

HB

38

HFIN

FILE

HOUSE COMMITTEE REPORT

4/21/95
Rules

(11)

Date Referred: March 22, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/21/95

The FINANCE Committee considered:

HB 38

HOUSE BILL NO. 38

SENTENCING; 3RD SERIOUS FELONY OFFENDER

"An Act relating to criminal sentencing; relating to the availability for good time credit for offenders convicted of certain first degree murders; relating to mandatory life imprisonment, parole, good time credit, pardon, commutation of sentence, modification or reduction of sentence, reprieve, furlough, and service of sentence at a correctional restitution center for offenders with at least three serious felony convictions; and amending Alaska Rule of Criminal Procedure 35."

recommends it be replaced with the following committee substitute CS HB 38 (Sub) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

fiscal note(s) Court, LAW DH fiscal note(s) DOA 3/22/95 # 2
DOA 3/22/95 # 5

zero fiscal note(s) DOC PS zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Mark Hanley</i> Hanley			<input checked="" type="checkbox"/>	
<i>Terry Martin</i> Martin	<input checked="" type="checkbox"/>			
<i>Jay Brown</i> Brown				<input checked="" type="checkbox"/>
<i>Therriault</i> Therriault				<input checked="" type="checkbox"/>
<i>Kelly</i> Kelly			<input checked="" type="checkbox"/>	
<i>Vic Kohring</i> Kohring			<input checked="" type="checkbox"/>	
<i>Ben Grossendorf</i> Grossendorf	<input checked="" type="checkbox"/>			
<i>Richard Foster</i> Foster			<input checked="" type="checkbox"/>	

CO-CHAIR'S SIGNATURE *Mark Hanley* *Richard Foster*
Hanley Foster

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CS HB 381

Revision Date: _____	Dept. Affected: <u>Corrections</u>
Title: <u>An Act Relating to criminal sentencing.....</u>	BRU: <u>Statewide Programs</u>
	Component: <u>all institutions</u>
Sponsor: <u>Rep Bunde</u>	COMPONENT SERIAL NO. _____
Requester: <u>Rep Bunde</u>	

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The original of this bill (HB 38) would have mandated a 99 sentence for a conviction of an unclassified or Class A felony if the offender has been previously convicted of two or more separate "most serious" felonies. This committee substitute (CS HB 38 {JUD}) would mandate a minimum 40 year sentence under the same circumstances. It would allow a sentence reduction after the greater of one half the sentence or 30 years while the original would have allowed reduction after 49.5 years. This CS allows discretion to the prosecutor whether or not to seek sentencing under the new sub section (I).

This bill would create a substantially larger prison population as they they continue to serve beyond the current 12.5 year average sentence, No impact would accrue until after that time

Analysis of the Department's prison population and information from other justice agencies indicates fifteen cases defined in this bill would be subject to prosecutorial discretion annually.

Prepared by: Jerry Shriner
 Division: Comm. Office
 Approved by Commissioner: *Margaret M. Peck*
 Agency: 0 Department of Corrections

Phone: 465-4640
 Date: 3/29/95
 Date: 3/29/95

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FISCAL NOTE
CS HB 38 (JUD)

page 2

Individuals convicted under current statutes who might be convicted under the enhanced "three strikes" structure of this bill serve an average of 12.5 years in prison. These are demonstrably our most serious, most feared offenders. It is reasonable to expect that the Department of Law will prosecute to the full extent of the law in each case. Under current procedures few, if any, sentences will be reduced below the mandatory forty years.

Correctional professionals and non-professionals may disagree about what additional risks this group will present to other inmates and correctional staff simply by virtue of the fact that they will spend most, if not all of their life in prison. There can be no dispute about the fact that a huge burden will begin to accumulate as these individuals pass the point where they would otherwise have been released from prison. That is, after about thirteen years.

Even if each offender served the minimum of 30 years the group would peak at 450 inmates before leveling off. This is a group larger than could be housed in any prison in the Alaska at this time. The DOC would have to begin planning one \$80 million dollar prison in the near future just for the population increase resulting from this bill.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: HB 38

Revision Date: _____ Dept. Affected: Public Safety
 Title: Sentencing: 3rd serious felony offenders DPS Statewide Support
 Component: Commissioner's Office
 Sponsor: Representative Bunde
 Requestor: (H) State Affairs COMPONENT SERIAL NO. 0523

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

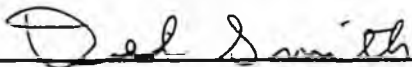
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
 No significant impact on the Department of Public Safety

Prepared By: Lee Ann Lucas, Special Assistant to the Commissioner Phone: 465-4322
 Division: Commissioner's Office Date: 2/8/95
 Approved by Commissioner:  Date: 2/8/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

No. 2

STATE OF ALASKA
1995 LEGISLATIVE SESS

(Bill Version: CSHB 38 (JUD)

(H) Publish Date: 3/22/95

Revision Date: _____
Title: An Act relating to criminal sentencing
relating to the availability of good time credit
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	82.6	82.6	82.6	82.6	82.6	82.6
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	63.4	63.4	63.4	63.4	63.4	63.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	3.6	3.6	3.6	3.6	3.6	3.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	160.6	160.6	160.6	160.6	160.6	160.6

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	160.6	160.6	160.6	160.6	160.6	160.6
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	160.6	160.6	160.6	160.6	160.6	160.6

Estimate of any current year (FY 95) cost: \$ None

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared by: Brant McGee, Public Advocate *[Signature]*
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Mark Boyer *[Signature]*
Agency: Department of Administration

Date: 3/25/95

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ANALYSIS (continued)

HB 38 substantially revises the original "Three Strikes" proposals made last year and should significantly reduce the number of criminal defendants susceptible to the 99 year prison term. The changes allow prosecutorial discretion, modify the way prior felony convictions are viewed by the court, and require that the final charge be an A or Unclassified felony.

The Alaska Judicial Council, which provided the statistical analysis related to the original HB 334, has not provided additional statistics regarding the potential impact of the new bill on criminal justice agencies. However, the assumptions regarding the 1994 fiscal notes remain valid. While the numbers of cases will undoubtedly be reduced by the modifications contained in HB 38, there is no question that litigation surrounding "Three Strikes" cases will be lengthy and costly. Costs will be dictated by the high stakes of each case, the necessity for collateral attacks on prior convictions both in State and Federal courts, and the certainty that each of these cases will go to trial.

Because of the necessity of attacking underlying convictions and the treatment of each case as most serious because of the severity of the sanction, litigation will require the filing of numerous motions, not only on the current charge, but in each prior case which resulted in convictions. This will require the review of voluminous records associated with each of the prior felony cases and the initiation of new litigation in each case. If that prior conviction occurred in a different state, it would be necessary to retain out-of-state counsel to launch the collateral attacks upon these convictions. Further, expert testimony regarding the adequacy of prior counsel would probably need to be prepared in many of the cases.

While it is not possible to estimate the indirect impact of such legislation on client decision-making in first and second felony cases, there is little question that some clients will be influenced to go to trial rather than plead guilty when they know that this conviction will make them eligible for life in prison if they commit another felony. More trials mean higher costs for each criminal justice agency.

It should also be noted that these cases will give rise to many conflicts of interest which will necessitate withdrawal of the Public Defender Agency and the assignment of OPA to provide representation. These conflicts of interest will arise because the Public Defender will have provided representation in the earlier cases which resulted in convictions, and which would be subject to collateral attack during the litigation of each "Three Strikes" case.

Because OPA criminal lawyers are currently at maximum caseload capacity, and because of the loss of one such attorney in FY 93, it will be necessary to add an additional experienced attorney to provide representation in these cases throughout the state.

Further, because at least one of these cases each year will require the appointment of conflict counsel at an estimated cost of \$60,000 per case, contractual costs will also be high.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12		Location Anchorage	Election District 8
TYPE OF EXPENDITURE		AMOUNT	Justification The Anchorage Office of Public Advocacy presently has four attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside of the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these four attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.	
Salary		61.0		
Benefits		21.6		
Premium Pay				
Other				
Total Personal Services	0.0	82.6		
Travel				
Contractual		3.4		
Commodities		1.0		
Equipment		3.6		
Other				
Total Cost		90.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts1002				
G.F. Match1003				
General Fund1004		90.6		
I-A Receipts1007				
CIP Receipts1061				
Other				

8/LEG95/13/FN-OPA38.KI'5

Page 3 of 3

Request For New Position

AGENCY ADMINISTRATION

BRU OFFICE OF PUBLIC ADVOCACY

COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 96

Page 3 of 3
Revised Date:

FISCAL NOTE

No. 5

Bill Version: CSHB 38(JUD)

(H) Publish Date: 3/22/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to criminal sentencing
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Administration
SRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	317.9	322.8	322.8	322.8	322.8	322.8
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	50.0	50.0	50.0	50.0	50.0	50.0
SUPPLIES	2.5	2.5	2.5	2.5	2.5	2.5
EQUIPMENT	7.5	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	382.9	380.3	380.3	380.3	380.3	380.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	382.9	380.3	380.3	380.3	380.3	380.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	382.9	380.3	380.3	380.3	380.3	380.3

Estimate of any current year (FY 95) cost: \$ 0

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: John B. Salemi, Director *John B. Salemi*
Division: Public Defender Agency

Phone: (907) 264-4412
Date: _____

Approved by Commissioner: Mark Boyer *Mark Boyer*
Agency: Department of Administration

Date: 1/15/95

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Rev: 01/95

ANALYSIS

INTRODUCTION

This proposal requires that certain repeat felony offenders receive prison terms that are the equivalent of life without parole. This is similar to proposals that have either been enacted or are being considered in other states. It is noteworthy that this punishment is harsher than that for first degree murder.

The actual expense is somewhat speculative, in that it is difficult to get a statistical "handle" on how many cases will be subject to "three strikes" punishment. For purposes of this fiscal analysis, the Public Defender Agency will rely on what are believed to be rather conservative estimates generated by the Alaska Judicial Council, which in turn were used by the Department of Law for its fiscal note.

Using those estimates, the Public Defender (PD) expects it will handle between 10 to 15 cases per year where the client will be facing a 99-year term, without parole release potential. Just as homicide cases are currently the most expensive, challenging and labor-intensive prosecutions to defend, these "three strikes" cases will be similarly treated because of the grave consequences attached to a conviction. Trials will be the rule, not the exception. Only the most experienced staff attorneys will be involved in these cases, adding to personal services costs. It is likely the litigation of these matters will involve significant investigation, extensive pre-trial motion work, and long and difficult trials. As a result, the court system and prosecutor's office will be affected.

Research has shown that states with three strikes laws have found fewer cases are "plea bargained." (Plea bargaining was recently reinstated in Alaska.) In those states where three strikes laws have been passed, defendants are less likely to plead to any "strike" felony because of the potential impact the strike could have on them if they reoffend. This translates into more trials, which means more prosecutors, Public Defenders, judges and court personnel to handle those cases. In Los Angeles, the district attorney eliminated entire sections of his office, including Environmental Crimes, Consumer Protection and the Major Fraud Unit, in order to free up enough attorneys to handle impact of the three strikes legislation. See "The Law that Brought the Criminal Justice System to its Knees." *Los Angeles Times* (March 27, 1994).

As part of its investigation and pre-trial workup, the defense will have to consider mounting what are called in the law "collateral attacks" of the prior convictions which trigger the "three strikes" penalty. Put another way, attorneys will necessarily explore the possibility of invalidating one or more of the prior convictions to avoid the 99-year penalty. This effort will involve considerable effort on the part of support staff, hence the request for paralegal assistants in this fiscal note. It will also necessitate contracting with attorneys in other states to collaterally attack out-of-state felony convictions which serve to trigger the 99-year penalty. For example, if a client has a felony conviction in Idaho or California, a determination will have to be made as to whether 1) the conviction qualifies as felony level conduct in Alaska, 2) the conviction was based on a knowing and voluntary plea, 3) the defendant was represented by competent counsel, 4) the conviction was susceptible to some set-aside or expungement procedure which was not exercised but could have been. This is only a partial list of issues which will arise in the context of out-of-state convictions, and which may require the assistance of lower 48 lawyers paid on contract. These lawyers will have to go into courts in their state and file post-conviction petitions moving to set aside convictions if a legal basis is found to support such a filing.

These collateral attacks, which the Department of Law acknowledges in its fiscal analysis will be part of the "three strikes" litigation landscape, is expensive and time consuming. It will also potentially involve some out-of-state travel on the part of investigators, paralegals and lawyers. It is for these reasons that additional contractual and travel funds are required.

FISCAL IMPACT

In order to absorb the impact of these cases, the Public Defender will require additional resources. Like the Department of Law, this will mean more staff lawyers. Because the lawyers will need support for the collateral attacks aforementioned along with investigation and pre-trial preparation, paralegal assistants and a secretarial position are also required.

One attorney IV position will be placed in the Anchorage office and one in Fairbanks. Anchorage will also receive one paralegal assistant and a secretary. Fairbanks will add one paralegal position. These lawyers and support staff will also be responsible for responding to "three strikes" prosecutions arising in rural locations, either by handling the case, or by providing support for the rural PD offices where the cases are sited. (It should be noted that the attorney positions will also absorb any additional appellate work which will generate post-conviction as concerns these cases.)

CONCLUSION

It is the opinion of the Public Defender that this proposal will result in protracted, expensive litigation, which will have a reverberating impact on the entire justice system. It is suggested that, given the strict presumptive sentencing structure already in place in Alaska, this proposal be given very close scrutiny.

BUDGET ANALYSIS

100: Anchorage -	Attorney IV	82.6
	Paralegal Asst. II	51.5
	Legal Secretary I	36.7
Fairbanks -	Attorney IV	93.7
	Paralegal Asst. II	<u>53.4</u>
		317.9
200: Travel		5.0
300: Contractual		50.0
400: Supplies		2.5
500: Equipment (one time)		<u>7.5</u>
	TOTAL	<u>382.9</u>

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit GGLI														
Time Status PFT	Staff Months 120	Location EBA		Election District 50														
TYPE OF EXPENDITURE		AMOUNT																
Salary		24,756																
Benefits		11,905																
Premium Pay																		
Other																		
Federal Personal Services	0.00	36,661																
Travel		-0-																
Contractual		-0-																
Commodities		500																
Equipment		1,500																
Other																		
Total Cost		38,661																
FUNDING SOURCE FOR TOTAL COST																		
Federal Receipts	1002																	
G.F. Match	1003																	
General Fund	1004	38,161																
I-A Receipts	1007																	
CIP Receipts	1061																	
Other																		
<p>Justification</p> <p>This proposal will add 10 to 15 felony cases to the Public Defender workload per year. These cases will involve protracted, complex and therefore expensive litigation of both pretrial and trial issues in that they will require a labor-intensive effort of a magnitude mounted in murder cases. Only experienced lawyers will be assigned to these cases. These lawyers will need paralegal and secretarial support, especially to raise collateral attacks of prior convictions. These collateral attacks will also require the use of lawyers who practice and are licensed in other states. As such, contractual and travel funds will also be required.</p> <p>These positions will be necessary additions to current staffing in order to respond to the effects of this proposal.</p> <p>Anchorage:</p> <table> <tr><td>Attorney IV</td><td>82.6</td></tr> <tr><td>Paralegal Assistant II</td><td>51.5</td></tr> <tr><td>Legal Secretary I</td><td>36.7</td></tr> </table> <p>Fairbanks:</p> <table> <tr><td>Attorney IV</td><td>93.7</td></tr> <tr><td>Paralegal Assistant I</td><td>53.4</td></tr> <tr><td>Travel</td><td>5.0</td></tr> <tr><td>Contractual</td><td>50.0</td></tr> </table>					Attorney IV	82.6	Paralegal Assistant II	51.5	Legal Secretary I	36.7	Attorney IV	93.7	Paralegal Assistant I	53.4	Travel	5.0	Contractual	50.0
Attorney IV	82.6																	
Paralegal Assistant II	51.5																	
Legal Secretary I	36.7																	
Attorney IV	93.7																	
Paralegal Assistant I	53.4																	
Travel	5.0																	
Contractual	50.0																	

8/leg95/174x1hb38np kp6/3

Request For New Position

AGENCY ADMINISTRATION

BRU PUBLIC DEFENDER AGENCY

COMPONENT PUBLIC DEFENDER AGENCY

FY 96

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Revised Date

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 38 (JUD)

Revision Date: 04/20/95

Dept. Affected: Alaska Court System

Title: An Act relating to criminal sentencing...

BRU: Trial Courts

Components: _____

Sponsor: Rep. Bunde

Requestor: _____

COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	100.4	100.4	100.4	100.4	100.4	100.4
TRAVEL						
CONTRACTUAL	67.5	67.5	67.5	67.5	67.5	67.5
SUPPLIES						
EQUIPMENT	0.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	168.7	167.9	167.9	167.9	167.9	167.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	168.7	167.9	167.9	167.9	167.9	167.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	168.7	167.9	167.9	167.9	167.9	167.9

POSITIONS

FULL-TIME						
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Agency: Alaska Court System

Phone: 264-8228

Date: 04/20/95

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 04/20/95

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Alaska Court System
Fiscal Analysis
CSHB 38 (JUD)

CSHB 38 (Jud) amends Alaska's presumptive sentencing laws to provide that a defendant convicted of a third felony offense is subject to a mandatory term of imprisonment of at least 40 years but not more than 99 years. The first two convictions must be for a "most serious" felony, and the third conviction must be for a class A or unclassified felony. The prosecutor has the discretion to pursue or not pursue the 40-year to 99-year mandatory sentence.

A most serious felony is any unclassified or class A felony prescribed under AS 11 or an attempt or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified or class A felony prescribed under AS 11.

The Department of Law has estimated that prosecutors will seek the mandatory 40-year to 99-year sentence 15 times per year. Because of the potential sentence, these cases can be expected to approach first-degree murder cases in the amount of court time spent on the actual trial, as well as on evidentiary hearings, collateral attacks on previous convictions, and other pre- and post-trial motion work. This is estimated to average three weeks of trial time per case, plus one-half week of additional hearings. If the defendants were not subject to a 40-year to 99-year sentence, only three of these 15 cases would statistically be expected to go to trial.

In addition to the costs of the third felony case, the existence of the mandatory 40-year to 99-year sentence will encourage offenders charged with their first or second most serious felony to fight the charge more strenuously, because conviction would greatly increase the chance that the offender would be vulnerable to the mandatory sentence at a later time. In the years 1984 through 1990, an average of about 900 defendants each year were charged with a first or second most serious felony. Trial rates for defendants charged with those felonies currently range from eight to 20 percent, depending on the classification of the offense (class B, class A, or unclassified). If the trial rate increases by 50 percent, over 50 additional felony trials will be held each year. Such changes in the trial rate are not unprecedented. When the plea bargaining ban was imposed in 1975, the felony trial rate doubled during the first year and tripled during the second year. Because it is impossible to predict what increase will occur in the trial rate as a result of CSHB 38 (Jud), this note does not reflect those costs. Should CSHB 38 (Jud) result in a significantly higher trial rate, the court system will need to return to the legislature for additional funding.

For similar reasons, it can be expected that the appeal rate and rate of applications for post-conviction relief will increase among the 900 defendants charged each year with a first or second most serious felony. Again, this note does not attempt to quantify those costs.

Alaska Court System
Fiscal Analysis
CSHE 38 (JUD)

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, PPT, 50% vested, Anchorage, 10 months	\$40,250	\$26,593	\$66,843
In-Court Clerk, range 12A, PPT, Anchorage, 10 months	22,590	10,921	<u>33,511</u>
Total Personal Services			100,354

Contractual Services

Jury fees for 12 jurors and 3 alternates for 15 days for 12 new trials at \$25 a day for each juror 67,500

Equipment

Desk and chair for in-court clerk 800

Estimated Total Cost \$168,654

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 38 (JUD)

Revision Date: <u>3/24/95</u>	Dept. Affected: <u>Department of Law</u>
Title: <u>"...relating to criminal sentencings...definite term sentences, parole, good time credit, pardon, commutation..."</u>	BRU: <u>Prosecution</u>
Sponsor: <u>Representative Bunde</u>	Component: <u>Third District</u>
Requester: <u>Representative Bunde</u>	<u>Criminal Appeals & Special Prosecution</u>
	COMPONENT SERIAL NO. <u>0087, 0090</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	162.6	162.6	162.6	162.6	162.6	162.6
TRAVEL	7.5	7.5	7.5	7.5	7.5	7.5
CONTRACTUAL	22.2	22.2	22.2	22.2	22.2	22.2
SUPPLIES	6.6	6.6	6.6	6.6	6.6	6.6
EQUIPMENT	13.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	211.9	198.9	198.9	198.9	198.9	198.9

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	211.9	198.9	198.9	198.9	198.9	198.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	211.9	198.9	198.9	198.9	198.9	198.9

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Judiciary Committee Substitute for HB 38 changes the proposed 99-year mandatory term of imprisonment for third-time "most serious felony" offenders to allow courts to sentence these offenders to a definite term of imprisonment of at least 40 years and not less than 99 years. Thus a court could sentence an offender to a set term anywhere within the range of 40 years and 99 years. As provided in both the original bill and the Judiciary Committee CS, a third-time most serious felony offenders could apply for a modification or reduction of sentence after serving one-half of the definite term, except that the CS provides that an offender could not apply for modification or reduction until after serving the greater of one-half of the term, or 30 years. An offender would not be eligible for a good time deduction. Consequently, in determining the greater of one-half of the definite term served or 30 years, good time credit could not be considered. As a result, and under even the best of circumstances, the minimum time served by a third-time most felony offender would be 30 years.

Prepared by: <u>Richard I. Peques, Director</u>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>3/24/95</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>3/24/95</u>
Agency: <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 38 (JUD)

ANALYSIS CONTINUATION:

Most offenders would obviously serve terms of substantially greater length. Although the CS, by establishing a 40-to-99 year sentencing range, in lieu of a mandatory 99-year sentence, will result in some pleas, the majority of offenders will still present a toughened defense. We have therefore reduced our fiscal note costs by one of three positions to reflect this change, but we are continuing two positions to reflect the need to fully prosecute the majority of offenders who are expected to vigorously resist a definite term sentence.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 38 (JUD)

ANALYSIS CONTINUATION:

Component Analysis

	<u>0087</u> <u>Third District</u>	<u>0090</u> <u>Crim. Appeals</u>	<u>Total</u>
Personal Services	81.3	81.3	162.6
Travel	7.5	0.0	7.5
Contractual	13.6	8.6	22.2
Supplies	3.3	3.3	6.6
Equipment	6.5	6.5	13.0
	_____	_____	_____
Total	112.2	99.7	211.9

01/30/95

00:09:16.6

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 1

 DEPARTMENT OF LAW
 COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

 SCENARIO: 3
 DRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	B U	S R&S	HOS BUDG	SALARY	PREH PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT		
03#030		ATTORNEY III	F	ANCHORAGE	A	XE	AA	22A	12	53304	0	18385	71689.98		
**** JUSTIFICATION: This position will be needed to handle an increased felony caseload when the penalty for driving while intoxicated (or refusing to take a chemical test) for the fourth or more times is raised from a class A misdemeanor to a class C felony.															
												TRAVEL COSTS	3000.00		
												CONTRACTUAL COSTS	8600.00		
												SUPPLIES COSTS	3300.00		
												EQUIPMENT COSTS	6500.00		
												OTHER COSTS	0.00		
												TOTAL COSTS	71089.98	71689.98	
												*** FUNDING DETAIL: 100% GENERAL FUND RECEIPTS		71689.98	
												TOTAL FUNDING	71689.98		
03#031		LEGAL SECRETARY I	F	ANCHORAGE	A	CG	2A	10A	12	24756	0	11367	36123.82		
**** JUSTIFICATION: This position will be needed to handle an increased felony caseload when the penalty for driving while intoxicated (or refusing to take a chemical test) for the fourth or more times is raised from a class A misdemeanor to a class C felony.															
												TRAVEL COSTS	0.00		
												CONTRACTUAL COSTS	6000.00		
												SUPPLIES COSTS	2400.00		
												EQUIPMENT COSTS	8500.00		
												OTHER COSTS	0.00		
												TOTAL COSTS	53023.82	36123.82	
												*** FUNDING DETAIL: 100% GENERAL FUND RECEIPTS		36123.82	
												TOTAL FUNDING	36123.82		
03#033		ATTORNEY IV	F	ANCHORAGE	A	XE	AA	24A	12	61008	0	20305	81313.82		
**** JUSTIFICATION: This position will be required to handle prosecutions and appeals of third-time offenders of "most serious" felonies, where the penalty will be mandatory term of imprisonment of 99 years. In many cases, the penalty will be more severe than the sentence for first degree murder. Consequently, a much tougher defense can be expected, including attacks on the underlying prior convictions.															
												TRAVEL COSTS	7500.00		
												CONTRACTUAL COSTS	13600.00		
												SUPPLIES COSTS	3300.00		
												EQUIPMENT COSTS	6500.00		
												OTHER COSTS	0.00		
												TOTAL COSTS	112213.82	81313.82	
												*** FUNDING DETAIL: 100% GENERAL FUND RECEIPTS		81313.82	
												TOTAL FUNDING	81313.82		

01/24/95

15:31:51.9

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 4

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R B S C U	R&S HOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03/035		ATTORNEY IV		F ANCHORAGE	A XE AA 24A	12	61000	0	20305	81313.82	

**** JUSTIFICATION:

This position will be required to handle prosecutions and appeals of third-time offenders of "most serious" felonies, where the penalty will be mandatory term of imprisonment of 99 years. In many cases, the penalty will be more severe than the sentence for first degree murder. Consequently, a much tougher defense can be expected, including attacks on the underlying prior convictions.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	8600.00	
SUPPLIES COSTS	3300.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	99713.82	81313.82

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS	81313.82	
TOTAL FUNDING	81313.82	

**** COMPONENT TOTALS:

FULL TIME NEW POSITIONS	1	TOTAL PERSONAL SERVICES	81313.82
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	99713.82
OTHER.....	0		

NUMBER OF NEW POSITIONS IN COMPONENT: 1

FUNDING DATA: G.F. & G.F. MATCH:	81313.82
OTHER FUNDS:	0.00
TOTAL FUNDING:	81313.82

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

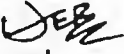
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 17, 1995

SUBJECT: Sectional Summary HB 38 (Work Order No. 9-LS0187A)

TO: Representative Con Bunde
Attn: Pattie Swenson

FROM: Jerry Luckhaupt 
Legislative Counsel

You have requested a sectional summary of the above-described bill, please be advised that a sectional summary is not an authoritative statement of a bill and what it does - the bill is the best statement of its contents.

Section 1 of the bill provides findings and intent.

Section 2 of the bill amends AS 12.55.025(e) by clarifying that mandatory 99-year terms for certain three time felony offenders, added by sec. 6 of the bill, do not affect the court's ability to impose consecutive sentences.

Section 3 of the bill amends AS 12.55.125(c) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Sec. 6 of the bill.

Section 4 of the bill amends AS 12.55.125(i) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Sec. 6 of the bill.

Section 5 of the bill amends AS 12.55.125(j) to provide that a person sentenced to a mandatory term of 99 years under sec. 6 of the bill may apply to the court for a sentence reduction after serving one half of the sentence.

Section 6 of the bill amends AS 12.55.125 by providing a new subsection (l) that requires a court to sentence a defendant convicted of an unclassified or class A felony to a mandatory 99-year term of imprisonment when the defendant has been previously convicted of at least two most serious felonies. This section also provides that the mandatory 99-year term may not be suspended or reduced.

Section 7 of the bill amends AS 12.55.145(a) to explain how a conviction can qualify as a prior most serious felony conviction for purposes of sentencing under sec. 6 of the bill.

Section 8 of the bill amends AS 12.55.145(c) to provide the procedure by which a defendant may challenge the use of a conviction as a prior most serious felony conviction at sentencing under sec. 6 of the bill.

Section 9 of the bill amends AS 12.55.145(d) relating to the burden of proof of showing that a conviction is a prior most serious felony conviction for purposes of sentencing under sec. 6 of the bill.

Section 10 of the bill amends AS 12.55.145 by adding a new subsection (f) that explains when a prior conviction has occurred for use at sentencing under AS 12.55.145.

Section 11 of the bill amends AS 12.55.155(c)(20) by providing a conforming change to the change made in sec. 7 of the bill.

Section 12 of the bill amends AS 12.55.185 by adding a new paragraph (14) that provides a definition of what is a "most serious felony."

Section 13 of the bill amends AS 33.16.090(b) to provide that a person receiving a mandatory 99-year term under AS 12.55.125(l) is not eligible for discretionary parole during the entire 99-year term.

Section 14 of the bill amends AS 33.20.010(a) to provide that a person receiving a mandatory 99-year term under AS 12.55.125(a)(after the effective date of this bill) or AS 12.55.125(l) may not earn good time deductions from the 99-year term.

Section 15 of the bill amends AS 33.30.101 by adding a new subsection (c) that provides that furlough regulations may not allow for the granting of a furlough to any inmate serving a mandatory 99-year term under AS 12.55.125(l) except in certain limited instances.

Section 16 of the bill amends AS 33.30.161(b) by adding a new paragraph (5) that provides that an inmate serving a mandatory 99-year term under AS 12.55.125(i) may not serve the inmate's sentence in a correctional restitution center.

Section 17 of the bill provides an applicability section.

Section 18 of the bill provides notice that the change made in sec. 5 of the bill has the effect of modifying Alaska Rule of Criminal Procedure 35 which thereby necessitates a two-thirds vote.

UNCLASSIFIED AND CLASS A FELONY OFFENSES

Unclassified Felonies

AS 11.41.100	Murder in the First Degree
AS 11.41.110	Murder in the Second Degree
AS 11.41.300	Kidnapping
AS 11.41.410	Sexual Assault in the First Degree
AS 11.41.434	Sexual Abuse of a Minor in the First Degree
AS 11.71.010	MICS in the First Degree

Class A Felony Offenses

AS 11.41.120	Manslaughter
AS 11.41.200	Assault in the First Degree
AS 11.41.500	Robbery in the First Degree
AS 11.46.400	Arson in the First Degree
AS 11.56.300	Escape in the First Degree
AS 11.61.190	Misconduct Involving Weapons in the First Degree
AS 11.61.240	Criminal Possession of Explosives (for murder/kidnapping)
AS 11.66.110	Promoting Prostitution in the First Degree
AS 11.71.020	MICS in the Second Degree

(sale of firearms)

Crimes against the person, as defined in AS 33.30.901, include only offenses under AS 11.41.

ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union
P. O. Box 201844 Anchorage, AK 99520-1844
Phone: 1-907-258-0044 Fax: 1-907-258-0288

February 14, 1995

RECEIVED
FEB 19 1995

The Honorable Brian Porter
Chair, Judiciary Committee
Alaska House of Representatives
State Capitol - Room 118
Juneau, AK 99801-1182

Brian Porter

Dear Representative Porter:

I am writing on behalf of the Alaska Civil Liberties Union (AkCLU) to express our opposition to HB 38, commonly known as the "Three-Strikes, You're Out" bill. We urge you to seriously review any stated justification for this legislation and ask that your committee probe with a critical mind the factual basis of any arguments presented in favor of adopting sentencing guidelines that remove total discretion from the judiciary and place it in the hands of prosecutors.

The experience of other states which have adopted "three-strikes" laws will greatly assist the Alaska Legislature as it debates the value of this particular legislation. I hope that the Judiciary Committee takes the time to gather information from those states who have had "three-strikes" legislation and that your committee educates its members by talking directly with the public safety and corrections officials from other states responsible for administration of laws similar to that proposed in HB 38. I also encourage the committee to talk with social scientists and experts in the field of criminology about the merits of the assumptions that underlie this bill.

Introduction

The most important impetus for the national movement toward three-strikes legislation is the public's present preoccupation with crime. Despite the perception that serious crime is on the rise, the facts are that the murder rate in the United States 60 years ago is just about what it is today.¹ "The numbers show that the high murder rate is not just a recent phenomenon brought on by drugs, unemployment or loss of family values," the non-profit Washington-based [Population Reference] Bureau said. 'Murder, it seems, is part of the American way

¹ Lisa Hoffman. "Despite Leap in Fear, Murder Rate is no Higher than in 1933," Anchorage Daily News, February 2, 1995, page A1.

of life."² In addition, according to figures released by the FBI, there has been little or no growth in the overall crime rate during the last two decades.³ In short, violent crime is no more a problem today than it was ten, twenty, or even sixty years ago.

The likely root of the public's fear is increasing media attention to individual cases of violent crime, combined with the fact that certain segments of the population -- such as young, non-white males -- have a greater chance of becoming a homicide victim now than ever before and the fact that the homicide rate for children under 14 is at or near record highs for the post-World War II era and rates for preschoolers 4 and younger have risen to their highest levels in 40 years.⁴ The Population Reference Bureau study found that

Americans today perceive they are more at risk for murder than they really are because of the prevalence of stories on violent death in the news. "Communications and the media make it seem closer to home," [Carol] De Vita said [director of publications for the Population Bureau]. "We are under constant bombardment that homicide is everywhere, and increasing." She said that the nation also has become more "aware and sensitive" to the murder problem as its victims and perpetrators have gotten increasingly younger.⁵

Finally, while the rate of violent crime among younger people has risen, the rate among offenders aged 35 and older has decreased dramatically.⁶ Ironically, it is such older felons -- not the younger and more violent first-timers -- that HB 38 is designed to target directly.

Three-Strikes is Too Costly for the State

There appears to be a national consensus of opinion that three-strikes laws will cost a tremendous amount of money to implement and maintain. For example, in New Jersey, a non-partisan review found that each inmate not paroled as a result of a proposed three-strikes law would end up costing the state \$1,080,000.⁷ This magnitude of economic impact tends to trouble even conservative legislators who otherwise support the laws.⁸

² *Id.*, page A1.

³ Kevin Henderson, "Numbers on Crime Reveal a Different Picture from the 'Crisis' that Many Politicians Paint," *Christian Science Monitor*, February 8, 1994, page 1.

⁴ Hoffman, *supra*.

⁵ Hoffman, *supra*, page A8.

⁶ Henderson, *supra*, page 4.

⁷ Jerry Gray, "New Jersey Senate Approves Bill to Jail 3-Time Criminals for Life," *New York Times*, May 13, 1994, page 1.

⁸ See "California Governor Expected to Back Life Terms for Repeat Felons," *New York Times*, March 7, 1994, page A14; and William Claiborne, "State Legislators Rethink '3 Strikes' Laws as Costs Begin to Hit Home," *Washington Post*, August 7, 1994, page A18.

There are at least three significant ways in which a three-strikes law would be expected to impact Alaska's pocketbook: 1) costs associated with increased prison populations; 2) increasing health care costs for prisoners as they reach old age or who contract a terminal or physically debilitating disease while serving life sentences; and 3) costs incurred by the judiciary, the district attorney's offices, the Public Defender Agency, and the Office of Public Advocacy as a result of increased numbers of cases going to trial and a greater reluctance of defendants to plea bargain to any felony charge.

Prison Population Effects

Longer sentences mean more prisons will have to be built to handle the increase in numbers of incarcerated individuals. In California, a RAND Corporation study recently concluded that the state's three-strikes law will cost \$5.5 billion annually, most of which would go towards building and operating the additional prisons necessary to handle the resultant expected doubling of the prison population.⁹

As you know, last fall Alaska Superior Court Judge Karen Hunt began imposing a daily fine on the Alaska Department of Corrections so long as overcrowding continued, forcing the state to ship some 200 prisoners out-of-state, and leading to additional costly and lengthy litigation. The fine was assessed in the amount of \$5,000 per day. There can be no question, then, that any increase in numbers of prisoners will eventually have to be dealt with by adding prison beds. Please carefully review any Department of Corrections fiscal notes regarding the anticipated additional cost to the state of this proposed legislation.

Costs of Maintaining Geriatric or Medically Incapacitated Prison Populations

One inevitable effect of three-strikes laws will be to turn prisons into nursing homes.¹⁰ Longer sentences will mean that Alaska will have to be prepared to spend to match the rising annual cost for each prisoner as he or she gets older and requires more medical attention. Nationally, estimates are that costs of incarceration rise 3 to 5 times as prisoners reach ages of 55 to 65 years.¹¹

In addition, "three-strikers" may also contract serious, debilitating or even terminal diseases which would eliminate them as a danger to society. Yet it appears, under present HB 38, that the earliest date that either the state or a person incarcerated under this legislation could even approach the courts for consideration of release would be 49 1/2 years after final sentencing. This will

⁹ "3 Strikes' Found Hobbled by Enormous Prison Costs," Los Angeles Times, September 22, 1994, page A1.

¹⁰ William J. Eaton, "'3-Time Loser' Bill a Political Winner, but Critics Abound," Los Angeles Times, January 25, 1994, page A24.

¹¹ Miles Corwin, "Doing Time in a Jail for Old-Timers," Los Angeles Times, May 6, 1994, page A1; and Daniel Franklin, "The Right Three Strikes," Washington Monthly, September, 1994, pages 25 and 29.

compel the state to care for these persons, often at great expense, through their death. The AkCLU would hope that humanity, alone, would dictate that the Legislature would consider amending this bill to provide for the release of "three-strikers" for medical reasons adjudged serious enough to remove them from consideration as a danger to society.

Impact on the Judicial System

Just as significant, and much more sudden, will be the new strain put on the judicial system. States with three-strikes laws have discovered that plea bargaining is much more difficult now. Defendants are much less likely to plead to any "strike" felony than they were in the past, because of the devastating impact such a strike could have on them.¹² This means more trials, which means more prosecutors, public defenders and public advocates, judges, and court personnel to handle the additional trials.

In states that have implemented three-strike laws, this impact has already begun to hit home. Following passage of California's three-strikes law on March 7, 1994, public defenders immediately began counseling defendants that there was little reason to accept plea bargains, given that a deal would later make those defendants subject to the three-strikes mandatory sentencing.¹³ *Shortly thereafter, Los Angeles District Attorney Gilbert Garcetti announced that he was simply getting rid of many sections of his office, including environment, consumer affairs, and major fraud sections, in order to free up enough attorneys to handle the three-strikes case load.*¹⁴ By August of 1994, California prosecutors were already being forced to move to dismiss prior felony convictions of potential three-strikers, or reclassify prior felonies as misdemeanors, in order to cope with suddenly unmanageable caseloads.¹⁵

In terms of actual costs, the California Judicial Council predicted that the three-strikes law in that state would result in 17,000 additional jury trials each year, requiring the hiring of 322 more judges, costing an additional \$276 million annually.¹⁶ Similar results are found in Washington State, where potential three-strikers are refusing to plea bargain and instead "forcing full trials in a court system that has neither the manpower nor the space to take on the extra load."¹⁷

¹² Timothy Egan, "A 3-Strike Law Shows It's Not as Simple as It Seems," New York Times, February 15, 1994, page A1.

¹³ Dan Morain, "Citing '3 Strikes,' Lawyers to Shun Plea Bargains," Los Angeles Times, March 9, 1994, page A1.

¹⁴ Charles L. Linder, "The Law That Brought the Criminal Justice System to Its Knees," Los Angeles Times, March 27, 1994, page M6.

¹⁵ Marc Peyser, "Strike Three, You're Not Out," Newsweek, August 29, 1994, page 53.

¹⁶ Dan Morain, "Costs to Soar Under '3 Strikes' Plan, Study Says," Los Angeles Times, March 1, 1994, page A1.

¹⁷ Egan, *supra*, page A1.

Three-Strikes Will Be Dangerous to the Public

There are several respects in which a three-strikes law is likely to prove counter-productive to its very purpose of protecting the public from violent crime. First, conservative and liberal commentators alike have expressed concern that criminals, faced with a third felony life sentence, will be more inclined to kill any victims or witnesses during commission of felony offenses.¹⁸ In fact, prosecutors and police officers in Washington State have observed, since the passage of the three-strikes law there, that criminals have been "showing a tendency to be more violent or desperate when officers try to arrest them."¹⁹

Two weeks ago, the Seattle police were about to make what they thought would be a routine arrest of a burglary suspect. Instead of surrendering, he threatened to shoot. Only after a special weapons squad surrounded the house did the stand-off end.

After the suspect was taken into custody, the police were told by his acquaintances that he thought he was facing a three-strikes charge. Rather than face life in prison, he decided to confront officers, the police said.

"It now looks like some of these three-strikes cases might try to get away or shoot their way out," said Sgt. Eric Balden of the Seattle Police Department. "Believe me, that's not lost on us. We're thinking about it."²⁰

Second, crowding of prisons with three-strikers may well lead to the forced early release of first and second offenders, who tend to be younger and statistically more likely to commit violent crimes again. This effect has already been documented in states where three-strikes laws have been implemented.²¹

Finally, there will be fewer pleas to felony charges by defendants with nothing to gain and everything to lose. This could have two possible consequences. First, more defendants will go to trial and, because the state's evidence is usually weaker when it is willing to plea bargain, more defendants may well go free. Whereas a plea bargain might have put a defendant in prison on a reduced felony or misdemeanor charge when the state was unsure of its ability to prevail at trial, the defendant may end up walking free as a result of the three-strikes law. Second,

¹⁸ Keith Henderson, "'Three Strikes' Laws Strike Out With Law Enforcement Experts," Christian Science Monitor, February 1, 1994, page A1; and William Tucker, "Three Strikes and You're Dead," American Spectator, March, 1994, page 22.

¹⁹ Egan, supra, page A1.

²⁰ Id., page A18; see also Marc Mauer, "Politics, Crime Control . . . and Baseball?," Criminal Justice, Fall, 1994, noting reported cases in Washington State "where otherwise routine arrests resulted in armed confrontations with offenders who believed they had nothing to lose by resisting. This occurs even though Washington is a death penalty state and an armed confrontation with police could result in a capital charge" (emphasis added).

²¹ Corwin, supra, pages A1 and A22.

prosecutors may go ahead and reduce serious felonies to misdemeanors in order to maintain manageable case loads, with obvious results. Neither of these possibilities is what the proponents of three-strikes laws, nor the sponsor of HB 38, had in mind.

Three-Strikers Will Be Ineffective

First, as you may already be aware, most third-offense defendants convicted of a murder in the first or second degrees or of kidnapping will be unaffected by a three-strikes law because they already are normally sentenced to life in prison under Alaska's presumptive sentencing statutes. Thus, under these circumstances the law is unnecessary.

Second, it is well-documented that most violent crimes are not premeditated, but are instead committed in the heat of passion or anger, or while the defendant is under the influence of alcohol or drugs. A three-strikes law will not act as a deterrent to any of these people. Finally, most criminals who commit premeditated violent crimes have no intention of being caught. They also have good reason to believe they won't be caught: there were 6.6 million violent crimes committed during 1992 in the United States, and only 742,130 violent crime arrests.²² This is further evidence that a three-strikes law will, as professed by many, have no effect on crime rates.

Discretion Will Be Taken From Judges, Given to Prosecutors

"I am here to express the complete and unmitigated opposition of the federal judges of this country to mandatory minimums," announced U. S. District Court Judge Vincent Broderick to the Subcommittee on Crime of the House Judiciary Committee on July 28, 1993.²³ Among the reasons Judge Broderick gives for that opposition is the fact that "mandatory sentencing denigrates the independence of the judiciary, which is treated as a robotic rather than intelligent branch of government."²⁴ This denigration of judges is "based on the unexamined assumption that the statutory description of a crime contains all the information needed for wise disposition of the offender."²⁵

Three-strikes laws are mandatory minimums carried to an extreme. Under HB 38, Alaska judges would apparently have *no discretion whatsoever* to take into account anything about the three-strikes offender. The practical effect will be to place the discretionary decisions into the hands of prosecutors, who will decide with what to charge potential three-strikers. Instead of leaving to dispassionate judges

²² Bureau of Statistics, Sourcebook of Criminal Justice Statistics -- 1993, published in 1994.

²³ Vincent L. Broderick, "The Delusion of Mandatory Sentencing: The Wrong Approach to Fighting Crime," Trial, August, 1994, page 62.

²⁴ Id., page 64.

²⁵ Id.

the important decision about whether to imprison a person for life, that decision is handed completely over to the prosecution. The judge and the prosecutor become one and the same.

Three-Strikes Will Be Unjust and May Be Unconstitutional

In states that have enacted three-strikes laws, the injustices perpetrated as a result have come fast and furious. To counter the injustices wrought by these laws, judges and prosecutors are having to find fancy ways to resolve these matters. For example, a review of three-strikes cases resolved by August 31, 1994 in California revealed that only 1 in 6 eligible three-strikes defendants was actually sentenced to the prescribed 25-years-to-life-in-prison, because of the inability of prosecutors and judges to bring themselves to effectively enforce the law to its letter.

Even more troubling are the potential racist effects of a three-strikes law that puts too much discretion in the hands of prosecutors. A habitual offender law in Florida, allowing severe sentences for criminals guilty of three previous felonies, was found to have had this problem during its first three years after enactment.²⁶ In each of twenty statewide circuits, African-Americans were prosecuted under the law in greater proportion than whites who were similarly eligible.²⁷ Statewide, prosecutors charged black defendants with three-strikes violations at three times the rate charged against white defendants also eligible for the charge.²⁸ Faced with these facts, the criminal court judges in Palm Beach County voted unanimously to close down the habitual offender court altogether.²⁹

Given the present over-representation of the Alaska Native and African-American populations in Alaska's correctional institutions, the shift of discretion away from judges to prosecutors raises genuine concerns about the potential racist application of such a law.

Finally, serious constitutional questions exist about any law that imposes a mandatory life sentence. The Alaska Constitution contains a "cruel and unusual punishment" prohibition (Article I, section 12), which has been interpreted to make unconstitutional any "punishment so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice."³⁰ Any three-strikes legislation is bound to be attacked on these grounds as it begins to be applied to specific cases.

²⁶ Colman McCarthy, "Three Strikes Is a Foul for Justice," Washington Post, February 15, 1994, page D18.

²⁷ Id.

²⁸ William Clairborne, "State Legislators Rethink '3 Strikes' Laws as Costs Begin to Hit Home," Washington Post, August 7, 1994, page A18.

²⁹ McCarthy, supra.

³⁰ Burnor v. State, 829 P. 2d 837, 840 (Alaska App. 1992) (citation omitted).

Conclusion

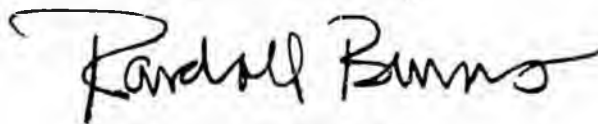
HB 38 is not an effective, sound approach to the punishment of repeat offenders. As catchy as "Three-Strikes, You're Out," may sound to the ear, such a law is destined to be costly, ineffective, and unjust. As the American Civil Liberties Union's "briefer" on "10 Reasons to Oppose '3 Strikes, You're Out,'" states (copy attached):

Today, the United States has the dubious distinction of leading the industrialized world in per capita prison population, with more than one million men and women behind bars. The typical inmate in our prisons is minority, male, young, unemployed, and uneducated. This profile should tell us something important about the link between crime and lack of opportunity, between crime and lack of hope.

Only when we begin to deal with the conditions that cause so many of our young people to turn to crime and violence will we begin to realize a less crime ridden society.

For the above reasons, the Alaska Civil Liberties Union urges the House Judiciary Committee to defeat passage of House Bill 38. Please feel free to contact this office if we can be of any assistance to you in reviewing this legislation.

Respectfully yours,



Randall P. Burns
Executive Director

cc: All members, AkCLU Board of Directors
Margaret W. Berck, Attorney at Law

Memorandum

State of Alaska
Department of Corrections
Division of Administrative Services
(907) 276-8122 Fax (907) 258-7512
800 A Street, Suite 102, Anchorage, Alaska

To: Diane Schenker
Special Assistant

Date: November 4, 1993

From: Steve Schwartz *S. Schwartz*
Research Analyst IV
Department of Corrections

File: A-1-8A
Subject: Rep. Bunde request

The information requested from Rep. Bunde offices is as follows:

Inmate population on November 4, 1993 is 2,692 (In-state, out-of-state - excludes CRCs).

- Inmates with two felony cases is 560 or 20.8%
- Inmates with three felony cases is 253 or 9.4%
- Inmates with four felony cases is 123 or 4.6%
- Inmates with five or more felony cases is 133 or 4.9%

Rep. Bunde's original question was; "What percentage of prisoners in our present population have returned to jail after three felony convictions?" This percentage is 9.5% .

Thank you.

Post-It™ brand fax transmittal memo 7671		# of pages
To <i>Patti Swenson</i>	From <i>D. Schenker</i>	
Co. <i>Rep. Bunde</i>	Co. <i>DOC</i>	
Dept.	Phone #	
Fax #	Fax #	

HIGHLIGHTS

In 1960:

- ❖ There was a total of 3,384,200 million crimes reported to law enforcement authorities.
- ❖ The chance of being a victim of a crime was 1 in 53.
- ❖ There was a total of 288,460 million violent crimes reported to law enforcement authorities.
- ❖ The chance of being a victim of a violent crime was 1 in 622.
- ❖ While crimes were escalating throughout the 1960s, the actual prison population was on the decline; the aggregate national prison population fell from 190,000 in 1960 to 174,000 in 1972.

By 1980:

- ❖ There were 13,408,300 million crimes reported to law enforcement authorities.
- ❖ The crime rate had risen over 215 percent above its 1960 level.
- ❖ The chance of being a victim of crime was 1 in 17.
- ❖ There were 1,344,520 million violent crimes reported to law enforcement authorities.
- ❖ The violent crime rate had risen over 270 percent. The chance of being a victim of a violent crime was 1 in 168.

❖ From 1960 to 1980, the states that had the largest increases in imprisonment rates had the smallest increases in crime rates; while the states that had the sharpest decline in their incarceration rates had the largest increases in crime rates. The trend continued from 1980 to 1992.

❖ While the trends in each state are consistent, great differences exist among the states as to the degree of change. Between 1960 and 1980 the crime rate in California increased more than 125 percent, while in New Hampshire the crime rate increased over 579 percent.

By 1992:

- ❖ Crime rates had increased but had been curbed. There was a total of 14,438,200 million crimes reported to law enforcement authorities.
- ❖ The crime rate was 200 percent above its 1960 level.
- ❖ The chance of being a victim of a crime was 1 in 18.
- ❖ Violent crime had soared to 371 percent above its 1960 level.
- ❖ There were 1,932,246 million violent crimes reported to law enforcement authorities.
- ❖ The chance of being a victim of a violent crime was 1 in 132.

❖ Since 1987, the percentage of juvenile arrests for violent crimes has increased more than 50 percent.

❖ In 1991, people under the age of 21 were responsible for more than one-third of all murders in the country.

❖ Today, a woman faces four times the chance of being raped than in 1960. In 1960 a woman's chance of being raped was 1 in 10,400; in 1980 it was 1 in 2,717.

❖ In the ten states with the highest increases in incarceration rates between 1980 and 1992, crime rates were substantially reduced. Even so, in all ten states their crime rates are more than double their 1960 levels. The states are: New Hampshire, New Jersey, California, Connecticut, Massachusetts, Arizona, Rhode Island, Idaho, Alaska, and Delaware.

❖ Approximately, one-third of all violent crimes are committed by an offender who is on probation, parole or pretrial release. This year more than 1,200 violent crimes will be committed every day by convicted felons on probation or parole; almost 700 more will be committed by a defendant on pretrial release.

❖ In 1990, the average prison sentence for all felony offenses which resulted in a prison sentence was 6 years, months. However, the actual time served in prison for that sentence was 2 years, 1 month, only one-third of the sentence imposed.

❖ In 1990, the average prison sentence for violent offenses which resulted in a prison sentence was 9 years, 11 months; the time served was 3 years, 9 months, or 38 percent of the sentence imposed.

❖ From 1960 to 1991 the correctional expenditure per adult inmate increased by nearly double.

❖ In California, the Federal Court has dictated the number of changes of clothes which must be provided inmates each week.

It is unlikely that this understanding of the Eighth Amendment (which forbids "cruel and unusual punishment") is within the intent of the U.S. Constitution. The extraordinary burdens placed by Federal Courts on state corrections authorities have contributed to an escalation in prison costs. From 1960 to 1990, per-inmate operating costs (current expenditures) nearly doubled (inflation adjusted.)

Immense savings in direct costs to the public, as well as a significant reduction in crime with its consequent savings in both financial cost and human suffering, could be realized simply by putting and keeping more convicted offenders in prison. This is not an impossible task.

If the cost per inmate had remained within the inflation rate since 1960, nearly an additional \$5.5 billion would have been available in 1990 alone for additional corrections capacity, tax reductions, or other public services. Some states achieved this level of cost control and better; the operating cost per inmate actually decreased in New Hampshire, Delaware and Oregon.

When prisoners are provided better institutional living conditions than they have available outside of prison, one of the primary purposes of punishment is undercut. "The infliction of disutility...is one of the objectives of criminal punishment; only if the only objective of punishment were incapacitation could it be argued that living conditions should be as comfortable in prison as outside."³



TABLE 2.1: AVERAGE ESTIMATED TIME SERVED BY TYPE OF OFFENSE

Offense	Percent of Sentence Served	Mean Prison Sentence	Estimated Time Served
All Offenses	33.0%	6 yrs., 3 mos.	2 yrs., 1 month
Violent Offenses	38.0%	9 yrs., 11 mos.	3 yrs., 9 mos.
Murder	43.0%	20 yrs., 3 mos.	8 yrs., 8 mos.
Rape	39.0%	13 yrs., 4 mos.	5 yrs., 2 mos.
Robbery	39.0%	9 yrs., 7 mos.	3 yrs., 9 mos.
Aggravated Assault ...	34.0%	6 yrs., 6 mos.	2 yrs., 2 mos.
Other	34.0%	7 yrs., 1 month	2 yrs., 5 mos.
Property Offenses ...	29.0%	5 yrs., 5 mos.	1 year, 7 mos.
Burglary	32.0%	6 yrs., 8 mos.	2 yrs., 2 mos.
Larceny	27.0%	4 yrs., 1 month	1 year, 1 month
Fraud	28.0%	4 yrs., 10 mos.	1 year, 4 mos.
Drug Offenses	29.0%	5 yrs., 6 mos.	1 year, 7 mos.
Possession	27.0%	4 yrs., 1 month	1 year, 1 month
Trafficking	31.0%	6 yrs., 2 mos.	1 year, 11 mos.
Weapons Offenses ...	40.0%	4 yrs., 2 mos.	1 year, 8 mos.

Source: Bureau of Justice Statistics, "Felony Sentences in State Courts, 1990"

³ Davenport v. DeRobertis, 844 F.2d 1310, 1313 (7th Cir. 1988) (Posner, J.).

'Revolving door' syndrome feeds cycle of violence

By Sam Vincent-Meddis
USA TODAY

In Washington, D.C., a teenager facing charges of deadly assault goes joy-riding while free on \$1,000 bond. He fatally shoots a woman in another car because he feels like "bustin' somebody."

In Hugo, Okla., a 39-year-old with a record of assault and property crimes buys an assault weapon and kills two people, wounds three others, then kills himself.

Many blame the easy access to guns for such carnage. But similarly under fire is a justice system that, to critics, seems to do little more than recycle criminals to the streets.

That outrage has sparked calls for a crackdown on repeat criminals nationwide: Washington state voters approved stiffer sentencing last year, and California voters consider an initiative this fall.

About 30 states are weighing similar measures, most of which provide long sentences without early parole for many repeat offenders.

"People have just had it — they don't want to live with the fear anymore," says Paul McNulty of the First Freedom Coalition, a group that advocates stiff crime penalties.

Looking at the numbers, repeat crime seems to be becoming the nationwide norm:

▶ About 60% of prison inmates have been behind bars before, according to a U.S. Bureau of Justice Statistics study; 44% were on probation or pa-

'3 strikes, you're out' likely in California

If what could spark a new wave of citizen action nationwide, California voters are expected to approve a crackdown on career criminals in a November 1994 ballot measure.

The measure, known as "Three Strikes and You're Out," would double sentences for criminals convicted of second serious felonies — and require a minimum of 25 years to life for a third offense.

Thirty other states are considering similar measures to toughen sentences for repeat offenders.

Gov. Pete Wilson supports the concept, and supporters appear to have easily topped the 385,000 signatures needed to place it on the 1994 ballot.

The initiative has been pushed by Fresno photographer Mike Reynolds, whose 18-year-old daughter was killed by a parolee in June.

role when re-arrested.

▶ A mere 108,000 criminals in one federal study had a staggering 1.9 million arrests between them.

Recent U.S. and Pennsylvania studies found about 6% of criminals commit nearly 70% of violent crimes.

Targeting those criminals sounds simple. The reality is tougher.

COMPLIMENTS OF THE
ALASKA STATE LIBRARY

Violent crime up fivefold from '60s, legislators report

Cox News Service

WASHINGTON — Americans are almost five times more likely to be the victim of a violent crime in the 1990s than in 1960, the nation's state legislators reported Wednesday.

But "getting tough works," they said. States that increased their incarceration rates the most tended to reduce their violent crime rates the most, the lawmakers

Report Card on Crime and Punishment" showed.

"The message here is unequivocal. Leniency is associated with higher crime rates; getting tough brings crime rates down," said Samuel Brunelli, executive director of the American Legislative Exchange Council, the nation's largest bipartisan association of state legislators.

The group released a study analyzing FBI crime statistics be-

tween 1960 and 1992 that shows how America has become a dramatically more dangerous place to live during the past three decades. In 1960, an American's chances of being a victim of a violent crime were 1 in 622. By 1992, the odds were 1 in 132.

"When the odds of being a victim of a violent crime increase five times over 32 years, there is an obvious problem with Ameri-

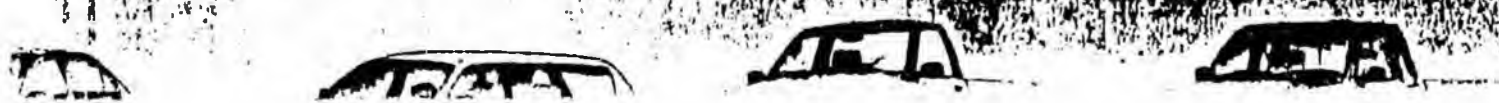
ca's criminal justice system," said Brunelli.

"Today, criminals' rights are protected over victims," he said. "The result is our schools, streets, neighborhoods and homes are unsafe, and crime is clearly the leading cause of America's decaying social fabric."

The report indicated that violent crime could be reduced by keeping known criminals off the streets.

ZERO DOWN!

19	\$9,261	\$7,086	\$7,834
Cost*	Total Cost*	Total Cost*	Total Cost*



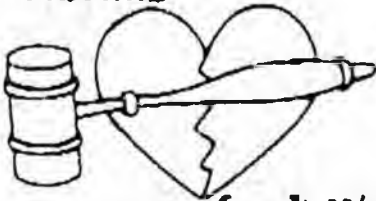
All Used Cars
Come With A
Free 60-Day
Power Train
Warranty And
A Free 30-Day
Trial Exchange
Policy!

'85 Nissan Pulsar \$49/Mo.
#11200 • Sale Price \$1,895 • \$517 Down
24 mos @ 8.25% • Deferred Pymt. \$1,693

'92 Chevy Corsica \$129/Mo.
#7649A • Sale Price \$6,995 • \$1,763 Down
48 mos @ 8.25% • Deferred Pymt. \$6,192

'87 Olds. Cutlass \$59/Mo.
#1107CP • Sale Price \$1,995 • \$698 Down
24 mos @ 8.25% • Deferred Pymt. \$2,114

'84 Chevy Pick-up \$89/Mo.

VICTIMS

Representative Con Bunde
 State Capital, Room 108
 Juneau, Alaska 99801-1182
 Fax 1 (907) 465-3871

Jan A. 1994

HB 38

Dear Representative Bunde,

Victims for Justice strongly supports "3 Strikes, You're Out". The "revolving door" system costs the state an enormous amount of money in law enforcement and legal fees each year, with no count of cost to the victims. It is time to stop this nonsense!

According to a study done by the Justice Department; of all crimes committed in this nation, only 15-20% of the criminals are apprehended and only 2-3% go to prison. Furthermore, 75-80% of all criminals who are released from prison reoffend within 36 months for the same offense!

Justice Charles L. Weltner sums it up well saying: "Right now a person who has been through the system and is contemplating a crime probably vies things as follows: 1. If I do it I won't get caught 2. If I get caught I won't get prosecuted, 3. If I get prosecuted I won't get convicted, 4. If I get convicted I won't go to prison, 5. If I go to prison I won't be there for very long". Given the statistics above, this assessment is real.

Criminals today are more violent than even a decade ago, and the cost to society is greater than the cost of keeping an offender incarcerated. Court costs are easily calculated but the cost to the victim is impossible to calculate. Victims never receive proper compensation or even proper justice through the system. With Alaska's modified matrix system DOC is releasing more serious offenders earlier, which will lead to more victimization. It is time to stop this madness! Please pass this important legislation! Build the necessary prisons, not resorts, but prisons and keep the repeat offenders in!

The prison system is told not heed the victims' pleas and public safety has been disregarded when releasing criminals. DOC claims to save money with early release into halfway houses, however the prior tracking system fails in this maze. Strikes Legislation will eliminate the errors of early release of repeat and dangerous offenders, which will ultimately save us millions in law enforcement, judicial, insurance, and victim costs.

Thank you for sponsoring this important bill!
 Sincerely,

Sharon Nahofney
 Janice Lienhart

Sharon Nahofney

FISCAL NOTE

No. 4

(Bill Version: CSHB 38(JUD)

(H) Publish Date: 3/22/95

**STATE OF ALASKA
1995 LEGISLATIVE SESSION**

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>...relating to criminal sentencings...mandatory life imprisonment, parole, good time credit, pardon, commutation...</u>	BRU: <u>Prosecution</u>
Sponsor: <u>Representative Bunde</u>	Component: <u>Third District/Fourth Dist.</u>
Requester: <u>Representative Bunde</u>	<u>Criminal Appeals & Special Prosecution</u>
	COMPONENT SERIAL NO. <u>0087,88,90</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	254.8	254.8	254.8	254.8	254.8	254.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	30.2	30.2	30.2	30.2	30.2	30.2
SUPPLIES	9.9	9.9	9.9	9.9	9.9	9.9
EQUIPMENT	19.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	329.4	309.9	309.9	309.9	309.9	309.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF	329.4	309.9	309.9	309.9	309.9	309.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	329.4	309.9	309.9	309.9	309.9	309.9

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends Alaska's presumptive sentencing laws, under AS 12.15.125-175, to provide that a defendant convicted of a most serious felony offense shall be sentenced to a mandatory term of imprisonment for 99 years without the possibility of parole if the defendant has been previously convicted of two or more most serious felony offenses.

The bill also amends AS 12.55.185 to provide that "most serious felony" means any unclassified or class A felony or a felony attempt or conspiracy to commit any unclassified or class A felony.

The bill also provides that imposition of a sentence under the bill's provisions may not be suspended; provides that a person sentenced to a mandatory 99-year term of imprisonment is not eligible for parole and is not eligible for a good time deduction; and provides that furlough of any type may not be granted to a person sentenced to a mandatory 99-year term of imprisonment, except while in custody of a corrections officer.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/30/95
 Date: 1/30/95

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ANALYSIS CONTINUATION:

The bill does provide that a defendant sentenced to a mandatory term of imprisonment of 99 years may apply for a modification or reduction of sentence after serving one-half of the mandatory term without consideration of good time credit.

The Criminal Justice Working Group believes that prosecution of between ten and thirty defendants will occur each year, where "most serious felony" circumstances are present triggering a mandatory 99-year sentence. We believe the department will seek mandatory 99-year sentences in about 15 cases each year. Consequently, the Department of Law will be impacted in the following ways. First, because the bill provides for a mandatory 99-year prison term without any chance for reduction, and in many cases the sentence will be more severe than the sentence for first degree murder, the stakes for the defense will be much higher resulting in much more difficult litigation for the prosecution and the defense. Second, the defense can be expected to attack the underlying prior convictions seeking post conviction relief under Criminal Rule 35.1, and seeking relief using collateral habeas corpus attacks in federal court. Litigation disposing of the attacks on the underlying prior convictions must be completed before trial on the third felony triggering the mandatory 99-year prison term can be conducted. Third, defendants can be expected to wage a more vigorous defense (and seldom plead guilty) to any charge included in this bill as a most serious felony offense, because of the consequences of prior convictions. As a result, prosecutor time will also increase substantially for both first and, in particular, second most serious felony offense prosecutions.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 38

ANALYSIS CONTINUATION:

Component Analysis

	<u>0087</u> <u>Third District</u>	<u>0088</u> <u>Fourth District</u>	<u>0090</u> <u>Crim. Appeals</u>	<u>Total</u>
Personal Services	81.3	92.2	81.3	254.8
Travel	7.5	7.5	0.0	15.0
Contractual	13.6	8.0	8.6	30.2
Supplies	3.3	3.3	3.3	9.9
Equipment	6.5	6.5	6.5	19.5
	_____	_____	_____	_____
Total	112.2	117.3	99.7	329.4

01/30/95

08:09:16.6

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 1

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: -6501020300 NAME: THIRD JUDICIAL DISTRICT

DRU NAME: PROSECUTION

Page 4 of 5

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	F B S C U	R&S HOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT	
03/030		ATTORNEY III	F	ANCHORAGE	A XE AA 22A	12	53304	0	18385	71689.98		
**** JUSTIFICATION:												
This position will be needed to handle an increased felony caseload when the penalty for driving while intoxicated (or refusing to take a chemical test) for the fourth or more times is raised from a class A misdemeanor to a class C felony.										TRAVEL COSTS	3000.00	
										CONTRACTUAL COSTS	8600.00	
										SUPPLIES COSTS	3300.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	93089.98	71689.98
*** FUNDING DETAIL:												
100% GENERAL FUND RECEIPTS										71689.98		
										TOTAL FUNDING	71689.98	
03/031		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A 10A	12	24756	0	11367	36123.82		
**** JUSTIFICATION:												
This position will be needed to handle an increased felony caseload when the penalty for driving while intoxicated (or refusing to take a chemical test) for the fourth or more times is raised from a class A misdemeanor to a class C felony.										TRAVEL COSTS	0.00	
										CONTRACTUAL COSTS	6000.00	
										SUPPLIES COSTS	2400.00	
										EQUIPMENT COSTS	8500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	53023.82	36123.82
*** FUNDING DETAIL:												
100% GENERAL FUND RECEIPTS										36123.82		
										TOTAL FUNDING	36123.82	
03/033		ATTORNEY IV	F	ANCHORAGE	A XE AA 24A	12	61008	0	20305	81313.82		
**** JUSTIFICATION:												
This position will be required to handle prosecutions and appeals of third-time offenders of "most serious" felonies, where the penalty will be mandatory term of imprisonment of 99 years. In many cases, the penalty will be more severe than the sentence for first degree murder. Consequently, a much tougher defense can be expected, including attacks on the underlying prior convictions.										TRAVEL COSTS	7500.00	
										CONTRACTUAL COSTS	13600.00	
										SUPPLIES COSTS	3300.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	112213.82	81313.82
*** FUNDING DETAIL:												
100% GENERAL FUND RECEIPTS										81313.82		
										TOTAL FUNDING	81313.82	

01/24/95

15:31:51.9

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE:

4

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNATHH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R B S C U	R&S BUDG	HOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03	035	ATTORNEY IV	F	ANCHORAGE	A XE AA	24A	12	61008	0	20305	81313.82	

**** JUSTIFICATION:

This position will be required to handle prosecutions and appeals of third-time offenders of "most serious" felonies, where the penalty will be mandatory term of imprisonment of 99 years. In many cases, the penalty will be more severe than the sentence for first degree murder. Consequently, a much tougher defense can be expected, including attacks on the underlying prior convictions.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	8600.00	
SUPPLIES COSTS	3300.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	99713.82	81313.82

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	81313.82	
TOTAL FUNDING	81313.82	

**** COMPONENT TOTALS:

FULL TIME NEW POSITIONS	1	TOTAL PERSONAL SERVICES	81313.82
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	99713.82
OTHER.....	0		

NUMBER OF NEW POSITIONS IN COMPONENT: 1

FUNDING DATA: G.F. & G.F. MATCH:	81313.82
OTHER FUNDS:	0.00
TOTAL FUNDING:	81313.82

Page 5 of 5

FISCAL NOTE

Bill Version: CSHB 38 (JUD)
(H) Publish Date: 3/22/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Alaska Court System
Title: An Act relating to criminal sentencing... BRU: Trial Courts
Sponsor: Rep. Bunde Components: _____
Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	145.4	145.4	145.4	145.4	145.4	145.4
TRAVEL						
CONTRACTUAL	90.0	90.0	90.0	90.0	90.0	90.0
SUPPLIES						
EQUIPMENT	0.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	236.2	235.4	235.4	235.4	235.4	235.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	236.2	235.4	235.4	235.4	235.4	235.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	236.2	235.4	235.4	235.4	235.4	235.4

POSITIONS

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	3.0	3.0	3.0	3.0	3.0	3.0
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CHC* Phone: 264-8228
Agency: Alaska Court System Date: 03/07/95

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CHC* Date: 03/07/95
Agency: Alaska Court System

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Alaska Court System
Fiscal Analysis
HB 38

HB 38 amends Alaska's presumptive sentencing laws to provide that a defendant convicted of a third felony offense is subject to a mandatory term of imprisonment of 99 years. The first two convictions must be for a "most serious" felony, and the third conviction must be for a class A or unclassified felony. The prosecutor has the discretion to pursue or not pursue the 99-year mandatory sentence.

A most serious felony is any unclassified or class A felony prescribed under AS 11 or an attempt or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified or class A felony prescribed under AS 11.

The Department of Law has estimated that prosecutors will seek the mandatory 99-year sentence 15 times per year. Because of the potential sentence, these cases can be expected to rival first-degree murder cases in the amount of court time spent on the actual trial, as well as on evidentiary hearings, collateral attacks on previous convictions, and other pre- and post-trial motion work. This is estimated to average four weeks of trial time per case, plus one week of additional hearings. If the defendants were not subject to a 99-year sentence, only three of these 15 cases would statistically be expected to go to trial; those would most likely be first-degree murder cases, with an average five week length.

In addition to the costs of the third felony case, the existence of the mandatory 99-year sentence will encourage offenders charged with their first or second most serious felony to fight the charge more strenuously, because conviction would greatly increase the chance that the offender would be vulnerable to the 99-year sentence at a later time. In the years 1984 through 1990, an average of about 900 defendants each year were charged with a first or second most serious felony. Trial rates for defendants charged with those felonies currently range from eight to 20 percent, depending on the classification of the offense (class B, class A, or unclassified). If the trial rate increases by 50 percent, over 50 additional felony trials will be held each year. Such changes in the trial rate are not unprecedented. When the plea bargaining ban was imposed in 1975, the felony trial rate doubled during the first year and tripled during the second year. Because it is impossible to predict what increase will occur in the trial rate as a result of HB 38, this note does not reflect those costs. Should HB 38 result in a significantly higher trial rate, the court system will need to return to the legislature for additional funding.

For similar reasons, it can be expected that the appeal rate and rate of applications for post-conviction relief will increase among the 900 defendants charged each year with a first or second most serious felony. Again, this note does not attempt to quantify those costs.

Alaska Court System

Fiscal Analysis

HB 38

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, PPT, 50% vested, Anchorage, 12 months	\$48,300	\$30,891	\$79,191
Pro Tem Superior Court Judge, PPT, 50% vested, Anchorage, 3 months	12,075	6,447	18,522
In-Court Clerk, range 12A, PFT, Anchorage, 12 months	27,108	12,084	39,192
In-Court Clerk, range 12A, PPT, Anchorage, 3 months	6,777	1,745	8,522
			<hr/>
Total Personal Services			145,427

Contractual Services

Jury fees for 12 jurors and 3 alternates for 20 days for 12 new trials at \$25 a day for each juror 90,000

Equipment

Desk and chair for permanent full-time in-court clerk

 800

Estimated Total Cost

\$236,227

Revision Date: _____
 Title: An Act relating to sentencing of serious felony offenders
 Sponsor: Rep Bunde
 Requester: Rep Bunde

Dept. Affec (Bill Version: HB 38)
 BRU: (H) Publin Date: 2/10/95
 Component Dept. of Corrections
 COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	168.2	168.2				
TRAVEL	5.0					
CONTRACTUAL	4,848.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	206.2	412.5	618.7	824.9	1,031.1	1,237.4
TOTAL OPERATING	5,227.4	580.7	618.7	824.9	1,031.1	1,237.4

CAPITAL EXPENDITURES		27,472.0				
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF	5,422.6	28,052.7	618.7	824.9	1,031.1	1,237.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	5,422.6	28,052.7	618.7	824.9	1,031.1	1,237.4

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	2	2				
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would mandate a 99 year sentence for a conviction of an unclassified or Class A felony if the offender has been previously convicted of two or more separate "most serious" felonies. This would include attempt, conspiracy or solicitation regarding unclassified or Class A felonies, Assault II, Sexual Assault II, Sexual Abuse of a Minor II and Unlawful Exploitation of a Minor. Offenders sentenced to 99 years under this bill would not be eligible for parole or other forms of early or graduated release. They could apply for sentence reduction after serving one half of the 99 year sentence. The bill mandates consideration of convictions in all other jurisdictions when determining if an offender is subject to the "three strikes of this bill"

Analysis of the Departments prison population indicates 40% of the population of 2775 is incarcerated for a "most serious" felony (.4X2775 = 1110). Analysis further indicates that approximately 20% of the population (.2X2775 = 555) have committed three or more felonies and , of these, 10% have been convicted of three or more "most serious" felonies (.1X 555 = 55.5).

CONTINUED ON ATTACHED PAGES :

Prepared by: Jerry Shriner
 Division: Comm. Office
 Approved by Commissioner: 15/
 Agency: Department of Corrections

Phone: 465-4640
 Date: 1/25/95
 Date: 1/25/95

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The 99 year sentence is assumed to be a "life" sentence. The estimated life span of a male, by the year 2000, is estimated to be 73.5 years, according to the United States Statistical Abstract. The estimated age at the time of conviction for a most serious felony is estimated to be 28 years, according to the Alaska Judicial Council. Thus, those sentenced under this bill would be incarcerated for 45.5 years, rounded up to 46 years. (Age for males is used, since the prison population is over 95% male.) If allowed to earn statutory good time on a 99 year sentence, the prisoner would still have to serve 66 years. Furlough eligibility would not occur until the prisoner had served 63 years, with good time, and sentence modification allowed under the bill would not occur until after serving 49.5 years. Since the average would be dead prior to meeting these requirements, the provisions governing good time, furlough, and sentence modification are assumed to be irrelevant.

The statewide average cost of incarceration in a state correctional center is \$113 per day. This figure does not include CRC beds, since prisoners under this bill are prohibited from furlough, restitution center placement, etc. This figure includes the standard overhead for medical and administrative costs. This number should be considered to be conservative, since medical expenses for older prisoners doing life sentences are expected to be higher than average.

The average cost for construction of a medium security prison bed in Alaska is \$160,000. It is assumed that prisoners sentenced to life will require high security housing. Capital expenses might be reduced if additional beds were purchased under contract, however there are no contract beds currently available in Alaska for prisoners with higher than minimum custody.

The correctional system cannot absorb any additional prisoners without additional resources. The system has been operating over emergency capacity throughout the past year. Even when all aspects of the department's current population management plan are achieved, only the current overcrowding will be addressed, no including any additional numbers of inmates caused by new legislation. In addition to posing safety hazards, operating over emergency capacity for prolonged periods may result in fines of up to several thousand dollars per day if the department is found in contempt of court for violating population caps.

The cost of maintaining this new population would rise to \$1,237,350 in the sixth year. Because a number of crime bills are pending before the legislature this year, it is difficult to predict the total number of beds by which the prison system may need to be increased, and therefore difficult to predict how and where such beds would be added through new facility construction, facility modification, or contracting. It is not possible to estimate the number of staff positions needed until specific expansion plans are made.

The table below presents the Department's best estimate of the effect of this bill on the number of additional prison beds that would be needed within the corrections system. Although the increases for various categories of offenses would result over varying periods of time, this method arrives at an aggregate increase in population in order to predict future needs for the prison system. The "% length increase column" in the chart below is the multiplier which reflects the difference between the current average sentence for offenders impacted by this bill and the sentence they would have received if they had been sentenced under this bill. Murder I, Murder II and Kidnapping are excluded since the current average sentence already exceed the expected life span.

Offense	Total in DOC on 6/30/93	10% (3rd repeaters)	Current Prisoner-days	% sent. length increase	Additional Prisoner-days
Unclassified Felonies					
SAM I	153	15.3	5,584.5	X 3.54	19,769.1
SA I	178	17.8	6,497		22,999.4
MICS I	9	9	328.5		1,162.9
TOTAL UNCLASSIFIED					43,931.4
Class A Felonies					
Assault I	57	5.7	2,080.5	X 3.83	7,968.3
Manslaughter	28	2.8	1,022		3,914.3
Robbery I	101	10.1	3,686.5		14,119.3
Arson I	6	.6	219		838.7
Escape I	2	.2	73		279.6
MIW I	20	2	730		2,795.9
TOTAL A FELONIES					29,916.1
TOTAL ADDITIONAL PRISONER-DAYS					73,847.5

This suggest that the actual prison population would, over time, increase by 73,848 prisoner-days, or 202 prisoners as a result of the increased sentence lengths required by the bill.

January 23, 1995

Page 4 of 5

73,848 prisoner-days X \$113 per day = \$ 8,344,824 operating expenses

202 beds X \$160,000 per maximum bed = \$ 32,320,000 capital expenses

TOTAL ADDITIONAL EXPENSE = \$ 40,664,824

This figure does not include any inflation factor and does not assume any increase in the rate of convictions/incarceration. It does not account for increases in medical costs for a larger, aging population.

Offsetting this number, it would be expected that some savings might be expected in the Community Corrections component, since most of these prisoners would otherwise have been released and supervised on probation or parole under current law. However, the \$6 average cost per day for this supervision is almost negligible compared to the \$113 cost per day of incarceration, and would only be a factor for a relatively small portion of the total sentence.

Another offsetting factor might be the avoidance of costs of new crimes, probably violent, that these chronic types of offenders might be assumed to commit if they were released, under current law. These savings would be experienced by other agencies and departments through avoidance of arrests, investigations, trials, etc.

The fiscal impact of this legislation can be viewed from two fundamentally different ways. One can assume that those sentenced under this bill would have been sentenced for some length of time in any case and therefore the effect of this bill would "kick in" only after that presumed sentence had been served. In the case of the offenders in question here that would be roughly thirteen years from now.

On the other hand one can view the effects as beginning on the day the inmate begins servicing the sentence. In the opinion of the department the latter approach yields the most reliable results in presenting the cost of operating. Further it is the only approach which provides for critical long range planning. Prisoners sentenced under this bill are essentially "lifers" and from the day they walk in the door with that status they are fundamentally different.

It is a more realistic reflection of the impact to state that the Department expects four to six new individuals per year under this bill. Disregarding increases in convictions and incarcerations on the one hand and a reduction of new crimes committed by these inmates on the other; the department expects the population will peak 200 to 250 in approximately 46 years when the first of the group is released or dies of old age while in prison. Thus five new prisoners per year increase the cost of operation of the Department of Corrections by \$206,255 per year each year.

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5 prisoners X \$113 per day X 365 days per year = \$206,225.00

The cost of maintaining this new population would rise to \$1,237,350 in the sixth year.

Operating expenses are shown on page 1 as miscellaneous because more a detailed description of staffing and other operating expenses would be purely speculative with out first knowing the design of the facility. Further, it is assumed that site selection, facility design and and program design would require the time of several DOC staff at all levels. Two new full time positions would be necessary in order to meet the responsibilities of DOC to plan and facilitate the project. Therefore the salary of one facilities manager and one criminal justice planner has been included. Preliminary engineering and architectural services have been estimated at fifteen percent of the anticipated cost of the construction project. It is anticipated that this amount would transfered by RSA to DOT & PF.

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