

**HB**

**491**

STEVE COWPER  
GOVERNOR



448

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 7, 1990

The Honorable Tim Kelly  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill creating a sentencing commission.

Over the past decade, the prison population in Alaska has increased every year. In the period from 1980 to 1988, Alaska had the largest percentage increase in prison population, and the fourth highest rate of incarceration, of all 50 states. Disagreement exists over both the cause of the increase and the manner in which state government should respond to the expanding prison population.

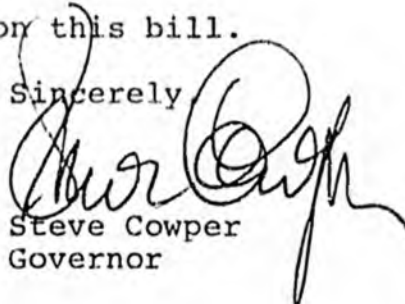
Based on research and data collected in other states, it is obvious that the increased rate of incarceration has not, and will not, solve the crime problem in Alaska. Neither will the development of intermediate and alternative sanctions, by itself, eliminate prison overcrowding. Building more prisons is one way to deal with expanding prison populations. However, with prison construction costs ranging from \$50,000 to \$100,000 per bed, the ultimate price of building more jails (which includes both real costs and the effect on our ability to pay for other important public needs) is formidable. A change in our sanctioning policy is the only real means of controlling ever-expanding prison populations.

This bill creates a commission composed of executive-, legislative-, and judicial-branch employees, as well as members of the public. The commission's job would be to review sentencing patterns and practices, as well as crime rates, and to make recommendations for long-term management

of Alaska's prison population. The legislation requires the commission to make annual recommendations for legislative and administrative action on sentencing laws.

I urge your favorable action on this bill.

Sincerely,

  
Steve Cowper  
Governor

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act creating a sentencing commission; and..."  
 Sponsor: Rules Committee  
 Requestor: Governor

Agency Affected: Office of the Governor  
 BRU: Commissions and Social Offices  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	140.0	144.9	149.7	155.0	160.4	
TRAVEL	39.1	39.1	39.1	39.1	39.1	
CONTRACTUAL	91.3	74.7	74.7	74.7	74.7	
SUPPLIES	6.2	6.2	6.2	6.2	6.2	
EQUIPMENT	28.2	5	5	5	5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>304.8</b>	<b>265.4</b>	<b>270.2</b>	<b>275.5</b>	<b>280.9</b>	

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	304.8	265.4	270.2	275.5	280.9	
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>304.8</b>	<b>265.4</b>	<b>270.2</b>	<b>275.5</b>	<b>280.9</b>	

**POSITIONS:**

FULL-TIME	3	3	3	3	3	
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

See attached analysis

Prepared by: Michael A. Nizich, Director *MAN* Phone: 465-3616  
 Division: Division of Administrative Services Date: 2/6/90

Approved by Commissioner: Garrey Peska, Chief of Staff *[Signature]* Date: 2/6/90  
 Agency: Office of the Governor

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Manager
- Impacted Agency(i)

PERSONAL SERVICES 140.0

Fiscal note assumes Anchorage location of commission staff. Request for New Position forms are attached. Salary shown are step A for FY 91. Personal Services request for subsequent years includes a one-step merit increase for all positions.

TRAVEL 39.1

Travel assumes six annual commission meetings.

Anchorage: 4 meetings

travel @ 366/person x 5 people	=	1,830	
per diem @ 80/day x 3 days x 7 people	=	1,680	
four meetings @		3,510	= 14,040

Juneau:

travel @ 390/person x 11 people	=	4,290	
per diem @ 80 x 3 days x 12 people	=	2,880	

Administrative staff

travel @ 366/person x 2 person	=	732	
per diem @ 90 x 3 days x 2 people	=	480	8,382

Fairbanks:

travel @ 390/person x 10 people	=	3,900	
per diem @ 90 x 3 days x 11 people	=	2,970	

Administrative staff

travel @ 390/person x 2 people	=	780	
per diem @ 80 x 3 days x 2 people	=	540	8,190

Additional administrative travel: = 8,500

includes legislative hearings;  
out-of-state travel to meet with  
sentencing experts

Total Travel: 39,112

CONTRACTUAL 91.3

Professional Services:

Services for programmer, sentencing analysts,  
statisticians, corrections specialists, and  
other related professionals 35,000

Communication:

Telephone (toll costs, base/local  
fixed costs, centrex network costs)  
900/mo x 12 months 10,800  
Telecopier charges -- 25/mo x 12 months 300  
Teleconference charges -- 6 @ 450 2,700  
Postage -- 300/mo x 12 3,600 17,400

Transportation:

Freight and express charges -- 75/mo x 12 900

Advertising, Printing & Binding:

Subscriptions 75  
Advertising -- 6 meetings x 750 4,500  
Printing -- 6 newsletters x 800 each 4,800  
Annual report 10,000  
Forms, misc. 750 20,125

Minor Repair, Maintenance 1,200

Rental for Space:

Space requirement per Department of  
Administration standards:

693.5 SF x 2.00/SF x 12 months = 16,644

Total Contractual: 91,269

SUPPLIES AND MATERIALS 6.2

Office and library supplies, 350/mo x 12 = 4,200  
Data processing supplies = 2,000 6,200

EQUIPMENT 28.2

Communication Equipment:

Phones 1,800

Data Processing Equipment:

3 PCs with 1 lazer printer 16,000

Furniture/Office Equipment:

Furniture/work station equipment	=	7,500	
2 5-drawer lateral file cabinets	=	900	
Photocopier	=	2,000	15,850

Total Equipment: 28,200

1.	POSITION TITLE Executive Director				RANGE/STEP 24/A	DARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCH NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION:							
4.	TYPE OF EXPENDITURE				<p>Executive Director, Sentencing Commission. Attorney with 4-6 years experience in criminal justice. Responsible for overall supervision, working with Commission, legislators, other agencies and public; evaluating existing laws, programs and policies and advocating proposed legislation; analysis of sentencing patterns and factors.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary		56,244									
6.	Benefits		12,726									
7.	Supplemental Benefits											
8.	Fixed Benefits											
9.	TOTAL PERSONAL SERVICES		01								69.0	
10.	Travel		02								5.5	
11.	Contractual		03								3.8	
12.	Commodities		04								.8	
13.	Equipment		05								8.1	
14.	Other											
15.	TOTAL COST										87.2	
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		G.F. Match 1003										
18.		General Funds 1004		87.2								
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
FOR B&M USE ONLY												
KEY NUMBER												

REQUEST FOR  
NEW POSITION

AGENCY Office of the Governor  
 BRU Commissions and Special Offices  
 COMPONENT \_\_\_\_\_

Page 1 of 3  
 Revised Date \_\_\_\_\_

FY 91

1.	POSITION TITLE Project Assistant				RANGE/STEP 16/A	DARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PPT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION		
4.	TYPE OF EXPENDITURE			AMOUNT
	1	2		3
	PERSONAL SERVICES			
5.	Salary	32,580		
6.	Benefits	7,534		
7.	Supplemental Benefits			
8.	Fixed Benefits			
9.	TOTAL PERSONAL SERVICES	01		40.1
0.	Travel	02		5.5
1.	Contractual	03		3.0
2.	Commodities	04		.8
3.	Equipment	05		7.5
4.	Other			
5.	TOTAL COST			56.9

JUSTIFICATION:

Assist Exec. Director with sentencing analyses and reports. Maintain data base, data collection and compilation; prepare reports and analysis of sentencing patterns and effects of other sentencing factors; liaison with contractors.

	RECEIPT CODE	FUNDING SOURCE	
6.		Federal Receipts 1002	
7.		G.F. Match 1003	
8.		General Funds 1004	56.9
9.		I-A Receipts 1005	
0.		Program Receipts 102B	
1.		Other	

FOR B&M USE ONLY  
KEY NUMBER - - - - -

REQUEST FOR  
NEW POSITION

AGENCY Office of the Governor  
BRU Commissions and Special Offices  
COMPONENT \_\_\_\_\_

Page 2 of 3  
Revised Date \_\_\_\_\_

FY 91

1.	POSITION TITLE Executive Secretary				RANGE/STEP 12/A	BARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>Secretarial support to Executive Director and Sentencing Commission staff. Assist with coordination of Commission meetings; public hearings, travel arrangements, process fiscal and personnel documentation.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	24,984								
6.	Benefits	5,868								
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES	01	30.9							
10.	Travel	02								
11.	Contractual	03	1.8							
12.	Commodities	04	.8							
13.	Equipment	05	7.5							
14.	Other									
15.	TOTAL COST		41.0							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		41.0						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								

FOR B&M USE ONLY  
KEY NUMBER - - - - -

REQUEST FOR  
NEW POSITION

AGENCY Office of the Governor  
BRU Commissions and Special Offices  
COMPONENT \_\_\_\_\_

FY 91

Page 3 of 3  
Revised Date \_\_\_\_\_

## Changes Made in Proposed Judiciary CS for HB 491

CSHB 491 (Jud) am	SCS CSHB 491 (Jud)
<p data-bbox="234 392 627 435"><i>Composition of Commission:</i></p> <ul data-bbox="234 478 995 1472" style="list-style-type: none"><li data-bbox="234 478 468 520">• 13 members:</li><li data-bbox="234 563 995 777">(1) 3 appointed by governor with consideration to geographic representation and interests of victims, local law enforcement officers, rehabilitation specialists and other groups closely concerned with sentencing policies;</li><li data-bbox="234 1255 883 1298">(2) Commissioner of corrections or designee;</li><li data-bbox="234 1298 883 1340">(3) Commission of public safety or designee;</li><li data-bbox="234 1340 712 1383">(4) Attorney general or designee;</li><li data-bbox="234 1383 702 1426">(5) Public defender or designee;</li><li data-bbox="234 1426 936 1472">(6) Board of Parole presiding officer of designee;</li></ul>	<p data-bbox="995 392 1415 435"><i>Composition of Commission:</i></p> <ul data-bbox="995 478 1759 1472" style="list-style-type: none"><li data-bbox="995 478 1266 520">• 14 members:</li><li data-bbox="995 563 1759 734">(1) Person with law enforcement background appointed by governor from nominations of Alaska Peace Officers Association;</li><li data-bbox="995 734 1759 862">(2) Two persons who are members of crime victims advocacy or assistance organizations appointed by governor;</li><li data-bbox="995 862 1759 990">(3) Person with understanding of concerns of Alaska Natives relating to criminal justice system appointed by governor;</li><li data-bbox="995 990 1759 1084">(4) Person with background in criminal rehabilitation appointed by governor;</li><li data-bbox="995 1084 1759 1255">(5) Person with academic background in criminal justice issues, appointed by governor after considering nominations from dean of School of Public Policy of the University of Alaska;</li><li data-bbox="995 1255 1159 1298">(6) Same</li><li data-bbox="995 1298 1159 1340">(7) Same</li><li data-bbox="995 1340 1159 1383">(8) Same</li><li data-bbox="995 1383 1159 1426">(9) Same</li></ul>

## Changes Made in Proposed Judiciary CS for HB 491

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CSHB 491 (Jud) am		SCS CSHB 491 (Jud)
(7) Chief justice of supreme court or another justice or court of appeals judge as designated by chief justice;	(10) Same	
(8) Superior court judge designated by chief justice;	(11) Same	
(9) District court judge designated by chief justice;		
(10) Senate president or another senator;	(12) Same	
(11) House speaker or another representative.	(13) Same	

BEDSPACE

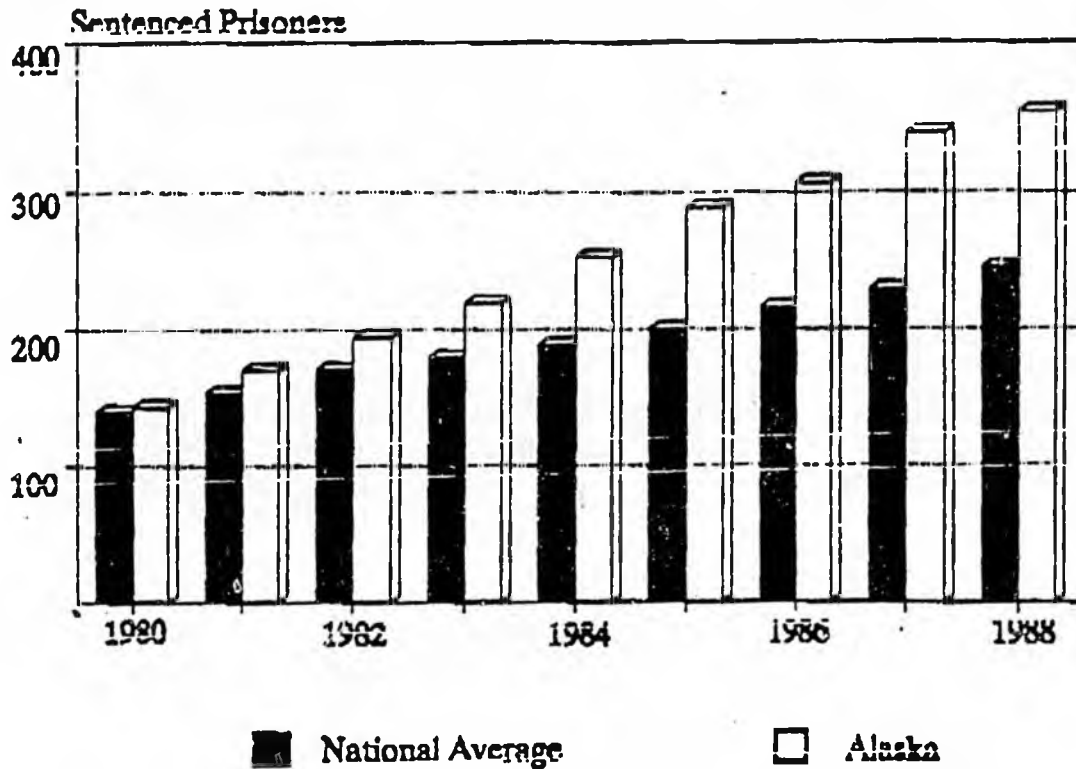
	<u>6/89</u>	<u>12/89</u>	<u>6/90</u>	<u>12/90</u>	<u>6/91</u>	<u>12/91</u>	<u>6/92</u>	<u>12/92</u>	<u>6/93</u>	<u>12/93</u>
Total Population:	2606	2844	2922	3000	3078	3156	3234	3312	3390	3468
Less FBP:	95	75	75	75	75	75	75	75	75	75
Less CRC:	200	200	200	200	250	250	250	250	250	250
Less MN:	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>
In-State Population:	2306	2564	2642	2720	2748	2826	2904	2982	3060	3138
Available Beds In-State:	2516	2516	2516	2516	2516	2516	2516	2676	2996	2996
* Un-triple Bunk YKCC:										
* Close Small FCC Dorms:										
* Close LCCC Dorm:										
* Un-double Bunk Cells at FCC:										
New Palmer Minimum:							120			
New Unit for Long-Term Women:							40			
2nd Half of SCCC:										
Available Beds Less In-State Population:	+210	- 48	-126	-204	-232	-310	-228	+14	-64	-142
							<u>2676</u>	<u>2996</u>		

Rev. 11/14/89  
Corrected Copy

\* Unable to close any beds  
due to increasing prison  
population

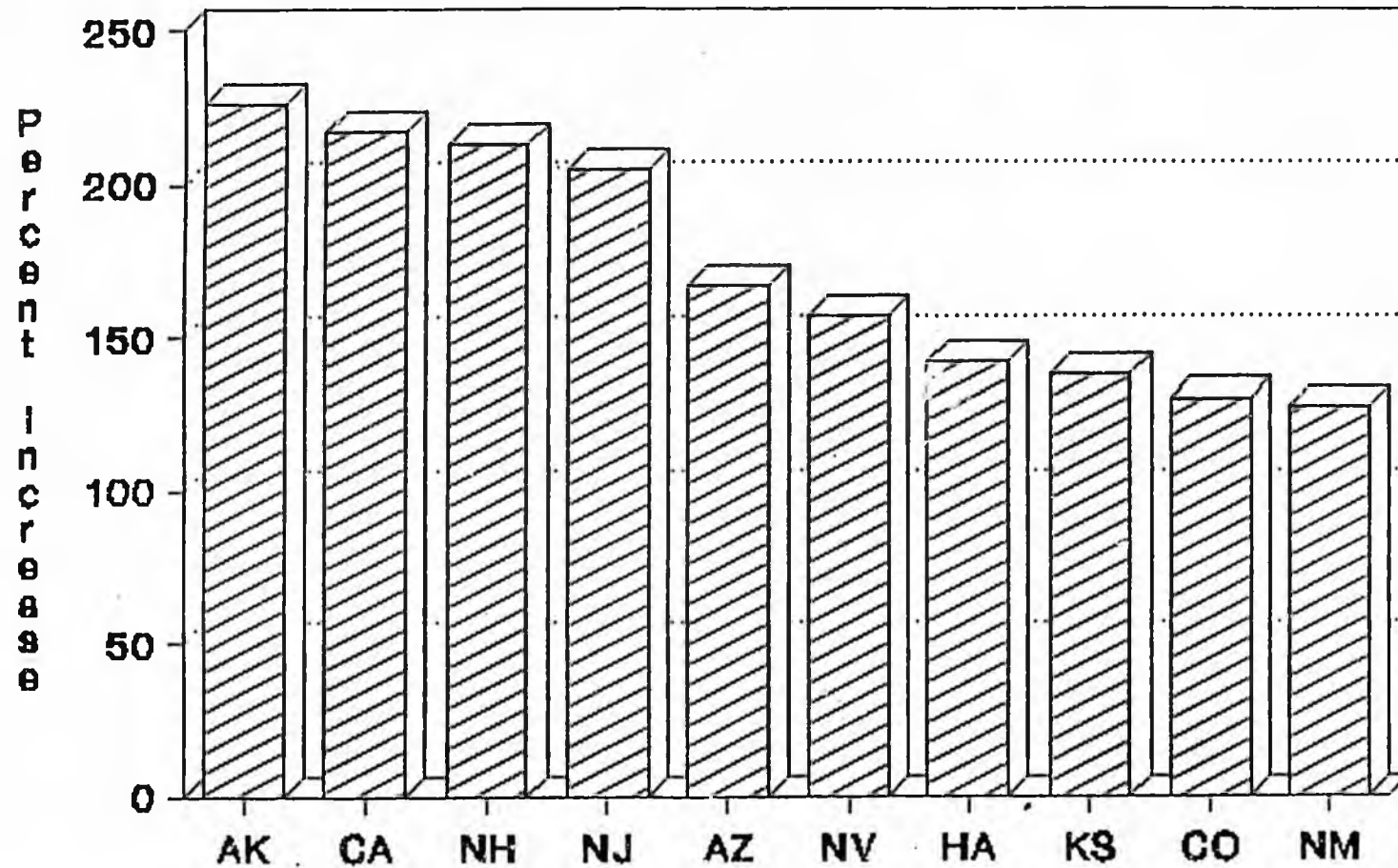
## Trends in Alaska Corrections

Rates of Incarceration \*  
National Average vs Alaska



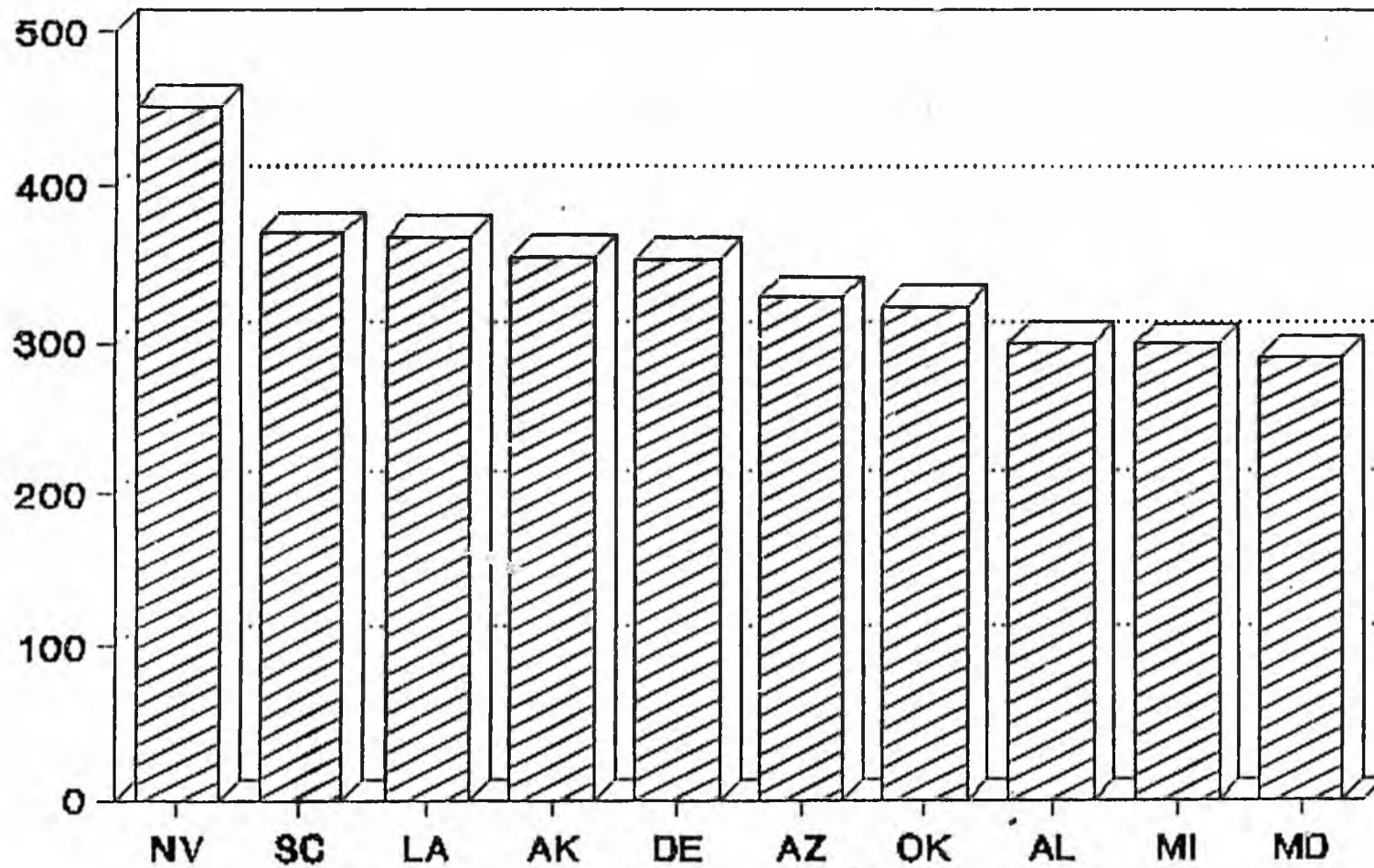
\* Rate per 100,000 resident population  
Figures from Bureau of Justice Statistics, U.S.  
Department of Justice

# 10 States with the largest percent increase in prison population 1980-88



Prisoners per 100,000 residents

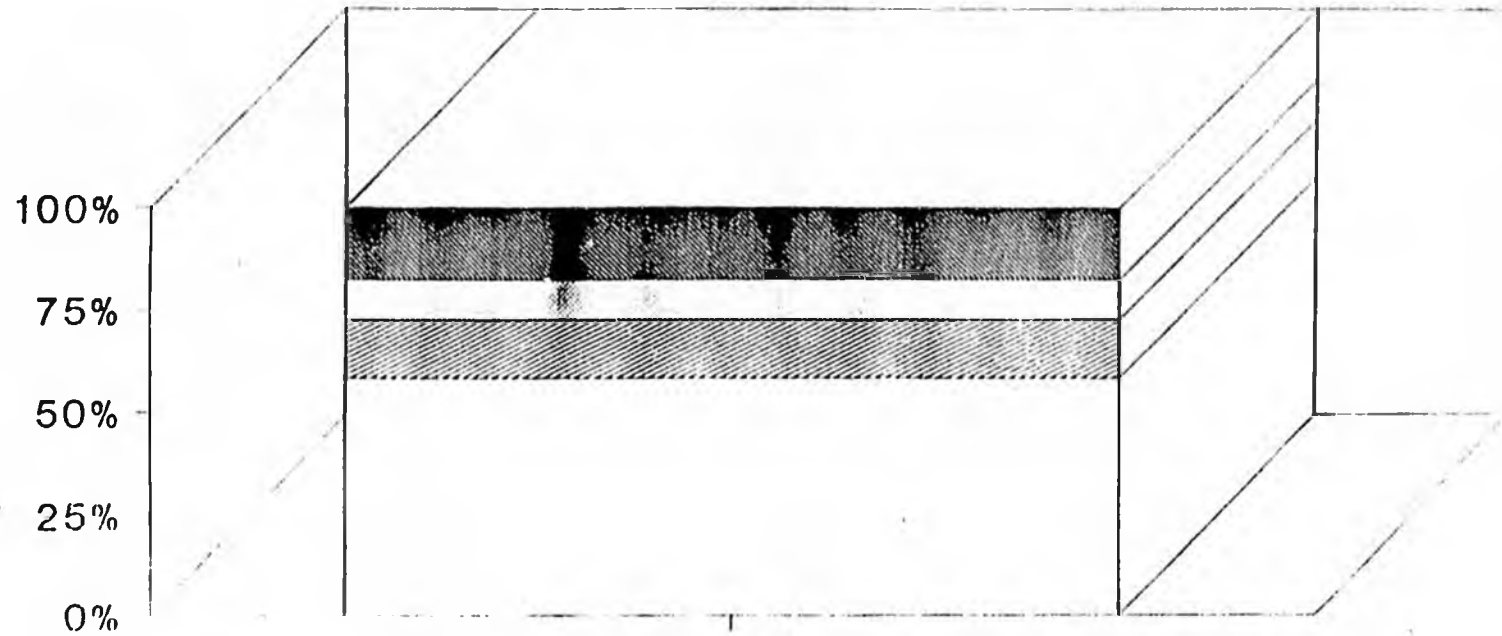
## 10 States with the highest incarceration rates in 1988



Prisoners per 100,000 residents

# Inmate Offense Categories

## December 31, 1988

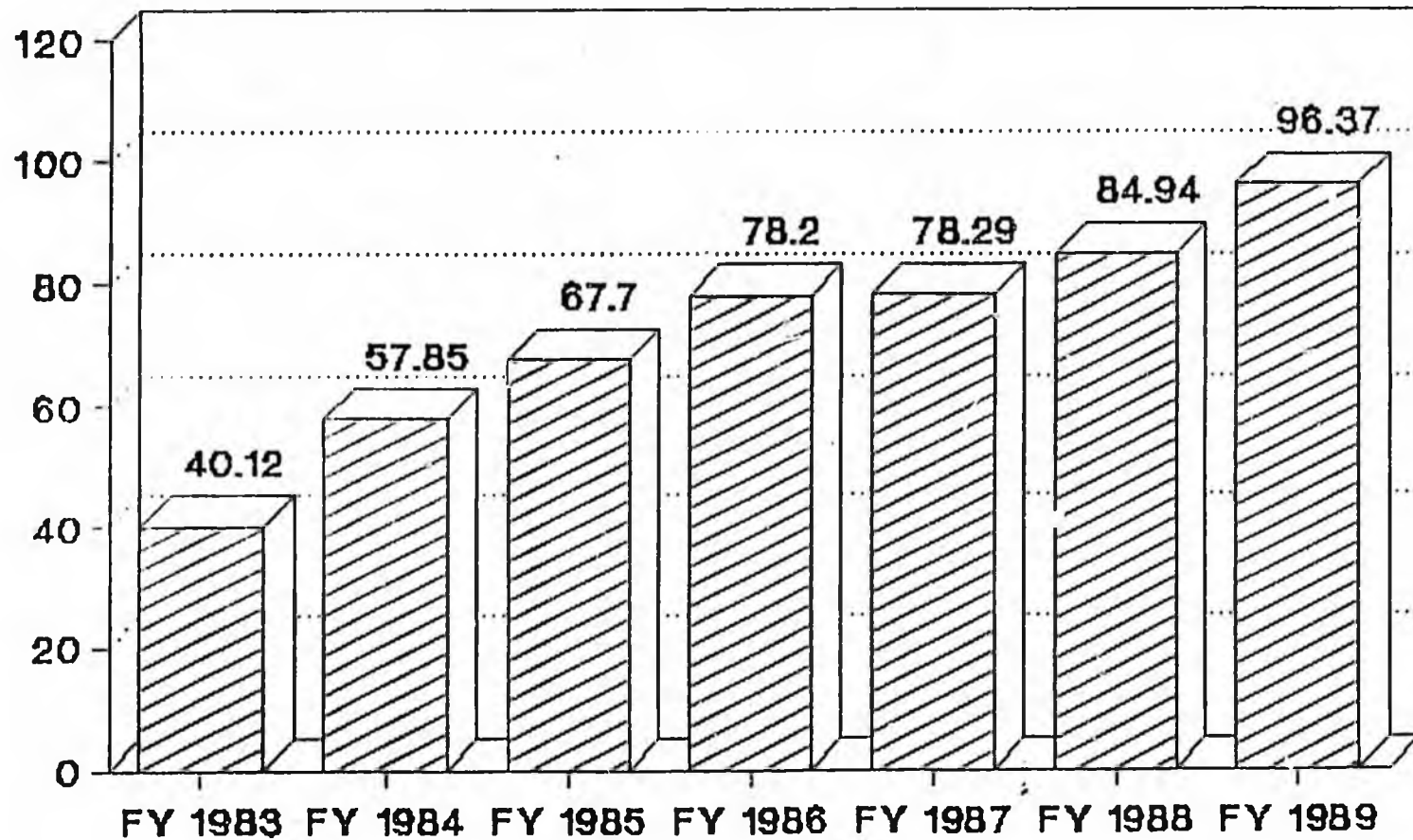


Violent Offenses  
Substance Abuse

Property Offenses  
All Others

# Department of Corrections Operating Budget FY 1983 to FY 1989

In Millions of Dollars



\* Fiscal Year Actuals

(Ratio of Actuals)

# FOCUS

THE NATIONAL COUNCIL ON CRIME  
AND DELINQUENCY

JULY 1988

## Ranking the Nation's Most Punitive and Costly States

By James Austin, Ph.D. and Marci Brown

### HIGHLIGHTS

This issue of NCCD FOCUS represents the second annual "Ranking the Nation's Most Punitive States." The United States, now with more than 625,000 inmates in prison, has long been recognized as a country that imprisons a large portion of its population. Since 1980, the nation's imprisonment rate has nearly doubled.<sup>2</sup> Presently, over 40 states are under some form of litigation related to crowding or unconstitutional conditions of confinement.

This surge in the number of inmates has been interpreted by some as an indication of a more punitive attitude toward the crime problem that characterizes the politics of contemporary criminal justice. Punitive attitudes have traditionally been cited as the reason certain states and regions have higher imprisonment rates than the nation as a whole.

As states respond to the pressure of overcrowding, more attention is being paid to comparing states in terms of their use of other forms of control in addition to prisons. And, states are also concerned with the high costs of these systems. State and federal prison population data, the most obvious means of calculating comparative imprisonment rates, reflect only a single component of a jurisdiction's correctional system and exclude other far-reaching forms of incarceration and control, including jails, juvenile facilities, and parole and probation.

For these reasons, the domain of prison control must be evaluated in relation to, and in many cases as overlapping with,

the control exercised by other correctional control systems. This has become all the more obvious in recent years, as many states, facing crisis situations in their prisons, have placed many offenders in a wide variety of non-prison correctional settings.

The major findings of this report are:

- The nation's use of prisons, jails, probation and parole continues to grow at record levels. More than one out of every 100 persons are under the control of the criminal justice system.<sup>3</sup>
- Washington, D.C., ranks number one in all forms of punishment and criminal justice expenditures. Despite an enormous investment in criminal justice agencies, policy makers have recently chosen the nation's capitol as the site for further investment in more incarcerative policies.
- The South continues to have the highest regional imprisonment rate and the highest total control rate. However, the West, fueled by dramatic increases in California, has the highest regional total incarceration rate (including jails and juvenile facilities, as well as prisons).
- In 1987, it cost each man, woman, and child \$211 per year to fund state and local criminal justice systems. This figure compares with \$95 in 1979.
- There is a strong correlation between rates of criminal justice expenditures and crime rates. States that spend the most on criminal justice have the highest crime rates. Despite a continuing increase in expenditures for criminal justice agencies and in the

use of formal punishment, crime rates continue to escalate.

### IMPRISONMENT VS. TOTAL INCARCERATION RATES

The most commonly used gauge of the punitive nature of a state or geographic region is the imprisonment rate. This rate typically refers to the number of persons in prison on a given day, per 100,000 state population. Southern states have historically had the highest levels of imprisonment in the country, which has been interpreted by some experts as reflecting the conservative political and social values of that region.

Table 1 shows the rates of imprisonment for the 50 states and Washington, D.C. Among the 15 states with the highest rates of imprisonment, 11 were Southern states (including Washington, D.C.). The table also shows that the Southern region had the highest imprisonment rate followed by the West, Midwest and Northeast. Among the 15 states with the lowest rates of imprisonment, seven states were in the Northeast and six were in the Midwest.

Overall, state rankings for imprisonment varied little from last year's report, which used 1986 data. However, a few states showed significant increases or decreases in their imprisonment rate between 1986 and 1987. Interestingly, Washington, D.C., which has the highest imprisonment rate in the nation, increased its imprisonment rate from 1,078.4 in 1986 to 1,197.4 per 100,000 in 1987. Alaska is second with a rate of 481.5 per 100,000 and replaces

Table 1: Imprisonment vs. Incarceration Rates

Rank	State	1987 Population*	1987 Prisoners	Imprisonment Rate***	Rank	State	1987 Persons in Jail**	Jail Rate***	1987 Juveniles in Custody	Total Incarceration Rate****	
1	D.C.	622	448	727.4	1	D.C.	1,674	269.1	413	1,333.0	
2	Alaska	525	2,528	481.5	2	Nevada	1,925	191.1	442	679.3	
3	Delaware	644	2,931	455.1	3	Louisiana	10,300	230.8	1,028	598.6	
4	Nevada	1,007	4,434	440.1	4	Alaska	0	0	1,178	515.4	
5	South Carolina	1,425	12,864	369.8	5	California	60,802	219.7	14,712	515.1	
6	Louisiana	4,461	15,375	344.7	6	Arizona	5,137	131.7	1,019	505.1	
7	Arizona	3,384	10,348	323.3	7	South Carolina	3,675	107.3	146	497.9	
8	Alabama	4,083	12,827	314.2	8	Florida	24,602	204.6	2,311	493.7	
9	Georgia	6,222	18,575	298.5	9	Delaware	0	0	149	481.4	
10	Maryland	4,335	13,467	289.0	10	Georgia	9,504	152.7	1,338	472.8	
11	Oklahoma	3,272	9,639	294.8	11	Alabama	4,328	105.9	804	459.6	
12	Florida	12,023	37,445	249.9	12	Maryland	4,065	109.9	1,022	459.6	
13	North Carolina	6,413	17,249	240.0	13	Tennessee	10,514	218.3	1,038	395.0	
14	Mississippi	2,625	6,831	259.2	14	Oklahoma	2,734	85.55	146	391.8	
15	Michigan	9,200	23,879	259.6	15	Texas	25,453	139.6	2,421	383.3	
16	California	27,463	46,975	242.1	16	Virginia	7,738	111.0	1,456	381.4	
17	Kansas	2,474	5,841	237.5	17	New Jersey	13,107	170.8	1,997	374.9	
18	Connecticut	3,211	7,511	233.9	18	New York	23,694	132.9	2,228	374.5	
19	Texas	18,789	38,821	211.2	19	Michigan	6,547	92.90	1,816	372.2	
20	New York	17,425	40,842	229.1	20	North Carolina	5,380	83.89	812	365.5	
21	Arkansas	2,188	4,443	222.9	21	Kansas	1,914	73.10	142.1	362.1	
22	Virginia	5,904	1,321	225.6	22	Ohio	8,729	80.84	3,124	354.7	
23	Ohio	10,784	24,240	224.8	23	Arkansas	1,982	82.99	249	321.4	
24	Missouri	5,103	11,357	222.6	24	Oregon	2,469	10.63	542	313.8	
25	Hawaii	1,083	2,508	229.4	25	Mississippi	1,018	38.78	353	312.5	
26	Oregon	2,724	5,482	201.2	26	Indiana	4,710	85.15	1,320	304.8	
27	Indiana	5,531	10,823	195.8	27	New Mexico	1,428	95.2	491	304.5	
28	Wyoming	490	945	191.8	28	Wyoming	177	36.9	173	304.1	
29	New Jersey	7,672	15,862	178.1	29	Illinois	12,616	128.9	1,930	297.0	
30	New Mexico	1,500	2,648	176.5	30	Missouri	2,854	55.82	815	294.5	
31	Illinois	11,582	19,850	171.4	31	Kentucky	4,696	125.9	607	299.1	
32	South Dakota	709	1,135	160.1	32	Washington	5,281	116.3	1,134	276.5	
33	Tennessee	4,855	7,624	157.0	33	Colorado	1,797	115.0	503	276.2	
34	Idaho	988	1,482	148.5	34	Wisconsin	5,750	159.6	686	258.7	
35	Kentucky	3,727	5,471	146.8	35	Pennsylvania	13,145	110.5	1,103	256.1	
36	Montana	809	1,187	146.7	36	Connecticut	0	0	227	241.0	
37	Colorado	3,294	4,808	145.9	37	South Dakota	294	41.66	258	235.8	
38	Rhode Island	984	1,429	144.9	38	Montana	412	10.82	128	225.8	
39	Vermont	548	7,759	138.5	39	Idaho	630	43.12	117	221.3	
40	Pennsylvania	11,936	16,767	138.3	40	Hawaii	0	0	149	221.2	
41	Washington	4,538	6,131	135.1	41	Nebraska	1,174	73.65	274	221.7	
42	Nebraska	1,594	2,286	130.9	42	Iowa	2,736	46.54	427	212.6	
43	Wisconsin	4,807	8,001	124.8	43	Massachusetts	4,740	30.95	212	191.1	
44	Utah	1,640	1,888	115.4	44	Utah	1,066	63.43	217	188.8	
45	Maine	1,187	1,328	111.9	45	Maine	572	48.18	214	174.1	
46	Massachusetts	5,855	6,238	106.5	46	New Hampshire	807	76.34	128	170.1	
47	Iowa	2,834	2,863	101.0	47	Rhode Island	0	0	105	155.6	
48	New Hampshire	1,057	867	82.0	48	Minnesota	3,106	73.13	581	146.8	
49	West Virginia	1,897	1,441	77.0	49	West Virginia	1,134	60.83	141	145.1	
50	North Dakota	672	430	64.0	50	Vermont	0	0	15	141.2	
51	Minnesota	4,244	2,546	60.0	51	North Dakota	245	36.45	69	110.7	
<b>REGION</b>					<b>REGION</b>						
<b>SOUTH</b>		83,885	221,592	264.2	<b>WEST</b>		83,320	147.6	19,995	432.7	
<b>WEST</b>		49,699	111,719	224.8	<b>SOUTH</b>		117,735	140.4	15,135	422.8	
<b>MIDWEST</b>		59,538	111,095	186.6	<b>NORTHEAST</b>		56,115	111.6	4,225	100.8	
<b>NORTHEAST</b>		50,277	88,903	176.8	<b>MIDWEST</b>		52,675	84.5	11,948	295.1	
<b>TOTALS</b>		243,399	533,309	219.1	<b>TOTALS</b>		309,945	127.1	53,303	368.4	

\* Total population in thousands

\*\* Average daily jail populations for 1987 are estimates drawn from published reports and phone calls to individual state officials

\*\*\* Per 100,000 total population (1987), as reported in the 1987 UCR

\*\*\*\* Number of persons in prison, jail, and juvenile facilities per 100,000 total population (1987)

• In the states of Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont, which maintain combined prison and jail systems, all inmates are accounted for in the prison figures

Nevada as the state with the highest imprisonment rate. However, Alaska's high ranking is misleading as its prison figures include persons awaiting trial or serving short sentences. In most other states these inmates are counted in jail populations.

To correct for this bias, we created a "total incarceration rate" which includes prison and jail populations and juveniles in custody.<sup>4</sup> When the states are ranked according to this criterion, the West replaces the South as the nation's leader with a rate of 432.7 per 100,000. Nevada reassumes its number one state ranking, and D.C. continues to

have the highest rate of incarceration (four times the national average). California's dramatic increase in prison, jail and juvenile facility populations is the main reason the West has taken the lead in incarceration. Since the previous NCCD report, California added about 6,500 inmates to its prison population, more than 19,000 inmates to its jail population, and 2,100 children to its juvenile facilities.

When the total incarceration measure is compared to the imprisonment rate, significant changes occur among the states with respect to their national ranking. Tennessee, for example, moves from 33

to 13 in total incarceration, in part because the state houses many state prisoners in local jails due to a consent decree restricting prison populations. The same phenomenon also explains increases in rankings for other states including New Jersey, Texas, and Louisiana.

Connecticut, on the other hand, moves down to a rank of 36 for total incarceration compared to a rank of 15 for imprisonment. Similar declines for other states, such as Hawaii, Rhode Island and Vermont, simply reflect that they also have consolidated jail and prison systems.

but have not addressed other elements of sentencing decision making. Florida's prison sentencing guidelines are undermined by severely overcrowded prisons that have necessitated wholesale early release of large numbers of inmates.

Although no single state has structured comprehensively its sentencing policy and correctional resources, the experience of those that have tried illustrates the promise and potential of this pioneering public policy effort. This paper attempts to (1) review the goals of structuring statewide sentencing policy, (2) describe the scope and agenda that must be tackled, and (3) discuss practical and political issues involved in creating a commission.

## A COMMISSION ON STRUCTURED SENTENCING

A commission to structure sentencing policy is created and overseen by the legislature as a means of developing a comprehensive policy. Once a sentencing policy is established, the commission's role shifts to monitoring the effect of sentencing policy on correctional facilities and resources and to advising the legislature on changes and modifications in sentencing policy.

The commission approach offers the advantage of managing some of the rough-and-tumble politics and potential demagoguery surrounding sentencing issues. A commission also provides a vehicle through which all the necessary parties—legislators, judges, corrections officials—can participate equally and cooperatively.

The product of the commission's deliberations can take different forms, depending upon a state's tradition of separation of powers. In Washington, the sentencing commission's recommendations were submitted to the legislature and adopted by statute. In Oregon and Louisiana, the sentencing policy will be promul-

## The Goals of Structured Sentencing

The most common and most important goals of structured sentencing are to:

- Ensure uniformity in sentences and eliminate insupportable disparities based on race, gender, or socioeconomic factors;
- Increase the severity of correctional sanctions in direct proportion to the seriousness of the offense and the criminal history of the offender;
- Guide judicial decision making while providing adequate opportunities for the exercise of discretion when substantial and compelling circumstances exist;
- Reassert legislative control over sentencing policy in a coordinated and compre-

hensive way, as opposed to a piecemeal approach;

- Coordinate the full range of criminal sanctions from fines and probation supervision in the community to total confinement; and
- Coordinate sentencing policies with correctional policies and resources.

In a state where these goals are broadly shared by the various actors and institutions involved in sentencing, a commission represents a promising vehicle to achieve structured sentencing. What follows is a step-by-step description designed to help legislators in drafting legislation to establish a sentencing commission.



gated in administrative rules. In Minnesota, the initial guidelines were established by rule, but all modifications must be reviewed by the legislature before going into effect. Most sentencing experts agree that voluntary judicial guidelines are not an effective means of implementation because they are advisory in nature and lack the mandating force of legislative policy. [8, p. 98, and 1, p. 171]

Statutory enactment has the strongest legal standing and has the advantage of legislative review of both the substantive policy as well as the all-important financial implications on corrections resources. Although the administrative rules process means a more passive and limited legislative review, it may minimize the danger of piecemeal amendment or limit the politics of emotion aimed at selected parts of the sentencing policy. More important, the administrative rules process cannot deal with allocation of resources to implement a sentencing policy.

Legislators interested in establishing a commission on structured sentencing must not

only draft the legislation setting forth the scope of work and operating details but also foster the necessary environment of interbranch cooperation.

## Creating the Right Climate

Sentencing policy requires an interbranch effort built on appreciation for the unique role that each branch plays in sentencing. Constitutionally and practically speaking, statewide sentencing policy can be established only by the legislature. Clearly, however, judges have the most experience and direct involvement with the day-to-day application of sentencing policy to individual cases. Corrections administrators, prosecutors and defense lawyers, parole officials, and the public also have real and vital interests in sentencing and, therefore, must have a role in the commission process.

An interbranch partnership is required for several reasons. Judicial guidelines alone lack the enforcement needed to ensure compliance and cannot address questions of financial and space needs resulting from sentencing policy. Executive branch innovations at best can only

structure parole decision making or make limited changes within available criminal justice resources. Legislative action can mandate and coordinate statewide policy, but legislative initiatives pursued without judicial support and involvement will likely be stillborn in the implementation process.

Sentencing policy and procedure represent a unique area of substantive law that sharply magnifies the special relationship between the legislature and the judiciary. Oregon Attorney General David Frohnmayr, writing in a 1986 issue of *State Government*, notes that courts are not as well suited as the legislature or the executive branch to resolve major issues of public policy, yet the requirements of legal interpretation inescapably lead to creation of laws. Moreover, he argues that legislatures invite judicial activism by the prodigiousness of their lawmaking and the tendencies toward overly vague language and broad delegations of power. The tension between judicial and legislative roles has been dramatized in many substantive areas of law but is heightened in sentencing since it represents a major judicial function. The challenge for legislators interested in sentencing reform is to recognize and channel the institutional tensions creatively.

### Defining the Scope of Work

The legislature defines the scope of study and work of a commission and, by so doing, can enhance or handicap the likelihood of success. If the legislature fails to mandate a comprehensive approach, then a commission cannot be faulted for recommending a piecemeal policy. If the legislature directs the commission to look only at sentencing commitments to state prisons and not the full range of correctional sanctions, then the concerns of local governments and the availability of community-based sentencing options may not be adequately considered.

The most common problems involving the scope of work stem from three primary issues. First, sentencing guidelines should consider the full range of correctional sanctions from prison incarceration to community supervision and fines. Most of the early guideline experiments focused little attention on intermediate and non-

imprisonment sanctions, even though three out of four offenders are sanctioned in the community. More recent commission efforts (e.g., in Louisiana and Oregon) are attempting to build sentencing schemes that take into account the use and availability of local jails, residential treatment programs, probation, and community service. Absent specific guidelines structuring the imposition of non-imprisonment sentences, the potential for disparate and disproportionate sentences is great, and the ability to plan for and develop needed community resources is limited.

Correctional resources are not uniformly available in each community; some locales are rich in program options while others are lacking. Furthermore, since jails and many community-based correctional programs are locally funded, a comprehensive state sentencing policy must address state and local finance issues. Failure to address the full range of sentencing sanctions virtually ensures inequities, according to Kay Knapp, director of the Institute for Rational Public Policy, Inc.

Second, legislatures should give their commissions specific directives as to the extent to which they need to take into account existing constraints on correctional resources. They should also require sentencing commissions to report on the short- and long-term fiscal impacts of their proposed guidelines. For example, the recently enacted enabling legislation creating the Kansas Sentencing Commission states, "In developing its recommended sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities."

Where commissions are not required to consider existing constraints on resources, they may promulgate guidelines that result in the need for a substantial increase in new prison construction. While this may be an acceptable outcome in some states, most are already struggling to deal with existing prison crowding and cannot afford to enact policies that further exacerbate the problem. Pennsylvania is

an example of a state that enacted guidelines that resulted in the imprisonment of more offenders for longer periods of time. Adopted in 1982, Pennsylvania's minimum sentencing guidelines contributed to increases in the percentage of convicted offenders incarcerated and average prison sentences. [8, p. 69]

Third, sentencing reform should not be confused (and therefore not combined) with criminal code revision. Some states that have tried to accomplish code revision within the context of a sentencing commission have found their efforts stalled. Most recodification efforts are guided by the Model Penal Code, which reflected the philosophies of the 1940s and 1950s when "indeterminate" sentencing was the norm. While the model code establishes a common vocabulary and consistent logic within criminal statutes, it is wholly inadequate in the process of addressing modern sentencing reform. [4, p. 49]

One significant stumbling block of the Model Penal Code is its classification system of offenses (three felony punishment classes, two misdemeanor classes, and one violation class). States that have developed sentencing guidelines typically end up with more refined distinctions of offense seriousness. For example, Minnesota's guideline system ranks 10 offense severity levels, not including first degree murder, which carries a mandatory life sentence. Washington established a 14-tier ranking of offense seriousness. The more refined rankings weight factors such as type and extent of harm, culpability, and victim vulnerability.

The second major problem presented by the Model Penal Code is its focus on "worst case" behavior and assigning an appropriate maximum penalty. Most sentencing guidelines, as a practical matter, reflect "usual case" penalties with adequate provisions for judges to increase the sanction in light of aggravating circumstances. The "usual case" approach also allows judges to base sentencing on the offender's actual behavior in the crime rather than the offense for which he was convicted. (For a detailed discussion of these problems, see Tonry's "Sentencing Guidelines and the Model Penal Code" [9].)

### Setting the Agenda of Policy Choices

The enabling legislation should spell out the major issues to be addressed by the commission. Key policy issues include:

- Ranking offenses (including attempts, solicitations, and conspiracies) by degree of seriousness;
- Determining the role of and measuring criminal history as a factor in sentencing;
- Defining a dispositional policy that determines which offenders are confined in state prisons and which are sanctioned in other ways (i.e., custodial dispositions, fines, restitution, and probation);
- Establishing the length of sentences (prison and otherwise) and the extent of other stipulated penalties of community service or fines;
- Developing policy and procedures governing when a judge may depart from the guidelines to order a more or less severe sentence; and
- Structuring policies and procedures (for example, plea bargaining agreements or parole decisions) to ensure consistency in all aspects of sentencing policy.

Within each of these six policy areas, a commission will face many diverse and complex questions. A brief discussion of some of the questions a commission will confront follows.

**Ranking the Gravity of Different Offenses.** A commission must develop a consensus hierarchy of criminal activity. In effect, a commission makes a collective judgment about what crimes are least serious or most serious and therefore deserving of harsher punishment. At a broad policy level, the rankings reflect judgments about harm or potential harm to the victim or community, the culpability of the offender, and physical injury to the victim. A commission may choose to make case-level differentiations as well. For example, the proposed Oregon crime ranking subdivides drug offenses using factors such as the type of substance involved, the intent to generate substantial profits, and the connection, if any, to an organized trafficking operation.

**The Role of Criminal History.** Commissions typically develop a scoring system to assign

a numerical weight to offender characteristics including prior felony and misdemeanor convictions, juvenile record, and probation or parole status at the time of the offense. Other considerations may include: Should offenses against people and property offenses be weighted differently? Should extended periods of crime-free behavior diminish the weight given to old convictions? How should multiple convictions arising out of a single incident be counted?

The rankings of offense seriousness and offender characteristics are usually displayed on a two-dimensional grid, yielding a matrix on which sentencing policy can be based. Next the commission must deal with the two major policy issues that drive prison populations and other correctional resources: (1) the dispositional policy or, more simply put, what sentences (prison, probation, or otherwise) are most appropriate for which offenders, and (2) the durational policy or, in other words, how long or how extensive a sentence should be given for a particular offense and to the offender. In effect, the commission draws lines through the matrix to represent when an offender will be sanctioned in the community or in prison and assigns time periods to each cell within the matrix. The designated time period in each cell is usually termed the "presumptive sentence," the sentence presumed to be most appropriate. (See Figure 1.)

**Dispositional Policy.** A commission makes fundamental philosophical judgments about how much weight to give to offense seriousness and criminal history when choosing a sentencing option. A "just-deserts" policy emphasizes offense seriousness and mandates a sentence based on the offense with little regard to prior criminal activity. Conversely, a policy aimed at incapacitating repeat offenders would give much greater weight to criminal history.

In Minnesota, when establishing an in/out policy for the use of imprisonment, the guidelines commission initially identified those offenses for which imprisonment should always or never be recommended. Using information on past sentencing practices, the com-

mission could project the population impact of the different weightings of offense seriousness and offender history on prison capacity—the more punishment-oriented the policy, the higher the commitments to prison. In addition, the commission weighed the political implications of different in/out policies. [7, p. 82]

As a practical matter, developing a dispositional policy will not deviate from past judicial sentencing practices in the vast majority of cases. Where new guidelines deviate from past practice, however, the debate is likely to be quite sharp and focused on fundamental philosophical issues.

**Durational Policy.** A commission articulates specific confinement periods and the extent or severity of other sanctions. Because structured sentencing substitutes shorter "real-time" sentences for symbolically longer indeterminate sentences, the durational policy attracts controversy even when it closely resembles actual judicial practice.

Some of the questions involved in the durational policy are: Should a single fixed sentence be provided or a sentencing range? To what extent should prison capacity constrain the development of sentence lengths? How should sanctions other than prison be weighted and what tradeoffs allowed when a community has limited correctional alternatives? Should fines be graduated according to the offender's ability to pay, and when should fines be allowed to substitute for custodial options or community service requirements? When multiple convictions are involved, how should concurrent or consecutive sentences be calculated? How should post-imprisonment supervision be calculated?

Several states are exploring one promising approach to incorporating community corrections into dispositional and durational policy. The approach involves two elements: (1) a refinement of sentencing guidelines to include different levels of probation sentences, and (2) a system of exchanges or equivalencies among various non-imprisonment sanctions. For example, Oregon's proposed sentencing guidelines establish three probation levels for

**FIGURE 1.  
MINNESOTA'S SENTENCING GUIDELINES MATRIX**

Severity Levels of Conviction Offense	Criminal History Score							
	0	1	2	3	4	5	6 or more	
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12*	12*	12*	13	15	17	19 19-20
Theft Related Crimes (\$2 500 or less) Check Forgery (\$200-\$2 500)	II	12*	12*	13	15	17	19	21 20-22
Theft Crimes (\$2 500 or less)	III	12*	13	15	17	19	22	25 24-26
Nonresidential Burglary Theft Crimes (over \$2 500)	IV	12*	15	18	21	24-26	32	41 37-45
Residential Burglary Simple Robbery	V	18	23	27	30	38	46	54 50-58
Criminal Sexual Conduct, 2nd Degree (a) & (b)	VI	21	26	30	34	44	54	55 60-70
Aggravated Robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	55 60-70	81 75-87	97 90-104
Criminal Sexual Conduct, 1st Degree Assault, 1st Degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
Murder, 3rd Degree Murder, 2nd Degree (felony murder)	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, 2nd Degree (with intent)	X	216 212-220	236 231-241	255 250-262	276 250-283	296 298-304	316 307-325	336 326-346

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.  
\* One year and one day.  
Second numbers, e.g., 18-20 denote range within which a judge may sentence without the sentence being deemed a departure.  
Source: Minnesota Sentencing Guidelines Commission, 1988.

which a maximum number of jail days can be ordered (i.e., 30, 60, or 90 days) and a maximum amount of time (measured in "custodial units") in other community programs can be required. The guidelines also establish equivalent custodial units—one day of jail confinement or residential treatment is considered equal to two days of home arrest or electronic surveillance. Eight hours of community service would be equivalent to one-third of a day of jail confinement or residential placement. Depending upon the availability of local resources and the circumstances of the offender, a judge could order any combination of jail confinement, community service, custodial treatment, work release, or restitution within the allowance of custody units specified in the guidelines. A judge is not limited in imposing additional conditions of probation that do not involve custody of the offender.

**Departure.** Structured sentencing plans typically provide a means for judges to deviate

from the prescribed sentence and order a less or more stringent sentence due to mitigating or aggravating circumstances. In developing a departure policy, a sentencing commission deals with both substantive criteria and standards for departing from the presumptive sentences and procedural requirements that must be followed.

Examples of departure criteria include mental capacity, deliberate cruelty, extreme vulnerability of the victim, the offender's role in the crime, and cooperation with the investigation. In Minnesota, the commission also developed a list of factors, primarily demographic and socioeconomic, which should not be used as the basis for departures.

Departure procedures may require a sentencing evidentiary hearing, written justification of departure, appellate review of departures, and limitations on extent of departure.

**Related Policies and Procedures.** A commission may need to propose additional legislation to reallocate sentencing authority to implement a structured sentencing policy. For example, in a bill enacted this year establishing a state sentencing commission, the Kansas Legislature specifically directed the commission, in its report to the legislature, to make recommendations regarding whether there is a continued need for and what is the projected role of, if any, the Kansas parole board and whether the policy of allocating good time credits for the purpose of determining an inmate's eligibility for parole or conditional release should be continued. (Kansas Senate Bill No. 50, 1989 Session)

Statutory enactment to establish appellate review may be necessary. Washington's guidelines include standards to limit the discretion of prosecutors on charging and plea bargaining. Minnesota's guidelines (and Oregon's proposed guidelines) outline how probation revocation is to be coordinated with sentencing guidelines. In sum, the commission must ensure coordinated procedures that reinforce the goals of sentencing equity and systemwide uniformity.

Some or all of these issues may be necessary to detail in the enabling legislation to frame the scope and agenda of a sentencing commission.

#### Organizing a Commission

A commission acts on behalf of the legislature to develop a consensus sentencing policy that is politically salable and can be implemented, monitored, and enforced. The commission not only recommends substantive policy but also facilitates political tradeoffs and compromises. The commission in many ways has to act like a legislature; therefore, the composition, staffing, schedule, and procedures of a commission are important elements to be covered in enabling legislation.

**Membership.** The commission members must have the ability to work together on sentencing policy issues as well as the capacity to build support and commitment for sentencing policy among interested groups through-

out the state. Commission members may be selected because of their ability to articulate and represent the concerns and views of interest groups, but they also must be able to assume a statesman-like perspective, compromising when necessary on issues of overriding system values and goals. [7, pp. 213-218]

The size of different sentencing commissions has varied from as few as nine members (Minnesota, although later increased to 11) to as many as 21 members (Louisiana). No specific number holds any particular magic; however, a commission needs to be large enough to achieve broad-based representation from the interested institutions and groups and yet small enough to be able to function effectively as in a consensus-building process.

Because of the need for interbranch participation, the membership typically includes legislators, judges (both from trial-level courts and from the appellate or supreme court), prosecutors, defense attorneys, law enforcement officers, probation and parole officers, corrections administrators, and public members. Whether the commission has direct legislator members or other forms of legislative participation will depend upon the state tradition and specific constitutional provisions governing separation of powers. Membership may be designated by specific position, for example, the state attorney general, or by general description. Limiting the number of specifically designated positions allows the appointing authority greater latitude to select members for other desired characteristics such as availability, flexibility, and commitment to sentencing reform.

Length of term varies from two years (e.g., some Louisiana members) to six years (e.g., in Tennessee), with most commissions using staggered terms. A minimum of two years is useful to provide continuity of membership through the initial development of sentencing policy; the longer terms obviously provide more stability and continuity. Some experts argue against coterminous tenure because of the potential for substantial turnover and disruption of continuity. [7, pp. 208-209]

The method of appointment will depend in large part on political tradition and constitutional constraints in a state. In designing the appointment process, a legislator also must evaluate what method is most likely to result in members who have credibility and standing among the interested groups and can represent a point of view without being inflexible. Some states have reserved the power of appointments for the governor (e.g., Louisiana and Washington). In Minnesota, the chief justice of the supreme court makes all judicial appointments, and several states have reserved some appointments for legislative leaders (e.g., Pennsylvania, Tennessee, and New Mexico). Some states specifically allow organized constituencies, such as the trial lawyers association or the judges conference, to suggest a list of potential nominees (e.g., Minnesota).

The commission chairmanship is a position akin to that of a legislative committee chair—providing leadership within the commission, guiding decision making, forging diverse points of view into a consensus, and being accountable to the interests of the governor and the legislature. In most commissions, the chair is usually appointed by the governor. Direct appointment of a chair usually means greater accountability and can ensure that the chairman shares the same goals as key public officials. Election has the advantage of underscoring the consensus nature of commission decision making, but it may not necessarily result in the selection of the strongest or most effective chair.

*Staffing and Support Resources.* Given the need for extensive data analysis, sentencing commissions require an independent and professional research staff, supplemented by temporary staff during the six- to nine-month data collection stage. Policy analysis, computer, administrative, and political skills are also required of the staff to organize the commission's work, to structure the policy issues for commission resolution, to assist commission members with important conceptual and political decisions, and to act as effective liaisons with all three branches of government and with state and local actors in the criminal justice system. The number of staff will depend in part

upon the time frame in which the commission must complete its work.

Data collection efforts are extensive, and sometimes easily underestimated or poorly planned. Commissions typically analyze data from 30 to 50 percent of all criminal cases in a one- or two-year period, collecting from each case up to 100 pieces of information dealing with demographic characteristics, criminal history, court decisions, charging and convicting offenses, available dispositions and correctional resources, and more. Because of its fundamental importance, data collection cannot be skipped, but it can be mismanaged. For example, in developing voluntary judicial guidelines, commission staffs collected 220 variables on 5,117 cases in Florida and 132 variables on 1,864 criminal counts in Maryland. One evaluator observed that the data collection efforts in both states bogged down and led to significant delays and robbed the projects of time and resources for important activities such as support building, training, and implementation procedures. [1, p. 154]

Data analysis programs usable on personal computers have been developed to facilitate research and develop models to forecast the financial and population implications of different sentencing options in different correctional settings such as jail, community supervision, or prison. Software is available in the public domain, in other words, free of charge.

Adequate time is necessary for staff and commission members to accomplish the task of policy development. A minimum of 18 months is required, but up to 36 months may be a more desirable schedule. Most states have mandated a two-year schedule for development of sentencing policy. Louisiana is unique in having no statutorily set deadline for reporting. As a practical matter, deadlines are useful for forcing policy choices and compromise. In addition, an extended study period may result in data being outdated before they are utilized.

The cost of undertaking a structured sentencing project will vary, depending upon the size of the state. As a general rule, an annual

appropriation for a small to medium-sized state of \$250,000 to \$450,000 will be required, contingent upon whether the commission is developing or monitoring ongoing sentencing policy, according to Knapp. Funds are used for staff, equipment, travel, meetings, and administrative expenses. For example, the Washington sentencing commission received an appropriation of \$391,000 in its first biennium (1984 to 1986) of operation and \$558,000 in its second biennium. New Mexico's sentencing commission is in the process of attempting to develop structured sentencing policy with a 1988-1989 appropriation of \$246,250. In addition to state appropriations, a number of states are receiving federal funds and technical assistance through the Bureau of Justice Assistance's Structured Sentencing Program.

*Process Considerations.* The development of a structured sentencing policy requires study of past practices but, more important, development of a new consensus about appropriate punishments for offenders. Consensus must be forged not only among the commission members but also among those in the corrections community and the general public. In some states, sentencing commissions have fallen far short of the promise of reform because of political conflict within them. Other reform efforts have failed upon implementation because of pockets of resistance in the criminal justice system. Therefore, the process used to develop the sentencing policy will contribute substantially to its credibility and political acceptance.

The decision-making style of the commission should be designed to maintain internal commitment to the process and the work product. The nature of sentencing policy—reflecting a broad range of different and legitimate perspectives—will require the incorporation of different points of view and tradeoffs among the interested parties. An inclusive, consensus-building process is essential as opposed to a simple majority-rules voting procedure.

Subcommittees have proven to be an effective, necessary tool for organizing the work of a sentencing commission on several fronts simultaneously. Typically, subcommittees are

assigned the task of overseeing data collection and identifying options, while the resolution of policy questions is reserved for the full commission as a means of underscoring the need for broad consensus. Louisiana has opted not to use subcommittees, a choice that may require more time of commission members but also may preserve the greatest degree of cohesion in decision making.

External support-building activities are essential and may include public hearings with participation by interested groups, open meetings held in locations throughout the state, comments solicited on working papers, personal contact between commission members and key community leaders, ad hoc advisory groups, newsletters and interim reports to disseminate information. For example, the success of Minnesota's commission was in no small part furthered by "an aggressively open political process" including several rounds of public hearings designed to disseminate information as well as solicit public input. [6, p. 15]

#### **Implementing and Enforcing a Sentencing Policy**

The long-term effectiveness of structured sentencing policy can be summed up in four questions:

- Does the policy have enforcement power?
- Is the policy specific and clearly articulated?
- Are resources sufficient to implement the policy?
- Is there an ongoing mechanism to monitor compliance and recommend changes in policy when necessary?

*Legal Enforcement.* The critical enforcement mechanism is appellate review—the process of appeals court review of judicial sentences that fall outside the presumptive sentence prescribed by the policy. Appellate review gives either the state or the defendant the right to appeal sentencing decisions. Traditionally, appellate review has been limited to the legality of the sentence imposed, but with structured sentencing, appellate review provides a means to judge the appropriateness of the sentence as well as judicial compliance with sentencing

policy. The enabling statutes for sentencing commissions in Minnesota, New Mexico, Tennessee, and Washington provided for appellate review.

Appellate review also provides a means for the development of case law on issues not addressed by the sentencing commission; however, case law may provide mixed results. [4, p. 18] The case law resulting from appeals in Washington and Minnesota has primarily focused on the threshold, extent, and substantive standards of departure. The experience of these two states suggests that departure issues should be scrutinized by other state sentencing commissions.

*Policy Clarity.* The clarity of the sentencing policy in large part will determine whether it is self-enforcing. The more specific the policy is, the easier it is for appellate courts to exercise review. If a commission defers policy issues or leaves certain criteria vague or broad, then courts must develop a body of case law to provide the necessary guidance. But court review is always limited by the circumstances of a particular appeal and, therefore, is an inadequate mechanism for policymaking.

In addition, if the sentencing policy is not comprehensive and fails to structure all dispositional choices and decisions affecting sentence length, then the goals of equity and uniformity cannot be achieved. There is evidence, for example, in Minnesota that inconsistent and inequitable punishments have resulted from the failure to structure community-based sanctions [12 (1989), pp. 29-33]

*Coordination of Resources.* By definition, structured sentencing means coordinating correctional resources within a consistent policy. A clear, predictable sentencing policy will allow a legislature to anticipate correctional needs—from prison beds and treatment facilities to probation officers and agents for fine collection. Since sentencing commissions have no power of appropriation, they cannot mandate additional resources if they develop a sentencing policy resulting in more offenders than prisons or community-based programs can handle. Thus, an important commission task is making other

■ decision makers aware of the policy and fiscal tradeoffs. Failure to consider the capacity of correctional resources may produce a rational, equitable, but unenforceable policy.

■ Legislatures in Oregon, Tennessee, and Washington directed their sentencing commissions to address specifically the adequacy of correctional resources needed to implement the new sentencing policy effectively. In Washington and Oregon, the enabling legislation directed the commissions to develop policies that would not exceed currently available prison space or recommend a sentencing alternative that specifies increased correctional resources. In other words, the enabling legislation ensured the legislatures comprehensive data if faced with a need for additional correctional facilities to enforce longer, tougher sentences. In Tennessee, the submission of four plans to the legislature allows lawmakers to compare different sentencing philosophies with varying price tags. To address correctional resources successfully, each policy choice must be evaluated in terms of its impact on current prison population or program capacity. If left as a postscript or afterthought, resource issues can undo a commission's work.

■ *Ongoing Monitoring.* Once a sentencing policy is established, a commission's work is not done. Ongoing monitoring is necessary to adapt to changes in public opinion, crime patterns, or demographic shifts. In the states with established commissions, the enabling legislation usually anticipates a life for the commission beyond the initial development of structured sentencing guidelines. For example, the Minnesota and Washington commissions collect data and analyze trends in sentencing, review any proposed legislation affecting sentencing, conduct studies of selected issues, promulgate interim rules, and propose sentence modifications annually to the legislatures. Since the nature and demographics of the offender population change, a commission's monitoring can assist legislators in projecting future needs in corrections and developing new sanctions. Moreover, a commission can maintain the necessary interbranch cooperation needed to address sentencing policy.

## CONCLUSION

Structured sentencing offers the most promising vehicle for legislators interested in achieving uniformity and equity in sentencing and coordinating the full range of correctional resources now and in the future. The pioneering experience of other states is instructive not only about what works or does not work but also about the magnitude and difficulty of the task.

The essential ingredients for success include: a commitment of interbranch cooperation that leads to a comprehensive policy and a consensus product; a carefully organized, well-run sentencing commission that has the membership and resources necessary for the task; a clear, unambiguous policy that is implemented with adequate legal authority; and an enforcement and monitoring mechanism to ensure implementation.

Strong policy leadership is critical. Within each of the three branches, there will be pockets of ignorance about and resistance to sentencing reform. Only through the cooperative efforts of key individual judges, legislators, and administrators will these hurdles be overcome.

Many of the problems that a sentencing commission may encounter can be anticipated and drafted into the enabling legislation. The other ingredients will depend upon the strength of the commission's membership, the political climate of support within a state's criminal justice community, and a sponsoring legislator's best judgment about the appropriate political timing to attempt broad-based reform.



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Washington Sentencing Reform Act of 1981—Title 9 RCW 94A.030-94A.440.  
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A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 491 (Jud)

Page 1, line 28:

Following "Alaska", insert "Anchorage"

go0340hJ.  
Gaguine  
5/1/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 491 (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 creating a sentencing commission; and provid-  
7 ing for an effective date."

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

9 \* Section 1. AS 44.19 is amended by adding new sections to read:

10 ARTICLE 16. SENTENCING COMMISSION.

11 Sec. 44.19.561. CREATION OF COMMISSION. The Alaska Sentencing  
12 Commission is established in the Office of the Governor.

13 Sec. 44.19.563. COMPOSITION. (a) The commission consists of 14  
14 members as follows:

15 (1) a person with a law enforcement background, appointed  
16 by the governor after considering nominations from the Alaska Peace  
17 Officers Association;

18 (2) two persons who are members of a crime victims advocacy  
19 or crime victims assistance organization, appointed by the governor;

20 (3) a person with an understanding of the concerns of  
21 Alaska Natives relating to the criminal justice system, appointed by  
22 the governor;

23 (4) a person with a background in criminal rehabilitation  
24 programs, appointed by the governor;

25 (5) a person with an academic background in criminal jus-  
26 tice issues, appointed by the governor after considering nominations  
27 from the dean of the School of Public Policy of the University of  
28 Alaska;

29 (6) the commissioner of corrections or a deputy

1 commissioner of corrections designated by the commissioner;

2 (7) the commissioner of public safety or a deputy commis-  
3 sioner of public safety designated by the commissioner;

4 (8) the attorney general or the designee of the attorney  
5 general;

6 (9) the public defender or the designee of the public  
7 defender;

8 (10) the chief justice of the supreme court or another  
9 justice of the supreme court or a judge of the court of appeals desig-  
10 nated by the chief justice;

11 (11) a superior court judge designated by the chief justice;

12 (12) the senate president or another senator designated by  
13 the senate president; and

14 (13) the speaker of the house of representatives or another  
15 member of the house designated by the speaker of the house of repre-  
16 sentatives.

17 (b) The commission, by majority vote of the membership, shall  
18 elect a chair and other officers it considers necessary from among its  
19 membership to serve on a yearly basis.

20 (c) The term of office of a member appointed under (a)(1) of  
21 this section is three years. A vacancy shall be filled for the bal-  
22 ance of the unexpired term in the same manner as original appoint-  
23 ments.

24 Sec. 44.19.565. COMPENSATION. Members of the commission serve  
25 without compensation, but are entitled to per diem and travel expenses  
26 authorized for boards and commissions under AS 39.20.180.

27 Sec. 44.19.567. MEETINGS. A majority of the members constitutes  
28 a quorum for conducting business and exercising the powers of the  
29 commission. The commission shall meet at the call of the chair, at

1 the request of the majority of the members, or at a regularly sched-  
2 uled time as determined by a majority of the members.

3 Sec. 44.19.569. PURPOSE. The purpose of the commission is to  
4 evaluate the effect of sentencing laws and practices on the criminal  
5 justice system, and to make recommendations for improving criminal  
6 sentencing practices. In so doing, the commission shall consider

7 (1) statutes and court rules related to sentencing of  
8 criminal defendants;

9 (2) sentencing practices of the judiciary, including the  
10 use of benchmark sentences;

11 (3) alternatives to traditional forms of incarceration;

12 (4) the use of parole and probation in sentencing criminal  
13 defendants;

14 (5) the adequacy, availability, and effectiveness of treat-  
15 ment and rehabilitation programs;

16 (6) crime rates, including the rate of violent crime, in  
17 this state compared to other states;

18 (7) incarceration rates in this state compared to other  
19 states; and

20 (8) the projected financial effect of changes in sentencing  
21 laws and practices.

22 Sec. 44.19.571. METHODOLOGY. In making recommendations, the  
23 commission shall

24 (1) solicit and consider information and views from a  
25 variety of constituencies in order to represent the broad spectrum of  
26 diversity that exists with respect to possible approaches for sentenc-  
27 ing criminals in the state; and

28 (2) base recommendations on the following factors:

29 (A) the seriousness of each offense in relation to

1 other offenses;

2 (B) the effect of an offender's prior criminal history  
3 on sentencing;

4 (C) the need to rehabilitate criminal offenders;

5 (D) the need to confine offenders to prevent harm to  
6 the public;

7 (E) the extent to which criminal offenses harm victims  
8 and endanger the public safety and order;

9 (F) the effect of sentencing in deterring an offender  
10 or other members of society from future criminal conduct;

11 (G) the effect of sentencing as a community condem-  
12 nation of criminal acts and as a reaffirmation of societal norms;

13 (H) the elimination of unjustified disparity in sen-  
14 tences; and

15 (I) the resources available to criminal justice system  
16 agencies.

17 Sec. 44.19.573. POWERS AND DUTIES. To accomplish its purpose,  
18 the commission may

19 (1) hire an executive director and additional administra-  
20 tive staff as may be necessary to the commission's function, or place  
21 the commission staff under the executive director of the Alaska Judi-  
22 cial Council;

23 (2) select and retain the services of consultants whose  
24 advice is considered necessary to assist the commission in obtaining  
25 information;

26 (3) accumulate and compile information concerning sentenc-  
27 ing practices; and

28 (4) recommend legislative and administrative action on  
29 sentencing practices.

1           Sec. 44.19.575. ANNUAL REPORT AND RECOMMENDATIONS. The commis-  
2 sion shall submit to the governor and the legislature an annual report  
3 of its proceedings for the previous calendar year and shall submit  
4 recommendations for legislative and administrative action. Reports  
5 and recommendations required under this section shall be submitted no  
6 later than January 1 of each year.

7           Sec. 44.19.577. DEFINITION. In AS 44.19.561 - 44.19.577, "com-  
8 mission" means the Alaska Sentencing Commission established in AS 44.-  
9 19.561.

10       \* Sec. 2. TRANSITIONAL PROVISIONS. The initial appointments to the  
11 Alaska Sentencing Commission under AS 44.19.563, as added by sec. 1 of this  
12 Act, shall be made and the first meeting of the commission shall be con-  
13 vened by July 1, 1990. The first report required under AS 44.19.575, as  
14 added by sec. 1 of this Act, shall be submitted no later than January 1,  
15 1991.

16       \* Sec. 3. This Act is repealed June 30, 1993.

17       \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).  
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BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 448

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act creating a sentencing commission; and  
7 providing for an effective date."

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

9 \* Section 1. AS 44.19 is amended by adding new sections to read:

10 ARTICLE 16. SENTENCING COMMISSION.

11 Sec. 44.19.525. CREATION OF COMMISSION. The Alaska Sentencing  
12 Commission is created in the Office of the Governor.

13 Sec. 44.19.535. COMPOSITION. (a) The commission consists of  
14 the following 13 members:

15 (1) three persons appointed by the governor, one of whom is  
16 appointed after consultation with the Alaska Peace Officers'  
17 Association;

18 (2) the commissioner of corrections or a deputy  
19 commissioner of corrections designated by the commissioner;

20 (3) the commissioner of public safety or a deputy  
21 commissioner of public safety designated by the commissioner;

22 (4) the attorney general or a deputy attorney general  
23 designated by the attorney general;

24 (5) the public defender or the designee of the public  
25 defender;

26 (6) the presiding officer of the board of parole or a  
27 member of the board of parole designated by the presiding officer;

28 (7) the chief justice of the supreme court or another  
29 justice of the supreme court designated by the chief justice;

1 (8) a judge of the court of appeals designated by the chief  
2 justice;

3 (9) a superior court judge designated by the chief justice;

4 (10) the senate president or another senator designated by  
5 the senate president; and

6 (11) the speaker of the house of representatives or another  
7 member of the house designated by the speaker of the house of  
8 representatives.

9 (b) The commission, by majority vote of the membership, shall  
10 elect a chair and other officers it considers necessary from among its  
11 membership to serve on a yearly basis.

12 (c) The term of office of a member appointed under (a)(1) of  
13 this section is three years. Terms shall be staggered, and a member  
14 may not serve more than two consecutive terms. A vacancy shall be  
15 filled for the balance of the unexpired term in the same manner as  
16 original appointments.

17 Sec. 44.19.545. COMPENSATION. Members of the commission serve  
18 without compensation, but are entitled to per diem and travel expenses  
19 authorized for boards and commissions under AS 39.20.180.

20 Sec. 44.19.555. MEETINGS. A majority of the members constitutes  
21 a quorum for conducting business and exercising the powers of the  
22 commission. The commission shall meet at the call of the chair, at  
23 the request of the majority of the members, or at a regularly  
24 scheduled time as determined by a majority of the members.

25 *Advisory* Sec. 44.19.565. PURPOSE. The purpose of the commission is to  
26 evaluate the impact of crime rates and sentencing laws on the criminal  
27 justice system, and to make recommendations for improving criminal  
28 sentencing practices.

29 Sec. 44.19.575. METHODOLOGY. In making recommendations, the

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1 commission shall  
2 (1) solicit and consider information and views from a  
3 variety of constituencies in order to represent the broad spectrum of  
4 diversity that exists with respect to possible approaches for  
5 sentencing criminals in the state; and

6 (2) base recommendations on the following factors:

7 (A) the seriousness of each offense in relation to  
8 other offenses;

9 (B) the effect of an offender's prior criminal history  
10 on sentencing;

11 (C) the need to rehabilitate criminal offenders;

12 (D) the need to confine offenders to prevent harm to  
13 the public;

14 (E) the extent to which criminal offenses harm victims  
15 and endanger the public safety and order;

16 (F) the effect of sentencing in deterring an offender  
17 or other members of society from future criminal conduct;

18 (G) the effect of sentencing as a community condem-  
19 nation of criminal acts and as a reaffirmation of societal norms;

20 (H) the elimination of unjustified disparity in sen-  
21 tences; and

22 (I) the resources available to criminal justice system  
23 agencies.

24 Sec. 44.19.585. POWERS AND DUTIES. To accomplish its purpose,  
25 the commission may

26 (1) hire an executive director and additional  
27 administrative staff as may be necessary to the commission's function;

28 (2) select and retain the services of consultants whose  
29 advice is considered necessary to assist the commission in obtaining

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1 information;

2 (3) accumulate and compile information concerning  
3 sentencing laws; and

4 (4) recommend legislative and administrative action on  
5 sentencing laws.

6 Sec. 44.19.595. ANNUAL REPORT AND RECOMMENDATIONS. Each year  
7 the commission shall submit to the governor and the legislature a  
8 report of its proceedings for the previous calendar year and shall  
9 submit recommendations for legislative and administrative action.  
10 Reports and recommendations required under this section shall be  
11 submitted no later than the 10th day of each regular session of the  
12 legislature.

13 \* Sec. 2. AS 44.66.010(a) is amended by adding a new paragraph to read:  
14 (17) Alaska Sentencing Commission (AS 44.19.525) - June 30,  
15 1994.

16 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).