

HPB

104

BILL CONTACT/ACTION

| DATE     | CONTACT/ACTION                                 |
|----------|--|
| 5/1/85   | 1st hearing - held over pending completion of  |
|          | presumptive sentencing study.                  |
|          |  |
| 11/23/86 | Doug Abbott - 780-4777 (w) or 789-2095 (H)     |
|          | wants to notify of hearing                     |
| 2/27     | Hayden notified - Suzanne 4990                 |
| 2/27/86  | SENATOR FISCHER NOTIFIED bill up 3/4 - Suzanne |
| 2/27/86  | AG HIL BROWN NOTIFIED - Suzanne                |
| 3/3/86   | NOTIFIED: ROGER ENDRELL 3376                   |
|          | MIKE SPAVE - DOL/CUM DIV. 34128                |
| 3/5      | NOTIFIED of 3rd MEETINGS                       |
|          | ROGER ENDRELL, MIKE SPAVE, AG, HAYDEN          |
|          | DOUG ABBOTT & SENATOR FISCHER                  |
|          |  |
|          |  |
|          |  |
|          |  |
|          |  |
|          |  |
|          |  |
|          |  |
|          |  |
|          |  |
|          |  |

4947

SUZANNE

34128

# Alaska State Legislature



## House of Representatives House Judiciary Committee

Hon. Pat Rodey, Chairman  
Senate Judiciary Committee  
Anchorage Legislative Information Office #308  
1024 W. Sixth  
Anchorage, Ak. 99501

Sept. 15, 1985

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

ATTN: Ann Plunkett

RE. HB 104

Dear Sen. Rodey:

You requested backup from the House Judiciary Committee regarding HB 104, having to do with statutory good time.

Enclosed you will find the contents of the House Judiciary Committee file on HB 104.

In addition, I am sending you a copy of a letter recently sent to us by Rep. Max Gruenberg as an informational copy, regarding an unpublished appellate court opinion in the case of Suiter v. Benson.

For further information on that correspondence, you may want to contact Rep. Gruenberg.

Sincerely,

A handwritten signature in cursive script that reads "Bob Speed".

Bob Speed, A.A.  
for Rep. Mike Miller, Chairman  
House Judiciary Committee

cc: Rep. Max Gruenberg

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907.465.3800

May, 1986

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

Jeanie Henry

|  |         |      |
|--|---------|------|
| House Judiciary Committee                  | 2/21/85 | 1:30 |
| " " "                                      | 2/26/85 | 1:00 |
| " " "                                      | 3/20/85 | 3:30 |
| House Health Education and Social Services | 3/7/85  | 4:30 |
| House Judiciary Committee                  | 2/27/85 | 1:30 |
| " " "                                      | 2/25/85 | 1:30 |
| " " "                                      | 2/27/85 | 1:30 |
| " " "                                      | 2/28/85 | 1:30 |

A. SNEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the computation, forfeiture, and restoration of statutory good time for state prisoners.

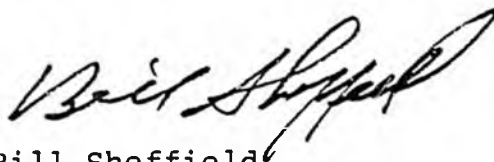
Good time accounting for state prisoners is currently being computed under three different systems dependent upon when a prisoner committed a criminal offense. Because of the complexities, an inordinate amount of staff time and frequent computational errors.

This bill will greatly simplify basic time accounting, and bring all Alaskan prisons under one time accounting system. For those prisoners already incarcerated on the date this bill becomes law, this bill will have the effect of changing the time accounting method from one of accruing good time at a set rate per month to one of a grant of good time in a block, the amount of which is dependent on the time remaining to be served on their sentences.

Additionally, although the primary purpose of the bill is to simplify the good time computation process, it will result in a minor reduction in the time prisoners will serve (one-twelfth of the sentence), if they observe all the rules of the institution while incarcerated.

Finally, the bill will assist in the statewide uniform application of restoration of forfeited good time for prisoners who demonstrate good conduct during their incarceration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield  
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Page 1 of 2

Revision Date: \_\_\_\_\_

**REQUEST:**

Bill/Resolution No.: HB 104  
 Title: "An Act relating to computation, forfeiture and restoration of statutory good time."  
 Sponsor: Governor  
 Requestor: Governor  
 Date of Request: 12-11-84

**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 |
|------------------------|-------|-------|-------|-------|-------|-------|
| <b>OPERATING</b>       |       |       |       |       |       |       |
| 100 PERSONAL SERVICES  |       |       |       |       |       |       |
| 200 TRAVEL             |       |       |       |       |       |       |
| 300 CONTRACTUAL        |       |       |       |       |       |       |
| 400 SUPPLIES           |       |       |       |       |       |       |
| 500 EQUIPMENT          |       |       |       |       |       |       |
| 600 LAND & STRUCTURES  |       |       |       |       |       |       |
| 700 GRANTS, CLAIMS     |       |       |       |       |       |       |
| 800 MISCELLANEOUS      |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b> | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|                |     |     |     |     |     |     |
|----------------|-----|-----|-----|-----|-----|-----|
| <b>CAPITAL</b> | -0- | -0- | -0- | -0- | -0- | -0- |
|----------------|-----|-----|-----|-----|-----|-----|

|                |     |     |     |     |     |     |
|----------------|-----|-----|-----|-----|-----|-----|
| <b>REVENUE</b> | -0- | -0- | -0- | -0- | -0- | -0- |
|----------------|-----|-----|-----|-----|-----|-----|

**FUNDING: (Thousands of Dollars)**

|               |     |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND  |     |     |     |     |     |     |
| FEDERAL FUNDS |     |     |     |     |     |     |
| OTHER         |     |     |     |     |     |     |
| <b>TOTAL</b>  | -0- | -0- | -0- | -0- | -0- | -0- |

**POSITIONS:**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

**ANALYSIS:**

separate page

See Attachment.

Prepared By: Cynthia Nelson  
 Special Assistant: Cynthia Nelson

Phone: 465-3376  
 Date: 1-3-85

Approved by Commissioner: William W. Lewis for Roger V. Enckell  
 Agency: DEPARTMENT OF CORRECTIONS

Date: 1-3-85

**Distribution (by Agency preparing fiscal note):**

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

Attachment

This change in the award of statutory good time from one-fourth to one-third would affect only those prisoners sentenced since 1980. Prisoners sentenced prior to 1980 are currently eligible to receive one-third of their sentence awarded as good time.

Projections indicate that this legislation would create a gain of 22 beds per month over the next five years. This has been calculated by applying the revised amount of good time towards the portion of the current population having five years or less remaining to serve.

Projecting from the 640 prisoners meeting this criteria, a gain of 56,000 man days of good time over a five year period were identified. Calculated below this would average a gain of 31.1 beds per month if all inmates were to earn the maximum amount of statutory good time. Approximately 72% of prisoners serve their sentences without any loss of statutory good time, which results in a total projected gain of 22 beds per month.

56,000 man days over five years  
 $56,000 \div 5 = 11,200$  man days per year  
 $11,200 \div 12 = 933$  man days per month  
 $933 \div 30 = 31.1$  beds per month  
 $72\% \times 31.1 = 22$  beds per month

Assuming that 22 additional beds per month become available over the next five years, the inmate population which is consistently raising at the rate of 25 per month would begin to stabilize.

# STATE OF ALASKA

## DEPARTMENT OF CORRECTIONS

BILL SHEFFIELD, GOVERNOR

REPLY TO:

POUCH T  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3376

May 10, 1985

The Honorable Pat Rodey  
Chairman  
Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

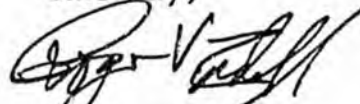
SUBJECT: HB 104

Dear Senator Rodey:

I urgently need your assistance on the corrections good time bill, HB 104. I hope that the attached summary sheet will help you. The eight summary facts are the essential ingredients critical to sound correctional management, and will help us to rectify the current administrative nightmare.

This bill has come a long way. I would sincerely appreciate your affirmative assistance in working toward the passage of this bill this session.

Sincerely,



Roger V. Endell  
Commissioner

enclosure

cc: Senate Judiciary Members

DEPARTMENT OF CORRECTIONS  
COMPARISON OF GOOD TIME SYSTEMS  
SUMMARY SHEET

| IMPORTANT CHARACTERISTICS                                   | Pre-1971  | 1971-1979   | 1980-Present  | HB 104         |
|---|---|---|---------------|----------------|
| A. Kinds of Good Time Can Earn                              | 1) Statutory (S.G.T.)<br>2) Meritorious (M.G.T.)<br>3) Extra Meritorious (E.M.G.T.) | S.G.T. (Good Behavior)<br>M.G.T. (Work &/or Program)<br>E.M.G.T. (Exceptional Act-Rare) | S.G.T.        | S.G.T.         |
| B. Block or Accrual System                                  | Block/Accrual   | Accrual   | Accrual       | Block          |
| C. Rates of Good Time                                       | 25% - 41%   | 21% - 33%   | 25%           | 33%            |
| D. When G.T. Earned   | Date Sentenced/<br>Once a Month   | Once a Month  | Every 4th Day | Date Sentenced |
| E. Amount G.T. available for Removal if Disciplinary Action | 17% - 33%   | 0% - 23%  | 0% - 25%      | 33%            |
| F. Monthly Calculations/ Entries w/out Disciplinary         | Usually   | Always  | No            | No             |
| G. Avg. Number Calculations if Disciplinary                 | 1   | 1   | 3             | 1              |
| H. Avg. Number Written Entries if Disciplinary              | 1   | 1   | 2             | 1              |
| I. Avg. # Calculations if G.T. Restored                     | 1   | 1   | 2             | 1              |
| J. Avg. # Written Entries if G.T. Restored                  | 1   | 1   | 2             | 1              |
| Total Calculations/Entries                                  | 4   | 4   | 9             | 4              |
| K. Relative Simplicity of System                            | Simple  | Complex   | Very Complex  | Very Simple    |

SUMMARY FACTS

- 1) Prisoners serve similar months, no matter which system is used (only 8% difference).
- 2) HB 104 falls in the middle of the four systems in good time rate.
- 3) HB 104 uses the lowest possible rate to be able to convert pre-1980 cases and therefore one system.
- 4) Most prisoners serve their good time earned on supervision, so not roaming around free when released.
- 5) Would allow staff time to supervise prisoners rather than spending time bookkeeping.
- 6) Expected to significantly reduce error rate.
- 7) Would treat city prisoners the same as state prisoners.
- 8) HB 104 would promote more equity in disciplinary matters and be a better management tool for prison administrators.

DEPARTMENT OF CORRECTIONS  
COMPARISON OF GOOD TIME SYSTEMS

SENTENCE LENGTH

MONTHS WOULD SERVE

|          | Pre-1971*  | 1971-1979* | 1980-Present | HB 104     |
|----------|------------|------------|--------------|------------|
| 1 Year   | 9 Months   | 9 Months   | 9 Months     | 8 Months   |
| 5 Years  | 38 Months  | 43 Months  | 45 Months    | 40 Months  |
| 10 Years | 71 Months  | 81 Months  | 90 Months    | 80 Months  |
| 20 Years | 141 Months | 160 Months | 180 Months   | 160 Months |

\* Assumes no E.M.G.T. earned.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

March 21, 1985

The Honorable Don Clocksin  
Majority Leader of the House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: CS for HB 104(Jud)  
Good Time for Prisoners

Dear Representative Clocksin:

This letter is a response to some concerns raised at the hearing before the House Judiciary Committee on March 20, 1985, to the effect that section 1 of CS for HB 104(Jud) would result in the wholesale amnesty and general release of a large number of prisoners upon its effective date.

These concerns are groundless as the bill will not be applied retrospectively. AS 01.10.090 precludes the retrospective application of a statute unless expressly declared therein. What will occur to the sentences of prisoners incarcerated on the effective date of this bill (assuming it is enacted into law) is that the portion of the sentences remaining to be served will be reduced by one third rather than reducing them by one day for each three served on an accrual basis. No prisoners will be released on the effective date of this bill who would not otherwise have been released for other reasons.

If you have any questions regarding the information provided above, please contact me at your convenience.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By: Michael J. Stark  
Michael J. Stark  
Assistant Attorney General

MJS/gb-52  
cc: Mike Miller, Chairman ✓  
House Judiciary Committee

Roger Endell, Commissioner  
Department of Corrections

BILL SHEFFIELD, GOVERNOR

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

# MEMORANDUM

State of Alaska

TO: Roger Endell  
Commissioner  
Department of Corrections

DATE: April 12, 1954

FILE NO: 366-496-84

TELEPHONE NO: 465-3428

FROM: NORMAN C. GORSUCH  
ATTORNEY GENERAL

SUBJECT: Forfeiture of good time  
during consecutive -  
sentences

By: Michael J. Stark *MJS*  
Assistant Attorney General

You have asked our opinion<sup>1/</sup> whether it is legally permissible for a disciplinary committee to forfeit a prisoner's statutory good time for a disciplinary infraction when at least part of the good time was earned during the first of two consecutive sentences and the infraction was committed during the second sentence.

As long as the amount of forfeited statutory good time does not exceed that set out in 7 AAC 60.470(a)(5), it is legally permissible to forfeit statutory good time earned during the first of two consecutive sentences for a disciplinary infraction committed during the second sentence.

### Legal Analysis

The purpose of statutory good time is to provide an incentive for good behavior by prisoners and to concomitantly aid in the rehabilitative process. See, e.g. DeSimone v. Norton, 404 F. Supp. 964, 967 (D. Conn. 1975). This is accomplished by mitigating the severity of punishment by rewarding a prisoner for good conduct.

This principle is embodied in Alaska in AS 33.20.010, which provides:

Computation of good time. Notwithstanding AS 12.55.125(f)(3) and (g)(3), each prisoner convicted of an offense against the state and sentenced to imprisonment, whose record of conduct shows that the prisoner has faithfully observed the rules of the institution in which

---

1/ The request for advice came from a superintendent; however, the question and our response has application systemwide.

the prisoner is confined, is entitled to a deduction from the term of imprisonment of one day for every three days of good conduct served.

Before this statute was adopted in its present form in 1978, former AS 33.20.010 provided for an award of statutory good time based on the length of the term of imprisonment.<sup>2/</sup>

Because the amount of good time awarded was dependent on the length of sentence, former AS 33.20.010(b) provided that consecutive sentences should be aggregated for purposes of computing the amount of good time a prisoner was entitled to receive. When AS 33.20.010 was amended, this subsection was dropped as it would have been superfluous given the fact that "good time" is earned at a rate of one day for every three days served, irrespective of sentence length.

Former AS 33.20.010 was substantially similar to 18 U.S.C. § 4161, the federal statute relating to the award of good time for federal prisoners. Cases interpreting that statute have consistently held that the expiration of the first of two consecutive sentences does not prevent the subsequent forfeiture of good time earned during that sentence. See e.g., Williams v. Lazgett, 377 F. Supp. 1110, 1112 (D. Kansas 1974); Hoover v. Taylor, 334 F.2d 281 (10th Cir. 1964). The basis for these rulings has been that no authority exists for the proposition that consecutive sentences "expire" independently of one another. Rather, consecutive sentences are treated as a single term, the expiration of which, less the time deducted for good conduct, results in the prisoner's release.<sup>3/</sup> E.g., McCray v. United States Board of Parole, 542 F.2d 558, 560 (10th Cir. 1976) and cases cited therein.

It is our understanding that the Department of Corrections has continued as a policy the mandate of former

---

2/ The amount of statutory good time a prisoner was entitled to receive ranged from five days per month for a sentence of six months to one year to 10 days per month for a sentence of 10 years or longer.

3/ In Alaska, a prisoner earning more than 180 days of good time is mandatorily released as if on parole and remains in the custody of the parole board. AS 33.20.040; AS 33.15.190.

AS 33.20.010 to aggregate consecutive sentences for purposes of time accounting and calculation of earned statutory good time.

The question thus becomes whether the 1978 amendments to AS 33.20.010 have the effect of precluding the department from forfeiting statutory good time earned during the first of two consecutive sentences when the disciplinary infraction triggering this sanction occurred during the second sentence.

As indicated earlier in this memorandum, the answer to this question is no. Both AS 33.20.050, which authorizes the forfeiture of a prisoner's earned statutory good time "during the term of imprisonment" and AS 33.20.030, which provides that "[A] prisoner shall be released at the expiration of the term of sentence less the time deducted for good conduct," are nearly identical to their federal counterparts (18 U.S.C. §§ 4165, 4163) and have not been amended since their original adoption in 1960. In addition, there has been no indication given by the legislature, either in its amendments to AS 33.20.010 or elsewhere, that the well-settled rule that consecutive sentences are to be treated as a single term for purposes of awarding and forfeiting statutory good time, should be abandoned.<sup>4/</sup>

---

4/ See Lambert v. U.S. Penitentiary, 591 F.2d 4, 8 (5th Cir. 1979), where the court, in an analogous situation dealing with a parole violator's loss of good time and credit for time spent on conditional release, stated:

Under the pre-1976 law, it is clear that a parole violator could lose both good time credit and credit for time spent on conditional release. 18 U.S.C. §§ 4205, 4207 (1970) [citations omitted]. Under the Parole Commission and Reorganization Act, sections 4205 and 4207 were substantially changed and include no similar forfeiture provisions. Nonetheless, absent some legislative indication to the contrary, we will not upset the well-settled rule that once the appellant's release was revoked because of his violation of its conditions, the U.S.P.C. had the authority to forfeit the appellant's good-time credit as well as credit for time spent on conditional release. [Citations omitted.]

Roger Endell, Commissioner  
Department of Corrections  
366-496-84

April 12, 1984  
Page 4

If you have any questions regarding this memorandum of advice, please contact us at your convenience.

MJS/so-03

cc: Kevin Bruce  
Deputy Commissioner for Operations

Art Schmidt  
Superintendent, Palmer Correctional Center

# State of Alaska

## COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
(Co-Chairman)  
HOUSE JUDICIARY  
HOUSE COMMUNITY AND  
REGIONAL AFFAIRS



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4968

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

30 July 1985

David Lampen  
Clerk of the Appellate Courts  
303 K Street  
Anchorage, Alaska 99501

Re: Suiter v. Benson, MO&J #734 (Alaska, App. 1984)  
(Unpublished opinion)

Dear Mr. Lampen,

I would like to request that the above opinion be published. The portion at pages 3 and 4 stating that the trial court has no authority to restrict the prisoner's ability to receive credit for good time because the awarding of good time is automatic under AS 33.20.010 is of considerable importance statewide. This portion of the opinion appears to be a decision on an issue of first impression in this state as no previous opinion is cited and my brief research through the Michie statutes annotation reveals none.

HB 104, revising the good time statutes, has passed the state House and now reposes in the state Senate.

I am presently considering whether to amend HB 104 to include a provision allowing trial courts the discretion to reduce or eliminate a prisoner's eligibility for good time. It will thus be important to the legislature to have a published opinion on the issue definitively setting forth that under present law the trial courts possess no such authority.

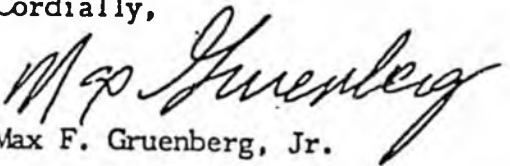
I would be most grateful if you would transmit this communication to the judges of the Court of Appeals as an official request to publish the opinion.

If you have any additional questions or if you or the judges have any comments on this or any other aspect of HB 104, please let me know.

For the record, this law office, through my partner, Joan Clover, represented appellee Cynthia Benson in the underlying divorce. As far as I know, we had no involvement in the appeal, however. I have not spoken with my partner directly on this as she is presently out of the state. I came across the opinion when reviewing this Benson's file on an unrelated matter

and this letter was written strictly from my point of view as a legislator, not in any matter as Ms. Benson's counsel. It is not intended to be utilized in any matter in the underlying litigation between the parties nor is my request intended to have any effect on the actual case of Suiter v. Benson.

Cordially,

  
Max F. Gruenberg, Jr.

cc: The Honorable Mike M. Miller, Chairman  
House Judiciary Committee

The Honorable Victor Carlson  
Superior Court Justice

Mary Ann Foley  
Carla Huntington

E. HEAD  
BOX 603  
ER, AK 99577

File

FEBRUARY 11, 1986

The Honorable Pat Rodey  
Chairman  
Senate Judiciary Committee  
POUCH V  
JUNEAU, ALASKA 99811

SUBJECT: H.B. 104

Dear Senator Rodey:

This is the third letter that we, The Concerned Inmates of the Department of Corrections, have sent encouraging you and your committee to act affirmatively on the passage of H.B. 104. We feel it is important that such frequent letters be sent impressing on you and your colleagues the need for legislation to curb prison over crowding. This problem is acute, for within the last two weeks the Governor has again begun the process of exercising his emergency release power due to over crowding. This over crowding is evidenced by the Department of Corrections having to place misdemeanor criminals with felons, which is not good. We, the inmates, feel these condition and seek to bring it to your attention, as Commissioner Endell has been doing.

We again state that we do not want to be soft on crime. But with the continued decline in the State's oil revenues, which Governor Sheffield has indicated could total close to a one billion dollar short fall for fiscal 1987, we would urge you to consider closely the implication this loss of revenue will have on funding the ballooning correctional system. Since we, the inmates, are wards of the state, we must make you aware of this over crowding and ask you to help us correct it. The time to act is now in legislating relief for the penal system.

If there is anything we, the inmates, can do to help you solve this problem Senator Rodey, it will be done. Again we, "would sincerely appreciate your affirmative assistance in working toward the passage of this bill this session".

Sincerely,

The Concerned Inmates of the Department of Corrections  
(Greg Head Spokesman)

GREG HEAD

cc: Senate Judiciary Members; Commissioner Roger Endell

GAH

JANUARY 28, 1986

The Honorable Pat Rodey  
Chairman  
Senate Judiciary Committee  
POUCH V  
JUNEAU, ALASKA 99811

SUBJECT: H.B. 104

Dear Senator Rodey:

We, The Concerned Inmates of the Department of Corrections, are writing to again encourage you and your committee to pass H.B. 104 which is still awaiting action in the Senate Judiciary Committee. As our previous letter of January 6, 1986 to you indicated, this bill has the Sheffield administration's support in addressing the growing problem of over crowding in the Alaska penal system.

With a continued decrease of state oil revenues due to the falling world oil prices, it is imperative that the Legislature take the necessary action to insure that Alaska doesn't have the same problems associated with over crowding in their penal system as the rest of the United States is experiencing. A recent study conducted by the University of Alaska at Anchorage has indicated that, at the present rate of growth, the rise in prison population in Alaska will quadruple by the year 2000. This is a situation that we must address now to avoid problems in the future.

The Sheffield administration, through Commissioner Endell, has continued to wave the "RED FLAG" by encouraging the Senate to pass H.B. 104 in its retroactive form. The Concerned Inmates again, "would sincerely appreciate your affirmative assistance in working toward the passage of this bill this session".

Sincerely,

The Concerned Inmates of the Department of Corrections  
(Greg Head Spokesman)

cc: Senate Judiciary Members; Commissioner Roger Endell

GAH

# State of Alaska

## COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
(Co-Chairman)  
HOUSE JUDICIARY  
HOUSE COMMUNITY AND  
REGIONAL AFFAIRS



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4968

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

30 July 1985

David Lampen  
Clerk of the Appellate Courts  
303 K Street  
Anchorage, Alaska 99501

Re: Suiter v. Benson, MO&J #734 (Alaska, App. 1984)  
(Unpublished opinion)

Dear Mr. Lampen,

I would like to request that the above opinion be published. The portion at pages 3 and 4 stating that the trial court has no authority to restrict the prisoner's ability to receive credit for good time because the awarding of good time is automatic under AS 33.20.010 is of considerable importance statewide. This portion of the opinion appears to be a decision on an issue of first impression in this state as no previous opinion is cited and my brief research through the Michie statutes annotation reveals none.

HB 104, revising the good time statutes, has passed the state House and now reposes in the state Senate.

I am presently considering whether to amend HB 104 to include a provision allowing trial courts the discretion to reduce or eliminate a prisoner's eligibility for good time. It will thus be important to the legislature to have a published opinion on the issue definitively setting forth that under present law the trial courts possess no such authority.

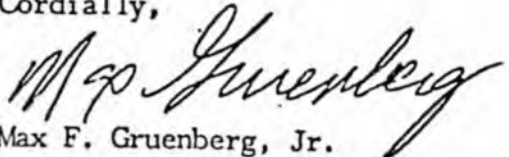
I would be most grateful if you would transmit this communication to the judges of the Court of Appeals as an official request to publish the opinion.

If you have any additional questions or if you or the judges have any comments on this or any other aspect of HB 104, please let me know.

For the record, this law office, through my partner, Joan Clover, represented appellee Cynthia Benson in the underlying divorce. As far as I know, we had no involvement in the appeal, however. I have not spoken with my partner directly on this as she is presently out of the state. I came across the opinion when reviewing this Benson's file on an unrelated matter

and this letter was written strictly from my point of view as a legislator, not in any matter as Ms. Benson's counsel. It is not intended to be utilized in any matter in the underlying litigation between the parties nor is my request intended to have any effect on the actual case of Suiter v. Benson.

Cordially,

  
Max F. Gruenberg, Jr.

cc: The Honorable Mike M. Miller, Chairman  
House Judiciary Committee

The Honorable Victor Carlson  
Superior Court Justice

Mary Ann Foley  
Carla Huntington

\* \* \* \* \*  
\* DELIVER TO: [illegible]  
\* ORIGINAL  
\* SENT: 08/04/84 TIME: 12:22  
\* FROM: BARBARA JRRELL  
\* SUBJECT: [illegible]  
\* PRINT DATE: 08/04/84 TIME: 12:23  
\* \* \* \* \*

6

TO: SENATE JUDICIARY COMMITTEE

SENS. ~~RODEY~~, KELLY, FATKS, HALFORD, ZIEGLER

FROM: LORRYNE TOLMAN, 2940 O'HALLY ROAD, ANCHORAGE, AK  
99516, 344-1674

SUBJECT: HR 104, COMPUTING "GOOD TIME" FOR PRISONERS

PLEASE PASS THIS BILL AND MAKE IT RETROACTIVE TO 1980. PLEASE  
PASS.

# Alaska State Legislature

CO-CHAIRMAN  
FINANCE COMMITTEE

907-465-3740

JAN FAIKS  
POUCH V  
CAPITOL BUILDING  
JUNEAU, ALASKA 99811

Senate

March 6, 1986

Commissioner Roger Endell  
Department of Corrections  
Pouch Y  
Juneau, Alaska 99811

Dear Commissioner Endell:

Thank you so much for the letter clarifying your statements as reported in the March 2nd news article. My apologies to both you and Attorney General Brown for my reaction at the Senate Judiciary meeting.

After further reflection and based on our years of working together, I should have realized your quote did not sound right and I regret I didn't take the time to clarify it with you prior to the Judiciary Committee meeting. As a result, I am especially pleased you took the time to set the record straight.

I really do appreciate the tough job you have dealing with the not very popular, but extremely critical, issue of meeting the state's correctional needs. I do, however, look forward to our working together to cooperatively address your department's needs.

Sincerely,



Jan Faiks  
Senator

JF:cf

cc: Attorney General Brown  
Senate Finance Members  
Senate Judiciary Members

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

FEBRUARY 25, 1986

The Honorable Pat Rodey  
Chairman  
Senate Judiciary Committee  
POUCH V  
JUNEAU, ALASKA 99811

Box 600  
EADIP WJRL

SUBJECT: H.B. 104

Senator Rodey:

The Concerned Inmates of The Department of Corrections implore you and your committee to consider the problems which are developing in the Alaska penal system. Because of over crowding, Governor Sheffield has again used his emergency power to commute the sentences of fifty-seven inmates to bring the prison population back within the court ordered ceiling. But no sooner after he had taken this action was the emergency count-down begun again. This is a real problem that must be addressed by the Legislature.

H.B. 104, with a retroactive date of 1980, was introduced to help ease the over crowding which we are now facing. The House addressed this matter by passing H.B. 104 and it is now up to the Senate to complete this legislation. Commissioner Endell, in his statement to the Finance committee last week, made it clear that the Legislature must either appropriate over \$140 million dollars to construct the necessary facilities to accommodate the increasing inmate population or else they must enact legislation to correct it. With the dramatic decline in the State's oil revenues due to the continued fall of world oil prices, which this week dipped below \$14 a barrel, it is becoming obvious that the Senate must act on this and other reform measures. The red flag Commissioner Endell has waved is real!

We, the inmates, are dependent upon the Legislature to correct this problem and offer our complete assistance in the passage of this bill.

Sincerely,

GREG HEAD

The Concerned Inmates of the Department of Corrections  
(Greg Head Spokesman)

cc: Senate Judiciary Members; Commissioner Roger Endell

GAH

JANUARY 06, 1986

The Honorable Pat Rodey  
Chairman  
Senate Judiciary Committee  
POUCH V  
JUNEAU, ALASKA 99811

SUBJECT: H.B. 104

Dear Senator Rodey:

We, the Concerned Inmates of the Department of Corrections, add our support to the passage of H.B. 104 which is currently in your committee awaiting action. Due to the rising number of inmates presently incarcerated there is a need to legislate relief for this over crowding before it becomes critical. The Commissioner of Corrections, Roger Endell, in the administration's attempt to address this problem has waved the "red flag" by stating that there needs to be an adjustment to statutory good time, and has continued to support H.B. 104 as it was originally written and passed by the House. (See enclosure)

We are not advocating a soft policy on crime, as those in opposition to this bill have suggested. But we do feel that an inmate who abides by the correctional rules and policies should be rewarded for his meritorious conduct.

We also urge you and your committee to retain this bill in its retroactive form in the accruing of all statutory good time, back to 1980 when the good time law was changed. This would put all inmates on a more equal basis and would simplify the confusing and difficult process of calculating good time.

As Roger Endell stated, "This bill has come a long way". We, a long with our families and friends, "would sincerely appreciate your affirmative assistance in working toward the passage of this bill this session".

Sincerely,

The Concerned Inmates of the Department of Corrections

enclosures

cc: Senate Judiciary Members; Commissioner Roger Endell

GAH

- 1) Ming Head
- 2) Paul Fink
- 3) Ewan Sabon
- 4) John Sabon
- 5) Dennis Murphy
- 6) William T. Jackson
- 7) Arnold Gene Eps
- 8) Dennis A. Shamayri
- 9) Waldo E. Cook
- 10) Russell D. Cook
- 11) Larry Hedrick
- 12) Jimmy A. Kirschner
- 13) David E. Jacobs
- 14) William Ortega
- 15) Paul Katongun
- 16) James Merritt
- 17) Eric O. Encelowski
- 18) Howard Gabriel
- 19) Francis Douglas
- 20) Vernon Childers
- 21) Kurt C. Corda

- 22) David Fletcher
- 23) Frank B. Stokes
- 24) Charlie Wingfield
- 25) Greg W. Blake Jr.
- 26) Charlie Constock
- 27) Calvin Scola
- 28) John B. Cramer
- 29) Gregory J. Zeller
- 30) Father Ed Hall
- 31) Paul
- 32) Joe Kauer
- 33) J. Chuck Shewey
- 34) Norbert K. Marshall
- 35) Diane Butz
- 36) James Rector
- 37) Patricia D. Drenth
- 38) Charles H. Stokes
- 39) Kalvin Boyd
- 40) Manuel Kuyal
- 41) Michael R. Dodge
- 42) Tony L. Ford

- |                                 |                          |
|---------------------------------|--------------------------|
| 1) Brett E. Thurman             | 22) Mark Zaska           |
| 2) Ross H. Shorey               | 23) Wayne Smalley        |
| 3) Ed. [unclear]                | 24) David Amore          |
| 4) J. [unclear] "Big" [unclear] | 25) Johnny Karpoff       |
| 5) Clifford M. [unclear]        | 26) Vernon J. [unclear]  |
| 6) Inez A. [unclear]            | 27) Otis [unclear]       |
| 7) Solomon Walker               | 28) W. [unclear] Phillip |
| 8) Loretta M. Williams          | 29) Warren [unclear]     |
| 9) Carl [unclear]               | 30) Agnes M. [unclear]   |
| 10) Michael K. [unclear]        | 31) [unclear]            |
| 11) Jimmy J. Sweet              | 32) Peter Andrews Jr.    |
| 12) Dana R. Sweet               | 33) Lloyd Kettick        |
| 13) [unclear] Stewart           | 34) Phil [unclear]       |
| 14) Bill Wilson                 | 35) Albert [unclear]     |
| 15) Thomas Alexie               | 36) [unclear]            |
| 16) Alexie Alexie               | 37) Joe Johnston         |
| 17) Gordon Heinrich             | 38) Robert Hernandez     |
| 18) Buddy [unclear]             | 39) Wayne C. [unclear]   |
| 19) Russell J. [unclear]        | 40) L. [unclear]         |
| 20) [unclear]                   | 41) [unclear]            |
| 21) [unclear]                   | 42) Gary [unclear]       |

- 1) Daniel T. McElhara
- 2) Ross Anderson
- 3) Jim Cannon
- 4) Robert Smith
- 5) Keith Brown
- 6) Robert Brown
- 7) Joe Smith
- 8) Robert Brown
- 9) Robert Brown
- 10) Leo Collins
- 11) Robert Brown
- 12) Joe Smith
- 13) Bill Smith
- 14) Joe Smith
- 15) Steve Christ
- 16) Maurice W. Slack Sr.
- 17) Harry Smith
- 18) RON K. Sexton
- 19) Robert Smith
- 20) Robert Smith
- 21) Eric J. Cranston

- 22) Dave & Lu Brown
- 23) Robert Smith
- 24) Robert Smith
- 25) Robert Smith
- 26) Thomas
- 27) Harold S. Smith
- 28) John A. Hawkins
- 29) Steve Tom
- 30) Harold W. Ashenfelter
- 31) Vernon Brown
- 32) Zachary W. Smith
- 33) Robert Smith
- 34) Guy Carother
- 35) Timothy P. Wahunga
- 36) Rich Mendel
- 37) Tom Egan
- 38) Jim Bridges
- 39) Fred Egan
- 40) David W. Smith
- 41) Bobbie Robinson
- 42) Peter M. Mignone

- 1) Donald L. Criner 22)
- 2) Paul W. [unclear] 23)
- 3) Richard H. [unclear] 24)
- 4) David [unclear] 25)
- 5) J. S. Burt 26)
- 6) [unclear] Davies 27)
- 7) Andrew C. Thayer 28)
- 8) [unclear] 29)
- 9) James R. [unclear] 30)
- 10) [unclear] 31)
- 11) Greg Blacklock 32)
- 12) Robert H. Hayes 33)
- 13) Kenneth L. Sellers 34)
- 14) Marvin S. Ball 35)
- 15) Sid Miller 36)
- 16) [unclear] 37)
- 17) [unclear] 38)
- 18) [unclear] 39)
- 19) John [unclear] 40)
- 20) [unclear] 41)
- 21) David [unclear] 42)

- |                         |                                    |
|-------------------------|------------------------------------|
| 1) Crystal Campbell     | 22) Anita D. Soltau                |
| 2) Robin Block          | 23) Candy L Cross                  |
| 3) Pamela Grantham      | 24) Peggy S. Ewell                 |
| 4) Shirley Clarkson     | 25) Cheryl Simpson                 |
| 5) Cheryl S. Brown      | 26) Kenneth Pruitt                 |
| 6) Lisa Ludwig          | 27) L. Alvin                       |
| 7) Mary Penone          | 28) Paula K. Gunders               |
| 8) Linda Smith          | 29) K. H. Fickel                   |
| 9) Susan K. Pearson     | 30) <del>William D. Stephens</del> |
| 10) Billy Anderson      | 31) Betty Rasmussen                |
| 11) Betty Bratts        | 32) Edith J. Noling                |
| 12) Marian D. Wukudu    | 33) Blanche Johnson                |
| 13) Jack H. Dancy       | 34) Gene J. Newat                  |
| 14) Margaret H. Johnson | 35) Martha K. Lipe                 |
| 15) Eileen P. Dowolik   | 36) Dana Sosa                      |
| 16) Judy R. Alexander   | 37) Yvette Richards                |
| 17) Sharon Rose         | 38) Sarah Vincent                  |
| 18) Muriel M. Hest      | 39) Adele Martin                   |
| 19) Len L. Moss         | 40) Richard Wheeler                |
| 20) Alena H. Phang      | 41) Gerry Paak                     |
| 21) Ernestine Walker    | 42) Leo Pruitt                     |

- 1) Kim Patterson
- 2) ~~Steve~~ Protopogolnik
- 3) Jan Zimmer
- 4) Dana D Sweet
- 5) Tommy Teayoumech
- 6) David R. Wastito
- 7) C. H. Best
- 8) Roddy Hart
- 9) Greg B. Pijer, Sr
- 10) ~~Rich~~ East
- 11) William Fikes
- 12) Calvin Howard
- 13) William Stamoscius
- 14) Kim C. Hanson
- 15) ~~David~~ ~~James~~ ~~Doyle~~
- 16) ~~Richard A~~ ~~Richard A~~
- 17) Michael H. Bateman
- 18) Larry Anderson
- 19) Zedek Dony
- 20) John Crawford
- 21) Leroy Coates

- 22) Jim Bly
- 23) Mulla H. Decker
- 24) Willie Geels
- 25) Terry R. East
- 26) Philip J. Van Hout
- 27) John Ecker
- 28) Wm C Bynum
- 29) Robert E. Muller
- 30) Wayne Leeper
- 31) Gareth Allen
- 32) Don B. Stickman
- 33) James B. Fleming
- 34) DAVID B. WATSON
- 35) Martin Stone Sr
- 36) Robert L. Glickler
- 37) Randall G. Hurn
- 38) Leonard Lavendure
- 39) Rene - J. L.
- 40) Wesley Decker
- 41) O E Holt
- 42) Dorothy Lee Hewitt

- 1) Kenneth Carlson 22)
- 2) Dan Bolhouse 23)
- 3) Joseph Morris 24)
- 4) Walfred H. Bereskin 25)
- 5) 26)
- 6) 27)
- 7) 28)
- 8) 29)
- 9) 30)
- 10) 31)
- 11) 32)
- 12) 33)
- 13) 34)
- 14) 35)
- 15) 36)
- 16) 37)
- 17) 38)
- 18) 39)
- 19) 40)
- 20) 41)
- 21) 42)

3691), 578 P.2d 971 (1978); Putnam v. State, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980); State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984); Cleary v. State, Sup. Ct. Op. No. 1257 (File No. 2623), 548 P.2d 952 (1976); Salazar v. State, Sup. Ct. Op. No. 1404 (File No. 2567), 562 P.2d 694 (1977); Cleary v. State, Sup. Ct. Op. No. 1431 (File No. 3059), 564 P.2d 374 (1977); Amidon v. State, Sup. Ct. Op. No. 1434 (File Nos. 2511, 2512), 565 P.2d 1248 (1977); Black v. State, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977); Sumabat v. State, Sup. Ct. Op. No. 1648 (File No. 3739), 580 P.2d 323 (1978); Hansen v. State, Sup. Ct. Op. No. 1689 (File No. 3412), 582 P.2d 1041 (1978); Kanipe v. State, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981).

Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge. — See Parks v. State, Sup. Ct. Op. No. 1529 (File No. 3209), 571 P.2d 100 (1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record

indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. Pascoe v. State, Sup. Ct. Op. No. 2249 (File No. 4290), 628 P.2d 547 (1980).

Case remanded for resentencing. — See Neal v. State, Sup. Ct. Op. No. 2341 (File No. 4787), 628 P.2d 19 (1981).

Case remanded for sentence review. — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence it imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

**Sec. 12.55.125. Sentences of imprisonment for felonies.** (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years.

(b) A defendant convicted of murder in the second degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years.

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

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction, other than for manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven

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

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

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, two years.

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

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum term may not be otherwise reduced.

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

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

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

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided.

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

- (1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;
- (2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;
- (3) if the offense is a second felony conviction, 15 years;
- (4) if the offense is a third felony conviction, 25 years. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28-30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1-3 ch 92 SLA 1983)

**Cross references.** — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010.

**Effect of amendments.** — The first 1982 amendment in subsection (b), deleted "or" preceding "kidnapping" and inserted "or misconduct involving a controlled substance in the first degree."

The second 1982 amendment in subsection (c), redesignated former paragraphs (1)-(3) as present paragraphs (2)-(4), added present paragraph (1), and substituted "possessed a firearm, used a dangerous instrument" for "possessed or used a firearm" and "seven years" for "six years" in present paragraph (2). The amendment also substituted "under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section" for

"under (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) of this section" in the introductory language of subsection (g), corrected the section number set out in paragraphs (1) and (2) of subsection (g), and added subsection (i).

The first 1983 amendment inserted "or sexual abuse of a minor in the first degree" in the introductory language of subsection (i).

The second 1983 amendment in (c)(2) added "or knowingly directed . . . at the time of the offense," added paragraph (3) of subsection (d), added paragraph (3) of subsection (e), and made other minor punctuation changes.

**Editor's notes.** — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

## NOTES TO DECISIONS

- I. General Consideration.  
II. Presumptive Sentencing.

### I. GENERAL CONSIDERATION.

**Limited use of both suspended jail time and probation is permitted under AS 12.55.155.** *Lacquement v. State*, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982). See also *Friedberg v. State*, Ct. App. Op. No. 258 (File No. 7015), 663 P.2d 558 (1983).

**Probationary sentences.** — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for rehabilitation through probationary supervision. *State v. Coats*, Ct. App. Op. No. 291 (File No. 7102), 669 P.2d 1329 (1983).

Under former law where statutory

mitigating factors warrant a sentence of 90 days to three years, extraordinary circumstances might justify a sentence of straight probation. *State v. Brinkley*, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

**Placement of offenders.** — It is within the sentencing judge's authority to make a recommendation to the commissioner regarding the appropriate placement of the offender. Under AS 33.30.100, the commissioner has the power to effectuate such a recommendation by placing the offender in the appropriate facility, and although the commissioner is not bound by the sentencing court's recommendation, a demonstrated failure to provide an appropriate rehabilitation program or to further the purposes of the sentence may justify judicial intervention. *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

HB/29

```

*****
*
* DELIVER TO: JPOH
*
* ORIGINAL
* SENT: 02/07/85 TIME: 10:43
* FROM: LANA TRUJILLO
* SUBJECT: POM
* PRINT DATE: 02/07/85 TIME: 10:43
*
*****

```

18

TO: REP. CLOCKSIN, DAVIS, FULLER, GRUENBERG, GRUSSENDORF, HURLEY, KOPONEN, MARTIN, MILLER (NP), MILLER (JNU), PETTYJOHN, PHILLIPS, PIGNALBERI, SUND, TAYLOR, THOMPSON AND WALLIS

FROM: FRANCES PURDY, 1101 CORDOVA, #426, ANCHORAGE, 99501, 274-3896(HM), 264-4876(WK)

RE: HB 104

THERE IS NO RESEARCH TO SHOW THAT PERSONS WHO ADHERE TO RULES IN PRISON ARE MORE LIKELY TO ADHERE TO RULES ONCE OUT OF PRISON. SPECIFICALLY, VIOLENT VIOLATIONS TOWARD FAMILY MEMBERS, SUCH AS INCEST, DOMESTIC VIOLENCE, ELDER ABUSE, AND CHILD ABUSE AND NEGLECT.

\*\*\*\*\*  
\*  
\* DELIVER TO: JPOM \*  
\* \*  
\* ORIGINAL \*  
\* SENT: 01/13/86 TIME: 11:54 \*  
\* FROM: MICKI HENSON \*  
\* SUBJECT: POM \*  
\* PRINT DATE: 01/13/86 TIME: 17:34 \*  
\* \*  
\*\*\*\*\*

61

TO: ALL LEGISLATORS

FROM: LANA DAILEY, 705 MULDOON SP. 216, ANCHORAGE, 99504 PHONE  
337-7760

HB 104 GOOD TIME  
I WANT THE PRESUMPTIVE SENTENCING CHANGED AND THE GOOD TIME BILL  
PASSED.

MBP v. MBP v. Patents J 016 Jun 3 478 877

```

*****
*
* DELIVER TO: JPOM
*
* ORIGINAL
* SENT: 02/14/85 TIME: 15:04
* FROM: LANA TRUJILLO
* SUBJECT: PDM
* PRINT DATE: 02/14/85 TIME: 15:04
*
*****

```

TO: ALL LEGISLATORS

GILBERT DELKITTIE, EAGLE RIVER CORRECTIONAL CENTER, P.O. BOX 600, EAGLE RIVER, 99577, 694-9852

I WANT TO SUPPORT HB 104 BECAUSE I THINK IT WOULD BE BETTER FOR US INMATES SO THAT WE COULD GET BACK INTO SOCIETY AND BE ACTIVE.

from bill  
file  
HB 104

Kathy -  
do my previous  
letter on this bill



## Senator Vic Fischer

---

Alaska State Legislature  
1024 W. 6th Avenue, Suite 204C  
Anchorage, Alaska 99501 (907) 278-3654  
During Session • Pouch V • Juneau, Alaska 99811 (907) 465-4954

February 25, 1986

### M E M O R A N D U M

To: Senator Pat Rodey, Chair  
Senate Judiciary Committee

From: Senator Vic Fischer *Vic*

Re: HB 140 - relating to good time

In the last few months, I've received several letters from constituents urging my support for HB 140. As you know, HB 140 has been endorsed by hundreds of Alaskans as a fair and equitable way to address our current crisis of overcrowded prisons.

I would appreciate it greatly if you would let me know when HB 140 will be scheduled for a hearing before the Judiciary Committee.

*I called  
& told  
him 3/4*

**DEPARTMENT OF CORRECTIONS**

REPLY TO

POUCH T  
JUNEAU, ALASKA 99811  
PHONE (907) 465-3376

March 5, 1986

The Honorable Jan Faiks  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Faiks:

I have finally realized what you must have been referring to in your criticism of the March 2nd Anchorage Times article (copy enclosed), "Crisis Behind Bars." You stated during the Senate Judiciary Committee meeting that I have been quoted as saying that, "the Senate wasn't listening to me." I knew that didn't make sense, because I do not criticize individual legislators, the legislature as a body, or any of its committees so I checked and rechecked the article.

The only portion of the story which might conceivably be related to your concern is contained at page A-8, first column, the second full paragraph. I assume that you referred to the last sentence in that paragraph which reads: "We don't disagree, but when we go to the Senate Finance Committee, they're not behind us."

Please understand that taken out of context, the word "they're" might be understood to mean the Senate Finance Committee. That would be a serious error. In context the word "they're" refers to "...police, prosecutors and victims' groups..." in the previous sentence of the same paragraph.

The full paragraph reads:

"What happens is we find it cheaper for people to doubt the nature or severity of the problem. It costs a lot less if you don't believe us," he said. "The police, prosecutors and victims' groups, which we generally work closely with, believe it's nice to lock up these bad guys. We don't disagree, but when we go to the Senate Finance Committee, they're not behind us."

My meaning was clearly that the police, prosecutors and victims' groups do not normally assist the Department of Corrections when it comes time to present our case for necessary capital or operating funds to the Finance Committee. They, the police, prosecutors and victims' groups, are not behind us in helping to explain our dilemma to the Committee.

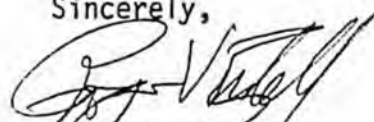
March 5, 1986

I hope you understand my surprise at being accused of attacking the Legislature or any of its Committees. I would consider that kind of behavior to be unproductive as well as unprofessional. I continue to have the highest regard for you and the other members of the Legislature as well as legislative staff. We all have a difficult and often thankless job to do and misunderstandings clearly interfere with the tasks before us.

It is difficult for me to apologize for an article in the newspaper which I did not write. I am sorry, however, that my remarks were so seriously misunderstood. Because this issue may have also been misinterpreted by other members of the Senate Finance or Judiciary Committees, I have taken the liberty of copying those members with this letter.

Thank you for giving me the opportunity to respond.

Sincerely,



Roger V. Endell  
Commissioner

RVE:cc

Enclosure

cc: Senate Finance Committee  
Senate Judiciary Committee