equipment, safety devices and safeguards as are prescribed for the work and work place; [AND]

(3) adopting and prescribing control or technological procedures, and monitoring and measuring employee exposure in connection with hazards, as may be necessary for the protection of employees; and

(4) furnishing to each of his employees employment and a place of employment which are free from recognized hazards which, in the opinion of the commissioner, are causing or are likely to cause death or serious physical harm to his employees.

* Sec. 4. AS 18.60.087 is amended to read:

Sec. 18.60.087. EMPLOYER AND EMPLOYEE PARTICIPATION. (a) A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the department during the physical inspection of a work place for the purpose of aiding the inspection. If the authorized representative is an employee, time spent aiding the inspection shall be considered as time worked and he shall be compensated accordingly. When there is no authorized employee representative, there shall be consultation with a reasonable number of employees concerning matters of health and safety in the work place.

Strengthen confidentiality

(b) Comments relating to an [employer's compliance with the provisions of secs. 10 - 105 of this chapter] made by an employee or an employee representative to the representative of the department during the course of an inspection, and [the name of any employee or employee representative making [ADD] comments to a representative of the department, concerning an] are confidential and may not be made available by the department to the employer without the consent of the employee or the employee representative.

* Sec. 5. AS 18.60.088(b) is amended to read:

(b) If the department makes a special inspection, or an inspection under sec. 83 of this chapter, a copy of an employee notice shall be provided the employer no later than at the time of the inspection. Unless expressly consented to by [UPON REQUEST OF] the person giving the notice, his name and the name of employees referred to in the notice shall be kept confidential and may not appear in the copy provided the employer or in any record available to the employer.

* Sec. 6. AS 18.60.097 is repealed and re-enacted to read:

Sec. 18.60.097. JUDICIAL REVIEW. (a) A person affected by an order of the OSHA Review Board under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter may obtain a review of the order by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

Give Dept Right to Appeal

(b) The department may obtain review of an order of the OSHA Review Board under sec. 93(c) or (e) of this chapter by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(c) An order of the OSHA Review Board under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter becomes final and is not subject to review by any court if a notice of appeal is not filed with the superior court within the period provided for by Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(d) An employer seeking judicial review of an order of the OSHA Review Board or of the commissioner must inform his affected employees of the fact that he is seeking judicial review.

(e) The court shall review an order of the OSHA Review Board or

of the commissioner on a substantial-evidence basis.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 1/16/76
Referred: Labor & Management
and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 588

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to occupational safety and health; and providing for an effective date."

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

* Section 1. AS 18.60.020(b) is amended to read:

(b) When the commissioner promulgates any regulation or standard, [MAKES ANY RULE OR ORDER,] or grants any variance [EXEMPTION OR EXTENSION OF TIME] under this chapter, he shall include a statement of the reasons for the action, forward a copy to the OSHA Review Board and cause a copy to be published in newspapers in the state so as to receive statewide coverage.

* Sec. 2. AS 18.60.055 is amended to read:

Sec. 18.60.055. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH. There is established in the department a division of occupational safety and health to be administered by a director responsible to the commissioner. Minimum qualifications shall be established for employees of the department acting as safety inspectors. These qualifications shall include, as a minimum requirement, at least five years general work experience in industry [THE FIELD THEY ARE ASSIGNED TO INSPECT].

* Sec. 3. AS 18.60.075(a) is amended to read:

(a) An employer shall do everything necessary to protect the life, health and safety of employees including, but not limited to:

(1) complying with all occupational safety and health standards and regulations promulgated by the department;

(2) furnishing and prescribing the use of suitable protective

equipment, safety devices and safeguards as are prescribed for the work and work place; [AND]

(3) adopting and prescribing control or technological procedures, and monitoring and measuring employee exposure in connection with hazards, as may be necessary for the protection of employees; and

(4) furnishing to each of his employees employment and a place of employment which are free from recognized hazards which, in the opinion of the commissioner, are causing or are likely to cause death or serious physical harm to his employees.

* Sec. 4. AS 18.60.087 is amended to read:

Sec. 18.60.087. EMPLOYER AND EMPLOYEE PARTICIPATION. (a) A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the department during the physical inspection of a work place for the purpose of aiding the inspection. If the authorized representative is an employee, time spent aiding the inspection shall be considered as time worked and he shall be compensated accordingly. When there is no authorized employee representative, there shall be consultation with a reasonable number of employees concerning matters of health and safety in the work place.

(b) Comments relating to an employer's compliance with the provisions of secs. 10 - 105 of this chapter made by an employee or an employee representative to the representative of the department during the course of an inspection, and the name of any employee or employee representative making such comments to a representative of the department, are confidential and may not be made available by the department to the employer without the consent of the employee or the employee representative.

maintain confidentiality

* Sec. 5. AS 18.60.088(b) is amended to read:

(b) If the department makes a special inspection, or an inspection under sec. 83 of this chapter, a copy of an employee notice shall be provided the employer no later than at the time of the inspection. Unless expressly consented to by [UPON REQUEST OF] the person giving the notice, his name and the name of employees referred to in the notice shall be kept confidential and may not appear in the copy provided the employer or in any record available to the employer.

* Sec. 6. AS 18.60.097 is repealed and re-enacted to read:

Sec. 18.60.097. JUDICIAL REVIEW. (a) A person affected by an order of the OSHA Review Board under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter may obtain a review of the order by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(b) The department may obtain review of an order of the OSHA Review Board under sec. 93(c) or (e) of this chapter by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(c) An order of the OSHA Review Board under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter becomes final and is not subject to review by any court if a notice of appeal is not filed with the superior court within the period provided for by Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(d) An employer seeking judicial review of an order of the OSHA Review Board or of the commissioner must inform his affected employees of the fact that he is seeking judicial review.

(e) The court shall review an order of the OSHA Review Board or

of the commissioner on a substantial-evidence basis.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

HB
600

"An Act relating to determinate sentencing."

COMMITTEE REPORT

1/16/76

HOUSE

Mr. Speaker: Date April 9, 1976

The Committee on JUDICIARY has had HB 600

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

Terry Sanders recommends: NO REC

_____ recommends:

_____ recommends: DO NOT PASS

_____ recommends:

_____ recommends:

Terry Sanders Chairman

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

April 23, 1976

Rep. Terry Gardiner
House of Representatives
Pouch V
Juneau, AK 99811

RE: 1975 Felony Sentences for Violent Crimes

Dear Representative Gardiner:

On April 14, 1976, at a joint meeting of the Judiciary Committees of the Senate and House of Representatives, the House Rules Committee and the Alaska Judicial Council, the subjects of H.B. 600 and the Judicial Council's alternative proposal for a system of presumptive sentencing were discussed at some length. Requests were made of the Judicial Council and of the Administrative Director of Courts to provide the Legislature with data concerning persons who were convicted in 1975 of violent felonies and the sentences actually received by them.

Enclosed is a summary of our research complied through a joint effort of the Administrative Director's office and the Alaska Judicial Council.

The attached figures include only cases both opened and closed in 1975. (This excludes cases filed in 1973 and 1974, but which did not come to final judgment until 1975.) This data encompasses the entire State of Alaska. There were only 59 individual defendants in the "violent felony" category. The following summary classifies these 59 by first offenses, prior misdemeanors, prior non-violent felonies, and prior violent felonies:

1. 28 defendants (47%) had no prior convictions of any kind.
2. 17 defendants (29%) had a record of convictions for misdemeanors only, but no prior felonies.
3. 8 defendants (14%) had a record of previous convictions for felonies of a non-violent nature.
4. 6 defendants (10%) had previously been convicted of one violent felony.

No defendant in the sample had more than one prior conviction for a violent felony. The greatest proportion by far (47%) were first offenders. The sentences for the 6 individuals with one previous conviction for a violent felony who were again convicted of a violent felony in 1975 were as follows:

* * *

CRIME	SENTENCE
Manslaughter	7 years; 15 years
Kidnapping	4 years
Rape	2 years
Assault with Dangerous Weapon	0 (1 year probation - suspended imposition of sentence)
Robbery	5 years

Of the 13 individuals convicted of Robbery in 1975, one had previously been convicted of a violent felony and received a 5 year sentence. Please note that only two robbers received probation, and both were first offenders. (Other first offenders were sentenced to imprisonment for periods of between 6 months and 5 years.) Sentences for robbers who had prior non-violent felony convictions were also quite severe. (6 years, 10 years and 15 years respectively.) Persons who were convicted of Assault with Intent to Commit Robbery received sentences ranging from probation to 15 years. The average sentence in this category was 6 years, and none had a prior violent felony conviction.

The Manslaughter convictions are particularly interesting because of the extreme range of penalties represented in the sentencing pattern: e.g., 30 days, 60 days, 7 years, 12 years, 15 years. (Two of these individuals had a prior violent felony conviction.) This may illustrate the problem inherent in using the common law crimes as a basis for mandatory sentencing legislation. Although I have not examined the individual case files supporting each of these sentences, it would be my guess that the circumstances leading to the death of a human being in each of these cases must have been extremely divergent to justify a sentence of 30 days in one case and 15 years in another, where neither defendant had

any prior felony convictions. Nevertheless, all these cases are "Manslaughters", regardless of the facts.

The Assault with a Dangerous Weapon category is especially interesting and is deserving of much more careful and detailed study. There were 23 convictions for Assault with a Dangerous Weapon. Thirteen defendants (56%) were placed on probation without being required to serve any jail time whatever. One of these defendants had a prior violent felony record. Only three of the 23 individuals received more than 6 months in jail.

Does this mean that our judges are particularly tolerant of interpersonal violence as long as no profit motive is involved?* Does it mean that most of these cases represent only "technical" assaults in which little or no actual injury was done? Does it mean that prosecutors are frequently "overcharging" in this crime category, so that most of these Assault with a Dangerous Weapon charges should have been filed as misdemeanors instead?** How many of these cases involved feuds between family members or altercations between close friends? How many of these situations involved defendants who were seriously provoked by their victims? Once more the question of the appropriate labeling of crime categories must be raised. I would submit that this data tends to illustrate that "Assault with a dangerous weapon" may be an infelicitous basis for a system of mandatory minimum sentencing. At the very least, the figures would strongly suggest the need for closer study.

***

* The Supreme Court of Alaska has held that Assault with a Dangerous Weapon is "among the most serious crimes . . . ." The court has expressly disapproved a sentence of probation for this offense where the defendant was a 23 year-old Army sergeant, a "model soldier," with no previous record of violence.
State v. Armantrout, 483 P.2d 696, 698 (Alaska 1971).

* * *

** AS 11.15.22 Assault with a dangerous weapon, provides for a double set of punishments: "by imprisonment in the penitentiary for not more than 10 years nor less than six months, or by imprisonment in jail for not more than one year nor less than one month, or by a fine of not more than $1,000 nor less than $100.

Thank you for giving us the opportunity to compile this interesting data. I believe that overall the statistical information is supportive of the proposition advanced by Chief Justice Boochever to the effect that the courts are not lenient with violent criminals. The extreme disparaties reflected in some of the sentences, in particular within the category of Assault with a dangerous weapon, are indicative of the need for careful crime definition and more precise and accurate drafting than that reflected in H.B. 600.

On behalf of the Alaska Judicial Council I repeat our offer to study the entire question of sentence reform and to prepare a draft sentencing bill for your consideration prior to the next session of the Legislature.

Sincerely,

Michael L. Rubinstein/tk

Michael L. Rubinstein

CC: Chief Justice Boochever
Sen. Chancy Croft
Rep. Mike Bradner
House Judiciary Committee
Senate Judiciary Committee
House Rules Committee
Art Snowden II
Mel Martin
Keith Brown, Esq.
Brian Shortell, Esq.
Judicial Council Members
Avrum Gross, Esq.
Herb Pierson, Esq.
Peter Ring, Esq.

CTOI 0003 10.54 CTO3 0022 10.54 04/15/76
CTOI

PLEASE DELIVER THE FOLLOWING AS SOON AS POSSIBLE TO MR. SNOWDEN. HE MAY BE IN THE SUPREME COURT.

ART SNOWDEN

FOLLOWING IS THE ONLY DATA I CAN PROVIDE YOU ON A TIMELY BASIS

MEL

1973 FELONY SENTENCING FROM JUDICIAL COUNSEL SENTENCING STUDY.

CRIME CATEGORY	TYPE CONVICTION	SENTENCE 2-5 YEARS	SENTENCE OVER 5 YEARS	TOTAL
VIOLENT	FIRST	5%	13%	18%
	REPEAT	10%	15%	31%
ROBBERY	FIRST	22%	21%	43%
	REPEAT	-	56%	56%
PROPERTY	FIRST	3%	3%	6%
	REPEAT	14%	7%	21%
HARD DRUG	FIRST	33%	11%	44%
	REPEAT	-	20%	20%
SOFT DRUG	FIRST	1%	-	1%
	REPEAT	27%	-	27%
CHECK & FRAUD	FIRST	-	-	-
	REPEAT	8%	21%	29%
TOTAL	FIRST	5%	6%	11%
	REPEAT	13%	15%	28%

PLEASE ACKNOWLEDGE THIS MESSAGE.

LINDA/CTOI

CTO3 0020 10.59 CTO3 0023 10.59 04/15/76

LINDA

MSG. RECEIVED TO MR. SNOWDEN.

CHARLENE/CTO3

DRAFT #7
Law

4/7/76 md

PROPOSED PWC

Original Sponsor: Rules Committee by
Request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 600

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to [redacted] sentencing."

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

* Section 1. AS 11.05.150 is amended to read:

Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in a case of murder or rape, or a case of a violent felony for which sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3), the court may, upon conviction, when in its opinion the facts and circumstances make the minimum penalty provided in this title manifestly too severe, impose a lesser penalty, either of a fine or imprisonment or both. When less than the minimum penalty is imposed, the court shall set out the reasons for its action on the record in the case.

* Sec. 2. AS 12.55 is amended by adding new sections to read:

Sec. 12.55.035. SENTENCING FOR VIOLENT FELONIES. (a) Every person convicted of a violent felony shall be sentenced as follows:

(1) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's first violent felony conviction, the court may sentence the defendant to a term of imprisonment, within the limits provided by law, or in accordance with AS 33.15.230 or secs. 80 or 85 of this chapter;

(2) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's second violent felony conviction, the court shall sentence the defendant to a minimum term of imprisonment,

(A) of 15 years, for first degree murder under AS

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11.15.010 and AS 11.15.020;

(B) of 12 years, for second degree murder under AS 11.15.030;

(C) of 8 years, for manslaughter under AS 11.15.040;

(D) of 8 years, for negligent homicide under AS 11.15.080;

(E) of 10 years, for forcible rape as defined in AS 11.15.120;

(F) of 5 years, for mayhem under AS 11.15.140;

(G) of 5 years, for shooting, stabbing or cutting with intent to kill, wound or maim under AS 11.15.150;

(H) of 5 years, for assault with intent to kill or commit rape or robbery under AS 11.15.160;

(I) of 3 years, for assault while armed under AS 11.15.190;

(J) of 5 years, for poisoning under AS 11.15.210;

(K) of 3 years, for assault with a dangerous weapon under AS 11.15.220;

(L) of 7 years, for robbery under AS 11.15.240;

(M) of 7 years, for kidnapping under AS 11.15.260;

(N) of 5 years, for first degree arson under AS 11.20-.010;

(O) of 2 years, for assault on an officer in penitentiary under AS 11.30.140;

(P) of 2 years, for assault on an officer in jail under AS 11.30.160;

(3) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's third or subsequent violent felony conviction, the court shall sentence the defendant to a minimum

term of imprisonment,

(A) of 20 years, for first degree murder under AS 11.15.010 and AS 11.15.020;

(B) of 15 years, for second degree murder under AS 11.15.030;

(C) of 12 years, for manslaughter under AS 11.15.040;

(D) of 12 years, for negligent homicide under AS 11.15.080;

(E) of 15 years, for forcible rape as defined in AS 11.15.120;

(F) of 7 years, for mayhem under AS 11.15.140;

(G) of 7 years, for shooting, stabbing or cutting with intent to kill, wound or maim under AS 11.15.150;

(H) of 7 years, for assault with intent to kill or commit rape or robbery under AS 11.15.160;

(I) of 5 years, for assault while armed under AS 11.15.190;

(J) of 7 years, for poisoning under AS 11.15.210;

(K) of 5 years, for assault with a dangerous weapon under AS 11.15.220;

(L) of 10 years, for robbery under AS 11.15.240;

(M) of 10 years, for kidnapping under AS 11.15.260;

(N) of 7 years, for first degree arson under AS 11.20.-010;

(O) of 5 years, for assault on an officer in a penitentia under AS 11.30.140;

(P) of 5 years, for assault on an officer in a jail under AS 11.30.160;

(b) For purposes of this section, no prior convictions will be considered when a period of 15 or more years has elapsed between the

date of discharge from disposition of the immediately preceding offense and the date of the commission of the violent felony for which sentencing is being rendered.

(c) For purposes of this section:

(1) a conviction in another jurisdiction which would amount to a violent felony conviction under the laws of this state is considered a prior violent felony conviction;

(2) two or more convictions arising out of the same incident are considered a single conviction;

(3) "violent felony" means the crimes listed in (a)(2) and (3) of this section.

(d) For terms of imprisonment required under (a)(2) or (3) of this section

(1) imprisonment may not be suspended under AS 12.55.080 and probation or parole may not be granted;

(2) imposition of sentence may not be suspended under AS 12.55.085; and

(3) terms of imprisonment may not be reduced under AS 11.05.150.

(e) Nothing in this section limits the authority of the court to impose fines for offenses, where authorized, in addition to the required term of imprisonment.

Sec. 12.55.037. PROCEDURE FOR DETERMINING PRIOR CONVICTIONS. (a) If it appears that a defendant has previously been convicted of a violent felony and is subject to sentencing as a second or subsequent offender under sec. 35 of this chapter, the district attorney shall file a certified copy of the record of prior convictions with the court before sentencing.

(b) If the defendant denies the truth of the certified copy of the record of prior convictions, the court shall hold a hearing,

without a jury, on the matter before sentencing. At the hearing, the only issues before the court are whether the record of prior convictions is that of the defendant and whether the conviction occurred within the period specified in sec. 35(b) of this chapter. The burden of proof is on the state to establish beyond a reasonable doubt the fact of prior convictions.

* Sec. 3. AS 12.55.060 is amended to read:

Sec. 12.55.060. PROCEDURE UPON DISCOVERY OF PRIOR CONVICTIONS. (a) Before conviction or while sentence is effective, if it appears that a person convicted of a crime in this state has previously been convicted and has not been charged under sec. [SECS. 40 AND] 50 of this chapter, the district attorney may file an information in the superior court accusing that person of the previous conviction or convictions. The court shall cause that person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in the information and of his right to be tried as to the truth of the allegations, and shall ~~require~~ inquire of the accused person ~~to say~~ whether or not he is the same person as charged in the information. If the accused acknowledges or confesses in open court, after being cautioned as to his rights, that he was previously convicted of the crimes charged, or any of them, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated. If the accused says he is not the same person, or refuses to answer, or remains silent, the court shall examine the charge of previous convictions, which shall be the only matter in issue.

(b) If it appears from the examination that there is sufficient cause to believe the accused has been previously convicted as charged

in the information, the accused shall be committed to await the action of the grand jury, which shall consider only the fact of previous convictions of the accused If the grand jury indicts the accused and he says he is not the same person, or refuses to answer, or remains silent, he shall be tried by jury in the superior court, and the only issue before the jury shall be whether the accused was previously convicted as charged. If the jury finds that the accused is the same person previously convicted as charged, or if, after being cautioned as to his rights, the accused acknowledges or confesses in open court that he was previously convicted as charged, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence.

(c) The accused may be admitted to bail either while awaiting examination, action of the grand jury, or trial.

* Sec. 4. AS 33.15.180 is amended to read:

Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state prisoner other than a minor under age 18 [JUVENILE DELINQUENT], wherever confined and serving a definite term or over 180 days or a term the minimum of which is at least 181 days, and who is not confined as a second or subsequent offender under AS 12.55.035, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in secs. 80 and 230(a,(1) of this chapter.

(b) A state prisoner confined as a second or subsequent offender under AS 12.55.035 may not be considered for parole.

* Sec. 5. AS 33.20.010 is repealed and re-enacted to read:

Sec. 33.20.010. COMPUTATION OF GOOD TIME. (a) Each prisoner convicted of an offense against the state and sentenced to confinement

in a penal or correctional institution, whose record of conduct shows that he has faithfully observe the rules of that institution and has not been subject to discipline, is entitled to a deduction from the term of his sentence of one day for every [redacted] days of good conduct served.

(b) Good time earned in excess of 30 days is not subject to forfeiture for a subsequent infraction, misconduct, or crime.

* Sec. 6. AS 12.55.040, 33.20.020 and 33.20.040 are repealed.

* Sec. 7. APPLICABILITY. (a) AS 12.55.035, as enacted in sec. 2 of this Act, applies to sentencing upon convictions only for violent felonies committed after the effective date of this Act. When sentencing for those convictions, the court shall consider prior convictions for violent felonies whether committed before or after the effective date of this Act.

(b) AS 33.15.180, as amended in sec. 4 of this Act, applies to persons imprisoned for violent felonies committed after the effective date of this Act.

(c) AS 33.20.010, as re-enacted in sec. 5 of this Act, applies to all persons imprisoned in state institutions as of the effective date of this Act, without retroactive application however.

* Sec. 8. INTENT. Section 2 of this Act is intended to strengthen present imprisonment provisions rather than lower minimum terms required by statute, especially those minimum terms provided in AS 11.15.010, 11.15.020 and 11.15.030. Under sec. 2 of this Act, a second or subsequent offender does not have available to him provisions for reduction or suspension of sentence.

1. XXXXXXX
2. XXX
XXXXXXX

DRAFT 3/16/76
Law

P R O P O S E D

Original Sponsor: Rules Committee by
Request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 600

IN THE LEGISLATURE FOR THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to determinate sentencing."

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

* Section 1. AS 11.05.150 is amended to read:

Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in a case of murder or rape, or a case of a violent felony for which sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3), the court may, upon conviction, when in its opinion the facts and circumstances make the minimum penalty provided in this title manifestly too severe, impose a lesser penalty, either of a fine or imprisonment or both. When less than the minimum penalty is imposed, the court shall set out the reasons for its action on the record in the case.

* Sec. 2. AS 12.55 is amended by adding new sections to read:

Sec. 12.55.035. SENTENCING FOR VIOLENT FELONIES. (a) Every person convicted of a violent felony shall be sentenced as follows:

(1) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's first violent felony conviction, the court may sentence the defendant to a term of imprisonment, within the limits provided by law, or in accordance with AS 33.15.230 or secs. 80 or 85 of this chapter;

(2) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's second violent felony conviction, the court shall sentence the defendant to a term of imprisonment of not less than one-half the maximum term authorized by law;

(3) if the conviction for which sentencing is being rendered

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is a violent felony and is the defendant's third or subsequent violent felony conviction, the court shall sentence the defendant to the maximum term authorized by law.

(b) For the purposes of this section, no prior convictions will be considered when a period of five or more years has elapsed between the date of discharge from disposition of the immediately preceding offense and the date of the commission of the violent felony for which sentencing is being rendered.

(c) For the purposes of this section:

(1) a conviction in another jurisdiction which would amount to a violent felony conviction under the laws of this state is considered a prior violent felony conviction;

(2) a conviction which authorizes a maximum term of imprisonment for life is considered as having a term of imprisonment of 99 years;

(3) "violent felony" means a violent crime against another person or a violent crime which tends to endanger a person; "violent felony" means only the following crimes:

(A) AS 11.15.010 -- first degree murder;

(B) AS 11.15.020 -- obstructing or injuring railroad or aircraft;

(C) AS 11.15.030 -- second degree murder;

(D) AS 11.15.040 -- manslaughter;

(E) AS 11.15.080 -- negligent homicide;

(F) AS 11.15.120 -- rape;

(G) AS 11.15.140 -- mayhem;

(H) AS 11.15.150 -- shooting, stabbing or cutting with intent to kill, wound or maim;

(I) AS 11.15.160 -- assault with intent to kill or

commit rape or robbery;

(J) AS 11.15.190 -- assault while armed;

(K) AS 11.15.210 -- poisoning;

(L) AS 11.15.220 -- assault with a dangerous weapon;

(M) AS 11.15.240 -- robbery;

(N) AS 11.15.260 -- kidnapping;

(O) AS 11.20.010 -- first degree arson;

(P) AS 11.20.080 -- burglary in a dwelling house;

(Q) AS 11.30.140 -- assault on officer in penitentiary;

(R) AS 11.30.160 -- assault on officer in jail;

(4) two or more convictions arising out of the same incident are considered a single conviction.

(d) For terms of imprisonment required under (a)(2) or (3) of thi section

(1) imprisonment may not be suspended under AS 12.55.080 and probation or parole may not be granted;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be reduced under AS 11.05.150.

(e) Nothing in this section limits the authority of the court to impose fines for offenses, where authorized, in addition to the required term of imprisonment.

Sec. 12.55.037. PROCEDURE FOR DETERMINING PRIOR CONVICTIONS. (a) If it appears that a defendant has previously been convicted of a violent felony and is subject to sentencing as a second or subsequent offender under sec. 35 of this chapter, the district attorney shall file a certified copy of the record of prior convictions with the court before sentencing.

(b) If the defendant denies the truth of the certified copy of the record of prior convictions, the court shall hold a hearing, without a jury, on the matter before sentencing. At the hearing, the only issues before the court are whether the record of prior convictions is that of the defendant and whether the conviction occurred within the period specified in sec. 35(b) of this chapter. The burden of proof is on the state to establish, by a preponderance of the evidence, the fact of prior convictions.

* Sec. 3. AS 12.55.050 is amended to read:

habitual criminal section

Sec. 12.55.050. INCREASED PUNISHMENT FOR PERSONS CONVICTED OF MORE THAN ONE FELONY. Except for a person sentenced for a violent felony under sec. 35(a)(2) or (3) of this chapter, a [A] person convicted of a felony in this state who has been previously convicted of a felony in this state or elsewhere, if the same crime elsewhere would constitute a felony under Alaska law, is punishable as follows:

(1) If the person is convicted of a felony which would be punishable by imprisonment for a term less than his natural life, and has previously been convicted of one felony, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed for the felony of which that person is convicted.

(2) If the person has previously been convicted of two felonies, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed herein for a second conviction of felony.

(3) If the person has previously been convicted of three or more felonies, then on the fourth conviction he shall be adjudged an habitual criminal, and is punishable by imprisonment for not less

than 20 years nor more than the remainder of his natural life.

* Sec. 4. AS 12.55.060 is amended to read:

Sec. 12.55.060. PROCEDURE UPON DISCOVERY OF PRIOR CONVICTIONS. (a) Before conviction or while sentence is effective, if it appears that a person convicted of a crime in this state has previously been convicted and has not been charged under sec. [SECS. 40 AND] 50 of this chapter, the district attorney may file an information in the superior court accusing that person of the previous conviction or convictions. The court shall cause that person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in the information and of his right to be tried as to the truth of the allegations, and shall require the accused person to say whether or not he is the same person as charged in the information. If the accused acknowledges or confesses in open court, after being cautioned as to his rights, that he was previously convicted of the crimes charged, or any of them, the court shall sentence him as provided in sec. [SECS. 40 or 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated. If the accused says he is not the same person, or refuses to answer, or remains silent, the court shall examine the charge of previous convictions, which shall be the only matter in issue.

(b) If it appears from the examination that there is sufficient cause to believe the accused has been previously convicted as charged in the information, the accused shall be committed to await the action of the grand jury, which shall consider only the fact of previous convictions of the accused. If the grand jury indicts the accused and he says he is not the same person, or refuses to answer, or remains silent, he shall be tried by jury in the superior court, and the only

issue before the jury shall be whether the accused was previously convicted as charged. If the jury find that the accused is the same person previously convicted as charged, or if, after being cautioned as to his rights, the accused acknowledges or confesses in open court that he was previously convicted as charged, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time served on the vacated sentence.

(c) The accused may be admitted to bail either while awaiting examination, action of the grand jury, or trial.

* Sec. 5. AS 33.15.180 is amended to read:

Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, and who is not confined as a second or subsequent offender under AS 12.55.035, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in secs. 80 and 230(a)(1) of this chapter.

(b) A state prisoner confined as a second or subsequent offender under AS 12.55.035 may not be considered for parole.

* Sec. 6. AS 33.20.010 is repealed and re-enacted to read:

Sec. 33.20.010. COMPUTATION OF GOOD TIME. Each prisoner convicted of an offense against the state and confined in a penal or correctional institution, whose record of conduct shows that he has faithfully observed the rules of that institution and has not been subject to punishment, is entitled to a deduction from the term of his sentence of one day for every two days of good conduct served.

* Sec. 7. AS 12.55.040, 33.20.020 and 33.20.040 are repealed.

* Sec. 8. APPLICABILITY. (a) AS 12.55.035, as enacted in sec. 2 of this Act, applies to sentencing upon convictions only for violent felonies committed after the effective date of this Act. When sentencing for those convictions, the court shall consider prior convictions for violent felonies whether committed before or after the effective date of this Act.

(b) AS 33.15.180, as amended in sec. 5 of this Act, applies to persons imprisoned for violent felonies committed after the effective date of this Act.

(c) AS 33.20.010, as re-enacted in sec. 6 of this Act, applies to all persons imprisoned in state institutions as of the effective date of this Act, without retroactive application however.

Give copies to Members for HB600

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

March 25, 1976

Hon. Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

On March 15, 1976 the Alaska Judicial Council met in Anchorage and unanimously resolved to express its strong opposition to any and all proposed criminal sentencing legislation based on mandatory minimum or so-called "flat-time" formulae. Legislation which purports to bind the conscience of the judge by compelling him to hand down a pre-ordained term of imprisonment to broad classes of persons without any regard either to the particular facts and circumstances surrounding the commission of the crime, or to the social and personal history of the defendant is productive of more injustice than the problem it is intended to remedy.

No judge should be placed in the position of being required by the law to blind himself to the actual facts and circumstances of the cases he is called upon to decide.

The mandatory minimum and "flat-time" bills now before the Legislature use the existing criminal laws as their foundation. To superimpose entirely new sentencing provisions upon our code--a code which was never intended by its draftsman to bear such a burden--will open the door to many unforseen and anomalous results, some of which are likely to produce unintended injustice in individual cases.

The traditional common law classification of crimes into "felonies" and "misdemeanors", and the typically broad subclasses of felonies, such as "robbery", "rape", "burglary", etc. are quite general and encompass within each class many varying levels of harmfulness and culpability. Under the present system the totally unguided discretion of the sentencing judge is relied upon to take these differences

into account in each case. Many have considered that the exercise of this substantially unguided discretion by judges of widely differing personalities and predispositions has resulted in undue disparity and inequity. However, it may be well to point out that all the blame should not be placed on the judiciary for the disparity which exists. A distinguished federal jurist, Judge Marvin Frankel of the United States District Court for the Eastern District of New York commented, in his book Criminal Sentences: Law Without Order (1972):

> [O]ur legislators have not done the most rudimentary job of enacting meaningful sentencing 'laws' when they have neglected even to sketch democratically determined statements of basic purpose. Left at large, wandering in deserts of unchained discretion, the judges suit their own value systems insofar as they think about the problem at all.

If we are not to rely upon the totally unguided discretionary decisions of diverse individual judges, it becomes encumbant upon the Legislature itself to consider each offense and to provide for a system of carefully graded levels of culpability based upon the actual social harm caused by the defendant's actions, the extent of his evil motivation if any, and such aggravating or mitigating circumstances as may have surrounded the commission of the act. Even if we totally put to one side any and all considerations of the defendant's age, race, sex, and socio-economic background, a just sentencing law must take into account, for example, that not all assaults with dangerous weapons are of equal culpability. Some produce serious harm and some do not. Some are the result of extreme provocation and others are totally unprovoked. Some forgers are compulsive alcoholics, and others are professional criminals. The broad categories of the existing law are simply insufficiently precise for mandatory sentencing.

Having prepared a comprehensive analysis* and review of sentencing practices in Alaska, the Judicial

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* Sentencing in Alaska: A Description of the Process and Summary of Statistical Data for 1973.

Council is well aware of the need for reform. At this time, the Judicial Council has under consideration a proposal for basic structural changes in the sentencing process; it will report to the Legislature at the conclusion of the study. This sentencing plan, dubbed "presumptive sentencing", was recently formulated by a special task force of The Twentieth Century Fund in New York City. The task force study panel was chaired by former California Governor Edmund G. Brown, Sr. and was composed of distinguished jurists, law professors, a police chief, and other involved with the criminal justice process. Although the proposal is complex and sophisticated, complexity may well be required if we are justly to address a problem which is probably not amenable to simplistic solutions.

The enclosed New York Times article briefly describes the presumptive sentencing system. The details of this proposal, in the form of advance page proofs are now being reviewed by the Judicial Council. The final published report will not be released by the McGraw-Hill Book Company until April 13. Pursuant to our agreement with The Twentieth Century Fund, we may make available to you an advance copy of the page proofs, if you wish one.

In summary, the Judicial Council strongly urges you to defer any final legislative action in the area of sentence reform until such time as it completes its report on presumptive sentencing proposals and until adequate study of alternatives for stuctural reform can be explored.

Very truly yours,

Michael L. Rubinstein

cc: Judicial Council Members
Hon. Avrum Gross

THE PUNISHMENT FIT THE CRIME

Indeterminate prison sentences, a major reform until recently, are now considered a mess, by liberals and conservatives alike.

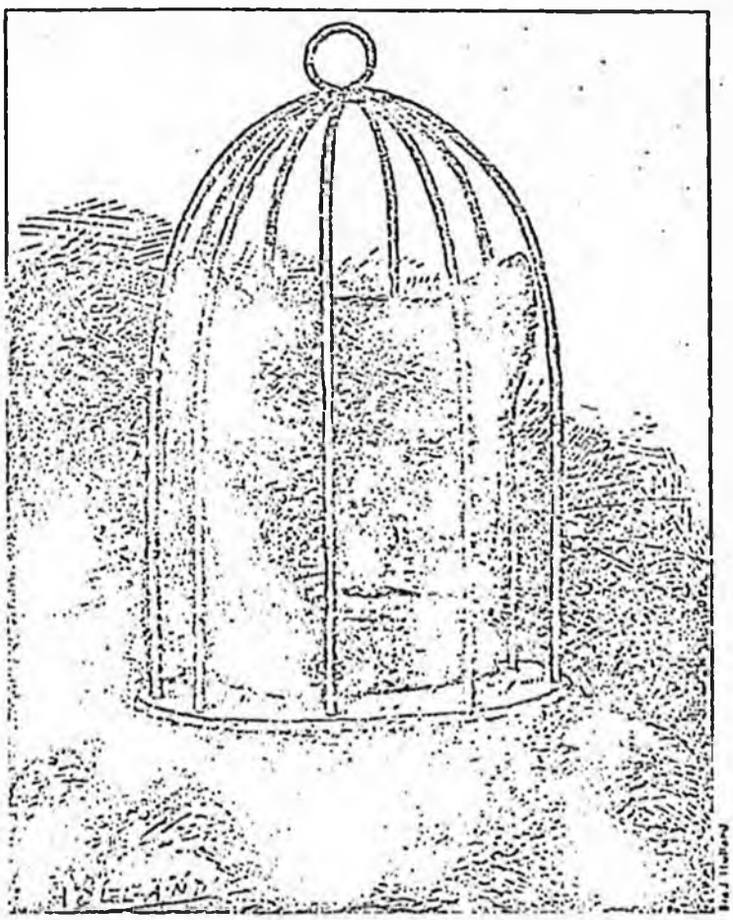
By Alan Dershowitz

When President Ford was confronted with Lynette Fromme's loaded gun, he was on his way to address the California State Legislature on the subject of violent crime. Among the key themes of his speech was a criticism of our current sentencing laws, under which judges and parole boards exercise wide discretion in determining a convicted criminal's sentence. Relating to the fact that "nearly 4 out of 10 persons using firearms to kill . . . or rob . . . are returned to the streets . . . without serving a prison sentence," the President called for the adoption of "mandatory sentences" in order to restore "the certainty of confinement that is presently lacking."

As the President was delivering his speech, its point was being dramatically highlighted in another part of town where law-enforcement officials were busily debating whether to charge Miss Fromme under Federal or state law. One primary consideration was, quite obviously, the kind of sentence she could receive if convicted. A glance at the relevant statutes concretely illustrates the pervasive lack of "certainty" under existing laws: The Federal law against attempting to kill the President carries a sentence of "any terms of years," while the applicable California statute would allow the judge to sentence her "to prison for six months to life, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars."

In other words, the judge who recently sentenced Miss Fromme to life in prison had the widest possible discretion to determine her sentence. "I have no guidelines to go by," Judge Thomas J. MacBride declared; indeed, he could also have imposed a sentence of probation, six months in jail, 20 years in prison—or even a fine.

This situation is not unique to California or the Federal system; nor is it limited to special crimes such as attempted Presidential assassinations. Virtually every state vests considerable sentencing discretion in judges. Moreover, every state and the Federal Government now employ "indeterminate sentencing" for most serious crimes.



Indeterminate sentencing simply means that the amount of time a convicted criminal will actually serve is decided not by the legislature when it enacts the criminal statute, nor even by the sentencing judge when he formally imposes sentence, but rather by some administrative agency —generally called the "parole board" or the "adult authority"—during the time the prisoner is serving his sentence. Both the legislature and the sentencing judge still have important roles to play in indeterminate sentencing: They generally set the outer limits of the confinement, but these limits are generally set very widely, and it thus becomes the responsibility of the parole agency to make the decision that really counts: When will the defendant get back on the street?

Indeterminate sentencing has emerged during this century as a major reform designed to substitute rehabilitation for retribution. Until this past decade, virtually every reformer advocated indeterminate sentencing as among the most important first steps toward humanizing the criminal law. As recently as 1970, Ramsey Clark—widely regarded as perhaps the most liberal person ever to occupy the Attorney Generalship — predicted that "the day of [increased reliance on] the indeterminate sentence is coming," since it gives "the best of both worlds—long protection for the public yet a fully flexible opportunity for the convict's rehabilitation."

Now, just five years later, it seems that the day of the indeterminate sentence is passing—and with few regrets. While law-and-order conservatives remain persuaded that indeterminate sentencing is just one more form of coddling criminals, prisoners and their defenders outside the walls are complaining that it has resulted in too much power for parole boards and longer stays in prison. Prison officials blame the system for overcrowding that has put new strain on their facilities. In short, a surprising consensus is emerging around the idea that it is time for a return to uniformity in sentencing.

The shifting attitude of reformers toward sentencing illustrates how widely the pendulum of reform is capable of swinging in a short period of time. What is proclaimed as panacea by one generation of reformers is denounced as anathema by the next. But the call for reform continues unabated, fueled by our collective frustrations over rising crime rates and staggering disparities in the sentences imposed under our present system.

In a recent study commissioned by the judges of the United States Court of Appeals for the Second Circuit, 50 Federal judges were given 20 identical files, drawn from actual cases, and asked what sentence they would impose on each defendant. The results showed "glaring disparity." In a case involving a middle-aged union official convicted on several counts of extortionate credit transactions, one judge imposed a sentence of 20 years' imprisonment plus a $65,000 fine, whereas another judge imposed a 3-year sentence with no fine. In a case of possession of barbiturates with intent to distribute, one judge gave the defendant five years in prison, while another put him on probation.

These disparities cannot be explained by the

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Alan Dershowitz, professor of law at Harvard, is coordinator of the Twentieth Century Fund's Task Force on Criminal Sentencing.

Punishment

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fact that the judges in this experiment did not have "flesh and blood" defendants in front of them. Indeed, in an actual recent case, Judge Constance Baker Motley—one of the judges included in the study — sent shock waves through the legal community when she sentenced a second offender convicted of stock fraud to 10 years' imprisonment, despite his plea of guilty and his cooperation with the Government. This sentence was five times greater than that given by any judge in a stock-fraud case included in the study. A recent study in Ohio disclosed that certain judges imprison defendants four times as often as other judges in the same county for the same offense.

These disparities cannot be explained by reference to relevant differences among criminals. They are—as Federal Judge Marvin Frankel recently observed—more commonly a function "of the wide spectrums of character, bias, neurosis and daily vagary encountered among occupants of the trial bench."

There is mounting evidence, moreover, that a significant part of the disparity is a function of simple prejudice. To cite one striking, though by no means typical, example, a California judge, in imposing sentence on a teenaged Mexican-American who had been convicted of incest, made the following statement: "Mexican people, after 13 years of age, it's perfectly all right to go out and act like an animal. . . . You ought to commit suicide. . . . You are lower than animals and haven't the right to live in organized society—just miserable, lousy, rotten people. . . . Maybe Hitler was right. The animals in our society ought to be destroyed. . . ." An exhaustive study of sentences for larceny and assault disclosed that in state courts 74 percent of blacks convicted of larceny were sentenced to prison, while only 40 percent of whites with similar records were imprisoned.

Some of the blame for this kind of disparity can be attributed to indeterminate sentencing. Since the job of the legislature, under indeterminate sentencing, is only to set minimum and maximum sentences, debate—what little there is about sentencing—tends to concentrate on unrealistic cases at the extremes. Instead of asking what a typical armed robber should generally get, the question becomes: "What is the most any armed robber should ever get?" Naturally, this kind of question focuses legislative attention on the most horrible cases imaginable, such as the thrill-seeker who terrorizes old people by cocking the hammer of his gun at their heads after he has robbed and beaten them. Likewise, the question, "What is the least any armed robber should ever get?" focuses attention on the most sympathetic cases, such as the father who nervously uses a toy gun in a desperate effort to rob enough money to pay for an operation needed by his child. Since there are vast differences between the most sympathetic and the most horrible cases under a given statute, the legislature generally sets the minimum very low (usually with no imprisonment) and the maximum very high (often at life imprisonment) for serious felonies.

This has contributed to the present situation in which we have among the highest and the lowest sentences for serious crimes of any civilized country in the world: More of our serious offenders go back to the street without any imprisonment, and more of those who are imprisoned receive extremely long sentences. Historically, it is clear that as states adopted indeterminate sentencing, the lengths of maximum sentences authorized by legislatures and imposed by judges skyrocketed. Some studies have also concluded—though the evidence here is not as compelling—that indeterminate sentences have increased the time actually served in prison.

Even if indeterminacy were abolished, however, there would be considerable disparity, since different judges could still impose widely disparate determinate sentences for similar crimes. There are some who argue that the problem might be even worse. Today, when two judges impose radically different sentences for similar crimes, the parole board can employ its discretion to ameliorate the disparities.

The critical issue, therefore, is not whether to abolish indeterminacy while retaining judicial discretion—virtually everyone agrees that this would be a disaster. It is whether the present system of wide judicial discretion coupled with indeterminacy should be replaced by legislatively fixed sentences. Two major reform proposals along these lines are currently receiving serious attention. The first, called "flat-time sentencing," simply means that the legislature would define one single sentence for each crime (or degree of crime); that sentence would be imposed by the judge in every case and would be served in full, with the only possible reduction being for "good time" or by executive commutation in an extraordinary case. This approach recently received added impetus from President Ford's 1975 message to Congress on crime in which he stated that "it may be time to give serious study to the concept of so-called flat-time sentencing in the Federal law," as a way of eliminating "wide disparities in sentencing for essentially equivalent offenses."

The other reform currently under active consideration is the "mandatory minimum sentence." This proposal, which is the half-brother of flat-time sentencing, simply eliminates all discretion to go below a certain minimum sentence that must be served for a given crime, regardless of the circumstances.

In an area that has been plagued as much with polarity as law enforcement, it is indeed surprising that a return to legislatively fixed sentences has commanded the support of so diverse a group on the criminal justice spectrum, especially since only a decade ago, support for indeterminate sentencing was equally unanimous. Jessica Mitford, whose recent book on the California prison system asserts that "prisons are intrinsically evil and should be abolished," sees the elimination of the indeterminate sentence as an intermediate step. She agrees with President Ford—on this if perhaps on no other issue—that "flat-time sentencing" is preferable to indeterminate sentencing.

Nor are Mitford and Ford the only unlikely bedfellows. The Prisoners Union, a national organization controlled and staffed by ex-convicts, has made "the abolishment of the indeterminate sentence and all its ramifications" its

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primary object. Its spokesman, Willie Holder, an ex-convict, argues that "criminals should be punished" rather than treated—and they should be punished "equally," without regard to their backgrounds or individual needs. If this kind of talk sounds as if it could be coming from an association of district attorneys, that is precisely because it could and it has: Many law-enforcement officials favor fixed sentencing because, as Evelle Younger—the tough Attorney General of California—recently put it: "Our records indicate [that under indeterminate sentencing, the adult authority is] releasing dangerous, violent people."

What is it that has changed so many minds so quickly? One important reason for the developing consensus is that the abolition of the indeterminate sentence and the return to legislatively fixed sentences means so many different things to so many different people. To many prisoners, it means the end of the tyranny of the parole board that determines the prisoner's fate under a veil of Kafkaesque secrecy. To President Ford, it means increased deterrence of crime on the streets. To the American Friends Service Committee, which recently called for legislatively fixed sentences, it means the end of privileges for white-collar criminals.

There are, of course, some special reasons that certain groups favor fixed mandatory sentences for particular crimes. Many conservative proponents of capital punishment favor the legislative enactment of mandatory death-penalty statutes for the simple reason that the Supreme Court has held that capital punishment cannot constitutionally be imposed in the discretionary manner in which it has been administered. Many liberal advocates of gun control favor legislation such as that recently enacted in Massachusetts, under which all persons convicted of illegal possession of handguns must serve a full year in prison, and, as the frequently broadcast TV ad says, "no one can get you out."

More fundamentally, however, there seems to be widespread agreement that the present system of sentencing simply has not worked—from any point of view. Nobody is happy about rising crime rates, increased prison violence, glaring disparities and injustices. The entire criminal justice apparatus is under heavy attack from advocates of law and order as well as from civil libertarians. It is only natural that one of its most visible characteristics—individualized sentencing—should be a focus of this attack. For generations, however, the concept of individualized sentencing was a sacred cow among civil libertarians, a manifestation of the "rehabilitative ideal." It was assumed that this reverence for rehabilitation was shared by its consumers, the prison population. But the 1960's witnessed a dramatic infusion of new inmates into the prison population. A significant number of civil-rights marchers, antiwar activists and middle-class drug users were sent to prison. Although they remained for only brief periods of time—and generally only in the "best" prisons—they did establish communication with the more permanent prison population, which tends to be poorer, blacker and less articulate. Upon their release from prison, these middle-class "passers-through" managed to convey to the media the gripes of the "real" prisoners. And much to the surprise of many civil libertarians, the foremost gripes were directed against rehabilitation in general and indeterminate sentencing in particular. Indeed, the Attica Report concluded that "the operation of the parole system was a primary source of tension and bitterness within the walls."

The tension reflects a larger problem: Rehabilitation simply has not worked. A recent survey of more than 200 studies of rehabilitation came to the discouraging conclusion that we have "very little reason" to believe that recidivism can be reduced by any of the currently employed rehabilitative techniques. This is not to say that occupational and educational programs should not be provided to prisoners who choose to avail themselves of such opportunities; it is to suggest that such programs should neither be coercively imposed on prisoners nor used as a justification for added confinement.

There is also widespread agreement that there is a clear relationship between the fact that many defendants who are sentenced to prison today receive extremely long sentences, and the fact that many convicted serious criminals receive no imprisonment at all. The primary reason so many serious criminals avoid imprisonment today is the severely overcrowded condition of most urban courts and places of confinement: The crowded court dockets force prosecutors to accept pleas of guilty in exchange for reduced charges or recommendations that result in probationary sentences; and the crowded prisons place pressure on the judges to use imprisonment as a last resort.

A recent New York Times study of prison populations in the South disclosed that in Florida, for example, prisons are so overcrowded that new prisoners are being locked into converted warehouses and herded behind Cyclone fences in Army tents. The average sentence for 801 young men (average age: 22) at one Florida correctional institution was 17½ years, with 177 of them serving life sentences. (In many parts of the world, the maximum permissible term of imprisonment is 15 years.) The consequence of high sentences and overflow of prison populations is that judges and parole boards are putting more and more convicted felons "back onto the streets," simply because there is no more room for them in state facilities. In October of this year, the Georgia parole board—in a desperate attempt to defuse the "powder keg" of overcrowded prisons—simply cut one year off the sentence of most prisoners.

These conditions have given rise to a call for the imposition of some imprisonment on a larger number of serious offenders even if that requires that those who are imprisoned serve shorter terms. President Ford told Congress that in his view "certainty of confinement" is more important than severity or length of confinement. This view, shared by liberals and conservatives alike, is emerging as the key element in proposals for sentencing reform.

It is being recognized as a fact of life that we simply cannot continue to impose prison sentences that are as long as those currently imposed and served and at the same time expect judges to imprison a larger number of serious felons. In order to have our cake and eat it too, there would have to be a significant increase in prison populations and a monumental expansion of prison plants—which is unlikely to occur in the current state of our economy. There simply has to be a trade-off of some kind between the length of imprisonment and the certainty of imprisonment.

In the last analysis, however, it is extremely unlikely that either "flat-time" or "mandatory" sentencing will emerge as an acceptable general solution to the sentencing dilemma. Flat-time sentencing is simply too extreme a remedy; by eliminating

flexibility and requiring judges to impose the identical sentence on every single defendant convicted under the same statute, flat-time sentencing threatens to create a system so automatic that it will produce major injustices of its own. It is simply impossible to come up with a single just sentence for all armed robbers, for all burglars, for all first-degree murderers. Some degree of flexibility, both at the sentencing and parole stage, has to remain in order for the system to maintain credibility.

Mandatory minimum sentencing is not a general solution either, since it deals only with discretion at the minimum end of the statutory spectrum and not with discretion at the maximum end. It addresses only the floor, not the house itself, or the ceiling.

Moreover, there is mounting evidence that rigidly fixed sentences simply do not work: Ways are found to circumvent them by prosecutors, judges and juries. In Massachusetts, for example, judges have contrived reasons for freeing otherwise "law-abiding" citizens who have run afoul of the mandatory one-year gun-control law. As one criminal lawyer put it: "Judges who had never before heard of the Constitution are now declaring searches to be illegal every time a gun is found in a white man's suit jacket." In states that have adopted mandatory death sentences for murder, prosecutors are reducing charges, and juries are returning "manslaughter" verdicts in cases where the death penalty is deemed inappropriate.

What is needed is an approach that steers a delicate course between the Scylla of glaring disparity and the Charybdis of inhumane equality—an approach that permits the sentencing judge and parole board some limited discretion to tailor the punishment to the particular criminal and his crime without producing significant disparities between similarly situated defendants. Recently, a task force of the Twentieth Century Fund, chaired by former Gov. Edmund (Pat) Brown of California and consisting of judges, academics, practicing lawyers, probation ...ls and a police chief, ...vened to recommend ... to the present ...stem. Among ...ration is ...d "pre... ...der ... would not only decide the minimum and maximum for a given crime; it would also decide what the fairly typical first offender convicted under the statute should receive. For example, a very large proportion of armed robberies are committed by unmarried males in their early 20's who never finished high school and who have been unemployed for more than a year. The robbery typically consists of an entry into a local store late at night with a loaded pistol; the store clerk and a few customers are frightened but not otherwise injured, and the robber takes several hundred dollars. Focusing on that fairly typical armed robbery, rather than on the atypically horrible or atypically sympathetic case, the legislature would decide that, say, two years' imprisonment should be the presumptive sentence for first offenders convicted of this kind of robbery. The legislature would also decide that for each prior conviction, the presumptive sentence should be increased by a fixed percentage, say, 25 percent. (The presumptive sentence for an armed robber with one "prior" would thus become two and a half years.) The trial judge would have the power to raise or lower the presumptive sentence by a given percentage based on the presence of legislatively specified mitigating or aggravating factors. He would also have the power, in extraordinary cases, to impose any sentence up to the maximum and down to the minimum, but he would have the burden of justifying in writing any departure from the range of presumptive sentences. Moreover, on appeal there would be a presumption against any such departure and in favor of a sentence within the presumptive range. This would place significant pressures on sentencing judges to impose sentences within the presumptive range, while leaving them the flexibility to go outside it in truly extraordinary cases.

The nature of the parole board would also be changed fundamentally: The board would no longer engage in the normative task of deciding the duration of the confinement, as it does under indeterminate sentencing laws; instead, it would be converted to an expert agency designed to help the inmate in his transition from prisoner to outside citizen.

The upshot of this presumptive-sentencing scheme would be to move in the direction of flat-time and mandatory minimum sentencing without eliminating all discretion. It is expected that the vast majority of sentences for a given degree of crime would cluster about the legislatively prescribed presumptive sentence. It is also expected that under presumptive sentencing a far greater number of serious criminals would be imprisoned but that the median duration of such imprisonment would be reduced.

In the end, neither this nor any other solution to the sentencing dilemma will prove to be a panacea. Discretion and disparity will not be eliminated: Policemen will still decide whom to arrest; prosecutors will still engage in plea-bargaining and Presidents and Governors will still pardon and commute. But a major source of discontent and unfairness will be regulated.

It now appears as if this sort of reform will be forthcoming. The only possible barrier might be the combined paranoia of liberals who suspect that any proposal supported by conservatives must be a disguised form of "repression" and of conservatives who believe that any change championed by liberals must be "soft on crime." The truth is that the movement toward more legislatively fixed sentences—whether they be "presumptive," "flat-time" or "mandatory minimum"—is a movement for structural reform. As such it is capable of generating either harsh or soft sentences, depending on how the blanks are filled in by the legislatures.

The quest for the fitting punishment has occupied the collective wisdom of mankind since the beginning of recorded history. The Biblical "eye for an eye" reflects at once the importance of letting the punishment fit the crime and the difficulty of going beyond simplistic symmetry. The pendulum appears now to have swung markedly in the direction of greater certainty and uniformity in sentencing. ■

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file with committee

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

Pouch KC-Court Bldg.
Juneau, Alaska 99811

March 2, 1976

The Honorable Terry Gardiner,
Chairman
House Judiciary Committee
Pouch U
Juneau, Alaska 99811

Re: Sentencing Legislation

Dear Representative Gardiner:

At the recent hearings, Representative Parr and yourself raised two points regarding the Governor's determinate sentencing bill. Both points were oversights on my part and if deemed appropriate, the committee should consider the following amendments to rectify the problem.

(1) Representative Parr's point on granting parole under Subsection 33.15.180(b) -- Subsection 12.55.050(d)(1) should be amended to read as follows:

"(1) imprisonment may not be suspended under AS 12.55.080 and probation or parole may not be granted."

(2) Your point regarding what is half of a life sentence, defining it statutorily as 99 years seems appropriate. Even if the offender gets half and under the most liberal administration of good time (one for one) the offender would serve 25 years. An amendment should read:

> Subsection 12.55.050(c)(3) a conviction which authorizes a maximum term of imprisonment of life shall be considered as having a term of imprisonment of 99 years.

If you have any further questions, please feel free to contact me.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
DEPUTY ATTORNEY GENERAL

By: Patrick W. Conheady
Patrick W. Conheady
Legal Assistant

PWC:gm

1. in
2. det
3. prot

Au Gross

1. 50% recidivism 87% Nationwide
2. Rehab doesn't work
   grow older commit less crime

Why should judge send someone to jail
when they don't rehabilitate

inequities of sentencing

indeterminate sentencing - Parole Board make sentences
coming of Parole Board

Sentencing in a deterrence
1. Sweden - drunk driving

6% committed 50% more offenses before 18
Small number of people commit majority of crimes

Det sentencing - not Mandatory - will get in
Rehab because he wants to for himself

What happens to Family House
Defer Prosecution on 2nd offense

Whats most imp — ① det sentencing - parole Board
② Mandatory Minimums

Sentencing is determinate
1. Sweden - driving while intoxicated - felonious character though?

How about defining felonies in bill not all

Did you analyze affect on jail capacity?
what is our present rate of occupancy?

Did you analyze existing sentencing
to compare to your proposal?

448 — 545

Determinate Sentencing

GOVERNOR WALKER'S PROPOSED JUSTICE MODEL

An Analysis of Its Impact

by the

JOHN HOWARD ASSOCIATION
67 East Madison Street
Chicago, Illinois 60603

(312) 263-1901

July, 1975

INTRODUCTION

In announcing proposed revisions to the criminal justice system in Illinois on February 18, 1975, Governor Walker requested that the public as well as law enforcement, court and corrections personnel study and respond to his proposal. In light of this request, the John Howard Association would like to comment on three elements at the present time: Probation, Determinate Sentencing and Parole. Comments regarding other aspects of Governor Walker's recommendations will be forthcoming.

In general, the Association found the Proposal to contain many progressive and worthwhile recommendations. However, the Association is of the opinion that the proposal tends to be both somewhat idealistic and unrealistic in regard to the reality of prisons, parole and probation. For example, we cannot support the apparent assumption of increased effectiveness of the probation system due mainly to a change in its name to "mandatory supervision". In addition, some of the recommendations are inconsistent with the findings of sound correctional studies and reports, indicating limited research on some important issues. The following comments reveal more specifically what the Association believes to be the strengths and weaknesses of the proposal in regard to probation, determinate sentencing and parole.

PROBATION SERVICES

The Proposal recommends that:

1. Adult probation services be transferred to and administered by a newly created Bureau of Community Safety within the Illinois Department of Corrections.

2. Juvenile probation services and the preparation of adult pre-sentence investigation reports and juvenile court social studies be administered under the

through the establishment of circuit-wide departments of court

It is recommended that the judiciary establish merit criteria for employment and that the Supreme Court be given power to set training and educational requirements for all circuit court services employees.

3. The preparation of pre-sentence investigation reports in all felony cases and in misdemeanor cases involving a prison sentence in excess of 90 days be mandatory. Extensive record keeping and reporting requirements are also imposed.

It is evident from numerous studies that the probation services in Illinois are, in general, of poor quality, influenced by politics and a step-child of the criminal justice system. The need for improvements is obvious, and while Governor Walker's proposal represents a positive step toward that improvement, it is incomplete since the recommendations are not sufficiently comprehensive.

The John Howard Association, the National Council on Crime and Delinquency, the League of Women Voters, the Junior League of Evanston, and other interested organizations and individuals have long advocated statewide funding and administration of the adult and juvenile probation system in Illinois. This system would be an efficient and effective method to insure the development of uniform practices, standards of performance, criteria for hiring, standardized training, and adequate probation coverage throughout the state. The National Advisory Commission on Criminal Justice Standards and Goals, along with many other national standard setting organizations have recommended state administered probation services for these very same reasons.

The Governor's proposal would result in a fragmentation of administration and funding of probation services and would create a "splitting" of pre-sentence investigation and probation supervision functions. Accordingly, it is the recommendation of the John Howard Association that such a program would be immeasurably strengthened by:

1. The establishment of a statewide system of adult and juvenile probation services, and
2. The new system of adult and juvenile probation services should be administered and funded by the Illinois Department of Corrections.

The John Howard Association strongly endorses Governor Walker's recommendation that pre-sentence investigation reports be mandatory in all felony and selected misdemeanor cases.

DETERMINATE SENTENCING - ABOLITION OF PAROLE

One of the most significant and far reaching aspects of the proposal is in the area of sentencing practices. The proposal offers to:

> Abolish indeterminate prison sentences and replace them with fixed, flat-time penalties. Narrow the range of such sentences, so that all offenders receive roughly comparable sentences. Establish a range of longer, determinate sentences, to be employed in aggravated cases.[1]

These recommendations were made in an attempt to correct significant problems: Inmates are "...not sentenced to a definite period of imprisonment..."[2] and "...perceived vagaries..." and arbitrariness "...of the paroling process contribute tension and unrest in our correctional facilities."[3] These recommenda-

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1/ Commentary on Determinate Sentencing - An Overview, Unpublished manuscript, Illinois Law Enforcement Commission, 1975, p. 43.

2/ Ibid., p. 2

3/ Ibid., p. 7

...proposal to eliminate apparent abuses in sentencing: Offenders ... wide-ranging periods of incarceration when placed ... under similar conditions and circumstances.

... Howard Association recognizes that the proposal appropriately identifies several significant problems inherent in the sentencing of inmates. However, the Association sees major defects in the solutions offered to correct these problems.

Under the recommendations in the Governor's proposal, felony offenders would serve longer prison sentences than they do at present. Naturally, this would result in a substantial increase in the prison population, and it is the opinion of the Association that there are too many people currently held in Illinois prisons whose rehabilitation does not require or warrant imprisonment. It is a well-documented and almost universally recognized that the sentences imposed in the United States are the highest in the Western world. In addition, researched and reported evidence shows that longer prison terms do not lead to better parole performance.[4]

Also, if implemented, the Governor's proposal would, in all probability, require extensive expansion of existing facilities or the construction of new facilities because the rated capacity of Illinois prisons is, at present, 7,400 with the actual prison population being approximately 7,000.

Another weakness in the proposal's solution relates to cost. For instance, Illinois parolees released during 1971-1973 would have served approximately 6,400 man years of additional prison time over a three-year period if they had been sentenced according to the provisions contained in the Governor's proposal

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4/ Gottfredson, D. M., M. G. Neithercutt, J. Nuffield, and V. O'Leary, Four Thousand Lifetimes: A Study of Time Served and Parole Outcomes, Davis, California: NCCD Research Center, June 1973.

[illegible] A 5,400 man-year increase in [illegible] period would cost taxpayers an additional [illegible]. This amount does not include monies that may be required for new [illegible] remodeling of existing facilities and facility expansion.

The proposal also recommends that we:

> Abolish parole, but replace it with a good-time credit of one day off of his (inmate's) sentence for each infraction-free day he spends in custody, so that each offender becomes directly responsible for the consequences of his own behavior. Retain -- indeed strengthen and expand -- needed rehabilitative services, but divorce participation in them from the release process.[6]

The recommendation that parole be abolisned is based upon the assumption that parole does not work, that parole is not an effective crime reduction and prevention device, and that the paroling process is capricious, vague and filled with uncertainties. With respect to the functioning of an individual parole board, the proposal may be correct. However, with respect to the proper functioning of parole, the proposal is, in our opinion, unsound.

The uniform Parole Report Program of the National Council on Crime and Delinquency has been following the outcomes of parolees throughout the United States since release year 1965. The statistics show that if the task of parole is to retain people in the community for a time, rather than return them to prison,

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5/ According to figures furnished by the Illinois Department of Corrections, it cost approximately $7,000 to maintain an inmate in an Illinois prison for one year.

6/ Op. Cit., Commentary on Determinate Sentencing - An Overview. p. 43.

[illegible] parolees released in 1972, followed to the end of [illegible] supervision or to their first anniversary of parole release, [illegible] "success" rate (success meaning no problems leading to parole violation. [illegible] included all those who were not returned to prison, the success rate was [illegible]. Not only is this a high success rate, but it has climbed steadily. The two-year follow-up success rate is 69%; it too, has risen regularly since 1968. The three-year success rate is 66% for 1969, the last year on which data has been published. This data suggests that the system works and is improving with time.

With respect to Illinois, the Uniform Parole Reports indicate that the success rate at the end of one year for parolees released in 1973 was 85%. For parolees released in 1972, the success rate after one year was 83%. For parolees released in 1972, the two-year success rate was 79%.

The proposal's contention that parole is not effective as a crime prevention device,[7] on either a state or national basis, must be exposed as being inconsistent with factual evidence. On June 30, 1974, there were nearly 185,267 active parolees in the United States. If every one of these parolees had committed an index crime in 1974, they would have accounted for only 2% of the known index crimes. We are confident,and the data clearly established, that over 70% of the parolees committed no new known crimes.

7/ Op. Cit., Commentary on Determinate Sentencing - An Overview, p. 11.

8/ "Number on Parole -- 1974," Newsletter, Uniform Parole Reports, Davis, California: NCCD Research Center, p. 5.

The Commission recommends that:

Sentencing in criminal cases in Illinois should conform to standards promulgated by the National Advisory Commission on Criminal Justice Standards and Goals. Specifically, Standard 5.2, Sentencing the Non-Dangerous Offender and 5.3, Sentencing to Extended Terms should be implemented. See attached copies of these Standards.

Standard 5.2, Sentencing the Non-Dangerous Offender, calls for the maximum sentence for any offender not specifically found to represent danger to others to a period not to exceed five years for felonies other than murder. No minimum sentence should be authorized by the legislature. The sentencing court should be authorized to propose a maximum sentence less than that provided by statute. It mandates the establishing of criteria for sentencing and suggests what the criteria should include.

Standard 5.3, Sentencing to Extended Terms, calls for a separate provision for sentencing offenders when, in the interest of public protection, it is considered necessary to incarcerate them for substantial periods of time. It identifies provisions to be included in the decision, e.g.,

(a) Authority for judicial imposition of extended term of not more than 25 years for (1) a persistent felony offender, (2) a professional criminal, or (3) a dangerous offender.

(b) Definition of a persistent felony offender.

(c) Definition of a professional criminal.

(d) Definition of a dangerous offender.

(e) Authority for court to impose a minimum sentence to be served

prior to eligibility for parole not to exceed one-third of the maximum sentence imposed or more than three years.

2. A system be established within the judiciary to review all sentences of incarceration in order to ensure that sentences are fair and equitable.

3. Parole services not be abolished and that parole and other reintegration and aftercare services be made available to all released offenders.

4. A system for ensuring the early release of offenders be maintained in addition to that which is based upon the accumulation of good time credits.

APPENDIX A

STANDARD 5.2

SENTENCING THE NON-DANGEROUS OFFENDER

Criminal code revisions should include a provision that the maximum sentence for any offender not specifically found to represent a substantial danger to others should not exceed five years for felonies other than murder. No minimum sentence should be authorized by the legislature.

The sentencing court should be authorized to impose a maximum sentence less than that provided by statute.

Criteria should be established for sentencing offenders. Such criteria should include:

1. A requirement that the least drastic sentencing alternative be imposed that is consistent with public safety. The court should impose the first of the following alternatives that will reasonably protect the public safety:

   (a) Unconditional release.
   (b) Conditional release.
   (c) A fine.
   (d) Release under supervision in the community.
   (e) Sentence to a halfway house or other residential facility located in the community.
   (f) Sentence to partial confinement with liberty to work or participate in training or education during all but leisure time.
   (g) Total confinement in a correctional facility.

2. A provision against the use of confinement as an appropriate disposition unless affirmative justification is shown on the record. Factors that would justify confinement may include:

   (a) There is undue risk that the offender will commit another crime if not confined.
   (b) The offender is in need of correctional services that can be provided effectively only in an institutional setting, and such services are reasonably available.
   (c) Any other alternative will depreciate the seriousness of the offense.

3. Weighting of the following in favor of withholding a disposition of incarceration:

   (a) The offender's criminal conduct neither caused nor actually threatened serious harm.
   (b) The offender did not contemplate or intend that his criminal conduct would cause or threaten serious harm.
   (c) The offender acted under strong provocation.
   (d) There were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish defense.
   (e) The offender had led a law-abiding life for a substantial period of time before commission of the present crime.

(i) The offender's conduct was the result of circumstances unlikely to recur.

(j) The character, history, and attitudes of the offender indicate that he is unlikely to commit another crime.

(k) Imprisonment of the offender would entail undue hardship to dependents.

(l) The offender is elderly or in poor health.

(m) The correctional programs within the institutions to which the offenders would be sent are inappropriate to his particular needs or would not likely be of benefit to him.

APPENDIX B

STANDARD 5.3

SENTENCING TO EXTENDED TERMS

State penal code revisions should contain separate provision for sentencing offenders when, in the interest of public protection, it is considered necessary to incapacitate them for substantial periods of time.

The following provisions should be included:

1. Authority for the judicial imposition of an extended term of confinement of not more than 25 years, except for murder, when the court finds the incarceration of the defendant for a term longer than five years is required for the protection of the public and that the defendant is (a) a persistent felony offender. (b) a professional criminal, or (c) a dangerous offender.

2. Definition of a persistent felony offender as a person over 21 years of age who stands convicted of a felony for the third time. At least one of the prior felonies should have been committed within the five years preceding the commission of the offense for which the offender is being sentenced. At least two of the three felonies should be offenses involving the infliction, or attempted or threatened infliction, of serious bodily harm on another.

3. Definition of a professional criminal as a person over 21 years of age, who stands convicted of a felony that was committed as part of a continuing illegal business in which he acted in concert with other persons and occupied a position of management, or was an executor of violence. An offender should not be found to be a professional criminal unless the circumstances of the offense for which he stands convicted show that he has knowingly devoted himself to criminal activity as a major source of his livelihood or unless it appears that he has substantial income or resources that do not appear to be from a source other than criminal activity.

4. Definition of a dangerous offender as a person over 21 years of age whose criminal conduct is found by the court to be characterized by: (a) a patterns of repetitive behavior which poses a serious threat to the safety of others, (b) a pattern of persistent aggressive behavior with heedless indifference to the consequences, or (c) a particularly heinous offense involving the threat or infliction of serious bodily injury.

5. Authority for the court to impose a minimum sentence to be served prior to eligibility for parole. The minimum sentence should be limited to those situations in which the community requires reassurance as to the continued confinement of the offender. It should not exceed one-third of the maximum sentence imposed or more than three years.

6. Authority for the sentencing court to permit the [illegible] offender sentenced to a minimum term prior to service of [illegible] upon request of the board of parole.

7. Authority for the sentencing court in lieu of the imposition of a [illegible] to recommend to the board of parole at time of sentencing that the offender not be paroled until a given period of time has been served.

APPENDIX C

Addendum
TABLE VIII
Uniform Parole Reports
Parole Performance Percentages
ONE Year Follow-up
1968-1973
Illinois Male

	1968	1969	1970	1971	1972	1973
Continued on Parole	68%	73%	80%	81%	83%	85%
Absconder	5%	5%	5%	3%	4%	4%
Return to Prison-Technical	22%	18%	11%	11%	9%	6%
Return to Prison-New Commitment	5%	5%	4%	5%	4%	5%
Total Cases	2,076	1,735	2,130	1,749	1,790	1,654

Appendum
TABLE IX
Uniform Parole Reports
Parole Performance Percentages
TWO Year Follow-up
1968-1972
Illinois Male

Parole Outcome	1968	1969	1970	1971	1972
Continued on Parole	62%	68%	74%	76%	79%
Absconder	4%	4%	4%	3%	4%
Return to Prison-Technical	27%	22%	15%	14%	11%
Return to Prison-New Commitment	7%	6%	6%	7%	6%
Total Cases	2,075	1,735	2,130	1,749	1,792

file with det sentencing

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

January 20, 1976

Rep. Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Terry:

Enclosed is a report prepared under contract for the Alaska Judicial Council pursuant to a 1974 grant from the United States Department of Justice Law Enforcement Assistance Administration, (LEAA). This report was included as a follow-up to the Council's initial statistical study, Sentencing in Alaska: A Description of the Process and Summary of Statistical Data for 1973. (March 1975) The original, comprehensive study, was prepared to assist the Legislature by developing a data-base which could then be utilized in drafting criminal legislation. The enclosed follow-up study was requested because the possibility of racial disparity in sentencing was raised by the data analyzed in the original study.

Unfortunately, (or fortunately) there were only 42 cases in Anchorage in which defendants received sentences of five years or longer; not really enough cases for a good sample. For this reason, although as Chief Justice Boochever's letter to the judges indicates, "the reports give rise to an appearance of racial discrimination", they are not conclusive in this regard.

Sincerely,

Michael Rubinstein

Michael L. Rubinstein

MLR/mb
Enclosure

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

January 20, 1976

Hon. Monroe N. Clayton
District Court Judge
Fourth Judicial District
604 Barnette
Fairbanks, Alaska 99701

Dear Judge Clayton:

This letter is being written at the request of the Alaska Judicial Council. The Council was funded in 1974 by the United States Justice Department Law Enforcement Assistance Administration to conduct a study of the sentencing process in Alaska. A comprehensive statistical analysis of the 1973 superior court felony cases in Anchorage, Fairbanks and Juneau was completed. This report indicates that a disproportionate number of blacks and Alaskan Natives failed to receive probation and that blacks received higher sentences than other groups. A follow-up report was made in an endeavor to ascertain whether there was justification for the higher percentage of black defendants receiving sentences of five years or greater when compared with the low percentage of Caucasians receiving similar sentences. I am enclosing a copy of the analysis and conclusions of this later report. The other reports are on file in the office of the Alaska Judicial Council at Anchorage and will be made available for your study upon request.

While the reports are not necessarily conclusive, they do give rise to an appearance of racial discrimination being involved in some sentencing procedures. The Council is confident that no Alaskan judge consciously discriminates against any group because of race, creed or color. As a result of the studies, however, there is concern that unconscious bias may creep into the sentencing process in certain instances. It is for this reason that I have been directed to write to each of the judges in the state advising

them of this situation so that they may consciously guard against any possible tendency toward such discimination.

Knowing the high caliber of the Alaska judiciary, I am confident that all members seek to comply with their oath in upholding the Constitution of the State of Alaska, including art. I, sec. 1 which provides that "all persons are equal and entitled to equal rights, opportunities and protection under the law", and that every effort will be made to avoid discrimination or the appearance of discrimination in all judicial functions.

Sincerely yours,

Robert Boochever
Chairman, Ex Officio

Enclosure
cc: Supreme Court Justices

Part III - ANALYSIS AND CONCLUSIONS

This paper began with the purpose of focusing on two poincs: whether or not the persons who received long sentences in 1973 had committed "particularly serious offenses" or were "dangerous offenders", "professional criminals", or "the worst type of offenders"; and whether, given these criteria, the high percentage of Black defendants who received sentences of five years or greater was as deserving of these sentences as the low percentage of Caucasians. Many facts and circumstances have been set forth in the preceding pages in order that an analysis of these questions can be attempted.

It may be instructive first to look at the supreme court's sentencing criteria. Since the sentence appeal law was enacted, effective January 1, 1973*, over 60 defendants have appealed their sentences to the supreme court.[13] (Approximately 70% of these appeals have resulted in affirmation of the lower court sentence, approximately 20% have been reversed on the grounds of excessiveness, and only 2 sentences, less than 4%, have been disapproved as too lenient.)[14] In the various supreme court opinions explaining its decisions in these cases, guidelines for sentencing have been set forth.

As noted, the court has written that, in general, maximum sentences need not exceed five years, except for particularly serious offenses, dangerous offenders, and professional criminals, and that the maximum sentence for a crime ought to be given only to the worst type of offender.[15] Regarding the definition of "serious offense", the court has noted in a

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* AS 12.55.120

case in which it affirmed a rape sentence that "Forcible rape and robbery rank among the most serious crimes."[16] In another case, where the defendant was convicted of assault with a dangerous weapon, (and in another very recent sentence affirmation for a rape case), the court has expressed the view that violent crimes involving physical injury to innocent people are to be regarded as the most serious offenses, and are not to be treated lightly.[17]

In several other cases the court has commented on the terms maximum sentence and "worst type of offender". In 1971 in affirming a maximum sentence, the court said a maximum sentence generally was not appropriate for a single violation of a law which was not surrounded by aggravating circumstances, such as a prior record or the defendant's having committed the offense while on bail, probation or parole.[18] The court further said in Galaktionoff v. State, 486 P.2d 919, 924 (Alaska 1971), in overturning a maximum sentence for petty larceny, that the following factors should be considered in assessing whether the defendant was the worst type of offender: the defendant's age; the defendant's previous offenses, if any; whether the (multiple) offenses occurred within only a single criminal transaction; and the value of the property taken. The terms "dangerous offender" and "professional criminal" have not been defined by the supreme court.

As noted earlier in this report, most of the crimes of which the 42 defendants were convicted were quite serious

offenses, although not all were rape or robbery, and not all involved harm to victims. In fact, only 3 of the 42 were convicted of rape (7%) and 13 convicted of robbery (31%), for a total of 38%.

Many of the defendants were young. It already has been noted that over half, 26 defendants or 63%, were under age 25. Eighteen were only 21 or younger, fully 43%.

Many of these defendants did not have prior records or had records of very little consequence, such as traffic offenses or misdemeanor convictions that had not resulted in jail. Nineteen defendants, or 46%, fit this description.

Many defendants also were involved in only a single criminal transaction, although the single transaction often was very serious. Eighteen defendants, or 43%, committed only a single criminal act. However, it should be noted that eight of the defendants involved in only a single transaction in 1973 had prior felony records.

With regard to the fourth guideline, the value of property injured or stolen, most of the crimes for these 1973 defendants involved harm of some value (usually over $50) if they involved harm to property.

These sentencing guides also can be compared along racial lines. (Only defendants in Anchorage are included in the following computations, as the desire to focus on racial comparisons arises from Blacks sentenced there.) Of all 12 Caucasians receiving sentences of five years or greater, 7 or 58% were 25 years old or younger, and 6 or 50% were 21 or

under. Of all 12 Blacks receiving sentences of five years or greater, 8 or 67% were 25 or younger; but only 4 or 33% were 21 or under. Thus more young Caucasians received long sentences than Blacks.

Four of the Caucasians (33%) had no prior record (or no prior record of any consequence). Eight of the Blacks (67%) had no prior record. Thus twice as many Blacks as Caucasians who had no prior record received long sentences.

Five of the Caucasians (42%) had been involved in only a single criminal transaction (including any offenses committed later while the defendant was on bail but had not yet been sentenced). Only 3 of the Blacks (25%) were involved in only one transaction.*

As noted previously (on p. 18), seven of the Caucasians (58%) did physical harm to a victim, while only one out of all 12 Blacks (the defendant who raped two women) could be said to have done physical harm to his victim. All of the homicides and aggravated assaults that resulted in long sentences were committed by Caucasian (or Native Alaskan) males.

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* Some of the sentences appear to have been based on the judge's consideration that the defendant probably had committed other offenses and merely not ben caught, although convicted of only one. However, the Supreme Court clearly has said that such consideration is not proper in sentencing. In Galaktionoff v. State, 486 P.2d 919, 924 (Alaska 1971), where the court was reviewing a judge's consideration that a defendant probably was guilty of more serious offenses than the one charged, the court said that the danger inherent in giving undue weight to such factors should be readily apparent to the judge, and that absent a conviction even an indictment is absolutely no evidence of guilty conduct.

The main offense which was committed most often by these Anchorage defendants, both Caucasian and Black, was robbery. Four of the Caucasians and 8 of the Blacks received their long sentence for robbery. All but one of the Caucasians receiving long sentences for robbery had prior felony records. Only one of the Blacks receiving a long sentence for robbery had a prior felony record.

In order to analyze whether these 7 Blacks received unduly harsh sentences, these sentences are compared below with other Anchorage sentences for robbery (that did not exceed 5 years). Although it would not be feasible to compare for each of the 42 defendants all other sentences meted out to other defendants for the same offense, it is possible to compare all of one kind of sentence for a select group of individuals. Because most of the Blacks in question were first offenders, the description below is of all 1973 defendants who committed robbery, who were first offenders or had no prior record of any consequence, but who did not receive sentences of 5 years or greater.

Firstly, it can be seen that 9 Caucasian first offenders received sentences of less than 5 years for robbery in 1973. Only 4 Blacks received such sentences. Moreover, only one of these Blacks was sentenced to less than 1-1/2 years in jail, whereas seven of the 9 Caucasians (78%) were sentenced to one year or less in jail. (Two were placed on probation.)

All defendants on Table IV, Caucasian and

TABLE IV

DEFENDANTS≠ CONVICTED OF ROBBERY WHO RECEIVED
LESS THAN A FIVE-YEAR SENTENCE
(Anchorage only - no robbery convictions in Fairbanks or Juneau)

SEX	RACE	AGE	PRIOR RECORD	SENTENCE	JUDGE	SPECIAL CIRCUMSTANCES
F	Cauc.	20	One prior misdemeanor	Probation (3 years SIS)*	Carlson	Robbed victim of watch and $50
M	Cauc.	21	No prior record	5 months (plus 5 years SIS)	Burke	Robbed person of watch and $50 at gunpoint; repeat bail recidivist
M	Cauc.	19	No prior record	1 year (plus 2 suspended)	Kalamarides	Military; liquor store robbery at gunpoint; co-defendant of defendants #25-27, Table II
M	Cauc.	21	Less than 6 misdemeanors, no jail time	1 year (plus 2 suspended)	Occhipinti	
M	Cauc.	23	Less than 6 misdemeanors; never served more than 90 days	Probation (2 years SIS)	Burke	Robbed person of money with long-barreled gun; case dismissed in return for defendant pleading guilty to other cases; repeat bail recidivist.
M	Cauc.	18	Minor traffic record	2 years (plus 2 suspended)	Occhipinti	
M	Cauc.	19	No prior record	3 years	Kalamarides	Convicted of 2 counts of robbery, one armed, one against his mother
M	Cauc.	21	No prior record	1 year (plus 4 suspended)	Moody	Turned state's evidence; ordered to make $240 restitution
M	Cauc.	23	Two prior felonies; never been sentenced to more than 90 days	115 days	Carlson	Stole $435 after putting victim in fear with .22 calibre rifle; "Pled down" to petty larceny; drug-related

≠ Defendants with no prior criminal record, or a minor record only.
* Suspended imposition of sentence.

TABLE IV - Continued

SEX	RACE	AGE	PRIOR RECORD	SENTENCE	JUDGE	SPECIAL CIRCUMSTANCES
M	Nat.	25	Less than 6 misdemeanors; no jail time	4 years	Burke	
M	Black	20	Less than 6 misdemeanors; no jail time	1-1/2 years (plus 3-1/2 years suspended)	Buckalew	
M	Black	19	No prior record	60 days (plus 3 years SIS)	Carlson	Military; recidivated on bail; defendant's father (a military officer) appeared on his behalf
M	Black	23	No prior record	3 years (mandatory 1/3)	Occhipinti	Military; drove "get away" car
M	Black	21	No prior record	2 years (plus 3 suspended)	Burke	Military; alcohol treatment recommended

Black, were under age 25. All the Caucasians except one were 21 or younger, and all the Blacks except one were 21 or younger.

None of the Blacks on Table IV were noted as having used a weapon during the robbery (although the fact that the court files did not note a weapon does not necessarily preclude the possibility of their having been one). Five of the Caucasians (56%) were noted as having used a gun.

It thus appears that even among defendants receiving less than 5 years for robbery, Blacks may have been treated more harshly.

Comparing the 9 Caucasians on Table IV with the 7 Blacks (on Table II) who were also "first offenders" but received 5 years or greater, there are some factors possibly justifying apparent disparity. It can be noted that the Blacks were slightly older--one was over 25 and 3 were over 21. Moreover, of the 7 Blacks, 5 (71%) were noted as having used a weapon, compared to 56% of the Caucasians. Five of the 7 Blacks (71%) also were involved in more than one event, whereas only 4 of the Caucasians in Table IV (44%) were involved in more than one criminal transaction.

It should be pointed out that if the 3 young Black defendants (#25-27) who participated in the same liquor store robberies had not received sentences of 5 years or greater but had received lesser sentences, a bit more of the statistical disparity among Blacks and Caucasians on both Table II and Table IV would be removed. However, those three

Blacks did receive sentences of five years or greater. It should be further noted, with regard to those liquor store robberies, that Table IV shows a fourth co-defendant in those cases, who was a Caucasian male, also age 19 with no prior record, and who received a sentence of one year plus two years suspended. (This sentence was imposed by the same judge who sentenced 2 of the 3 Black defendants.) The following analyses of certain other sentencing phenomena may help to show whether the 1973 sentencing results shown in Tables I and II might be considered disparate.

Table V below shows the number and type of defendants who had a trial on the charge for which they received their long sentence, compared to those who accepted plea negotiations. It was noted in several of the preceding Anchorage sentencing narratives that the attorneys or the judge when sentencing a defendant took into account whether or not the defendant had gone to trial.

Out of 30 Anchorage defendants with long sentences, 8 had trials (27%). This figure far exceeds the figure 6% of all convicted felony defendants who had trials in 1973.[19]

In Anchorage, none of the Caucasian males who received sentences of 5 years or greater went to trial. The first report showed the converse--that none of the Caucasian males who went to trial received sentences of 5 years or greater.[20] On the contrary, six of the Blacks who received sentences of 5 years or greater (50%) had gone to trial. The earlier study also reported that all Black males convicted

TABLE V

INCIDENCE OF TRIALS

Fairbanks		
	Number of Defendants Who Went to Trial	Percentage of Defendants
Caucasian Males	1	25%
Nat. Alaskan Males	1	33%
Males, Race Unknown	0	--

Juneau

The one defendant sentenced to five years in Juneau did have a trial.

Anchorage		
	Number of Defendants Who Went to Trial	Percentage of Defendants
Cauc. Females	1	50%
Cauc. Males	0	--
Nat. Alaskan Males	1	25%
Black Males	6	50%

at trial in Anchorage received sentences of 5 years or greater.[21]

However, Table VI below shows that whether or not there was a trial, the majority of all sentences of 5 years or greater statewide, and most of the sentences of 5 years or greater given to Blacks in Anchorage, did not occur without the benefit of a presentence report. Statewide, presentence reports were prepared in 62% of the cases, although this figure varied according to type of defendant and area of the state. In Fairbanks presentence reports were prepared for 92% of defendants receiving long sentences, but for only 50% of the Anchorage defendants. A presentence report was prepared for the one defendant in Juneau.

Among the Anchorage cases, presentence reports were prepared for 75% of the Blacks but for less than 50% of the Caucasians, and for only 33% of the Caucasian males. It might be noted that the higher incidence of presentence reports among Blacks may reflect the fact shown earlier on p. 18 that sentences for Caucasians were "negotiated" more often. (It might also be called to mind that Table II showed that the judge followed the district attorney's recommendation for Caucasians three times, sentenced above it once, and sentenced below it once; and for Blacks the statistics were not very different, the judge following the district attorney's recommendation 4 times and sentencing below it twice.

Table VII shows another factor that could indicate

TABLE VI

INCIDENCE OF PRESENTENCE REPORTS

A. Statewide. 62% of defendants sentenced to 5 years or more in jail received pre-sentence reports.

B. Areas.

Race & Sex	Anchorage	Fairbanks			Juneau	
	No. of defendants for whom report prepared	% of defendants of this race & sex	No.	%	No.	%
Cauc. Female	1	50%	--	--	--	--
Cauc. Male	4	33%	6	100%	--	--
Nat. Alaskan Male	1	25%	3	75%	1	100%
Black Male	9	75%	--	--	--	--
Male, Race Unk.	--	--	1	100%	--	--
	15		10		1	

disparity, the incidence of a judge imposing a required mandatory minimum (usually one-third of the sentence imposed) to be served before parole eligibility.

Statewide, 18 out of the 42 defendants (43%) were required to serve a mandatory minimum. In Fairbanks only 2 defendants (17%) were required to serve a mandatory minimum. The one defendant in Juneau was not required to serve a mandatory minimum.

In Anchorage 60% of the defendants were required to serve a mandatory minimum. However, 67% of Caucasian males were required to serve a mandatory minimum, while only 42% of Black males were. As is noted on the chart, however, 2 of the Caucasian males succeeded in getting their mandatory minimum eliminated, and thus the final situations are not very different. Unfortunately, the earlier report did not contain statistics on what percentage of all defendants receiving jail sentences were required to serve a mandatory minimum.

Sentencing Criteria and Treatment

The very first sentence appeal decision handed down by the supreme court after the sentence appeal law was enacted, State v. Chaney,[22] stated that a trial judge when imposing sentence should consider the following factors: the principles of reformation and the necessity of protecting the public, the objective of rehabilitation of the offender into a non-criminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender, deterrence of other

TABLE VII

INCIDENCE OF REQUIRED MANDATORY MINIMUMS

Fairbanks

Only two defendants in Fairbanks who received sentences of 5 years or greater were required to serve a minimum before parole eligibility. One was male, "race unknown," and one was a Caucasian male. One was required to serve one-half of a 30-year sentence before parole eligibility, which sentence is illegal,* and one was required to serve 2 years of a 10-year sentence (less than one-third of the sentence).

Juneau

In Juneau, the one defendant receiving a sentence of 5 years or greater was not required to serve a mandatory minimum.

Anchorage

	Number of Defendants Required to Serve Mandatory One-Third Minimum	Percent
Caucasian Females	1	50%
Caucasian Males	8**	67%
Native Alaskan Males	1	25%
Black Males	5	42%

* At that date the judge was allowed to fix a mandatory minimum to be served before parole eligibility only if it did not exceed more than one-third of the sentence. AS 33.15.230(a)(1). See also Sentencing in Alaska, p. 27 and p. 168.

** 2 eliminated, plus one that was less than one-third.

members of the community who might possess criminal tendencies; and community condemnation of the individual, (also described as "reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves.")[23] The court further noted in a later case that the trial judge must determine the priority and relationship of these objectives in any particular case.[24]

In recent years there has been much debate over these criteria, with special focus on rehabilitation.[25] In the Anchorage sentencing narratives, the so-called "Chaney criteria" were alluded to in various ways by judges when imposing sentence. All of the "goals"--retribution and reaffirmation, deterrence of the offender and others, rehabilitation of the offender, and protections of society--were mentioned frequently as "purposes" of the sentence being imposed (as was punishment, however, which has not been set forth directly by the supreme court as a permissible basis for a sentence).

Although no tally has been made of those rationales for sentencing most frequently expressed by superior court judges, rehabilitation, deterrence, and protection of society were mentioned with regularity by the Anchorage judges.

The number of defendants recommended by the judge to receive rehabilitory treatment was discussed previously at pp. 8, 9, and 19. More defendants in Anchorage than in Fairbanks were recommended for treatment, and in Anchorage more Caucasians than Blacks were recommended for treatment. Both of the women and all 4 of the Native Alaskan males were

noted as having either an alcohol or drug problem, but only 2, both Native males, were recommended for treatment. Although in the Anchorage narratives more Caucasians than Blacks were described as having specific problems that could be "treated", it is difficult to believe that there could be a single person who needed a 5-year sentence but who did not need "treatment", in some sense.

Occasionally a judge recommended a certain correctional institution as a place where treatment should be provided. However, eight times that a judge recommended, or attached as a condition of the sentence, a certain institution or rehabilitation house such as Family House, the defendant was not placed there (or in an equivalent facility) by the Division of Corrections (or the defendant left the institution voluntarily, as was the case with 3 or 4 defendants sent to Family House). In only two cases was there a proceeding to resentence the defendant or modify his sentence once it was clear that the recommendation was not going to be followed.

The supreme court has set the rehabilitation of offenders high on the list of criteria to be considered at the time of sentencing. However, one obvious problem was expressed very succinctly by Judge Hanson when he said that the legislature has realized that persons need treatment but has not set up any way for them to get it. Especially when a defendant is sentenced to a long jail term, as were the defendants in this report, the lack of correlation between the defendant's need for treatment, the judge's recommendation for treatment, and the defendant's actual receipt of treatment is extremely

burdensome not only to the courts and the defendant, but to society who must support these persons while confined and deal with them when they are released. (It might further be noted that 7 of the defendants who were sentenced to 5 years or greater to serve in 1973 are, in mid-1975, not even in jail or an institution. Two are on bail pending their appeals, and 5 have finished serving time and are on parole or probation.)

Recommendations

The supreme court has said on numerous occasions that mere disparity in sentencing is not undesirable, and that on the contrary, disparity helps to achieve the purposes of sentencing. Rather, the key word in analyzing disparity in sentencing is whether or not it is justifiable.[26] While the supreme court will not review most of the sentences that were discussed here it is the recommendation of this report that the supreme court actively utilize the sentence appeal process to further expound the criteria it has set forth previously. Five years have passed since the sentence appeal law was enacted, and even though the court has said that sentences greater than 5 years should be given only to "the worst type of offenders" or only for "particularly serious offenses, dangerous offenders, and professional criminals", these terms have not been well enough defined. It has been noted especially that the 7 Black first offenders in Anchorage who received long sentences for robbery did not possess remarkably different characteristics from the 9 Caucasian male first offenders who received sentences of far less than 5 years.

A second proposal resulting from this study is a recommendation for better coordination of correctional activity with the purpose of any long sentence meted out in court. The "treatment" that is to be afforded a defendant during his period of incarceration or isolation must be respected as an integral part of the decision of how long that period need be. Presently the Division of Corrections, not the judge, makes the decision regarding where and how a defendant is to be confined.[27] Although no recommendation is made that this decision should be taken away from the correctional authorities, it is urged that the judge better coordinate his judgment of sentence and treatment recommendation with that of the Division of Corrections (presentence reports now are mandatory for felonies). If the judge's final recommendation is not followed, the judge should be notified forthwith by the Division of Corrections (and not by the defendant, as happened so often in 1973). Upon the DOC's notifying the judge that it cannot follow his recommendations, there should be a mandatory resentencing, subject to the present rules governing sentence modification.

To render the judge's participation in the correctional decision meaningful, judges must have an awareness of programs at existing facilities in the state and of any new developments in the broad field of corrections. Although a certain amount of judicial attention to matters concerning rehabilitation can be focused through participation in seminars and conferences, genuine devotion to theories and practices of rehabilitation or reformation must, in the end, be up to

each individual judge. Committees on judicial qualifications and other persons involved in the selection of judges should be made aware that a judge's interest in and attention to matters of criminal rehabilitation are an important aspect of his judicial abilities.

03-010

DEPARTMENT OF LAW

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Remarks:

PROPOSED COMMITTEE SUBSTITUTE FOR CSHB 600 am: A SYNOPSIS

I. OVERVIEW

The proposed committee substitute for CSHB 600 am is a comprehensive bill of limited application instituting a system of presumptive sentencing. The measure, which applies only to individuals convicted of two or more specific violent felonies, adresses one of the major shortcomings in the criminal justice system: just and equitable punishment.

Under the scheme encompassed in the proposed bill, an individual committing a violent felony for the first time is sentenced in accordance with existing law. Provisions for suspended terms of imprisonment, suspended imposition of sentence and probation would remain as alternatives to incarceration. For those sentenced to confinement, parole would be available upon completion of one-third of the sentenced term.

Only when the offender commits a second or subsequent violent felony within a prescribed period would the substantive sentencing provisions become applicable. From the nature of the offense and the offender's prior conduct, the system presumes the offender to be a danger to society, and attendently should be isolated therefrom for a minimum period. Neither the alternatives to imprisonment nor parole would be available to such an offender.

Prior to being sentenced, the offender is permitted to evidence certain circumstances which would mitigate against the presumptive term. For each of the specific factors established, the presumptive term would be automatically reduced by 10%. Similarly, the state can establish extraneous

factors which would be viewed as aggravating the crime committed. Each aggravating factor would automatically enhance the minimum presumptive term by 10%.

Recognizing that justice entails more than a mechanical scheme, the proposed bill gives the sentencing judge the discretion to certify that clear and manifest injustice would result from imposition of the presumptive term. Sentencing of the offender would then become the responsibility of a three-judge sentencing panel.

The three-judge panel would be composed of three superior court judges, designated as members, and two superior court judges, designated as alternates. The alternates would sit as members in the event of disqualification or disability. The panel would be appointed by the chief justice and would serve under rules established by the supreme court.

The panel is charged to consider all the relevant material, including trial transcripts and matters educed at sentencing. In its discretion, the panel may also hear oral testimony. A majority of the panel would then sentence the offender to any term available under the law. Effectively, the offender is no longer subject to the dictates of presumptive sentencing.

The proposed bill also addresses the system of awarding good time in correctional institutions. The present scheme is an amalgam of statutory and meritorious good time which, at best, is confusing to administrators and prisoners alike. The proposed approach allows a prisoner to earn a one day reduction in his period of confinement for each day of

good behavior served. Further, the inmate could only forfeit a maximum of thirty days accrued good time for any one subsequent infraction.