

**S B**

**6 7**

# HOUSE COMMITTEE REPORT

(7)  
Date Referred to Committee: March 14, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/16/97

The JUDICIARY Committee considered:

CSSB 67(JUD)

CS FOR SENATE BILL NO. 67(JUD)

TRUTH IN SENTENCING

“An Act relating to the imposition of criminal sentences; and amending Rule 32.2, Alaska Rules of Criminal Procedure.”

recommends it be replaced with the following committee substitute \_\_\_\_\_  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) \_\_\_\_\_

fiscal note(s) CORRECTIONS

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) PUB. SAF. (DPS), PHS SAFETY (VIO. CRIME BD.) & DEPT OF LAW

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> CROFT	✓			
<i>[Signature]</i> ROKEBERG	✓			
<i>[Signature]</i> PORTER	✓			
<i>[Signature]</i> GREEN				
<i>[Signature]</i> BERKOWITZ				✓
<i>[Signature]</i> JAMES	✓			

CHAIR'S SIGNATURE \_\_\_\_\_

*[Handwritten Signature]*

1997 LEGISLATIVE SESSION

(S) Publish Date: 3-5-97

Revision Date: \_\_\_\_\_

Dept. Affected:

Public Safety

Title: Truth in Sentencing

DPS Statewide Support

Component:

Commissioner's Office

Sponsor: Rules Committee

Requestor: S Judiciary

COMPONENT SERIAL NO. 0523

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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-
Coda Revenue						

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 97) 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 fiscal impact is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner

Phone: 465-4322

Division: Commissioner's Office

Date: 2/20/97

Approved by Commissioner: *Ron Smith*

Date: 2/21/97

Agency: Ronald L. Otte, Dept. of Public Safety

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# FISCAL NOTE

No. 14

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL N**      **Bill Version:** CSB 67 (TUC)  
**(S) Publish Date:** 3-5-97

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: Truth in Sentencing BRU: Violent Crimes Compensation Board  
Sponsor: Sen. Halford Component: \_\_\_\_\_  
Requestor: S Judiciary COMPONENT SERIAL NO. \_\_\_\_\_

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS CLAIMS	0					
MISCELLANEOUS	0					
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of current year (FY 97) impact \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

The Violent Crimes Compensation Board approves of any vehicle which makes the victim more informed.

Prepared By: Nola K. Capp Phone: 465-3040  
Division: Violent Crimes Compensation Board Date: February 10, 1997  
Approved by Commissioner: *Ronald L. Orte* Date: 2/2/97  
Agency: Ronald L. Orte, Dept. of Public Safety

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# FISCAL NOTE

No. 5

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

Bill Version: CSGB 67 (Jud)

(S) Publish Date: 3-5-97

Revision Date:	Dept. Affected: <u>Department of Law</u>
Title: <u>*An Act relating to the imposition of criminal sentences; amending Rule 32.2, Ak Rules of Criminal Procedure</u>	BRU: <u>Criminal Division</u>
Sponsor: <u>Senator Hallford</u>	Component: <u>Criminal Division</u>
Requester: <u>Senate Judiciary Committee</u>	COMPONENT SERIAL NO. <u>2085</u>

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

The Senate Judiciary Committee Substitute for SB 67 includes a new section stating that the required approximate minimum term statement in the sentencing report is for informational purposes only, and cannot be used as a basis for review or appeal of the sentence imposed.

With this change, the Department of Law no longer anticipates any fiscal impact from passage of this legislation.

Prepared by: <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone: <u>465-5370</u>
Division: <u>Administrative Services Division</u>	Date: <u>2/27/97</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u> <i>Bruce M. Botelho</i>	Date: <u>2/27/97</u>
Agency: <u>Department of Law</u>	

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Revision Date: 3-13-97

Title: Truth in Sentencing

Dept. Affected: Corrections

BRU: ALL

Sponsor: Senator Halford

Components: ALL

Requestor: Senate Finance Committee

Serial # 694.0

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	***	***	***	0.0	0.0	0.0
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CHANGE IN REVENUES (1002)	650.0	650.0	650.0	0.0	0.0	0.0
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FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	650.0	650.0	650.0			
1003 GF Match	65.0	65.0	65.0			
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>715.0</b>	<b>715.0</b>	<b>715.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

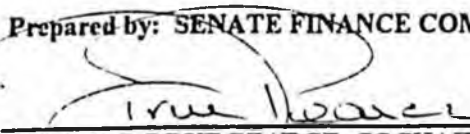
POSITIONS:

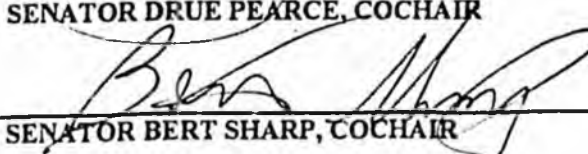
Full-Time						
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by: SENATE FINANCE COMMITTEE

  
SENATOR DRUE PEARCE, COCHAIR

  
SENATOR BERT SHARP, COCHAIR

Date: 3-13-97

Phone: 465-4993

Date: 3-13-97

Phone: 465-3004

## Analysis of CSSB 67(JUD)

As amended, SB 67 should qualify the State of Alaska to apply for and receive federal Truth-in-Sentencing grants under the United States Department of Justice Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants program. These funds are to be used for prison construction or renovations. Congress has authorized funds for the grants through FY 2000. The amount that the State of Alaska would be eligible to receive depends upon how many other states qualify, inasmuch as appropriated funds are divided between qualifying states on the basis of their number of violent offenders. Had Alaska qualified this past year, its share would have been \$650,000 plus a required 10% state match. The Department of Corrections assumes that Congress will appropriate similar sums each year, but that Alaska's share may receive a slight decrease each year as more states qualify.

\*\*\* Should these federal receipts materialize they will be available for appropriation by the Legislature for future capital expenditures on correctional facilities.

Anne Carpeneti

8367

Approx dates of release

4338

§ 2 Margo Knuth drafted  
on fed. level 85%  
\$ tied to that

(h) quality for fed. \$

try to break out mandatory  
parole

Margo Knuth

Feds came up @ "truth in sent."  
- actually increase prison time  
ie. No good time - no > 20% G.T.  
Now so long as truthful about jail time  
started out in diff. position  
backed into new position  
we still don't like good time  
① actual sentence  
② supervised release  
- Minnesota exception  
then @ become 100% state  
AK determinate sentencing state

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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

April 14, 1997

**SUBJECT:** Sectional Summary of CSSB 67(JUD)  
(Work Order No. 20-LS0137\L)

**TO:** Senator Rick Halford  
Attn: Brett Huber

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill provides a short title.

Section 2 of the bill provides language requested by the Department of Corrections concerning authorized sentences.

Section 3 of the bill requires the approximate minimum term a defendant is expected to serve before being released, becoming eligible for mandatory, or becoming eligible for discretionary parole be included in the sentencing report that is required to be prepared under AS 12.55.025(a).

Section 4 of the bill clarifies that the identification of minimum terms in the sentencing report, as required under sec. 3, is for informational purposes only and does not give rise to any right of the defendant to any particular minimum term.

Section 5 of the bill amends Rule 32.2(e), Alaska Rules of Criminal Procedure, and requires judges at sentencing hearings to state the approximate minimum term a defendant must serve before being eligible for discretionary parole and mandatory parole.

Section 6 of the bill provides notice that secs. 3 - 4 amend a court rule.

Senator Rick Halford

April 14, 1997

Page 2

Section 7 of the bill provides that the bill only takes effect if secs. 5 and 6 receive the two-thirds majority vote of each house as required under the Constitution for amendments to court rules.

GPL:jdr

97-268.jdr



Official Business

# Alaska State Legislature

## Senate

**RICK  
HALFORD**

State Capitol  
Juneau, Alaska  
99801-1182  
Phone (907) 465-4958

P.O. Box 670190  
Chugiak, Alaska 99567  
Phone (907) 694-4958

600 E. Railroad Avenue  
Wasilla, Alaska 99654  
Phone (907) 376-4958

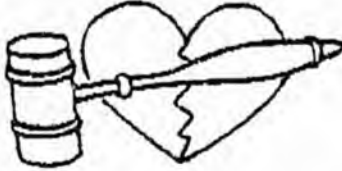
## *Sponsor Statement*

### *SB 67 "The Truth in Sentencing Act of 1997"*

When a felon is sentenced to a term of imprisonment the public often receives a false sense of security by believing the criminal will actually be incarcerated for the stated sentence. As a result of "good time", as well as mandatory and discretionary parole provisions, the actual sentence served is virtually guaranteed to be less than which is imposed by the judge.

If enacted, SB 67 would require that a victim of a crime, their family, as well as the public, be provided with an accurate statement of the period of the *minimum* period of time which must be served before the criminal is released. *At the very least*, the victim and their families, as well the public, deserve an honest and accurate assessment of the amount of time a criminal will actually be incarcerated. SB 67 would require that the judge do this.

The enactment of SB 67 would also allow the Department of Corrections to receive *up to* \$650,000 in federal funds which are available to states which meet federal truth in sentencing guidelines.

**VICTIMS**

**for Justice** 619 East Fifth Avenue • Anchorage, AK 99501  
(907) 278-0977 • Fax: (907) 258-0740

February 3, 1997

The Honorable Senator Rick Halford  
State Capitol Room 121  
Juneau, Alaska 99801-1182

Re: SB 67

Dear Senator Rick Halford,

Victims for Justice supports legislation that **demands truth in sentencing**. Victims of crime are overwhelmed by the criminal justice system as information is often withheld from families because it might affect the integrity of the case. The victim must struggle with continuances and is often traumatized as they begin to understand the laws protect the defendant's rights at the expense of the victims'. The victim's day in court finally arrives and the victims are permitted to give their victim impact statement as they anxiously await the sentencing. When the judge metes out the sentence a sigh of relief! Then the victim again becomes victimized when they realize that the defendant only serves a third of the sentence the judge imposes. Why does the court have to give the lay person misinformation? Why isn't the court required to tell the sentence as it is meant. "Truth in sentencing would eliminate another trauma from the victim.

Sincerely,

A handwritten signature in cursive script that reads "Janice Lienhart".

Janice Lienhart  
Executive Director

67  
FEB 03 1997

Senator Rick Halford  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

30 January 1997

Re: Senate Bill 67

Dear Senator Halford,

Today, I received a Senate Majority Fax regarding your Truth in Sentencing Act of 1997. I heartily support your efforts in this regard. It has long been my belief that if the public realized just how little time convicted criminals were actually incarcerated for their crimes, that same public would be appalled. And being thus appalled, would then rise up in righteous indignation and demand the changes that would return us to some common sense and sanity in our criminal justice system.

While many believe that our criminal justice system is broke and needs fixing or replacing, I disagree. I say there is nothing wrong with our criminal justice system and the principal behind it. The problem lies in how it has been perverted, and in some of the people who apply it.

Our criminal justice system is based on the idea that sufficient punishment deters crime. But that will only work if punishment is, in actuality, sufficient. It must also be both swift and sure. These days, it is none of the above.

Your bill, if passed, will go a long way toward helping to insure that punishments are sufficient by shining the light of public scrutiny on the sentencing actions and decisions of judges. I suspect that they will be less likely to be lenient with the public looking over their shoulder.

Very Truly Yours,



Levi Gudde  
P.O. Box 240487  
Anchorage, Alaska 99524-0487

T.E. Brown  
LCDR, USCG (Ret)  
Palmer, AK 99645

September 30, 1996

Senator Rick Halford  
P.O. Box 670190  
Chugiak, AK 99567

RECEIVED  
OCT 11 1996  
Ans'd.....

Dear Senator Halford,

The attached letter is pretty much self-explanatory. Perhaps it could have been better composed but it does express a Mothers' grief. To re-fresh your memory, this is about a man who took a girl out the Glenn Highway, stopped by the King Mountain Lodge, then proceeded on northbound, murdered the girl and dumped her body by the river.

This man should serve the entire 1,825 days of his 5 year sentence. To serve less would be an injustice to us all. After all, the crime was murder, although the Prosecution allowed him to plead down.

I am hopeful you will be able to forestall the early release of this convicted criminal.

Sincerely,



T.E. Brown

Dolores M. Johnston  
RD #11 Box 873  
Greensburg, PA 15601  
(412) 834-7823  
August 3, 1996

RE: Case 3 PAS.94-1013

To the Alaska Dept. Of Corrections and to Whom it May Concern (and Especially Those Victims of Murder):

This letter is written in total disgust of the Correctional System for asking to place Frank Osborn on furlough and placing him in the public workplace.

I feel he received a light sentence for **Murder**, and this offering of work privileges is a real slap in the face to me as the mother of the victim. I was with the understanding at his sentencing in May that he was to serve five (5) years without parole -- WHAT DO YOU CALL THIS?! Maybe all of the intellectual people have forgotten the basics of conversation and statements. They seem to use "except", "if", "or" and "but" for all of their poor judgments in the court system. Excuses for CRIMINALS.

Concerning the five (5) year sentence, my heart was at ease for a while. How can you even recommend such a placement so soon after the sentence date, May 28, 1996? Doesn't the judge have the real say so?! Why bother having a judge if a lesser educated person is going to override his/her decisions. What a mockery! Go ahead, give Frank Osborn his request. It's your public surroundings, not mine. You can release him if I agree or not. I only hope that the next victim of his crime isn't your relative or daughter. You'll get to know the word "hurt". Do you know the mental anguish this has put me through, plus I've lost today's wages (8/2/96). I also understand a release date has been set for September 1997. This is not five (5) years! If pursuit of this furlough and release date is granted, I fear that a medical disability may occur due to the amount of stress I've endured, punishment more than the criminal Frank Osborn has to endure for **murder**. If work release is needed for finances, let him work in the facility cleaning the restrooms, etc., but he should remain behind bars! He already has three (3) balanced meals, housing, etc. -- better than most poor people -- more than a **murderer** deserves!!! I understand Frank didn't think I would have a problem with the furlough request. Well, "I DO"!!!

In my loving remembrance of Lorie.

Dolores M. Johnston

# Alaska State Legislature



House of Representatives  
House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

## MEMORANDUM

**Date:** April 15, 1997  
**To:** Committee Members  
**From:** Lisa Kirsch, House Judiciary Committee  
**Re:** SB 67 --Truth in Sentencing

---

Because the function of section 2 is not immediately apparent, I have attached Margo Knuth's testimony in the Senate Judiciary Committee which explains the function of Section 2 in SB 67.

Margo Knuth will attend our meeting on Wednesday to answer any questions you may have.

JUDGE BUCKALEW: I have nothing to add. Tom Stewart did a magnificent job, he's a real scholar and I'm perfectly satisfied with the record as is, and I can't improve on it, and I'm overparked. It's nice hearing from you, Tom. That was a great job.

SENATOR TAYLOR: Seeborn, you run and catch your car and thank you ever so much and appreciate those good comments. Tuckerman, you are batting clean-up, I guess at this point. That's the only other witness I had. Did you ...

SENATOR MILLER: It's kind of like following a kid's act or an animal act - you don't win.

CHAIRMAN TAYLOR: It's my understanding you had some amendments being prepared. Did they arrive?

MR. BABCOCK: Yes, Mr. Chairman, they did, and I gave to your staff the amendments that are incorporated what might be considered as a committee substitute, should the committee so desire.

CHAIRMAN TAYLOR: If you wouldn't mind, what I would like to do at this time is, I will hold the bill until a future hearing - hopefully after we return from this five-day recess we'll bring you up first. By that time we can have a committee substitute prepared that you can work on staff with, and then go through those amendments with us and we can provide for further discussion because I realize that you were hit with a pretty good load there today and I want to give you a chance to respond or bring in such witnesses as you want to respond to that.

MR. BABCOCK: Thank you Mr. Chairman. I certainly appreciate the testimony from such an honorable and venerable Alaskan as Judge Stewart and I am in no hurry - Senator Green is in no hurry to have this committee act injudiciously, or more quickly than necessary so I appreciate the added time to discuss with the committee, and with committee staff, the proposed amendments to this constitutional amendment.

There being no further testimony on SJR 10, **CHAIRMAN TAYLOR** announced SJR 10 would be held in committee until further notice. The committee took a brief recess.

#

#SB67

SB 67 TRUTH IN SENTENCING

**VICE-CHAIR PEARCE** called the meeting back to order at 2:57 p.m. and announced SB 67 was next on the agenda.

**SENATOR RICK HALFORD**, sponsor of SB 67, explained the proposed committee substitute, which he supports, includes an amendment by

the Court System to clarify that the bill is asking judges to determine approximate dates of release that cannot be used against the Court System regarding accuracy, and a new Section 1 which may provide for the capture of federal funds. SB 67 requires, at the time a judge imposes a sentence, which is when the victims and/or family are most likely present, the judge also approximate how much time will actually be served.

Number 396

**SENATOR PARNELL** asked about Section 1. **SENATOR HALFORD** repeated that section pertains to the capture of federal funds in regard to how Alaska sets sentences.

**VICE-CHAIR PEARCE** asked about the new fiscal note. **SENATOR HALFORD** replied CSSB 67(JUD) has a positive fiscal impact of about \$617,000.

**SENATOR MILLER** moved to adopt CSSB 67(JUD) (version 0-LS0137\K) for discussion purposes. There being no objection, CSSB 67(JUD) was adopted.

**PAUL SWEET**, testifying via teleconference from Mat-Su, asked whether appeals with affect this bill. **VICE-CHAIR PEARCE** responded at the time of sentencing, the judge does not know whether an appeal will occur. Although everyone is aware of problems with abusing the appeal system, SB 67 does not address that issue.

**MARGOT KNUTH**, representing the Department of Corrections, informed committee members several years ago the federal government instituted a truth in sentencing intensive grant program which makes funds available to states for prison construction and expansion. The program has two components: truth in sentencing; and a requirement that states actually impose at least 85 percent of the period of incarceration. Alaska has not been able to qualify for those funds because it has a mandatory good-time provision that allows up to one-third of the sentence to be served on supervised release for felons, or any case with a sentence longer than two years. If the sentence is less than two years, mandatory good-time means early release for the prisoner. Good-time can be lost for disciplinary infractions within the institution. The federal government has recently decided that requiring states to keep prisoners incarcerated for a full 85 percent of their sentences is hardly affordable for most states. Consequently, it has recognized several different exceptions to the 85 percent requirement. One, the Minnesota exception, provides that the sentence be defined to exclude any statutorily required supervised release periods. For Alaska's violent offenders, that would amount to the "good time" because they are spending more than two years incarcerated and are not being released on discretionary parole. Alaska might now be able to meet that requirement, but needs a language change to bifurcate the sentence, which is what Section 1 does. If Alaska is able to

qualify for truth in sentencing funds, they will amount to \$617,000 for FY 98, and about \$500,000 for the following four years.

**CHAIRMAN TAYLOR** noted several years ago the Legislature was attempting to accomplish a similar goal. His concern at that time was the early release of violent prisoners, by the Parole Board, with no notification to witnesses or others who might be threatened, including the judge who imposed the sentence. He felt the appropriate solution was to require the sentencing judge's consent to an early release. **MS. KNUTH** agreed notification of victims and the court is entirely appropriate and added Senator Ellis has introduced a bill to create an automated victim notification system. **CHAIRMAN TAYLOR** noted his proposal was to make anyone responsible for early release personally and civilly liable to any victims for future conduct.

TAPE 97-14, SIDE A  
Number 000

**DEL SMITH**, Deputy Commissioner of the Department of Public Safety, testified in strong support of SB 67. He and Commissioner Otte are concerned about the public's misperceptions of actual time served by prisoners, and the effect early release can have on the victims, witnesses, defendants and the public.

**SENATOR PEARCE** asked whether a jury is told how much time will actually be served when deliberating. **CHAIRMAN TAYLOR** replied they are not informed, because it is believed it might prejudice them against the prosecution. He explained there are states where one can choose who will impose the sentence; the jury or judge, but the judge has the right to overrule the jury.

**CHAIRMAN TAYLOR** asked why existing sentences cannot be structured by shifting the numbers so that one-third became three-quarters to bring us into federal compliance. **MS. KNUTH** agreed that there are several ways to accomplish the same thing that would do the least "tweaking" to our system.

**CHAIRMAN TAYLOR** asked what is wrong with a system that sentences a person for 15 years and tacks on additional years for acting out. He noted we assume and reward good conduct up front while most other penal institutions put a person in prison assuming good conduct and then punish them for misconduct. **MS. KNUTH** replied the difference in a bad-time state is the presumption that prisoners have to earn time off. Most states in the union are good-time states but the truth in sentencing program has caused some states to change to bad-time policies.

**CHAIRMAN TAYLOR** questioned why prisoners, using public defender services to appeal a criminal case, are given credit for prison time served while the appeal is pending. If they weren't, they would have something invested in the appeal. **MS. KNUTH** said that was an interesting proposal. **CHAIRMAN TAYLOR** commented the

appeal turnaround time in some other countries is three months, while it is two and one-half to three years here.

Number 55

**SENATOR PEARCE** moved to pass CSSB 67(Jud) from committee with individual recommendations and the appropriate fiscal notes. There were no objections and it was so ordered.

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#SB41

**SB 41 ENVIRONMENTAL & HEALTH/SAFETY AUDITS**

**MR. MIKE PAULEY**, staff to Senator Leman, sponsor of SB 41, noted he submitted a packet of 24 amendments from various sources: the sponsor, industries affected by the bill, DEC, and the Department of Law. (A COPY OF THE AMENDMENTS IS ATTACHED TO THE END OF THIS DOCUMENT.)

**CHAIRMAN TAYLOR** said the subject of the second amendment was reasonable: 90 days instead of 30. **MR. PAULEY** said DEC does not oppose amendments 1 and 2.

**CHAIRMAN TAYLOR** asked what impact deleting the word "only" in amendment #4 would have. **MR. PAULEY** explained it refers to the circumstances in which one could disclose the audit report, but not waive the privilege.

**MR. PAULEY** said amendment #5 specifies privileged information can only be disclosed to a lawyer or someone who works for that lawyer. Amendment #6 provides that if an audit report is shared with someone else under terms of a confidentiality agreement, anyone who violates that agreement is liable for damages. He thought that provision was omitted inadvertently.

**MR. PAULEY** continued explaining the amendments.

Amendment #7 clarifies that all parties agree that the privilege described in this bill does not shield underlying facts.

Amendment #8 relates to privilege for information relating to pipeline tariffs.

Amendment #9 provides that privilege and immunity can be overcome if the violation in question poses an imminent threat of injury, and is one of the things EPA looks for.

Amendment #10 adds an administrative hearing officer, in addition to the courts.

Amendment #11 is a semantic change for the purpose of consistency.

Amendment #12 specifies which portions of an audit can be viewed during an investigation.

Amendment #13 addresses EPA's concern by conditioning immunity.

## MEMORANDUM

**Date:** April 14, 1997  
**To:** Joe Green  
**From:** Lisa Kirsch  
**Re:** SB 67

*Lisa - Shouldn't  
this bill be called  
the "2/3<sup>rd</sup> Truth  
in sentencing?"  
Hey Dude - 3 yrs -  
but really only 2!!  
Truth in sentencing???*  
*Joe*

We have this bill set for Wednesday's meeting. It requires judges to include the approximate minimum terms in a sentencing report. The bill is clear and straightforward for the most part and appears to enjoy broad support.

The one section that may cause some confusion is section 2. This section was added at the request of the Department of Law. Apparently, this section may allow us to capture some federal funds earmarked for those states who comply with truth in sentencing rules. Margo Knuth attended a conference on truth in sentencing and this section has the model language used in Minnesota which allowed that state to qualify for the federal funds.

Otherwise the Department of Law seems to be happy with the bill. Anne Carpeneti tells me the sponsor worked with them to make some changes to address the dept's concerns. The primary one was to add the word "approximate" to modify "minimum term." This change was made because it would be extremely difficult for the court to calculate the exact minimum term based on the many possible variables.

Both Anne Carpeneti and Margo Knuth plan to attend the hearing so that they will be available for any questions that arise.