Restriction on Municipal stores to jerk license if they sell to drunks

---

Sell liquor but community cannot make profit off the store

Private licenses - but with restrictions

---

1. investigate
2. Police

Regs + stat → and enforcement

Big Problem

What commitment of state to enforce

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 240
Title An Act Relating to Alcoholic Beverages, and Providing for an Effective Date
Requested by Office of the Governor Date February 17, 1977

Note: The information shown on this fiscal note represents a compilation of fiscal notes submitted by the effected agencies.

II. FISCAL DETAIL
Agency Affected Office of the Governor, Departments of Revenue and Community and Regional Affairs
Program Category Affected General Government, Public Protection, Development
Budget Request Unit(s) Affected Elections, ABC Board, Alcohol Revenue Sharing (new)

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES		60.0	63.0	66.1	69.4	
200	TRAVEL		9.0	9.0	9.0	9.0	
300	CONTRACTUAL		28.5	28.0	3.0	3.0	
400	COMMODITIES		.8	1.0	1.0	1.0	
500	EQUIPMENT		2.5				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.		53.0	224.2	414.6	439.5	
	TOTAL		153.8	325.2	493.7	521.9	

FUNDING (Thousands of Dollars)

GENERAL FUND		153.8	325.2	493.7	521.9	
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		3	0	0	0	
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Major Assumptions:

1) Consumer Price Index will increase annually at 6%.
2) Seven cities (Bethel, Eagle, Klawock, Nondalton, Ouzinkie, Port Lions, Selawick) will be eligible for compensation for lost revenue in FY 78 by virtue of their current legal status with regard to alcohol sales.
3) Fifty communities, with an average population of 300 people each, will vote themselves "dry" and become eligible for lost revenue compensation in each of fiscal years 1978 and 1979.
4) No additional districts will vote themselves "dry" after FY 79.
5) Eligibility for compensation for lost revenue due to "dry" status will commence on July 1st following the date of the election of such status by a community.
6) The population of the communities which opt for "dry" status will not, on the average, increase during the period of time covered by this fiscal note.
7) Each precinct election is estimated to cost $500 with fifty such elections estimated as being required in each of two fiscal years, FY 78 and FY 79.

IV. DATE February 17, 1977 PREPARED BY Ron Lind (con't on attached page)
AGENCY Division of Budget and Management
PHONE 465-2213

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

B. Additional Personnel Required:

The Alcoholic Beverage Control Board staff will require two additional ABC Investigator positions to enforce the provisions of this act ($22.8 per position plus travel and equipment).

Correspondence, licensing and clerk-typist support for the enforcement of the provisions of this Act require that an additional clerk-typist III position be assigned to the ABC board staff ($14.4 plus equipment).

C. Estimated Budgetary Impact by Year and Budget Request Unit

		BUDGET REQUEST UNIT			
	Line Item	Alcohol Revenue Sharing*	ABC Board	Elections	Total
FY 78	Personal Services		60.0		60.0
	Travel		9.0		9.0
	Contractual Svcs		3.5	25.0	28.5
	Commodities		.8		.8
	Equipment		2.5		2.5
	Grants	53.0			53.0
	TOTAL	53.0	75.8	25.0	153.8
FY 79	Personal Services		63.0		63.0
	Travel		9.0		9.0
	Contractual Svcs		3.0	25.0	28.0
	Commodities		1.0		1.0
	Equipment				
	Grants	224.2			224.2
	TOTAL	224.2	76.0	25.0	325.2
FY 80	Personal Services		66.1		66.1
	Travel		9.0		9.0
	Contractual Svcs		3.0		3.0
	Commodities		1.0		1.0
	Equipment				
	Grants	414.6			414.6
	TOTAL	414.6	79.1		493.7
FY 81	Personal Services		69.4		69.4
	Travel		9.0		9.0
	Contractual Svcs		3.0		3.0
	Commodities		1.0		1.0
	Equipment				
	Grants	439.5			439.5
	TOTAL	439.5	82.4		521.9

* New BRU

OFFICE OF THE GOVERNOR
JUNEAU

JAY S. HAMMOND
GOVERNOR

FOR INFORMATION CONTACT:
Scott Foster, Press Secretary
Office of the Governor
Pouch A Juneau, Alaska 99811
OR PHONE: 907-465-3500

GOVERNOR HAMMOND'S STATEMENT ON INTRODUCTION OF ALCOHOL ABUSE PACKAGE TO LEGISLATURE
FEBRUARY 18, 1977
#33

file in HB 240 committee file.

"LAST SPRING I APPOINTED A CABINET-LEVEL COORDINATING COMMITTEE TO STUDY THE PROBLEMS OF ALCOHOL ABUSE IN ALASKA.

THE COMMITTEE'S FINDINGS ARE GRIM, THOUGH NOT REALLY SURPRISING. IN 1975, EXCESSIVE DRINKING WAS FOUND TO BE INVOLVED IN: 45% OF ALL REPORTED CASES OF CHILD NEGLECT; 25% OF ALL REPORTED CASES OF CHILD ABUSE; 45% OF ALL FATALITIES FROM TRAFFIC ACCIDENTS; 60% OF ALL FATALITIES FROM BOATING ACCIDENTS; AND 30% OF ALL FATALITIES FROM FIRES.

ALCOHOL ABUSE HAS AN ENORMOUS IMPACT ON THE CRIMINAL JUSTICE SYSTEM: OVER 30% OF THE WORK OF STATE TROOPERS AND STATE PROSECUTORS, AND OVER 60% OF THE WORK IN THE PUBLIC DEFENDER AGENCY, IS TRACEABLE TO ALCOHOL-RELATED INCIDENTS, INCLUDING VIOLENT CRIME, DISORDERLY CONDUCT, DRUNK DRIVING, ALCOHOL CODE VIOLATIONS, AND SO ON. ALCOHOL HAS ADDED COMPARABLE COSTS TO THE STATE'S COURTS AND JAILS. IT ADDS SIGNIFICANTLY TO THE COST OF WELFARE PROGRAMS.

"IN ADDITION, THE COMMITTEE FOUND THAT, ALTHOUGH THE STATE RECEIVED OVER $7 MILLION IN ALCOHOL EXCISE TAXES AND LICENSE FEES IN 1975, ALCOHOL-RELATED STATE GENERAL FUND EXPENDITURES WERE IN EXCESS OF $17 MILLION. THIS FIGURE INCLUDES ALCOHOL-RELATED COSTS INCURRED IN ALCOHOLISM TREATMENT, SOCIAL SERVICES, WELFARE PROGRAMS, THE CRIMINAL JUSTICE SYSTEM, AND OTHER PROGRAMS.

"FINALLY, ALASKANS DO INDEED DRINK A LOT AND ARE DRINKING MORE ALL THE TIME. CURRENTLY ALASKANS DRINK 57% MORE ALCOHOL PER CAPITA THAN THE NATIONAL AVERAGE. 80% MORE ALCOHOL IS CONSUMED

OBSERVATION THAT SOCIETIES WITH LOW PER CAPITAL ALCOHOL CONSUMPTION GENERALLY EXPERIENCE LOW RATES OF EXCESSIVE DRINKING, WHILE SOCIETIES WITH HIGH PER CAPITA CONSUMPTION SHOW CORRESPONDINGLY HIGH RATES OF EXCESSIVE DRINKING. THE COMMITTEE CONCLUDED THAT INCREASINGLY HEAVY PER CAPITA ALCOHOL CONSUMPTION CARRIES WITH IT INCREASINGLY HEAVY IMPACTS OF ALCOHOL ABUSE AND RELATED PROBLEMS.

"I AM INTRODUCING LEGISLATION IN RESPONSE TO THESE FINDINGS, IN THE HOPE THAT BY TAKING POSITIVE ACTION WE CAN, AS A SOCIETY, REDUCE THE CHRONICALLY DEBILITATING EFFECTS OF ALCOHOL.

"HOUSE BILL 196, WHICH I INTRODUCED ON FEBRUARY 9, WILL RAISE $10 MILLION ADDITIONAL REVENUE FROM ALCOHOL EXCISE TAXES AND LICENSE FEES, TO MORE EQUITABLY FUND ALCOHOL-RELATED STATE COSTS AND TO STABILIZE THE OVERALL CONSUMPTION OF ALCOHOL IN ALASKA. I AM PROPOSING TO RAISE THE TAX ON HARD LIQUOR BY 50¢ PER FIFTH; ON BEER BY 28¢ PER 6-PACK; AND ON MOST WINES BY 45¢ PER HALF GALLON. TAX INCREASES OF 2¢ PER SHOT OF HARD LIQUOR AND 5¢ PER CAN OF BEER ARE HARDLY PROHIBITIVE.

"ON JANUARY 24, I INTRODUCED A BILL TO TIE EXCISE TAXES ON MOTOR FUELS, CIGARETTES, AND ALCOHOL TO THE CONSUMER PRICE INDEX. THE EXCISE TAX ON ALCOHOL HAS REMAINED AT THE SAME DOLLAR AMOUNT PER GALLON SINCE 1961. STATE COSTS RISE WITH INFLATION. THIS BILL WOULD PROVIDE FOR EXCISE TAX REVENUES TO RISE WITH INFLATION AS WELL.

"I AM NOW SUBMITTING FURTHER LEGISLATION AIMED AT PROVIDING BUSH COMMUNITITES WITH ADDITIONAL LEGAL RECOURSE IN TRYING TO COPE WITH THEIR OFTEN UNIQUE AND SEVERE ALCOHOL PROBLEMS.

"FIRST, WE PROPOSE THAT MUNICIPALITIES BE EMPOWERED TO LEVY ANY SALES TAX RATE ON ALCOHOL THEY CHOOSE; WHETHER FOR PURPOSES OF MEETING LOCAL ALCOHOL-RELATED COSTS, OR FOR FURTHER INCREASING THE PRICE, OR BOTH.

RETAILERS IN ALL IN-STATE PUBLICATIONS, AND ON ALL IN-STATE RADIO AND TELEVISION PROGRAMMING. THERE IS PRECEDENT FOR PUBLIC RESTRICTIONS ON ADVERTISING AND THE DEMAND FOR ALCOHOL IN ALASKA HAS LITTLE NEED OF MEDIA STIMULATION.

"CONCERNING DRY COMMUNITIES, MY PROPOSALS ARE AS FOLLOWS:

1) PROVIDE A LOCAL OPTION FOR RESIDENTS OF A DRY TOWN TO BAN IF THEY CHOOSE MAIL ORDER AND TELEPHONE ORDER SHIPMENTS OF ALCOHOL INTO THEIR COMMUNITY.

2) PROHIBIT THE POSSESSION IN DRY COMMUNITIES OF LARGE AMOUNTS OF ALCOHOL, IN ORDER TO REDUCE BOOTLEGGING.

3) CHANGE THE CRIME OF BOOTLEGGING IN DRY COMMUNTIES FROM A MISDEMEANOR TO A FELONY, AND ALLOW THE CONFISCATION OF CARS, TAXI CABS AND AIRPLANES INVOLVED IN ILLEGAL SALES.

4) ALLOW COMMUNITITES TO SELL PACKAGED LIQUOR UNDER A NEW CATEGORY OF LICENSE THAT CREATES A TWO-WEEK TIME LAG BETWEEN ORDER AND DELIVERY.

5) COMPENSATE TOWNS AND VILLAGES FOR ALCOHOL SALES TAX REVENUE LOST AS A RESULT OF VOTING DRY.

"OUR DESIRE IS TO MAKE IT MORE LIKELY THAT A COMMUNITY VOTING DRY IN RESPONSE TO SERIOUS ALCOHOL PROBLEMS CAN EXPECT A MAJOR REDUCTION IN THE FLOW OF ALCOHOL INTO THE AREA.

"FINALLY, I AM SUBMITTING LEGISLATION TO APPROPRIATE $1.5 MILLION BEYOND THE FY '78 BUDGET REQUEST FOR EXPANDED ALCOHOL ABUSE PREVENTION AND TREATMENT PROGRAMS. THE FUNDS WOULD BE USED PRIMARILY AS FOLLOWS:

PURCHASE AND INSTALLATION OF DETOXIFICATION FACILITIES AT TWELVE NEW LOCATIONS, WITH A REQUIREMENT FOR LOCAL MATCHING FUNDS.

PROVIDE FUNDS FOR OPERATION OF A 30-DAY RESIDENTIAL TREATMENT FACILITY.

PROVIDE FOR A PUBLIC INFORMATION PROGRAM CONDUCTED THROUGH THE MEDIA, AND DEVELOP AN ALCOHOL EDUCATION CURRICULUM FOR PUBLIC SCHOOLS.

AS I HAVE STATED PREVIOUSLY, MY EVENTUAL APPROVAL OF SUCH ADDITIONAL EXPENDITURES WILL DEPEND ON PASSAGE OF ADDITIONAL TAXES BY THE LEGISLATURE TO PAY FOR THEM.

"THE PROPOSALS I HAVE MENTIONED CONSTITUTE A REASONABLE FIRST STEP IN ADDRESSING THE PROBLEMS OF ALCOHOL ABUSE IN ALASKA. SOME WILL FIND THESE PROPOSALS TOO STRONG; THOUGH I MUST ASK THEM WHAT ALTERNATIVES THEY HAVE IN MIND FOR REDUCING OUR ALCOHOL-RELATED PROBLEMS, AND WHAT EVIDENCE EXISTS TO PERSUADE US THAT THE ALTERNATIVES MAY WORK. OTHERS MAY FEEL THAT WHAT WE PROPOSE IS NOT ENOUGH TO SUBSTANTIALLY LOWER THE COSTS OF ALCOHOL ABUSE. MY REPLY IS THAT WE DISAVOW A RETURN TO THE UNWORKABLE EXTREME OF PROHIBITION. WE ARE ATTEMPTING TO FIND A "MIDDLE GROUND" WHICH RECOGNIZES PEOPLE'S RIGHT TO CONSUME ALCOHOL BUT ALSO RECOGNIZES OUR OBLIGATION TO PROTECT THE PUBLIC HEALTH, WELFARE, AND SAFETY AND DO IT IN A COST-EFFECTIVE WAY."

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 18, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Last spring I appointed a coordinating committee to study the problem of alcohol abuse in Alaska. The results of this study are shocking:

- Alaskans drink over half again as much liquor as the average American.

- We drink 80% more alcohol per capita than we did 20 years ago.

Excessive drinking was found to be involved in:

- 45% of all reported cases of child neglect;

- 25% of all reported cases of child abuse;

- 45% of all fatalities from traffic accidents;

- 60% of all fatalities from boating accidents;

- 30% of all fatalities from fires.

In addition, the study found that alcohol abuse has placed a tremendous burden on the criminal justice system: over 30% of the work of the State troopers and State prosecutors is devoted to incidents involving excessive drinking, and over 60% of the work of the Public Defender Agency is traceable to alcohol-related events, such as violent crimes, disorderly conduct and drunk driving.

Alcohol has added comparable costs to the State's courts and jails. It adds greatly to the cost of welfare programs.

The Committee found that alcohol abuse cost the State of Alaska over $17 million in 1975. This includes the cost of alcohol treatment programs as well as the costs to all State agencies dealing with alcohol-related problems. Yet in 1975, the sale of alcohol generated only $7 million from taxes and fees.

As a result of the Committee's work, I am introducing six pieces of legislation this session to combat the massive problem that alcohol causes in our society. Together, these measures will help deter alcohol abuse; require the sale of alcohol to more nearly repay the State for the costs it creates; and strengthen anti-bootlegging laws.

I have proposed that the alcohol excise tax and license fees be increased sufficiently to raise an additional $10 million. House Bill 196 was introduced by me on February 9, 1977; today I have introduced an identical bill in the Senate. I have proposed in SB 76, introduced on January 24, 1977, that the excise tax on alcohol as well as on motor fuel and cigarettes be tied to the Anchorage consumer price index. Under this proposal, the Commissioner of Revenue could, with the concurrence of the legislature, revise the tax rate annually.

I am requesting appropriations totaling $1.5 million for additional alcohol detoxification, treatment, and rehabilitation programs. I believe these expenditures must be funded through the increase in the alcohol excise tax rates which I have proposed.

I am proposing that municipalities be allowed to levy a sales tax on alcohol at a rate higher than that on other commodities.

I am also proposing major revisions to Title 4 of the Alaska Statutes which regulates the sale of alcohol. Among other things, these revisions will:

- reimburse towns and villages for sales tax revenue they may lose as a result of voting "dry"; I expect this provision to be funded from the alcohol excise tax increase that I have proposed;

- allow "dry" communities to vote to ban mail-order and telephone-order shipments of alcohol to the community;

- allow communities to elect to sell packaged liquor under a new category of license that creates a two week time-lag between the order and delivery;

- prohibit the advertising of beverage alcohol;

- prohibit the possession in "dry" communities of large amounts of alcohol;

- change the crime of bootlegging from a misdemeanor to felony and allow the confiscation of cars, boats, and airplanes which are used in bootlegging.

Finally, I propose to simplify and streamline the administration of alcohol-related programs by combining the Office of Alcoholism and the Office of Drug Abuse. Legislation to accomplish this reorgainzation will be introduced in the near future.

The rationale for these measures is spelled out in detail in the report of the Coordinating Committee on Alcoholism, which has been made available to every legislator. Additional documentation is available through the Office of Alcoholism.

If one or more of the measures I have proposed are regarded by some as drastic, I reply that alcohol abuse in Alaska is a drastic problem. A forceful and determined effort must be made to combat it.

Sincerely,

Jay S. Hammond
Governor

HB
274

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

Minutes of the Committee Meeting of 3/17/77

The meeting was called to order by Chairman Gardiner at 7:00p.m.
Present were: Chairman Gardiner
Vice - Chairman Miles
Rep. Brown
Rep. Specking
Rep. Dankworth

Absent were:

Rep. Eliason
Rep. Rudd

The Committee first took up the salary commission report and heard testimony from Kay Deeble of the Salary Commission. Ms. Deeble briefly went over parts of the report, dealing with the executive and judicial catagories and discussed the three major aspects of legislative provisions dealing with salary, per dium, and vouchers. Ms. Deeble was questioned by the Committee and other Legislators and observes at the meeting regarding specific methods by which they arrived at the per dium recommendation and the vouchery recommendations.

The Committee then heard from LAA Attorney, Dick Bradley, regarding a request that had been made by Chairman Gardiner for a legal opinion dealing with aspects of the Salary Commission report. A three page memo was handed out to the Committee members prior to the meeting in the full report had not been typed as of the time of the meeting but Mr. Bradley gave an oral presentation.

Rep. Swanson testified briefly on HB 8 which would repeal the salary commission and the salary commission recommendations.

Speaker Malone testified on HB 8 and HB 274,275,276,277,278 & 279. Malone testified in favor of repealing the salary commission report with respect to legislative compensation or taking the legislative compensation out of the purview of the salary commission.

Rep. Parr testified in favor of amending the existing law governoring the salary commission but basicly letting it continue in its work. He also testified that the legislative recommendations of the report should be ignored and the legislature enact its own salary and benefit levels.'

The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentation of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M March 14, 1977

SUBJECT: Final Report of Salary Commission (W.O. #3646)

TO: Representative Terry Gardiner

FROM: Richard A. Bradley
Legislative Counsel

By your request of March 7, you have requested my comments on the January 18, 1977 report of the Alaska Salary Commission to the Legislature.

Your request asked:

> (1) Do the Salary Commission recommendations follow the law (AS 39.23)? If they do not, set out the questionable areas.
>
> (2) May a resolution approving the request amend the recommendations and condition legislative approval or is the legislature limited to an approval or rejection of the recommendations?

You also asked that I draft a resolution consistent with my conclusions.

An analysis of AS 39.23 is required in order to provide you the advice you request.

AS 39.23.080(c) provides that the Salary Commission will make a

> "final report of its findings and recommendations as to the rate and form of compensation and retirement benefits ... within 10 days after the first regular session of a legislature convenes. The recommendations regarding compensation become effective, retroactive to January 1, only if approved by concurrent resolution before the end of a session. The recommendations regarding retirement become effective if enacted into law by the legislature." (Emphasis added.)

Sec. 80(d) allows the commission to submit amendments to its report, apparently without any limitation as to time, except that a new report is required for a new legislature. Recommendations as to compensation lapse if not affirmatively approved during the first session of each legislature and the law contains no express mechanism for resubmission of proposals regarding compensation to the second session of the legislature of the first recommendations lapse.

Sec. 120 provides the "Policy of the Legislature:"

> It is the policy of the legislature that the commission determine the salary schedule and retirement benefits for public officers based upon equitable relationships being maintained among state positions. (Emphasis added)

In my opinion, the legislature by the enactment of AS 39.23 has divested itself of the authority to set the compensation of the public officers listed in AS 39.23.060. While legislative approval is required, it is by a resolution of relatively low dignity, a concurrent resolution. Uniform Rules, Alaska State Legislature, Rule 51(c). If a concurrent resolution is used, in my opinion the legislature is limited to an approval or disapproval of the recommendations as to compensation. If a recommendation is disapproved, the legislature has in effect directed the commission to resubmit recommendations. I note that §80(d) allows the commission to amend its recommendations and it may clearly amend if a recommendation is rejected.

A more difficult question is presented by the possibility that the legislature may wish to reject some recommendations while approving the remainder. The charge to the commission in §110 of the law is to establish a "schedule" "based upon equitable relationships being maintained among state positions." At least in theory, an approval that is less than total may cause the establishment of inequity among the positions. Nonetheless, in my judgment the legislature may approve or disapprove all the recommendations or it may approve only a part. Note that while in my opinion the legislature retains an option to disapprove recommendations, its failure to approve a recommendation becomes a rejection at the "end of [the] session." Sec. 80(c).

A proposal as to retirement benefits must be adopted by an amendment to the retirement act by law.

I assume that you recognize, moreover, that my opinion as to the limited options that the legislature possesses is neces-

sarily founded on a decision by the legislature to remain within the framework of AS 39.23. The legislature cannot, by the enactment of any law, divest itself of the underlying constitutional prerogative of setting the compensation of the officers listed in AS 39.23.060.

Accordingly, in my opinion, the legislature

(1) must approve a recommendation before it can take effect.

(2) may approve less than all of the recommendations.

(3) may not change a recommendation as to compensation by a concurrent resolution.

(4) may approve a recommendation as to retirement benefits only by amending the retirement law.

My opinion as to the consistency of the Commission's recommendations with AS 39.23, existing law, and the Constitution is contained in a separate memorandum.

RAB:hjd

Amendment of March 2, 1977 to Alaska Salary Commission Final Report.

Amend Page 7, Section 13, Paragraph D to read:

D) Legislators receive an /vouchered/ annual allowance of of /$2500/ $4000 with vouchering of the allowance to begin January 1, 1978.

Amend Page 8, Section 13, Paragraph G to read:

G) Recognizing the need for maintaining constituent contact, each legislator shall be reimbursed at cost, and upon presentation of proof, for one round-trip to his home district during each regular session. The trip is considered to be legislative business and per diem outlined in Pargraph F shall apply.

3/14/77 7pm

— Salary Commission

present
Gardiner
Miles
Dankworth
~~Ellison~~
Spalding

Brown

Salary Commission Report
Kay Diebel
Legislative per diems

Calif
New York
Illinois
~~Alaska~~

full time
Salaries

if adopted would be eighth

nobody on Commission ever worked in any of the positions for which salary recommendations were made.

Mckinnon.

statute = pay in 12 equal monthly installments

recommendations = pay or not

3/14/77

Salary Commission did not arrive at a figure of four for ~~the~~ legislature but what would ~~be~~ be advisable to the public.

— arrived at a figure - but it was just a little less than figure just turned down — therefore they lowered.

Vouchering —

office supplies
postage
etc. telephone calls.
not salary

— ~~only~~ 8 State allow - unrestricted, unvouchered.

only item before committee
recommendations -
not appendices
~~Governor~~ not philosophy

Governor. 50,000

① retirement
② ~~Longevity~~ longevity

The act creating salary commission
gave no guidelines

Lt Governor 44,000 ⇒ 47,300

Agst. Commissioner
47,300
not legal or constitutional

~~Deputy~~ 43,200
Deputy Comm

Directors -
no change recommended
but salary level is set by division
of personnel - no legislation or regulations

conclude
① division of personnel has lost its basis
to set salary
② didn't realize wide disparity

about 1600 ft Bradley

3/14/77

problem with directors

Commissions =

APUC
Limited Entry
Pipeline

Judges.

10c
11c
12c } not before committee at this time

10d, 11d, 12d judges after 1/~~77~~78

Legislature

13(a) no ~~statutory~~ statutory authority to ~~be~~ recommended after three 12-month installments.

~~13(a) if~~
~~13(b)~~

13(b) ambiguity =

Summary HB 8
in favor of repeater of Salary Commission

Bradley.
13(c) – no legal or constitutional
offense as citizen.

13(d) no authority for voucher

13(e) retirement system mandatory

13(f) Per diem.

13(g) trip home during session.
difficulty finding it in Commissions
charge.
or if in charge – authority to
recommend to ~~add to~~ alter
expenses.

Side 2

MALONE 400 B

39.23.070(6)

→ HB 8.

Salary Commission
concept was not working.

with respect to legislative compensation
go back to old system —
take legislative pay out of salary
commission.

HB 74.
Sale. Commission doesn't work

275 — adopts recommendations of
Commission:

HB 276 —
Sec. 1 — sets legislation for legislative
salary
ratify — increase salary from $9,000
to 19,705

~~Line w/~~ voucher system
per diem = $50.00.
~~———~~ recommendation to drop
per diem after 100 days bad.

HB 277 increase per diem

Minutes of constitution convention
good public policy to cover costs
of legislatures incurs.

HB 278 —
make adjustment of cost of living.
for areas of the state

HB 279 —
same as Salary Commission
except make it retroactive to
10/14/76.

Rep Parr 0920 pm

~~Report of Committee~~

(1) amend of existing law governing the
commission - let it continue.

(2) ~~do not approve~~ ignore legislative recommendations
of report

(3) approve ~~governors~~ / judicial portions
of report.

about 900

Committee discussion. 0930 pm

Spalding = adopt Malone approach
disagree w/ numbers

Brown — want consensus of fellow legislators.

Dankworth — support the initiative
vote against any pay raise
legislature set own salaries
do away with commission
per diem support to equal to what other
state employees

Miles - do not repeal commission
agree w/ Para
give another chance — give better direction
do not adopt commission recommendations.

Gardiner.
— commission made a better recommendation than last legislature
— ~~80~~ 87% acceptable
— more thought, research
— changes to salary commission act
① no referral for commission
② legal standards
③ authority to make optional recommendations
④ approve all of the legal recommendations
~~part~~ this out.

HB
276

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE COMMISSIONER / POUCH C – JUNEAU 99811
JAY S. HAMMOND, GOVERNOR

March 2, 1977

Honorable Terry Gardiner, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Representative Gardiner:

The new employee payroll system being developed by the Department of Administration and scheduled for implementation early in Fiscal Year 1978, provides for all salaries to be paid on a bi-weekly basis instead of the current monthly schedule.

Last year, legislation relating to salaries was written to express only annual amounts to avoid any possible conflict with provisions of the new payroll system. We note, now, that House Bills 276 and 279 referred to your committee again express salaries for certain employees as "payable monthly in 12 equal installments."

It would be appreciated if these bills could be amended to express only the annual amount. Your assistance in this regard is appreciated and if there is any further information we can give you in this regard please do not hesitate to call us.

Very truly yours,

Richard Freer

Richard W. Freer
Deputy Commissioner

RWF/kw

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

Minutes of the Committee Meeting of 3/17/77

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Rep. Brown
Rep. Specking
Rep. Dankworth

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Rep. Rudd

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Rep. Parr testified in favor of amending the existing law governoring the salary commission but basicly letting it continue in its work. He also testified that the legislative recommendations of the report should be ignored and the legislature enact its own salary and benefit levels.'

The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentation of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

Members file

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER / *POUCH C – JUNEAU 99811*

March 2, 1977

Honorable Terry Gardiner, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Representative Gardiner:

The new employee payroll system being developed by the Department of Administration and scheduled for implementation early in Fiscal Year 1978, provides for all salaries to be paid on a bi-weekly basis instead of the current monthly schedule.

Last year, legislation relating to salaries was written to express only annual amounts to avoid any possible conflict with provisions of the new payroll system. We note, now, that House Bills 276 and 279 referred to your committee again express salaries for certain employees as "payable monthly in 12 equal installments."

It would be appreciated if these bills could be amended to express only the annual amount. Your assistance in this regard is appreciated and if there is any further information we can give you in this regard please do not hesitate to call us.

Very truly yours,

Richard Freer

Richard W. Freer
Deputy Commissioner

RWF/kw

HB
277

4:00 pm
3/14/77
SB

YEAR	CPI*	% INCREASE
October 1966	97.9	
October 1967	100.0	2.1%
October 1968	102.6	2.6%
October 1969	107.3	4.6%
October 1970	111.5	3.9%
October 1971	114.4	2.6%
October 1972	116.9	2.2%
October 1973	123.8	5.9%
October 1974	140.0	13.1%
October 1975	157.4	12.4%
October 1976	167.6	6.5%
January 1977	169.4	

1972 to 1976 had a total of 43.4% increase, or an average increase of 8.02%

the numbers were prepared by Chris Miller of the Department of Labor, Research and Analysis, 465-4514

* Consumer Price Index for Anchorage

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

Minutes of the Committee Meeting of 3/17/77

The meeting was called to order by Chairman Gardiner at 7:00p.m.
Present were: Chairman Gardiner
Vice - Chairman Miles
Rep. Brown
Rep. Specking
Rep. Dankworth

Absent were:

Rep. Eliason
Rep. Rudd

The Committee first took up the salary commission report and heard testimony from Kay Deeble of the Salary Commission. Ms. Deeble briefly went over parts of the report, dealing with the executive and judicial catagories and discussed the three major aspects of legislative provisions dealing with salary, per dium, and vouchers. Ms. Deeble was questioned by the Committee and other Legislators and observes at the meeting regarding specific methods by which they arrived at the per dium recommendation and the vouchery recommendations.

The Committee then heard from LAA Attorney, Dick Bradley, regarding a request that had been made by Chairman Gardiner for a legal opinion dealing with aspects of the Salary Commission report. A three page memo was handed out to the Committee members prior to the meeting in the full report had not been typed as of the time of the meeting but Mr. Bradley gave an oral presentation.

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The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentatio of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

HB
279

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER / *POUCH C – JUNEAU 99811*

March 2, 1977

Honorable Terry Gardiner, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Representative Gardiner:

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Very truly yours,

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Deputy Commissioner

RWF/kw

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The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentation of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

House Judiciary
March 8, 1977

The meeting was called to order at 3:00 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Eliason, Brown and Specking. Mrs. Rudd was absent.

HB 112 Appropriation for capital improvements within the court system HB 112

Mr. Miles explained the memo that he had written to the committee regarding HB 112.

Art Snowden, Director of the Court System, explained that the costs indicated in this bill were provided on the basis of consultation with the Department of Public Works.

Mr. Brown reminded the committee that the $710,000 figure for the Fairbanks Court Building had been amended to be reduced to $60,000.

Mr. Miles asked if these figures in the bill are still valid. Rick Barrier, Manager of Fiscal Operations for the Court System, answered that "yes", they were.

There was a general discussion about other court building projects and their costs.

Mr. Brown moved that the Dillingham figure be changed to 1,063,027 (instead of 1,458,000). He also moved that a letter be sent to the Finance Committee with the bill to have them consider a lease-back program for the Dillingham Court Building.

The committee generally feels that the costs are unrealistic. The Finance Committee will probably adjust the figures. The bill was moved out of committee. Gardiner will write a letter to the Finance Committee- to accompany the bill- saying that the Judiciary Committee felt that the figures provided by Public Works were unrealistic.

HB 279 Judicial compensation HB 279

Art Snowden explained the purpose of this bill as being to make it so that all judges are paid the same salary, rather than having the salaries vary from one part of the state to another.

This bill does essentially the same thing as the salary commission recommendation. Only one or the other will be adopted.

This bill will be taken up again at a later date with similar Malone bills.

HB 278 Geographic cost of living salary differentials for judicial officers HB 278

Art Snowden explained that the purpose of this bill would be to provide judges with a cost of living differential, like other state employees. It provides the same % cost of living increase as for other state employees.

It was indicated that the 7.5 % for the retirement system wouldn't apply to judges presently sitting, but it would apply to judges coming on after the effective date of the act.

Susan Burke, Staff Counsel for the Court System, also answered some questions about the bill.

Mr. Brown objected to the title of the bill. He felt it was not broad enough to cover section 4 on retirement. The committee agreed.

Mr. Brown indicated that Section 25.25.049 may be redundant with other law. If not, the interest rate referred to in the bill needs to be more specific.

This bill will be considered again at a later date.

HB 238 Inquiries into cause of death HB 238

Susan Burke explained the intent of the bill. She said, however, that this was the first time that she had seen section 2... and she doesn't feel that a coroner's inquest should be completely illiminated (which line 19 would do).

Mr. Eliason moved that section 2 of the bill be deleted. He also moved the bill out of committee. Both motions passed and the bill was moved out of committee.

HB 237 Appointment and compensation of registrars of vital statistics HB 237

Art Snowden and Susan Burke explained the purpose of the bill.

Mr. Gardiner requested that Rick Barrier, Manager of fiscal operations for the court system, get together with the Department of Health and Social Services to come up with a fiscal note for this bill.

Lois Jund, Deputy Commissioner for the Department of Health and Social Services, was here but indicated that they would need more information about the bill before being able to testify.

This bill will come up again later.

The meeting was adjourned at 4:30

HB
297

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

PUBLIC DEFENDER AGENCY

333 K STREET
ANCHORAGE 99501
PHONE: 907-~~279-0455~~ 279-7541

March 16, 1977

Walter Carpeneti
Assistant Public Defender
Pouch AE
Juneau, Alaska 99811

Re: Senate Bill 206

Dear Bud:

As I discussed with you on the telephone today, this agency has been requested to testify on the subject of Senate Bill 206: The so-called "presumptive sentencing" bill. Unfortunately, I am beginning a two-count murder trial on Monday, and I will not be able to come to Juneau to testify, even though I think the bill is important enough to justify such action. I have asked you to substitute for me and to be the representative of this agency at the hearings on the bill. I hope that you will submit this letter as a part of your testimony, as it gives my views on the bill and outlines what I would say.

First, I am generally in favor of any attempt to clean up, simplify, make more efficient and rational the criminal law. The present Alaska Statutes dealing with this subject are frequently poorly conceived and badly drafted; undoubtedly, they need revision. However, a comprehensive revision of Alaskan criminal law is currently underway. This approach is a better idea than piecemeal legislation.

The presumptive sentencing bill is a major change in the law. It follows closely upon another major policy change imposed by the Attorney General's ban on plea bargaining. Although we cannot yet evaluate the effects of no plea bargaining on our system, I feel safe in saying that a tremendous impact has already been felt, including a large increase in trials, an even larger increase in appeals, and an increase in the expense of processing criminal cases.

I anticipate an unquantifiable, but probable, financial effect on this agency, the court system, prosecution, and the taxpayers of this state from yet another major policy change. Almost certainly we will see an increase of

litigation caused by this very complicated bill. As I told Duncan Fowler of the State Criminal Justice Planning Agency (see letter attached), the bill is a litigator's dream, and I foresee much litigation merely to determine how the Alaska Supreme Court will construe it.

I do not know precisely what statistics upon which Mr. Rubinstein based the sentencing figures in his statute. I certainly hope that the legislature has required an adequate analysis of backup statistics. I asked Mr. Rubinstein for these figures, but he could not provide them for me on short notice.

I suppose my major problem with the bill is precisely that of short notice. It was submitted late, and appropriate opportunity has not been had to solicit well-prepared responses to the bill from all segments of the system. The Criminal Code revision has included input from all segments: Court System, prosecution, defense, and public. It would not appear that the same equality of response has been provided with regard to Senate Bill 206.

Very truly yours,

Brian Shortell

Brian Shortell
Public Defender

BS:jd

Enclosures

House Judiciary
March 30, 1977

The meeting was called to order at 3:10 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Eliason and Specking. Mr. Brown came late. Mrs. Rudd was absent.

HB 297 Sentencing

HB 297

Bud Carpenetti from the Public Defender's Office in Juneau was here on behalf of Brian Shortell (head of the Public Defender's Office in Anchorage). He indicated that they have some problems with this bill in that some references don't coincide with the system being proposed by the Criminal Code Revision Subcommission. The feel that the timing of this legislation is bad- that it may be premature. He indicated that the bill is based on the premise that judges can't be trusted.

Commissioner Burton from the Department of Public Safety was here to testify in support of the bill. He said that the law enforcement people that he knows and has spoken with are in support of this bill.

Dan Hickey from the Dept. of Law was here to speak to the fiscal note that had been drawn up by the Dept. of Health and Social Services. Mike Rubenstein from the Judicial Council also spoke about the fiscal note. The committee's feeling seemed to be that they found the fiscal note to be troublesome.

There were further comments on the bill by both Dan Hickey and Mike Rubenstein. Mr. Rubenstein said that he didn't feel that Mr. Carpenetti's statement that this bill is based on the premise that judges can't be trusted is correct.

This bill will be considered again later.

The meeting was adjourned at 4:45 p.m.

House Judiciary
March 19, 1977

The meeting was called to order at 1:30 p.m. Members present were Gardiner, Miles, Brown, Rudd, Specking and Dankworth. Mr. Eliason was absent.

HB 297 Sentencing HB 297

Testimony on HB 297 was continued from Friday, starting with "mitigating circumstances" on page 9. Further testimony was heard from Mike Rubenstein and Dan Hickey.

The meeting was adjourned at 3:00 p.m.

(907) 272-5522

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

March 18, 1977

Representative Terry Gardiner
Pouch V
Juneau, AK 99811

Dear Rep. Gardiner:

This will respond to your request for comments regarding S.B. 206, the presumptive sentencing bill. In the nature of comments upon short consideration, this letter will tend to raise questions rather than answer them. I am sure that satisfactory answers compatible with the ultimate adoption of S.B. 206 can be made available. In general, at the philosophical level, I believe all of the staff here believe that presumptive sentencing in some form is a progressive step in making our justice system fairer and more understandable.

1. PURPOSE CLAUSE. Proposed AS 12.55.005 of the Act would appear to throw down a constitutional gauntlet unnecessarily. It is not clear what purpose the declaration of purpose clause serves since the scheme seems to speak for itself.

As you know, the Alaska Constitution states:

> "Penal administration shall be based on the principle of reformation and upon the need to protect the public."

We believe a presumptive sentencing scheme is compatible with this constitutional goal. Both the prospect for reformation and the need to protect the public require that the penal law have a deterrent effect proportionate to the offense.

The purpose clause offers a fruitful field for litigation respecting the extent to which the Legislature intends to depart from the constitutional prescription. Possibly the draftsmen believe that the sentencing process is something different from "penal administration."

We do not understand why the draftsmen felt compelled to proclaim the primary purpose of the act to be to "punish" - which Webster defines as "to cause to undergo pain, loss or suffering for a crime or wrongdoing." The dictionary notes "punish... generally connotes retribution rather than correction..." c.f. Chaney v State.

This tone problem is exacerbated slightly by the reference to "an non-criminal member of society" in (a) (6) with its suggestion that criminality is a question of status not conduct.

The declaration of purpose is not only philosophical in tone but it is comprehensive in scope. Yet is applies to certain enumerated crimes. No statement is made regarding the justification for applying the scheme to some crimes but not others...Does this create a constitutional classification problem?

2. SENTENCING ALTERNATIVES. AS 12.55.007 (6) (3) Does this mean the specific offender (O.K.) or the general offender? (problems)

There is some question regarding how the court is to interpret AS 12.55.007 (c) in relation to the presumptive sentencing provisions of the bill. A judge is bound by the presumptive sentence. He weighs specified aggravating and mitigating circumstances in departing from that sentence and presumably in imposing sentence he reviews those circumstances. At what point does he go back to the philosophy of sentencing set forth in AS 12.55.005? What bearing will each of those factors have on the presumptive sentence?

3. CLASSIFICATION OF FELONIES. AS 12.55.033(a). While each crime considered individually may be constitutionally firm, does the sentencing bill open up a new basis of attack by describing the elements of each of class A and class B felonies? For instance, suppose a person commits a class A felony, but there was not, in fact, a great risk of violence in the conduct. Can he then charge an arbitrary classification as to his specific offense?

4. THE PRESUMPTIVE TERMS OF YEARS. AS 12.55.035. Two of the basic tests of any sentencing scheme are whether it incarcerates the most "relevant" persons - those who pose the greatest danger to the public - and its effect on the overall prison capacity of the system.

Are some people being "squeezed out" as others are put in? What changes will take place in the character of the prison population and how should correctional facilities and programs be designed to meet these characteristics?

Unfortunately, it is impossible to provide even tentative answers to these kinds of questions without carefully review-

ing the background data which went into the development of each presumptive sentence and predictive analysis of the effect of the aggravating and mitigating factors on actual terms served. It is my understanding that the establishment of presumptive terms was based upon "average" experience but that for some offenses the draftsmen chose to depart from those sentences. How hard is the initial data? Does it come from court records of sentences imposed or correctional data on time served? What was the justification for picking "averages"? What is the justification in departing from it in some cases and what are the effects of those departures on capacity issues?

5. DESIGN OF PRESUMPTIVE SENTENCE STRUCTURE. AS 12.55.035(d) establishes "physical injury" as a major distinguishing factor in determining eligibility to opt out of the system. Has any thought been given to defining this crucial phrase - whether physical injury can be a bruise from an accidental bump on the head when the victim stepped back under a low light or an intentional gunshot wound. How do you decide whether a defendant "employed" a firearm? Does it include a co-defendant's use of a firearm with the knowledge of the defendant?

Under 35(b)(2) suppose the prior offense is an offense which includes all, or substantially all of the elements of the offense charged but also includes several other elements - e.g., an a.d.w. which was charged under a special statute involving the use of fire or poison. The elements of the prior crim are not identical. Would it count as a prior conviction under this language?

Under AS 12.55.041(c), here assuming the burden of going forward with "substantial evidence" may be placed on the defendant, isn't he entitled to a jury trial on the issue once he meets that burden and the state is obliged to prove the prior conviction beyond a reasonable doubt?

In the aggravating factors listed in AS 12.55.042(b) are "cruelty", "dangerous weapon" and "physical injury" of a sufficiently precise meaning to be readily applicable? For instance, does cruelty include mental cruelty?

In 12.55.042(c) does the proposed law inadvertently create by statute defenses of "coercion", "threat" or "compulsion" which may or may not be defenses at common law?

What does "youthful" mean in 042(c)(4)? To what age does it reference? May a more "Mature" person be younger?

What is an infirmity resulting from age? (042(c)(4)) Does it mean advanced age or can the mental infirmities of youth mitigate? How about infirmities of a young crippled person? Is the classification stated a rational one? Isn't

the existence of an infirmity alone the more appropriate standard alone? How is "infirmity" to be defined?

Under 042(c)(3), partial proof of certain specified defenses is allowed as a mitigating factor. Why were these particular defenses chosen and not others? For instance, the existence of mental illness not found by a jury to be a complete defense is frequently considered now as a mitigating factor by a sentencing judge.

How do you treat a "period of incarceration" under (f)(2) (and elsewhere) when the incarceration was not the result of a conviction sustained on appeal?

Under 12.55.043(c) does the term "punishment" mean something different from "presumptive term" as used elsewhere in the bill?

Does the language in proposed AS 12.55.042(d) mean that many weapons cases and a goodly number of assault cases will never involve aggravation on grounds listed in 042(b)(1)-(3)? Is there a risk that judges will sentence with aggravation in assault cases involving weapons, where weapons are an element in the offense until an appeal settles the issue?

6. PROCEDURAL DUE PROCESS. In proposed AS 12.55.042(e) are counsel bound by the trial record, or may they introduce factors which are not presented at trial? Does this create problems? (e.g., collateral use of inadmissable evidence?)

Can you constitutionally create "majority" sentencing as proposed in AS 12.55.044(c) or must the decision of the review panel be unanimous? Could a dissenter file a dissenting opinion? If there is a dissent, should there be an automatic appellate review by the Supreme Court?

Can you constitutionally deny "future" good time as is contemplated under proposed AS 33.20.010(b)? Can the denial be in excess of 30 days? What "due process" standards should be required by legislative action, as opposed to rule or regulation? No mention of A.P.A. Should there be?

A final point. Proposed AS 12.55.035(a)(2)(3) may not be written dearly enough to comply with Supreme Court holding in Davenport.

These thoughts are offered in conformity with your request for immediate comment. We are sending a copy to Representative Dankworth who made essentially the same request.

It is likely that on reflection, we might wish to withdraw some observations, elaborate on others or offer new comments. I should also observe that we have not had time to confer with any of the draftsmen on these matters. It would have been helpful if the bill had been accompanied by a careful explanatory commentary as is the case, for instance, with the criminal code revision. We are concerned that every sentence under this bill will be the

occasion for appeals since so many questions are left open by the text alone. Our comments are not prepared with the care we would use if this were to be entered as part of a formal record. If you have any inclinations in that regard, we would prefer to consult with the draftsmen before entering any formal comments.

Sincerely,

John E. Havelock
Director

JEH/sl

cc: Rep. Dankworth

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

March 29, 1977

The Honorable Robert Boochever
Chief Justice
Supreme Court of Alaska
Pouch U
Juneau, Alaska 99811

Re: H. B. 297
S. B. 206

Dear Chief Justice:

The committee appointed to consider presumptive sentencing has held two meetings, the last one being on March 23, 1977, when specific attention was given to H.B. 297 and S.B. 206. These two bills are identical and are designed to implement presumptive sentencing in Alaska at least as to Class A felonies.

As defined in the bills, Class A felonies include felonies "characteristically involving aggravated violence against a person, or great risk of aggravated violence against a person." The bills list second degree murder, manslaughter under A.S. 11.15.040, forcible rape under A.S. 11.15.120, mayhem under A.S. 11.14.140, shooting, stabbing or cutting with intent to kill, wound or maim under A.S. 11.15.150, assault with intent to kill or commit rape or robbery under A.S. 11.15.190, poisoning under A.S. 11.15.210, assault with a dangerous weapon under A.S. 11.15.220, aggravated assault under A.S. 11.15.225, robbery under A.S. 11.15.240, kidnapping under A.S. 11.15.260, burglary in a dwelling when occupied by another under A.S. 11.20.080 and assault on a correctional officer under A.S. 11.30.140 or A.S. 11.30.160. The committee is of the view that first and second degree arson fit the definition of Class A felony under the bills

and that first and second degree arson ought to be included as Class A felonies.

The three committee members, Judge Buckalew, Judge Taylor, and the undersigned are unamimously in favor of the concept of the bill. In the First District, I believe it is accurate to say that the Superior Court judges favor the concept of the bill, but there is some concern that the presumptive sentences set forth in the bill are too high in some instances, for the average case.

In the Fourth District, the Superior Court judges apparently favor the concept of presumptive sentencing. Only one comment was reported to your committee and that was that the presumptive sentence for forcible rape was too low.

In the Third District, the reaction appears to be more mixed. Some of the Superior Court judges in the Third District favor wide judicial discretion in sentencing as it presently exists while others favor the concept of the presumptive sentencing bills. There is also some feeling in the Third District that the presumptive sentences in the bills as they are today are too high for the average case while others in the Third District feel they are too low.

While we are unable to report, at this time, concerning the views of other judges, the committee members were in agreement with the relatively wide discretion still available to the sentencing judge in first offender cases. In fact, we feel that this is a particularly unimportant feature of the bill as it presently exists. While the sentencing judge has large discretion on the lenient side in first offender cases, it is the understanding of the committee that only a three judge panel could impose a sentence in excess of the maximum presumptive sentence (the presumptive sentence plus 50%) in first offender cases. That provision is an important safeguard against abuse of judicial discretion and we urge that it be retained.

The committee members are not particularly anxious to offer comment on the particular presumptive sentences set forth in the bills, but we certainly believe that they are high enough.

If I may offer my own view, I think the presumptive sentences in many instances are simply too high and that adoption of the bill with those sentences will lead to a substantial number of mitigation hearings which, in turn, will tend to consume judicial time and resources. If the idea of presumptive sentencing is to cover the normal average case, then, I think the presumptive sentence in many categories ought to be lowered.

After some rather extended discussion, the committee endorsed adoption of H.B. 297 in this Session of the Legislature. We understand that a thorough revision of the Criminal Code is under way and that much of the work already done on presumptive sentencing will need to be redone in order to correlate this sentencing scheme to a new Criminal Code. However, the committee felt it was important to get at least some experience with presumptive sentencing before it was made generally applicable to all felonies. If either one of these bills could be passed during this Session of the Legislature, both the Judiciary and the Legislature could have the benefit of some experience with the concept of presumptive sentencing in a limited class of felonies in which follow up and study of the results could be accomplished without a whole lot of time and money being spent. If shortcomings developed or some of the procedures set forth in the bills concerning hearings in aggravation or mitigation or the three judge sentencing panel proved too cumbersome, these problems could be resolved before the system bogged down.

As to the three judge sentencing panel provided for in A.S. 12.55.044, I think it is accurate to say that the committee does not believe this panel will or should be involved in very many cases. However, its function will be an important one and consistency would seem to require that the panel be selected on a statewide basis and serve for definite terms and that those terms should be long enough so that some useful guidelines can develop. As we understand the bill, the three judge panel comes into play only when the sentencing judge states that the presumptive sentence called for by the statute is unjust. In other words, neither the prosecution nor the defendant can request consideration by a three judge panel. We believe that this feature ought to be retained in the bill and we would recommend that the bill spell out more clearly than it does that neither party can request a three judge panel; that the panel would be convened only when the sentencing judge felt the presumptive sentence unjust. We would also suggest that the Legislature clarify just what is meant by "relevant mitigating or aggravating factors not specifically included in Section 42 of this chapter" and what is meant by "aggravating or mitigating factors" that "would result in manifest injustice to the defendant or the public" as those terms are used in Section 43.

Section 43 (a) of the bill appears to allow the sentencing judge to either exceed or go below the presumptive sentence without reference to a three judge panel in the case of first offenders. Other provisions of the bill appear to allow the sentencing judge only to go below the presumptive sentence, not exceed it. The committee feels very strongly that a sentencing judge should never be allowed to exceed the applicable presumptive sentence,

without referral to the three judge panel and we recommend that Section 43 be re-written to reflect that limitation. We can conceive of no policy justification for greater discretion on the high side in first offender cases than exists in repeat offender cases, and such a situation would seem to do violence to the whole rationale behind presumptive sentencing.

There are two matters that the committee did not feel were adequately addressed in the bill.

One is rehabilitation. We understand that one of the principal arguments for presumptive sentencing, mandatory minimum sentencing and a variety of other proposals is the argument that the concept of rehabilitation or treatment of the offender has not been a successful endeavor and, in fact, has been the rationale for much abuse in the indeterminate sentencing procedures now in vogue. In short, it is difficult to justify different sentences for the same offense when the available information does not demonstrate that the different sentences, or treatment, were required in any given case, nor than when "required" and ordered or recommended, it is available, and finally when actually available, that it is successful.

However, that does not justify to us the idea of junking rehabilitation altogether. There is evidence that some programs are helpful in meeting some identifiable causes of criminal conduct in some offenders. We feel that the presumptive sentencing legislation ought to address itself more strongly to the area of rehabilitation programs, particularly in the area of drug related offenses, including alcohol. The provisions in the bill as it now exists are nothing more than whitewash and amount to no more than lip service to the mandate of the Alaska Constitution. In addition, it is simply bad policy. It amounts to throwing the baby out with the bath water. Certainly, more discrimination is needed in the use of these rehabilitation programs, but the Legislature should address that problem, not ignore it.

Another area not addressed in the pending legislation is appellate review of sentences. Briefly, one of the very strong arguments for appellate review of sentencing was to provide a check on disparity in sentencing and another was to provide a method of establishing guidelines for the exercise of the wide discretion given to sentencing judges under statutes now in effect in Alaska.

The presumptive sentencing bills provide for a presumptive sentence in each Class A felony, and authorize the sentencing judge to exceed that sentence, or decrease it, by 50% after considering certain enumerated aggravating or mitigating circumstances.

The unusual case in which the sentencing judge feels that the presumptive sentence is too harsh or too lenient is provided for by referral to a three judge court.

Under that scheme, a question arises as to the function of appellate review. Given the sharply increasing workload in the Supreme Court, we recommend that some consideration be given to eliminating appellate review. We cannot articulate any benefit to be gained by the continued expenditure of judicial time and resources on review of sentences if presumptive sentencing becomes the law in Alaska. This, of course, does not mean that no reason exists for continued appellate review, but the committee does feel that the Supreme Court or perhaps, the Judicial Council ought to explore the question and make a recommendation concerning it to the Legislature.

In recommending a review of the necessity for appellate consideration of sentences, we understand that a sentencing court's failure to follow the procedures outlined in the legislation and such new rules as may be necessary to implement it would in itself be grounds for reversal and re-sentencing. I suppose the question we asked ourselves was: "Assuming compliance with the applicable statute and rules, under presumptive sentencing, what would be the function of appellate review?" We couldn't, in the limited time available, come up with any, and so we recommend that the concept of appellate review be re-evaluated in light of presumptive sentencing.

The committee gave consideration to the factors in the bill on mitigation or aggravation. We concluded that the bill, including amendments proposed by Mr. Hickey and Mr. Rubenstein, was probably sufficient in that regard. Although most sentencing judges have undoubtedly considered other factors from time to time, the factors listed certainly seem to cover the normal case.

In conclusion, please accept my apology for indulging an old habit and rambling on for too long a time. I have probably done my cohorts an injustice. The three judges on this committee were unamimous in the view that the bills present a much more rational and fair system of sentencing than that we presently have. We urge its favorable consideration. We note that some of our brothers disagree, and we are confident that they will make their views known, although they have not done so yet to our knowledge.

Respectfully,

S/ Thomas E. Schulz

Thomas E. Schulz
Chairman
Presumptive Sentencing Committee

TES:ri

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR
J. S. Hammond

PUBLIC DEFENDER AGENCY

415 Main Room 206
BOX 1296—KETCHIKAN 99901
TEL: 225-6189

March 25, 1977

Honorable Terry Gardiner
Alaska State House
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

The rumor has been fostered, apparently by news reports from the Governor's Office, that a presumptive sentencing bill will pass the legislature this session and it causes some concern. The desire of english speaking peoples for certainity in the criminal law is aged and has much to be commended. However, the proposed legislation in HB 297 is too far reaching for passage absent critical analysis. The bill seems to effectively repeal the "reformation" principal of Alaska Constitution, Art. I, §12.

Please defer passage to preserve opportunity for extensive comment in the next session of the legislature.

Terry, historical antidote may be used to make the point that excessive punishment serves no purpose and the most iron clad of rules can be avoided. A good thing can be overdone. One is reminded of the english mandatory punishment of death by hanging for pick-pockets. A favorite site for pick-pocketing was the gallows where pick pocketers were hung.

The establishing of standards for judges to follow is, of course, necessary as not all judges have the ability or wisdom to dispense "justice." Equally unworkable, however, in my opinion are mechanistic rules requiring certain sentences upon conviction of specified acts. Within the definition of a crime, the act and actor can vary greatly and hard rules can result in cruelty. In medieval times the rules tended to be absolute and hence, interesting ways of avoiding harsh results were developed. An illiterate person to be taken before a judge was frequently given a Bible and taught to memorize certain passages so that it might appear he could read. In adjudicating the case the judge would pick passages from the Bible and, if he wanted to let the man go, the passages

chosen by the judge to be read had been previously memorized by the accused. In those times clerics were not responsible under the criminal law. Of course, clergyman were universally the only literate class. Hence, if one could read it was presumed he was a clergyman and not responsible for his acts.

The Public Defender, Brian Shortell, can state the agency's official criticism in a more erudite and scholarly manner.

Sincerely yours,

James L. Bruce

JLB:eip

cc: Honorable Robert Zeigler
Alaska State Senate
Juneau, Alaska 99811

March 10, 1977

Duncan Fowler
Criminal Justice Planning Agency
Pouch AJ
Juneau, Alaska 99811

Re: Presumptive Sentencing Bill -
Financial Impact on Public Defender
Agency

Dear Duncan:

You have asked me for an account of SB 206's possible fiscal impact on this agency. I have read the statute, discussed it with Michael Rubinstein of the Judicial Council and with some members of this age.

I think there is no question that the statute will result in a substantial increase in the number of trials tried by this agency. Senate Bill 206 takes away the incentive to plead guilty or nolo contendere, since there is really no leeway in the statute.

Additionally, there are so many procedural provisions in the statute to be interpreted, that I know that we can assume a larger number of sentence appeals at least for the first couple of years of the statute. The procedures are so complicated and so extensive that I don't question the need for much litigation to interpret procedural and substantive provisions of the statute. The statute is a litigator's dream.

More than this I can't tell you at this time. I am assuming that the bill as I have read it will be modified in the legislative process.

Any new criminal statute has a spin-off effect of increased litigation; any one as complicated as this statute is sure to increase litigation. I am assuming that this office will need additional people to handle a substantial increase in litigation, as I am assuming that the expense of trials and appeals will be reflected in the budget requests of the District Attorney, the Public Defender Agency, and the court system.

I am also assuming that the system will be willing to pay for any increase in litigation caused by SB 206. More litigation, more cost.

Very truly yours,

Brian Shortell

Brian Shortell
Public Defender

BS:jd

#

TELEGRAM

13003 KETCHIKAN ALASKA 154 03-22 144P PST ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

PMS HONORABLE TERRY GARDINER

JUN 1977 MAR 22 PM 2 13

DEAR TERRY; AS SECRETARY OF THE KETCHIKAN BAR ASSOCIATION, I'VE BEEN AUTHORIZED TO GIVE YOU OUR GROUPS FEELINGS WITH REGARD TO THE PRESUMPTIVE SENTENCING BILL. WE FEEL THAT THE BILL IS PREMATURE IN THAT NO ONE HAS REALLY HAD THE OPPORTUNITY TO PROPERLY ANALYZE ITS VARIOUS RAMIFICATIONS AND THE LENGTH OF SENTENCES INVOLVED. IN OTHER WORDS, IT SHOULD NOT BE BROUGHT OUT THIS SESSION - IT SHOULD WAIT UNTIL NEXT YEAR. THIS OPINION HAS NOTHING TO DO WITH THE MERITS OF THE PROPOSAL BUT MERELY ITS TIMELINESS. SECONDLY, IF IN FACT SOME BILL MUST COME OUT, WE WOULD SUGGEST THAT A MINIMUM PERIOD OF ONE YEAR BE ALLOWED BEFORE ITS EFFECTIVE DATE. THIS WOULD GIVE THE COURTS AND BAR TIME TO PREPARE AND PUT FORTH ANY AMMENDMENTS THAT MIGHT BE NECESSARY. IF THE KETCHIKAN BAR CAN FURNISH YOU ANY INFORMATION OR BE OF ANY HELP WITH REGARD TO THIS, PLEASE LET US KNOW.

CLIFFORD H SMITH, SECRETARY, KETCHIKAN BAR ASSOCIATION

Bud Carpenenti — Brian Shortell

1. A lot of litigation —
2. submitted late
3. not balanced input + review

Use own criminal code commission

4. piece-meal approach

— New conflicts — with the proposed revised code would have to be revised
would have to put new crimes →

Plea-Bargaining Abolition → not had time to be implemented

1. No Plea-Bargaining study
2. Sentencing Study

1. Const Problem

"Aggravated violence" — will be litigated as to meaning

Escape clause

1. Rubenstein on council
2. Rec. from Jud Com.

① 005 — most severe sentence → does this mean toward the lower end of the scale

Judges Meeting Thurs.

Taylor
Buckalew
Schultz

② All appeals go to 3 judge panel

③ May be more standards for sentencing not in bill

④ Alcohol & Drugs → institutions don't deal with problems

⑤ Sentences may be to high

⑥ Statute presently provides for sentence review by S.C. — Most States don't have that

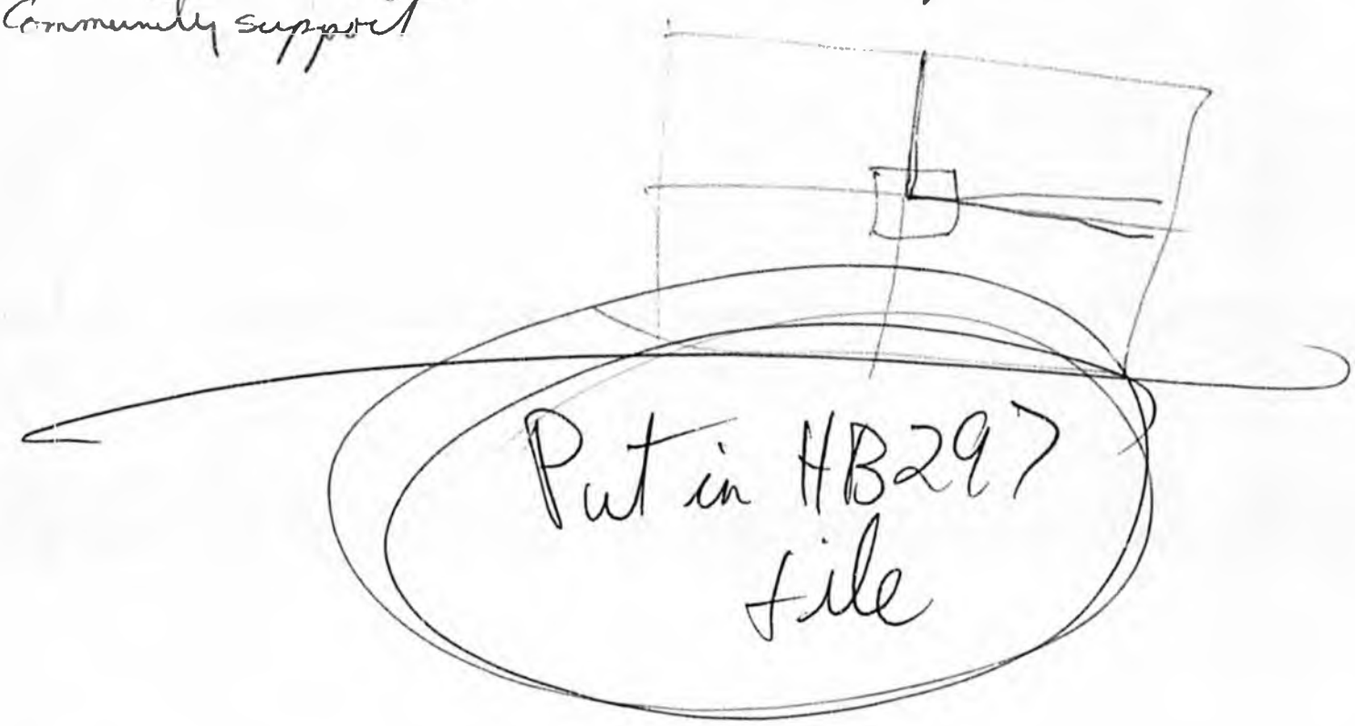
What is S.C. appellate Review function?

⑦ only judge can trigger 3 judge panel
A. Pros or Defense has same right — Preliminary showing
B. have review before deciding · Evidentiary hearing

⑧ Can judge raise an issue without going to 3 judge panel

⑨ Term of office for 3 judge panel

Jail lease back program — Non Profit Corp.
Community support



TELEGRAM

13003 KETCHIKAN ALASKA 154 03-22 144P PST

PMS HONORABLE TERRY GARDINER

JUN

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CLIFFORD H SMITH, SECRETARY, KETCHIKAN BAR ASSOCIATION

[illegible] COMMUNICATIONS, INC.
[illegible]
JUNEAU, ALASKA 99801
377 MAR 22 PM 2 13

CLASS A

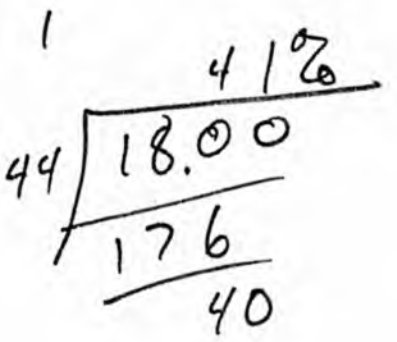
	Second Degree Murder	Manslaughter	Rape	Robbery	Kidnapping	Shooting with intent to kill, wound or maim	Assualt with intent to kill, rape, or rob	Assault with a Dangerous weapon	Burglary in a Dwelling (occupied)	Total
Number of convictions 1974-1976	8	18	23	60	3	6	10	78	16	222 (249)
% of total Class A Felony Convictions	3.6%	8.1%	10.4%	27%	1.4%	2.7%	4.5%	35.1%	7.2%	100%
Mean Sentence imposed over-all1 (months)	A	66.8	95.4	57.6	A	53.1	48.3	15.4	18	43.3
Mean Active sentences im-posed2 (months)	A	75.1	95.4	68.1	A	74.4	53.7	29.5	26.2	57
Number and per-centage of cases receiving proba-tion	0	2(11%)	0	9(15%)	0	2(29%)	1(10%)	26(33%)	5(31%)	45(20%)
ACTIVE TIME										
1-6 months	0	1(6%)	1(4%)	4(7%)	0	0	4(40%)	24(31%)	1(6%)	35(20%)B
7-12 months	0	3(17%)	4(17%)	4(7%)	0	0	1(10%)	6(8%)	3(19%)	21(12%)B
13-24 months	0	1(6%)	1(4%)	7(12%)	0	0	0	7(9%)	4(25%)	20(11.3%)B
25-60 months	0	3(17%)	3(13%)	18(30%)	0	2(29%)	2(20%)	12(15%)	3(19%)	43(24.3%)B
Over 100 months	8(100%)	8(44%)	14(61%)	18(30%)	3(100%)	3(43%)	2(20%)	3(4%)	0	59(33%)B
Highest Sentence (Months)	Life	180	360	180	Life	120	180	120	60	

1. Including probation averaged in as 0 Time
2. Not including sentences of o time

A.mean not computed because some sentences were life imprisonment
B.of setences imposing active time.

62 — 19.4 Mon

44 — 19.2.



POSITION PAPER/Department of Health and Social Services

POSITION PAPER

HOUSE BILL NO. 297

"An Act relating to sentencing."

The Department of Health and Social Services supports the concept of this bill.

The Alaska Judicial Council administrative staff is currently conducting a sentencing study. The preliminary findings, incorporating data gathered on Assault with a Dangerous Weapon during a two year period, 1974-76, indicated 78 counts or 67 people convicted (86 per cent). About 47 per cent of the defendents had at least one prior felony conviction (of any class) or at least one violent/weapon misdemeanor conviction. During this period, 44 people were incarcerated for ADW, for an average of 19.2 months per individual.

Under House Bill No. 297, the same 67 people convicted would be sentenced as follows:

5 would receive probation

62 would receive active time of 2.43 years adjusted by the two-for-one good time provision - actual time served would be 19.4 months per individual.

Since ADW represented about one-third of all Class A crimes for the period, the study indicated that approximately 54 (62-44 x 3 = 54) more people will be incarcerated over a two year period, an increase of 27 per year.

The Division of Corrections' review, using data from 1971-1975 annual recidivism studies, supports the Alaska Judicial Council staff study. The Division of Corrections' information covers a wider spectrum of felonies. The combination of both organizations' data, although not completely refined, offers a reasonable base to determine the approximate impact on Corrections during the next five fiscal years.

Several qualifications and assumptions made to develop conservative projections are:

a. assumption that the effective date of House Bill No. 297 will be July 1, 1977;

b. state population growth is excluded from computations;

c. the frequency or rate of felonies remain constant;

d. a uniform rate of sentencing occurs;

e. all offenders will serve minimum presumptive sentences; and,

f. inflation cost factor equals six per cent.

The charts on pages 3 and 4 display the minimum impact on bed space due to presumptive sentencing.

The estimated dollar impact of the bill on the Division of Corrections is summarized below:

	No. of Beds Needed at Year End	Average Mandays	Institution Costs
First Year	27	5,000	$ 250,000
Second Year	49	13,870	658,000
Third Year	62	20,075	956,000
Fourth Year	76	25,185	1,236,000
Fifth Year	85	29,565	1,522,000

27 million
9 million new jail

Recommended: William H. Huston 3/18/77

William H. Huston, Director
Division of Corrections

Date

Concurrence: for Lois M. Jones 3/18/1977

Francis S.L. Williamson
Commissioner
Department of Health
and Social Services

Date

CHART 1

IMPACT ON BED-SPACE DUE TO PRESUMPTIVE SENTENCING

	Percent	Additional no. of people in 2 years	Additional no. of people in 1 year	Length of Sentence	Total additional beds filled after system stabilizes
ASSAULT	33%	18	9.0	1.6	14.4
ROBBERY	25%	13	6.5	4.4	28.6
BURGLARY	16%	9	4.5	1.5	6.8
MANSLAUGHTER	10%	5	2.5	8.2	20.5
MURDER	8%	4	2.0	20.9	41.8
RAPE	7%	4	2.0	6.1	12.2
KIDNAPPING	1%	1	0.5	13.3	6.7
TOTAL	100%	54	27	-	131.0

Chart 2

	No. of Additional persons/year	Length in years till stabilization	ADDITIONAL BEDS FILLED BY End of year 1	End of year 2	End of year 3	End of year 4	End of year 5
ASSAULT	9.0	1.6	9.0	5.4			
ROBBERY	6.5	4.4	6.5	6.5	6.5	6.5	2.6
BURGLARY	4.5	1.5	4.5	2.8			
MANSLAUGHTER	2.5	8.2	2.5	2.5	2.5	2.5	2.5
MURDER	2.0	20.9	2.0	2.0	2.0	2.0	2.0
RAPE	2.0	6.1	2.0	2.0	2.0	2.0	2.0
KIDNAPPING	0.5	13.3	0.5	0.5	0.5	0.5	0.5
TOTAL			27	21.7	13.5	13.5	9.6
ACCUMLATED IMPACT			27	48.7	62.2	75.7	85.3
PERCENT OF TOTAL IMPACT			21%	37%	47%	58%	65%

111 15% reduction for No. of persons

AVERAGE IMPACT PER YEAR
******* ****** *** ****

CHART 3

PROBATION/PAROLE
********* ******

	No. of persons	Starts at	Length of probation	Year 1	Year 2	Year 3	Year 4	Year 5
ASSAULT	9	1.6	0.8	-	3.6	3.6	-	-
ROBBERY	6.5	4.4	1.5	-	-	-	-	3.9
BURGLARY	4.5	1.5	0.8	-	2.25	-	-	-
MANSLAUGHTER	2.5	8.2	1.5	-	-	-	-	-
MURDER	2.0	20.9	1.5	-	-	-	-	-
RAPE	2.0	6.1	1.5	-	-	-	-	-
KIDNAPPING	0.5	13.3	1.5	-	-	-	-	-
TOTAL			0.0	0	5.85	3.6	0.0	3.9
ACCUMULATED TOTAL			0.0	0	5.85	9.45	9.45	13.35

1) Persons receiving a presumptive sentence are subtracted from the probation figure.

2) Persons getting off of presumptive sentence for good time are added back to the probation figures.

3) Combining 1 and 2 above give the following net change in probation population.

	Year 1	Year 2	Year 3	Year 4	Year 5
CHART 2	-27	-21.7	-13.5	-13.5	- 9.6
CHART 3	+ 0	+ 5.9	+ 3.6	+ 0	+ 3.9
TOTAL	-27	-15.8	- 9.9	-13.5	- 5.7
ACCUMULATED TOTAL	-27	-42.8	-52.7	-66.2	-71.9
AVERAGE IMPACT PER YEAR	-13.5	-34.9	-47.8	-59.2	-72.0

Normal probation/parole workload increases of 6% yearly more than offset the approximate 1% negative effect as shown by chart 3 - Average Impact Per Year.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 297

Title An Act Relating to Sentencing

Requested by The Governor (with the Judicial Council) Date March 3, 1977

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services - Division of Corrections

Program Category Affected Administration of Justice

Budget Request Unit(s) Affected Adult Confinement and Probation/Parole

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES		149.6	363.3	503.1	633.3	772.3
200	TRAVEL		1.3	3.7	5.6	7.5	9.3
300	CONTRACTUAL		47.2	138.8	213.1	283.4	352.5
400	COMMODITIES		42.5	125.0	191.9	255.1	317.4
500	EQUIPMENT		2.4	6.9	10.6	14.1	17.6
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.		7.0	20.8	31.9	42.4	52.8
	TOTAL		250.0	658.2	956.2	1,235.8	1,521.9

FUNDING (Thousands of Dollars)

GENERAL FUND		250.0	658.2	956.2	1,235.8	1,521.9
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		6	13	17	20	23
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The Alaska Judicial Council administrative staff study preliminary data, in concert with figures developed by the Division of Corrections, forms the basis for the above computations. (Refer to Position Paper narrative for details.) The cost distributions shown above are patterned from budgeted and experienced costs of the various correctional centers.

A 6 per cent inflation factor was used.

No debt service for capital improvements was included. The impact of this bill hastens the need for additional bed capacity.

IV. DATE March 18, 1977 PREPARED BY Leland T. Dalby, Administrative Officer

AGENCY Dept. of Health & Social Services - Division of Corrections

PHONE 465-3376

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

PROPOSED AMENDMENTS TO SB 206 AND HB 297

p. 1, line 23: after "sentence" delete all material and insert the following "which the offender deserves, considering the following:"

p. 1, line 24: delete all material

p. 1, line 27: delete "nature" and insert "circumstances"

p. 1, line 29: between "the" and "isolation" insert "need for"

p. 2, line 9 and 10: delete all material

p. 2, line 11: delete "(c)" and insert "(b)"

p. 2, line 11: delete "further"

p. 2, line 17: between "(a)" and "In" insert: "Except as provided in sec. 35 of this chapter,"

p. 3, line 9: delete all material and insert "(1) the offender deserves to be imprisoned considering the"

p. 3, line 12: after "offenders" insert ","

p. 3, line 12: delete "due"

p. 3, line 13: after ";" insert "or"

p. 3, line 14: delete "the term of"

p. 3, line 15: delete ";" and insert "."

p. 3, lines 16-18: delete all material

p. 4, line 5: delete all material and insert "aggravated violence against a person."

p. 5, line 20: delete "will" and insert "may"

p. 6, line 18: delete "any other felony," and insert "more than one felony"

p. 7, line 3: delete "must" and insert "shall"

p. 7, line 18: delete "must" and insert "shall"

p. 7, line 21: delete "must" and insert "shall"

p. 7, line 27: delete "must" and insert "shall"

p. 8, line 10: delete "must and insert "shall"

p. 8, line 11: delete "due"

p. 8, line 14: delete "must" and insert "shall"

p. 9, line 2: delete "or"

p. 9, between lines 5 and 6: insert the following:

"(8) the defendant was on release for another felony charge under AS 12.30.020 or 040; or

(9) the defendant was on probation, parole or community supervision for a prior felony conviction."

p. 9, line 6: delete "must" and insert "shall"

p. 9, line 23: delete "or"

p. 9, lines 24-25: delete all material and insert the following:

"(7) the defendant does not have a criminal history of prior convictions other than for minor traffic offenses; or

(8) imposition of the presumptive term would cause great hardship to persons dependant on the defendant for support, which may result in the responsibility for the support passing to the state."

p. 10, line 3: delete "must" and insert "shall"

p. 10, line 6: delete "must" and insert "shall"

p. 10, line 7: delete "must" and insert "shall"

p. 10, line 14: delete "will" and insert "may"

p. 11, line 15: delete "members" and insert "of the judges"

p. 11, line 16: delete "." and insert ";"

p. 11, line 17: delete "superior court"

p. 12, line 16: delete "parole" and insert "community supervision"

p. 12, line 17: after "deduction" insert ", but in no event for more than 18 months,"

p. 12, line 17: delete "rules and"

p. 12, line 18: delete "his parole officer" and insert "the probation/parole officer."

p. 12, line 22: after "," insert "or imprisoned for a violation of probation, parole or community supervision,"

p. 12, line 27: delete "any one subsequent" and insert "an"

p. 12, line 28: after "time" insert "not to exceed 30 days"

p. 13, lines 16-19: delete all material and insert the following:

* Sec. 7. EXISTING REHABILITATIVE PROGRAMS. The Alaska Division of Corrections shall examine existing and alternative rehabilitation programs to determine how the constitutional principle of reformation may best be carried out within the context of the presumptive sentencing provisions of this Act, and annually report their findings and recommendations under this section to the legislature."

p. 14, lines 2-4: delete all material and insert the following:

"(b) The Alaska Judicial Council shall collect and analyze data relating to existing sentencing practices in the state, the impact of legislative enactments affecting sentencing, and trends in sentencing practices in other jurisdictions. The council shall periodically distribute the data and analyses to the legislature, the court system, and other affected or interested agencies.

Rape →
Burglary → 2
6

860 Felony convictions 1974-1976

Statistical Model — segment - is sum of differences from mean

simplified picture of overall picture

Picked 7 classes of crimes

class 2 - violent felonies — Use to compare to criminal code
"A Felonies"

1. Prior Felonies

Use Sentencing Study to right Standards for Pre-Sentence Reports

Not Factors
1. Degree of harm of Victim
2. Use of Firearm

Problems

(1) Page 9, line 24 (7)

Problem of civil offenses & infractions

Versus Moral Traffic offenses

(2) Alcohol

(3.) Judge can't send to Family House

(4.) Change ongoing monitoring

(5) When expanding to all Felonies
Change Aggravating & Mitigating factors

(8.) set Appeals to 3 judge panel
for all Sentencing Appeals

(9.) longer effective Date

(10) Add aggravating factor - Commission of 2nd or More offense in same crime
Robbery & Assault
"A Rotten Case of Double Jeopardy — 2 convictions 1 sentence

HB 297

March 3, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill designed to alter the present philosophical focus of Alaska law with respect to sentencing practices and to implement a statutory scheme of presumptive sentencing for violent crimes and crimes that have a high potential for violence.

Our present system for imposing sentences upon individuals convicted of criminal offenses is essentially an unstructured exercise of judicial discretion. The legislature has set only the outside limit of a sentencing court's authority, leaving the selection of a specific sentence to each judge on a case-by-case basis. It is true that the Supreme Court does have the statutory authority to review individual sentences and to modify or reduce an excessively harsh sentence or issue an advisory opinion with respect to an excessively lenient sentence. However, this authority has, of necessity, also been exercised on a case-by-case basis and while it is has resulted in the development of some general sentencing guidelines, it has in a larger sense provided little more than a check against individual incidents of abuse. Consequently, the sentencing judge, himself, continues to bear primary responsibility for analysis of the factors which will effect the imposition of a particular sentence.

At present, a sentencing judge in Alaska is required to consider the goals of rehabilitation of the offender; the necessity to isolate an offender from society; deterrence of both the offender and others; and comforms, comdemnation and a reaffirmation of societal norms, or put another way, punishment of the offender.

State v. Chaney, 477 P.2d 441 (Alaska 1970). The judge has been provided with little positive guidance as to which of these goals or which combination of them ought to be afforded significance in a particular case. A judge's decision within this framework has a tendency to vary dependent on the personal characteristics of defendants appearing before him and the judge's own evolving concepts of fairness and justice.

In view of this general lack of guidance, the sentencing process in Alaska has from time to time been the subject of a good deal of criticism. Different judges frequently disagree over the importance to be afforded various aggravating and mitigating factors present in a given case. Indeed, disagreement exists with respect to the essential purpose to be achieved through imposition of sentence in individual cases. The result of this disagreement has been a good deal of disparity in the sentences actually received by similarly situated offenders for similar offenses.

This proposed sentencing legislation is designed to establish a comprehensive statutory system of limited initial application. It is intended as the first step in a substantial restructuring of present sentencing practices to eliminate the unjustified disparity which now occurs. To that end, the bill seeks to provide for the imposition of sentences that are deserved by an offender, that are proportionate to the seriousness of each individual offense and which are to be imposed within a range of specific limitations placed on the exercise of judicial discretion.

The specific sentencing scheme provided for in the bill is one of "presumptive" sentencing. Initial application of this scheme is restricted in the bill to convictions for offenses denominated as Class A felonies and include the following offenses: second degree murder; manslaughter; forcible rape; mayhem; shooting, stabbing or cutting with intent to kill, wound or maim; assault with intent to kill or commit rape or robbery; assault while armed; poisoning; assault with a dangerous weapon; aggravated assault; robbery; kidnapping; burglary in a dwelling when occupied by another person; and assault on a correctional officer.

In spite of this limited initial applicability, the bill provides for the creation of an overall framework designed for adaption to sentencing for all offenses. Indeed, the bill has been specifically designed to provide for a set of statutory guidelines and criteria of general applicability. Consequently, rather than leaving an application of the guidelines delineated in State v. Chaney, supra, and its progeny to individual cases, the specific factors to be examined are codified.

The bill also sets out sentencing alternatives available to a court and specifies that a sentence of confinement shall be imposed when certain circumstances are present. In this respect, a fundamental concept embodied in the bill is a rejection of rehabilitation as the principal purpose of imprisonment and a reinstatement of the basic precept that the primary purpose of imprisonment for crime is punishment. Reliance on the principle of rehabilitation as a justification for the imprisonment of an offender has in large measure contributed to disparate sentencing practices. Extensive correctional research has failed to demonstrate that rehabilitative programs in general are effective in reducing recidivism. Consequently, the primary purpose of imprisonment should be honestly identified for what it should be, punishment of an offender for the commission of a criminal act against society.

I must emphasize that this bill is the product of combined efforts over many months of the Criminal Division of the Department of Law and the Alaska Judicial Council, which first proposed the concept of presumptive sentencing as an alternative to a straight mandatory minimum approach. The penalties set out in the bill for Class A felonies are "presumptive" penalties in that they establish the "average" sentence to be imposed in a "typical" case. Presumptive sentencing provides for sentences set by statute, such as those proposed in this bill, within a range that is neither fully mandatory nor fully discretionary, but rather, which establishes a "bottom line" below which a judge cannot reduce a sentence except in extraordinary circumstances pursuant to a procedure that is specifically delineated in the bill.

The penalties proposed in the bill are included as a beginning point for legislative discussion of the subject. While they are not "fixed in stone", neither are they merely arbitrary terms of years, but rather, have been derived from an exhaustive statistical analysis conducted by the Judicial Council of Alaska felony sentences actually imposed during a two year period between August 1, 1974, and August 1, 1976. Thus, to a large extent the terms set out in the bill adopt as a point of departure the aggregate experience of Alaska's superior court bench as expressed in actual sentencing decisions.

Under the presumptive sentencing scheme established in the bill, individual presumptive terms are provided for the specified felonies, on the basis of a first, second and third or subsequent offense. In the case of an offender with no prior felony conviction, a sentencing judge could suspend the presumptive term and place the defendant on probation if in committing the offense, he did not cause physical injury to any person and did not employ a firearm in furtherance of the offense. In the case of an individual with two prior Class A felony convictions, the presumptive term set out in the bill would become a mandatory minimum sentence below which a court could not sentence. On the other hand, a sentencing judge would be free to impose any sentence from the presumptive term up to the statutory maximum.

Recognizing that justice entails more than a mechanical scheme, the bill provides the sentencing judge with the ability to enter findings in a particular case, again by a standard of clear and convincing evidence, that a manifest injustice would result either to the public or the defendant from imposition of a presumptive sentence. In such a case, sentencing would then become the responsibility of a three-judge sentencing panel, which is specifically provided for under the bill. The three-judge panel would be free to sentence a defendant in the interest of justice to any term applicable irrespective of the presumptive sentencing provisions of the bill.

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

reduction in his period of confinement for every two days of good conduct served. Further, only a maximum of 30 days of accrued good time plus a period of future good time could be forfeited for any single infraction of prison rules.

Additionally, the bill provides that a prisoner sentenced under the presumptive sentencing provisions established in the bill is not eligible for discretionary release on parole. However, in order to adjust for the reality that recidivist rates are generally higher among individuals released from prison without supervision, the bill additionally provides that when a prisoner is released early as a result of accumulated good time, he is placed on parole subject to such conditions as may be imposed by the parole board or his parole officer for a period identical to his accumulated good time. The purpose and effect of this provision is to maintain active supervision over an offender for the entire length of his presumptive sentence.

Lastly, it should be emphasized that while the bill is, of necessity, drafted in a manner to fit the present offense structure found in the Alaska Statutes, it was also intentionally designed to readily mesh with the criminal code revision effort now in progress through the Alaska Criminal Code Revision Subcommission.

Sincerely,

Jay S. Hammond
Governor

COMPARISON OF LENGTHS OF SENTENCES IMPOSED OR TIME SERVED BY OFFENSES

(All Time Expressed in Years)

OFFENSE	Number of cases in Alaska, August 1, 1974 to August 1, 1976.[A]	Range of sentence as prescribed in AS Title 11.	Mean sentence imposed in Alaska[B] for all offenders 1974-1976.	2/3 of mean sentence imposed in Alaska 1974-1976.[C]	Twentieth Century Fund Recommended presumptive sentences.[D]	California presumptive sentence range.[E]	Average sentences imposed in U.S. District Courts, 1972.[F]	Mean time served before parole in all 50 states 1965-1970.[G]	Average time served by first releases from federal institutions, 1972.[H]
Second degree murder	8	15 to life	25.75	17.25	5	5-6-7		6.6	4.9
Manslaughter	18	1 to 20	5.6	3.74	4	2-3-4	5.06	2.4	
Kidnapping	3	any term of years	65.44[3]	43.84		3-4-5	18.2		2.4
Rape	23	1 to 20[1]	7.95	5.3	6	3-4-5	7.9	5.7	3.5
Robbery	60	1 to 15	6.1	4.1		2-3-4	10.3	1.34	4.0
Assault w/A dangerous weapon	79	6 months to 10 yrs; or $100 to $1000 or both	1.67	1.1	6	2-3-4	3.5	1.9	5.5
Burglary in a dwelling	16	1 to 10, 15 or 20 years[2]	1.5	1	2		3.6	1.8	4.5

A. Alaska Judicial Council Sentencing Study, 1977.

B. Alaska Judicial Council Sentencing Study, 1977.

C. The Alaska Court System is presently studying the length of time an offender serves before being released from imprisonment. Preliminary findings show that on an average, offenders actually serve 2/3 of the sentence imposed.

D. Twentieth Century Fund Task Force on Criminal Sentencing: Fair and Certain Punishment. (McGraw-Hill, N.Y. 1976) Appendix B.

E. California Senate Bill 42 (1976) Effective July 1, 1977, the statute prescribes a presumptive sentence as well as minimum and maximum beyond which the judge cannot impose time.

F. From Sourcibook of Criminal Justice Statistics, 1973, LEAA. Table 5.38.

G. Gottfredson, Don M.; M. G. Neithercutt; and Joan Nuffield: "Four Thousand Lifetimes: A Study of Time Served and Parole Releases". National Council on Crime and Delinquency, June 1973, page 28.

H. U.S. Department of Justice, Bureau of Prisons. "Statistical Report, Fiscal Years 1971 and 1972". pp.152, 153.

1. When the victim of a rape is the offender's daughter, son, sister or brother, or is under the age of 16, the sentence prescribed by Alaska law is any term of years (AS 11.15.130(a)).

2. If the burglary was committed during the daytime, the maximum is 10 years, if it was at night, the maximum is 15 years, and if the dwelling was occupied, the maximum is 20 years (AS 11.20.080).

3. One defendant received 30 years, two defendants received life terms.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

March 3, 1977

The Honorable Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Terry:

I am attaching a copy of the presumptive sentencing bill which was introduced today in both houses. I am sorry this bill has been so late, but we have worked very hard to try and reach a compromise position with the Judicial Council so that the administration and the Judicial Council would be able to present one bill to the legislature rather than starting the whole thing off with contrasting versions. In my humble view, this proposed legislation, which represents literally thousands of hours of work both in last year's legislature and in the interim, is an excellent approach to the sentencing problem. The bill has been worked over in great depth and I think we can defend every provision of it. I am giving you an advance copy of it because I know of your interest in the bill.

If you would like to talk about the bill informally before it reaches the hearing stage, I'd be happy to do so.

Yours very truly,

Avrum M. Gross
Attorney General

AMG:as

file with those
Sentencing Studies
or
Bill introduced
today

(907) 272-5522

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

February 18, 1977

Dear Representative:

As you are undoubtedly aware, one of the more significant issues facing this session of the legislature relates to sentencing reform proposals. One of those proposals, known as presumptive sentencing, has already been introduced in the House.

Enclosed you will find a copy of a report dealing with presumptive sentencing which was prepared last year for the Criminal Law Revision Subcommission. The report digests Fair and Certain Punishment, a study conducted by the Twentieth Century Fund which developed the concept of presumptive sentencing and is considered the definitive word on the subject. Particular attention should be paid to pages 3-5 of the enclosed report which provide a summary of legislative responsibilities related to presumptive sentencing which were recommended by the Twentieth Century Fund.

The enclosed report also suggested a number of areas for further research which would be required prior to active legislative consideration of presumptive sentencing (pp. 6-8). Research conducted by the Judicial Council during the past six months should provide some answers to the issues raised in the report.

Also enclosed is a report which summarizes sentencing standards established by the Alaska Supreme Court as a result of sentence appeals heard by it under AS 12.55.120.

A third enclosure contains excerpts from an unpublished memorandum written by Professor Jerry Israel of the University of Michigan Law School entitled: "An Introduction to Basic Sentencing Issues".