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237

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 237
Publish Date: _____

Revision Date: _____
Title: "An Act providing that assistance
...constituting a mitigating factor..."
Sponsor: Senator Kerttula
Requestor: Senate HESS Committee

Agency Affected: Department of Law
BRU: Prosecution
Components: ALL

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: April 28, 1987
 Approved by Commissioner: Richard I. Pegues / FOR /
Grace Berg Schaible, Atty. Gen. Date: April 28, 1987
 Agency: Department of Law

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 237

This bill amends AS 12.55.155(d)(12) by adding assistance to authorities to prosecute other persons to the list of mitigators available to a defendant in a criminal sentencing. The bill also amends existing law by broadening the circumstances under which mitigators are granted from providing assistance regarding the offense for which the defendant was charged to providing assistance on any criminal offense. Thus a defendant's sentence could be reduced if he provided information about an offense completely unrelated to the crime for which the defendant was convicted, even if such information could not be verified. Because this bill changes the law regarding sentencing, it will not have a fiscal impact on the Department of Law.

BILL NO: HB 237

DATE: 4/21/87

TITLE: "An Act providing that assistance to authorities to detect, apprehend, or prosecute other persons is conduct constituting a mitigating factor in criminal sentencing."

CONTACT: James D. Vaden
Deputy Commissioner

DEPARTMENT OF PUBLIC SAFETY

Provides an incentive for persons accused of a crime to provide information to authorities to detect, apprehend, or prosecute other offenders involved in the commission of criminal offenses.

This proposed legislation would assist authorities by encouraging persons involved in or having knowledge of criminal activity to come forward with their information and assist the criminal justice agencies in identifying and prosecuting other offenders. This type of assistance to the criminal justice agencies would be considered by the sentencing court as a mitigator to presumptive sentencing as set out in 12.55.125.

The Department of Public Safety supports this legislation.


Arthur English
Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: SB 237

Publish Date: _____

REQUEST

Revision Date: _____

Agency Affected: Public Safety

Title: "An Act providing that assistance to authorities to detect..."

BRU: Alaska State Troopers

Sponsor: Senator Kerttula

Components: Detachments & CIB

Requestor: Senate HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *G.C.A.*
 Division: Alaska State Troopers

Phone: 269-5691

Date: 4/15/87

Approved by Commissioner: _____

Agency: Public Safety

Date: 4/15/87

Distribution (by preparer):

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

*JNR
4/15/87*

[Signature]

Ben Esch

ATTORNEY AT LAW, P.C.

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MAR 25 1987

March 23, 1987

Senator Jay Kerttula, Chairman
Senate Judiciary Committee
P. O. Box V
Juneau, AK 99811

Dear Senator Kerttula:

I would like to bring to your attention a particular problem I am presented with regarding a client. This individual is presently incarcerated awaiting sentencing for an offense committed last year here in Anchorage. He is subject to a presumptive sentence for his offense. Pending sentencing, my client provided substantial help to authorities both in discovering and turning over contraband (a handcuff key) which he was secreted inside the jail in which he was residing and further cooperated with authorities in providing trial testimony against an inmate who had made admissions to my client while he was in the institution. At the time of sentencing, it was discovered that my client had no statutory mitigating factors in his case and both the prosecutor and I began to examine AS 12.55.155. In the course of our review, it appeared to both of us that perhaps in enacting the statutory mitigators, there had been legislative oversight as to one of the mitigating factors. Under that statute, a mitigating factor exists if: "The defendant assisted authorities to detect or apprehend other persons who committed the offense with the defendant." See AS 12.55.155(d)(12). My client provided an equivalent service to the State, but due to the fact the individuals against whom he provided substantial assistance to the State in their prosecution and conviction were not co-defendants in his case, he was denied the application of this mitigating factor.

As I pondered this, I failed to discern any policy difference between a defendant who assists authorities to detect and/or apprehend co-defendants as opposed to someone

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who provides information as to third-parties. One result of this situation is that prosecutors are forced to enter "deals" with defendants who wish to provide information in other cases to get this help. Prosecutors are sometimes reluctant to do so given the fact that the existence of this "deal" will be brought out on cross-examination, if and when the informant testifies, thereby possibly weakening the strength of his testimony and resulting in tainting perfectly legitimate evidence by virtue of the fact that it is obtained through a direct quid pro quo transaction involving an individual who is facing charges himself. The current situation involving the star witness in the McKay case is a perfect example of this situation.

I would like to suggest to you for possible consideration of legislation to be introduced by your Committee, an amendment to AS 12.55.155(d) which reads as follows:

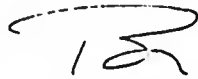
(12) The defendant assisted authorities to detect [or], apprehend, or prosecute other persons who committed [the] an offense [with the defendant].

Such an amendment would allow substantial cooperation with authorities to act as a mitigating factor at the time of sentencing for any individual. This could result in the trial judge being given the latitude to take into account any cooperation with authorities provided by an offender and provide a method of rewarding (or at least providing the opportunity for reward,) individuals who cooperate without creating the potential for any "stigma" to be suggested during cross-examination that this help is provided only in contemplation of a preferential treatment of or deal concerning their own charges. A provision similar to this is included in the new Anti-drug Abuse Act of 1986 on the federal level. There are certain minimum sentences which are required to be given (like presumptive sentences) and these can only be reduced upon a demonstration of "substantial assistance" in the investigation or prosecution of another person who has committed an offense (See § 1007.).

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From the point of view of the prosecutor, I believe the statute solves one problem while providing an inducement to individuals to provide information without the necessity of entering into a specific deal. This will encourage individuals to provide whatever information they have or offer whatever assistance they can give. As such, I see this as an amendment which could benefit many people in general, and my client in particular, if such an amendment is made prior to his mid-June sentencing date. Thank you in advance for your consideration in this matter. I would enjoy hearing your thoughts.

Yours truly,

A handwritten signature in black ink, appearing to be 'Ben Esch', with a stylized flourish above the name.

Ben Esch

BE/cag



alaska judicial council

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ACTING DIRECTOR
Teresa W. Carns

March 19, 1987

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ALASKA FELONY SENTENCES: 1984

The Alaska Judicial Council found that presumptive sentencing caused only part of the increases in court felony trials and prison populations during the early 1980s. A one-hundred percent increase in the number of convicted offenders, and legislative reclassification of drug and sexual offenses contributed equally to high court caseloads and jail overcrowding. The Judicial Council's study was based on data about all 1984 felony case filings that resulted in a conviction and sentence. The data were provided by state agency computerized information systems, especially the Department of Law's PROMIS system. Department of Public Safety and Department of Corrections also contributed data for the report.

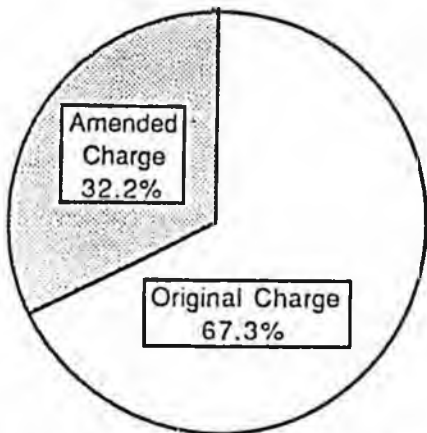
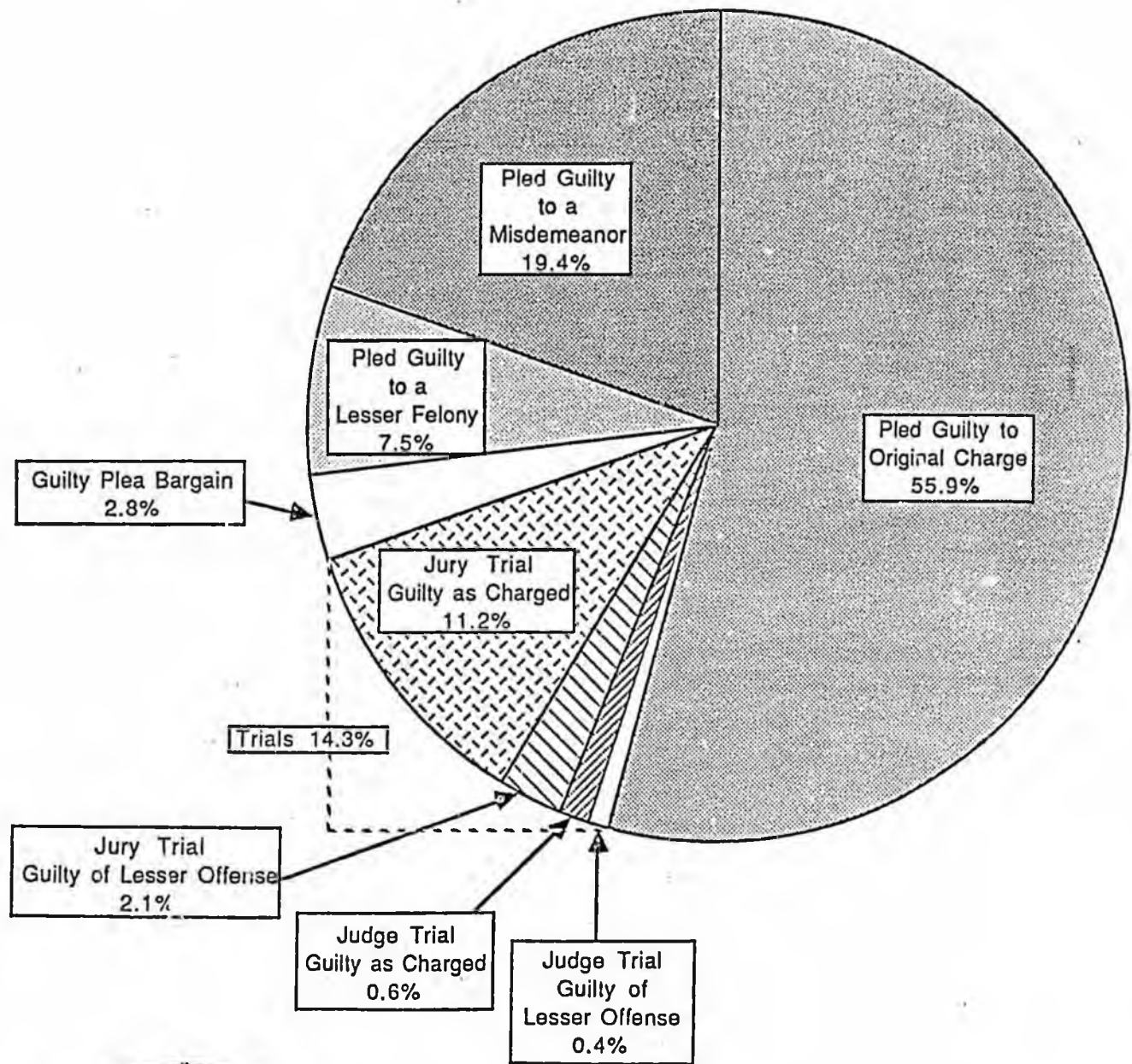
The study found that 14.3% of the offenders had been convicted after a trial. Nearly 20% of the 1984 offenders had a misdemeanor as their final, most serious charge of conviction. Only 2.8% of the convicted offenders pled guilty in a recorded plea bargain as an exception allowed under the Attorney General's prohibition of plea bargaining.

Sentence lengths for offenders were strongly related to the seriousness of the offense. The most serious offenses (Unclassified) received sentences ranging from 87.9 months for sexual abuse of a minor I to 401.3 months for murder I. Class A offenses typically received sentences of about 5 years, Class B offenses were sentenced to about 2 years and Class C offenses to about 1 year. The study found that the presumptive sentencing scheme had, with few exceptions, resulted in consistent sentence lengths for most offenders.

The report found a 100% increase in the amount of prison time imposed between 1980 and 1984. The study estimates that the increased numbers of convictions between 1980 and 1984 accounted for about 40% of the increased prison time in 1984. Legislative changes, including presumptive sentences for first-time felony offenders convicted of Class A offenses and reclassification of sexual and drug offenses, accounted for another 40% of increased prison time. The balance of the increase was due to the fact that a higher percentage of 1984 offenders were convicted of serious crimes than were 1980 offenders.

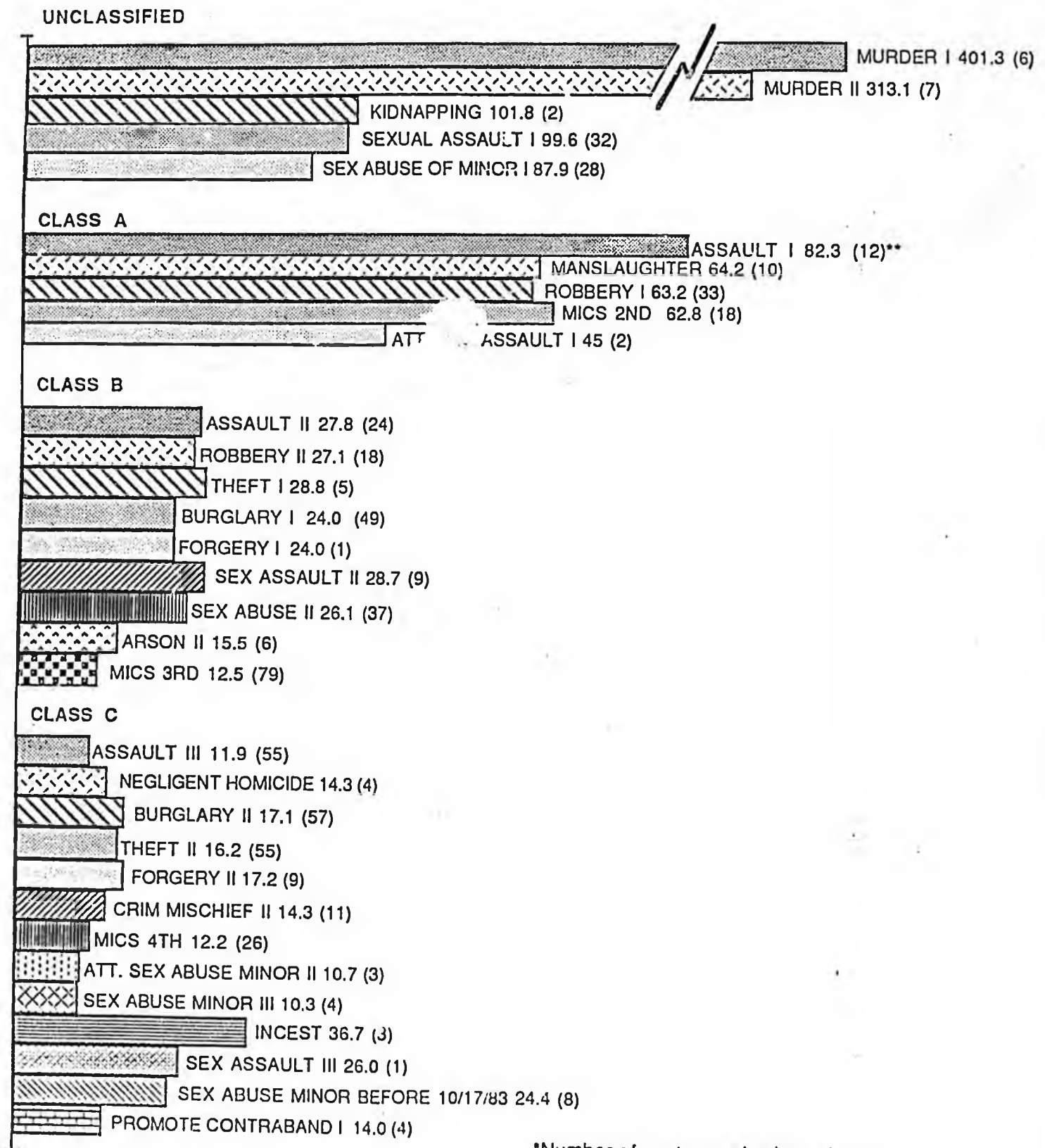
Additional copies of the report are available upon request from the Alaska Judicial Council. Contact: Teresa W. Carns, Acting Director, Alaska Judicial Council, 1031 W. 4th Avenue, Suite 301, Anchorage, Alaska 99501, telephone 279-2526.

FIGURE 3
(Alaska Felony Sentences: 1984)
Types of Convictions



Original vs. Amended Charge

FIGURE 7
Alaska Felony Sentences: 1984
Comparison of Mean Sentence Length For Selected Offenses
by Class of Offense*



*Number of sentences is shown in parentheses.
 All sentence lengths are in months.
 **Includes one sentence of 20 years (240 months)

FIGURE 6
(ALASKA FELONY SENTENCES: 1984)
Increase in Total Prison Time: Percent of
Increase Due to Specific Factors

