

ALASKA LEGISLATURE COMMITTEE FILES 1983-1986 86/2

3374 HJUD

HB 554

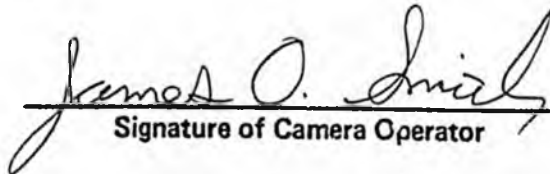
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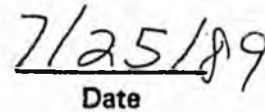


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Date

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STATE OF ALASKA THE LEGISLATURE

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BUREAU, ALASKA 99511
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date e CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2/21/86	1:30 pm
"	" 3/10/86	1:30 - 3:00 pm
"	" 3/26/86	1:30 P M
"	" 4/8/86	8 AM
"	" 4/30/86	1:30 pm

HOUSE
COMMITTEE REPORT

(7)

Date referred: 2/7/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered HB 554

"An Act relating to sentencing."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 554 (JUD) same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

April 24, 1986

Representative Mike Miller
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Subject: CSHB 554 (Jud) -
Presumptive Sentencing

Dear Chairman Miller:

The following is a sectional analysis of the proposed committee substitute dated April 25, 1986.

Section 1. - Allows the court in imposing sentence to order a defendant convicted of certain offenses to participate in a sex offender, drug, or alcohol treatment program. This would be an additional requirement aimed at rehabilitating the offender. Current law is limited to ordering participation only for drug offenders.

Section 2. - Lowers the presumptive term by two years (from seven to five years) for first time offenders convicted of a Class A felony committed with a firearm or dangerous instrument, where serious physical injury occurred, or against certain uniformed officials. Removes the five year presumptive term for first time offenders convicted of any other Class A felony.

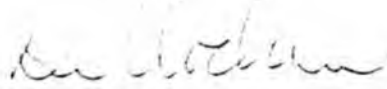
Section 3. - The percentage amount by which a court can decrease a presumptive term if mitigating factors are found is increased from 50 to 75 percent. This section was proposed by the Attorney General.

Section 4. - New mitigating factors are added that, if applicable, could reduce a presumptive sentencing. Note: currently law has 26 aggravating factors and 15 mitigating factors.

Section 5. - Expands discretionary parole eligibility to first time felony offenders who are subject to presumptive sentencing.

Mr. Chairman, thank you for consideration of this bill.

Sincerely,



Representative Don Clocksin

Ford/Uermohle
4/25/86

Original sponsors: Clocksin, Adams,
Duncan, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 554 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to sentencing and discretionary
7 parole."

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

9 * Section 1. AS 12.55.015(d) is repealed and reenacted to read:

10 (d) The court, in imposing sentence on a defendant convicted of
11 (1) sexual assault or sexual abuse of a minor; (2) misconduct involv-
12 ing a controlled substance in the first, second, third, fourth, fifth
13 or sixth degree; or (3) a felony involving the abuse of alcohol, may,
14 in addition to a sentence required by law, order the defendant to
15 participate in a treatment program for persons who are sex offenders
16 or a program for treatment of drug or alcohol abusers, if the court
17 determines that the treatment is appropriate. Participation may be
18 required as a condition of probation, a condition of suspended exe-
19 cution of sentence, or a condition of suspended imposition of sen-
20 tence. This subsection may not be construed to reduce a mandatory
21 minimum or presumptive sentence.

22 * Sec. 2. AS 12.55.125(c) is amended to read:

23 (c) A defendant convicted of a class A felony may be sentenced
24 to a definite term of imprisonment of not more than 20 years, and
25 shall be sentenced to the following presumptive terms, subject to
26 adjustment as provided in AS 12.55.155 - 12.55.175:

27 (1) [IF THE OFFENSE IS A FIRST FELONY CONVICTION AND DOES
28 NOT INVOLVE CIRCUMSTANCES DESCRIBED IN (2) OF THIS SUBSECTION, FIVE
29 YEARS;]

1 (2) if the offense is a first felony conviction, other than
2 for manslaughter, and the defendant possessed a firearm, used a dan-
3 gerous instrument, or caused serious physical injury during the com-
4 mission of the offense, or knowingly directed the conduct constituting
5 the offense at a uniformed or otherwise clearly identified peace
6 officer, fire fighter, correctional officer, emergency medical techni-
7 cian, paramedic, ambulance attendant, or other emergency responder who
8 was engaged in the performance of official duties at the time of the
9 offense, five [SEVEN] years;

10 (3) if the offense is a second felony conviction, 10 years;

11 (4) if the offense is a third felony conviction, 15 years.

12 * Sec. 3. AS 12.55.155(a) is amended to read:

13 (a) If a defendant is convicted of an offense and is subject to
14 sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or
15 (i) and

16 (1) the presumptive term is four years or less, the court
17 may decrease the presumptive term by an amount as great as the pre-
18 sumptive term for factors in mitigation or may increase the presump-
19 tive term up to the maximum term of imprisonment for factors in aggra-
20 vation;

21 (2) the presumptive term of imprisonment is more than four
22 years, the court may decrease the presumptive term by an amount as
23 great as 75 [50] percent of the presumptive term for factors in miti-
24 gation or may increase the presumptive term up to the maximum term of
25 imprisonment for factors in aggravation.

26 * Sec. 4. AS 12.55.155(d) is amended by adding new paragraphs to read:

27 (17) the defendant is under the age of 25;

28 (18) the defendant has demonstrated good potential for
29 rehabilitation;

1 (19) the offense was isolated and not premeditated;

2 (20) the defendant, before apprehension, notified law en-
3 forcement authorities of the defendant's involvement in the criminal
4 conduct.

5 * Sec. 5. AS 33.16.090(b) is amended to read:

6 (b) Unless a prisoner is serving a term for the prisoner's first
7 conviction of an offense subject to a presumptive sentence, a [A]
8 prisoner is not eligible for discretionary parole during the term of a
9 presumptive sentence; however, a prisoner is eligible for
10 discretionary parole during a term of sentence enhancement imposed
11 under AS 12.55.155(a) or during the term of a consecutive or partially
12 consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).
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**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: 4/29/86

REQUEST

Bill/Resolution No.: CS'B 554
Title: "An Act Relating to Sentencing."

Sponsor: Representative Clocksin
Requestor: House Judiciary Committee
Date of Request: 4/29/86

FISCAL DETAIL

Agency Affected: Corrections
BRU: Administration and Support and Operations

Components: Various

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES				122.9	127.8	132.9
TRAVEL				125.1	131.4	138.0
CONTRACTUAL				126.8	133.1	139.8
SUPPLIES				1.3	1.4	1.4
EQUIPMENT				-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	376.1*	393.7	412.1
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	376.1	393.7	412.1
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	376.1	393.7	412.1

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

*See page 4 for projected savings

Prepared by: Nadine Winters, Special Assistant *N.W.*
Division: Corrections

Phone: 465-3376
Date: 4/29/86

Approved by Commissioner: *[Signature]*
Agency: Corrections

Date: 4/29/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 554

Currently the Parole Board is hearing 200 parole cases a year. This bill provides for increased parole eligibility that would approximately double the number of parole case hearings per year. To accommodate the increased workload the department has two options.

Option I (Displayed on fiscal note form): Continue to operate with a 5 member Parole Board composed of lay persons with increased support staff.

Probation Officer II 16A			
\$2702/mo x 12	=	\$ 32,424	
SBS @ .0613	=	1,988	
RET @ .1325	=	4,296	
VAR BEN @ .051694	=	1,676	
HI @ \$252.29/mo	=	3,027	
		\$ 43,411	x 2 = \$ 86,822

Clerk Typist II 7B			
\$1586/mo x 12	=	\$ 19,032	
SBS @ .0613	=	1,167	
RET @ .1325	=	2,522	
VAR BEN @ .051694	=	984	
HI @ \$252.29/mo	=	3,027	
		= \$ 26,732	

Total Personnel Services FY 87 =	\$113,554
Assumed 4% inflation in personal services for fiscal years beyond FY87	

Total Personnel Services FY 89 =	\$122,900
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Travel	\$125,100
Provides for increased travel for 5 board members and 2 support staff to hold increased number of hearings	

Contractual	\$126,800
Additional board members compensation, increased office space rent and utilities	

Supplies	\$ 1,300
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Total FY87 Costs	\$376,100
Assumed 5% inflation in other than personal services line items for fiscal years beyond FY87	

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 554

Option II: Provide for a full-time, compensated Parole Board of three members and support staff.

Parole Board Member 21A		
\$3,812/mo x 12	=	\$ 45,744
SBS @ .0613 or 2800	=	2,800
RET @ .1325	=	6,061
VAR BEN @ .051694	=	2,365
HI @ \$252.29/mo	=	3,027
		\$ 59,997 x 3 = \$179,991

Probation Officer II 16A		
\$2,702/mo x 12	=	\$ 32,424
SBS @ .0613	=	1,988
RET @ .1325	=	4,296
VAR BEN @ .051694	=	1,676
HI @ \$252.29/mo	=	3,027
		\$ 43,411 x 2 = \$ 86,822

Clerk Typist II 7B		
\$1586/mo x 12	=	\$ 19,032
SBS @ .0613	=	1,167
RET @ .1325	=	2,522
VAR BEN @ .051694	=	984
HI @ \$252.29/mo	=	3,027
		\$ 26,732

Delete Executive Director' (\$ 75,231)

\$218,314

Travel \$113,500
Same as Option I

Contractual \$ 30,000
Increase office rent, delete
board members compensation

Supplies \$ 2,000

Equipment \$ 30,000

Total FY87 Costs \$393,814

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 554

It is difficult to calculate with absolute certainty the fiscal impact of the proposed legislation. The largest impact on the department would be expanding parole eligibility to first time offenders. Since the cost of incarceration per year per offender is approximately \$29,200, and probation/parole supervision cost per year is approximately \$1,800, the savings would be substantial.

The following table represents the projected reduction in prisoner-years associated with presumptively sentenced first time felons becoming parole eligible.

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Number of first-time felons admitted to serve presumptive sentences	229	247	267	289
Total prisoner-years to be served	916	990	1,070	1,156
Total prisoner-years to be served with parole eligibility	732	792	856	925
Difference in prisoner-years	184	198	214	231

The cumulative savings associated with the reduction in years would be theoretically realized over a period of years amounts to \$22,659,800. This is assuming no other changes in sentencing law and a stable population base. The increased workload for the Parole Board would not be realized until FY 89.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 554
 Title : "An Act relating to sentencing."

 Sponsor : Representative Clocksin
 Requestor : H. Judiciary
 Date of Request : 2/12/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRIT : Alaska State Troopers

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: *K Niles* Kathy Niles, Admin. Assistant Phone: 465-4336
 Division: Commissioner's Office Date: 2/14/86
 Approved by Commissioner: *[Signature]* Date: 2/14/86
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Department of Public Safety

HOUSE BILL 554

Position Paper

Commissioned Officers within the Department of Public Safety, as well as other law enforcement officers within the State of Alaska, are charged with the responsibility to protect the life and property of all persons within the jurisdiction of this State. You, as members of the Alaska Legislature, duly elected representatives of the citizens of the State of Alaska, are likewise charged with the responsibility to insure that the citizens of this State can reside in a safe environment.

This bill, in the opinion of law enforcement, takes a tremendous step towards reducing the ability of law enforcement to protect the citizens we serve. This law allows those predators to serve a minimal period of incarceration and does nothing to address the needs of the victim or the protection of our citizens.

This bill is allegedly designed to address the first offender who, in the sponsor's opinion, may be receiving an excessive sentence. There are, in fact, very few individuals who are first offenders when they are arrested. What we are really talking about in this bill is reducing the sentence of those individuals who may have an extensive history of committing crimes, but who had never been previously convicted.

In Alaska, consistent with the rest of the nation, law enforcement agencies solve approximately 25 percent of the crimes by arresting the defendants. Due to the abolishment of plea bargaining, the prosecutors heavily screen cases before accepting the case for trial. Thus, even a smaller number are eventually charged within our court system. Of those, fewer yet plead guilty or are convicted. The odds of committing a crime, not being prosecuting, and not being convicted are heavily in favor of the offender.

To specifically address this bill, I find that it is extremely confusing to interpret.

The only mandatory sentences which are not affected by this bill are first degree murder, second degree murder, kidnapping, and misconduct involving a controlled substance in the first degree.

Virtually every other crime has had the sentencing structure gutted.

There is no longer any protection for a peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other first responder who is engaged in the performance of his official duties at the time of the offense. This law reduces the jeopardy of the offender, and increases the jeopardy of those who respond to give aid.

An individual who commits a heinous rape or sexually abuses a minor and is convicted for the first time could receive any sentence, including, as I understand this bill, a suspended sentence or a suspended imposition.

Although this bill purports to reduce presumptive sentencing by only one year for subsequent felony convictions, this bill allows much more discretion. For Class B and Class C felony convictions for the second or third offense, the sentence can be suspended or the individual can receive a suspended imposition of sentence. For a Class A felony, an individual convicted of sexual assault or sexual abuse of a minor in the first degree, several mitigating factors have been incorporated into this bill.

1. The defendant is under the age of 25. We fail to find any valid reason for this to be a mitigating circumstance.
2. The defendant has demonstrated good potential for rehabilitation. Who is to judge that the defendant has demonstrated good potential for rehabilitation? In many instances, the individual has not even been under observation from the time that he was first apprehended until he is convicted. Will this result in bringing in various psychiatrists to argue their less than exact scientific findings?
3. The defendant has no record of criminal law violations. This makes no sense, since we are talking about those individuals who are being presumptively sentenced for second and third offenses.
4. The defendant has demonstrated sincere remorse for the offense. It has been my experience, after 23 years in this profession, that most individuals, when they are apprehended, are sincerely remorseful. I would find it extremely subjective

for an individual to determine whether the remorse was for the victim or for the fact that the defendant was apprehended.

5. The offense was isolated, and not premeditated. What does this mean, if an individual is involved in a drunk driving manslaughter case, is it not isolated? It certainly is not premeditated. If an individual has two or three beers and rapes a woman in a hospital parking lot, is the offense not isolated? Was it a crime of opportunity?
6. The defendant's capacity to formulate the requisite culpable mental state for the offense was diminished to a degree insufficient to constitute a complete defense. I suppose this means that everyone who claims that he was using drugs or alcohol at the time of the offense was in a diminished mental state.
7. The defendant sought counseling or other mental health treatment for the conduct underlying the criminal offense before discovery of the offense or apprehension of the defendant. This situation would probably only occur in those child sexual abuse cases, where the family has become aware of the parent or other relative's abhorrent behavior. Is this a result of pressures from within the family, or the defendant acknowledging that he needs treatment? If, in fact, it is the latter, he certainly had the opportunity to discuss his abnormal desires with a competent professional before committing the act.
8. The defendant, before apprehension, notified law enforcement authorities of the defendant's involvement in the criminal conduct. It would appear that if an individual is being questioned for an offense without being taken into custody, and admits that offense, this could also be considered as a mitigating circumstance. If the defendant knew a warrant had been issued, he/she could call in before apprehension.

Section 11 of the proposed bill purportedly amends AS 33.15.180(a). Although this statute was repealed in the last legislative session, it would appear the sponsor's intent, in my opinion, is that any individual who is sentenced for a term over 180 days, other than a juvenile delinquent, is eligible for parole.

Alaska is unique. Alaska has both a young and transient population. Both of these factors contribute to a higher crime rate, according to many national studies.

Although it is too early to tell, it would appear that crime in Alaska is beginning to level off. Although we do not know exactly what the cause for this is, it could be Alaska's tough presumptive sentencing laws, which discourage individuals from coming to Alaska to commit their crimes.

Previous legislators cast presumptive sentencing, with the intent to insure a measure of certainty and uniformity in prison sentences, while allowing mitigating or extraordinary cases to be treated differently. The primary benefit of presumptive sentencing has been to minimize disparity created by widely varying sentencing practices among individual judges. Any law enforcement officer or criminal attorney knows that the particular judge assigned to a case is the single most significant factor in the ultimate sentence imposed. This law would create an incentive for "judge shopping." It would turn the sentencing system into the "luck of the draw."

It is true that there are more sex offenses being reported, investigated, and referred to prosecution. That would indicate that the sponsor of this bill is incorrect in indicating that people are not reporting the offenses because of the length of sentencing. We believe that more crimes are being reported now due to the publicity of the offense and the emphasis placed on sex offenses by our legislators. However, the trend does show some indication of levelling off.

Although one of the sponsors of this bill indicated there may be too much control by prosecutors, our system is designed to insure that unjust convictions do not occur. The defendant is represented by counsel and he does have a right to trial by jury. Offenses must be proven beyond a reasonable doubt. The individual may appeal those convictions, even after that determination has been made by a trial judge and jury. The only real danger to the public is that a prosecutor may choose a charge which is too low or too lenient. That concern is not addressed by this bill.

During the last two years, I have heard many individuals testify before this legislative body regarding the traumatization of a child victim. Some of these individuals have expressed concern as a result of the criminal justice system breaking up the family unit, as a result of presumptive sentencing. Many have explained that the father who rapes his child is not the same as a predator who rapes a

stranger's child. I ask you, who is better off, the child who is traumatized by a stranger who has loving parents to go home to for support, or a child who is traumatized by an individual whom that child loves and respects, and who believes is there to protect her or him? If the family unit turns on a child who becomes a victim within their own family, then maybe it is in the best interest of the child to remove the child from that family unit, rather than allow the child to continue to be victimized by either the defendant or the other family members.

If this bill is designed to reduce the cost of corrections, I believe other avenues should be explored.

Certainly, the cost of criminal justice in Alaska, as well as in the rest of the nation, is rising.

In good conscience, I do not believe we can reduce that cost by increasing the risk to those we serve.


Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 554
 Title : An Act Relating to Presumptive Sentencing
 Sponsor : _____
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Karla Forsythe Phone : 264-8228
 Division : Alaska Court System Date : 2/19/86

Approved by Commissioner : Arthur P. Snowden, II Date : 2/19/86
 Agency : Alaska Court System

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FEB 20 '86 15:34 ACA 2ND JUD DIST FAX276-6342

HB 554: Presumptive Sentencing
Fiscal Impact

Although the precise impact of HB 554 is difficult to quantify, it appears that this bill would permit the judiciary to devote more of its resources to the civil caseload, decreasing the delay in scheduling civil trials.

Alaska Court System statistics reflect that 18% of all felonies filed in superior court go to trial, more than double the national trial rate as reported by the National Center for State Courts. Alaska's presumptive sentencing scheme, combined with the ban on plea bargaining, appears to have contributed to this disproportionately high trial rate.

It is anticipated that the provisions of this bill which decrease the length of presumptive terms will have limited impact on the courts. However, eliminating first offenders from the presumptive scheme may have a significant and positive impact. In a recent study assessing the impact of sentencing patterns for sex-related offenses, the Judicial Council found that the trial rate for these defendants was double the rate for defendants sentenced non-presumptively. If this ratio can be generalized to all felonies, eliminating first offenders from presumptive sentencing could significantly reduce the overall felony trial rate.

Felonies comprise only 5% of the Anchorage superior court workload, but require half of the court's judicial resources. A decreased felony trial rate would result in more expeditious processing of domestic relations matters, commercial cases and other disputes which comprise the civil portion of the court's workload.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 554
Title : "An Act relating to sentencing."

Sponsor : Repr. Clocksin
Requestor : House Judiciary Committee
Date of Request : February 13, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Prosecution

Components : All Components

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by : Richard I. Pegues, Director Phone : 465-3672
 Division : Administrative Services Division Date : 2/20/86
 Approved by Commissioner : Harold M. Brown, Attorney General Date : 2/20/86
 Agency : Department of Law

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

This bill would remove first time offenders from the presumptive sentencing provisions of AS 12.55, would reduce all other presumptive sentences, would make many repeat felony offenders eligible for suspended impositions of sentence and suspended sentences, would extend parole eligibility to presumptively sentenced prisoners and would create a number of additional mitigating factors.

This bill will probably reduce the number of trials of first time felony offenders charged with class A felonies or unclassified sexual assaults. Because of the addition of new mitigating factors such as "good potential for rehabilitation" and "sincere remorse for the offense," it is anticipated that sentencing proceedings will delve into areas involving psychological evidence that is for the most part irrelevant under current law. Sentencing proceedings may, as a consequence, be longer and more complicated. In addition, more cases may undergo additional sentencing proceedings before the three-judge panel.

Because potentially more prisoners will be placed under probation or parole supervision, there may be more revocation proceedings and, in the appropriate case, further sentencing procedures. It is difficult to assess whether there would be substantial savings in trial resources. However, there would be substantially less expense and inconvenience in connection with jury service and more flexibility for the court and the Department of Law in calendaring cases for post plea proceedings.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB554
 Title: "An Act relating to sentencing..."
 Sponsor: Rep. Clocksin
 Reference: Judiciary
 Date of Request: 2/13/86

FISCAL DETAIL

Agency Affected: Dept. of Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-				
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-				

CAPITAL	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91

REVENUE	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91

FUNDING : (Thousands of Dollars)

GENERAL FUND	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-				

POSITIONS :

FULL-TIME	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Brant McGee, Public Advocate *BMG* Phone: 274-1684
 Division: Office of Public Advocacy Date: 2/21/86
 Approved by Commission: Eleanor Andrews *Eleanor Andrews* Date: _____
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requester
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 554
 Title: "An Act relating to sentencing."
 Sponsor: Representative Clocksin
 Requestor: House Judiciary
 Date of Request: February 20, 1986

FISCAL DETAIL

Agency Affected: Department of Administrative
 BRU: Public Defender Agency

Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The Alaska Public Defender Agency's caseload is rapidly becoming out of control for the number of attorneys authorized for that Agency. National caseload statistics for the maximum number of

Prepared by: Dana Fabe, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: February 20, 1986

Approved by Commissioner: [Signature]
 Agency: ADMINISTRATIVE

Date: 2/24/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

cases to be handled by a public defender during a year indicate that this Agency is 7.5 attorneys short of the minimum number required to handle its caseload. Furthermore, drastic increases in the number of jury trials in felony cases has caused greater stress on the attorneys, resulting in delays in processing of cases through the court system.

Because the Public Defender Agency is already operating without the recommended minimum number of attorneys to handle its caseload, this Agency cannot give up positions based on this legislation. However, this legislation will allow the attorneys in this Agency to handle the assigned caseload more quickly and efficiently and to absorb future increases in felony caseloads without the requirement of additional funding. This is due to the fact that the number of jury trials will certainly decrease if presumptive sentencing is not required for first offenders. Currently, a first time felony offender charged with a Class A felony is subject to a five-year presumptive term regardless of whether he demands a jury trial or pleads guilty to the charge. If presumptive terms are removed for first offenders, many offenders now electing a trial will plead guilty in the hope that their cooperation and demonstrative remorse will be reflected in their sentence. If the number of trials decreases for the Public Defender Agency, the number of felony appeals decreases as well, since there is no right to an appeal after a defendant has pled guilty to the charge. Similarly, the number of post-conviction relief actions handled by the Public Defender Agency should decrease.

For the above reasons, a zero fiscal note is anticipated for this legislation.

FEB 23 1986

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 554
 Title : "An Act Relating to Sentencing."

Sponsor : Representative Clocksin
 Requestor : House Judiciary Committee
 Date of Request : February 19, 1986

FISCAL DETAIL

Agency Affected : Corrections
 BRU : Administration and Support and Operations

Components : Various

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		113.6	118.1	122.9	127.8	132.9
TRAVEL		113.5	119.2	125.1	131.4	138.0
CONTRACTUAL		115.0	120.7	126.8	133.1	139.8
SUPPLIES		1.2	1.3	1.3	1.4	1.4
EQUIPMENT		20.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	363.3	359.3	376.1	393.7	412.1

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	363.3	359.3	376.1	393.7	412.1
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	363.3	359.3	376.1	393.7	412.1

POSITIONS :

FULL-TIME	-0-	3	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by : Susan E. Knighton, Research Analyst Phone : 465-3376
 Division : Corrections Date : 2-19-86

Approved by Commissioner : [Signature] Date : 2-19-86
 Agency : Corrections

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

Currently the Parole Board is holding 20 parole cases a year. This bill provides for increased parole eligibility that would approximately double the number of parole case hearings per year. To accommodate the increased workload the department has two options.

Option I (Displayed on fiscal note form): Continue to operate with a 4 member Parole Board composed of lay persons with increased support staff.

Probation Officer II 16A		
\$2702/mo x 12	=	\$ 32,424
SBS @ .0613	=	1,988
RET @ .1325	=	4,296
VAR BEN @ .051694	=	1,676
HI @ \$252.29/mo	=	3,027
		\$ 43,411 x 2 = \$ 86,822

Clerk Typist II 7B		
\$1586/mo x 12	=	\$ 19,032
SBS @ .0613	=	1,167
RET @ .1325	=	2,522
VAR BEN @ .051694	=	984
HI @ \$252.29/mo	=	3,027
		= \$ 26,732

Total Personnel Services	\$113,554
Assumed 4% inflation in personal services for fiscal years beyond FY87	

Travel	\$113,500
Provides for increased travel for 5 board members and 2 support staff to hold increased number of hearings	

Contractual	\$115,000
Additional board members compensation, increased office space rent and utilities	

Supplies	\$ 1,200
----------	----------

Equipment	
Office furniture and word processing equipment for new staff, one-time expenditure	\$ 20,000

Total FY87 Costs	\$363,254
Assumed 5% inflation in other than personal services line items for fiscal years beyond FY87	

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

Option II: Provide for a full-time, compensated Parole Board of three members and support staff.

Parole Board Member 21A		
\$3,812/mo x 12	=	\$ 45,744
SBS @ .0613 or 2800	=	2,800
RET @ .1325	=	6,061
VAR BEN @ .051694	=	2,365
HI @ \$252.29/mo	=	3,027
		<u>\$ 59,997</u> x 3 = \$179,991
Probation Officer II 16A		
\$2,702/mo x 12	=	\$ 32,424
SBS @ .0613	=	1,988
RET @ .1325	=	4,296
VAR BEN @ .051694	=	1,676
HI @ \$252.29/mo	=	3,027
		<u>\$ 43,411</u> x 2 = \$ 86,822
Clerk Typist II 7B		
\$1586/mo x 12	=	\$ 19,032
SBS @ .0613	=	1,167
RET @ .1325	=	2,522
VAR BEN @ .051694	=	984
HI @ \$252.29/mo	=	3,027
		<u>\$ 26,732</u>
Delete Executive Director		<u>(\$ 75,231)</u>
		\$218,314
Travel		\$113,500
Same as Option I		
Contractual		\$ 30,000
Increase office rent, delete board members compensation		
Supplies		\$ 2,000
Equipment		<u>\$ 30,000</u>
Total FY87 Costs		\$393,814

For fiscal years beyond FY87 the inflation rates of Option I would be assumed for Option II. FY88 - \$379.8, FY89 - \$396.5, FY90 - \$414.0, FY91 - \$432.2.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554

This proposed legislation reflects only minimal change to the current criminal code sentencing provisions. However, these minor changes will represent cost savings to the state in future years.

The following table represents the reduction in prisoner-years associated with presumptively sentenced felons projected to be admitted over the next five years.

	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Number of felons admitted to serve presumptive sentences	424	458	495	535	578
Total prisoner-years to be served by felons sentenced presumptively-current criminal code	2,544	2,748	2,970	3,210	3,468
Total prisoner-years to be served with proposed changes	2,264	2,446	2,643	2,857	3,087
Difference in prisoner-years	280	302	327	353	381

A person currently serving a 10 year presumptive sentence will generally serve 7.5 years in prison at a cost of \$219,000 (7.5 years x 365 days x \$80 day). If the presumptive sentence was reduced to 9 years, the prisoner will serve 6.75 years in jail at a total cost of \$197,000. Thus, the reduction in sentence length would result in a savings of \$21,900 in the seventh year.

The cumulative savings associated with the reduction in prisoner-years in the table above which would be theoretically realized over a 10-15 year period amounts to \$47,975,600, assuming no other changes in sentencing laws and a stable population base.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 554

February 20, 1986

HB 554 "An Act relating to sentencing."

The Council on Domestic Violence and Sexual Assault would like to add some concerns, comments and questions about certain sections of HB 554 to the discussion of these very important issues.

Sec. 5. AS 12.55.125(i). This section proposes to abolish presumptive terms for first felony convictions of sexual assault in the first degree and sexual abuse of a minor in the first degree. This section also reduces presumptive sentences for second and third felony convictions.

The Council on Domestic Violence and Sexual Assault would like to insure that serious discussion occurs prior to abolishing presumptive terms for first felony convictions of sexual assault in the first degree and sexual abuse of a minor in the first degree. When the Legislature classified first degree sexual assaults as unclassified felonies, they recognized the seriousness of these crimes. Except for homicide, rape is the most serious violation of a person's body because it deprives the victim of both physical and emotional privacy and autonomy. When rape occurs, the victim's ego or sense of self as well as her body is penetrated and used without consent. She has lost a basic human need and right: control of physical and emotional self. Although in many cases of child sexual assault physical force is not an issue, the damage to the victim is as serious and can be longer lasting because emotional damage is not as easily repaired as broken bones or bruises. Victims of child molestation are affected more severely by the crime than are victims of most crimes as supported by statistics relating to these victims. Studies have revealed that a majority of prostitutes were molested as children. Female molestation victims often become abusers of alcohol or drugs and a large proportion of female patients in mental hospitals were molested as children. One researcher has estimated that "upwards of 80% of kids at juvenile hall had been sexually molested regardless of the reasons that placed them there". Also of great concern is the probability that an overwhelming majority (75% according to one study) of child molesters and most rapists reported they were molested during childhood. The consequences of child sexual assault plus the ongoing trauma suffered by victims confirm the seriousness of the crime.

Research has shown that molestation by a parent or step parent is more traumatic to the child than cases involving non-family members because the child has been harmed repeatedly by a person whom he or she loves, trusts and regards as a protector. Treatment experts find little difference in the behavioral characteristics and patterns of offending behavior of an incest offender and a non-family child molester. In one of the few

empirical studies of child molesters, it was shown that incest offenders often commit sexual assault upon other individuals. Forty-four per cent of the incestuous males studied reported molesting non-family female children as well as their daughters; 11% of these incestuous men reported sexually abusing their sons as well as their daughters; 11% of these incestuous men reported molesting non-family boys as well as their daughters; and 18%, or nearly one out of five, of incest offenders also reported that they were violent rapists of adult women. Another stunning piece of information from this study was that the 411 non-incarcerated offenders studied reported committing 219,000 completed crimes involving thousands of victims over many years.

Besides the seriousness of these crimes, and the need to protect victims from further harm, other important aspects of this issue need to be scrutinized. A rationale has been presented that first time offenses should not be subject to presumptive sentences because first time offenders are more amenable to treatment. A study conducted at Atascadero State Hospital in California revealed that almost 85% of the hospitalized child molesters admitted to prior separate undetected molestations. Two thirds of these molesters were officially considered to be first time offenders. It is highly unlikely that someone convicted for the first time is really a first time offender.

Although a great deal of discussion has centered around the conflict of long prison terms versus the need for treatment of offenders to assure rehabilitation, there is little empirical evidence that treatment is effective. Reputable sex offender therapists admit that there is no guarantee for cures and, in fact, they recommend long term monitoring of known sex offenders to prevent reoffending. Also, most treatment specialists recognize that imprisonment is necessary so offenders recognize the severity of the crime and society's sanction against it.

There is a need to appreciate the chronicity and dangerousness of this population, the damage that is done by their offenses and have some knowledge of victims and victimology. Discussion of this complicated issue must weigh all factors before actions are taken. The most important factor is our responsibility to protect the community and prevent future victims.

Sec. 7.AS 12.55.155(d). This section adds mitigating factors to presumptive terms. The Council on Domestic Violence and Sexual Assault has serious questions and concerns about the following mitigating factors in the HB 554:

(17) "the defendant is under the age of 25"

Why is the fact that the defendant is under age 25 seen as a mitigating factor?

(18) "the defendant has demonstrated good potential for rehabilitation"

Who would judge that the defendant has demonstrated good potential for rehabilitation? How would someone "demonstrate potential"? It is recognized that sex offender treatment is a highly specialized area

psychology with few experts. Although there are therapists without a sex offender speciality who may feel they can assess rehabilitation potential, the consequences are too serious to be left to non-specialists. Mental health professionals without specialized expertise are more prone to errors such as undercalling risk, inattention or oversimplification of the variables that are relevant and making unrealistic or dangerous recommendations. This issue is particularly important in Alaska where there is a dearth of sex offender specialists.

Even specialized sex offender therapists have not developed and tested a treatment model for minority cultures. Assessment and treatment would therefore be biased and could add to the over-representation of Alaskan Natives in prisons and denial of appropriate treatment services.

- (19) "the defendant has no record of criminal law violations"

If the presumptive terms in HB 554 are only for defendants with prior convictions, how is this factor relevant?

- (20) "the defendant has demonstrated sincere remorse for the offense"

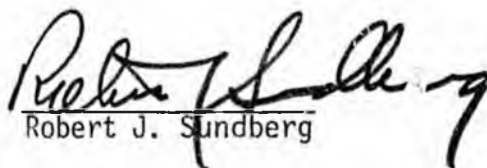
It is difficult to judge remorse. Even if there is remorse, it is not sufficient to assure that the offender will not reoffend. In the case of sex offenders, frequently after the offender has sexually abused a child, he will go through a period of feeling depressed and terrible about what he has done. He will swear to himself that he will never repeat the behavior again. This will eventually be overcome again by the rationalizations he used in the behavior and once again, the behavior will occur. Also, it would be possible and, in fact, very likely for skilled manipulators to appear remorseful. Therapists who have been working in the field for many years assert that very few sex offenders are sincerely remorseful.

- (22) "the defendant's capacity to formulate the requisite culpable mental state for the offense was diminished to a degree insufficient to constitute a complete offense"

It is not clear what factors diminish a defendant's culpable mental state. Does this include being under the influence of alcohol or drugs? If this is true, is this sufficient justification to mitigate a serious crime? What about the offender who purposefully uses alcohol and drugs to lower inhibitions against committing sexual and other violent crimes?

Sec. 11. AS 33.15.180(a). This section makes prisoners who are given presumptive terms eligible for parole. Because of the severity of the crimes addressed by presumptive sentencing, issues and concerns listed for Section 5 in this position paper should be considered for this section of HB 554 also.

The Council recognizes the serious fiscal questions facing Alaska because of the increased and costly demands placed upon the criminal justice system. However, we understand that other reforms of the correctional system could be implemented that are less controversial and that would also have a negative fiscal impact. All these issues should be considered before actions are taken. We also know that solutions to these problems are complex and may not be to everyone's satisfaction. There is a great deal that is unknown about sex offenders and less that is understood. As the primary state agency representing victims of domestic violence and sexual assault, the Council thinks it is imperative that actions taken consider the protection of victims and that the State do all it reasonably can to prevent further victimization.


Robert J. Sundberg

POSITION PAPER

HB 554

This bill makes adjustments to the presumptive sentencing scheme and its major effect is to return a modicum of sentencing discretion to the judiciary. The bill accomplishes this by removing presumptive terms in cases involving first time felony offenders, allowing the court to suspend portions of sentences for Class B and C felony offenders, expanding parole eligibility to those offenders subject to presumptive sentencing, and expanding the list of aggravating and mitigating factors which are available to increase or decrease a presumptive sentence.

This legislation will affect the Alaska Public Defender Agency and the Office of Public Advocacy in a number of ways. First, it is estimated that the number of trials for first felony offenders will decrease dramatically, since these offenders will be subject to sentencing at the discretion of the judge. Currently, a first offender charged with a Class A felony knows that he will receive a presumptive five-year sentence regardless of whether he demands a jury trial or pleads guilty. Were full discretion returned to the court in sentencing first offenders, many would change their pleas to guilty or no contest in the hope that their cooperation and demonstrated remorse will be taken into account at the sentencing hearing. The reduction in trials will not only allow attorneys in both agencies to handle their ever increasing caseloads more efficiently, it will also decrease the number of time-consuming and expensive appeals of convictions, since no appeal can be taken from a guilty plea.

This legislation is also desirable because it recognizes that many first offenders demonstrate potential for rehabilitation, rendering lengthy and expensive jail sentences unnecessary to accomplish the goals of deterrence and protection of the public. Other provisions of the bill, including the addition of mitigating factors, allowing suspension of sentence for Class B and C felons and parole eligibility for presumptive offenders will also result in easing jail overcrowding and allowing offenders who do not need hard jail space to participate in more economical and beneficial rehabilitative

treatment programs. A decrease in the jail population will not only save a great deal of money for the state but will also reduce the number of post-conviction relief actions handled by the Public Defender Agency and Office of Public Advocacy for convicted felons.

For the above reasons, the Department supports this bill.

Diana Tabe
Diana Tabe, Public Defender

2-23-86
Date

Brant McGee
Brant McGee, Director, Office of Public Advocacy

2/21/86
Date

Eleanor Andrews
Eleanor Andrews, Commissioner of Administration

2/22/86
Date

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99801
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1986

SUBJECT: Sentencing
(CSHB 554(Jud))

TO: Representative Don Clocksin

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a sectional analysis of CSHB 554(Jud):

Section 1 - Allows the court to order a defendant, convicted of certain offenses, to participate in a treatment program for persons who are sex offenders, or drug or alcohol abusers.

Section 2 - Deletes the reference to limitations on discretionary parole in AS 33.16.090 and 33.16.100.

Section 3 - Deletes presumptive sentencing for first felony offenders, except as provided in paragraph (2). Reduces the presumptive term for a first felony conviction from seven to five years.

Section 4 - The percentage amount by which a court could decrease a presumptive term is increased from 50 to 75 percent.

Section 5 - Adds four new mitigating factors that would permit the court to decrease a presumptive sentence.

Section 6 - Amends the section to provide that both mandatory and discretionary parole are available to a prisoner sentenced to a term of imprisonment greater than 180 days.

Section 7 - Provides that a prisoner serving a term of at least 181 days may be released on discretionary parole, subject to AS 12.55.086(b) regarding suspended imposition of sentence, and 12.55.015 regarding the power of the court to restrict eligibility for parole.

Representative Don Clocksin
Page 2
April 7, 1986

Section 8 - Repeals those provisions establishing that
certain prisoners are ineligible for parole.

MFF:mkr
m4/076

LETTERS IN SUPPORT



Superior Court
State of Alaska

THIRD JUDICIAL DISTRICT

303 K Street
Anchorage, Alaska 99501

Chambers of
VICTOR D. CARLSON, Judge

March 10, 1986

The Honorable M. Mike Miller
Chairman, Judiciary Committee
Alaska House of Representatives
Pouch V - Mailstop 3100
Juneau, Alaska 99811

Re: House Bill 554
Presumptive Sentencing

Dear Representative Miller:

This letter is written with reference to the amendments proposed to the scheme of criminal penalties set forth in AS 12.55 which has been in effect since January 1, 1980. Over the past six years a substantial body of judicial interpretation has accumulated and practitioners and trial judges can predict with a reasonable degree of certainty what the statute means.

The subject bill eliminates from the scheme of punishment for Class A felonies a five-year presumptive sentence for the first conviction and a seven-year sentence for attacks against peace officers, etc. and for those who use weapons in the perpetration of crime. I question why, if penalties discourage criminal conduct, stiff penalties for what are clearly significant crimes should be reduced.

The proposed reduction of one year from the second and third convictions ranges from a one-half reduction to a one-fifteenth reduction depending upon the class of crime and number of the conviction. I can understand where reducing from two years to one year the presumptive sentence may promote changes of plea but reducing from fifteen years to fourteen means very little.

Concerning AS 12.55.155(a)(1) which provides for the possibility of decreasing a presumptive term by the full amount

The Honorable M. Mike Miller
Juneau, Alaska 99811

March 10, 1986

- 2 -

if the term is four years or less and a mitigating factor has been established. It appears as if greater flexibility could be accomplished by simply raising the four years to six.

The proposed additional mitigating factors generally weaken the presumptive sentencing scheme. The scheme was adopted to more nearly achieve equal treatment of offenders based upon their offense and not personality, color, social status, education, identity of the judge, wealth, etc. Factors like "seeking mental health treatment" are related to social status, education and wealth and have nothing to do with "making the punishment fit the crime." If the additional mitigating factors are included, the presumptive sentencing scheme is seriously eroded.

The elimination of "manifest injustice" from AS 12.55.165 and 175 and the insertion of new language to permit referral to the three-judge sentencing panel and the provision for referral just to permit deviation from the presumptive sentencing scheme will spawn numerous appellate cases interpreting the new language. It seems counterproductive to eliminate words which have been given an appellate interpretation and to add words which will require an interpretation when certainty of sentencing is one of the main objectives. Further, to permit "deviation" seems particularly troublesome.

Thanking you for considering this letter, I am

Very truly yours,



Victor D. Carlson
Superior Court Judge

VDC:rw

cc: Karla L. Forsythe
Staff Counsel
Alaska Court System
303 F Street
Anchorage, Alaska 99501



CENTRAL COUNCIL
Tlingit and haida INDIAN TRIBES of alaska
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801

April 28, 1986

The Honorable M. Mike Miller
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: House Bill 554
For an Act entitled: "An Act relating to sentencing."

Sir:

The Central Council of Tlingit and Haida Indian Tribes of Alaska strongly urges passage of House Bill 554.

Considering all testimony being provided throughout the state, including judges, parole and probation officers, and the Commissioner of Corrections himself, there can be no doubt that presumptive sentencing, as it currently is being enforced, has the effect of discriminating against Alaska Natives.

Whenever laws are enacted that are designed to be especially harsh in order to deter criminal behavior, what often results instead is that many of those who are accused and are members of the dominant culture avoid persecution and conviction altogether. At the same time, members of minorities feel the full brunt of the increased severity of punishment.

The bill under consideration does not move toward a leniency which would jeopardize the public welfare.

What it does is provide some reasonableness and latitude in considering appropriate and just punishment.

This bill is not one which will "weaken" criminal justice in Alaska. It is one which will move toward ensuring that all who commit crimes against our state are meted out fair and equal justice.

Sincerely,

Art Holmberg, Director
Department of Human Services

Alaska Native Health Board

1136 W. 8th AVENUE SUITE 2 ANCHORAGE, ALASKA 99501

PHONE (907) 776 6089

Reference #A86-0326

March 21, 1986

Representative M. Mike Miller
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, Alaska 99811

Dear Representative Miller:

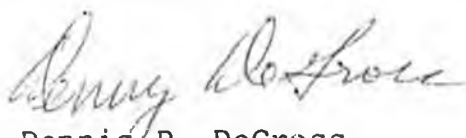
This letter is in support of H.B. 554, "An Act relating to sentencing."

The Alaska Native health Board has long been concerned about the inordinately high percentage of Alaska Natives residing in the State's correctional system.

We believe significant cultural differences not currently understood or recognized by the criminal justice system, coupled with the current presumptive sentencing statutes, conspire to create this gross inequity.

The interests of both the State and the rehabilitation needs of offenders will be better served if judges are allowed the flexibility to make judgments free of the presumptive sentencing requirements. Passage of H.B. 554 is therefore strongly recommended.

Sincerely,



Dennis P. DeGross
Executive Director

dd/DD

ALEUTIAN/PRIKILOF ISLAND ASSOC. INC.
BRISTOL BAY AREA HEALTH CORPORATION
COOK INLET NATIVE ASSOCIATION
COPPER RIVER NATIVE ASSOCIATION

KODIAK AREA NATIVE ASSOCIATION
MANILAU ASSOCIATION
THE NORTH PACIFIC RIM
NORTH SLOPE BOROUGH HEALTH CORP.

NORTON SOUND HEALTH CORPORATION
SOUTHEAST ALASKA REGIONAL HEALTH CORP.
TANANA CHIEFS CONFERENCE
YUKON-KUSKOKWIM HEALTH CORPORATION

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER
FROM: MORRIS BROWN
BOX 1232
KENAI 99669
283-3364

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

I SUPPORT PASSAGE OF THIS BILL BECAUSE ALASKA CAN NO LONGER AFFORD TO KEEP INMATES INCARCERATED FOR LONG TERMS WITHOUT PAROLE. PAROLE DOES WORK. IT IS ALOT LESS EXPENSIVE TO KEEP A PERSON ON PAROLE THAN IN JAIL AND HE STILL WILL BE SUPERVISED.

DATE: 04/01/86 TIME: 14:41:14 SENT BY: SOLDOTNA LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER
FROM: DARYL SHAW
2104 CLEVELAND AVENUE
ANCHORAGE 99517
248-3704

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

I AM FOR HB 554. I BELIEVE PEOPLE SHOULD DESERVE A SECOND
CHANCE. I DO AGREE THAT THEY NEED TO HIRE MORE PAROLE OFFICERS
TO HELP REHABILITATE THE OFFENDERS.

DATE: 04/01/86 TIME: 09:32:18 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER
FROM: GEORGIA EASTLUND, SUSITNA B.P.W.
PO BOX 4832
ANCHORAGE 99510
272-6970

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

AS A REPRESENTATIVE OF THE SUSITNA BUSINESS AND
PROFESSIONAL WOMEN I WOULD LIKE YOU TO KNOW THAT
OUR ORGANIZATION OPPOSES HB 554.

DATE: 04/01/86 TIME: 10:27 /2 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE JUDICIARY

iB534

Robert Thompson
P.O. Box 103155, H
Anchorage, Alaska 99501

Dear Legislator,

This letter is a product of very careful consideration. It is a plea for an alternative. Please do not misconstrue this plea as "just another convict crying about what the system has done to him." This letter, hopefully, will in some way help to bring about some type of viable alternatives to constant incarceration.

To begin with let me set out some ground rules, as I understand them. First, from the figures that I have been fiving, it cost between \$35,000 and \$45,000 a year to incarcerate an inmate. Second, there are "outpatient or halfway houses" for certain classes of crimes. Third, the protection of John Q. Public. Fourth, the need for a criminal justice system.

Before I address other issues let me give some of my personal back ground. I am a thirty-four year old, white male with nine years of military service as of March 16, 1985. I have a substantial amount of college credits toward degree's in Drug and Alcohol, Mental Health and Social Work Counseling. I am divorced and have a 13 year old son. I come from an old southern background and have been in Alaska Since October 1982. In October of 1984 I was accused of sexually abusing my fiancée's nine year old daughter. I was convicted in February of 1985, and sentenced to sixteen years incarceration.

I am a 4.0 average college student so I feel I am reasonably intelligent, but there are many aspects of the "Criminal Justice System" that I just cannot understand. I have been a reasonably law abiding citizen through my life. I have no juvenile record and only a misdemeanor as an adult. I do have some traffic tickets but no D.W.I.'s or suspended license.

I have been in Cook Inlet Pre-Trial for almost a year, and have seen many people come and go. I have seen people paroled or released and they have come back already. I have seen people with extensive adult and juvenile records, committing murder, assaults, robberies, drug sales and others yet they are given lighter sentences and are being told in some cases that because they are young that they are good candidates for rehabilitation. But those of us that have been productive citizens, not in trouble with the system and educated, that we are not good candidates because we should have know better. I must reject that idea. It did not take me long to realize that I never wanted to come back on this side. Which takes me back to my original points. Having been on the other side, management if you will, the staggering amount of money spent on each inmate yearly apalls me. Factored out if I spend 10 years incarcerated the state will have spent: approximately \$350,000 to \$450,000 and that is at today's figures. It appears that there could be some type of less expensive alternatives. I contend that there are those of us, innocent or guilty that have learned our lessons and have expressed a desire for professional help. As it is now, with presumptive sentence, the programs the court has directed us to attend won't even be available to us until many years down the road. I am truthfully telling you that the inmates I've talked to, in my class of crime, say that if treatment were available now they would enthusiastically attend. But that 4, 8 ro 10 years from now all they want to do is get out. But in defense of the system, if sex offenders were promptly sent to a treatment program and

completed it, there wouldn't be any justification for further incarceration. Would there?

Drug and alcohol offenders have an outpatient and in-house program. It is my assertion that the vast amount of money that will be spent on us over the coming years could be spent in a more productive way. After being associated with Mental Health professionals for many years, I understand that their fees are approximately \$100 an hour. At this rate an individual could receive over 10 years, 4,500 hours of one on one professional help. Broken down this would amount to 112½ days of 4 hour sessions per year. And if the individual subsidized part of this cost it would greatly increase the amount of treatment time. I feel if the State of Alaska was really interested in stemming the tide of Child Abuse, it would take a bold step to find an alternative to long term incarceration.

I am not so naive as to believe that everyone could exist in the type of alternative that I suggest, but I feel that if John Q. Public put aside their emotions, and honestly evaluated the repercussions of long term incarceration they would scream for alternatives.

Using myself as an example consider the fact that I will not reintegrate into society until I am 45 years old. Granted that's still young but how many employers are looking for a 45 year old ex-con with no skills of the job market of the year 1997. I'll agree that there are some educational opportunities available but what about the funds for shelter, food, clothes or transportation. Some of us will have the foresight to save as much as we can but not everyone will. This means that we will probably have to apply for some form of State aid. This thought does not make me feel very good about myself or my chances at a normal productive life. This will continue to place the burden of our support on the public.

Don't get me wrong. Crimes that are committed against our young should be punished. But if punishment is the main goal of the system then the society is not going to be any better off when inmates are released. I have talked to many people during my short incarceration and some are willing to pay their debt to society but with no alternatives they are becoming very cynical people. Very hardened towards any form of authority and very down trodden individuals. I will grant you that the system is not supposed to be pleasant and as has been said before "don't do the crime if you can't do the time," but there has to be some type of vision for the future. I sit here day in and day out, listening to people that are proud to be called a thief. This is what they have been in the past and say they will be in the future. When the space shuttle disintegrated there were actually people here that laughed and said that it served them right. One individual who committed a violent rape said that he had gotten drunk and committed this same crime many times prior to being caught, and was proud of it. And from talking to him this could happen when he gets out. My background was such that human life and love of country were our mainstays. The simple thought that people will now doubt my word because I've been convicted of a felony is probably what bothers me most.

Last and certainly not least, I'll address the "Criminal Justice System," or as some of termed it the "Criminal Injustice Industry." Even though I am incarcerated I still believe that we need a protection system. But it seems strange to me that the conviction rate in Alaska is extremely high. Overall I've been told about 90%. In sex cases even higher. Enclosed you'll find a letter from Assistant D.A. Betsy Sheely, stating that they have never lost a sex case in which a child had testified. The D.A.'s office consistently states that "children don't lie about sexual abuse, that they don't have the knowledge and that they don't have any sexuality. They have doctors, counselors, police officers, and social workers who are consistently used and reused to testify. And in most cases their testimonies are almost mirror images of their prior testimony.

I challenge the State of Alaska to seek information from noted experts in the field. People who have substantial credentials and have done long term research in the child abuse field. There are professionals on both sides of the fences. But I

(3)

have yet to find one in Anchorage that will testify contrary to the states allegations.

I will grant you that child abuse does occur, in large numbers. I personally talked to my attorney's secretary and asked her how many sex cases they had won during her tenure there (2 years), and she told me only one. Enclosed find a newspaper article from Public Defender Dana Fabe, in which she states they handled over 13,000 cases last year. I can't believe that an attorney has time to be in court, to counsel with client, to research and to prepare for trial on this number of cases. In my case I gave him names of approximately 13-15 potential witnesses. He interviewed 6, subpoenaed 4 and called only 3. What kind of investigation was that?

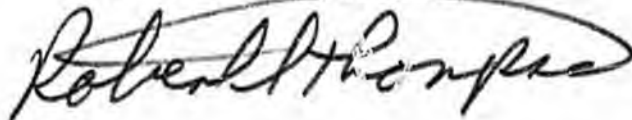
I don't necessarily fault my attorney but I do feel that because of his case load, he just couldn't allot anymore time to my case.

Other inmates have made the exact same statement about this attorney and other's from the P.D.'s office. I feel that many good attorneys are being made to look bad, because of the overload of cases. I know that the D.A.'s office has an overload also, but they have the assets of the State behind them. Then was the last time the P.D.'s office hired a prominent attorney from the private sector to defend against a "Special Prosecutor" that the State has hired? Ultimately the defendant suffers. I truly believe that in this state "You Are Guilty Until Proven Innocent."

In closing I thank you for your time and ask that you consider what I have had to say. You may decide that none of this has any merit, but at least you have taken time from your schedule to review these writings and I again thank you.

Should you desire anything further from me, I enclose my address below.

Sincerely,

A handwritten signature in cursive script that reads "Robert Thompson". The signature is written in dark ink and is enclosed within a faint, hand-drawn oval shape.

Robert Thompson

Michael W. Brewer
Bldg. 10 Chugach Ave.
Kenai, Alaska 99611

M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Miller,

In this letter I would like to address the issues of Presumptive Law; as it directly affects the people convicted under it.

This law as it affects the convicted offender, forces the court system to impose a greater mandatory presumptive sentence on the first offender. Or because of a prior felony does not allow the sentencing court to take into account the nature of the prior offense in second offender cases.

In essence the very nature of the presumptive law prohibits the sentencing judge from invoking any judicial discretion, which might reduce the impact of the sentence, when the sentence is clearly unjust. This actually negates any consideration of factors that might of been able to come into play.

Initially, the idea of presumptive sentencing was proposed for repeat offenders. Alot of people were of the opinion that repeat offenders were not being given adequate sentences. When the legislature took the idea of presumptive law and applied it to first time offenders, the results were clearly mistaken. People are being given long term sentences that simply aren't justified. (Under Chaney, the case which sets out criteria used by judges to set jail terms. The criteria includes the need to reaffirm societal norms, condemnation of anti-social behavior and evaluation of the likelihood of a defendants rehabilitation.)

The presumptive law does not allow a person access to the court system for sentence modification or reduction in any form. The law does not take into account any rehabilitation that may take place; in fact by it's very presence, rehabilitation is not only hampered but almost removed from reality. This is done through the removal of incentives for reform. It doesn't matter how good you are or how much you change, you still have no hope of parole or sentence reduction. They are strictly disallowed for those convicted under presumptive statutes.

With hope gone the inmate has little or no reason to change or to better himself. In fact, many inmates no longer care about rehabilitation because it just doesn't matter what they do.

In summary, I strongly support HOUSE BILL NO. 554 as written, and urge the swift passage of the BILL.

Sincerely,

Michael W. Brewer

Michael W. Brewer

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION/THIRD JUDICIAL DISTRICT
OFFICE OF THE DISTRICT ATTORNEY

HILSBRITH, GOVERNOR

REPLY TO

103rd WEST 4th AVENUE SUITE 520
ANCHORAGE ALASKA 99501
PHONE (907) 277-8622

DRAWER 1180
KENAI, ALASKA 99611
PHONE (907) 283-3131

326 CENTER AVE. 2ND FLOOR
KODIAK, ALASKA 99615
PHONE (907) 486-5744

P.O. BOX 1070
PALMER, ALASKA 99645
PHONE (907) 745-5027

P.O. BOX 671
VALDEZ, ALASKA 99686
PHONE (907) 835-2462

RECEIVED
1/18/85

January 16, 1985

William David Weed, Esq.
716 W. 4th Ave. Suite 400
Anchorage, Alaska 99501

Re: State v. Richard Anderson

Dear Mr. Weed:

I have discussed with the District Attorney Victor Krumm my desire to dispose of this case without a trial to avoid further damage to Jacob and Elizabeth from testifying. He has authorized me to offer the following plea bargain to your client Richard Anderson:

1. By filing an information, we will consolidate counts I, II and III into one count of Sexual Abuse of a Minor in the First Degree. The count would charge Mr. Anderson with engaging in sexual penetration with E.E. by fellatio, digital penetration into her genital opening, and digital penetration into her anal opening.

2. By information we would consolidate counts IV, V and VI into one count of Sexual Abuse of a Minor in the First Degree charging him with engaging in sexual penetration with J.E. by fellatio, anal intercourse and digital penetration of his anal opening.

3. Counts VII and VIII would be dismissed.

4. We would not attempt to seek aggravation of the presumptive sentences. There are several aggravating factors which we could prove. The victims are particularly vulnerable due to their age and entrustment to the care of the Andersons as babysitters. AS 12.55.155(c)(5). The conduct involved physical injury (anal tears). AS 12.55.155(c)(1). Anderson has a prior criminal history of similar offenses based on the incestuous abuse with his stepdaughters. AS 12.55.155(c)(21). The offenses are among the most serious conduct. AS 12.55.155(c)(10). I have appellate cases and superior court decisions from this district to support the findings of all these aggravating factors.

5. Anderson can enter a no contest plea to the two count information charging the offenses as outlined in paragraphs one and two above. The District Attorney must be notified of his acceptance of this plea bargain by 4:30 p.m. on January 17, 1985.

To: William David Wood
Re: Richard Anderson
January 16, 1985
Page Two

He must enter his plea on January 18, 1985, unless the court cannot schedule it by then. Otherwise, it must be entered by January 21, 1985.

I believe your client should know the severity of the charges he is facing and the likelihood of conviction. This office has never lost a child sexual abuse case with children this young when they have gotten on the stand and confirmed that the abuse occurred. Several grand jurors told me after the indictment that these two children were the most persuasive and best child witnesses they had seen in their three months of grand jury service. Some of them were visibly emotionally affected by the testimony.

If your client is convicted at trial, because of the mandatory consecutive sentencing provisions of AS 12.55.025(g)(5), he would be facing a minimum presumptive sentence of 48 years on the six unclassified counts plus whatever amount of years we can get for aggravation and the class B felonies. The proposed plea bargain would limit his liability to sixteen years.

Very truly yours,


NORMAN C. GORSUCH
ATTORNEY GENERAL

VICTOR C. KRUMM
DISTRICT ATTORNEY

By: Elizabeth H. Sheley
Elizabeth H. Sheley
Assistant District Attorney

EHS:sa

Read by Dick 1/18/85
and rejected
DW

FROM: JOSEPH P. PALMIER 
DATE: July 25, 1984
RE: ANDERSON Child Molestation Matter

At approximately 11:30 a.m. on July 25, 1984, I received a telephone call from Helene M. Antel, Assistant District Attorney. She indicated that she heard I was representing the Andersons, which I acknowledged. [She said that she made it a practice to call defense attorneys in all of these cases where she was contemplating an indictment. She said that she had testimony from two children apparently that there was anal penetration and that she was thinking of charging both Mr. and Mrs. Anderson (apparently Mrs. Anderson on the theory of an accomplice). She said that if the Andersons would waive Grand Jury and plead to one count each of a Class A crime (felony), she would charge it in such a way that the presumptive sentencing did not apply, i.e., charge the crime as occurring before the new law went into effect in 1983. Otherwise, she would charge each of them with two counts of presumptive, two counts unpresumptive, which of course, would increase any sentence they would get if they were, in fact, found guilty.]

I told Helene that I had a five day trial starting and would not be able to get back to her probably within the next five or six days. [She said she could not promise that she wouldn't go to Grand Jury, on the one hand, however, she said there was a lot of pressure from the families of the victims to get something done.] She said that she had viewed the videotapes

and that psychologists will testify that children at this age have no psychological ability to lie.

I asked Helene to put this in writing; however, she declined to do so.

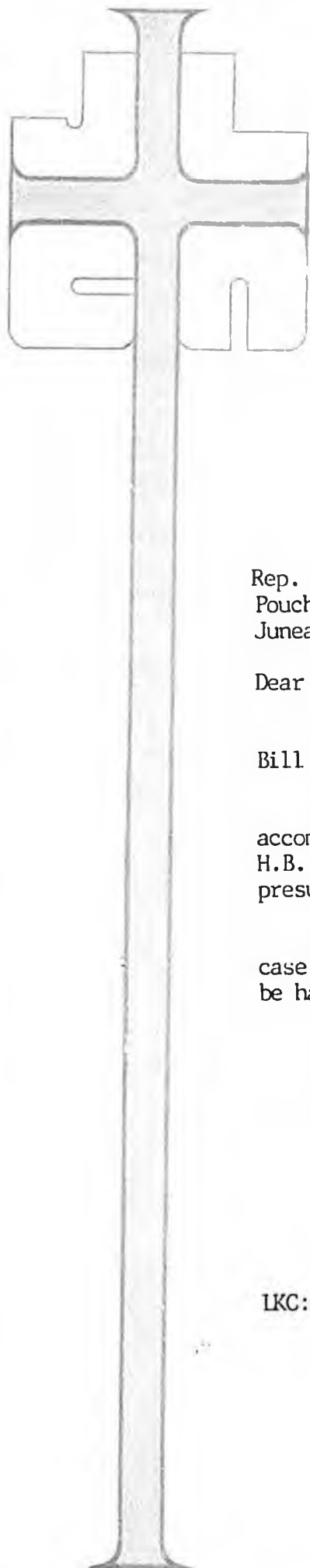
The question is now to determine how much evidence they have and whether or not they're bluffing. Since our clients deny any involvement whatsoever, I have instructed Eddi to immediately get them in so that we can determine what, if any, action they wish to take.

RA/SMEMOS

NOTE.

*DICK AND BETTY ANDERSON BOTH MAINTAIN THEIR INNOCENCE
DICK WAS SENTENCED TO FIFTY TWO YEARS- PRESUMPTIVE
BETTY WAS SENTENCED TO SIXTEEN YEARS PRESUMPTIVE.
THEY ARE BOTH APPEALING THE CONVICTION.*

F.H. 8-1-85



*Jewel Lake
Church of the Nazarene*

4025 West 88. Anchorage, Alaska 99502

(907) 243-2344

LYLE K. COBLENTZ *Pastor*

(907) 243-7609

MATTHEW L. WEAVER *Associate*

(907) 248-4192

SID STONE *Minister of Vestibition*

(907) 243-2586

March 17, 1986

Rep. M. Mike Miller
Pouch V "MS 3100"
Juneau, AK 99811

Dear Rep. M. Miller:

I want you to know that I strongly support House
Bill 554.

The law as it is stated today falls short of
accomplishing the intent of the original authors.
H.B. 554 comes closer to dealing with the issues of
presumptive sentencing.

There are many instances when the facts of a
case require judges to modify sentences. I would
be happy to cite them upon request.

I urge you to vote for H.B. 554.

Thank you for your time.

In His Service,

Lyle K. Coblentz
Lyle K. Coblentz

LKC:ms

LAW OFFICE
TORRISI & SNYDER

FREDERICK TORRISI
DAVID B. SNYDER

P.O. Box 210
(OLD BANK BUILDING)
DILLINGHAM, ALASKA 99578
(907) 842-5008

February 21, 1986

Representative Mike Miller
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 554

Dear Representative Miller:

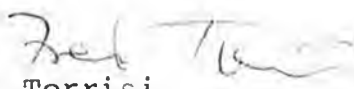
I am a lawyer who has practiced in Alaska since 1974. I have reviewed HB 554 and believe it should be enacted into law.

The points advanced by Representative Clocksin are well taken. Alaska has excellent judges and in some instances present law unnecessarily restricts their discretion. Uniformity may be a proper goal, but people and crimes are unique, and the system should allow more flexibility. I think enactment of HB 554 would be a significant improvement of our criminal justice system.

Please let me know if you have any questions on this.

Sincerely,

TORRISI & SNYDER


Fred Torrison
Attorney

FT:ilk

cc: Rep. Adelheid Herrmann
Sen. Fred Zharoff
Rep. Don Clocksin
Rep. Mike Davis

2--25-86

DEAR SIR,

I am writing you in response to house bill #554 concerning presutive sentencing in the state of alaska. I am eighteen years old and was a senior in high school. Until now I have never been in trouble with the law. I have been arrested for one count of armed robbery, which I did not committ. I am what is known as an accessory to the fact. (I knew about it and said nothing). Anyway there is no excuse for such a crime! I am now looking at five years in an adult prison, (Presumtive sentenceing). I do not feel like I deserve five years in jail. I never dreamed I would be in jail with all those murders and rapers one might hear about on television. Now I eat breakfast, lunch, and dinner with them every day. A place like this could easily psyc a young person such as myself into a life of crime.

The reason I am writing you is I would love to have the chance to speak at a pulic hearing I heard would be held in Anchorage. The prisons in thi state are presently over crowded with people like myself who find themsele in jail over night and don't really deserve such conditions...

If ther is anything you can do to assist me it would be greatly appreciated.

signed frightened and confussed,
JAMES O'DELL NUNLEY

LAW OFFICE
TORRISI & SNYDER

FREDERICK TORRISI
DAVID B. SNYDER

P.O. Box 210
(OLD BANK BUILDING)
DILLINGHAM, ALASKA 99576
(907) 842-5608

February 21, 1986

Representative Mike Miller
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 554

Dear Representative Miller:

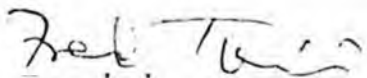
I am a lawyer who has practiced in Alaska since 1974. I have reviewed HB 554 and believe it should be enacted into law.

The points advanced by Representative Clocksin are well taken. Alaska has excellent judges and in some instances present law unnecessarily restricts their discretion. Uniformity may be a proper goal, but people and crimes are unique, and the system should allow more flexibility. I think enactment of HB 554 would be a significant improvement of our criminal justice system.

Please let me know if you have any questions on this.

Sincerely,

TORRISI & SNYDER


Fred Torrison
Attorney

FT:ilk

cc: Rep. Adelheid Herrmann
Sen. Fred Zharoff
Rep. Don Clocksin
Rep. Mike Davis

FEBRUARY 17, 1986

DONALD E. CLOCKSIN
POUCH V,
JUNEAU, ALASKA
99811

Re: HOUSE BILL No. 554

DEAR SIR:

THE ABOVE MENTIONED HOUSE BILL ADDRESSES MANY PROBLEMS IN THE SENTENCING PROCEDURE AND I BELIEVE WOULD PUT A LITTLE "JUSTICE" BACK IN THE SYSTEM. WHILE THIS BILL HAS MY FULL SUPPORT, I AM DEEPLY CONCERNED THAT UNCLASSIFIED FELONIES ARE NOT INCLUDED, IS THIS BECAUSE ALL SUPPORT WOULD BE WITHDRAWN IF UNCLASSIFIED FELONY SENTENCES WERE PROPOSED FOR ADJUSTMENT?

CERTAINLY OUR ELECTED OFFICIALS ARE AWARE OF THE INJUSTICES THAT OCCUR AT ALL LEVELS OF THE CRIMINAL JUSTICE SYSTEM, FROM CHARGING TO SENTENCING, BUT SEEM TO BE UNABLE OR UNWILLING TO TRY AND BRING IT BACK TO A FAIR AND JUST PROCESS AS IT WAS MEANT TO BE. PUNISHING "CRIMINALS" GUILTY OR NOT, IS A POPULAR ISSUE AND A POLITICAL VOTE GETTER. TOO MANY CONVICTIONS ARE BASED ON POLITICAL ADVANCEMENT OF THE PROSECUTING ATTORNEY AND NOT TRUTH, FACTS, HONESTY, OR JUSTICE. THIS IS ALL MADE SO EASY BY THE DEFENDANTS WHO HAVE NO KNOWLEDGE OF CRIMINAL LAW AND DISCOVER TOO LATE THAT THE DEFENSE ATTORNEY THEY HIRED AND TRUSTED WAS AS IGNORANT AND UNQUALIFIED AS THEY THEMSELVES. BY THE TIME ALL THIS COMES TO LIGHT, THE DEFENDANT HAS BEEN CONVICTED AND SENTENCED TO A LARGE NUMBER OF YEARS IN PRISON LEAVING ONLY THE APPELLATE PROCESS AS RELIEF. HOWEVER, THE FACTS NOT BROUGHT OUT IN THE TRIAL THAT ARE NECESSARY TO SHOW INNOCENCE CANNOT BE INCLUDED IN THE APPELLATE PROCESS. THE QUESTION ALSO ARISES AS TO WHETHER OR NOT THE DEFENDANT EVEN AFFORD TO FINANCIALLY PURSUE THE APPEALS AT ALL. THE PUBLIC DEFENDERS OFFICE IS

TOO BUSY TO DEVOTE THE NECESSARY TIME AND AT THIS POINT THE DEFENDANT HAS ALREADY SPENT EVERYTHING AVAILABLE ON A SUB-STANDARD DEFENSE ATTORNEY. THE BOTTOM LINE IS THAT POST-CONVICTION RELIEF IS NEXT TO IMPOSSIBLE, SO THE INJUSTICES MUST BE STOPPED AT THE FIRST STEPS OF THE PROCESS BEFORE THEY CAN BE COMPOUNDED.

IF I SOUND A LITTLE RADICAL, I APOLOGIZE. MY FAMILY HAS A PERSONAL INVOLVEMENT WHERE THE CRIMINAL JUSTICE IS CONCERNED SINCE OUR SON WAS CONVICTED OF FIRST DEGREE MURDER AND SENTENCED TO 20 YEARS. THIS HAPPENED 4 YEARS AGO WHEN HE WAS 19 YEARS OLD. SINCE THAT TIME, WE HAVE BEGGED AND PLEADED FOR SOMEONE TO HEAR THE FACTS OF HIS CASE, BUT NO ONE SEEMS TO CARE - NOT UNTIL IT HAPPENS TO SOMEONE THEY CARE FOR. WE HAVE ALSO SPENT THESE LAST YEARS LEARNING EVERYTHING WE CAN ABOUT CRIMINAL LAW. HAD WE KNOWN THEN WHAT WE KNOW NOW, OUR SON WOULD NOT BE IMPRISONED FOR A CRIME HE DID NOT COMMIT AND HE CERTAINLY WOULD HAVE HAD AN ATTORNEY WHO KNEW THE LAW. THERE IS DEFINITELY A DIFFERENCE BETWEEN FIRST DEGREE MURDER AND SELF-DEFENSE!

IN YOUR BILL (SEC. 7, A.S. 12.55.155(D)) I FIND MY SON MEETS 7 OUT OF 8 OF YOUR CRITERIA FOR SENTENCE ADJUSTMENT, BUT THIS DOES NOT APPLY TO UNCLASSIFIED FELONIES, SO THERE IS NO HELP FOR HIM OR OTHERS LIKE HIM IN YOUR LEGISLATION. KNOWING THAT THE WHEELS OF JUSTICE TURN VERY SLOWLY, IS OF NO REAL CONSOLATION TO THOSE OF US IN THIS TYPE OF SITUATION. HOWEVER, BELIEVING THAT YOUR SPONSORED LEGISLATION IS AT LEAST A START AND MAYBE SOMEONE DOES CARE AFTER ALL, MY FAMILY AND I WILL DO WHATEVER POSSIBLE TO SUPPORT THE PASSAGE OF SUCH. AT THE SAME TIME WE WILL CONTINUE OUR PRAYERS THAT THOSE WRONGLY CHARGED, CONVICTED AND INCARCERATED WILL ONE DAY BE CONSIDERED AS SALVAGEABLE HUMAN BEINGS RATHER THAN STATISTICS TO BE COUNTED IN DOLLARS AND CENTS.

SINCERELY,
Patricia A. Muzzana
PATRICIA A. MUZZANA

(CONT.)

PAGE 3

CC

ALBERT P. ADAMS

JIM DUNCAN

PETER GOLL

ADELHEID HERRMANN

NILO E. KOPONEN

M. MIKE MILLER

JOHN SUND

ROBIN L. TAYLOR

KAY WALLIS

Commercial
& Investment
Real Estate

MARY LOU WIRUM
500 L Street Suite 501
Anchorage Alaska 99501
~~907/273-8324 X2~~
907/276-3628

March 18, 1986

Representative M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99801

Dear Representative Miller:

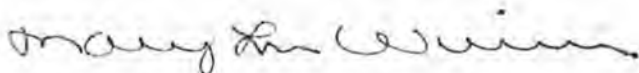
I am taking the liberty of enclosing a copy of a letter my husband and I sent to Representative Don Clocksin a week ago.

I will appreciate your taking the time to read this letter. You may or may not agree with our very strong feelings against presumptive sentencing. Unfortunately, our feelings are very personal and come from first-hand involvement.

We hope that you will take the time to consider presumptive sentencing from a standpoint of service of justice and for individuals who are first offenders. These individuals should have the opportunity to become useful citizens after an appropriate sentence that provides for rehabilitation and gives them the desire to carry on, rather than eliminate all hope for the future.

We hope you will support every effort to do away with presumptive sentencing in Alaska.

Sincerely,



Mary Lou Wirum

Enclosure



Certified Commercial Investment Member

1240 "S" Street
Anchorage, Alaska 99501
March 11, 1986

Representative Don Clocksin
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Clocksin:

There are many purposes behind our writing this letter to you. First we want to let you know that we strongly support your efforts to modify the presumptive sentencing approach for first offenders and young offenders.

I am sure that if more people were aware of the actual manner in which presumptive sentencing is handled - such that a legislator from years past who has never met the individual passes sentence, rather than the judge who gets to know the individual - that more people would be troubled by this type of arms-length sentencing. Therefore, we would like you to know that we do support your efforts with regard to changing the law, and will be of whatever assistance you feel we can be.

Because of matters involving our son, many of our friends have come to understand the realities of presumptive sentencing and agree with your position that more individualized justice is appropriate. We are sure that they will write to you so that you are aware of the support you do have. They are also interested in writing to their legislators or any lawmakers you feel should be made aware of the strong public opposition to presumptive sentencing.

Our first-hand involvement in this sentencing procedure came as a result of the sentencing of our son, Jay. Due to almost a decade of substantial drug usage, the early years of which had not been recognized by either ourselves or the counseling professionals whom we turned to for help, we had contacted our family lawyer regarding trying to commit him for some type of drug treatment. Although he had been exposed to some drug treatment programs during the year just prior to his arrest, their basic position was that we should "let him hit bottom" prior to more active intervention. The "bottom" that he hit was a series of extremely serious felon charges that involved presumptive time.

Representative Don Clocksin
Alaska State Legislature
March 11, 1986
Page 2

As we sat through the sentencing hearing and listened to the district attorney play number games with our son's life, and then heard the sentence, we could hardly believe what was happening. We were shocked at the sentence, but we were also aware that to a large extent the judge had very little discretion with what to do with our son's life. Furthermore, our son's lawyer has explained that when the presumptive terms such as seven years for a young person who drives someone to an armed robbery, or eight years for a person who engages in consensual sex with an under-aged person are typically given by the judge, that when the judge is confronted with more serious conduct, the sentence time goes up substantially without any view toward individual fairness.

We have always been supportive of bringing people who engage in crime to justice, but our concept of justice had been that the judge would carefully examine all the facts and circumstances, and if the person were redeemable, that a lesser or more rehabilitative sentence would be imposed. Similarly, if the judge found the person to be a professional criminal or someone who is not even trying to comply with our rules or regulations, the judge would have the power to impose a lengthy sentence to protect us all. Our observations are that determining these sentences by virtue of things that legislators, who may not even be in office now, determined four or five years ago, is not meeting our concerns of justice.

We agree that our son needs some help and needs to demonstrate that he can live drug free and comply with society's rules before he is entitled to complete freedom without any supervision at all. As a result of the presumptive sentences and the lengths of sentences, as well as the high number of Alaskans who are incarcerated, our son has simply been sitting at Cook Inlet Pretrial Facility for one year. There are relatively few programs or opportunities for him there. He has been classified to be sent Outside to the Federal Bureau of Prisons, and it is unclear to us when, if at all, he will be transferred.

We feel that a sentencing structure that permitted more focus on the individual would have included the consideration of things such as halfway houses, drug treatment programs, parole, and a local placement so that we can try to assist him in squaring away his life. Quite simply, Mr. Clocksin, our son has no friends or support people other than his family. We do not even know what state he will be living in during this period of his sentence, and that makes it very difficult for us to try to help him help himself.

As mentioned above, we would be very willing to discuss anything with you or with any other legislators. We believe that many of the lawmakers are not specifically familiar with the way presumptive sentencing works.

Representative Don Clocksin
Alaska State Legislature
March 11, 1986
Page 3

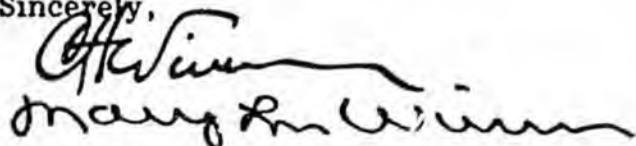
We also believe that the way the media portrays any attempt to change always ends up with some type of sensationalist headlines which will deter any effort to change.

We are afraid that many young people such as our son, after virtually decades of incarceration, will not have the motivation or the opportunity to go on and live productive lives. We are confident that if individual judges passed the sentences, that many of these lives could be redeemed at no cost or danger to the public. Quite frankly, as our son's lawyer has explained to us, all of these young eighteen, nineteen and twenty-year-olds who are incarcerated almost a decade will, in fact, get out -- but what kind of citizens will they be then?

We hope that our son will stay strong through his period of incarceration and come out and be the productive, rehabilitated citizen he wishes to be. However, we are afraid he may lose hope and not survive. We are afraid that many young men would not be able to spend a decade or more in prison and return to our community as productive citizens.

Thank you again for your interest in bringing individualized justice to our citizens. Please let us know what we can do to help you in your efforts to bring justice back into the court rooms.

Sincerely,



Harold and Mary Lou Wirum



Legislative
Information and
Teleconference Networks

**ALASKA STATE
LEGISLATURE**

LEGISLATIVE
INFORMATION OFFICES

ANCHORAGE
1024 West Sixth Avenue
Anchorage 99501
278-3668
Teleconference 278-9624

BARROW
P.O. Box 830, Barrow 99723
852-7111

BETHEL
P.O. Box 886, Bethel 99559
543-3541

DELTA JUNCTION
P.O. Box 1189
Delta Junction 99737
895-4236

DILLINGHAM
P.O. Box 215, Dillingham 99576
842-5319

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315 Barnette Street, Suite 101
Fairbanks 99701
452-4448

GLENNALLEN
P.O. Box 68, Glennallen 99588
822-5588

JUNEAU
Pouch Y, Juneau 99811-3101
465-4648

KENAI PENINSULA
312 Tye Street, Suite 3, Soldotna 99669
262-9364

KETCHIKAN
111 Stedman, Room 100
Ketchikan 99901
225-9675

KODIAK
720 Mill Bay Road, Room 231, Kodiak 99615
486-8116

KOTZEBUE
P.O. Box 667, Kotzebue 99752
442-3880

MATANUSKA-SUSITNA
P.O. Box 871470
Wasilla 99687-1470
376-3704

NOME
P.O. Box 1630, Nome 99762
443-5555

PETERSBURG
P.O. Box 1470, Petersburg 99833
772-3741

SITKA
210 Lake Street, Sitka 99835
747-6276

VALDEZ
P.O. Box 1969, Valdez 99686
835-2111

February 24, 1986

M. Mike Miller, Chairman
House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Representative Miller:

Please find attached written testimony from Constance Griffith and Scott Ballard regarding House Bill 554, relating to sentencing. I have also attached a copy of our sign in list for the teleconference in which testimony was received on House Bill 554. No one on the list was able to testify because of the limited time schedule. They would all like to be contacted if the committee decided to teleconference again on House Bill 554.

Thank you.

Sincerely,

Bonnie Potter
Bonnie Potter, Information Officer
Ketchikan Legislative Information Office

Attachments



Legislative Teleconference Network

SIGN-IN SHEET

Email → LTCJ

DATE: 2-21-86

SITE/LOCATION: Ketchikan

SPONSOR/SUBJECT (H) Judiciary
House Bill 554

BROADCAST CONSENT: This teleconference may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by initialing the appropriate box.

NAME/REPRESENTING	ADDRESS	PHONE	HERE TO PARTICIPATE	BROADCAST CONSENT	HERE TO OBSERVE
Patricia Francis - Self	815 Brown Deer Ketchikan	225-5827	X		
Floyd Richmond	P.O. Box 6552 Ketchikan	225-9474	X		
Gigi Pickens	2749 Third Ave	225-6734			X
Constance S. Griffith	2509 Fourth Ave	225-5069	X		
S. D. Griffith	2509 4th	19			X
Julie McElroy	P.O. Box 9518 Ketchikan	225-1465	X		
Scott Ballard	832 Buren Ketchikan	225-1625	X		

To: Rep. Dan Coakley
Fr: Constance Griffith
R: HB# 554 &
Da: Ketchikan LIO

at Feb. 26 - 3 p.m.

I support your efforts, Rep. Coakley,
and thank you for calling this thing
a date. Thank you for the packet of informa-
tion you sent me, too.

Reacting to today's learning;

I concern fully with the testimony from
Robert Wagstaff & from Dave Telle. Both
made points raised equally on facts known
to them or through research.

I concern with Mr. Carpenter's (Booth) statement -

terms about rehabilitation; that money
spent for prevention is a money well spent;
that non-voluntary placement should not be
taking up expensive jail beds.

The minutes of June Bay made good points

Most important, Dr. Madden (?), Ho Clinical

Psychologist on January, raised critical
academic issues: "Withholding money
experimentally response (and exercise),
might add) the problem of dealing with
offenders. 2. There are programs that are
achieving positive results around the

turn up

to Clocheson fr Griffith - p. 2

Country - he named some. [I sent you a description of Colorado's promising program, brought about by the failure of mere incarceration to solve problems.]

3. Dr. Marder pointed out that clearly identified types of offenders are treatable.

My own points follow:

1. Money spent warehousing human offenders is not cost-effective. Offending fathers, relatives - even strangers - are a human resource. A released prisoner once told me: "You come out sort of retarded." If nothing has changed the inmate's perspective and psychological make-up, how has the expensive incarceration protected the public? How are "society's norms" upheld? Millions to create monsters are dollars mis-spent.
2. Young first offenders with long sentences for quite usual infractions are angry and embittered. I have this at first hand from a state jail inmate. Will they avail themselves of training opportunities? What will they be like when they come out as middle-aged men? They need to see a light at the tunnel's end.

to p. 3, pls. → →

To: Rep. D. Cloonan - Fr. Griffiths. p. 3

Re: HB 554

Rtn. 21 Feb. 86.

3. Shorter sentences are important in reducing the deleterious effect on the person incarcerated and on that person's family. Shorter sentences release mega-dollars for:
- training jail personnel,
 - developing effective programs for rehabilitating or re-habilitating offenders (as the case may be);
 - implementing effective programs to rehabilitate/pre-habilitate offenders;

Ketchikan's CO)AK,* Inc. study, submitted to the Legislature six years ago (and carefully panned by the D.O.C.) brought nationally known corrections experts to Ketchikan. They pointed out that idleness only has harmful effects on persons on whom it is enforced. A good program reduces the deleterious effect of idleness on inmates.

In short, the legislature should look at quality time, and at incentives to encourage prison inmates to use

*Committee on Jail Alternatives for Ketchikan

→
Ship?

To: Clerk to: Griffith -

p. 4

their time in prison wisely and productively. Prisons could be more like good schools. The increased effectiveness of incarceration could make it possible to safely reduce the length of sentences for first offenders, especially felons.

The elements of A.S. 11.41.434 should be examined. This unclassified felony scoops into its net one-time inadvertent offenders as well as repeating, violent offenders. Was this the legislature's intent? Looking at this law could reduce the population in Alaska's prisons, because its wording has been judicially approved, and yet it has resulted in the incarceration at lengthy mandatory sentences of some totally innocent individuals.

A more efficient sentencing system can make it feasible to prioritize fiscal demands. Give the judges an opportunity to "fit the punishment to the crime." Give the prisons the opportunity to improve the persons they serve.

Constance D. Griffith

I support changes in presumptive sentencing laws. All residents, but especially native Alaskans could benefit from this legislation. Alaska natives are at ~~a~~ ~~disadvantage~~ disadvantage in dealing ~~to~~ equally with the legal process and the brutal conditions experienced in prison.

Scott Ballard
Box 6714
Barter Ketchikan AK
99901

LAW OFFICE
TORRISI & SNYDER

FREDERICK TORRISI
DAVID B. SNYDER

P.O. Box 210
(OLD BANK BUILDING)
DILLINGHAM, ALASKA 99576
(907) 842-5008

February 24, 1986

Representative Mike Miller
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 554

Dear Representative Miller:

I am writing to you in support of HB 554. It is clear that presumptive sentencing has resulted in severely overcrowded prisons and a greater strain on the state budget. Equally important, is the loss of human potential by the needlessly severe sentences for a number of different offenses. Particularly in the area of sexual assault or sexual abuse of a minor, presumptive sentencing has incarcerated too many people for an inordinate length of time. There have been several sentencings held here in Dillingham where a number of the community leaders spoke in favor of a more lenient sentence than a seven year presumptive term for sexual abuse of a minor and where the judge stated that he had no other choice but to impose seven years. I remember in particular the testimony offered in behalf of one man from the village of Portage Creek who supported a very large family including his father and mother who were well into or past their 80's. In that case, Superior Court Judge Hansen (who is not known as a lenient judge in any sense of the word) stated on record that he would not have given the defendant a sentence of more than two or three years, but for the presumptive sentencing law. As I said, at that hearing well respected community members including the Chairman of the Board of the Bristol Bay Native Corporation, had urged a much lighter sentence in view of the defendant's lack of any prior conviction and his prospects for no antisocial activity.

There have been other similar sentences handed down within the Dillingham area and many persons in the community cannot believe that a person is required to spend seven years in jail with no discretion by a judge to impose a lesser term of imprisonment. I think the current sentencing scheme has fostered a disrespect for the law and it is time that the law be amended.

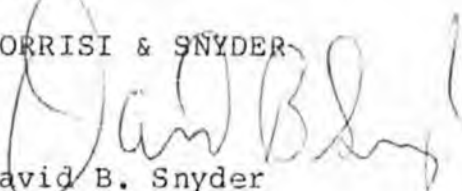
Representative Mike Miller
February 24, 1986
Page Two

I would be happy to give you or the relevant committees further information of other instances of failed justice in support of this bill.

Thank you for your concern in addressing the problem.

Sincerely,

TORRISI & SNYDER



David B. Snyder
Attorney

DBS:ilk

February 12th 1986

Honorable Bill Sheffield
Governor
State of Alaska
3601 C Street
Anchorage, Alaska 99503

14 B 534 signed
Ans Rep M. Mike Miller

Mr. Sheffield

I take this opportunity to write to you to offer congratulations to Representative Don Clocksin. It appears that he and his co-sponsors of H.B. 554, are intelligent enough to notice and correct, or at least try to correct, the current injustices in the court system in this state.

The approval of H.B. 554, would put individuality back in the court system. This bill makes a good beginning to correct the problem that was created by past legislatures.

It clearly states in Alaskas Constitution that "Penal Administration shall be based on the potential for rehabilitation and protecting the Public." The present statute on presumptive sentencing does not allow for consideration of the defendants potential for rehabilitation. You may as well have a chart on the wall in the court rooms, if you fill this square on the chart this is your sentence. That is basically the way it is now. There is no allowance for someone that sought help, because he realized his mistake. Part of a persons sentence is to be a deterrent. Are you trying to deterr offenders from seeking help and turning themselves in? Is this protecting the public?

Don Clocksins bill does not completely do away with presumptive sentencing for first time offenders. It merely allows mitigators that should have been there in the first place. It will encourage people to seek help because they will be allowed consideration of this in a Court of law.

In closing please review the attached copy of an article in the Feb. 11th Anchorage Times. Don't you think the people of this state should be told the truth? Isn't it about time you started doing your job? You and the legislature want to protect the public, don't scare off the people that want to ask for help. Encourage them to do so. Treat people as individuals. This country was founded by individuals. You are not protecting the public when you discriminate against them.

Governor Sheffield

page two.

Maybe all the tourists that this state depends on every year should be told about the categorizing of human being and the warehousing of them in correctional facilities. You say you are protecting the public, you are rehabilitating people. bull; Wake up. You and your colleagues are breeding recidivism. Correct the situation now!

Respectfully:

Al Sharp

Al Sharp

P.O.A.C.

257 E. Potter Dr.

Anchorage, Alaska 99518

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
All State Legislators
All State Senators
Anchorage Times
Anchorage Daily News
20-20 News Magazine
U.S. Supreme Court

February 24, 1986

Alaska State Legislature
Pouch V Capital Building
Juneau, Alaska 99811

Attention: Senator's and Representatives of the State of Alaska

Ladies and Gentlemen:

Thank you for your efforts to make wise decisions on behalf of first time offenders who are serving presumptive sentences. You are likely to know that often the longer a prisoner spends in confinement, the more attached they are subject to become to the lifestyle - unincumbered by the economics of life perhaps in the end to become products of our welfare program. Institutionalization is an insidious condition which may persist once a prisoner is released after many non-productive years.

Our entire system of fairness in this country is structure' around granting some leniency to first time offenders. This method is in itself rehabilitative.

One of the more serious consequences of a criminal conviction is that it remains a permanent blemish, and a person is forever punished for his/her indiscretion. The best situation for both society and the offender is to insure that criminal behavior is not habitual. What can help is that our system return felons to the streets with some infrastructure in place; i.e. friends, family, and the ability to re-enter the work force.

The sentencing practices of this state are, in my opinion, reprehensible. You have created a system where disposition of a convicted felon could as well be accomplished using a computer. The statute clearly decides the sentence a person is to receive. Perhaps for the habitual offender this is acceptable because society is weary of the effects these people impose upon their innocent prey. And we really seem to be at wits end trying to combat the "total" problem of criminal behavior in this country. Unfortunately our coffers are not so inexhaustible that we can afford to support prisoners whom it would be more economical to manage using methods other than containment, where our money must care for them as if they were coddled children. Many first time offenders do not pose a sustained threat to our communities and people. We are able to sort out these people considering all factors at sentencing.

Please consider allowing non-violent first time offenders to go free if they have served three years prison time. They have lost the most - careers they worked years to achieve - loss of families, paid out huge sums of money for trial expenses etc.

Sincerely,

Genevieve Blavka

Mrs. Genevieve Blavka

Michael W. Brewer
Bldg. 10 Chugach Ave.
Kenai, Alaska 99611

M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Miller,

In this letter I would like to address the issues of Presumptive Law; as it directly affects the people convicted under it.

This law as it affects the convicted offender, forces the court system to impose a greater mandatory presumptive sentence on the first offender. Or because of a prior felony does not allow the sentencing court to take into account the nature of the prior offense in second offender cases.

In essence the very nature of the presumptive law prohibits the sentencing judge from invoking any judicial discretion, which might reduce the impact of the sentence, when the sentence is clearly unjust. This actually negates any consideration of factors that might of been able to come into play.

Initially, the idea of presumptive sentencing was proposed for repeat offenders. Alot of people were of the opinion that repeat offenders were not being given adequate sentences. When the legislature took the idea of presumptive law and applied it to first time offenders, the results were clearly mistaken. People are being given long term sentences that simply aren't justified. (Under Chaney, the case which sets out criteria used by judges to set jail terms. The criteria includes the need to reaffirm societal norms, condemnation of anti-social behavior and evaluation of the likelihood of a defendants rehabilitation.)

The presumptive law does not allow a person access to the court system for sentence modification or reduction in any form. The law does not take into account any rehabilitation that may take place; in fact by it's very presence, rehabilitation is not only hampered but almost removed from reality. This is done through the removal of incentives for reform. It doesn't matter how good you are or how much you change, you still have no hope of parole or sentence reduction. They are strictly disallowed for those convicted under presumptive statutes.

With hope gone the inmate has little or no reason to change or to better himself. In fact, many inmates no longer care about rehabilitation because it just doesn't matter what they do.

In summary, I strongly support HOUSE BILL NO. 554 as written, and urge the swift passage of the BILL.

Sincerely,

Michael W. Brewer

Michael W. Brewer

PO Box 1232
Kenai, AK 99611
March 12, 1986

Dear Representative Miller,

I am in favor of HB 554 and the repeal of presumptive sentencing for first time offenders. "Equal time" for "equal crime" is a fallacy because the circumstances in every crime vary. The right of the judge to consider every case individually needs to be returned to them.

A person could spend 10,20, or 30 years of their adult life as a responsible member of society and then during a stressful period of their life commit a crime. This one time mistake will cost them 5 - 10 years of their life even if they show immediate remorse. The judge and parole board need the power to differentiate between individual cases.

The Alaska prison system has many self-help and rehabilitation programs. The people that avail themselves of these programs should be released earlier. Let the parole board decide when a man is ready for release.

Most first time felons do not repeat and therefore need not be treated as career criminals.

Long presumptive sentences are counter productive to rehabilitation. People become institutionized because they adapt their behavior to adjust to living in an institution. They then lose their desire to alter their lives to live with others in society.

Roger Endell has called for \$140 million to keep people in prison. Alaskans can not afford to spend their tax money unnecessarily. The law needs to be changed so that those that are rehabilitated and ready for society can be released. Let them become taxpaying citizens supporting themselves and their families instead of a government expense.

Yours truly,

Barbara Brown
Barbara Brown

Michael G. Norbert
Bldg. 10, Chugach Ave.
Kenai, Alaska 99611

March 17, 1986

M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Miller,

This is a formal letter of complaint addressing the presumptive sentencing law that is currently in effect in the Alaskan Judicial System. Presumptive sentencing was proposed initially for repeat offenders because it was felt by the general public that repeat offenders were not being given adequate sentences. The legislature however, has taken the original idea of presumptive sentencing for repeat offenders and applied it for the first time offender as well.

By doing so, the presumptive sentencing law forces the court system to impose greater mandatory presumptive sentences on the first time offender, and/or because of any prior felonies, does not allow the sentencing court to take into account the nature of the prior felony conviction in second time offender cases. In essence, the very nature of the law prohibits the sentencing judge from invoking any judicial discretion that may reduce the impact of the sentence when the sentence is clearly unjust, therefore negating any factors of consideration that may have been used in the defense of the first time or repeat offender(s).

Under the current presumptive law, a convicted person cannot apply for parole until their presumptive term has been fulfilled; nor can a convicted person, under the law, apply for a sentence remodification hearing or any other form of sentence reduction regardless of any rehabilitation that person may have accomplished while incarcerated.

Therefore, a person convicted of a felony and serving a presumptive sentence, has no reason to even attempt rehabilitation, because the issue of rehabilitation no longer has an effect on the person. No matter how hard a person tries or what a person does, if he/she is serving a presumptive sentence there are no benefits, such as parole and sentence remodifications, just straight time, thereby remitting any reasons to work toward rehabilitation. There are no incentives to reform under the current presumptive law.

The law also slows down the amount of prisoners released from custody in Alaskan jails by giving stiffer, longer sentences. A large part of the prison population in Alaska is currently serving presumptive time thereby enhancing over-crowded inmate populations in the Alaskan Correctional Centers. A large demand for more prisons has already arisen, and the need for more will continue to arise as more and more first time and repeat offenders are given presumptive sentences.

Sincerely,

Michael G. Norbert

Michael G. Norbert

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: ANTHONY ROGERS
8201 EAST 4TH AVE
ANCHORAGE
337-1390

99504

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

PLEASE WORK ON THIS BILL AND GET IT PASSED BEFORE THE END OF THIS
15TH SESSION. I FEEL IT IS A VIABLE AND IMPORTANT PIECE OF
LEGISLATION. THANK YOU.

DATE: 03/27/86 TIME: 09:31:03 SENT BY: SOLDOTNA LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE W. MIKE MILLER
FROM: MICHAEL BREWER
BUILDING 10 CHUGACH AVE.
KENAI 99611
N/A

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

I THROUGHLY SUPPORT THIS BILL AND I AM FURTHER REQUESTING YOUR SUPPORT FOR SWIFT PASSAGE WITH ALASKA'S OIL REVENUES DECLINING SO RAPIDLY, AND PRISONS AND THE COURT SYSTEM EXPANDING WITH OVERCROWDING SOME RELIEF TO THIS PROBLEM NEEDS TO BE CONSIDERED. PRESUMPTIVE LAW NEEDS TO BE RESTRUCTURED OR TOTALLY BANNISHED.

DATE: 03/27/86 TIME: 09:42.25 SENT BY: SOLDOTNA LIO

COPIES TO: REPRESENTATIVE: ALBERT P. ADAMS
REPRESENTATIVE: H. A. "RED" BOUCHER
REPRESENTATIVE: SAM COTTEN
REPRESENTATIVE: JIM DUNCAN
REPRESENTATIVE: JOHN G. (JACK) FULLER
REPRESENTATIVE: ANDRE MARROU
REPRESENTATIVE: MIKE W. MILLER
SENATOR: BETTYE M. FAHRENKAMP
SENATOR: JAN FAIKS
HOUSE JUDICIARY