

HB

366

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 5, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/2/90

The FINANCE Committee considered:

SSHB 366

SS FOR HOUSE BILL NO. 366 TREATMENT OR REHABILITATION OF OFFENDERS

"An Act relating to the treatment and rehabilitation of a defendant convicted of an offense."

RECOMMENDATIONS:

- be replaced with SSSHB 366 (JUD) the same title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note HSS - Public Safety - Corrections fiscal note(s) _____
- zero with analysis Court System zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

<u>[Signature]</u> Hoffman	<u>[Signature]</u> Koponen	X		
<u>[Signature]</u> Larson				
<u>[Signature]</u> Brown				
<u>[Signature]</u> Ulmetz				
<u>[Signature]</u> Barnes				
<u>[Signature]</u> Shultz				
<u>[Signature]</u> Phillips				
<u>[Signature]</u> Rieger				

[Signature] Hoffman
CO - Chairman's Signature
[Signature] Larson

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: "An Act relating to the treatment and rehabilitation of a defendant convicted of an offense." BRU: Alcohol & Drug Abuse Services
 Sponsor: Ulmer Components: ASAP
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

FY 90 Fiscal Impact is "0".

Prepared by: Matthew C. Felix, Coordinator *Matthew Felix* Phone: 586-6201
 Division: Office of Alcoholism & Drug Abuse Date: 1/23/90

Approved by Commissioner: *Mpa M Munson* Date: 1/23/90
 Agency: Health & Social Services

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

Adopted

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Treatment & Rehabilitation of
offenders
Sponsor: Rep. Ulmer, et al
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence
and Sexual Assault
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence and Sexual
Assault
Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Phone: 465-4356
Date: 1/22/90
Date: _____
Page 1 of 1

Adopted

1/22/90

Bjm

SE

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to treatment and rehabilitation of a defendant."
Sponsor: Representative Ulmer
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Division: Administrative Services

Phone: 465-3376
Date: 01/24/90

Approved by Commissioner: *S. H. ... - Barnitt*
Agency: Department of Corrections

Date: 01/24/90

Distribution (by preparer):

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

Adopted

1990 LEGISLATIVE SESSION

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: <u>An Act relating to the treatment and rehabilitation of a defendant</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Ulmer</u>	Components:	
Requestor:		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. See attached analysis.

Prepared by: Jan Strandberg, General Counsel
Division: Alaska Court System

Phone: 284-8228
Date: 01/22/90

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 01/22/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor

Adopted

Alaska Court System

HB 366

This proposed legislation may impact the Alaska Court System if a significant number of review hearings are held under sections 4 and 7. Because that number cannot be determined with any accuracy at this time, no present fiscal impact is indicated. If the court finds that it is holding an appreciable number of review hearings, a supplemental appropriation will be requested.

Offered: 2/5/90
Referred: Finance

6-1692J

Original sponsor(s): REP. ULMER, Ellis, Goll

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 366 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the treatment and rehabilitation
7 of a defendant convicted of an offense; and providing
8 for an effective date."

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

10 * Section 1. AS 12.55.015(a) is amended to read:

11 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in
12 imposing sentence on a defendant convicted of an offense, may singly
13 or in combination

14 (1) impose a fine when authorized by law and as provided in
15 AS 12.55.035;

16 (2) order the defendant to be placed on probation under
17 conditions specified by the court that may include provision for
18 active supervision;

19 (3) impose a definite term of periodic imprisonment;

20 (4) impose a definite term of continuous imprisonment;

21 (5) order the defendant to make restitution under AS 12.-
22 55.045;

23 (6) order the defendant to carry out a continuous or peri-
24 odic program of community work under AS 12.55.055;

25 (7) suspend execution of all or a portion of the sentence
26 imposed under AS 12.55.080;

27 (8) suspend imposition of sentence under AS 12.55.085;

28 (9) order the forfeiture to the commissioner of public
29 safety of a deadly weapon that was in the actual possession of or used

HB0366C

1 by the defendant during the commission of an offense described in
2 AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

3 (10) order the defendant, while incarcerated, to participate
4 in or comply with the treatment plan of a rehabilitation program that
5 is related to the defendant's offense or to the defendant's reha-
6 ilitation, if the program is made available to the defendant by the
7 Department of Corrections.

8 * Sec. 2. AS 12.55.085(b) is amended to read:

9 (b) At any time during the probationary term of the person
10 released on probation, a probation officer may, without warrant or
11 other process, rearrest the person so placed in the officer's care and
12 bring the person before the court, or the court may, in its discre-
13 tion, issue a warrant for the rearrest of the person. The court [AND]
14 may revoke and terminate the probation [,] if the interests of justice
15 require, and if the court, in its judgment, has reason to believe that
16 the person placed upon probation is

17 (1) violating the conditions of probation;

18 (2) [, OR] engaging in criminal practices; or

19 (3) violating an order of the court to participate in or
20 comply with the treatment plan of a rehabilitation program under
21 AS 12.55.015(a)(10) [, OR HAS BECOME ABANDONED TO IMPROPER ASSOCIATES,
22 OR A VICIOUS LIFE].

23 * Sec. 3. AS 12.55.100(a) is amended to read:

24 (a) While on probation and among the conditions of probation,
25 the defendant may be required

26 (1) to pay a fine in one or several sums;

27 (2) to make restitution or reparation to aggrieved parties
28 for actual damages or loss caused by the crime for which conviction
29 was had;

1 (3) to provide for the support of any persons for whose
2 support the defendant is legally responsible; [AND]

3 (4) to perform community work in accordance with AS 12.-
4 55.055;

5 (5) to participate in or comply with the treatment plan of
6 an inpatient or outpatient rehabilitation program specified by either
7 the court or the defendant's probation officer that is related to the
8 defendant's offense or to the defendant's rehabilitation; and

9 (6) to satisfy the screening, evaluation, referral, and
10 program requirements of an agency authorized by the court to make
11 referrals for rehabilitative treatment or to provide rehabilitative
12 treatment.

13 * Sec. 4. AS 12.55.100 is amended by adding a new subsection to read:

14 (c) A program of inpatient treatment may be required by the
15 authorized agency under (a)(6) of this section only if authorized in
16 the judgment, and may not exceed the maximum term of inpatient treat-
17 ment specified in the judgment. A person who has been referred for
18 inpatient treatment may make a written request to the sentencing court
19 asking the court to review the referral. The request for review shall
20 be made within seven days of the agency's referral, and shall specif-
21 ically set out the grounds upon which the request for review is based.
22 The court may order a hearing on the request for review.

23 * Sec. 5. AS 12.55.110 is amended by adding a new subsection to read:

24 (b) Good cause justifying the revocation of a suspended sentence
25 is established if the defendant has violated an order of the court to
26 participate in or comply with the treatment plan of a rehabilitation
27 program under AS 12.55.015(a)(10).

28 * Sec. 6. AS 28.35.030(c) is amended to read:

29 (c) Upon conviction under this section the court shall impose a

1 minimum sentence of imprisonment of not less than 72 consecutive hours
2 and a fine of not less than \$250 if the person has not been previously
3 convicted in this or another jurisdiction of driving while intoxicated
4 under this or another law or ordinance with substantially similar
5 elements or refusal to submit to a chemical test under AS 28.35.032 or
6 another law or ordinance with substantially similar elements. Upon
7 conviction under this section the court shall impose a minimum sen-
8 tence of imprisonment of not less than 20 consecutive days and a fine
9 of not less than \$500 if, within the preceding 10 years, the person
10 has been previously convicted once in this or another jurisdiction of
11 driving while intoxicated under this or another law or ordinance with
12 substantially similar elements or refusal to submit to a chemical test
13 under AS 28.35.032 or another law or ordinance with substantially
14 similar elements. Upon conviction under this section the court shall
15 impose a minimum sentence of imprisonment of not less than 30 consecu-
16 tive days and a fine of not less than \$1,000 if, within the preceding
17 10 years, the person has been previously convicted in this or another
18 jurisdiction of more than one of the following offenses or has more
19 than once been previously convicted of one of the following offenses:
20 (1) driving while intoxicated under this or another law or ordinance
21 with substantially similar elements; (2) refusal to submit to a chemi-
22 cal test under AS 28.35.032 or another law or ordinance with substan-
23 tially similar elements. The execution of sentence may not be sus-
24 pended nor may probation be granted except on condition that the
25 minimum imprisonment provided in this section is served. Probation may
26 be conditioned as provided in AS 12.55.102. Imposition of sentence
27 may not be suspended. In addition, if the offense involved driving a
28 motor vehicle for which a driver's license is required, the person's
29 driver's license shall be revoked in accordance with AS 28.15.181 and

1 the vehicle used in commission of the offense may be forfeited under
2 AS 28.35.036. [IN ADDITION, THE COURT SHALL ORDER, AND A PERSON
3 CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPECIFIED BY
4 THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION THAT
5 THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (d)
6 OF THIS SECTION, FINDS APPROPRIATE.]

7 * Sec. 7. AS 28.35.030 is amended by adding new subsections to read:

8 (i) The court shall order a person convicted under this section
9 to satisfy the screening, evaluation, referral, and program require-
10 ments of an agency authorized by the court to make referrals for
11 rehabilitative treatment or to provide rehabilitative treatment.

12 (j) A program of inpatient treatment may be required by the
13 authorized agency under (i) of this section only if authorized in the
14 judgment, and may not exceed the maximum term of inpatient treatment
15 specified in the judgment. A person who has been referred for
16 inpatient treatment under this subsection may make a written request
17 to the sentencing court asking the court to review the referral. The
18 request for review shall be made within seven days of the agency's
19 referral, and shall specifically set out the grounds upon which the
20 request for review is based. The court may order a hearing on the
21 request for review.

22 (k) If a person fails to satisfy the requirements of an au-
23 thorized agency under (j) of this section, the court

24 (1) may impose any portion of a suspended sentence;

25 (2) may punish the failure as contempt of the authority of
26 the court under AS 09.50.010 or as a violation of a condition of
27 probation; and

28 (3) shall order the revocation or suspension of the per-
29 son's driver's license until the requirements are satisfied.

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

2 (g) Upon conviction of a person under this section, the court
3 shall impose a minimum sentence of imprisonment of not less than 72
4 consecutive hours and a fine of not less than \$250 if the person has
5 not been previously convicted in this or another jurisdiction of
6 driving while intoxicated under AS 28.25.030 or another law or ordi-
7 nance with substantially similar elements or refusal to submit to a
8 chemical test under this section or another law or ordinance with
9 substantially similar elements. Upon conviction under this section the
10 court shall impose a minimum sentence of imprisonment of not less than
11 20 consecutive days and a fine of not less than \$500 if, within the
12 preceding 10 years, the person has been previously convicted once in
13 this or another jurisdiction of driving while intoxicated under
14 AS 28.35.030 or another law or ordinance with substantially similar
15 elements or refusal to submit to a chemical test under this section or
16 another law or ordinance with substantially similar elements. Upon
17 conviction under this section the court shall impose a minimum sen-
18 tence of imprisonment of not less than 30 consecutive days and a fine
19 of not less than \$1,000, if, within the previous 10 years, the person
20 has been previously convicted in this or another jurisdiction of more
21 than one of the following offenses or has more than once been previ-
22 ously convicted of one of the following offenses: (1) driving while
23 intoxicated under AS 28.35.030 or another law or ordinance with sub-
24 stantially similar elements; (2) refusal to submit to a chemical test
25 under this section or another law or ordinance with substantially
26 similar elements. The execution of sentence may not be suspended nor
27 may probation be granted except on condition that the minimum impris-
28 onment provided in this section is served. Probation may be condi-
29 tioned as provided in AS 12.55.102. Imposition of sentence may not be

1 suspended. If the offense involved driving a motor vehicle for which
2 a driver's license is required, the person's driver's license shall be
3 revoked under AS 28.15.181. [IN ADDITION, THE COURT SHALL ORDER, AND A
4 PERSON CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPEC-
5 IFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITA-
6 TION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED
7 UNDER (h) OF THIS SECTION, FINDS APPROPRIATE.] The sentence imposed
8 by the court under this subsection shall run consecutively with any
9 other sentence of imprisonment imposed on the committed person.

10 * Sec. 9. AS 28.35.032 is amended by adding new subsections to read:

11 (l) The court shall order a person convicted under this section
12 to satisfy the screening, evaluation, referral, and program require-
13 ments of an agency authorized by the court to make referrals for
14 rehabilitative treatment or to provide rehabilitative treatment.

15 (m) A program of inpatient treatment may be required by the
16 authorized agency under (l) of this section only if authorized in the
17 judgment, and may not exceed the maximum term of inpatient treatment
18 specified in the judgment. A person who has been referred for inpa-
19 tient treatment under this subsection may make a written request to
20 the sentencing court asking the court to review the referral. The
21 request for review shall be made within seven days of the agency's
22 referral, and shall specifically set out the grounds upon which the
23 request for review is based. The court may order a hearing on the
24 request for review.

25 (n) If a person fails to satisfy the requirements of an au-
26 thorized agency under (m) of this section, the court

27 (1) may impose any portion of a suspended sentence;

28 (2) may punish the failure as contempt of the authority of
29 the court under AS 09.50.010 or as a violation of a condition of

1 probation; and

2 (3) shall order the revocation or suspension of the per-
3 son's driver's license until the requirements are satisfied.

4 * Sec. 10. AS 33.16.220(a) is amended to read:

5 (a) The board may revoke parole if the parolee

6 (1) engages in [FOR] conduct in violation of AS 33.16.-
7 150(a) or (b); or

8 (2) has violated an order of the court to participate in or
9 comply with the treatment plan of a rehabilitation program under
10 AS 12.55.015(a)(10).

11 * Sec. 11. AS 33.30.011 is amended to read:

12 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

13 (1) establish, maintain, operate, and control correctional
14 facilities suitable for the custody, care, and discipline of persons
15 charged or convicted of offenses against the state or held under
16 authority of state law;

17 (2) classify prisoners;

18 (3) for persons committed to the custody of the commis-
19 sioner, establish programs, including furlough programs that are
20 reasonably calculated to

21 (A) protect the public;

22 (B) maintain health;

23 (C) create or improve occupational skills;

24 (D) enhance educational qualifications;

25 (E) support court-ordered restitution; and

26 (F) otherwise provide for the rehabilitation and
27 reformation of prisoners, facilitating their reintegration into
28 society;

29 (4) provide necessary medical services for prisoners in

1 correctional facilities or who are committed by a court to the custody
2 of the commissioner, including examinations for communicable and
3 infectious diseases; and

4 (5) provide necessary psychological or psychiatric treat-
5 ment if a physician or other health care provider, exercising ordinary
6 skill and care at the time of observation, concludes that

7 (A) a prisoner exhibits symptoms of a serious disease
8 or injury that is curable or may be substantially alleviated; and

9 (B) the potential for harm to the prisoner by reason
10 of delay or denial of care is substantial;

11 (6) establish minimum standards for sex offender treatment
12 programs offered to persons who are committed to the custody of the
13 commissioner.

14 * Sec. 12. AS 12.55.015(d) is repealed.

15 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

Introduced: 1/15/90
 Referred: Judiciary, and Finance

BY REP. ULMER, Ellis

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 366

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the treatment and rehabilitation
 7 of a defendant convicted of an offense."

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

9 * Section 1. AS 12.55.015(a) is amended to read:

10 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in
 11 imposing sentence on a defendant convicted of an offense, may singly
 12 or in combination

13 (1) impose a fine when authorized by law and as provided in
 14 AS 12.55.035;

15 (2) order the defendant to be placed on probation under
 16 conditions specified by the court that may include provision for
 17 active supervision;

18 (3) impose a definite term of periodic imprisonment;

19 (4) impose a definite term of continuous imprisonment;

20 (5) order the defendant to make restitution under AS 12.-
 21 55.045;

22 (6) order the defendant to carry out a continuous or peri-
 23 odic program of community work under AS 12.55.055;

24 (7) suspend execution of all or a portion of the sentence
 25 imposed under AS 12.55.080;

26 (8) suspend imposition of sentence under AS 12.55.085;

27 (9) order the forfeiture to the commissioner of public
 28 safety of a deadly weapon that was in the actual possession of or used
 29 by the defendant during the commission of an offense described in

1 AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

2 (10) order the defendant, while incarcerated, to participate
3 in or successfully complete a rehabilitation program that is related
4 to the defendant's offense or to the defendant's rehabilitation, if
5 the program is made available to the defendant by the Department of
6 Corrections.

7 * Sec. 2. AS 12.55.085(b) is amended to read:

8 (b) At any time during the probationary term of the person
9 released on probation, a probation officer may, without warrant or
10 other process, rearrest the person so placed in the officer's care and
11 bring the person before the court, or the court may, in its discre-
12 tion, issue a warrant for the rearrest of the person. The court [AND]
13 may revoke and terminate the probation [,] if the interests of justice
14 require, and if the court, in its judgment, has reason to believe that
15 the person placed upon probation is

16 (1) violating the conditions of probation;

17 (2) [, OR] engaging in criminal practices; or

18 (3) violating an order of the court to participate in or
19 successfully complete a rehabilitation program under AS 12.55.-
20 015(a)(10) [, OR HAS BECOME ABANDONED TO IMPROPER ASSOCIATES, OR A
21 VICIOUS LIFE].

22 * Sec. 3. AS 12.55.100(a) is amended to read:

23 (a) While on probation and among the conditions of probation,
24 the defendant may be required

25 (1) to pay a fine in one or several sums;

26 (2) to make restitution or reparation to aggrieved parties
27 for actual damages or loss caused by the crime for which conviction
28 was had;

29 (3) to provide for the support of any persons for whose

1 support the defendant is legally responsible; [AND]

2 (4) to perform community work in accordance with AS 12.-
3 55.055₁

4 (5) to participate in or successfully complete an inpatient
5 rehabilitation program specified by either the court or the defen-
6 tant's probation officer that is related to the defendant's offense or
7 to the defendant's rehabilitation; and

8 (6) to satisfy the screening, evaluation, referral, pro-
9 gram, and fee requirements of an agency authorized by the court to
10 make referrals for rehabilitative treatment.

11 * Sec. 4. AS 12.55.100 is amended by adding a new subsection to read:

12 (c) A program of inpatient treatment may be required by the
13 referral agency under (a)(6) of this section only if authorized in the
14 judgment, and may not exceed the maximum term of inpatient treatment
15 specified in the judgment. A person who has been referred for inpa-
16 tient treatment may make a written request to the sentencing court
17 asking the court to review the referral. The request for review shall
18 be made within seven days of the agency's referral, and shall specif-
19 ically set out the grounds upon which the request for review is based.
20 The court may order a hearing on the request for review. If the
21 person establishes by clear and convincing evidence that the referral
22 for inpatient treatment was arbitrary or capricious, the court may
23 rescind or modify the referral.

24 * Sec. 5. AS 12.55.110 is amended by adding a new subsection to read:

25 (b) Good cause justifying the revocation of a suspended sentence
26 is established if the defendant has violated an order of the court to
27 participate in or successfully complete a rehabilitation program under
28 AS 12.55.015(a)(10).

29 * Sec. 6. AS 28.35.030(c) is amended to read:

1 (c) Upon conviction under this section the court shall impose a
2 minimum sentence of imprisonment of not less than 72 consecutive hours
3 and a fine of not less than \$250 if the person has not been previously
4 convicted in this or another jurisdiction of driving while intoxicated
5 under this or another law or ordinance with substantially similar
6 elements or refusal to submit to a chemical test under AS 28.35.032 or
7 another law or ordinance with substantially similar elements. Upon
8 conviction under this section the court shall impose a minimum sen-
9 tence of imprisonment of not less than 20 consecutive days and a fine
10 of not less than \$500 if, within the preceding 10 years, the person
11 has been previously convicted once in this or another jurisdiction of
12 driving while intoxicated under this or another law or ordinance with
13 substantially similar elements or refusal to submit to a chemical test
14 under AS 28.35.032 or another law or ordinance with substantially
15 similar elements. Upon conviction under this section the court shall
16 impose a minimum sentence of imprisonment of not less than 30 consecu-
17 tive days and a fine of not less than \$1,000 if, within the preceding
18 10 years, the person has been previously convicted in this or another
19 jurisdiction of more than one of the following offenses or has more
20 than once been previously convicted of one of the following offenses:
21 (1) driving while intoxicated under this or another law or ordinance
22 with substantially similar elements; (2) refusal to submit to a chemi-
23 cal test under AS 28.35.032 or another law or ordinance with substan-
24 tially similar elements. The execution of sentence may not be sus-
25 pended nor may probation be granted except on condition that the
26 minimum imprisonment provided in this section is served. Probation may
27 be conditioned as provided in AS 12.55.102. Imposition of sentence
28 may not be suspended. In addition, if the offense involved driving a
29 motor vehicle for which a driver's license is required, the person's

1 driver's license shall be revoked in accordance with AS 28.15.181 and
2 the vehicle used in commission of the offense may be forfeited under
3 AS 28.35.036. [IN ADDITION, THE COURT SHALL ORDER, AND A PERSON
4 CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPECIFIED BY
5 THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION THAT
6 THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (d)
7 OF THIS SECTION, FINDS APPROPRIATE.]

8 * Sec. 7. AS 28.35.030 is amended by adding new subsections to read:

9 (i) The court shall order a person convicted under this section
10 to satisfy the screening, evaluation, referral, program, and fee
11 requirements of an agency authorized by the court to make referrals
12 for rehabilitative treatment.

13 (j) A program of inpatient treatment may be required by the
14 referral agency under (i) of this section only if authorized in the
15 judgment, and may not exceed the maximum term of inpatient treatment
16 specified in the judgment. A person who has been referred for inpa-
17 tient treatment under this subsection may make a written request to
18 the sentencing court asking the court to review the referral. The
19 request for review shall be made within seven days of the agency's
20 referral, and shall specifically set out the grounds upon which the
21 request for review is based. The court may order a hearing on the
22 request for review. If the person establishes by clear and convincing
23 evidence that the referral for inpatient treatment was arbitrary or
24 capricious, the court may rescind or modify the referral.

25 (k) If a person fails to satisfy the requirements of an au-
26 thorized agency under (j) of this section, the court

27 (1) may impose any portion of a suspended sentence;

28 (2) may punish the failure as contempt of the authority of
29 the court under AS 09.50.010 or as a violation of a condition of

1 probation; and

2 (3) shall order the revocation or suspension of the per-
3 son's driver's license until the requirements are satisfied.

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

5 (g) Upon conviction of a person under this section, the court
6 shall impose a minimum sentence of imprisonment of not less than 72
7 consecutive hours and a fine of not less than \$250 if the person has
8 not been previously convicted in this or another jurisdiction of
9 driving while intoxicated under AS 28.25.030 or another law or ordi-
10 nance with substantially similar elements or refusal to submit to a
11 chemical test under this section or another law or ordinance with
12 substantially similar elements. Upon conviction under this section the
13 court shall impose a minimum sentence of imprisonment of not less than
14 20 consecutive days and a fine of not less than \$500 if, within the
15 preceding 10 years, the person has been previously convicted once in
16 this or another jurisdiction of driving while intoxicated under
17 AS 28.35.030 or another law or ordinance with substantially similar
18 elements or refusal to submit to a chemical test under this section or
19 another law or ordinance with substantially similar elements. Upon
20 conviction under this section the court shall impose a minimum sen-
21 tence of imprisonment of not less than 30 consecutive days and a fine
22 of not less than \$1,000, if, within the previous 10 years, the person
23 has been previously convicted in this or another jurisdiction of more
24 than one of the following offenses or has more than once been previ-
25 ously convicted of one of the following offenses: (1) driving while
26 intoxicated under AS 28.35.030 or another law or ordinance with sub-
27 stantially similar elements; (2) refusal to submit to a chemical test
28 under this section or another law or ordinance with substantially
29 similar elements. The execution of sentence may not be suspended nor

1 may probation be granted except on condition that the minimum impris-
2 onment provided in this section is served. Probation may be condi-
3 tioned as provided in AS 12.55.102. Imposition of sentence may not be
4 suspended. If the offense involved driving a motor vehicle for which
5 a driver's license is required, the person's driver's license shall be
6 revoked under AS 28.15.181. [IN ADDITION, THE COURT SHALL ORDER, AND A
7 PERSON CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPEC-
8 IFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITA-
9 TION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED
10 UNDER (h) OF THIS SECTION, FINDS APPROPRIATE.] The sentence imposed
11 by the court under this subsection shall run consecutively with any
12 other sentence of imprisonment imposed on the committed person.

13 * Sec. 9. AS 28.35.032 is amended by adding new subsections to read:

14 (l) The court shall order a person convicted under this section
15 to satisfy the screening, evaluation, referral, program, and fee
16 requirements of an agency authorized by the court to make referrals
17 for rehabilitative treatment.

18 (m) A program of inpatient treatment may be required by the
19 referral agency under (l) of this section only if authorized in the
20 judgment, and may not exceed the maximum term of inpatient treatment
21 specified in the judgment. A person who has been referred for inpa-
22 tient treatment under this subsection may make a written request to
23 the sentencing court asking the court to review the referral. The
24 request for review shall be made within seven days of the agency's
25 referral, and shall specifically set out the grounds upon which the
26 request for review is based. The court may order a hearing on the
27 request for review. If the person establishes by clear and convincing
28 evidence that the referral for inpatient treatment was arbitrary or
29 capricious, the court may rescind or modify the referral.

1 (n) If a person fails to satisfy the requirements of an au-
2 thorized agency under (m) of this section, the court

3 (1) may impose any portion of a suspended sentence;

4 (2) may punish the failure as contempt of the authority of
5 the court under AS 09.50.010 or as a violation of a condition of
6 probation; and

7 (3) shall order the revocation or suspension of the per-
8 son's driver's license until the requirements are satisfied.

9 * Sec. 10. AS 33.16.220(a) is amended to read:

10 (a) The board may revoke parole if the parolee

11 (1) engages in [FOR] conduct in violation of AS 33.16.-
12 150(a) or (b); or

13 (2) has violated an order of the court to participate in or
14 successfully complete a rehabilitation program under AS 12.55.-
15 015(a)(10).

16 * Sec. 11. AS 12.55.015(d) is repealed.
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REP. ULMER
2/21/90

SECTIONAL ANALYSIS OF CSSH B 366, RELATING TO OFFENDER TREATMENT

SECTION 1: Authorizes the court to order the offender, while incarcerated, to participate in and comply with the treatment plan of a rehabilitation program that is related to the defendant's offense. This order would apply only to those programs made available by the Department of Corrections.

SECTION 2: Authorizes the court to revoke and terminate probation if the person on probation fails to participate in or comply with the treatment plan of a rehabilitation program.

SECTION 3: Authorizes the court to require an offender on probation to participate/comply with inpatient treatment or to satisfy the screening, evaluation, referral, program, and fee requirements of a referral agency (e.g. Alcohol Safety Action Programs) for rehabilitative treatment.

SECTION 4: Requires that referrals for in-patient treatment first be authorized by the court; treatment may not exceed the maximum term of inpatient treatment specified in the judgment. A person referred for inpatient treatment may challenge the referral by requesting review within 7 days of the agency's referral. Court may order a hearing on the referral.

SECTION 5: A suspended imposition of sentence may be revoked if the defendant does not comply with the treatment plan of a rehabilitation program ordered by the court.

SECTION 6: Amends DWI statutes to delete requirement regarding alcohol education or rehabilitation. This is a technical amendment necessitated by bill section 7.

SECTION 7: Amends the drunk driving statutes: Authorizes the court to require the offender to satisfy the screening, evaluation, referral, program and fee requirements of a referral agency for rehabilitative treatment. Requires that referrals for in-patient treatment first be authorized by the court; treatment may not exceed the maximum term of inpatient treatment specified in the judgment. A person referred for inpatient treatment may challenge

the referral by requesting review within 7 days of the agency's referral. Court may order a hearing on the referral. If a person fails to satisfy the requirements of the referral agency, the court:

- may impose any portion of a suspended sentence;
- may punish the failure as contempt of court or as a violation of a condition of probation;
- shall order revocation or suspension of driver's license until the requirements are satisfied.

SECTION 8: Amends DWI statutes to delete requirement regarding alcohol education or treatment. This is a technical amendment necessitated by bill section 9.

SECTION 9: Amends the drunk driving statutes: Authorizes the court to require the offender to satisfy the screening, evaluation, referral, program and fee requirements of a referral agency for rehabilitative treatment. Requires that referrals for in-patient treatment first be authorized by the court; treatment may not exceed the maximum term of inpatient treatment specified in the judgment. A person referred for inpatient treatment may challenge the referral by requesting review within 7 days of the agency's referral. Court may order a hearing on the referral. If a person fails to satisfy the requirements of the referral agency, the court:

- may impose any portion of a suspended sentence;
- may punish the failure as contempt of court or as a violation of a condition of probation;
- shall order revocation or suspension of driver's license until the requirements are satisfied.

SECTION 10: The Parole Board is given the discretion to revoke parole if the parolee does not participate in or comply with the treatment plan of a rehabilitation program ordered by the court. This authority applies ONLY to situations where an offender has received a presumptive sentence and is released on mandatory parole as a result of the accumulation of good time.

SECTION 11: Requires the Commissioner of Corrections to establish minimum standards for sex offender treatment programs offered by the state to offenders in custody.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF ALCOHOLISM AND DRUG ABUSE

P.O. BOX H-05F
JUNEAU, ALASKA 99811-0607
PHONE: (907) 586-6201

January 23, 1990

Fran Ulmer
Rm. 421, Capitol
P. O. Box "V"
Juneau, AK. 99811

Dear Fran:

The State Office of Alcoholism & Drug Abuse strongly supports House Bill 366. As you know, the Hester Decision in July, 1989 created problems in referring court cases to alcohol/drug abuse treatment centers. We feel that this bill will solve the difficulties presented by Hester.

Authorizing the court to designate an agency to conduct the screening, evaluation and referral will allow the ASAP office to continue to function as a bridge and link between the court and the health care delivery system.

We are particularly pleased with having consequences for treatment noncompliance in the form of driver's license revocation. This legislation would not increase the period of license revocation unless the defendant failed to complete requirements. This will greatly enhance the motivation to enter treatment and complete in a timely manner. Research has shown that to be most effective treatment must begin as soon after a crisis event as possible. This bill will create a strong impetus to do that.

This change in statute would seem to take care of the problems brought about by the Hester decision. It goes on to give the court control over the requirement of residential treatment, and gives the defendant a path back to the court when residential treatment is recommended.

This access to the sentencing judge is already done on any ASAP case where the defendant disagrees with the referral requirement, whether the referral is residential or outpatient. This reinforces the court's final authority in every case decision.

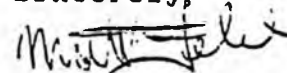
In addition, under present statute there is no way to enforce treatment or rehabilitation if a defendant is incarcerated. Treatment can be available in the facility of incarceration and the defendant can refuse with no consequences.

Matthew Felix letter continued...

pg. 2

We feel that this legislation is excellent and would like to provide our enthusiastic support to this bill.

Sincerely,

A handwritten signature in cursive script that reads "Matthew Felix". The signature is written in dark ink and is positioned above the printed name.

Matthew Felix

cc: Jay Livey

Alaska State Legislature

HOUSE OF REPRESENTATIVES



FEB 21 1990

REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 21, 1990

TO: Rep. Lyman Hoffman, Co-Chair
Rep. Ron Larson, Co-Chair
House Finance Committee

FROM: Rep. Fran Ulmer

RE: CSSSHB 366, relating to offender treatment

In 1987, the Court of Appeals ruled in Benboe v State, 738 P.2d 356 (Alaska App. 1987), that a sentencing court cannot order an inmate to participate in a sex offender (or any other) treatment program while in prison because the statutes do not give the courts the authority to enter such an order. In addition, as a result of the combined effect of two other court decisions, Hester v. State, 777 p.2d 217 (Alaska App. 1989), and Boyne v. State, 586 p.2d 1250 (Alaska 1978), a court probably cannot order in-patient treatment as part of probation. Offenders who might otherwise be ordered to in-patient treatment in lieu of jail, will now simply receive jail time.

CSSSHB 366 addresses these limitations relating to sentencing courts. In brief, it does the following:

- (1) Authorizes a sentencing court to require a convicted defendant to participate in "an appropriate rehabilitation or treatment program" while incarcerated;
- (2) Requires a defendant to comply with the treatment plan of a rehabilitation or treatment program as a condition of probation; and
- (3) Makes the defendant's failure to comply with the treatment plan of a rehabilitation program (a) grounds for revocation of probation, or (b) reason to revoke a suspended sentence.

House Finance Committee
February 21, 1990
Page 2

- (4) Authorizes the Parole Board to revoke parole if the defendant fails to comply with the treatment plan of a rehabilitation program ordered by the court.
- (5) Requires the Commissioner of Corrections to establish minimum standards for sex offender treatment programs offered to offenders.

Most offenders, regardless of offense, suffer from a variety of problems which require treatment in order for rehabilitation to occur. These problems include sexual disorders, alcohol and drug addictions, anger disorders, and others. If we are to reduce the offender recidivism rate, we must ensure that appropriate treatment does occur, either while a person is in custody or while he or she is on probation. This bill provides a mechanism for requiring offenders to receive necessary treatment, and a mechanism for enforcing court treatment orders.

FU/dl

City of Fairbanks
Police Department
656 7th Avenue Fairbanks, Alaska 99701
(907) 459-6500

November 24, 1989

Representative Fran Ulmer
Alaska State Legislature
1700 Angus Way
Juneau, Ak 99801

Re: Offender treatment

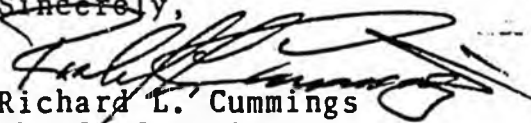
Dear Representative Ulmer:

Please accept my support for the bill you plan to introduce pertaining to an offender's mandatory participation and successful completion of treatment programs.

I hope you will find funding within Corrections budget to support treatment programs, that increase the defendant's possibilities of rehabilitation.

Please keep me informed on the progress of this bill and any assistance you need. Thank you very much for seeking Law Enforcement's opinion.

Sincerely,


Richard L. Cummings
Chief of Police

February 21, 1990

Ron Larson
State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Larson:

I received a copy of the Committee Substitute for House Bill 366 as amended and passed out of Judiciary Committee. While I applaud your good sense to remove the Standard of Proof, i.e., Clear and Convincing Evidence, from Sections 4, 7 & 9 of the original Bill, in doing so, you also removed any reference as to what relief the Court may provide if a defendant petitions the court for review of its order. I also believe some important points were overlooked.

In addition to the large fiscal impact of the Bill, the Bill still fails to identify the burden or proof required, prior to committing someone to a program of rehabilitation. The legislature should avoid providing the court with broad authority in this area and then leave it up to the expensive ritual of judicial decisions to establish the burden of proof. I strongly suggest an addition to the Bill, e.g.,

Section 1. (10) order the defendant, while incarcerated, to participate in or successfully complete a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation, if the program is made available to the defendant by the Department of Corrections, and if it is demonstrated by clear and convincing evidence that such a program is required.

This would provide the required constitutional protection, eliminate expensive appeals and court decisions on the issue and could quite possibly eliminate constitutional challenges to your proposed legislation. This of course does not cure the other problems that, in my opinion, must be cured prior to implementation of such a broad plan, e.g.;

*Committee Substitute
House Bill 366;
Comments, February 21, 1990*

- 1. Equal access to programs created by the department, and*
- 2. Some form of creating accredited programs or state certified programs so such programs are recognized by the mental health community.*

I would also like to make a suggestion, that may solve the problem with the legislature's wishes to remove the eligibility for dividend checks from those guilty of a criminal offense and would solve the constitutional problems of such a measure.

Since you're already amending AS 12.55.015, sentencing procedures, you should consider adding another subsection to read;

(b) In addition to any sentence of imprisonment imposed by the Superior Court, the Court shall order that the defendant not receive a permanent fund dividend check during the period of confinement imposed. The dividend check shall be assigned by order of the court based on the following order of priority;

- (1) Pay any order of restitution ordered by the Court;*
- (2) Pay Child Support, if the defendant has dependent children;*
- (3) To be deposited in the fund established for the purpose of compensating victims of violent crime; or*
- (4) To be assigned to the Department of Corrections.*

(c) A copy of the order of assignment issued under (b) of this section shall be transmitted to the Department of Revenue and to the Department of Corrections. The Department of Corrections shall provide a list each year to the Department of Revenue and shall designate where assigned dividend checks should be sent.

Such a subsection would effectively eliminate eligibility for the dividend check while a person is incarcerated, it would eliminate the equal protection and due process problems of the prior legislation, which is currently pending before the State Supreme Court, and it would provide an order of priority as to where that dividend check shall be assigned. Repealing AS 43.23.005(d) and amending

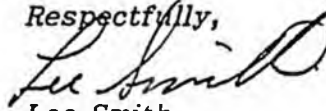
*Committee Substitute
House Bill 366;
Comments, February 21, 1990*

that statute to read that when a copy of the order issued under AS 12.55.015(b) is received by the Department of Revenue, then the check will be paid to the appropriate recipient would also eliminate any problems as to inmates who refuse to apply for their dividend checks, as they no longer need apply.

A constitutional challenge to the dividend issue would be completely eliminated by these amendments to AS 12.55.015 and repeal of AS 43.23.005(d).

I thank you for your consideration of this letter and my previous letters on this Bill. As always, I regard you and your colleagues;

Respectfully,



Lee Smith

P.O. Box 919

Palmer, Alaska 99645

*cc: Representative Lyman Hoffman
Representative Mike Navarre
Representative Sam Cotten
Representative Virginia Collins
Representative Curt Menard*