

HB

366

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 23, 1990

TO: Senator Jan Faiks, Chair
Senate Judiciary 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.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

Senator Jan Faiks
April 23, 1990
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- (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.

CSSSHB 366 is supported by:

Department of Corrections
Parole Board
Department of Law
Court System
SOADA, Dept. of Health & Social Services
Department of Public Safety

FU/dl

REP. ULMER
2/21/90

SECTIONAL ANALYSIS OF CSSH 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

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

OFFICE OF ALCOHOLISM AND DRUG ABUSE

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 or 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.

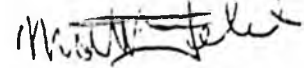
In addition, under present statute there is no way to enforce treatment or rehabilitation if a defendant is incarcerated. Treatment can be available in the facility of incarceration and the defendant can refuse with no consequences.

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, appearing to read "Matthew Felix".

Matthew Felix

cc: Jay Livey

STEVE COWPER, GOVERNOR

DEPARTMENT OF CORRECTIONS

BOARD OF PAROLE

ALASKA BOARD OF PAROLE
P.O. BOX 7
JUNEAU, ALASKA 99811-2000
PHONE: (907) 465-3384

February 28, 1990

Honorable Fran Ulmer
Alaska House of Representatives
Room 421, Capitol Building
P.O. Box V
Juneau, Alaska 99811

RE: SS HB 366

Dear Representative Ulmer:

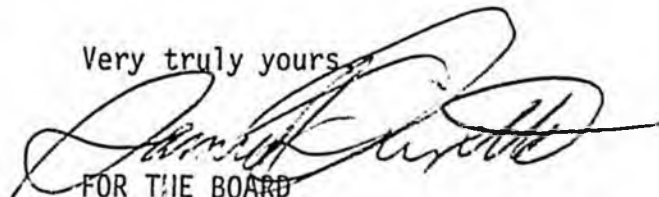
Your recent letter regarding SS HB 366 arrived too late to have the Board members review it during our hearings in January. I did put it on the agenda for our next meeting, which took place by teleconference about a week ago.

To the extent the bill will give the Judiciary the authority to enforce treatment in relevant cases, the Board strongly supports this issue. And it appears the bill will have that impact. The Board believes that relevant treatment to many offenders can reduce their risk to commit new crimes upon release. So it is this reduced risk to the public that we see as the "bottom line".

As a side note, the Board still believes that many offenders that are presumptively sentenced could be motivated into treatment if they were made eligible for parole. As you know, many offenders don't see the value in treatment until they have been exposed to it for awhile. The Board believes such legislation in the long run would help reduce prison overcrowding, reduce the risk of some offenders upon release, & result in better public protection. This might be an issue for discussion for next year.

Thank you again for soliciting the Board's comments and input on criminal justice legislation. The Board members take their responsibilities very seriously and are pleased to offer their experience and judgment on criminal justice issues.

Very truly yours,



FOR THE BOARD
Samuel H. Trivette
Executive Director

SHT/rs

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

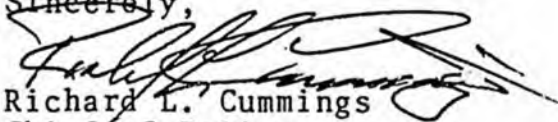
Dear Representative Ulmer:

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



Reducing sex offenses

by Keon S. Chi

States are taking the lead in treating and rehabilitating incarcerated sex offenders. The departments of corrections in Missouri and Vermont credit their treatment programs with lowering the number of inmates who become repeat offenders.

Missouri reduces new crimes

Missouri inmates who participated in the state's sex offender treatment program committed fewer repeat sex offenses compared to those who did not. According to a recent study by the Missouri Department of Corrections, only 17 percent of the participants of the 7-year-old program returned to prison, compared to 32 percent of offenders who did not receive treatment. Those who did not participate were three times more likely to commit a new sex offense. The study was based on a sample of 261 sex offenders who were released from prison between 1984 and 1985.

State law requires people imprisoned for sexual assault to participate in the treatment program but many refuse treatment. Currently, about 200 of 1,500 incarcerated sex offenders are in the program. The offender receives mental health treatment provided by a team of eight psychologists, who specialize in the treatment of sex offenders, and two corrections case workers.

The program consists of two phases. In the initial two-week phase, participants receive extensive psychological testing and attend classes on therapy and human behavior.

The second phase lasts approximately a year. Group therapy sessions are held four times a week. The therapy helps sex offenders

learn social, problem-solving, assertiveness and empathy skills. Overall, the program requires participants to take responsibility for their own attitudes, beliefs, behaviors, emotions and actions. For more information contact: Randee M. Kaiser, Director, Missouri Sexual Offender Program, Missouri Department of Corrections and Human Resources, (314) 751-2389.

Vermont diminishes sex crimes

Vermont has reduced repeat crimes dramatically by treating sex offenders. According to a 1988 study of the Vermont Treatment Program for Sexual Aggressors (VTPSA) by the state Department of Corrections, the overall recidivist rate for sex offenders treated in the program is 4 percent, while the rate for untreated offenders is 60 percent.

The program has about 200 sex offenders in three residential and 28 outpatient treatment groups. The program has been operational since 1982 and is based on the notion that sex offenders cannot be cured but can learn to control their abusive attitudes. Treatment includes individual, marital and group therapy, substance abuse counseling, vocational training and behavior modification.

Vermont officials also attribute the program's success to close supervision of offenders on probation by therapists and probation officers. The program requires collaboration of mental health, corrections and child protective services. State officials are studying the feasibility of a halfway house for more effective treatment of sex offenders newly released from prison.

Contact: William D. Pithers, Center for Prevention and Treatment of Sexual Abuse, Vermont Department of Corrections, (802) 244-6902. □

*Walt Majoran rec'd
Training of Pithers.*

Dr Chi is a senior policy analyst for The Council of State Governments' headquarters office

Alaska State Legislature

HOUSE OF REPRESENTATIVES



RECEIVED

APR 09 1990

REPRESENTATIVE FRAN ULMER

JAN FAIKS
SENATE OFFICE

M E M O R A N D U M

April 6, 1990

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Rep. Fran Ulmer

RE: Offender treatment

Last week the House Judiciary Committee heard a special presentation from Mr. Rob Freeman-Longo, a nationally recognized professional in the field of offender treatment programs, who is on contract with the Alaska Department of Corrections. He made several points during his testimony which I would like to bring to your attention in connection with HB 366, relating to offender treatment.

Mr. Freeman-Longo noted that many states are turning to stricter penalties for sexual offenses and that the number of sex offenders in jail is rising as a result. He stated unequivocally that sex offenders are dangerous if untreated. The recidivism rate for untreated sex offenders is about 80%. In light of the probability that an untreated sex offender will reoffend, one must consider that the average rapist has 10-15 victims for each conviction; a pedophile has 20-30 victims for every conviction.

Most importantly, Mr. Freeman-Longo stated that most sex offenders need to be incarcerated in order to receive the intensive treatment which is available from the state. The sex offender treatment program offered by the state requires 5 hours of treatment per day, 25 hours per week. This is far more than is offered in any out-patient setting. Mr. Freeman-Longo noted that this type of intensive, in-patient treatment is the only program model which consistently gets good results. The recidivism rate for offenders who have participated in Mr. Freeman-Longo's intensive treatment program is approximately 14%.

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Senator Faiks
April 6, 1990
Page 2

HB 366 provides an incentive for offenders to participate in treatment programs required by the court because it authorizes the Parole Board to revoke parole if treatment is not completed. The effect of this provision is a potential increase of an offender's sentence by up to one-third. In his testimony, Mr. Freeman-Longo strongly supported the concept that offenders should participate in treatment programs and he encouraged the state to provide incentives such as the one included in HB 366.

I urge you to schedule a hearing for HB 366 at the earliest possible date. Without the authorization to mandate treatment which is part of HB 366, Alaska will be merely warehousing offenders rather than rehabilitating them.

STATE OF ALASKA

PUBLIC DEFENDER AGENCY

STEVE COWPER, GOVERNOR

P.O. BOX 203
NOME, ALASKA 99762
PHONE: (907) 443-2281

RECEIVED

APR 09 1990

JAN FAIKS
SENATE OFFICE

REF: HB366

Dear Senator Faiks:

On March 29, HB366 was assigned to the Senate Judiciary Committee, having passed the House on March 27. I realize that a bill which ostensibly promotes "the treatment and rehabilitation of a defendant convicted of an offense" is directed toward a commendable goal. I have reviewed the bill, and I ask that you and the Judiciary Committee carefully consider the underlying premise and policy, as well as the practical impact of the bill. I ask that the bill not be passed out of committee.

A. Court Ordered Treatment Program While Incarcerated.

The goal of those sections of the bill which amend Titles 12 and 33 is to encourage more inmates to participate in available rehabilitation programs by threatening them with longer jail terms. The unstated and unproven premise is that rehabilitation programs can and actually do change behavior in most persons. Because of cultural values, most Alaskan Natives perform poorly in treatment programs featuring modern confrontation theories. The practical effect will be that a disproportionate number of Alaska Natives will serve prison terms of over twice the length of non-native inmates because of probation and parole revocations.

The Medical Model that requires a person to be released from "treatment" only when that person has been "cured" should not be applied to Alaska's Justice System. A person who receives a sentence which is appropriate for his offense and background should be able to "do his time" without being required to "participate in or comply with" questionable treatment programs. Until the State is prepared to guarantee the efficacy of the treatment program, an inmate should not be required to participate in the program under threat of an increased sentence. The bill violates the well-established rule that persons convicted of similar offenses should receive similar sentences. The bill will reintroduce racial and cultural disparity in sentences.

B. Alcohol Treatment Program After DWI

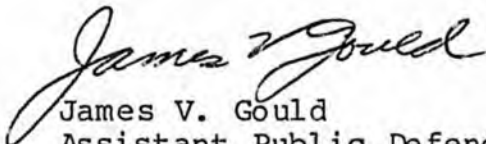
Those sections of the bill which amend Title 28 by delegating the court's sentencing authority in DWI cases to an agency will result in inappropriate, harsh requirements being imposed upon Alaska Natives and rural residents. In many instances there is only one agency in a region which is authorized to make referrals, and it is frequently the same agency which is authorized to provide the purported treatment. In some rural areas, there are no treatment programs being made available in the villages. The practical effect will be that Alaska Natives and rural residents will be required to either enter an inpatient program or move to Anchorage, Fairbanks, or Juneau where a full range of services are available. The resulting unnecessary disruption in family and community life is unacceptable.

C. Fiscal Responsibility

If this bill becomes law, the population of the already overcrowded jails will increase, for the bill provides only for longer sentences, not for shorter. The sentencing hearings will become longer and more expensive, for both the prosecution and the defense will frequently present experts to address the issue of whether the court should order the defendant to participate in treatment while incarcerated. Since experts are not readily available in rural Alaska, any difficulty in providing expert witnesses will fall disproportionately upon Alaska Natives. This bill will substantially increase the cost of Alaska's Justice System.

I ask that you carefully consider the impact of HB366, not merely its goal. I am willing to testify concerning this bill.

Sincerely,



James V. Gould

James V. Gould
Assistant Public Defender

JVG/no

cc: All Senators

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 18, 1990

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Rep. Fran Ulmer

RE: CSHB 366, relating to offender treatment

You have received a letter from Assistant Public Defender James Gould raising objections to CSHB 366, relating to offender treatment. Mr. Gould has substantially misstated the facts regarding offender treatment and I would like to offer these corrections to his observations.

ISSUE: Mr. Gould states "The unstated and unproven premise is that rehabilitation programs can and actually do change behavior in most persons." "Until the State is prepared to guarantee the efficacy of the treatment program, an inmate should not be required to participate in the program under threat of an increased sentence."

RESPONSE: A recent presentation to the House Judiciary Committee by nationally recognized offender treatment expert Mr. Rob Freeman-Longo (summarized in my memorandum of 4/6/90 to Sen. Faiks) dramatically substantiated the premise that treatment works. According to Mr. Freeman-Longo, the recidivism rate for untreated sex offenders is approximately 80%; after completing treatment, the recidivism rate is generally between 3%-25%. The experience of Alaska as well as other states which have embarked on intensive treatment programs demonstrates that rehabilitation is the most effective long-term measure for public protection and cost containment in the criminal justice system. Unfortunately, rehabilitation is a painful psychological process which has resulted in a 60% drop out rate. Mr. Freeman-Longo strongly advocated on behalf of incentives to participate in treatment such as the incentive offered in CSHB 366.

District 4B — Juneau

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Senator Jan Faiks
April 18, 1990
Page 2

ISSUE: Mr. Gould states "Because of cultural values, most Alaskan Natives perform poorly in treatment programs featuring modern confrontation theories.."

ANSWER: Mr. Gould is correct. However, the Department of Corrections currently has a specialist on contract to review treatment programs for this very problem and plans to adjust treatment modalities to accommodate cultural differences.

ISSUE: Mr. Gould states "Those sections of the bill which amend Title 28 by delegating the court's sentencing authority in DWI cases to an agency will result in inappropriate, harsh requirements being imposed upon Alaska Natives and rural residents. Alaska Natives and rural residents will be required to either enter an inpatient program or move to Anchorage, Fairbanks, or Juneau where a full range of services are available."

RESPONSE: Mr. Gould is incorrect; CSHB 366 does not delegate any of the court's sentencing authority to any other agency. This bill continues the court's prior practice of referring an offender to the appropriate screening agency after conviction to determine the kind of treatment an offender needs. This practice may result in the requirement for in-patient treatment in lieu of jail, a substitution which may better meet the needs of the offender as well as save the state money in its corrections system. Further, if an offender disagrees with the treatment recommendation made by the referral agency, the offender may contest that recommendation in court before sentence is imposed.

Mr. Gould is incorrect when he assumes that Alaska Natives and rural residents will be required to enter in-patient treatment or move from their communities. There is nothing in the bill which suggests that in-patient treatment will be favored over out-patient treatment. In fact, the thrust of the bill is to ensure that referrals for treatment are based on the specific needs of the individual and receive his or her agreement as well. In addition, the bill includes a provision which allows an offender to object to recommended treatment and to request alternate treatment. Virtually every community in Alaska offers out-patient treatment; this will undoubtedly be the preferred form of treatment because it is substantially lower in cost. However, if the alcohol addiction is so severe that a reoccurrence of the criminal behavior appears to be a substantial likelihood without in-patient treatment, then it is in both the state's and the individual's best interest to refer the offender for that type of treatment.

ISSUE: Mr. Gould states "If this bill becomes law . . . The sentencing hearings will become longer and more expensive, for both the prosecution and the defense will frequently present experts to address the issue of whether the court should order the defendant to participate in treatment while incarcerated. . . . This bill will substantially increase the cost of Alaska's Justice System."

Senator Jan Falks
April 18, 1990
Page 3

RESPONSE: Mr. Gould is incorrect; CSHB 366 carries a \$0 fiscal note. Since this bill simply authorizes the continuation of past practice, there will be no change to the length or the cost of sentencing hearings. In addition, one of the underlying purposes of this bill is to contain costs, in the long term, of Alaska's correctional system. Effective rehabilitation will reduce the recidivism rate for a wide range of offenses and thereby reduce future demands on, and costs of, the criminal justice system.

In closing, I would like the Senate Judiciary Committee to remember that CSHB 366 primarily allows the courts to continue their long-established practice of referring offenders for treatment; the bill's effect is to maintain the status quo. In his letter, Mr. Gould objects to what has been determined to be the most effective and humane way society has devised for dealing with violent, costly criminal behavior. Although I am sympathetic to Mr. Gould's concerns regarding the potential racially disparate effects of the bill, those concerns are not created by the bill. As Mr. Freeman-Longo testified before the House Judiciary Committee, the disproportionate number of Native offenders in jail should be addressed through education and prevention efforts, efforts which are clearly outside the scope of CSHB 366.

cc: Senate Judiciary Members
Mr. John Salemi, Public Defender
Mr. James V. Gould, Assistant Public Defender

THE
ALASKA CENTER
FOR RESPONSIBLE ALCOHOL CONTROL

Education
Outreach
Prevention
Training
Treatment

3098 Airport Way
Fairbanks, Alaska 99709
(907) 474-0004

A Program
Operated by
KILA, Inc.

March 30, 1990

To: Judiciary Committee
State of Alaska

From: Barbara J. Staley
Program Manager *BJS*

Re: House Bill 366

RECEIVED

APR 03 1990

JAN FAIKS
SENATE OFFICE

I was greatly distressed to read in the Tuesday, March 27, 1990 issue of The Fairbanks Daily News Miner that House Bill 366 passed the house without one dissenting vote. It is true there is no clear legal authority for judges to order certain offenders into "treatment." Did anyone in the House question the reason that this is so?

Were I in your position, before I placed the burden of mandating "treatment" on the judiciary, I would certainly ask myself some questions.

1. What is "treatment?"
2. What kinds of treatment do we have available to our heterogeneous Alaskan population?
3. Do current screening, evaluation and placement procedures assure that clients will be mandated into appropriate treatment settings?
4. Does "treatment" work?
5. How much will it cost?
6. Who will bear the cost for such coerced treatments and who will bear the liability for unsuccessful or harmful "treatment?"

I have just received an advance copy of the Institute Of Medicine's (IOM) findings commissioned by the National Institute On Alcoholism and Alcohol Abuse (NIAAA), Broadening The Base Of Treatment For Alcohol. The findings will not be available to the general public until April 15th. (It has already been submitted to our U.S. senators and congressman.) I would urge that you delay final action on this bill until you have obtained copies.

The greater preponderance of criminal actions in this state have as a component the use, misuse, or abuse of alcohol. By far the majority of arrests are for DWI or DUI. Any law that you enact is going to effect a large segment of the population. On the surface that might appear to enhance the desirability for passage for such a bill. However, you must look beyond that to the methodologies currently in place to classify offenders. There is no system in place within the State of Alaska to differentiate and match offenders to treatments most appropriate for them. In fact, there is only one treatment modality approved by the DOADA.

It is easy to pass laws in response to what appears on the surface to be logical assumptions. The question you must ask yourself is, "Will passing this kind of law achieve what we are trying to achieve?" I am assuming that the outcome goals would be threefold: 1) Deterring reckless and criminal acts in certain populations; 2) Rehabilitation of offenders, and 3) Reduce recidivism. If these are the goals - then I would urge you to go one step further to assess the means by which these goals may be brought about. What system will you and the judiciary be relying on to achieve these three goals, and how will successful (unsuccessful) outcomes be measured?

You may not assume that the State Division of Alcohol and Drug Abuse has the answers. DOADA is still operating under 1973 guidelines for accrediting substance abuse programs, and working with 1970 methodologies for implementing treatment. The DOADA has just this month recognized the need to differentiate persons with psychopathologies from "gamma alcoholics." How can you place your faith in a system which refuses to recognize what others have long known; that approximately 35% of cases diagnosed and treated as "gamma alcoholics" are in fact in need of psychiatric services and, in some cases, medication? A large percentage of the remainder is usually classified "problem" or "presumptive problem" drinkers regardless of the severity of their involvement with legal or illegal substances.

I am enclosing the summary of the findings from IOM. It is desired that you delay your decision on HB 366 until you can obtain the complete study so that any decisions you make may be based in knowledge and not on faulty assumptions.

Secondly, the people of the State of Alaska deserve to have a voice in this matter. They deserve the facts and the opportunity to weigh the ramifications of this particular bill. Public hearings should be held. An effort should be made to broadly publish the latest findings from the IOM and to inform the general public, and more importantly, to consult the judges who will, as an end result of your actions, be responsible for mandating a particular "treatment" (antidote, cure, panacea, prescription, remedy, therapy, serum) modality for offenders.

This program's goals are, hopefully, the same as yours; the reduction of criminal acts committed while under the influence of legal or illegal substances. The state system we have in place, although not written into law, mandates evaluation and treatment *from a State Approved Program* for offenders already. It has been in use since the early eighties with no perceptible impact either in decreased recidivism or prevention.

Please think before you act.

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: *Myla M. Munn* Date: 1/23/90
 Agency: Health & Social Services

Distribution (by preparer):

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

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

1/22/90

BGM

AS

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 Phone: 465-3376
 Division: Administrative Services Date: 01/24/90

Approved by Commissioner: S. H. W. Gregory-Barnett Date: 01/24/90
 Agency: Department of Corrections

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

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						
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REVENUE						
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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

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

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

Date: 01/22/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor

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.

BILL NO: HB 366

DATE: January 22, 1990

TITLE: Treatment and rehabilitation of offenders

CONTACT: Barbara Miklos
465-4356

DEPARTMENT OF PUBLIC SAFETY

The Council on Domestic Violence and Sexual Assault supports HB 366, "An Act relating to the treatment and rehabilitation of a defendant convicted of an offense". Among other things, this legislation enables the Court to order the defendant, while incarcerated, to participate in or successfully complete an inpatient rehabilitation program; to participate in, or successively complete, an inpatient rehabilitation program while on probation, which could be revoked if the court order is violated; to satisfy screening, evaluation and other requirements to make referrals for rehabilitative treatment or to revoke parole if the parolee violates an order of the court to participate in or successfully complete a rehabilitation program.

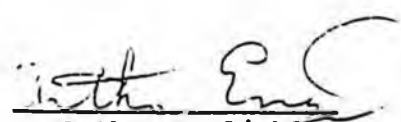
Under current law, courts probably do not have the power to order inpatient treatment as a condition of probation or parole. Recent court cases have limited the courts authority to make treatment and rehabilitation part of a defendant's sentence. We believe it is important that the courts have the authority to do this.

It has been shown that many domestic violence offenders can learn new ways to deal with their anger if given information and treatment. Prison batterers programs have helped reduce aggression in many prisoners. Community batterers' programs have proved that court-mandated treatment programs can affect positive change.

Although the efficacy of sex offender programs is often controversial, it stands to reason that jail time alone will do nothing to change a sex offender's behavior. Other interventions must occur.

Since so much crime in Alaska is associated with alcohol, alcohol treatment is crucial. Alcohol treatment often must be provided before issues of violence can be addressed.

In order to protect victims, we must do all we can to stop crimes. Therefore, courts should have all the tools necessary to help offenders stop their violent or other crimes.


Arthur English
Commissioner

Sec. 12.55.005. Declaration of purpose.

NOTES TO DECISIONS

Chaney criteria incorporated, etc.

In accord with original. See *Schnecker v. State*, 739 P.2d 1310 (Alaska Ct. App. 1987).

Sentencing of "worst offender." — A "worst offender" designation, standing alone, permits imposition of the maximum term for the single most serious offense. The designation does not, however, automatically permit consecutive sentences exceeding the maximum for the single most serious crime. In order to impose such a sentence, the court must actually find, as a matter of fact, that the defendant will continue to pose a danger to the community during the extended term and that his continued isolation is actually necessary. Such a finding does not necessarily justify pyramiding consecutive maximum sentences; rather, such a finding permits only an incrementally more severe sentence based on the actual need for protection of the public under the totality of the circumstances of the prosecution's case. *Hancock v. State*, 741 P.2d 1210 (Alaska Ct. App. 1987).

Sentencing for extended term for deterrence and rehabilitation. — In order to make the determination that a defendant requires a period in excess of 15 years for deterrence and rehabilitation, it

is imperative that the trial court compare his background, experience, and offenses with those of others sentenced to extended terms, disregarding eligibility for parole. *Hancock v. State*, 741 P.2d 1210 (Alaska Ct. App. 1987).

Emphasis on isolation in sentencing. — Based on the trial judge's discretion under the Chaney criteria and the defendant's status as a repeat offender and a worst offender in his class, the original sentence of seven years' imprisonment, with five and one-half years suspended, for 14 fish and game violations was reinstated; the sentencing judge specifically emphasized the Chaney factor of isolation based on the defendant's extensive record of flagrant fish and game violations. *State v. Graybill*, 695 P.2d 725 (Alaska 1985).

Applied in *State v. Andrews*, 797 P.2d 900 (Alaska Ct. App. 1985).

Quoted in *Hancock v. State*, 706 P.2d 1164 (Alaska Ct. App. 1985); *Aveoganna v. State*, 757 P.2d 75 (Alaska Ct. App. 1988).

Cited in *Crouse v. State*, 736 P.2d 783 (Alaska Ct. App. 1987); *Kirby v. State*, 748 P.2d 757 (Alaska Ct. App. 1987); *State v. Ambrose*, 758 P.2d 639 (Alaska Ct. App. 1988).

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

- (1) impose a fine when authorized by law and as provided in AS 12.55.035;
- (2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;
- (3) impose a definite term of periodic imprisonment;
- (4) impose a definite term of continuous imprisonment;
- (5) order the defendant to make restitution under AS 12.55.045;
- (6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;
- (7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;
- (8) suspend imposition of sentence under AS 12.55.085;
- (9) order the forfeiture to the commissioner of public safety of a deadly weapon that was in the actual possession of or used by the

defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of the present offense and the defendant's prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty.

(d) A court, in imposing sentence on a defendant convicted of misconduct involving a controlled substance in the first, second, third, fourth, fifth, or sixth degree, may, in addition to any mandatory minimum sentence required by law, order the defendant to participate in a program for treatment of drug abusers if the court determines that the defendant is a drug abuser. Participation in such a program may be imposed as a condition of probation, a condition of suspended execution of sentence, or a condition of suspended imposition of sentence. Nothing in this subsection shall be construed to reduce any mandatory minimum sentence.

(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term in a correctional restitution center.

(f) In this section "deadly weapon" has the meaning given in AS 11.81.900. (§ 12 ch 166 SLA 1978; am § 37 ch 102 SLA 1980; am § 3 ch 45 SLA 1982; am § 3 ch 72 SLA 1985; am §§ 2, 3 ch 169 SLA 1988)

Effect of amendments. — The 1985 amendment added subsection (e).

The 1988 amendment, in subsection (a), substituted "that" for "which" in para-

graph (2) and "under" for "as provided in" in paragraphs (5) — (8), and added paragraph (9); and added subsection (f).

NOTES TO DECISIONS

Trial court exceeded scope of sentencing powers by ordering defendant to attend a sexual offender rehabilitation program while incarcerated, where the order was set out as a separate provision of the written judgment and not as a condition of probation, and any failure to abide by the order could not have served as a

predicate for a finding of criminal contempt. *Benboe v. State*, 738 P.2d 356 (Alaska Ct. App. 1987).

Quoted in *Hancock v. State*, 706 P.2d 1164 (Alaska Ct. App. 1985).

Cited in *Schnecker v. State*, 739 P.2d 1310 (Alaska Ct. App. 1987); *State v.*