PRESUMPTIVE SENTENCING

"presumptive file"

Rec ID name
title
agency
address
city state zip
salutation
phone

1 Daniel W. Hickey
Chief Prosecutor
Department of Law
Pouch KC
Juneau, AK 99811
Mr. Hickey
465-3428

2 Roger Endell
Commissioner
Department of Corrections
Pouch T
Juneau, Alaska 99811
Mr. Endell
465-3376

3 Robert Sundberg
Commissioner
Department of Public Safety
Pouch N
Juneau, Alaska 99811
Mr. Sundberg
465-4322

4 Francis L. Bremson
Executive Director
Alaska Judicial Council
1031 W. 4th Ave., Suite 301
Anchorage, Alaska 99501
Mr. Bremson
279-2526

5 The Honorable Rodger W. Pegues

Pouch U
Juneau, AK 99811
Judge Pegues
465-3422

Rec ID name
title
agency
address
city state zip
salutation
phone

6 Ms. Sandra Borbridge
Special Assistant
Office of the Governor
Pouch A
Juneau, AK 99811
Ms. Borbridge
465-3500

7 Brant McGee
Director
Office of Public Advocacy
900 W. 5th Ave., Suite 525
Anchorage, AK 99501
Mr. McGee
274-1684

8 Dana Fabe
Public Defender
Department of Administration
900 W. 5th Ave., Suite 200
Anchorage, AK 99501
Ms. Fabe
279-7541

9 The Honorable Alex Bryner
Chief Judge
Court of Appeals
303 "K" Street
Anchorage, Alaska 99501
Judge Bryner
264-0751

Presumptive Sentencing
Worksession
2/13/85
1:30 Botrouch BILL FILE LOG

BILL #_____

1/30 Telephone calls to "presumptive file."
1/30 Approval from (H) Judiciary on "presumptive file" list.
1/30 Discussion w/ Janie Fisher re: worksession
1/30 Roger conversation w/ John Havelock for possible questions
2/1 Letter mailed to "presumptive file"
2/1 Pat requests prison release.
2/1 Request addition of Alex Bryner at hearing received. Dept of Law Briefing Paper on Presumptive Sentencing

John Havelock (H) 337-8301
276-1116 mornings

Alaska Institute for Research and Public Service

A not for profit corporation organized under Alaska law

3210 Baxter Rd.
Anchorage, Alaska 99504
Telephone (907) 337-8305

February 7, 1985

Roger Lewis, Staff Counsel
Senate Judiciary Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

RE: Outline of Presumptive Sentencing Issues

Dear Roger:

I hope the enclosed outline will be of some use to you.

Sincerely,

John E. Havelock

JH/lh

Rlewis7

PRESUMPTIVE SENTENCING

ISSUES

The state is facing a growing prison population but has limited prison space. New space is very expensive. The operating costs of prisons are very high. High levels of physical security, 24 hour institutional surveillance and care come at a high price. The state's oil revenue base is shrinking. These factors call for a close scrutiny of the question: "Are we putting the right people into the right kind of facility for the right period of time?"

HOW THE PRISON POPULATION IS CREATED

Out of the great mass of anti-social actors, those selected for imprisonment and their length of residence in the facility are a product of the exercise of legislatively guided discretion. This discretion is exercised separately, but with substantial coordination, by police, prosecutors, public defense, pretrial services, courts and corrections.

DISCRETIONARY FUNCTIONS: GENERALLY

Each component of the justice system exercises Its own influence on the size and composition of the jail population. For example, police influence jail population by variations in charging and arresting policies, or by using citations in lieu of arrests and by the influence they bring to bear in informal communications with prosecutors, jail personnel, (who may be influential at bail hearings) and others. Police efficiency, including pro-active policies (sting operations, undercover work,

etc.) and variations in informal policies such as "crackdowns" will influence prison population also.

Prosecutor's policies with respect to bail and O/R recommendations, charging and intake, prosecutorial diversion, charge bargaining and sentence bargaining and trial practices influence the population size in a major way.

The public defender case load, skill levels, and perceptions of fairness and (like other components) allocation of resources among classes of offender influence the outcome.

Corrections policy choice of institutional styles (usually indicated as security level institutions), halfway houses, work release programs, the use of probation and parole, probation and parole revocation policies, good time policies and (with the governor) executive commutation influence the population.

RESOURCES AND CONSTITUTIONAL LIMITS

At any particular time, changes in policies in one component may have an alternative impact on the tendency of another and, absent policy adjustment, an increase in the resources given a component will increase the prison population, except of course rsources given to the public defender, where presumably the the opposite effect would occur.

Apart from the varying legislative guidelines given to each agency, there are constitutional controls applicable to each which is one reason why the public defender's office must be funded at some minimum level and why prison crowding has its limits. These constitutional controls are administered primarily by the courts, as a part of the exercise of appelate and rule making authority of the appeals courts, wnich also impact the

size and characteristics of prison populations.

POINTS OF VIEW

The personnel in each component typically have a particular point of view which arises form the function and emphasis given to the component and agency. Personnel in each component look at the function and performance of other components with varying degrees of criticism or skepticism. Ironically, it is said that the accused offender has the only whole perspective on the system.

JUDICIAL DISCRETION

In part because of its high visibility, judicial discretion has received the highest degree of legislatively oversight. There are swings over the years in legislative control over judicial discretion which relate to the political tension among the ways people look at various types of crime, its consequences the accused and offenders.

Presumptive sentencing is out one aspect of post- conviction practices and policies which determines how long each person stays in jail at what cost. Keep in mind how presumptive sentencing fits in with other judicial powers to suspend sentences, suspend imposition of sentences, apply concurrent or consecutive sentences, impose probation, treatment and service alternatives, and the good time, work release, and parole policies of corrections and the styles of detention which are available.

PRESUMPTIVE SENTENCING

Presumptive sentencing is a statutory scheme which establishes a fixed term of imprisonment as a sentence for a particular category of offenses, subject to a limited judicial power to limit that term depending upon finding after conviction of either "aggravating" or "mitigating" circumstances as established by the legislature. The presumptive sentence is determined by the class or category of the offense ("unclassified", A, B, or C felony, A or B misdemeanor) and whether the offense is a first, second or third conviction (what constitutes a "prior conviction"is a variable which will produce differing sentence consequences also).

Notice that the presumptive sentence scheme tracks the process by which a judge would pick a sentence were it within the Judges discretion but takes no account of unique factors which might influence the judge.

HISTORY AND PHILOSOPHICAL ORIGINS OF PRESUMPTIVE SENTENCING IN ALASKA

No doubt the push for presumptive sentencing arose in part from the public demand for longer sentences and the perception that the Judges were not giving tough enough sentences. Demands for tougher sentencing are as old as sentencing itself and do not seem to depend upon any particular level of sentence. There are wide differences among the States in the sentences imposed for various crimes but the call for tougher sentencing is about as vociferous in "tough" jurisdiction as it is "lenient" ones, measured by the percentage of population in jail or typical sentence patterns. There is no objective way of determining

what a "just" sentence is, measured only by the offense.

Ironically, There is informal evidence that the Alaska Judges response to this outcry was quicker than the legislature's so that the prison population may contain a "bubble" of persons sentenced just before presumptive sentencing came in, created by an aroused judicial exercise of discretion to increase sentences. Presumptive sentencing may have reduced the typical sentence particularly for some offenses, during this time period.

Beyond this outcry, Alaskan opinion reflected a rising national perception that sentences were imposed unequally according to the outlook of individual Judges, a perception supported by the rise of statistical science and its application to the criminal justice system, including applications in Alaska.

The call for "equality" in sentencing was tied also to the idea of "just deserts": that the sentence be imposed considering only the behavior of the offender, looking less at the offender herself, as sentencing had previously done, less at prospects for rehabilitation, etc., since the past practice tended favor the socially and economically better off offender.

CRITIQUE OF PRESUMPTIVE SENTENCING

The primary challenge to presumptive sentencing is the accusation that is a mechanistic model that does not fit the complexity of the underlying behavior. Although we categorized offenses according to specific elements of offense, the elements are not all that exact from a common sense point of view. For example, the average person is likely to look quite differently at a homicide committed by a persin who has been victimized by the deceased (as in the quote the "Burning Bed" T.V. dramitization) yet the law treats it as a "all or nothing"

proposition, in which the "all" is made the equivalent of homicides arising in radically different social contexts. What is true for homicide is also true for most other offenses. Life is far more complex than the pigeon holes of the law.

ARGUMENT FOR INCREASED JUDICIAL DISCRETION

The argument for judicial discretion is that the categories of offense and fixed sentences are necessarily too grossly generalized. It takes an experienced human being to weigh in the variations of the style of the crime, the human dynamics of the situation, the consequences for the several parties of different outcomes, and the interests of society, to produce a just result.

The recent changes in Alaskan law were not based on a direct disagreement with this line of argument. By providing a greater degree of detail in the sentence measurement, "to make the punishment fit the crime" with mitigating and aggravating factors, Alaska's "presumptive sentencing" attempts to establish a more detail framework for the exercise of judicial discretion.

The focus of this frame work is still strongly influenced by the mood of the country favoring the "just deserts" model, giving relatively little weight to the diagnosis of the offender and the offenders social setting.

In practice, the court's mitigate or aggravate a sentence less frequently than the observer might suppose from reading the long lists of factors which may be taken into consideration for those purposes.

POINTS OF POSSIBLE CHANGE IN THE SENTENCING SYSTEM

Giving more rein to judicial discretion does not have an

immediately predictable impact on prison population unless the grant of increased discretion is all in one direction - to lower but not raise the range of sentences from the standard set in the existing system. If discretion is increased, the Judges may continue according to the pattern set now or give longer sentences on the average, or shorter, or some longer and shorter so that the net effect balances out. The effects of expanding discretion alone or prison population are not predictable.

Areas where the legislature could produce change in include:

1. Widening the range of presumptive sentence for a class of offenses.
2. Increase the percentage change which the Judge may use in varying from the presumptive sentence;
3. Introduce new mitigating or aggravating factors either generally or for particular offenses.

   It has been suggested that in establishing such factors originally, the draftsman did not anticipate the boom in family crime and sex offenses of the 1980's which may suggest a closer examination of the values served in recognizing particular factors in mitigation and aggravation.

4. Change the scope of presumptive sentences to include fewer or more crimes in the "first offense" category as being subject to presumptive sentencing;
5. Change the presumptive sentence up or down in any category or in any category for second or subsequent offense;
6. Reclassify an offense;

7. Further subdivide defined crimes and give lower classifications to the lesser of the newly created crimes;
8. Make Parole eligibility, earlier or later for any class of crime
9. Raise or lower the good time allowance (now 25%)
10. Give greater or lesser discretion with respect to consecutive or concurrent sentences (a particular point of complaint with some judges)
11. Increase power to suspend sentence or its imposition or to use probation or treatment alternative or house arrest or similar conditional releases in the presumptive setting;
12. Abandon presumptive sentencing by going back to sentences like, "a term of year determined by the court not less than one or more than twenty."

WHERE ARE WE GOING

The current pattern of increases in prison population is a results of the joint impact of many legislative judicial and executive policies that themselves are inevitably likely to change in the future as they have in the past. Several of these policies - which may include the adoption of presumptive sentencing or some specific element in it, have brought about a rapidly rising prison population. If the policies stabilize, at some level, the population of the prisons will also stabilize (as percentage of the states total population). Any time a policy changes, there is a "backlog", so to speak, which causes the prison population to move as this new policy becomes routinized

over a number of years. The existing increase in the last prison population will level off but, at the moment, there is little certainty regarding the percentage of the state population level where that will occur.

There is no abstract notion of what the real "right" level of prison population should be. It is all relative to the beholder's values or could be measured relative to other states or countries or other offenders. It is not necessarily bad or good that a prison population is rising or lowering. Alaska has one of the highest rates of incarceration of all the states and America has the highest rate of the democratic world. But it may be a factor of this country's great wealth and cultural violence and this state's place in that, or in this state's greater efficiency in identifying crime and capturing criminals which brings about this result. Comparative rates are only an indicator of where our practices lie in relation to norms that have no absolute footing. What is real, is limitation of capacity and the political will to build it.

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
COURT AND OFFICE BUILDING
POUCH U
JUNEAU, ALASKA
99811

CHAMBERS OF
RODGER W. PEGUES, JUDGE

February 4, 1985

Patrick M. Rodey, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Presumptive Sentencing

Dear Senator Rodey:

Thank you for your invitation to attend the joint Judiciary Committees' work session on presumptive sentencing on February 13, 1985. Unfortunately, I will be away on a longplanned vacation at that time.

I can say for the record that presumptive sentencing appears to be meeting its goals and that I have not found sentencing to presumptive terms to be inconsistent with the basic sentencing considerations set for in AS 12.55.005, and indeed, have found the presumptive-sentencing provisions to be a more systematic means of achieving statutory sentencing goals.

While some fine tuning may be in order, I would hope that we can have considerably more experience with presumptive sentencing before any major reworking is attempted. As a wise old bureaucrat once told me, almost any system can be made to work, if it's left alone long enough for folks to get the hang of it.

Very truly yours,

Rodger W. Pegues
Superior Court Judge

RWP/seb

ALASKA DEPARTMENT OF LAW - CRIMINAL DIVISION

A Briefing Paper On Presumptive Sentencing
Prepared For The
House and Senate Judiciary Committees

February 13, 1985

OVERVIEW: PRESUMPTIVE SENTENCING

1. What is Presumptive Sentencing?

In 1978, as part of the comprehensive revision of the criminal code, the Alaska legislature adopted an equally sweeping revision of the state's sentencing laws. The most significant aspect of the sentencing revision was the enactment of presumptive sentencing.

Presumptive sentencing is a system in which judicial discretion is channeled by the legislature. The legislature sets a specific term of imprisonment which is "presumed" to be appropriate for the average offender (thus the use of the term "presumptive") in the absence of specific aggravating or mitigating factors. If such factors are present the sentence may be varied by the court within a designated range. Other features of the system are ineligibility for parole, increasingly higher presumptive sentences for repeat offenders, and a "safety valve" that allows deviation from the presumptive sentence in extraordinary and unanticipated circumstances before a three-judge sentencing panel.

When Alaska adopted presumptive sentencing in 1978, six other states had already adopted similar sentencing schemes: Arizona, California, Colorado, Illinois, Indiana and New Mexico. Today, seven additional states have also adopted presumptive sentencing schemes: Florida, Minnesota, New Jersey, North Carolina, Pennsylvania, South Carolina, and Washington.

The two most frequently asked questions about presumptive sentencing are (1) why do we need presumptive sentencing; and (2) are the numbers which have been set by the legislature (i.e., the specific presumptive terms) too high or too low as to a particular offense or a particular group of offenses? To answer these questions we have to take a look at how sentencing works, why presumptive sentencing was developed, and how the specific terms were arrived at.

2. Why Presumptive Sentencing?

To understand why presumptive sentencing was adopted, one has to understand how sentencing works without a presumptive system. Prior to 1980, sentencing in Alaska (and in most other states) was indeterminate and solely at the judge's discretion up to a statutory maximum. A judge could impose any sentence, ranging from zero to the maximum allowed under the law. (In cases where the person was convicted of more than one offense, the judge could also impose "consecutive" sentences which meant that the maximum sentence in many cases was almost unlimited.) This type of sentencing system works fine in a perfect world but judges are subject to the same human frailties that affect us all. They therefore make mistakes and are subject to being influenced, either consciously or unconsciously, by inappropriate considerations.

However when an improper sentence is imposed, it is often difficult if not impossible to correct that sentence. The courts have told us that, although an excessive sentence

can be lowered, a sentence which is too lenient cannot be increased. With sentences that are too lenient, the only thing that the appellate court can do is "disapprove" of the sentence. Even with sentences that many people would find to be improper (either too harsh or too light), the appellate court will require that the sentence be reduced only if the court is convinced that the judge was "clearly mistaken" in imposing the sentence. Thus the legal system has certain inherent limitations on its ability to change a sentence that has been lawfully imposed.

This kind of system with unlimited discretion inevitability leads to widely varying sentences in similar types of cases. In the mid-70's the Alaska Judicial Council conducted two studies of felony sentencing practices in Alaska. Several hundred cases were analyzed from all over the state and with all types of crimes. The conclusion reached by these studies was that the two most significant factors affecting a person's sentence were (1) the race of the defendant, and (2) the identity of the sentencing judge. The summary section of the council's 1975 study noted that

> [a] higher percentage of some groups of persons were convicted or sentenced more harshly than other groups, however. Even when many other factors were held equal, some groups of persons still appeared to receive disparate treatment. For example, two-thirds of all Blacks sentenced for robbery received sentences of five years or greater, while less than one-third of Caucasians did, even though twice as many Caucasians sentenced for robbery had prior felony records as Blacks.

ALASKA JUDICIAL COUNCIL, SENTENCING IN ALASKA: A DESCRIPTION OF THE PROCESS AND SUMMARY OF STATISTICAL DATA FOR 1973 (1975) (B. Cutler, Research Attorney), page 175.

The Judicial Council's studies directly led to the consideration and adoption of a system that would channel the judge's discretion toward uniform sentences based on appropriate sentencing criteria, and away from disparate sentences that were potentially affected by inappropriate criteria. The purpose of Alaska's presumptive sentencing system was made clear in the legislative commentary that accompanied the passage of the criminal code: "the elimination of unjustified disparity in sentences imposed on defendants convicted of similar offenses - disparity which is not related to legally relevant sentencing criteria." ALASKA SENATE J. SUPP. NO. 47, at 148 (June 12, 1978).

Alaska's presumptive sentencing system still leaves a great deal of discretion with the sentencing judge. With few exceptions, presumptive sentencing only applies to repeat felons. There is no mandated presumptive term for first time offenders except in cases of (1) sexual assault in the first degree or sexual abuse of a minor in the first degree; (2) class A felonies, i.e., robbery, arson, assault with serious physical injury, manslaughter; and (3) assaults on peace officers and other emergency service providers.

With this discretion still remaining under Alaska law, trial judges at times continue to sentence too harshly or

too leniently in the view of the appellate courts. In Langton v. State, 662 P.2d 954 (Alaska App. 1983), the Alaska Court of Appeals was faced with 3 similar cases of child abuse where one defendant got 6 years, one got no jail time at all, and one got 20 years. (At the time, such offenses were not subject to presumptive sentencing.)

Judge Singleton's concluding paragraphs in Langton concisely summarized the three disparate sentences imposed on each defendant and the unsatisfactory modifications of the sentences that the court of appeals was able to affect.

> Langton, Doe and Joe were convicted of sexual assaults of children. Of the three, Langton was the worst offender since he committed many separate assaults over a long period of time. Doe assaulted two children on one occasion and Joe committed a single assault. In all other respects, the offenses are virtually indistinguishable. In a rational system seeking to eliminate disparity and attain reasonable uniformity, Langton should have received the most severe sentence and Doe and Joe similar and substantially less severe sentences. In actuality, Langton received a much less severe sentence than Joe, and Doe received no period of imprisonment at all. While we have modified two of the sentences, the modified sentences still leave substantial disparity in place. This unsatisfactory result is a necessary concommitant of the substantial trial court discretion which still exists for first-felony offenders where the ultimate decision must rest upon an application of the clearly mistaken standard.

Id. at 962-63 (footnotes omitted, emphasis added).

Under a discretionary sentencing system, it is not surprising that the sentencing disparities described in Langton occurred. In such systems some defendants are treated much differently than other similar defendants based on a judge's

individual sentencing attitudes, and this serves to undermine public confidence in the entire criminal justice system. Presumptive sentencing minimizes, if not eliminates, these unjustified disparities. It was for this reason that in 1978 the legislature enacted presumptive sentencing for all repeat felony offenders. Cases such as Langton serve to emphasize the continued need for presumptive sentencing.

3. The Specific Presumptive Terms

The original presumptive sentencing system enacted in 1978 (with an effective date of January 1, 1980) has only been modified slightly since then. The specific presumptive terms enacted by the legislature were the result of a great deal of careful thought and study, and in some instances were based on information provided by the Alaska Judicial Council relating to past sentencing practices in Alaska. The various proposals for presumptive terms considered by the legislature in 1978 appear in Chart A (Criminal Code Revision Subcommission version) and Chart B (House Judiciary version, Terry Gardiner, Chairman). The final version as adopted in 1978 is set out in Chart C and the present system is displayed in Chart D. In addition, a comparison of Alaska's system with the systems in other states shows that the specific terms imposed under Alaska law are consistent with, and in many cases lower, than those imposed by the laws of other states. The Arizona scheme (one of the original presumptive sentencing states) appears in Chart E.

The present sentencing system in Alaska is based on the need for uniformity, certainty, and equal treatment. The specific presumptive terms have been based on past sentencing practices, sentencing systems from other states, and the legislature's assessment of sentences which are appropriate to the crime committed. However, these same considerations can and should be periodically reviewed in light of actual practice to determine whether there is any need for modification. For example, in 1982 and 1983 the legislature provided for additional specific presumptive terms when the defendant possessed a firearm, assaulted a peace officer, or committed a crime of sexual assault in the first degree. If it is determined that the presumptive sentencing system is in need of change then there are several ways to go about it:

(1) the specific presumptive terms can simply be reduced or increased, or a narrow range can be substituted for a specific number of years;

(2) additional mitigating or aggravating factors, which are precisely worded to avoid overbroad interpretations, can be considered;

(3) parole eligibility can be expanded or limited; and

(4) sentence reductions based on "good time" credit can be expanded or limited.

The most important thing to keep in mind, however, is that any change in the presumptive sentencing system should be

made with the same degree of careful study, consideration, and debate that accompanied its original adoption.

PROPOSAL OF CRIMINAL CODE REVISION SUBCOMMISSION: HB 661 (1978)

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Class A Felony	0 - 15	3-7 (7-11) 11-16	7-11 (11-18) 18-30
Class B Felony	0 - 7	1-3 (3-5) 5-7	3-7 (7-11) 11-16
Class C Felony	0 - 3	0-3mo. (3mo.-3) 3-4 1/2	1-3 (3-5) 5-7

Presumptive range is circled. Numbers to right is range of sentence if factors in aggravation are established. Numbers to left is range of sentence if factors in mitigation are established.

CHART "A"

HOUSE JUDICIARY PROPOSAL: CSHB 661

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Class A Felony	3 - 15* 0 - 15	5 (10) 15	7 1/2 (15) 22 1/2
Class B Felony	0 - 7	2 1/2 (5) 7 1/2	5 (10) 15
Class C Felony	0 - 3	1 (2) 3	2 (4) 6

* If firearm used.

Presumptive terms are circled. Number to right is highest sentence for factors in aggravation; number to left is lowest for factors in mitigation.

CHART "B"

PRESUMPTIVE SENTENCING AS ENACTED IN 1978

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Class A Felony	0 - 20 3 - (6*) - 20	5 (10) 20	7 1/2 (15) 20
Class B Felony	0 - 10	0 (4) 10	3 (6) 10
Class C Felony	0 - 5	0 (2) 5	0 (3) 5

Number in circle is presumptive sentence. Number to left is lowest mitigated sentence; number to right is highest aggravated sentence.

Only if firearm used or if victim suffers serious physical injury and offense is not manslaughter.

CHART "C"

PRESUMPTIVE SENTENCING TODAY

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Sexual Assault or Sexual Abuse of Minor in the First Degree	4 (8) 30 5 (10*) 30	7 1/2 (15) 30	12 1/2 (25) 30
Class A Felony	2 1/2 (5) 20 3 1/2 (7**) 20	5 (10) 20	7 1/2 (15) 20
Class B Felony	0 (2***) 10 0 - 10	0 (4) 10	3 (6) 10
Class C Felony	1/2 (1***) 5 0 - 5	0 (2) 5	1 1/2 (3) 5

* Ten year presumptive term only applies in cases where the defendant possesses a firearm, uses a dangerous instrument, or causes serious physical injury during the offense. All other cases are subject to the eight year presumptive term.

** Seven year presumptive term only applies if crime is a class A felony other than manslaughter and the defendant possesses a firearm, uses a dangerous instrument, causes serious physical injury or knowingly directed the conduct constituting the offense at a uniformed or otherwise identified peace or correctional officer, fire fighter, ambulance attendant, or other emergency responder engaged in official duties. All other cases are subject to the five year presumptive term.

*** Presumptive term of imprisonment only applies if defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise identified peace or correctional officer, fire fighter, ambulance attendant, or other emergency responder engaged in official duties. All other cases are not subject to presumptive sentencing and the defendant faces a maximum term of imprisonment of ten years for a class B felony and five years for a class C felony.

CHART "D"

PRESUMPTIVE SENTENCING IN ARIZONA

Current Offense	First Felony Offender	Second Felony Offender	Third Felony Offender
Class 2 Felony	5 (7) 14	7 (12) 21	14 (19) 28
(residential burglary, sexual assault, arson	7 (12) 21	14 (19) 28	21 (28) 35
Class 3 Felony	4 (5) 10	5 (9) 15	10 (14) 20
(manslaughter, armed robbery, aggravated assault)	5 (8) 15	10 (14) 20	15 (20) 25
Class 4 Felony	2 (4) 5	4 (6) 8	8 (6) 12
(negligent homicide, perjury, unarmed robbery)	4 (6) 8	8 (10) 12	12 (14) 16
Class 5 Felony	1 (2) 3	1 (3) 4	4 (5) 6
(credit card theft, shoplifting)	2 (3) 4	2 (5) 6	6 (7) 8
Class 6 Felony	3/4 (1 1/2) 2	1 (2) 3	3 (4) 5
(animal fighting, jury tampering, false swearing)	1 1/2 (2) 3	3 (4) 4 1/2	4 (5) 6

Numbers below broken line involve offense committed with deadly weapon or a victim who suffers serious physical injury. Parole eligibility for all offenders is restricted to last half or third of sentence, depending on length of sentence. Probation is precluded for second and third felony offenders.

CHART VIII

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE
2/11/85

FURTHER INFORMATION:
465-3717

The House and Senate Judiciary Committees have scheduled a joint work session on Alaska's mandatory sentencing law. The joint work session is scheduled for 1:30 p.m., Wednesday, February 13 in the Butrovich. The purpose of the joint work session is to provide lawmakers the broadest possible perspective so that future adjustments to the law, if required, will be the most appropriate and rational possible. Those invited to testify include:

Roger Endell, Commissioner, Department of Corrections
Robert Sundberg, Commissioner, Department of Public Safety
Dan Hickey, Chief Prosecutor, Department of Law
Francis Bremson, Executive Director, Alaska Judicial Council
Sandra Borbridge, Office of the Governor
Dana Fabe, Public Defender
Brant McGee, Office of Public Advocacy
The Honorable Alex Bryner, Chief Judge, Court of Appeals

"presumptive hearing
DRAFT

February 1, 1985

¥name¥
/If Not Empty,title/¥title¥
/End If//If Not Empty,agency/¥agency¥
/End If/¥address¥
¥city_state_zip¥

Dear ¥salutation¥:

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

Sincerely,

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1985

The Honorable Rodger W. Pegues
Pouch U
Juneau, AK 99811

Dear Judge Pegues:

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Sincerely,

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1985

Ms. Sandra Borbridge
Special Assistant
Office of the Governor
Pouch A
Juneau, AK 99811

Dear Ms. Borbridge:

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

Sincerely,

Pat

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1985

Dana Fabe
Public Defender
Department of Administration
900 W. 5th Ave., Suite 200
Anchorage, AK 99501

Dear Ms. Fabe:

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

Sincerely,

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1985

Brant McGee
Director
Office of Public Advocacy
900 W. 5th Ave., Suite 525
Anchorage, AK 99501

Dear Mr. McGee:

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

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Patrick M. Rodey
Chairman
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Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1985

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

Dear Mr. Endell: Roger

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

Sincerely,

Pat

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1985

Robert Sundberg
Commissioner
Department of Public Safety
Pouch N
Juneau, Alaska 99811

Dear Mr. Sundberg:

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

Sincerely,

Pat

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1985

Francis L. Bremson
Executive Director
Alaska Judicial Council
1031 W. 4th Ave., Suite 301
Anchorage, Alaska 99501

Dear Mr. Bremson:

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

Sincerely,

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska State Legislature

Senate

Committee on Judiciary

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Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1985

Daniel W. Hickey
Chief Prosecutor
Department of Law
Pouch KC
Juneau, AK 99811

Dear Mr. Hickey: DA??

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

Sincerely,

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 4, 1985

The Honorable Alex Bryner
Chief Judge
Court of Appeals
303 "K" Street
Anchorage, Alaska 99501

Dear Judge ~~Bryner~~ ALEX:

Presumptive sentencing will be the topic of discussion at a joint House/Senate Judiciary Committee work session to be held February 13, 1985, at 1:30 p.m. in Room 205 of the Capitol Building.

You are invited to attend the work session, and to provide information and insight to members of the Judiciary Committees on the issue of presumptive sentencing as it relates to your agency.

If you have any further questions, please contact Roger Lewis, Senate Judiciary Committee aide, at 465-3717.

Sincerely,

Patrick M. Rodey
Chairman
Senate Judiciary Committee

Alaska's prisoner problem

dean gottehrer

FAIRBANKS – Roger Endell has a problem. Most Alaskans hardly sit up and take notice when a state commissioner has a problem — even when it's the commissioner of corrections.

But Roger Endell believes Alaskans had better listen to his complaints. If we don't, we may soon find the streets are the repositories of some criminals our courts thought should be in prison.

Endell compares the situation in the state's prisons to a bathtub. The level of water in the tub can be controlled in two ways — either by controlling the water flowing in or the water flowing out.

Like that metaphorical bathtub, Endell's prisons have a limited capacity. And the prison population keeps bubbling up around the top of the limit.

When the number of prisoners exceeds the number of beds for 25 days, Endell must release offenders to bring down the numbers. That's his overflow valve.

The problem, as Endell told members of the Farthest North Press Club last month, is that the spigot sending criminals to prison is open full blast. It's so wide open that Alaska's prisons take in 300 to 350 more prisoners each year than they release.

"The prison population is growing so rapidly it will overtake us," Endell said.

He is quick to point out that offenders who are released are not felony criminals. Three times in the past two years, Endell said, prison gates have had to swing open to set convicted criminals free. He stressed that fortunately no violent crimes had resulted.

One way to solve Roger Endell's problem is to build a bigger bathtub. The Department of Corrections is doing just that. Endell expects prison capacity to increase by 1,500 beds in the next five years. If prison population growth stays to the lower end of predicted increases, a growth of 300 a year over the next five years will just be contained in the new 1,500 beds.

But if growth is more like 350 a year, in five years Alaska will have to worry about dealing with the release of 250 criminals spilling out over the top of the prison bathtub.

Building a bigger bathtub is expensive — especially when the state's oil income is dropping. High-security prisons cost $130,000 to $150,000 per bed, and while that's the high rent tub, the state needs those prisons for dangerous felons. Another way to control the flow is to tighten the tub's spigot.

One of the reasons the spigot opened so wide was that the legislature passed a new criminal code that took effect in 1980. Prison population before then had been relatively stable. In 1980, the numbers started to shoot up.

The difference in Endell's mind is mandatory sentencing. Before the new criminal code, for example, Endell said the prisons housed about 50 sexual offenders. Today that number has jumped to 470, reflecting the effectiveness of a mandatory sentence for sexual offenses.

The second leg of Endell's three-legged solution to prison problems is to examine presumptive sentencing. While he knows he won't win any popularity contests for suggesting it, Endell says the legislature should lop a year or two off presumptive sentences. That would close the spigot into the tub a bit. Alaska ranks third nationally after Nevada and the District of Columbia in its incarceration rate. It jumped into third place after mandatory sentencing took effect.

The third leg is to develop more options to prison. The one Endell mentioned is a program of diversionary work in the community. One of its goals is for prisoners to repay victims.

The cost of such programs is significantly lower than jailing a criminal. The state spends $85 a day to keep someone behind bars, $45 a day in a halfway house and just $3 a day to supervise someone on probation or parole.

Since Endell's visit to Fairbanks, I've read about an intensive probation program Georgia instituted to deal with its overcrowded prisons so dollars would not have to continue to be taken from school construction to build more prisons.

Intensive probation allows judges to put drug abusers, shoplifters, thieves, forgers, felony drunk drivers — anyone who might receive a five-year prison sentence — back on the street under tight supervision. In Georgia, that means curfew, at least five unannounced visits of the probation officer each week at home or work, and spot testing for drugs or alcohol use. The probation officer can easily return a probationer to prison.

In Georgia, intense probation costs 20 percent of jail. If that holds true here, we might expect intense probation to cost $17 a day in Alaska. The interesting twist is that all state probationers in Georgia pay fees that completely support the program. As well as paying a fee, probationers are required to make restitution to victims of their crimes, pay fines and do at least 132 hours of community service work.

Roger Endell doesn't really have a problem. The state of Alaska does. Endell knows that if the legislature doesn't appropriate more money, lower the presumptive sentences or provide the means to divert prisoners to halfway houses or intensive probation, his course of action is clear.

Once the prisoner population passes prison capacities for 25 days, Endell merely has to open the doors and release enough prisoners to bring the levels back down.

He doesn't have a difficult choice to make. You and I and the state government down in Juneau do.

□ Dean M. Gottehrer teaches at the University of Alaska-Fairbanks in the Department of Journalism and Broadcasting.

11/17/85

A/FAIRBANKS

Child abuse bill omits problem of sentencing

2-11-85

By DAN JOLING
News-Miner Bureau

JUNEAU—Gov. Bill Sheffield's child abuse bill, part two of a two-tier approach to protecting Alaska's children, may be leaving out one aspect of a comprehensive approach to the problem, according to testimony here last week.

Sheffield introduced House Bill 88 to tighten current statutes. He has also proposed 59 new social workers, law staff or clerical workers to address the problem in the fiscal year 1986 budget, including nine emergency hires last summer.

According to testimony offered to the House Health, Education and Social Services Committee, HB 88 does not address presumptive sentencing. Presumptive sentencing has begun to gain legislative attention for its effect on families involved with sexual crimes, plus its effect on an overloaded prison system.

State Public Defender Dana Fabe of Anchorage told legislators last week that presumptive sentencing laws force many defendants to pursue their full range of alternatives, including jury trials, because of automatic eight-year sentences for serious sexual offenses against children.

She said many would plead guilty, sparing children from testifying, if mitigating circumstances could be considered.

If passed in the form proposed by the governor, HB 88 would:

- Increase the categories of people required to report suspected child abuse to authorities. Doctors, teachers, school administrators, peace officers, and employees of licensed day care centers are now required to report child abuse, either when they observe child victims or take reports from offending adults.

HB 88 expands the list to include clergy when acting as counselors and other church counselors. It specifies that employees and volunteers of both private and public schools are required to tell authorities if they suspect a child has been abused. The penalty for not reporting remains a class B misdemeanor.

Assistant Attorney General Gayle Horetsky said the purpose is to expand the number of people reporting, not violate the sanctity of the confessional.

The law distinguishes between communication made to clergy in their role "in the furtherance of a religious practice" and not for counseling purposes.

- Require reporting of suspected "mental injury" as well as neglect and abuse. Mental injury is defined as "an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance and behavior, with due regard to the child's culture."
- Allow adults, such as police, to repeat before grand juries the testimony they've taken from children without making the children appear themselves.

The hearsay evidence provision is designed to spare child victims the trauma of retelling their stories numerous times.

- Require people who process film to report to police if they process film that depicts a minor engaged in prohibited sex activity. A similar provision in another state resulted in Alaska police being alerted to an adult who had forced a minor into participating in pornography.
- Add a provision to allow the attorney general to petition the court to stop a person who has abused a child from having contact with other children.

Public Defender Fabe said if the Legislature includes the hearsay provision, it should be as narrow as possible, used to protect only the youngest children, those under 10 years old.

She said testifying is not necessarily traumatic to children. If a trend to protect victims at the expense of defendants' rights is established, grand jury proceedings could evolve into sessions of police reading reports to the jurors.

Because of stiff presumptive sentences, she said, she cannot now in good faith counsel clients to waive grand jury hearings and jury trials.

ROGER ENDELL
High costs, few beds

Budget woes add to growing jail problem

1-31-85

By DAN JOLING
News-Miner Bureau

JUNEAU—In the late 1970s, Alaskans demanded and got tougher criminal laws. In 1985, legislators must decide whether Alaskans can afford that luxury.

The pincers of a diminishing budget and demand for more bed space are squeezing Alaska's prison system. The pressure may magnify, depending on a controversial class-action lawsuit seeking higher standards for prisoner care.

In a Senate Health, Education and Social Services Committee meeting Tuesday, Department of Corrections Commissioner Roger Endell told legislators:

- Alaska added 300 prisoners more than the number released in both 1983 and 1984.
- Alaska, which just surpassed Wyoming in population, has more than 1,000 felons in jail compared to Wyoming's 700.
- Alaska's incarceration rate of 263 persons per 100,000 population ranks 7th among states.
- Alaska added 800 new prison beds the last two years. To keep up, the Corrections Department wants to add 600 more.
- The adult corrections operating budget hit $57.8 in fiscal year 1984. For fiscal year 1986, the request is for $79.4 million.

> **"Where the judge's discretion has been limited, we're feeling the crunch."—**
> *Department of Corrections Commissioner Roger Endell*

The Corrections Department is already feeling the economic pinch.

State officials originally planned for more than 600 beds at a new Seward maximum security prison. Legislators balked, and last session appropriated $19 million for a 320-bed facility.

Endell said $22 million is needed to finish it. However, because of diminished revenue projections, Sheffield has recommended only $10 million more. That will make it a 128-bed facility, at a cost of $100,000 per bed.

That may not be enough to meet Alaska's future need, especially if the verdict in the prisoner class action suit requires less congestion in the jails.

Thirty-five states are under court order in the administration of their prison systems. Alaska may become No. 36 next month.

That's when Anchorage Superior Court Judge Douglas Serdahely is expected to render his decision in the Cleary case, a 1981 class-action suit filed over alleged overcrowding, understaffing and the lack of rehabilitation programs. The judge's decision will tell the state whether it meets constitutional requirements to balance protection of the public with rehabilitation requirements.

"My guess would be that he would try to set caps, or capacity for facilities," Endell said.

That means that when prisoners exceed beds, the court may order prisoners released.

Endell indicated his problems of rapidly increasing costs and shortage of beds is caused in part by the stricter laws that went into effect

(See PRISONS, page 3)

Has law destroyed her family?

Mother opposes husband's incest conviction

By DOUG O'HARRA
Daily News reporter

KNIK — Twice a week, L.D. piles her three children into a battered old car for a 100-mile round trip to an Anchorage jail.

Her husband, W.D., has begun a 21-year prison sentence for sexually abusing their 4-year-old daughter when the child was 2½ years old.

The trip for L.D. is a grim family reunion, a last chance to involve her husband with their children.

"People say to me: 'Now that you're single . . .' I hate t[illegible]," she says as she drives to the Cook Inlet Pre-trial Facility. "I'm not single. We are still a family."

Since her husband's arrest last spring, L.D. has lived a

See Page A-10, MOTHER

☐ **Editor's note: The family in this story did not request anonymity. They believe their neighbors are already familiar with their circumstances due to hometown news reports. The Daily News, however, has withheld the names of the husband and wife to protect the identity of their daughter beyond the family's hometown.**

Mother opposes incest conviction of her husband, says sentence has destroyed her family

Continued from Page A-1

life powered by bitterness and a belief she has been wrongly sentenced to a term of single-motherhood.

From the moment she discovered her husband having sexual contact with her daughter in June 1983, she tried to solve the problem without bringing in authorities.

During the year that followed, L.D. says, she and her husband were able to deal with his problem without it ever happening again — only to have him suddenly arrested.

"We were just starting to get our family together," she says. But the arrest and conviction is "just making the problems worse. If you can't see that there are worse problems than before, then somebody's got to be blind."

To L.D., the prosecution of her husband was the act of a rigid and impersonal system — a system, she says, that traumatized a child who had not been harmed, and shattered a family just as it had begun to heal.

As a result, L.D. has mounted a vigorous attack on the laws that sent her husband to jail. She and her husband have written a petition asking that incest and sexual assault be separated under the law. She intends, she says, to get thousands of signatures.

During the summer, L.D. pleaded her case in letters to then-Palmer District Attorney Michael White and Superior Court Judge James Hanson. She stormed the offices of a local Valley newspaper, lost her temper with social workers, denounced the system to whomever would listen.

But Michael White and others who deal with sexually abused children say L.D. has simply placed herself and her husband above the safety of their children.

"(L.D.) is very concerned, as she said several times to police officers and everyone else, about losing the paycheck," White says.

"It is not at all unknown for a mother, when faced with choosing between the welfare of the children and the interests of the father, to choose the father," says Gayle Horetski, an assistant attorney general specializing in sexual abuse law.

"Our concern more than anything is to protect that child from further assaults, and if the mother doesn't like it, that's too bad. The mother didn't protect the child in the first place."

Under questioning, W.D. confessed to having sexual contact with his daughter three times in the

his family.

"He was always here for work and he always did his job," Merrigan said.

W.D. is a bearded, lean man with intense eyes. He is slow to speak, inarticulate, his voice resigned. He says he felt at home working at the salvage yard, alone with the equipment and away from people.

"I'm not really an outgoing person. I like to keep to myself and I always have," he said last summer. "I like to be able to feel the pain of working."

The couple had a child in 1980, another in 1982. They invested their 1982 permanent fund dividend checks in an acre of land 12 miles south of Wasilla off Knik Road. W.D. erected a 16-by-32 Army tent, framed and insulated it.

While working on the tent in the spring of 1983, W.D. was alone with his daughter, then 2½. He had sexual contact with her, including oral sex. It happened twice more in the next weeks, ending forever, the couple says, when L.D. walked in on them.

"I know it would never happen again," she says. "I am assured of that."

But psychologists and prosecutors disagree. They say the chances are slim anyone could stop such behavior permanently without intense professional treatment.

"It is possible, but it is a remote possibility that it would be a one-time thing," says Dr. Dennis Greene, an Anchorage psychologist who specializes in sexual abuse problems.

"The stronger the denial, the more you're probably at risk because it's not a matter of willpower. It's a matter of controlling your thought life."

W.D. says he tried to distance himself from his family after the incidents.

"I've been trying to stay away from her, trying to stay away from my family," he told police after his arrest. "I try to think of her as a boy. As a son and not a daughter."

When asked last summer why it happened, W.D. took a long time to answer.

"I wouldn't be able to explain it," he said finally, a tortured look in his eyes. "I can't find the words to explain it."

In a pattern found in a large percentage of adults who sexually molest children, W.D. had himself been molested as child, along with his brother.

That brother now is serving several life sentences in Louisiana for sexually molesting children, accord-

Anchorage Daily News/Fran Durner

Until early this winter, L.D. lived in a tent with her two children.

laws.

In sexually molesting his daughter that spring, W.D. committed three unclassified felonies and three other felonies — punishable in his case (because of his previous burglary conviction) by three 15-year and three two-year prison terms.

Under Alaska law, any sexual penetration of a child by an adult — whether it was rape by a stranger or in-home incest — takes the same automatic penalty.

Whether W.D. actually harmed the

age, a key player in winning legislative approval of presumptive sentencing.

"It was necessary because we had too many rapists that were getting very light sentences, getting back out on the street and raping again," Barnes says. "A father that could rape a child in his own home — and that's what it boils down to — deserves what he gets."

The perception under Alaska law of there being no difference between a child being sexually assaulted out-

know whether I had told (my daughter) the right thing," she says.

The neighbor contacted the police. W.D. was arrested in June after a short investigation. During interviews, he made a full confession and was held in lieu of $50,000 cash-only bond. He never made bail.

From that point, things got progressively worse for L.D., then pregnant with her third child. Beginning with the arrest, she says, her family was assaulted by newspaper articles and media reports that she believes described W.D. as a "monster."

"Everybody that knows him, that knows us, knew what happened," she says. "I didn't know it was going to be published, and there you are. There's no privacy."

Meanwhile, without the support of her husband, L.D. struggled to buy food and keep her car running.

She owns, through inheritance, a 111-acre homestead near Homer that lacks access but is appraised at nearly $350,000. She is negotiating to sell it to the state, but no money has been appropriated to buy it.

Because she has the property, L.D. is ineligible for most kinds of public assistance. She has very little cash.

Her car broke down. She got another one, but damaged it in a minor accident on an icy road. A third car needs work. Her bills are stacking up. Valley Hospital in Palmer even filed a small-claims action over the bill for the birth of her second child.

Throughout the fall and early winter, she lived in the cluttered Army tent with holes in the roof and the sparse light thrown by two oil lamps and a Coleman lantern.

As time passed, word of her situation prompted local churches and individuals to donate food to her family.

At the same time, in a project started before W.D. was arrested, local residents and business owners also contributed time and labor to build a small frame house on the couple's land.

"I really appreciate what they've done," L.D. says. But "it makes it really sad that we're going to have a house and he's not going to be there to share it."

Over the summer, as L.D. scraped by and wrote letters to the prosecutor pleading with him to drop the case, W.D. became morose as he awaited trial at the Cook Inlet Pretrial Facility.

In a July interview, he talked at length about a vision that he had been cut off by God. Police said he was a suicide risk.

place."

Under questioning, W.D. confessed to having sexual [illegible] with his daughter three [illegible] in the spring of [illegible]. Nevertheless, the couple insists that the incidents were isolated acts, never to be repeated.

"They're saying they don't want it to happen again, and in a year, it never happened again," L.D. says. "So why are they locking him up for 20 years when we've proven we can all live here together for a year without it happening?"

That cuts to the heart of a crucial question: Does the mandatory sentencing of W.D. needlessly destroy his family, or is it the only way to protect his children from future assaults?

The question comes as the number of sexual offenses against children has exploded into a statewide epidemic.

The number of prosecutions involving sexual offenses against minors in Alaska has jumped 560 percent in four years, from 52 during 1979-80 to 343 during 1983-84, according to Department of Law statistics. Horetski believes the number will exceed 400 this year.

"There seems to be two factors feeding it," she says. "One, that there is more of it going on, and two, people are more likely to report it."

The increase comes despite a steady toughening of penalties by adding mandatory minimum sentences — called presumptives — and vigilant prosecution of offenders.

Presumptive sentencing meant W.D. faced 51 years in prison upon conviction this fall of three counts of first-degree sexual assault and three counts of sexual abuse of a minor.

It was only White's decision to drop two of the assault charges at the last minute that gave W.D. a 21-year sentence and avoided a mandatory review of the sentence by a three-judge panel.

□

L.D., now 35, and W.D., now 26, met in Alaska in the late 70s while W.D. was still in the Army. After his discharge, he was arrested for burglarizing a house and served a six-month sentence.

W.D. then attended the vocational center in Seward for a course in mechanics. The couple married and moved to the Matanuska-Susitna Valley, where W.D. got a job with Knik Towing & Wrecking.

According to L.D., they "squatted" for a while, then moved into a trailer in the salvage yard.

"Basically, we lived on damn near nothing," W.D. said during an interview last summer. "We ain't got the money to pay the rent."

"Things were never real good for them," said Frank Merrigan, W.D.'s supervisor at the yard. "There was never any real future for them."

W.D. worked at the yard for four years as a parts man, go-fer and mechanic. In his testimony at W.D.'s sentencing, yard owner David Webster said he was "a good hard worker" who always tried to provide for his brother.

That brother now is serving several life sentences in Louisiana for sexually molesting children, according to W.D.'s attorney, Richard Collins.

Whatever the reasons behind her husband's actions, L.D. insists that her child was not harmed. That has become her cry against the prosecution of her husband, a stand she took shortly after W.D. was arrested last June and continues now, months after his sentencing.

"She (her daughter) didn't know it was wrong until we sat down and talked about it," L.D. says. "I just tried to explain it without putting any guilt on it."

The child was only harmed, she says, when the state removed her husband from the home and twice interviewed the girl — once by police and once before a grand jury.

"She was OK before they started dragging her through all this garbage, but she isn't now," L.D. says.

Whether that's true is difficult to know, according to mental health experts.

"It would really be different in each case," says Phillip Kaufman, an Anchorage psychotherapist with the Human Relations Center.

The child could be "scarred for life" or little traumatized, depending on the exact circumstances, he says.

But it is possible a child that young could have suffered the acts without psychological damage, Greene says.

"The younger the child, the less devastating the effect of sexual abuse," he says. With a 2½-year-old, trauma could be non-existent, he says.

Nonetheless, the effect on the child would worsen if acts were repeated, if physical assault were involved, or if the father's reaction were guilt-laden, Greene says.

Both White and Horetski acknowledge that by prosecuting the case, the child could have been harmed further.

"I'm not saying the court process is helpful to her," White says. "It's a necessary evil to protect her.

"It's really easy for someone to say: 'My child is traumatized by the legal justice system,'" Horetski says.

"I have no doubt in my mind at all that it's less trauma to a child to go through the legal system than be subject to further assaults."

In any case, White believes L.D. did nothing to mitigate additional harm to the child. White says she has brought her daughter to court proceedings when it wasn't necessary, and openly accused the child of putting her father in jail.

L.D., on the other hand, insists she has always told the girl it wasn't her fault. She says behavior changes and regression occurred only after W.D. was arrested.

In a legal sense, the argument is academic. Even if the child had suffered no harm, it would make no difference for W.D. under Alaska [illegible] whether it was rape by a stranger or in-home incest — [illegible] automatic penalty.

Whether W.D. actually harmed the girl, whether he sought counseling, whether he would have ever had sexual contact with the child again does not matter.

That rigidity, where the law treats different kinds of actions with the same penalties, is unacceptable, according to Richard Collins, W.D.'s attorney.

"The theory of punishment (historically) has gone from to hurt, to hold, to help," he says. Following that idea, the incarceration of W.D. should be aimed at his rehabilitation.

"Let's assume that after 6 years of being in prison and going through therapy, W.D. has corrected his problem. But he's still got 15 years to go."

Valley businessman Robert Pontius, a longtime friend of the couple, also is dismayed about the presumptive sentencing.

"If all the system is trying to do is match up the law with the crime, then all you need is a computer," he says. "Presumptive sentencing doesn't allow for justice and it doesn't allow for mercy."

Presumptive sentencing eliminates some degree of judicial flexibility, agrees Judge Hanson, who supported the idea but now thinks it may be wrong in some situations.

"Am I frustrated in many, many cases because the sentence is more than I would be giving?" he asks. "The answer is yes.

"I think in the case of the first-time offender, society would be better served if we could tailor the penalty to the individual."

That idea is supported by counselors and other professionals.

"The length of the sentence should be tailored to the length of the treatment for that person rather than just a blanket eight-year sentence," says Ray Clements, executive director of Parents United, a non-profit group that works with families coping with incest.

Greene also favors court-supervised treatment of offenders.

Not surprisingly, L.D. thinks it should go even further.

"I think the law should be changed so people can get counseling if they think they need it without fear of going to jail," she says.

In her petition, she states that "incest should be regarded as an illness" and that "there should be a maximum two-year sentence and mandatory counseling."

"I don't think I want the sexual assault laws changed but I do want the incest laws changed because they're dealing with families," she says. "There is nothing the same between incest and sexual assault except maybe the act itself."

But the strict penalties were created to protect the public against light sentencing and to stop sexual assaults and sexual abuse of children, [illegible] deserves what he gets."

The perception under Alaska law of there being no difference between a child being sexually assaulted outside the family (rape) or inside the family (incest) has angered and dismayed L.D. since her husband's arrest.

L.D. is a slender, sharp-featured woman. She grew up in Homer and attended two years of college in Idaho, where she studied photography. She is harsh and assertive during interviews. Her friends describe her as having "a lot of gut[s]." Her letters to White, the prosec[utor], are grammatical and neat, written in precise, upright strok[es].

In discussing the case, she [is u]tterly matter-of-fact, crying [only] when talking about her daug[hter] and the hopeless frustration at b[eing] denied a chance to save her family.

"[I] do love him and he loves me and he loves his kids," she says. "I wanted to work it out. I believe in families. I believe in marriage. I believe that there isn't anything you can't solve by sitting down and talking about it."

But after she discovered the incest, her husband became withdrawn and would not talk to her about it.

"For a long time after it happened, he had a hard time trying to have a good relationship with (our daughter) because he felt real bad about it," she says. "The only time we were able to sit down and talk about it was the night before he was arrested."

W.D. admitted that it was a long time before he could come to grips with what had happened.

"It took me a long time to be able to get close to my family," he said last summer. "It took me over a year to be able to love them again, to be close to them."

L.D. says the family grew apart after the incident and began to utterly break down. Finally, she decided to seek counseling through Parents United, which specializes in incest.

The group was glad to help. But under Alaska law it and other such groups must report to police immediately if they have cause to believe a child has been sexually assaulted.

"It's kind of a Catch-22 situation for a person who wants help and turns to any authority for that help," says Clements, the executive director of Parents United. "That authority is required by law to report the abuse."

For L.D., the law became a trap: she couldn't get counseling without sending her husband to jail.

She rejected Parents United and refused to talk to a police officer who was sent to talk to her. For lack of evidence, the investigation was dropped.

As winter passed into spring, life in the family began to improve, L.D. says. W.D. began to interact with his children and she began to have hope.

During that period, L.D. told a neighbor about the assaults and what she had done about them.

"I asked because I wanted to [illegible]

In a July interview, he talked at length about a vision that he had been cut off by God. Police said he was a suicide risk.

Gambling that the state wouldn't be able to corroborate his confession with further evidence, he and his attorney took the case to trial in September. Using testimony by L.D. and a neighbor, White was able to support the confession without having the victim testify. A jury found him guilty of all charges.

A psychological report on W.D., compiled for sentencing, painted a picture of severe emotional problems — a picture L.D. angrily denounces.

[A]t his sentencing, W.D. lectured the [c]ourtroom on the apocalypse and likened Anchorage and Fairbanks to Sodom and Gomorrah.

L.D. listened from the front bench of the courtroom, where she sat with her children, nursing the couple's 5-day-old baby.

The treatment of the couple, say White and others, was an effort by the system to balance the safety of the child with the needs of the family and the accused.

"Somebody has an obligation to help those who can't help themselves," White says. "If you're going to have to err one way or another, it seems to me the best way to err is for the safety of children, to stop the cycle of sexual abuse right then and there."

New legislation to help insulate child victims from the justice system is now being written, Horetski says. A proposal in the last session of the legislature would have allowed hearsay evidence rather than direct testimony by victims to be admitted before grand juries.

As for presumptive sentences, Horetski says public sentiment and political reality likely will keep them in place.

According to L.D., that reality is ethically wrong.

"I do think (sexual abuse is) wrong," she says. "But I feel like it should be up to the family to press charges, and I think that counseling should be made available without having to have it reported or have to press charges."

From the ordeal, L.D. has salvaged some hope for the future. Her house furnished, she wants to earn [a] living by babysitting there.

She also hopes people will fight the system that she feels doomed her husband. If she can sell her land, she wants to mount a petition drive and persuade legislators to change the laws. She has already met with some Mat-Su legislators to plead her cause.

But for L.D., whose three children will be grown when their father [is] released from prison, the overall lesson has been plain.

"Don't trust anybody," she says. "Don't go to social services. Don't [go] to the police. Don't go to anybody [illegible]

Prosecutors don't want child rape law softened

Associated Press

Attorney General Hal Brown's statements that he may seek legislation to reduce jail terms for first-time child sex offenders have infuriated prosecutors in the Anchorage district attorney's office.

Brown said Friday he may seek a new law to change the eight-year sentence now required for first-degree sexual assault of a child. The charge requires penetration.

"There are degrees of seriousness within the offense," Brown said. "I am a firm believer in the general principle that the penalty should be tailored to fit the offense and the person."

Brown assumed the state's top law enforcement job after a stint as a prosecutor followed by a decade as a defense attorney. He used the word "hysteria" to describe the mentality of some police and prosecutors handling child sex crimes.

But Anchorage District Attorney Victor Krumm said he disagrees with his boss.

"Anyone who penetrates any child deserves to go to jail for eight years or more," he said. Prior to state's adoption of mandatory sentencing for some crimes, such people frequently received suspended sentences, he said.

"We are resolute," said Krumm. "We are determined. We are not hysterical. The one thing we know about people who rape children is that they are recidivists. They rape many children many times."

Defense attorneys and some state social workers have argued that sex offenders, particularly in cases of incest involving the father, have a treatable sickness that cannot be effectively treated by locking offenders up for long terms in prison.

About 20 percent of the cases now handled by Krumm's office are child sex abuse cases, most of them incest.

The average victim is between 7 and 10 years of age, Krumm said. "What that eight-year sentence does is give her time to grow up to an age where she can defend herself," he said.

Under the state's presumptive sentencing law, the eight-year jail term is automatic in the average case, but a judge can reduce the sentence to four years if he finds mitigating factors or increase the term if the case includes aggravating factors.

Brown said changes in the law could include simply reducing the eight years now required, or broadening the number of mitigating factors that judges are allowed to consider when deciding whether to give a first-offender a lesser term.

Dan Hickey, the state c prosecutor leaving his job at end of the month after b fired by Brown, said he stro opposes abolishing the presu tive sentence.

However, Hickey said, he in the past proposed creati new category for first-offen charged with digital penetra only, which would carry a year mandated sentence.

"I'm talking about nuan further refinement of the tem, not scrapping the presu tive sentence," said Hickey, authored the presumptive tencing law.

8205 Aspen Ave
Juneau, AK 99801
March 30, 1985

Patrick Rodey
Alaska State Legislature
Juneau, AK 99811

Dear Senator Rodey,

Presumptive sentencing is Alaska's answer to standardizing terms. Under presumptive sentencing, the Legislature mandates a specific term of imprisonment which is "presumed" appropriate for the average offender.

The problem with this law is that there is no "average" offender. Every crime is committed by a different individual under a variety of circumstances with its own unique set of aggravating or mitigating factors.

Presumptive sentencing as a solution for stopping and preventing the reoccurence of crime is especially falliable for first time offenders. Although there is a percentage of chronic repeat offenders. Most first time offenders do learn their lesson and do not become repeat offenders.

Because of the long mandatory sentences, offenders are reluctant to plead guilty even when they feel remorse. Likewise, family members and friends hesitate to report some crimes and testify because they do not want to see someone they care about receive a long prison sentence.

Judges have lost their original constitutional power to "judge". After a person has been arrested and found guilty, the judge has lost the right to weigh the facts in this specific case and determine an appropriate sentence. The Alaska Legislature has already predetermined what the "average" offender deserves.

After the offender has been sentenced, there is no incentive for rehabilitation. He knows he will be released in a certain number of years no matter what his behavior or attitude in prison is. A person with no natural desire to change will not enroll in a self help program, counseling, prison industry, etc. He knows he can "flat time" with no intention of changing and still be released at a given date. He will return to society with no effort made to change his life style.

The greatest injustice is dealt to those who see the error of their ways and want to change. They are given long prison terms, the same as those who won't change. They usually are separated by great distances from their families. As a result the lives of the family members are destroyed by the very system that was set up to protect them. The state often ends up supporting them financially, but the emotional damage is irreparable.

When the incarcerated ask for counseling help, they are told they can't receive any because they have so much time to serve that it is a waste of time. They know that all the times they avoid fights with "bully" inmates, any self help groups they join, any counseling sessions, work or education programs they participate in will not help them be released one day sooner.

A person who has lead a productive life in society for years and then commits a crime for the first time does not need 6-10 years in prison to see the error of his ways. Long prison terms are counterproductive. Offenders become so discouraged they lose all incentive to try to rebuild their lives. Instead of using their time in prison to better prepare themselves for life once they are released they become completely engulfed in helplessness or bitterness.

The presumptive sentencing law for first time offenders should be repealed retroactively. First time offenders should be given open sentences where their progress could be routinely reveiwed. Inmates should have monthly evaluation sessions with local corrections personnel where their daily attitudes and progress could be discussed. They then could be released under a parole system when they show signs of rehabilitation. The parole system could oversee them in a manner that is less costly than imprisonment. At the same time the offender is given his self dignity back and is able to be a productive part of society and support himself and his family.

There should be an individual review and resentencing of every first time offender sentenced under the old law.

Inmates should be housed as close to their residence as possible. This is a necessity both to the incarcerated and their families. Private individual counseling should be provided. More education and work programs need to be provided.

The presumptive sentencing law needs immediate attention. Everday the present law remains in effect, it adversely affects the lives of those sentenced under it, their families and ultimately society itself.

Yours truly,
Barbara Brown

~~R.A.D.D.~~

INVITES

DAN Hickey
Roger Gindell
Robert Sandberg
Fran Brumsard
Sandra Bandrady
Brent McGee ✓
Dave Love ✓
Judge Alex Brownson

Joan Havlock
337-8301
276-1116

Plt HOT: Sex offenses -
: Consec. Sentencing
SB 128 Hold Harmless
on [illegible] Bo - a ?
Why [illegible] Plt " [illegible]

Public [illegible] for [illegible]
[illegible]

Toll Law Ann - Adams

→ Scope of Presumptive Sentencing

Reason Scheme Adopted

Parole: Disparity in Controversy
+ Jud. Review inadequate
for Public

① Philosophy: Just DESERTS
conflict = Behavior / Law

② Offender Profile:

Presumptive Sentencing was a Hard swing toward Just Deserts

"The custodial function"
"Constitutional limitation on custodial capacity" Hovey v.

Early Parole is a Symptom of "Limited Sept" model

Policies THAT Determine THE Size of INCARCERATION Population

✓ Judges: Don't Like - Reduce Jud Discretion
* Want Expansion by Sentenced Mitigation Authority

✓ Corrections: Parole Authority weighed against Problem of Crowding
* Parole Authority Has Low Discretion now. Can't want more

✓ Prosecutor / Police = Support
PS = Greatest discretion and Gain Authority

Consecutive Sentences:
Public = No OVERHEAD - TINKERING

(907) 688-2219
Star Route 3, Box 1239, Old Glenn Highway
Chugiak, Alaska 99567

February 9, 1986

Alaska State Legislature
Pouch V Capital Building
Juneau, Alaska 99811

Attn: The Senators and Representatives of the State of Alaska

Ladies and Gentlemen:

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

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

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

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

Sincerely,

Mrs. Genevieve Blanka

P.S. Please consider releasing first time, non-violent offenders who have already served ~~two~~ three years of their presumptive sentences. T. B.

LEMON CREEK CORRECTIONAL CENTER

P O BOX 309
JUNEAU ALASKA 99802

The attached letter was place in our prisoner mailbox for forwarding to you. This letter has not been opened. If the writer raises a problem over which this institution has jurisdiction, you may wish to write to me or the Director, Department of Corrections, P. O. Box 309, Juneau, Alaska 99802.

If the writer encloses for forwarding correspondence addressed to another addressee, please return the enclosure to me or the Director.

Margaret M. Pugh

Margaret M. Pugh
Superintendent
Lemon Creek Correctional Center
(907) 780-4777

Senator - Mr. Patrick Rodey
State Capital Room # 504
Pouch V
Juneau, Alaska 99811

February 5-1985
Rick Gottardi
P.O. Box 309
Juneau, AK 99802

Dear "Sir", yes I was wondering if there are going to be any changes in the Criminal Justice System - regarding the presumptive sentencing laws in the near future??

And I was wondering if you might know who I can talk to about an early release from prison? or if its possible to pay my debt to society in a different way besides just prison time, say like community services, or join the service, or something useful for a change??? I've been locked up for five years, since Jan 7-1980 - I was then 19 years old, now I'm 25 years old, lived most all my life in Alaska....

I wrote to "Senator Mr. Bill Ray", about a few of my concerns, —— he said he would forward a copy of my letter to him to you, because you were chairman of the senate judiciary committee....

I'm really interested in knowing if there is going to be any changes in the presumptive sentence laws? because I'm under four presumptive sentences, or soon will be, and I'm never eligible for parole, I will be 40 years old before I get released from prison, or close to it....

I'm in prison for the following - two burglaries - escape + assault - two — criminal mischiefs - + escape; I haven't been sentenced on the

two criminal mischefs + escape ! sentencing is this february 22-1985 - all presumptive terms ...

On January 7-1980 I was age 19 and put in jail for two burglaries, later was sentence to two years, and while serving time on the burglary cases, on January 1-1981, picked up escape + assault, later was sentenced to 6½ and 3 years concurrent, and while serving time on the escape and assault, on September 9-1983 picked up criminal mischief, and on December 2-1983 another criminal mischief, and on July 25-1984 an escape .... I am now age 25 ....

In the last five years in prison I've learned there isn't any rehabilitation or limited rehabilitation, I haven't got any life skills or trades, or vocational schooling - none is offered in the Alaska prison system .... all through grade school and high school until 12th grade I was a slow learner, my trade is fishing, its all I know ....

Since being in prison I've been beat up many times, had my nose broken twice, been stabbed in the back + hands, and all most was a victim to sexual assault three times, all that has happened to me, I had know choice but to remain silent, so I wouldn't make any know enemies, I've had it pretty rough so far .... Leavenworth Kansas penitentiary is where the above mentioned occurred or most of it ....

I've spent time in Ketchikan, Juneau, Anchorage, Leavenworth Kansas, which have been had experiences ....

family problems, my Grandparents are real old; one out of four has passed away; the rest of

my Grandparents are worried they will pass away and never see me again, and I never did really get a chance to know them very well, I've lived in Alaska since age 8, and haven't been anywhere or seen any thing but Alaska....

My Parents have been driven to drink due to emotional stress, they are worried sick about me, they are trying to run the family fishing boat by there selves, and are getting older, and I worry about them day & night....

My only girlfriend in my life left me a couple years ago, she was everything to me, it hurts me really bad, but I can't blame her....

I haven't seen my family in five years, I only talk to them over the phone, these are pressures on me that won't quit, I'm headed for a nervous break down, I'm not sure how much more prison time I can endure before I truly crack or go in-sane....

I realize I did a certain amount of wrong in my life, but there must be some other way I can pay my debt to society, besides just prison time, I mean its such a waste of a life, I'm willing to do any thing to pay my debt that would be useful, and kind of give me a chance at life again, I'm not a seriously dangerous individual or offender, and I don't have any detainers from other states, I've only been in trouble in Alaska, I need a break real bad from confinement...

I've been in isolation for most of my sentence, and all I do is sleep & sit around a 8 by 10 foot cell 24 hours a day, and read & write letters to my-

family, don't get to watch TV, or go out side for fresh air, all I'm being is wear-housed, there is know plan for, or to work — towards a release date....

I'm really suffering mentally + physically - this is destroying me, know joke, its not like I walked in here yesterday, the torment is getting harder to endure, I'm a total nervous case, I've come close to suicide a few times in the past, I don't know if I'm going to make it, I'm a chain smoker and coffee drinker my health isn't good, I'm really trying to seek help to get my self out of here, but I just don't know who to ask for help....

Sincerely

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

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE
2/11/85

FURTHER INFORMATION:
465-3717

The House and Senate Judiciary Committees have scheduled a joint work session on Alaska's mandatory sentencing law. The joint work session is scheduled for 1:30 p.m., Wednesday, February 13 in the Butrovich. The purpose of the joint work session is to provide lawmakers the broadest possible perspective so that future adjustments to the law, if required, will be the most appropriate and rational possible. Those invited to testify include:

Roger Endell, Commissioner, Department of Corrections
Robert Sundberg, Commissioner, Department of Public Safety
Dan Hickey, Chief Prosecutor, Department of Law
Francis Bremson, Executive Director, Alaska Judicial Council
Sandra Borbridge, Office of the Governor
Dana Fabe, Public Defender
Brant McGee, Office of Public Advocacy
The Honorable Alex Bryner, Chief Judge, Court of Appeals

✓ Copy to Jud. Committee for files + update of progress as it goes thru Committee

January 18, 1985

Mr. Jack Kleinkauf
642 W. 34th, #314
Anchorage, Alaska 99503

Dear Jack:

Thanks for your letter which just arrived in my office regarding stiffer penalities for drunk drivers. I also have noted the article you enclosed.

The issue of drunk driving has become a major concern for many Alaskans, including myself. As a legislator and parent, I also feel that stiffer penalties are needed to deal with the problem more effectively. I believe you will be interested to know that I have been a strong advocate for imposing stiffer penalties for those convicted of drunk driving, and I will continue to do what I can to see that concerns of individuals, such as yourself, are addressed.

As Chairman of the Senate Judiciary Committee, I'm certain this issue will come before the Committee for further legislative review. I'm glad to know you share my views on this important topic, and you can count on my support to see that further efforts are taken to curb the problem of drunk drivers.

Sincerely,

Patrick M. Rodey

Trish,
I'm checking on the necessary changes in the Criminal code to allow consecutive sentencing.

December 6, 1984

Senator Patrick M. Rodey
2335 Lord Baranoff
Anchorage, Alaska 99503

Dear Senator Rodey:

The accompanying article from the Anchorage Daily News provides the incentive for this letter to you as an Alaska Legislator.

There has been a great deal of effort on the part of a lot of people in this State to do something about those who drive while drunk. I hope you have read of some of these efforts.

It seems that those who are finally caught and brought to trial have received sentences that do not reflect the severity of the offense, either because of plea bargaining, lack of evidence or a lenient Judge. Not so in this case.

In the Brewer case, the Judge was visibly upset because he could not sentence in relationship to the offense. Mr. Brewer ws sentenced ten years for each of the deaths he caused and five years for assault - a total of twenty-five years.

But because of Alaska Law, these sentences MUST run concurrently rather than consecutively-resulting in a ten year sentence. The reason given by the attorney was that both of the deaths and the injury were caused in the same incident.

Is this what the Legislature had in mind for "stiffer penalities" for drunken drivers? If such is the case, the moral of the story is to "kill a whole carload because they can get you only for one!"

Respectfully yours,

Jack Kleinkauf
642 West 34th #314
Anchorage, Alaska 99503

JK/kkn

Enclosure: News article

Man gets 10 years in auto death case

Anchorage Superior Court Judge Ralph Moody Tuesday said he wished he could hand down a longer sentence as he gave Michael Brewer 10 years in jail for causing the deaths of two people last October when he ran a red light in downtown Anchorage.

Helen Garnand and her 7-year-old daughter, Michelle Garnand, died after Brewer, 26, ran a red light at 15th Avenue and I Street, striking the car Garnand was driving. Another daughter, Charlotte Garnard, was injured.

Moody said he could not attach a lengthy period of probation to the sentence because Alaska's mandatory sentencing scheme dictated what the sentence would be.

"My hands are tied," he said. Moody said he would have preferred a 20-year sentence, with 10 to serve and 10 years' probation so the court could supervise Brewer after his release.

Brewer had pleaded no contest to two counts of manslaughter and one count of second-degree assault.

Moody handed down 10-year sentences on the manslaughter counts and a five-year sentence on the assault charge.

All the sentences run concurrently, and Brewer will be released without probation or parole.

The District Attorney initially charged Brewer with two counts of second-degree murder in the deaths, then reduced the charges on evidence Brewer was not driving as fast as investigators first thought.

Moody considered a previous felony conviction for selling 4 ounces of marijuana in 1980 in determining the mandated sentence length.

I have Rodger check on this - Can we change to allow "consecutive sentence"

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 28, 1985

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

Dear Mr. Gottardi:

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

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

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

Sincerely,

Bill Ray

Bill Ray
Senator
District C

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

January 17-1985

Rick Hottarde
P.O. Box 309
Juneau, Alaska 9980[illegible]

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

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

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

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

Sincerely

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

GEORGIA DEPARTMENT OF CORRECTIONS
Floyd Veterans Memorial Building
Room 756 - East Tower
Atlanta, Georgia 30334

David C. Evans
Commissioner

February 11, 1986

M.. Robert H. Ziegler, Sr.,
Senator
Capitol Room 111
Box V, Pouch 5
Juneau, Alaska 99811

Attention: Mr. Guy Van Dorn

Dear Mr. Van Dorn:

Your interest in Georgia' s Alternative Sentencing Options especially the Special Alternative Incarceration Unit (SAI) is appreciated. I am enclosing some information which, I hope, will provide you with the operational perspectives of the program you desire.

The Special Alternative Incarceration Unit (SAI)Shock Incarceration is for the young, impressionable offender (aged 17-25), the sentencing judge may impose, as a special condition of probation, a term of ninety (90) days to be served in a special facility for probationers. The regimen at this unit of a recently-constructed state institution is patterned after military boot camp, with very few privileges and many constructive physical activities. The probationer has very little time for anything other than work activity. If he does not abide by the rules and regulations of the unit, his probation may be revoked and he will enter the general state prison population. If he does make acceptable adjustment to the unit, he may be returned to regular supervision upon release from the program. The overall thrust of this program is to make the offender aware of the realities of prison life.

The enclosed packet will provide you the array of sentencing alternatives short of incarceration. While we realize that prisons must exist, we also recognize that prisons are becoming an increasingly scarce resource and must be used only when an offender' s crime or lifestyle precludes community supervision.

After your review of this packet, please let me know if you have questions or if I may provide more information. Again, thank you for your interest in Georgia.

Sincerely,

Helen Scholes
Community Service Coordinator
Probation Division

HS/es

Enclosure

lected for the purpose of restitution may be used only for that purpose. 1971 Op. Att'y Gen. No. 71-182.

When a trust of funds collected pursuant to this section fails of accomplishment, the funds should be returned to the probationer who is similar to the grantor of an implied or resulting trust. Op. Att'y Gen. No. 71-182.

But where neither the intended recipient nor the probationer can be found, and the sum collected pursuant to this section is quite small, the money should continue to be held, since the escheat procedure would consume the fund. 1971 Op. Att'y Gen. No. 71-182.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 567-579.

C.J.S. — 24 C.J.S., Criminal Law, §§ 1571, 1572, 1618.

ALR. — Power to impose sentence with direction that after defendant shall have served part of time he be placed on probation for the remainder of term, 147 ALR 656.

Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest, or the like, 45 ALR3d 1022.

What constitutes "good behavior" within statute or judicial order expressly conditioning suspension or sentence thereon, 58 ALR3d 1156.

Propriety, in imposing sentence for original offense after revocation of probation, of considering acts because of which probation was revoked, 65 ALR3d 1100.

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim, 79 ALR3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs, 79 ALR3d 1025.

Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation, 79 ALR3d 1068.

Validity of requirement that, as condition of probation, defendant submit to warrantless searches, 79 ALR3d 1083.

Propriety of conditioning probation on defendant's not associating with particular person, 99 ALR3d 967.

Propriety of conditioning probation on defendant's serving part of probationary period in jail or prison, 6 ALR4th 446.

Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants, 19 ALR4th 1251.

Power of court to revoke probation for acts committed after imposition of sentence but prior to commencement of probation term, 22 ALR4th 755.

Propriety of conditioning probation on defendant's not entering specified geographical area, 28 ALR4th 725.

42-8-35.1. "Special alternative incarceration."

(a) In addition to any other terms or conditions of probation provided for under this chapter, the trial judge may provide that probationers sentenced for offenses committed on or after January 1, 1984, to a period of time of not less than one year nor more than five years on probation as a condition of probation must satisfactorily complete a program of incarceration in a "special alternative incarceration" unit of the department for a period of 90 days from the time of initial incarceration in the unit.

(b) Before a court can place this condition upon the sentence, an initial investigation will be completed by the probation officer which will

indicate that the probationer is qualified for such treatment in that the individual does not appear to be physically or mentally handicapped in a way that would prevent him from strenuous physical activity, that the individual has no obvious contagious diseases, that the individual is not less than 17 years of age nor more than 25 years of age at the time of sentencing, and that the department has granted provisional approval of the placement of the individual in the "special alternative incarceration" unit.

(c) In every case where an individual is sentenced under the terms of this Code section, the clerk of the sentencing court shall, within five working days, mail to the department a certified copy of the sentence and indictment, a personal history statement, and an affidavit of the custodian provided by the sheriff of the county.

(d) The department will arrange with the sheriff's office in the county of incarceration to have the individual delivered to a designated facility within a specific date not more than 15 days after receipt by the department of the documents provided by the clerk of the court under this Code section.

(e) At any time during the individual's incarceration in the unit, but at least five days prior to his expected date of release, the department will certify to the trial court as to whether the individual has satisfactorily completed this condition of probation.

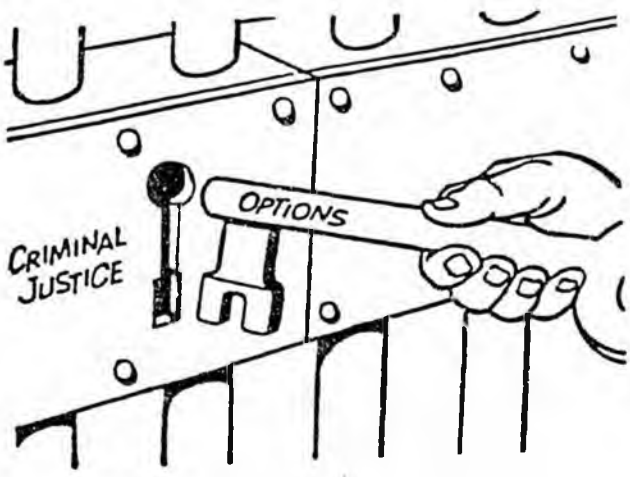
(f) Upon the receipt of a satisfactory report of performance in the program from the department, the trial court shall release the individual from confinement in the "special alternative incarceration" unit. However, the receipt of an unsatisfactory report will be grounds for revocation of the probated sentence as would any other violation of a condition or term of probation. (Ga. L. 1982, p. 1097, § 1; Code 1981, § 42-8-35.1, enacted by Ga. L. 1982, p. 1097, § 2; Ga. L. 1983, p. 3, § 31; Ga. L. 1984, p. 446, § 1.)

Effective date. — This Code section became effective November 1, 1982. (See 1982 Acts in history line for similar provisions given effect before November 1, 1982.)

The 1983 amendment, effective January 25, 1983, part of an Act to correct errors and omissions in the Code, revised language in this Code section (see also editor's note).

The 1984 amendment, effective March 14, 1984, in subsection (a), inserted "for offenses committed on or after January 1, 1984," following "provide that probationers sentenced", substituted "90" for "180" following "department for a period of", and deleted the former second sentence dealing with earned time in 'special alternative incarceration' units; in subsection (b), substituted "an initial investigation will be completed by the probation officer which will indicate" for "the chief probation officer of the circuit must certify to the sentencing court", substituted "does

SENTENCING OPTIONS
STATE OF GEORGIA



PROBATION DIVISION
DEPARTMENT OF CORRECTIONS
Floyd Veterans Memorial Building
Room 954, East Tower
July, 1985

David C. Evans
Commissioner

Vince Fallin
Deputy Commissioner

PROGRAM COST: COMMUNITY CORRECTIONS

Public fear of crime and concern for appropriate punishment is both understandable and legitimate. However, while prisons can remain to punish the most violent and repetitive offenders, there does exist a wider range of alternatives which can both hold the offender accountable and, often times, offer restitution to the victim. Community-based sanctions can offer a far less costly way of both punishing less serious offenders and reducing pressure on our overcrowded prison system. By responsibly working with less serious offenders in such community-based programs as regular probation supervision, Intensive Probation Supervision, Diversion Centers, and Special Alternative Incarceration, prisons can be reserved for only the most violent and repetitive criminals.

Following is a cost comparison of major sentencing options available to the judiciary. The options presented are in order of restrictiveness to the offender, and are based on one-year costs for each option:

COMMUNITY-BASED OPTIONS

	Average Days of Special Supervision	X	Per Day Cost	+	Regular Supervision	=	Yearly Cost
Basic Probation Supervision:	Not Applicable				365 Days X 72¢ per day	=	$263
Intensive Probation Supervision:	240	X	$4.50 = $1,080	+	125 X 72¢	=	$1,170
Diversion Center:	120	X	$21.75= $2,610	+	245 X 72¢	=	$2,786*
Special Alternative Incarceration:	90	X	$30.43= $2,739	+	275 X 72¢	=	2,937*

* While cost differences between Diversion Center and Special Alternative Incarceration programs appear at first to be minimal, it must be pointed out that the 120-day Diversion Center placement results in the offender maintaining employment and paying taxes, room and board, fines, restitution, dependent support, medical/dental care, etc. The 90-day Special Alternative Incarceration program requires total confinement at taxpayer expense.

INSTITUTIONAL OPTION (1 YEAR CONFINEMENT)

365 days X $30.43 per day (includes capital outlay) = $11,107

SENTENCING OPTIONS

OPTIONS	CIRCUIT	Alapaha	Alcovy	Appalachian	Atlanta	Atlantic	Augusta	Blue Ridge	Brunswick	Chattahoochee	Cherokee	Clayton	Cobb	Conasauga	Cordele	Coweta	Dougherty	Douglas	Dublin	Eastern	Flint	Griffin	Gwinnett	Houston	Lookout Mt.	Macon	Middle	Mountain	Northern	Northeastern	Ocmulgee	Oconee	Ogeechee	Pataula	Piedmont	Rockdale	Rome	Southern	S. Georgia	Southwestern	Stone Mountain	Tallapoosa	Tifton	Toombs	Waycross	Western
Pre-Trial Diversion					•	•		•	•		•		•				•			•				•		•																			
Pre-Trial Release					•			•					•							•										•																
Basic Probation Supervision *	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Intensive Probation Supervision	•		•	•	•	•	•	•	•	•	•	•	•	•	•	•			•	•	•	•	•	•		•	•	•	•	•	•	•	•			•	•		•	•				•	•	•
Diversion Center	•	•	•	+ 4) •	•	•	+ •	•	•	•	•	•	+ •	•	•	•	+ •	•	•	•	•	+ •	•	•	+ •	•	•	•	+ •	•	•	•	•	•	•	+ •	+ •	•	•	•	•	•	+ •	•	+ •
Special Alternative Incarceration	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	+ •	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•

* Basic Probation Supervision also may include fines, restitution, community service, special conditions, dependent support, etc., as specific and additional components of the program.

\+ Denotes location of Diversion Facility; however, available for referral from any circuit.

BASIC PROBATION SUPERVISION

1.	Number of probationers under supervision:	107,712
2.	Number of field probation officers:	585
3.	Number of field offices:	109
4.	Fiscal Year 1984 performance:	
	Presentence investigations:	9,065
	Child Support collected:	$23,477,115
	Fines collected:	$15,402,036
	Restitution collected:	$3,705,023
	Probation Fees collected:	$2,491,482
	% Successfully terminating probation:	87%
5.	Per diem cost each offender:	$.72

Program Objectives

The primary purpose of probation services is to provide supervision which is consistent with the public interest and safety; to provide quality and timely presentence investigations for the courts; and to recognize, plan for, and implement specialized programming for identified probation populations.

Basic field probation supervision is the cornerstone for all Probation Division activity. Each specialized diversion program (Intensive Probation Supervision, Community Service, Diversion Centers, and Special Alternative Incarceration) direct their efforts to stabilizing the offender so that he/she may be transferred to regular supervision, and then ultimately to successful termination from supervision. Probation and its adjunct diversion programs and mechanisms offer the most promising and effective alternative to imprisonment through expanding community-based programming.

Probation Adjuncts

- An externally-validated Classification System for probationers, based on a Needs/Risk Scale of eighteen factors, allows probation staff to readily determine the amount of surveillance, degree of treatment need, and frequency of contact necessary for effective supervision. The level of supervision can range from one contact per month to one each week.

- A Workhour Formula based on the Classification System allows the Probation Division to improve supervision by determining manpower needs and caseload requirements.

- A probation fee may be imposed by the sentencing judge on a probationer as a means to help offset the costs of supervision.

- Community service may be required to more pointedly impress upon the probationer the collective concern of society over his criminal activity.

- Restitution and fines may be a component in basic probation supervision or any of its specialized programs.

- Special Conditions of Probation may be imposed to restrict the probationer's freedoms, to limit movement, or to require attainment of additional rehabilitative services to the offender.

- A "split-sentence" may be imposed upon an offender who, in the opinion of the court, needs both a prison experience and community supervision upon release.

The services being provided, enhanced, and expanded by the Probation Division offer cost-effective alternatives to incarceration. These services can provide meaningful supervision while maintaining protection of the public as a primary focus.

INTENSIVE PROBATION SUPERVISION (IPS)

1.	Number of existing IPS programs:	33
2.	Current offender caseload capacity:	990
3.	Current annual diversion capability:	1,910
4.	Program length:	6-12 months
5.	Availability:	IPS circuits only
6.	Per diem cost each offender:	$4.50
7.	Source of program funding:	Probation Fee

Program Objectives

The major thrust of the IPS program is that of addressing prison overcrowding by offering a sentencing option that entails highly-structured, rigidly-monitored supervision. The program utilizes a team of two (2) probation employees supervising a caseload of no more than twenty-five (25) probationers, thus ensuring the capability of near-daily contact with the probationer and surveillance of his/her activities.

Program Elements

1. Weekly staff/probationer contacts range from minimum of five in initial phase (3 months) to twice per week in final phase (6-12 months).
2. Employment given highest priority.
3. Minimum of 132 hours community service required.
4. Mandatory curfew.
5. Weekly check of local arrest records.
6. IPS probationers entered on statewide computer network.
7. Travel outside county of residence not allowed without prior approval.
8. Law enforcement requested to help monitor activities.
9. Routine drug/alcohol screen.

Program Eligibility

- Must be identified as an offender who is being diverted from the state prison system.
- Should present no unacceptable risk to the safety and security of the community.
- Offense must not carry mandatory prison sentence.
- Term of court on current sentence of incarceration must not be expired.
- Offender's sentence must not be under appeal.

DIVERSION CENTERS

1.	Number of existing centers:	14
2.	Additional planned centers:	3
3.	Current center offender capacity:	600
4.	Current annual diversion capability:	1,800
5.	Average days in program:	120
6.	Availability:	Statewide referral
7.	Per diem cost each offender:	$21.75

Program Objectives

The Diversion Center program plays a role in helping to address this state's issue of prison overcrowding. This short-term residential program allows the sentencing judge to impose a harsher sentence than "street" probation, yet not so harsh as incarceration. The Diversion Center program also permits offenders the opportunity to stabilize their lives through Center educational, counseling, and socialization programs.

Program Elements

All Diversion Center residents are:

1. Under the supervision of Center staff, including 24 hour-a-day supervision by Correctional staff.

2. Required to be employed on a full-time basis, with all earnings turned in to Business Office personnel for disbursement for room and board; court-ordered fines, restitution and fees; dependent's support; medical/dental expenses; and other financial obligations

3. Required to participate in counseling, educational, and life skills programs as deemed necessary.

4. Required to complete a minimum of 30 - 50 hours of community service work.

5. Screened for alcohol/drug abuse.

6. Allowed to leave Center grounds only for work, counseling, education, or other approved destinations.

7. Returned to regular probation supervision upon successful completion of the Diversion Center program.

Program Eligibility

The prospective Diversion Center referral should be:

1. Aged 17 or older.

2. Convicted of a property crime not involving use of a weapon, act of violence, or sex-related.

3. In suitable health, capable of maintaining full-time employment.

4. An offender who is not a chronic drug/alcohol abuser.

SPECIAL ALTERNATIVE INCARCERATION (SAI) PROGRAM

1.	Location of program:	Dodge Correctional Institution
2.	Current capacity:	100
3.	Current annual diversion capability:	400
4.	Availability:	Statewide referral for selected felons
5.	Length of program:	90 days
6.	Per diem cost each offender:	$30.43

Program Objectives

The overall purpose of the SAI program is to offer the courts an alternative to long-term incarceration and serve as a rehabilitative mechanism by combining an initial ninety (90) day period of confinement with probation supervision following the brief prison experience. The program addresses the needs of the sentencing judge faced with a young, impressionable offender who does not need long-term incarceration, but needs a short period of confinement to experience the harsh realities of prison life.

Program Elements

1. Program participants separated from general inmate population; supervised by specially-trained correctional staff.

2. Activities patterned after that of military basic training; little idle or discretionary time.

3. Work and constructive physical activity stressed as the major part of the program experience.

4. Successful program participation results in release at the end of ninety (90) days; with transfer to regular probation supervision.

5. Failure to comply with program requirements results in request for revocation, with possibility of sentence of probation being revoked.

Program Eligibility

To be eligible for program inclusion, the offender must:

- Be male
- Be not less than 17 nor more than 25 years of age
- Have no previous incarceration in an adult penal institution

- Be convicted of a felony
- Have no physical limitation which would exclude labor requiring strenuous physical activity
- Have no mental disorder or retardation which would prevent him from strenuous physical activity

COMMUNITY SERVICE

1.	Number of probationers performing community service (past fiscal year):	6,790
2.	Number of hours served by probationers:	954,126
3.	Approximate labor value for community service work performed in communities (calculated at minimum wage of $3.35 per hour):	$3,196,322

Note: Figures do not include residents at diversion centers hours.

Program Objective

Community service programs promote a work ethic approach to punishment and establish accountability for criminal acts. Work performed by offenders benefit the community in needed areas of service in a cost-effective manner. One of the primary goals of community service, as a punishment option, is to deter criminal behavior. It is a highly visable program which fosters citizen and agency involvement in the criminal justice process and decreases the use of incarceration in a relatively inexpensive manner.

Program Information

By Legislative definition, community service is "uncompensated work by an offender with an agency for the benefit of the community pursuant to an order by a court as a condition of probation."

A number of community service programs now exist in Georgia. Generally, they have been limited in scope to certain judicial circuits and coordinated by the local probation staff. The Legislative Acts (Ga. Code 42-8-70 and DUI Leg. Ga. Code 40-6-39) provides community service as a sentencing option and is predicted to increase drastically the Probation Division's work load. Ten (10) Community Service Coordinators were funded in FY'86 to coordinate community service in ten (10) circuits which have experienced the most impact of this legislation. Through a coordinated effort, the probation staff is working to implement an effective and efficient expansion of community service programs throughout the State. Technical assistance will be provided to counties or cities developing community service upon request.

Program Eligibility

The Probation Division's administration of community service programs will be limited to offenders who receive probated sentences from those courts that are served by the statewide probation system (Ga. Code Section 42-8-34 and 42-8-39). Community service is imposed by the court as a part of the sentence as a condition of probation.

The Probation Division will administer intake, placement, general counseling, follow-up, and monitoring of the offender's compliance of court-ordered community service hours. In addition, appropriate agencies will be identified and screened for possible community service worksites. Necessary data will be collected for program evaluation purposes.

The procedures for managing community service programs can be outlined as follows:

- Conduct investigations to determine offender placement suitability.
- Contact appropriate local court approved agencies.
- Initiate appropriate documentation for the court in sentencing, revocation or release of probationer performing community service.
- Establish record keeping and reporting procedures with agencies.
- Serve as a liaison between agencies and probationers in areas of controversy.
- Monitor and follow-up of probationer's performance.

PRETRIAL DIVERSION/INTERVENTION

1. Diversion programs operate under a wide variety of legal or administrative authority.
   - 1/3 of all Diversion programs in the United States are administered by the Prosecutor's Office.
   - 1/4 (or 27%) are court programs under administration of probation agencies.
   - Others fall in public agencies or private non-profit.
2. Number of Pretrial Diversion programs in Georgia: 10

Program Objectives

Pretrial diversion programs are designed to restore victim's loss through payment of restitution. The diversion program is designed to reduce present criminal activities and deter future criminal involvement of selected offenders by providing them opportunities to affect such changes.

General Objectives

- To provide the criminal justice system with an alternative to the traditional methods of processing selected non-violent, non-aggressive offenders.
- To reduce the population of the jail by providing a mechanism for the more efficient processing of priority cases.
- To provide first offenders opportunities to avoid the consequences of criminal conviction and criminal record.

Program Information

Legislation (HB-1101) passed by the 1984 General Assembly authorized the Department of Offender Rehabilitation to establish and operate pretrial release and pretrial diversion programs as rehabilitative measures for persons charged with misdemeanors and felonies with the approval of local court officials.

A limited number of programs are coordinated by the Probation Division due to the lack of staff and resources. General guidelines for developing and governing pretrial programs established and operated by the Department of Offender Rehabilitation are still in the developmental stages and will require the approval of the Board of Offender Rehabilitation upon completion.

In addition, a number of pretrial programs are operational through the Correctional Services Division of the Georgia Department of Labor.

Program Eligibility

Some programs require the defense attorney petition the court for a case to be considered for pretrial diversion. Other program participants are selected by the District Attorney or Solicitor. The staffing and organization of programs varies because of variations in communities, in availability of local resources, funds and structure of existing criminal justice systems.

Program general requirements consist of:

- Volunteer to participate and approval of District Attorney or Solicitor.
- Be at least 17 years of age.
- Agree in writing to waive right to speedy trial.
- Enter a contractual agreement which outlines restitution required, court cost, supervision requirements for specific time.
- As a rule, only offenders with no prior conviction will be eligible for program participation.
- Case must be prosecutable.

PRETRIAL RELEASE

1.	Release programs operate under a variety of legal or administrative authority.	
2.	Number of programs operating in Georgia:	6
3.	Program authority:	H.B. 1101
4.	Number of programs in United States: (More than 1/4 of all programs are administered by probation departments.)	400

Program Objectives

Pretrial release programs have been in existence in this country for over 15 years. Though release programs have undergone considerable changes during this time, and indeed no two programs are exactly alike, the basic function of all pretrial release programs remains the same. This function is to provide a viable alternative to the traditional bail system; one which does not discriminate against indigent offenders, but bases the release decision on verified community stability and prior criminal behavior. Release programs operate under the hypothesis that the forfeiture of a sum of money has been highly over-rated as a deterrent to flight, and that the offender's personal ties to the community may be the real guarantee of his appearance for trial. Therefore, the goals of most pretrial programs are to:

- Establish a more effective and less discriminatory system of bail.
- Bring the pretrial functions under the control of the court.
- Relieve jail overcrowding, thereby saving money in jail expenses and maintenance of pretrial detainees.

The responsibilities of a pretrial program is to gather and submit to the court verified data on jailed offenders for judicial review in order to determine release eligibility.

Program Elements

The purpose of bail as recognized by the law is to insure that the accused will return to court for trial. Under the traditional bail system, the arrested person has three options to procure his release from custody prior to his trial; post a property bond, a cash bond, or a commercial bond. All these methods require financial resources. The traditional system is ineffective because it is not directly related to the basic reliability of the accused to appear in court.

A pretrial release program is beneficial to:

- Court - relieves jail overcrowding and provides more efficient case flow management.
- Individual offender - return to job.
- Community - tax savings.

Other benefits of the program cannot be measured quantitatively, but are nevertheless real and very important, such as the prevention of embitterment that may lead a first offender into a more anti-social attitude and more crime.

General Procedures

- Interview and initial screening
- Verification of data
- Recommendation
- Establish release conditions:
  a. regular reporting
  b. notification of changes in personal status, employment, residence, etc.
- Apprehension - failure to comply with courts conditions

Program Authority

- Local court rule.
- Legislation (HB 1101) passed by the 1984 General Assembly authorized the Department of Offender Rehabilitation to establish and operate pretrial release and pretrial diversion programs as rehabilitative measures for persons charged with misdemeanors and felonies with the approval of local court officials.

GEORGIA DEPARTMENT OF CORRECTIONS
Floyd Veterans Memorial Building
Room 756 - East Tower
Atlanta, Georgia 30334

David C. Evans
Commissioner

February 11, 1986

Mr. Robert H. Ziegler, Sr.
Senator
Capitol Room 111
Box V, Pouch 5
Juneau, Alaska 99811

Attention: Mr. Guy Van Dorn

Dear Mr. Van Dorn:

Your interest in Georgia Alternative Sentencing Options especially the Special Alternative Incarceration Unit (SAI) is appreciated. I am enclosing some information which, I hope, will provide you with the operational perspectives of the program you desire.

The Special Alternative Incarceration Unit (SAI) Shock Incarceration is for the young, impressionable offender (aged 17-25), the sentencing judge may impose, as a special condition of probation, a term of ninety (90) days to be served in a special facility for probationers. The regimen at this unit of a recently-constructed state institution is patterned after military boot camp, with very few privileges and many constructive physical activities. The probationer has very little time for anything other than work activity. If he does not abide by the rules and regulations of the unit, his probation may be revoked and he will enter the general state prison population. If he does make acceptable adjustment to the unit, he may be returned to regular supervision upon release from the program. The overall thrust of this program is to make the offender aware of the realities of prison life.

The enclosed packet will provide you the array of sentencing alternatives short of incarceration. While we realize that prisons must exist, we also recognize that prisons are becoming an increasingly scarce resource and must be used only when an offender's crime or lifestyle precludes community supervision.

After your review of this packet, please let me know if you have questions or if I may provide more information. Again, thank you for your interest in Georgia.

Sincerely,

Helen Scholes
Community Service Coordinator
Probation Division

HS:hem

Enclosure

CC: Vince Fallin

HB 554 file presumptive sentencing

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

Patrick Rodey
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Rodey,

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

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

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

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

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

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

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

Sincerely,

Michael W. Brewer

Michael W. Brewer

THE PRESUMPTIVE SENT.

Fairbanks North Star Borough

Mayor: Juanita Helms

March 10, 1986

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

Dear Representative Clocksin:

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

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

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

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

Sincerely,

Juanita Helms

Juanita Helms
Borough Mayor

JH:rlf

Attachments

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