HB396

HOUSE COMMITTEE REPORT

(11)
Date Referred: January 29, 1992 FURTHER REFERRALS:

Date of Committee Action: 2/19/92

The FINANCE Committee considered: HB 396

HOUSE BILL NO. 396 ANTI-VIOLENT CRIME ACT OF 1992

"An Act relating to violent crimes and criminal law and procedure."

RECOMMENDATIONS: [ ] the same title
be replaced with CS HB 396 (JUD) [✓] a new title
[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[✓] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

[✓] fiscal impact DOA [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [✓] zero fiscal note(s) Law 1/29/92 DPS 1/29/92 Corrections 1/29/92 AK Court Sys 1/29/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eldon S MacLean MacLean	✓	Adopted		✓	
Pamela R Barnes Barnes	X	Mike Navarre Navarre		✓	
Mark Boyer Boyer	X	Fay Brown Brown		✓	
Rob E Phillips Phillips	✓	(revise fiscal notes)			
		Jack D Jacko		✓	
		Bert L Sharp Sharp		X	

Mike Navarre Navarre E P MacLean MacLean

(1) CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 396 (JUD)

Revision Date: February 4, 1992
Title: An Act relating to violent crimes and criminal law and procedures.
Sponsor: House Judiciary
Requestor: House Judiciary

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1 6 3 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	76.7	79.0	81.4	83.8	86.3	88.9
TRAVEL	2.0	2.1	2.2	2.3	2.4	2.5
CONTRACTUAL	20.0	20.6	21.2	21.8	22.5	23.2
SUPPLIES	1.5	1.6	1.7	1.8	1.9	2.0
EQUIPMENT	2.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	102.2	103.3	106.5	109.7	113.1	116.6
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	102.2	103.3	106.5	109.7	113.1	116.6
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	102.2	103.3	106.5	109.7	113.1	116.6

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)
See Attached.

Prepared by: John B. Salemi, Director
Division: Public Defender Agency
Phone: 279-7541
Date: February 4, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 2/5/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/07/91
LEG92/02127.KP/1

ANALYSIS: (continued)

Many of the provisions contained in this bill are fiscally insignificant. Others, however, will have a fiscal impact on the Alaska Public Defender Agency. Additional cases, additional trials, more protracted sentencing hearings all add up to an increased work load. It should be noted that the statute of limitations provisions, for example, were introduced in this bill because police were complaining that many cases were going unprosecuted because they fell outside of the applicable statute of limitations. While neither the police nor the Department of Law have provided statistics concerning the additional cases which might be prosecuted, suffice it to say the work load is going to go up, not down.

It is difficult to project the amount of additional work which will be generated by the provisions of this bill. For that reason a very conservative approach is taken by this agency in terms of fiscal impact. It is anticipated that one additional attorney will be needed in Anchorage to absorb the work created through this bill. This lawyer would travel on an "as needed" basis to other office locations.

BUDGET ANALYSIS - CSHB 396 (JUD)

100 - Attorney III (Anchorage)		76.7
200 - Travel		2.0
300 - Contractual Office Space, Experts		20.0
400 - Supplies		1.5
500 - Equipment (One Time)		2.0
	Total	102.2

Position Title	No. of Positions	Range / Step	Barg. Unit
Attorney III	1	22A	PX

Time Status	Staff Months	Location	Election District
PFT	12.0	EBA	92

TYPE OF EXPENDITURE		AMOUNT
Salary	56.0	
Benefits	20.7	
Premium Pay		
Other		
Total Personal Services	76.7	76.7
Travel		2.0
Contractual		20.0
Commodities		1.5
Equipment		2.0
Other		
Total Cost		102.2
FUNDING SOURCE FOR TOTAL COST		
Federal Receipts 1002		
G.F. Match 1003		
General Fund 1004		102.2
I-A Receipts 1007		
CIP Receipts 1061		
Other		

Justification

CSHB 396 (JUD) will increase the workload of the Public Defender Agency. Its provisions will 1) elevate certain criminal conduct from misdemeanor level to a felony classification, 2) elevate certain felony conduct to a higher classficiation of offense, thereby increasing potential penalties, 3) extend significantly the statute of limitations for many criminal acts, including doubling the period for charging crimes against persons and increasing by 15 years the statute of limitations for sex offenses against persons under 16 years of age, 4) create a more severe criminal penalty for certain homicide offenses (99 years without parole), and 5) modify certain sentencing procedures which will restrict the court's ability to reduce sentences.

While it is difficult to quantify the extent to which these provisions will increase the Public Defender case/workload, a real increase will occur. The proposed budget increment (one attorney and associated expenses) represents a conservative estimate of the fiscal impact of CSHB 396 (JUD).

8/LEG92/02127B.KP/1

Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Revised Date:

FISCAL NOTE

No. 3

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: CSHB 396(JUD)
(H) Publish Date: 1/29/92

Revision Date: _____ Department Affected: Department of Corrections

Title: "An Act relating to violent crimes and criminal law and procedures." BRU: Statewide Operations

Component: Various

Sponsor: House Judiciary

Requestor: House Judiciary COMPONENT SERIAL NO. [ ][ ][ ][ ]

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Carl Nickel, Director Phone: 465-3376

Division: Administrative Services Date: 1-16-92

Approved by Commissioner: Lloyd Hames, Commissioner for

Agency: Department of Corrections Date: 1-16-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91 COMMITTEE COPY

#3
CSHB 396(JUD)
1-29-92

CONTINUATION OF FISCAL NOTE ANALYSIS

HB 396: "An Act relating to violent crimes and criminal law and procedures."

This bill makes numerous changes to Alaska's Criminal Code involving violent crimes. By raising the seriousness of certain crimes from one class to another and by providing for mandatory sentences for certain crimes, the bill will impact the Department by increasing the prisoner population and lengths of sentences of some prisoners. However, most of the offenses addressed are anticipated to occur infrequently and some of the effects will not become apparent for at least five years. Therefor, no significant fiscal impact is expected. A sectional analysis follows:

Section 1: Title.

Sections 2-4: These sections amend the statutes addressing certain forms of assault, such as those which cause serious physical injury as a result of repeated, rather than single assaults, and those committed by an adult against a child under 10 years of age. Because of the infrequency of the offenses, these amendments are unlikely to have significant fiscal impact.

Sections 5-9: These sections amend the sexual offense statutes to include the conduct of engaging in sexual acts or contact with a person who is unaware that the sexual contact or act is being committed, and sexual offenses committed by a health care professional during professional treatment. Section 9 adds sexual sadism or masochism to the list of prohibited behaviors described under unlawful exploitation of a minor. The amendments are unlikely to have fiscal impact because of the infrequency of the offenses.

Sections 10-12: These sections address "drive by shootings" which would become Class C felonies even when no one is injured or placed in fear by the conduct. The amendments are unlikely to have fiscal impact because of the infrequency of the offenses.

Section 13: This section would include knowingly selling a firearm or defensive weapon to a person under 18 years of age within the crime of misconduct involving weapons in the second degree. The amendment is unlikely to have significant fiscal impact because of the anticipated infrequency of the offense.

Section 14: This section prohibits persons under age 21 from possessing defensive weapons on the grounds of or on a parking lot immediately adjacent to a public or private school, without permission of the school administration. This offense would be a misdemeanor. This section is unlikely to have significant fiscal impact because of the infrequency of the offense being committed by adults.

COMMITTEE COPY

#3
CSHB 396 (JUD)
1-29-92

CONTINUATION OF FISCAL NOTE ANALYSIS

HB 396

Sections 15, 24, and 25: These sections extend the statute of limitations from five to ten years for the following felonies: Manslaughter, Criminally Negligent Homicide, Assault in any degree, Kidnapping and Custodial Interference, Arson in the First Degree, Sexual Assault in any degree, Sexual Abuse of a Minor in any degree, Incest, Unlawful Exploitation of a Minor, Robbery, Extortion, or Coercion. The statute of limitations is extended from five to twenty years for felony sexual offenses involving a victim under age 16. The fiscal impact will not be felt for at lease five years. No information is available on how many crimes go uncharged because of the current five year limitation, however the fiscal impact is not expected to be significant.

Section 16: This section clarifies that a person convicted of two or more crimes, including murder in the first degree, may be sentenced to consecutive sentences in excess of the term of imprisonment for the murder conviction. There are already a number of prisoners within the Department who are serving such consecutive terms, so this amendment is not expected to have significant impact.

Section 17: This section provides that the preponderance of evidence standard of proof applies to sentencing proceedings, except as provided by AS 12.55.145(d), 12.55.155(f), and 12.55.165. This amendment reverses a recent Court of Appeals ruling and is not expected to have significant fiscal impact.

Sections 18 & 21: These sections provide that a person convicted of Murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years and shall not be eligible for discretionary parole when the conviction is for the murder of a clearly identified peace officer, fire fighter, or correctional officer engaged in official duties, or when the person has been previously convicted of Murder in the first or second degree. Due to the infrequency of the offenses, no significant fiscal impact is anticipated.

Sections 19, 20, 22, and 23: These sections provide that a court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds certain factors in aggravation. If a three-judge panel determines that manifest injustice would result from imposition of a presumptive term and also finds that the defendant has excellent potential for rehabilitation, the panel shall sentence the defendant to the presumptive term and order the defendant to engage in appropriate rehabilitation programs. The panel may then provide that the defendant is eligible for discretionary parole during the second

COMMITTEE COPY

CONTINUATION OF FISCAL NOTE ANALYSIS

HB 396

half of the sentence, if the defendant successfully completes all rehabilitative programs ordered by the panel. There are not significant numbers of prisoners incarcerated at this time who had their sentences reduced by a three-judge panel, based on excellent potential for rehabilitation, therefor the fiscal impact is not expected to be significant.

COMMITTEE COPY

FISCAL NOTE

No. 4

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: CSHB 396(JUD)
(H) Publish Date: 1/29/92

Revision Date: _____ Department Affected: Department of Law

Title: "An Act relating to violent crimes and criminal law and procedure." BRU: Prosecution

Component: All

Sponsor: House Judiciary Committee

Requestor: House Judiciary Committee COMPONENT SERIAL NO. [ ][ ][ ][ ]

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone 465-3672

Division: Administrative Services Date January 13, 1992

Richard I. Pegues /FOR/

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: January 13, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor/Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

COMMITTEE

CONTINUATION of FISCAL NOTE ANALYSIS #4

For Bill/Resolution No. CSHB 94(JUD) 1-29-92

Title: "An Act relating to violent crimes and criminal law and procedures."

This bill makes numerous changes to Alaska's Criminal Code involving violent crimes. A section-by-section analysis follows below.

Section 1. Title.

Section 2. This section amends AS 11.41.200(a) to include within the crime of assault in the first degree recklessly causing serious physical injury to another by repeated assaults using a dangerous instrument, even if each assault individually does not cause serious physical injury. This amendment is in response to the recent court of appeals decision in S.R.D. v. State, 817 P.2d 484 (Alaska App. 1991). It will not have an impact on the Department of Law because, where it is now necessary to prove several misdemeanors, the amendment will allow the state to prove a single class A felony, instead. This crime usually arises when a child is subjected to repeated physical abuse.

Section 3. This section amends AS 11.41.210(a) to include in the definition of the crime of assault in the second degree recklessly causing serious physical injury to another by repeated assaults, even if each assault individually does not cause serious physical injury. The result of this amendment is the same as Section 2, except that assault in the second degree is a class B felony because of the absence of a dangerous instrument.

Section 4. This section amends AS 11.41.220(a) to provide that a person, who is 18 years of age or older and who violates AS 11.41.230(a)(1) or (a)(2) when the victim of the offense is under the age of 10, commits the crime of assault in the third degree. This conduct, recklessly causing physical injury to another person, or with criminal negligence causing physical injury to another person by means of a dangerous instrument, is usually a class A misdemeanor. Under this amendment, however, the offense is increased to a class C felony when it is committed by an adult against a child under 10 years of age. The amendment is unlikely to have a fiscal impact because of the infrequency of the offense.

Section 5. This section amends AS 11.41.410(a) to include in the crime of sexual assault in the first degree the conduct of engaging in sexual penetration with a person who is unaware that a sexual act is being committed if the offender is a health care worker, and the conduct occurs while the offender is providing professional treatment of the victim. This amendment will have little impact on the department because of the infrequency c the offense.

Section 6. This section amends AS 11.41.420(a) to include in the crime of sexual assault in the second degree the conduct of

engaging in sexual contact with a person who is unaware that a sexual act is being committed if the offender is a health care worker, and the conduct occurs while the offender is providing professional treatment to the victim. The amendment also adds to the offense of sexual assault in the second degree the conduct of engaging in sexual penetration with a person who is unaware that a sexual act is being committed (when the offender is not a health care provider). These changes are not expected to have a fiscal impact on the department.

Section 7. This section amends AS 11.41.425(a) to include in the crime of sexual assault in the third degree the conduct of engaging in sexual contact with a person who is unaware that a sexual act is being committed. This section is not expected to have a fiscal impact on the department.

Section 8. This section amends AS 11.41.455(a) to include within the crime of unlawful exploitation of a minor the conduct of knowingly inducing or employing a child under 18 years of age to engage in, or photographing, filming, recording, or televising a child under 18 years of age engaged in sexual masochism or sadism. This change should have no fiscal impact on the department.

Section 9. This section provides definitions for the terms "health care worker" and "sexual act."

Section 10. This section amends AS 11.61.200(a) to include within the crime of misconduct involving weapons in the first degree the act of discharging a firearm from a moving propelled vehicle. Consequently, "drive-by" shootings would become a class C felony even when no one is injured or placed in fear by the conduct. This section is not expected to have a fiscal impact on the department.

Section 11. This section amends AS 11.61.200(d) to provide that as an exception to AS 11.61.200(a)(11), a peace officer acting within the scope and authority of employment may fire a weapon from a moving vehicle. This amendment will have no fiscal impact on the department.

Section 12. This section amends AS 11.61.200 to make it an affirmative defense to a prosecution under AS 11.61.210(a)(11) that the person who discharged the firearm from a moving vehicle was engaged in a lawful hunting or fishing activity at the time. This amendment will have no fiscal impact on the department.

Section 13. This section amends AS 11.61.210(a) to include knowingly selling a firearm or defensive weapon to a person under 18 years of age within the crime of misconduct involving weapons in the second degree. This amendment will not have a fiscal impact.

Section 14. This section amends AS 11.61.220(a) to provide that a

person commits the crime of misconduct involving weapons in the third degree if the person knowingly possesses a defensive weapon within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer. A person 21 years of age or older is exempted from this provision. This amendment will not cause a fiscal impact.

Section 15. This section amends AS 12.10.010, the state's general statute of time limitations for criminal prosecutions, to provide that the current 5-year limitation within which an indictment must be found or an information or complaint must be instituted, shall be extended to 10 years for the following felonies:

Manslaughter
Criminally Negligent Homicide
Assault in any degree
Kidnapping and Custodial Interference
Arson in the first degree
Sexual Assault in any degree
Sexual Abuse of a Minor in any degree
Incest
Unlawful Exploitation of a Minor
Robbery, Extortion, or Coercion

However, the section also provides that the current 5-year limitation shall be extended to 20 years after the commission of a felony sexual offense, including those listed above, involving a victim under the age of 16. As provided in Section 25 of the bill, the amendment of the statute of limitations will be prospective only. Consequently, there will be no fiscal impact for at least 5 years. Although information that would indicate how many crimes go uncharged under the current 5-year limitation is not available, the department does not anticipate that this amendment will have a significant fiscal impact.

Section 16. This section amends AS 12.55.025(e) to clarify that a person convicted of two or more crimes, including murder in the first degree, may be sentenced to consecutive sentences in excess of the term of imprisonment for the murder conviction. This is a sentencing provision and will not have an impact on the department.

Section 17. This section amends AS 12.55.025 to provide that the preponderance of the evidence standard of proof applies to sentencing proceedings, except as provided by AS 12.55.145(d), 12.55.155(f), and 12.55.165. This amendment has the effect of reversing a recent Court of Appeals ruling. Because the amendment is a sentencing provision, it will not have a fiscal impact on the department.

COMMITTEE COPY

Section 18. This section amends AS 12.55.125(a) to provide that a defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when the conviction is for the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional officer who was engaged in the performance of official duties at the time of the murder. The mandatory term of imprisonment of 99 years would also apply if the person convicted of murder in the first degree has been previously convicted of murder in the first or second degree in Alaska, or homicide under the laws of another jurisdiction when the offense contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110. This sentencing provision is not expected to have a fiscal impact on the department.

Section 19. This section amends AS 12.55.165 to provide that a court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (19), (20), (21), or (28) is present. This sentencing provision will not have a fiscal impact on the department.

Section 20. This section amends AS 12.55.175 to provide that, except as provided in Section 19 above, if a three-judge panel determines that manifest injustice would result from imposition of a presumptive term and the panel also finds that the defendant has excellent potential for rehabilitation and that a sentence of less than the presumptive term should be imposed because of the defendant's exceptional potential for rehabilitation, the panel shall sentence the defendant to the presumptive term under AS 12.55.125 and order the defendant to engage in appropriate rehabilitative programs under AS 12.55.015. The panel may then provide that the defendant is eligible for discretionary parole under AS 33.16.090 during the second half of the sentence, if the defendant successfully completes all rehabilitative programs ordered by the panel. This sentencing provision is not expected to have a fiscal impact on the department.

Section 21. This section amends AS 33.16.090(b) to provide that a prisoner sentenced to a mandatory 99-year term, under the amendment to AS 12.55.125(a) proposed in Section 18, shall not be eligible for discretionary parole during the entire term. This sentencing provision will not have a fiscal impact on the department.

Section 22 and Section 23. These sections amend AS 33.16.090 to provide that a prisoner may be eligible for discretionary parole during the second half of a sentence imposed under the amendment to AS 12.55.175(e) proposed in Section 20, above.

COMMITTEE COPY

Section 24. This section repeals AS 12.10.020(c), relating to the statute of limitations for certain sex offenses, which are amended in Section 15 above.

Section 25. This section makes the extension of the statute of limitations on criminal prosecutions, set out in Section 15 above, prospective.

COMMITTEE COPY

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 2
Bill Version: CSHB 396(JUD)
(H) Publish Date: 1/29/92

Revision Date:
Title: An Act relating to violent crimes and criminal law and procedure
Sponsor: Judiciary
Requestor: Judiciary

Department Affected: Alaska Court System
BRU: Trial Courts
Components:

COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Division: Alaska Court System
Phone: 264-8228
Date: 01/23/92

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 01/23/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

STATE OF ALASKA
1992 LEGISLATIVE SESSIO..

No. 5
Version: CSHB 396(JUD)
(H) Publish Date: 1/29/92

Revision Date: _____ Department Affected: Public Safety

Title: An Act relating to violent crimes and criminal law and procedure

BRU: Alaska State Troopers

Component: Detachments

Sponsor: House Judiciary

Requestor: House Judiciary

COMPONENT SERIAL NO. | | 7 | 9 | 9 |

EXPENDITURES/REVENUES: (Thousands of Dollars; (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Gayle A. Horetski Phone: 465-4322

Division: Commissioner's Office Date: 1/21/92

Approved by Commissioner: Gayle A. Horetski for Richard L. Burton

Agency: Department of Public Safety Date: 1/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DRR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

COMMITTEE COPY

CS FOR HOUSE BILL NO. 396 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 1/29/92
Referred: Finance

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crimes of assault, sexual assault, unlawful exploitation of a minor, and misconduct involving weapons; relating to the statute of limitations in criminal offenses; imposing a standard of proof in sentencing proceedings; requiring a 99-year prison term without discretionary parole for first degree murder if the defendant has a prior murder conviction, kills a peace officer, fire fighter, or correctional officer, or commits a torture murder; relating to sentencing of certain first felony offenders; limiting a court's discretion to refer certain criminal cases to a three-judge sentencing panel based upon the defendant's potential for rehabilitation; relating to sentencing and discretionary parole of offenders found to have an exceptional potential for rehabilitation; and amending Alaska Rule of Criminal Procedure 35."

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

* Section 1. SHORT TITLE. This Act shall be known as the Anti-Violent Crime Act of 1992.

(1) the **offender** [DEFENDANT] engages in sexual penetration with another person without consent of that person;

(2) the **offender** [DEFENDANT] attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person; or

(3) the **offender** [DEFENDANT] engages in sexual penetration with another person

(A) who the **offender** [DEFENDANT] knows is mentally incapable; and

(B) who is entrusted to the **offender's** [DEFENDANT'S] care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the Department of Health and Social Services; **or**

(4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

* **Sec. 6.** AS 11.41.420(a) is amended to read:

(a) An offender commits the crime of sexual assault in the second degree if

(1) the offender engages in sexual contact with another person without consent of that person;

(2) the offender engages in sexual contact with a person

(A) who the offender knows is mentally incapable; and

(B) who is entrusted to the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the Department of Health and Social Services; [OR]

(3) the offender engages in sexual penetration with a person who the offender knows is

(A) mentally incapable; [OR]

(B) incapacitated; **or**

psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or a substantially similar position;

(8) "sexual act" means sexual penetration or sexual contact.

* **Sec. 10.** AS 11.61.200(a) is amended to read:

(a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued under AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife; [OR]

(a) A person commits the crime of misconduct involving weapons in the third degree if the person

(1) knowingly possesses a deadly weapon, other than an ordinary pocketknife or a defensive weapon, that is concealed on the person;

(2) knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of a parent or guardian of the minor;

(4) knowingly possesses a firearm

(A) **or a defensive weapon** within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school [,] without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, except that a person 21 years of age or older may possess

(i) an unloaded firearm in the trunk of a motor vehicle or encased in a closed container in a motor vehicle**;**

(ii) a defensive weapon; or

(B) within the grounds of or on a parking lot immediately adjacent to a center, other than a private residence, licensed under AS 47.35.010 - 47.35.075 or recognized by the federal government for the care of children; or

(5) possesses or transports a switchblade or a gravity knife.

*** Sec. 15.** AS 12.10.010 is amended to read:

Sec. 12.10.010. GENERAL TIME LIMITATIONS. A prosecution for murder may be commenced at any time. Except as otherwise provided by law, **a** [NO] person **may not** [SHALL] be prosecuted, tried, or punished for **an** [ANY] offense **other than** [, NOT] murder [,] unless the indictment is found or the information or complaint is instituted **no later than**

(1) 10 years after the commission of a felony offense in violation of AS 11.41.120 - 11.41.530 or in violation of AS 11.46.400; or

(2) five years after the commission of any other offense [WITHIN FIVE YEARS NEXT AFTER SUCH OFFENSE SHALL HAVE BEEN COMMITTED].

*** Sec. 16.** AS 12.10.020(c) is amended to read:

of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110; or

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture.

* **Sec. 20.** AS 12.55.125(h) is amended to read:

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

* **Sec. 21.** AS 12.55.125 is amended by adding new subsections to read:

(j) A defendant sentenced to a mandatory term of imprisonment of 99 years under (a) of this section may apply for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or that circumstances exist that would warrant a referral to the three judge panel under AS 12.55.165.

* **Sec. 22.** AS 12.55.165 is amended by adding a new subsection to read:

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21), or (28) is present.

* **Sec. 23.** AS 12.55.175 is amended by adding a new subsection to read:

(e) If the three-judge panel determines under (b) of this section that manifest injustice would result from imposition of the presumptive term and the panel also finds that the defendant has an exceptional potential for rehabilitation and that a sentence of less than the presumptive term should be imposed because of the defendant's exceptional potential for rehabilitation, the

to the defendant by the department.

* Sec. 27. APPLICABILITY OF SECTIONS 15 AND 16. AS 12.10.010, as amended by sec. 15 of this Act, and AS 12.10.020(c), as amended by sec. 16 of this Act, apply to all offenses committed on or after the effective date of this Act and to all offenses that could have been prosecuted under AS 12.10.010 and 12.10.020 on the day before the effective date of this Act.

* Sec. 28. AS 12.55.125(j), added by sec. 21 of this Act, has the effect of amending Alaska Rule of Criminal Procedure 35 by permitting a court to reduce or modify a mandatory sentence of imprisonment of 99 years imposed under AS 12.55.125(a), as amended by sec. 19 of this Act, after the defendant has served one-half of the mandatory term without consideration of good time earned under AS 33.20.010.

Alaska State Legislature

House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

M E M O R A N D U M

TO: Representative Eileen MacLean, Finance Co-Chair
Representative Mike Navarre, Finance Co-Chair
Members of the Finance Committee

FROM: Representative Dave Donley, Chair DD
Judiciary Committee

RE: HB 396 - Anti-Violent Crime Act of 1992
Public Defender Fiscal Note

DATE: January 29, 1992

Although the Judiciary Committee passed HB 396 out of committee with the fiscal note that was submitted by the Public Defender Agency, **the Committee believes that this fiscal note is not appropriate and that the Public Defender should have submitted a zero fiscal note.**

Rather than preparing its own zero fiscal note for the Public Defender Agency, the Committee decided it would be better for the Finance Committee to consider whether the Public Defender has accurately characterized the fiscal impact of HB 396.

The Committee would note that the amendments in the bill either (1) create new crimes that occur so infrequently that they will not result in a fiscal impact, or (2) change the sentencing procedures used, and penalties imposed, in cases that are currently being handled by the Public Defender Agency under its existing budget. The bill also increases the statute of limitations for certain criminal offenses, however, a significant fiscal impact of this change will not be felt during the time period covered by the fiscal note.

The Committee would also note that the other criminal justice agencies that are potentially affected by the bill, including the Alaska Court System, the Department of Law, the Department of Public Safety, and the Department of Corrections, have independently concluded that the fiscal impact of HB 396 is zero.

cc: Bruce Geraghty, Governor's Office
John Salemi, Public Defender

Alaska State Legislature

House of Representatives
House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

M E M O R A N D U M

TO: Representative Mike Navarre, Co-Chair
Representative Eileen MacLean, Co-Chair

FROM: Representative Dave Donley, Chair
Judiciary Committee

RE: HB 396 - Anti-Violent Crime Act of 1992

DATE: January 22, 1992

I would greatly appreciate if HB 396, the Anti-Violent Crime Act of 1992, could be scheduled for a hearing pending refe
rral on January 28, January 29, or January 30. The bill, which currently has all zero fiscal notes, will be passed out of the Judiciary Committee no later than January 27.

The Anti-Violent Crime Act of 1992 corrects problems in our criminal statutes created by a series of recent trial and appellate court decisions. The bill is strongly supported by the Departments of Law and Public Safety, the Network on Domestic Violence/Sexual Assault, the Council on Domestic Violence/Sexual Assault, the Anchorage Police Department, and the Chiefs of Police Association.

The most important changes made by the Anti-Violent Crime Act are:

* making it illegal for health care workers to sexually assault their patients;

* requiring judges who sentence dangerous felons to place more focus on protecting the public safety;

* tightening laws against physically abusing children;

* making it a crime to fire a gun from a moving vehicle;

* extending the statute of limitations for violent crimes and for child sexual abuse.

Thank you in advance for your help and assistance in scheduling this bill for a hearing.

SECTIONAL ANALYSIS - CSHB 396 (JUD)

Anti-Violent Crime Act of 1992

Section 1: Short title.

Section 2: The bill section clarifies that a person commits first degree assault whenever the person recklessly causes serious physical injury to another person by using a dangerous instrument. The amendment is in response to S.R.D. v. State, 817 P.2d 484 (Alaska App. 1991), in which the court held that the current assault statute does not allow injuries inflicted over the course of several separate assaults to be cumulated for purposes of establishing that a first degree assault had been committed. First degree assault is a class A felony.

Section 3: The bill section clarifies that a person commits second degree assault whenever the person recklessly causes serious physical injury to another person. The amendment is in response to S.R.D. v. State, 817 P.2d 484 (Alaska App. 1991), discussed under bill section 2. Second degree assault is a class B felony.

Section 4: The bill section elevates what is currently classified as fourth degree assault to third degree assault if an offender is 18 years of age or older and repeatedly assaults a child under the age of 10, or assaults a child under 10 and the assault requires medical treatment. This amendment is in response to several recent Anchorage cases including one in which an infant had 56 different bruises on its body caused by a series of beatings committed over a three week time period and one in which a 5 year old child was intentionally burned by being placed in a bath of scalding water. Because there was not a substantial risk that either child would die and neither child was permanently disfigured, the offenders could only be charged with misdemeanors. Third degree assault is a class C felony.

Section 5: The bill section amends the first degree sexual assault statute to make it illegal for a health care worker to engage in sexual penetration with a patient who the offender knows is unaware that a sexual act is being committed. By specifically including this conduct within the statute, the amendment closes the door on a technical legal defense to a charge of sexual assault in a future case similar to the one involving Dr. Ake. First degree sexual assault is an unclassified felony.

Section 6: The bill section amends the second degree sexual assault statute to make it illegal for a health care worker to engage in sexual contact with a patient, and for anyone to engage in sexual penetration with a person, who the offender knows is unaware that a sexual act is being committed. As with bill section 5, the amendment closes the door on a technical legal defense to

a sexual assault charge. Second degree sexual assault is a class B felony.

Section 7: The bill section amends the third degree sexual assault statute to make it illegal for anyone to engage in sexual contact with a person who the offender knows is unaware that a sexual act is being committed. As with bill sections 5 and 6, the amendment closes the door on a technical legal defense to a sexual assault charge. Third degree sexual assault is a class C felony.

Section 8: The bill section amends the unlawful exploitation of a minor statute by making it illegal to induce or employ a child under 18 to engage in sexually masochistic or sadistic behavior in written or recorded materials. The amendment closes a gap in the statute that was brought to light as a result of the prosecution of former Anchorage police officer Feichtinger. Unlawful exploitation of a minor is a class B felony.

Section 9: The bill section defines the term "health care worker" as used in bill sections 5 and 6. The definition includes those persons who are employed in jobs in which it is possible to the person to sexually assault a patient without the patient's knowledge.

Section 10: The bill section amends the misconduct involving weapons in the first degree statute to make it a crime to discharge a firearm from a moving vehicle. The amendment is in response to a series of "drive-by" shootings that have occurred in the past year, and prohibits inherently dangerous conduct. Misconduct involving weapons in the first degree is a class C felony.

Section 11: The bill section clarifies that the crime created by bill section 10 does not apply to a peace officer acting within the scope and authority of the officer's employment.

Section 12: The bill section clarifies that the crime created by bill section 10 does not apply to a person using a firearm while hunting, trapping, or fishing in a manner not prohibited by law.

Section 13: The bill section amends the misconduct involving weapons in the second degree statute to make it illegal to sell firearms and defensive weapons to people under 18. The amendment is in response to a growing problem in Anchorage with the use and possession of stun guns by minors. Misconduct involving weapons in the second degree is a class A misdemeanor.

Section 14: The bill section amends the misconduct involving weapons in the third degree statute to make it illegal for people under the age of 21 to possess defensive weapons on school property. The amendment is in response to a growing problem in Anchorage with the use and possession of stun guns by minors in the

schools. Misconduct involving weapons in the third degree is a class B misdemeanor.

Section 15: The bill section extends the statute of limitations for violent felony crimes from five years to ten years. The amendment removes a technical legal defense to charges that a person has committed a serious violent felony.

Section 16: The bill section eliminates the statute of limitations for felony crimes involving child sexual abuse. As with bill section 15, the amendment removes a technical legal defense to child sexual abuse charges and eliminates a practical barrier to prosecuting child abusers.

Section 17: The bill section makes a technical amendment to conform to the changes made by bill section 19.

Section 18: The bill section clarifies that, unless the legislature has provided otherwise, the "preponderance of the evidence" standard of proof applies in sentencing proceedings. The amendment codifies Brakes v. State, 796 P.2d 1368 (Alaska App. 1990) and codifies the standard of proof that is generally applied to sentencing issues under current law.

Section 19: The bill section requires a sentence of 99 years, without possibility of probation or parole, to be imposed on persons convicted of first degree murder who have previously been convicted of murder; who murder a peace office, fire fighter, or correctional officer who was engaged in the performance of official duties at the time of the murder; or who commit a torture murder.

Section 20: The bill section clarifies that by imposing the mandatory 99 year prison term in the circumstances listed in bill section 19, the legislature does not intend to limit the court's discretion to impose this type of sentence in other circumstances.

Section 21: The bill section adds a new subsection (j) to AS 12.55.125 to allow a person who has been sentenced to a mandatory 99 year prison term under bill section 19 to apply for modification or reduction of sentence under Criminal Rule 35(b) after having served half of the mandatory term (49.5 years). In order to actually receive a sentence reduction under Criminal Rule 35(b), an offender would need to prove "that conditions or circumstances have changed since the original sentencing hearing such that the purposes of the original sentence are not being fulfilled."

The bill section also adds a new subsection (k) to AS 12.55.125 to codify Buoy v. State, ___ P.2d ___, Op. No. 1169 (Alaska App. October 25, 1991) and Austin v. State, 627 P.2d 657 (Alaska App. 1981).

Section 22: The bill section prohibits referring certain aggravated cases to the three judge panel based on the defendant's potential for rehabilitation. The presence of any of the following aggravators triggers the prohibition: the defendant's conduct manifested deliberate cruelty, the defendant has a history of aggravated or repeated instances of assaultive conduct, the defendant's conduct was among the most serious conduct included in the definition of the offense, the defendant was on bail, probation, parole, or furlough release for another crime at the time of the offense, the defendant has three or more prior felony convictions, the offense was one of a continuing series of criminal offenses, the offense was a crime against a minor and the defendant has engaged in the same or similar conduct against another minor, or the offense was committed in retaliation against someone who had previously testified against the defendant.

Section 23: The bill section changes the powers of the three judge panel in cases where it finds that manifest injustice would result from imposition of the presumptive term, that the defendant has an exceptional potential for rehabilitation, and that a sentence of less than the presumptive should be imposed. Under current law, the three judge panel can reduce a sentence based on its prediction of whether the defendant will be rehabilitated. Instead of this approach, the bill section allows the three judge panel to make it possible for the defendant to be released from jail early if the defendant succeeds in being rehabilitated and requires the three judge panel to order the defendant to engage in appropriate programs of rehabilitation. The amendments made in this bill section and in bill section 26 change the focus from predicting the defendant's future behavior to evaluating the defendant's past behavior.

Section 24: The bill section makes two technical amendments to conform to the changes made by bill section 19 and bill section 23.

Section 25: The bill section makes a technical amendment to conform to the changes made by bill section 23.

Section 26: The bill section makes an amendment to conform to the changes made by bill section 23.

Section 27: The bill section clarifies the applicability of bill sections 15 and 16 to be consistent with the Alaska and United States Constitutions.

Section 28: The bill section acknowledges that the addition of AS 12.55.125(j) in bill section 21 has the effect of amending a court rule.

BILL NO: CSHB 396(JUD)

DATE: February 18, 1992

TITLE: Anti-Violent Crime Act of 1992

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

POSITION PAPER - Department of Public Safety

The Department of Public Safety supports CSHB 396(JUD), an Act relating to violent crimes and criminal law and procedure.

Sections 2 and 3 of the bill will allow felony prosecution of an offender who causes serious physical injury to a person as a result of a series of assaults. Sections 5, 6, 7, and 9 would clarify present law to specifically prohibit a person from engaging in sexual assault or penetration with a person whom the offender knows is unaware that a sexual act is occurring. If the offender is a health care worker and the victim a patient the seriousness of the offense is increased. Section 8 amends the current child pornography law to include depiction of acts of sexual masochism or sadism.

Sections 10 through 14 amend the state weapons laws to prohibit possession of a defensive weapon on school grounds and to make "drive-by" shootings at least C felony level conduct. Section 13 would make it a class A misdemeanor for a person to knowingly sell a firearm or defensive weapon to a person under 18 years of age. The Department supports this change, but suggests that the Finance Committee consider the addition of a provision that prohibits knowingly providing a firearm or defensive weapon to an unemancipated minor under 18 without the consent of the minor's parent or guardian. This would cover giving, lending, or trading a weapon to the minor, in addition to selling. Under AS 11.61.220(a)(3) it is a class B misdemeanor offense for an unemancipated minor under 16 to possess a firearm without the consent of a parent or guardian; it seems at least as appropriate to prohibit a person from providing a firearm to a minor as it does to prohibit the minor's possession of it. The Department also suggests that the two different ages contained in proposed AS 11.61.210(a)(6) ("under 18") and existing AS 11.61.220(a)(3) ("under 16") be made consistent.

Sections 15, 16, and 27 extend the Statute of Limitations for criminal prosecution of certain serious crimes, including sexual offenses against children. It is often extremely difficult, and sometimes not possible, to gather sufficient evidence to be able to prosecute old offenses, so the Department does not anticipate a large number of additional cases as a result of this change. In those few cases where multiple witnesses, an offender's confession, or other convincing evidence make prosection of an old offense feasible, however, allowing a jury to consider the evidence and render a verdict is in the best interest of society. This is especially true if the offender continues to reside in the community and have access to young children.

Sections 17, 19, 20, 21, 24, and 28 establish a mandatory sentence of 99 years' imprisonment for an offender convicted of the first-degree murder of a uniformed peace officer or firefighter performing official duties, or for an offender who has been previously convicted of murder. Persons convicted of murder under these circumstances would almost always receive sentences of at least 99 years under existing law.

One of the most important provisions of the bill is contained in section 18, which amends AS 12.55.025 to provide that the standard of proof in sentencing matters is "preponderance of the evidence", rather than "clear and convincing". This change would return the law to what it had been assumed to be before the issuance of a recent Alaska Court of Appeals case, Buoy v. State. Once the offender already has been convicted of the crime, it is appropriate to allow the court to consider the widest array of relevant information about the offender or the crime so that the judge may best tailor the sentence to the particular circumstances of the case.

Sections 22, 23, 25, and 26 change the circumstances under which an offender's sentence can be referred to the three-judge panel. Section 22 lists certain aggravating factors which, if found in a given case, would preclude referral to the three-judge panel.

The changes described above are reasonable ones which will increase the ability of prosecutors and law enforcement officers to protect victims of violent crime, and of the courts to fashion just sentences. The Department of Public Safety supports CSHB 396(JUD).

Richard L. Burton
Commissioner

ALASKA PUBLIC DEFENDER AGENCY

POSITION PAPER

RE: HB 396 "An Act Relating to Violent Crimes and Criminal Law and Procedure"

Analysis This position paper will only cover selected sections of the proposed legislation.

Sec. 4. This section increases assault from a misdemeanor to a felony when an adult causes physical injury to a child under the age of 10. Previously charged as assault in the fourth degree, this section makes it a class C felony assault in the third degree.

The likely effect of this proposal is that minimal or non-injuries to children under 10 will now only be able to be charged as felonies. The definition of physical injury is "a physical pain or an impairment of physical condition." AS 11.81.900(b)(41). An example might best serve to show the broad range of conduct that will now be a felony offense. A parent is driving in Anchorage on icy roads. Negligently not realizing the slickness of the streets, the parent slides through a stop sign and is bumped or bumps another car. The child in the car seat bumps his head and cries because it hurts, it is a physical pain. This is now a felony crime because the parent has negligently caused physical injury to another person by means of a dangerous instrument (the car).

Other examples abound. There has recently been discussion among educators as to the use of corporal punishment as a reasonable disciplinary technique. AS 11.81.430 permits the use of force "when and to the extent reasonably necessary and appropriate to promote the welfare of the child..." Do we want parents and teachers to face felony charges of assault when there is uncertainty as to the reasonableness of their discipline?

In sum, this section broadly increases the possibilities of felony assault charges based simply upon the age of the complaining witness. This conduct already appears to be adequately addressed and punished under the assault in the fourth degree statutes. It appears unnecessary to make this a felony offense. Even the Department of Law in their fiscal note claims that this offense is "infrequent." Any parent who loses his temper momentarily and spanks his child could become a convicted felon. The criminal justice system is not the best choice for teaching proper parenting techniques.

1 To: House Judiciary Committee

#mo 7671	# of pages ▸ 10
From	B. Brink
Co.	
Phone #	
Fax #	

Sec. 15. This section amends the current statute of limitations with regard to criminal prosecution. Subsection 1 extends the statute of limitations to 10 years for what can be classified as crimes against a person.

Subsection 2 provides that the statute of limitations is extended to 20 years for any sex offense or promoting prostitution, former sex offense or former contributing to the delinquency of a minor charges where the complaining witness was under the age of 16. The five year period of limitations on sexual abuse of a minor offenses for victims under the age of 16 has already previously once been extended. In 1983, the statute changed to provide that charges could be commenced within one year after the crime is reported to a peace officer or the person reaches age 16 whichever occurs first, operating to extend the limitation an additional five years. (AS 12.10.020(c)).

Both of these extensions are objectionable and overbroad when one understands the basic purposes of statutes of limitations. The United States Supreme Court has recognized that statutes of limitation provide "the primary guarantee against bringing overly stale criminal charges." United States v. Ewell, 383 U.S. 116, 86 S.Ct. 773, 15 L.Ed.2d 627 (1966).

> The purpose of the statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature had decided to punish by criminal sanction. Such limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far distant past. Such a time limit may also have the salutary affect of encouraging law enforcement officials promptly to investigate suspected criminal activity.

Toussie v. United States, 397 U.S. 112, 90 S.Ct. 858, 25 L.Ed.2d 156 (1970). Commentators have recognized other useful purposes served by these statutes of limitation. These statutes prevent prosecution of those who have been law-abiding for many years, they avoid prosecution after the community's retributive impulse is lessened and they have been recognized to lessen the possibility of blackmail. However, foremost of all of the goals is the desirability of requiring that prosecutions be based upon reasonably fresh evidence in order the lessen the horrendous possibility of an erroneous conviction. These statutes therefore share important purposes with other speedy trial protections, and are grounded in the constitutional rights to due process and speedy

trial. The Alaska Supreme Court has also recognized the importance of statutes of limitation, even in the civil context.

> It is generally recognized that the purpose of statutes of limitation is to encourage promptness in the prosecution of actions and thus avoid the injustice which may result from prosecution of stale claims. Statutes of limitations attempt to protect against difficulties caused by lost evidence, faded memories, and disappearing witnesses.

Byrn v. Ogle, 488 P.2d 716, 718 (Alaska 1971). Therefore, any statute of limitation is intended to assure fairness in the court process. It limits the circumstances in which guilt may be found and is aimed at preserving the accuracy and basic integrity of the adjudicative process where the guilt or the innocence of a person is ultimately decided.

Under the due process clauses of the 15th and 14th Amendments, a person may argue that an excessive delay in his trial has caused his evidence and witnesses to disappear and his case to be compromised. A defendant does not have an adequate remedy to argue a violation of his constitutional speedy trial guarantees by demonstrating such prejudice. The real problem arises when the case is so stale, the information so cold, and the ability to investigate so hampered that the delay has also prevented the possibility of proving the prejudice.

The public has a strong interest in determining the truth of a criminal charge and a prompt conviction of the guilty party. The statute of limitations is not a "loophole." It is not a "technicality." Limitations are for the benefit both of the public and those accused. The report prepared by the Legislative Research Agency regarding statutes of limitations (dated December 4, 1991) recognizes that even with no change in the statute of limitations, an adult survivor of child abuse still has the capacity to initiate a civil cause of action, which "may offer several advantages over a criminal proceeding for the state, the victim, and society ..." (p.3).

The time limits are to some extent clearly arbitrary line drawing. Where there is a problem, it may make sense to alter the lines. The 20 years for any of the enumerated crimes in Section 15 is unjustified by any showing that crimes are not being prosecuted. To the extent that changes in limitations for child sex-abuse crimes should be made, the lines should be drawn as narrowly as possible.

A proposal to modify AS 12.10.020(c) to change to "a person under the age of 18 [16] may be commenced within one year after the crime is reported to a peace officer", eliminating the

language of "or the person reaches the age of 16." The five year extension already provided by AS 12.10.020(c) for a total of 10 years would appear to be adequate given the cases sought to be included. This would allow these reasons for non-reporting (still in the hands of the abusers, unawareness or criminal nature, repressed memories) to be taken care of.

Sec. 17. This section amends AS 12.55.025 to provide that proof by a preponderance of the evidence standard applies to sentencing proceedings except as already explicitly provided by law. This section is unfair, inconsistent with the legislative scheme so far, specifically disfavored by the Court of Appeals, and is strenuously opposed. The legislature has already recognized that in the presumptive sentencing context there should be high burdens of proof of specific facts that affect the sentence a person will receive. Prior convictions that will automatically enhance a sentence are required to be proven beyond a reasonable doubt. Aggravating factors that allow a judge to increase a sentence and mitigating factors that allow a judge to decrease a sentence must be proven by clear and convincing evidence. Extraordinary circumstances warranting referral to the three-judge panel must be proven by clear and convincing evidence. Any other facts to be proven at a sentencing proceeding (in particular allegations of "prior bad acts") that would reflect upon the person's character, rehabilitation potential, should also be reliable determinations. In non-presumptive sentencing situations, the consequences of finding certain "bad acts" as true can be as great or greater than the consequences of finding prior convictions, aggravators, mitigators, or extraordinary circumstances.

The majority of the Criminal Rules Committee for the State of Alaska in drafting tentative rules regarding sentencing proceedings reached the same conclusion, that the relatively strict standard of clear and convincing evidence should apply, given the seriousness of the potential consequences. Austin v. State, 627 P.2d 657 (Alaska App. 1981) provides that first felony offenders convicted of offenses for which no presumptive term is specified should normally receive more favorable sentences than the presumptive term for second felony offenders convicted of like crimes. The Austin rule can be deviated from only in exceptional cases and is recognized as promoting uniformity in sentencing, one of the legislative goals of the presumptive sentencing statutes. In determining the sentence for a first felony offender, aggravating and mitigating factors do not specifically apply by statute. However, they are used by sentencing courts to determine whether or not these are the kinds of exceptional cases that warrant exceeding the Austin rule.

In Buoy v. State, __ P.2d __ (Alaska App. 1991), the Court of Appeals recognized that unless the standard was clear and convincing evidence in these situations, the Austin rule would be

meaningless. If the preponderance of the evidence standard applies to determining aggravating factors or extraordinary circumstances in first offender cases, the first felon may in fact receive a more serious sentence than the same person with the same background committing the same offense would have received as a second felony offender. The higher burden of proof keeps the Austin rule intact and lends uniformity to sentencing. This clear and convincing standard does not make sentencing hearings unnecessarily cumbersome. Given the very broad sentencing ranges for both unclassified felonies as well as first felony offenders not governed by presumptive sentencings, often far greater consequences will attach in a non-presumptive case. Given such potentially drastic consequences, and the goal of achieving uniformity in sentencing, the legislature should not allow non-presumptive aggravators to be established by some burden of proof less than clear and convincing evidence. Sentences should be imposed based upon proven, reliable information not suspicion, conjecture, rumor, speculation, and unsupported allegations. See e.g., Note, A Proposal to Insure Accuracy in Presentence Investigation Reports, 91 Yale Law Journal 1225, 1245 n. 115-117 (1982). It is recommended that existing laws not be tampered with, and this section be deleted.

Sec. 19 and 20. This section proposes modifications to the way that the three-judge panel is referred cases, and the exercise of discretion by the three-judge sentencing panel. Section 19 specifically limits the discretion of a court to refer a case to a three-judge panel based upon the nonstatutory mitigating factor of the defendant's potential for rehabilitation if in addition to that finding the court has also found one of several specific factors in aggravation already set out in the statutes.

Section 20 is another limitation on the discretion of the sentencing court, this time on the three-judge panel. If the case is referred to the three-judge panel based upon manifest injustice and the defendant's exceptional potential for rehabilitation, the three-judge panel's power to sentence to less than the presumptive term is eliminated. The three-judge panel is still required to give the defendant the presumptive term, and is required to order the defendant to engage in "appropriate programs of rehabilitation." The only discretion left to the three-judge panel is that they may provide that during the second half of the presumptive sentence required to be imposed, the defendant may be eligible for discretionary parole if "the defendant successfully completes all rehabilitation programs ordered under Section 2 of this subsection."

Making any major modifications to the sentencing provisions as a whole is fraught with peril and a piecemeal approach which should be avoided. In fact, the Alaska Sentencing Commission is in the middle of its three year life span. This Commission is engaging in exhaustive research, taking testimony of experts and lay people,

gathering information, and compiling data bases in order to reach consensus upon what the appropriate changes to the sentencing law should be. The Alaska Sentencing Commission is a diverse group representing every aspect of law enforcement, criminal justice, and victim's rights. Major proposals are expected from the Commission based on its exhaustive study. It is unwise to make minor changes to portions of the statutory scheme when an exhaustively researched and prepared report and proposals are forthcoming. Therefore, it is recommended that no changes be made to the sentencing statutes.

Additionally, the specific changes proposed here appear to attempt to fix problems that in fact do not exist and create more problems than will be rectified. For example, under Section 19, it is a rare instance that where the sentencing court has found an aggravating factor the case will still be referred to the three-judge panel. However, there may be cases where this is appropriate (e.g. juvenile felony joy-riding conviction 20 years ago.) It is not necessary to limit the sentencing judge's jurisdiction, since it is already subject to further review and evaluation by the three-judge sentencing panel.

Similarly, limiting the discretion of the three-judge panel is not necessary nor useful. The three-judge panel has only rarely modified a presumptive term in those most exceptional cases. A recent Memorandum to Members of the Alaska Sentencing Commission specifically discussed three-judge panel referrals based on the Non-Statutory Mitigator "Extraordinary Potential for Rehabilitation." This memo analyzed the data and found that only 75 total cases in the State of Alaska were referred to the three-judge panel on that basis from January 1986 to October 1991. The three judge panel accepted the trial court's conclusion of extraordinary prospects for rehabilitation in 39 cases, but rejected that finding in 36 cases. Even in those cases where the mitigator was accepted, the three-judge panel did not always reduce the sentence. Since 1988 there have been only 15 referrals to the three-judge panel in cases involving sexual abuse. In 8 of those cases the three-judge panel rejected the finding of unusual prospects for rehabilitation. Even when it was accepted, the three-judge panel generally recommended sex offender treatment during incarceration and as a condition of probation. Therefore, the Sentencing Commission reviewed the data specifically regarding referrals to the three-judge panel for unusual rehabilitation potential, generally found in favor of the status-quo, and proposed taking no action. The minutes of that meeting show that many members of the commission found the decisions of the three-judge panel to be consistent, uniform, and fair. Only a single member wanted to eliminate the non-statutory mitigator, which in effect is what this section does.

Therefore, the three-judge panel reduces sentences only extremely rarely. Most sentences that are reduced simply have the amount of jail time that previously was required to be imposed, suspended

over the defendant's head. The defendant is ordered to be released on probation for an extensive period of time and required to participate in any kind of counseling and program that the court may think is appropriate. The only difference is that the counseling and programming is conducted outside of the Department of Corrections' prison system. Counseling and participation is closely monitored by parole and probation officers. It is true the court cannot go back and increase his sentence, but the court has absolute power to consistently evaluate performance and impose the entire suspended terms of imprisonment.

The other major problem with the proposal as listed here is that it assumes that the Department of Corrections will have appropriate programs of rehabilitation available to each and every individual person and their individual rehabilitative needs in every custodial setting. This is a false assumption. The quality and variety of programming varies widely within the prison system of the Department of Corrections. Even though a judge may recommend appropriate programs of rehabilitation, the judge may not order a prisoner to a particular institution and may not order that the institution provide specific things for him. That invades the province of the Department of Corrections. If, based upon the Department of Corrections' regulations, prisoner needs, bed space, and other concerns, a prisoner is designated to a facility that does not offer any of the appropriate programs, he will not be able to engage in the rehabilitation deemed appropriate. He will have no ability to try to prove that he has been rehabilitated and he will end up serving an entire sentence not because of any lack of initiative or rehabilitative desire on his part, but because of factors completely outside of his control.

It is also important to know that the Department of Corrections has limited space in the programs that it does offer. In part, due to this, the Department of Corrections has a policy of not sending a prisoner to a rehabilitative program until that prisoner is near the end of their incarcerative period. For example, a prisoner with an eight year presumptive sentence on a sex offense who is found to have excellent prospects for rehabilitation, an extreme desire and potential for successful treatment in a sex offender program will not be classified by the Department of Corrections to the Hiland Mountain Correctional Center for placement in the sex offender program immediately. Because of limited space in that program a waiting list is maintained. Because the program is approximately 18 months to two years in duration, and because part of the goal of the program is to teach people rehabilitative skills and non-criminal behavior that they can utilize in life on the outside world, the Department of Corrections will not send anybody to that program until they only have approximately two to three years left on the time that they need to serve. Therefore, it is impossible for a prisoner to participate in his own rehabilitation until the second half of his sentence. All the time he has done initially in the first half of

his sentence is dead time where he may not avail himself of rehabilitative programs. This is not in the interest of the defendant nor in the interests of society. Why should a person be warehoused with no treatment when he is ready, willing, and eager to participate? Remember again, this is the unusual offender. Why should a person be warehoused in jail if there has been a factual finding that he is not dangerous, that rehabilitation can be accomplished in an out-patient setting?

This legislation is unnecessary, and will not accomplish rehabilitation. It will greatly increase the numbers of people incarcerated who do not need to be incarcerated to protect the public or to rehabilitate themselves.

Sec. 18. Section 18 modifies the sentencing provisions with regard to the charges to Murder in the First Degree. It provides that the sentence shall be a mandatory term of imprisonment for 99 years when the deceased is a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional officer who is engaged in the performance of his official duties at the time he was murdered or if the person being sentenced has previously been convicted of Murder in the First Degree, Murder in the Second Degree or similar offenses under the laws of another jurisdiction.

Sec. 21. Section 21 amends AS 33.16.090(b) to provide that anybody who receives the mandatory 99 year term under those pre-existing conditions shall not be eligible for discretionary parole during the entire 99 year term.

The combined effect of the mandatory nature of the maximum term, and the absolute prohibition of any possible future relief through discretionary parole is troubling.

A. The Principle of Reformation Article I, Section 12 of the Alaska Constitution provides in pertinent part:

> "Penal administration shall be based upon the principle of reformation and upon the need for protecting the public."

Nell v. State, 642 P.2d 1361 (Alaska App. 1982) specifically upheld the current presumptive sentencing scheme because it restricted judicial discretion but did not eliminate it. If a judge's discretion is so limited that the trial court is prevented from carrying out the constitutional goals of reformation and rehabilitation, the sentencing statute may be subject to constitutional challenge. A mandatory 99 year sentence without any possibility of parole provides absolutely no basis for or incentive for rehabilitation.

B. Due Process and Equal Protection. A mandatory 99 year sentence without the possibility of parole may deny the constitutional rights to due process and equal protection. United States Constitution Amendment XIV; Alaska Constitution Article I, §§ 1, 3. While similar arguments were rejected in the analysis of presumptive sentencing for first offenders, none of those cases dealt with sentences of this magnitude. Martin v. State, 664 P.2d 612, 620 (Alaska App. 1983) (upheld the 20 year minimum sentence for murder in the first degree.) It is unclear whether a maximum mandatory term with no possibility of parole will satisfy due process.

C. Separation of Powers.

In Nell v. State, 642 P.2d 1361 (Alaska App. 1982) the current presumptive sentencing scheme survived a constitutional challenge that it violated the separation of powers doctrine by infringing on the power of the judiciary to sentence an offender on the particular facts of the case and the nature of the particular offender. The reasons presumptive sentencing did not violate the constitution were "safety valves" provided by the mitigating factors and the three-judge panel. The court specifically noted that the statute limited, but did not eliminate judicial discretion. Without the ability to exercise any discretion, Article IV, § 1 of the Alaska Constitution may be violated by this absolute infringement on the power of the judiciary.

To avoid these claims of constitutional violation which might arise should a mandatory 99-year sentence be automatically imposed for all these individuals, the Legislature might add a provision whereby individuals subject to the mandatory sentence could, after serving a portion of their sentence, apply for modification of the sentence under Criminal Rule 35(b) provisions. This safety valve could provide a mechanism for review in the future only if warranted, and save the statute from Constitutional challenge.

The American Bar Association's Standards for Criminal Justice specifically deal with the ideal role of the legislature with respect to sentencing. While recognizing the wisdom of providing sentencing authorities with the range of alternatives, the American Bar Association recommends that the legislature should not specify a mandatory sentence for any sentencing category or for any particular offense. Criticism of legislatively required mandatory sentences includes the tendency to produce rigidity, the inflation

of the penal code whose authorized sentence lines are already believed to be the longest in the western world, a pattern of covert nullification by judges, prosecutors and juries as they decline to enforce penalties they consider overly harsh, and transferring all of the power from the court to the prosecutor whose discretion, charge bargaining, and initial charging decisions would take on enhanced significance.

It appears wiser to try to tame discretion than to abolish it. It has been the experience of the Federal District Court Judiciary that the straight-jacket approach represented by the federal sentencing guidelines is not a workable solution and is not fair. At the recent Judicial Conference of the 9th Circuit, including both District and Appellate court judges, Resolution Number 5 calling for the repeal of mandatory minimum sentences was passed unanimously. The resolution noticed the actual effect of hampering the cause of justice, the extreme injustice in allocating all of the power and the initial charging decision to the prosecutor and the federal experience of backlogs of cases, demands for trial and the resultant impact on the civil calendar as well as the criminal. It is also important to notice that this resolution is identical to a resolution passed unanimously previously by the 7th Circuit also calling for the repeal of all mandatory minimum sentences. It appears that Alaska should be able to benefit from the experience of the federal guidelines and should gain wisdom from that experience.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

☑ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

January 14, 1992

The Honorable Dave Donley, Chairman
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 396 (Violent Crimes and Criminal Law and Procedure)

Dear Representative Donley:

At your request, we have reviewed HB 396 and by this letter we wish to indicate our support for the bill. We particularly favor those sections that are in response to recent appellate and trial court decisions.

Sections 2 and 3 cure the problem noted by the court of appeals in S.R.D. v. State, 817 P.2d 484 (Alaska 1991); namely, that under existing law the state cannot prosecute as felons those adults who ultimately cause serious physical injury to a child by subjecting the child to repeated assaults over a period of time. Section 4 amends AS 11.41.220(a) to make it a felony when an adult either recklessly causes physical injury to a child under ten years of age or causes physical injury to such a child by means of a dangerous instrument.

Sections 5, 6, and 7 amend the state's sexual assault statutes to make it a crime for a person to engage in sexual contact or penetration with a person known by the offender to be unaware that a sexual act is occurring. The level of offense is elevated one class if the offender is a health care provider, as defined in section 9 of the bill, and if the conduct occurs while the offender is providing professional treatment to the victim.

Section 8 amends AS 11.41.455(a), another of the state's sexual offenses ("Unlawful Exploitation of a Minor") to prohibit a person from inducing or employing a child under 18 years of age to engage in acts of sexual masochism or sadism. The amendment also prohibits a person from photographing, filming, recording, or televising a child engaged in such acts.

The next five sections of the bill amend the state's laws relating to weapons offenses. Section 10 amends AS 11.61.200(a) to include within the crime of misconduct involving weapons in the first degree the act of discharging a firearm from a moving propelled vehicle. Consequently, "drive-by" shootings will be at least a class C felony offense even if no one is injured or placed in fear by the conduct. Section 11 amends AS 11.61.200(d) to provide that, as an exception to AS 11.61.200(a)(11), a peace officer acting within the scope and authority of employment may fire a weapon from a moving vehicle. Section 12 amends AS 11.61.200 to make it an affirmative defense to a prosecution under AS 11.61.210(a)(11) that the person who discharged the firearm from a moving vehicle was engaged in a lawful hunting or fishing activity at the time.

Next, section 13 amends AS 11.61.210(a) to include knowingly selling a firearm or defensive weapon to a person under 18 years of age within the crime of misconduct involving weapons in the second degree. The last amendment relating to weapons, section 14, amends AS 11.61.220(a) to provide that a person commits the crime of misconduct involving weapons in the third degree if the person knowingly possesses a defensive weapon within the grounds of or on a parking lot immediately adjacent to a public or private school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer. A person 21 years of age or older, however, is exempted from this provision.

Section 15 amends AS 12.10.010, the state's general statute of limitations for criminal prosecutions, to extend to ten years the current five-year limitation within which an indictment must be found or an information or complaint must be instituted for the following felonies: manslaughter; criminally negligent homicide; any felony assault; kidnapping and custodial interference; arson in the first degree; sexual assault in any degree; sexual abuse of a minor in any degree; incest; unlawful exploitation of a minor; and robbery, extortion, or coercion.

In section 24, the bill repeals current AS 12.10.020(c), relating to the statute of limitations for sexual offenses involving victims under the age of 16. In its stead, section 15 extends the limitations period for these offenses to 20 years. As specified in section 25 of the bill, these amendments to the statutes of limitations will have prospective effect only.

Section 17 amends AS 12.55.025 to make clear that the preponderance of the evidence standard of proof applies to sentencing proceedings, except as provided in AS 12.55.145(d), 12.55.155(f), and 12.55.165. This amendment, effectively reversing the court of appeals' decision in Buoy v. State, ___ P.2d ___ (Op. No. 1169 Alaska Oct. 25, 1991), codifies both the court's decision

in Brakes v. State, 796 P.2d 1368 (Alaska App. 1990), and current practice on verified prior criminal conduct. It is also consistent with practice in federal courts and with the American Bar Association standards for criminal justice. III Standards for Criminal Justice § 18-6.4(c) (2d ed. 1980).

Section 18 amends AS 12.55.125(a) to provide that a defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when the conviction is for the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional officer who was engaged in the performance of official duties at the time of the murder. The mandatory term of imprisonment of 99 years will also apply if the person convicted of murder in the first degree has been previously convicted of murder in the first or second degree in Alaska, or of a similar offense under the laws of another jurisdiction. Section 16 amends AS 12.55.025(e) to clarify that nothing in AS 12.55.125(a) limits the court's ability to impose consecutive sentences; i.e., a defendant may be given consecutive sentences that exceed the term of imprisonment specified for murder in the first degree. Section 21 amends AS 33.16.090(b) to provide that a prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) is not eligible for discretionary parole during that entire term.

Sections 19, 20, 22, and 23 relate to the nonstatutory mitigator of "extraordinary potential for rehabilitation." Section 19 amends AS 12.55.165 to provide that a court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (19), (20), (21), or (28) is present.

Section 20 amends AS 12.55.175 to specify that, except as provided in section 19 above, if a three-judge panel determines that manifest injustice would result from imposition of a presumptive term and the panel also finds that the defendant has excellent potential for rehabilitation and that a sentence of less than the presumptive term should be imposed because of the defendant's exceptional potential for rehabilitation, the panel shall sentence the defendant to the presumptive term under AS 12.55.125 and order the defendant to engage in appropriate rehabilitative programs under AS 12.55.015. The panel may then designate the defendant as eligible for discretionary parole under AS 33.16.090 during the second half of the sentence, if the defendant successfully completes all of the rehabilitative programs ordered by the panel. Sections 22 and 23 amend AS 33.16.090 to make provision for the discretionary parole authorized by section 20.

As previously indicated, we support this legislation and we appreciate the opportunity to comment on the bill.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

PLEASE MICROFILM TOP PAGE ONLY

DOCUMENTS WHICH HAVE NOT BEEN FILMED BUT ARE AVAILABLE IN THE ORIGINAL FILE INCLUDE:

→ letters of support
→ news clippings

Alaska Association Chiefs of Police

Post-it™ brand fax transmittal memo 7671	# of pages ▶ 1
To Rep. Dave Donley	From Deputy Chief Udland
Co.	Co. APD
Dept.	Phone # 786-8552
Fax # 465-2299	Fax # 786-8638

January 21, 1992

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Donley,

On behalf of the Alaska Association of Chiefs of Police, I want to express our support for House Bill 396. We see this as extremely important legislation and we support your efforts in its passage.

This bill addresses a number of timely subjects that are important to public safety in Alaska. House Bill 396 would correct several deficiencies in current law and we would be willing to assist you in any way that we can to ensure that it becomes law.

Sincerely,

Duane S. Udland

Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507