TO DECISIONS

Applied in *Nicholson v. State*, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982); *Juneby v. State*, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983); *Reynolds v. State*, Ct. App. Op. No. 262 (File No. 6890), P.2d (1983).

Quoted in *Woods v. State*, Sup. Ct. Op. No. 2698 (File No. 6180), P.2d (1983).

Cited in *Hartley v. State*, Ct. App. Op. No. 153 (File No. 5737), 653 P.2d 1052 (1982).

DEPARTMENT OF CORRECTIONS

POSITION PAPER

Senate Bill No. 4

The Department of Corrections supports the concept of this proposed legislation. There is benefit to both the public and the prisoner in having certain non-violent offenders involved in community services and employed in the community.

Prisoner earnings would be generated to off-set a portion of the cost of incarceration, to support dependents and to make restitution to victims. Operating costs would probably be less for this type of facility, and the effect would be to make available the most costly and secure institutional spaces for more dangerous offenders. When not housed in the correctional facility, the offenders would either be working or completing community work service that would benefit the public.

While in support of the concept, the bill is not without problems, principally because of proposed Title 12 restrictions on the court and silence regarding Title 33 responsibilities of the Commissioner of Corrections. Under proposed language there would be three avenues for offenders to enter a correctional restitution center:

1. The Court could recommend placement to the Commissioner (Section 1);
2. The Court could require placement (Section 2); or
3. Under existing AS 33.30 authority the Commissioner could place offenders in these facilities.

As presently written the Commissioner would not be limited to placement of specific types of prisoners, however, the court would be limited.

Section 3 presents concerns regarding suspended imposition of sentence placement by the courts. First, while it has been stated in Section 1 that placement in restitution centers would be limited to individuals who would otherwise have been sentenced to imprisonment in a prison facility, this is not an easy distinction before the actual determination of sentence. This bill provides the courts with an attractive new alternative that could redefine the type of offender who would be sentenced to incarceration. By permitting the judicial placement option, there is a substantial possibility that over a time a number of non-violent offenders who historically have been placed on probation would be placed in this more restrictive and costly setting.

Secondly, the violation process under Section 3 is problematic. Under this bill if a person is placed in a Correctional Restitution Center by the court as a special condition of probation and the offender violates rules of conduct while in custody, the matter would be returned to the court for further proceedings. This is a costly and time consuming process. By contrast, inmates placed under the authority of the Commissioner would receive an administrative hearing regarding allegations and they could be administratively assigned to another institution for all or part of the balance of the period of imprisonment. This substantial difference could be resolved by either deleting Section 3, or by specifying that if the prisoner sentenced under this section

violates established rules, the Commissioner may require all or part of the remaining period of imprisonment to be served at another correctional facility.

Section 4 of this bill includes the provision for Community Advisory Committees. This five member group of citizens would be a working committee considering complaints against prisoners and making recommendations to the Commissioner. The language does not specify the level or types of complaints to be considered by the committee and should be clarified.

Section 4 is unclear in 33.30.286 (3) and (4) as to when the court will determine the amount of money necessary for support of dependents and restitution to victims. If it is intended that the court make this determination rather than the Commissioner, it should be addressed in Title 12 which is now silent on the matter. At any time other than at sentencing this would be a time consuming process and the court might not have sufficient information at time of sentencing regarding future income while in the restitution center. If it is to be the Commissioner's responsibility to make these determinations when more information is available, then this Section requires revision.

Using the criteria established in Section 2, 180 (15%) of the 1,239 sentenced prisoners in custody December 31, 1984 were identified as being potentially eligible to serve time in a Correctional Restitution Center. Of the 180 eligible prisoners, 59 (33%) identified Anchorage as their place of residence, 29 (16%) identified Fairbanks, 9 (5%) identified Juneau and the 83 (46%) remaining identified small cities and various villages around the state. With this information, we have determined that Correctional Restitution Centers should receive priority for establishment in the Anchorage and Fairbanks areas.

Operation of a Correctional Restitution Center directly by the Department of Corrections is a costly proposition. A reduction in the security staff required to maintain security of these non-violent offenders is off-set by the need to provide employment counseling and assistance locating employment opportunities for person entering the program. A review of the work history at the time of initial arrest of the 180 prisoners meeting the minimum criteria shows that 119 (66%) were unemployed, 38 (21%) were employed by a business or agency, and 23 (13%) were self-employed. This information reveals that extensive job preparation and on-going counseling would be required to enable prisoners not only to obtain employment but to keep it. Assisting with transportation to and from work and confirming attendance is critical to the success of the program.

The Department of Corrections encourages this method of rehabilitating non-violent offenders into productive members of our society. In order to be able to provide structured Correctional Restitution Centers with a reduction in costs we recommend that the Department be given authority to contract for the operation of these facilities with the private sector.

Prepared By: Cynthia Nelson
Cynthia Nelson, Special Assistant

Date: January 23, 1985

Approved By: Roger V. Enell
Roger V. Enell, Commissioner

Date: January 23, 1985

Prisoner Profile Summary of the 180 prisoners who meet the criteria of offenses not involving violence or use of force.

	<u>Work History at time of arrest</u>
165 (92%) Felony	119 (66%) Unemployed
15 (8%) Misdemeanor	38 (21%) Employed by business or agency
<u>180 (100%)</u>	<u>180 (100%)</u>
	<u>Place of Residence</u>
	<u>Employment Skills</u>
58 (32%) General Labor	59 (33%) Anchorage
17 (9%) Mechanics	29 (16%) Fairbanks
17 (9%) Fishermen	9 (5%) Juneau
19 (11%) Carpenters	83 (46%) Other
53 (30%) Misc. other skills	<u>180 (100%)</u>
16 (9%) No job skills	
<u>180 (100%)</u>	

Projected population profiles and growth rates indicate that the population of sentenced offenders who meet this criteria will remain constant at 15%. This will result in the following population being eligible for Correctional Restitution Center placement.

December '84 - 180
 December '85 - 220
 December '86 - 250
 December '87 - 280
 December '88 - 310
 December '89 - 340

Alaska State Legislature

file SB 4

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
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Senate Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: ~~Senator Bettye Fahrenkamp, Chairman~~ Committee Staff

RE: Committee Meeting, February 7, 1985

DATE: February 5, 1985

On Thursday, February 7 at 1:30 pm in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

SB 4, Relating to correctional restitution centers.

SB 4 received a preliminary hearing on January 24. A committee substitute (incorporating amendments proposed at that time has been prepared. In Brief, CS SB 4 (HESS):

- 1) Clarifies that the authority to allow a prisoner to serve time in a correctional restitution center lies with the commissioner of the Department of Corrections, and that the court's role is advisory only.
- 2) Amends the purpose section of the bill to include providing restitution.
- 3) Clarifies that a prisoner's earnings will be used for payment of a fine or restitution ordered by the court, as well as for room and board, travel expenses, and dependent care.
- 4) Allows release from the center when at and traveling to job interviews, as well as while at and travelling to work.
- 5) Authorizes the commissioner to contract with public or private agencies for operation of a restitution center.

Sec 1 & 2

Sec 3
33.30.282

P. 3, 1, 24
33.30.286

P. 4, 1, 2
33.30.288

33.30.285
P. 3, 1, 7

SENATE
JOURNAL SUPPLEMENT

3/26/85

STATE OF ALASKA

No. 24

FISCAL NOTE

SB
4

Revision Date: March 15, 1985

REQUEST:
BILL: CS 534 (HESS)
Title: "An Act relating to correctional centers."
 Sponsor: Senator Kelly
 Requestor: (S) Finance
 Date of Request: March 14, 1985

FISCAL DETAIL:
 Agency Affected: DEPARTMENT OF CORRECT
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Statewide Programs

EXPENDITURES/REVENUES: (Thous

	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING					
100 PERSONAL SERVICES					
200 TRAVEL					
300 CONTRACTUAL	1074.7	1128.4	1184.8	1244.0	1306.2
400 SUPPLIES					
500 EQUIPMENT					
600 LAND & STRUCTURES					
700 GRANTS, CLAIMS					
800 MISCELLANEOUS					
TOTAL OPERATING	1074.7	1128.4	1184.8	1244.0	1306.2

CAPITAL	-0-	-0-	-0-	-0-	-0-
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REVENUE	117.0	122.9	129.0	135.5	142.3
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FUNDING: (Thousands of Dollars)

GENERAL FUND	1074.7	1128.4	1184.8	1244.0	1306.2
FEDERAL FUNDS					
OTHER					
TOTAL	1074.7	1128.4	1184.8	1244.0	1306.2

POSITIONS:

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

ANALYSIS: separate page

Prepared By: William W. Ladwig Phone: 465-3376
 Division: Deputy Commissioner - Administration Date: March 15, 1985
 Approved by Commissioner: [Signature] Date: March 15, 1985
 Agency: DEPARTMENT OF CORRECTIONS

SB
4

Assumptions:

Department of Corrections will develop a pilot Correctional Restitution Center by changing the mission of the Ridgeview Correctional Center. Ridgeview will be converted from a 60 person holding facility to a 100 person Correctional Restitution Center.

The Department of Corrections will continue to lease the Ridgeview facility and will contract for operation of the Correctional Restitution Center. This contract will include all administrative, security, program, culinary, clerical, and maintenance operations.

It can be assumed that approximately 50% of the 100 inmates will be employed immediately while the remaining inmates are developing resumes' and other work search skills. The Department would retain 25% of a prisoner's income to off-set the cost of care. Most of those employed will earn close to the minimum wage, although some may be expected to earn slightly more.

Therefore, we calculate 50 inmates working full-time (40 hours per week) at \$4.50 per hour (the minimum wage of \$4.35 per hour plus a \$.15 adjustment for the few that could earn more) would mean a total cost of care reimbursement to the state of \$117,000.00.

50 inmates X 40 hours X 52 weeks = 104,000
 104,000 hours X \$4.50 per hour = \$468,000.00
 \$468,000.00 X .25 = \$117,000.00

A cost of living increase of 5% per year was assume to increase revenues in subsequent years.

Program Summary

The Department of Corrections estimates that a contract to operate this Correctional Restitution Center would cost \$1,074,701. These costs were calculated using FY 85 costs for similar services and adding a 5% inflation factor to estimate FY 86 costs.

Prisoner Profile Summary of the 180 prisoners who meet the criteria of offenses not involving violence or use of force.

Work History at time of arrest

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180 (100%)	180 (100%)

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 9 (5%) Juneau
 83 (46%) Other
 180 (100%)

corrections release



JUN 16 1986

ALASKA
DEPARTMENT
OF CORRECTIONS

June 1986
Vol. III, No. 3

Center fosters community service as well as restitution

Glennwood Center, located at 835 D Street in Anchorage, opened its doors on November 15, 1985 as the new Restitution Center under contract to the Alaska Department of Corrections. Owned and operated by T.J. Mahoney & Associates, which has contracted with the department since 1979, Glennwood's program is, to date, the first and only one of its kind in the 49th state.

Inmates must meet strict eligibility criteria to be admitted to Glennwood. Employability and/or eligibility for community work service projects are the main programmatic requirements. Inmates must have no criminal history involving violence or the use of force or weapons, nor may they have any convictions for sexual offenses. Also, they must be designated community custody and have no history of escape. All referrals are coordinated by the State Correctional Center Annex at Anchorage.

The facility can house up to 75 clients. Glennwood Center has admitted and discharged more than 1,400 clients since opening, and clients have donated almost 20,000 man-hours of community service.

All Glennwood clients are required to perform a certain amount of community work service during their stays. They are then eligible to seek or resume regular em-



A Glennwood inmate crew cleans the rest area at Glen Alps in Anchorage.

ployment within the community. Through collection of paychecks and monitored budgeting of expenses, clients pay fines, restitution, and/or family support, save money toward their release, and contribute 25 percent of their net earnings toward the cost of their incarceration.

Community work service projects are performed in conjunction with, rather than in place of, state personnel. No state jobs are affected by Glennwood clients' contributions toward these projects. The projects are an ideal method for inmates to provide a form of restitution to the community, in place of financial restitution, for those who are not specifically required to pay any.

The program provides a number of in-house services such as alcohol awareness and social awareness groups, a job search/skills group, a women's discussion group, and non-denominational worship services. Staff escort clients to recreational facilities and to such self-help resources as Alcoholics Anonymous and Narcotics Anonymous. The goal is for clients to know and make use of these community resources prior to their release, to assist them in making a dignified and meaningful re-entry into society.

Thanks to Glennwood Director John Evans for his report and photo.

Commissioner's corner

By Roger Endell



Photo courtesy of Douglas Van Reeth

Another legislative session has ended, and we are in the final few weeks of FY 86. Now we must prepare to close out the current year budgets, continue our operations under the new FY 87 operating and capital budgets, and design the new FY 88 budget. The budget process is very demanding. Competition for more limited revenue dollars has caused all of us to evaluate again the difference between essential and less or non-essential services.

Overall, the Department of Corrections will have additional resources to help with the continuing influx of offenders. New

laws (HB 104 and HB 114) will assist us in a variety of ways. The new budget, while it definitely has certain limitations, also provides us with some additional tools. Some examples: five new correctional officer positions will go to Goose Bay Correctional Center; thirty-four new staff positions will go to the new Mat-Su Pre-trial Facility (both Goose Bay and Mat-Su positions begin September 1); six new positions will be available to the Northern Region's community corrections (probation/parole) unit; contractual money has been allocated for the placement of 100 long-term incarcerated, sentenced felons to be moved from Alaska to Minnesota while the construction continues on the Spring Creek Correctional Center in Seward for the next year; and funds were also allocated for additional community residential center beds.

Each of these changes is directly related to identified needs within the department. While there are certainly other needs that will go unmet, our most critical functions were adequately funded.

The FY 88 budget process will, in all likelihood, be even more demanding and difficult. While we hope that the rate of offender population growth will be stabilized at a lower level, we know that our population will continue to expand. We can realistically expect to request the necessary staffing and operating budgets for the Seward facility and the staffing for the expanded Palmer facility next year, as well as major capital funds for additional ex-

pansion of our long-term, high-security holding capacity.

Programmatically, we will, undoubtedly, continue to feel the pressure of declining revenues on the education and medical portions of our budget. We will need to make our correctional industries program self-supporting over the next year. It is possible that a probation fee will be initiated for all probationers. We must show significant progress in collections from our restitution program efforts. And, finally, we will have clearly delineated and enforced plans, policies, and procedures for managing within the budgets allocated to each component, *i.e.*, there can be no supplemental budgets next year.

While belt tightening is neither easy nor without discomfort, the department is whole and healthy and will remain so in order to carry out its mission and the mandate of the state's constitution and statutes. The department is built upon a solid foundation of staff and management that continues to improve each year. Through teamwork, our progress has been remarkable, and our plans for further improvements will continue.

Thanks, everyone, for doing a good job.

corrections release is a bi-monthly publication of the State of Alaska, Department of Corrections.

Roger Endell, Commissioner

Bart Penny, Managing Editor
Doreen Ransom, Copy Editor

Statewide promotions for March and April

Promotions in the Northern Region are: Rufus King, Sr., Correctional Officer II, Fairbanks Correctional Center; and [Name], Probation Officer II, Fairbanks.