ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4033 SJUD PRESUMPTIVE SENTENCING - RICO

904

8205 Aspen Ave
Juneau, AK 99801
March 30, 1985

Patrick Rodey
Alaska State Legislature
Juneau, AK 99811

Dear Senator Rodey,

Presumptive sentencing is Alaska's answer to standardizing terms. Under presumptive sentencing, the Legislature mandates a specific term of imprisonment which is "presumed" appropriate for the average offender.

The problem with this law is that there is no "average" offender. Every crime is committed by a different individual under a variety of circumstances with its own unique set of aggravating or mitigating factors.

Presumptive sentencing as a solution for stopping and preventing the reoccurence of crime is especially falliable for first time offenders. Although there is a percentage of chronic repeat offenders. Most first time offenders do learn their lesson and do not become repeat offenders.

Because of the long mandatory sentences, offenders are reluctant to plead guilty even when they feel remorse. Likewise, family members and friends hesitate to report some crimes and testify because they do not want to see someone they care about receive a long prison sentence.

Judges have lost their original constitutional power to "judge". After a person has been arrested and found guilty, the judge has lost the right to weigh the facts in this specific case and determine an appropriate sentence. The Alaska Legislature has already predetermined what the "average" offender deserves.

After the offender has been sentenced, there is no incentive for rehabilitation. He knows he will be released in a certain number of years no matter what his behavior or attitude in prison is. A person with no natural desire to change will not enroll in a self help program, counseling, prison industry, etc. He knows he can "flat time" with no intention of changing and still be released at a given date. He will return to society with no effort made to change his life style.

The greatest injustice is dealt to those who see the error of their ways and want to change. They are given long prison terms, the same as those who won't change. They usually are separated by great distances from their families. As a result the lives of the family members are destroyed by the very system that was set up to protect them. The state often ends up supporting them financially, but the emotional damage is irreparable.

When the incarcerated ask for counseling help, they are told they can't receive any because they have so much time to serve that it is a waste of time. They know that all the times they avoid fights with "bully" inmates, any self help groups they join, any counseling sessions, work or education programs they participate in will not help them be released one day sooner.

A person who has lead a productive life in society for years and then commits a crime for the first time does not need 6-10 years in prison to see the error of his ways. Long prison terms are counterproductive. Offenders become so discouraged they lose all incentive to try to rebuild their lives. Instead of using their time in prison to better prepare themselves for life once they are released they become completely engulfed in helplessness or bitterness.

The presumptive sentencing law for first time offenders should be repealed retroactively. First time offenders should be given open sentences where their progress could be routinely reveiwed. Inmates should have monthly evaluation sessions with local corrections personnel where their daily attitudes and progress could be discussed. They then could be released under a parole system when they show signs of rehabilitation. The parole system could oversee them in a manner that is less costly than imprisonment. At the same time the offender is given his self dignity back and is able to be a productive part of society and support himself and his family.

There should be an individual review and resentencing of every first time offender sentenced under the old law.

Inmates should be housed as close to their residence as possible. This is a necessity both to the incarcerated and their families. Private individual counseling should be provided. More education and work programs need to be provided.

The presumptive sentencing law needs immediate attention. Everday the present law remains in effect, it adversely affects the lives of those sentenced under it, their families and ultimately society itself.

Yours truly,
Barbara Brown

~~R.A.D.D.~~

INVITES

DAN Hickey
Roger Gindell
Robert Sandberg
Fran Brumsard
Sandra Bandrady
Brent McGee ✓
Dave Love ✓
Judge Alex Brownson

Joan Havlock
337-8301
276-1116

Pat   HOT: Sex offences -
: Consec. Sentencing
SB 128 Hold Harmless
on language Bo- a ?
worry [illegible] Pat " [illegible] it?

Todd Law Anne - Adams

→ Scope of Presumptive Sentencing

Public [illegible] for [illegible] # [illegible]

Reason Scheme Adopted
Parole: Disparity in Continuing + Jud. Review inadequate for Public
① Philosophy: Just DESERTS
conflict = Behavior / Law
② Offender Profile:

Presumptive Sentencing was a Hard swing toward Just Deserts

"the custodial function"
"Constitutional limitation on custodial capacity" (Davy v.)

Early Parole is a Symptom of "Limited Sept" model

Policies THAT Determine THE Size of INCARCERATION Population

✓ Judges: Don't Like - Reduce Jud Discretion
* Want Expansion by Sentenced Mitigation Authority

✓ Corrections: Parole Authority weighed against Problem of Crowding
* Parole Authority Has Low Discretion now. Can't want more

✓ Prosecutor / Police = Support
PS = Greatest discretion and Gain Authority

Consecutive Sentences:
Public = No OVERHEAD - TINKERING

(907) 688-2219
Star Route 3, Box 1239, Old Glenn Highway
Chugiak, Alaska 99567

February 9, 1986

Alaska State Legislature
Pouch V Capital Building
Juneau, Alaska 99811

Attn: The Senators 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 he is 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 structured around granting some leniency to first time offenders. This method is in itself rehabilitative.

One 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 infastructure 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 statue clearly decides the sentence a person is to recieve. 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 inexhaustable that we can afford to support prisoners whom it would be more econimical to manage using methods other than containment, where our money must care for them as if they were cottled 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.

Sincerely,

Mrs. Genevieve Blanka

P.S. Please consider releasing first time, non-violent offenders who have already served ~~two~~ three years of their presumptive sentences. T. B.

LEMON CREEK CORRECTIONAL CENTER

P O BOX 309
JUNEAU ALASKA 99802

The attached letter was place in our prisoner mailbox for forwarding to you. This letter has not been opened. If the writer raises a problem over which this institution has jurisdiction, you may wish to write to me or the Director, Department of Corrections, P. O. Box 309, Juneau, Alaska 99802.

If the writer encloses for forwarding correspondence addressed to another addressee, please return the enclosure to me or the Director.

Margaret M. Pugh

Margaret M. Pugh
Superintendent
Lemon Creek Correctional Center
(907) 780-4777

Senator - Mr. Patrick Rodey
State Capital Room # 504
Pouch V
Juneau, Alaska 99811

February 5-1985
Rick Gottardi
P.O. Box 309
Juneau, AK 99802

Dear "Sir", yes I was wondering if there are going to be any changes in the Criminal Justice System - regarding the presumptive sentencing laws in the near future??

And I was wondering if you might know who I can talk to about an early release from prison? or if its possible to pay my debt to society in a different way besides just prison time, say like community services, or join the service, or something useful for a change??? I've been locked up for five years, since Jan 7-1980 - I was then 19 years old, now I'm 25 years old, lived most all my life in Alaska....

I wrote to "Senator Mr. Bill Ray", about a few of my concerns, —— he said he would forward a copy of my letter to him to you, because you were chairman of the senate judiciary committee....

I'm really interested in knowing if there is going to be any changes in the presumptive sentence laws? because I'm under four presumptive sentences, or soon will be, and I'm never eligible for parole, I will be 40 years old before I get released from prison, or close to it....

I'm in prison for the following - two burglaries - escape + assault - two — criminal mischiefs - + escape; I haven't been sentenced on the

two criminal mischefs + escape ! sentencing is this february 22-1985 - all presumptive terms ...

On January 7-1980 I was age 19 and put in jail for two burglaries, later was sentence to two years, and while serving time on the burglary cases, on January 1-1981, picked up escape + assault, later was sentenced to 6½ and 3 years concurrent, and while serving time on the escape and assault, on September 9-1983 picked up criminal mischief, and on December 2-1983 another criminal mischief, and on July 25-1984 an escape .... I am now age 25 ....

In the last five years in prison I've learned there isn't any rehabilitation or limited rehabilitation, I haven't got any life skills or trades, or vocational schooling - none is offered in the Alaska prison system .... all through grade school and high school until 12th grade I was a slow learner, my trade is fishing, its all I know ....

Since being in prison I've been beat up many times, had my nose broken twice, been stabbed in the back + hands, and all most was a victim to sexual assault three times, all that has happened to me, I had know choice but to remain silent, so I wouldn't make any know enemies, I've had it pretty rough so far .... Leavenworth Kansas penitentiary is where the above mentioned occurred or most of it ....

I've spent time in Ketchikan, Juneau, Anchorage, Leavenworth Kansas, which have been had experiences ....

family problems, my Grandparents are real old; one out of four has passed away; the rest of

my Grandparents are worried they will pass away and never see me again, and I never did really get a chance to know them very well, I've lived in Alaska since age 8, and haven't been anywhere or seen any thing but Alaska....

My Parents have been driven to drink due to emotional stress, they are worried sick about me, they are trying to run the family fishing boat by there selves, and are getting older, and I worry about them day & night....

My only girlfriend in my life left me a couple years ago, she was everything to me, it hurts me really bad, but I can't blame her....

I haven't seen my family in five years, I only talk to them over the phone, these are pressures on me that won't quit, I'm headed for a nervous break down, I'm not sure how much more prison time I can endure before I truly crack or go in-sane....

I realize I did a certain amount of wrong in my life, but there must be some other way I can pay my debt to society, besides just prison time, I mean its such a waste of a life, I'm willing to do any thing to pay my debt that would be useful, and kind of give me a chance at life again, I'm not a seriously dangerous individual or offender, and I don't have any detainers from other states, I've only been in trouble in Alaska, I need a break real bad from confinement...

I've been in isolation for most of my sentence, and all I do is sleep & sit around a 8 by 10 foot cell 24 hours a day, and read & write letters to my-

family, don't get to watch TV, or go out side for fresh air, all I'm being is wear-housed, there is know plan for, or to work — towards a release date....

I'm really suffering mentally + physically - this is destroying me, know joke, its not like I walked in here yesterday, the torment is getting harder to endure, I'm a total nervous case, I've come close to suicide a few times in the past, I don't know if I'm going to make it, I'm a chain smoker and coffee drinker my health isn't good, I'm really trying to seek help to get my self out of here, but I just don't know who to ask for help....

Sincerely

Rick Gottardi
P.O. Box 309
Juneau, Alaska 99802

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE
2/11/85

FURTHER INFORMATION:
465-3717

The House and Senate Judiciary Committees have scheduled a joint work session on Alaska's mandatory sentencing law. The joint work session is scheduled for 1:30 p.m., Wednesday, February 13 in the Butrovich. The purpose of the joint work session is to provide lawmakers the broadest possible perspective so that future adjustments to the law, if required, will be the most appropriate and rational possible. Those invited to testify include:

Roger Endell, Commissioner, Department of Corrections
Robert Sundberg, Commissioner, Department of Public Safety
Dan Hickey, Chief Prosecutor, Department of Law
Francis Bremson, Executive Director, Alaska Judicial Council
Sandra Borbridge, Office of the Governor
Dana Fabe, Public Defender
Brant McGee, Office of Public Advocacy
The Honorable Alex Bryner, Chief Judge, Court of Appeals

✓ Copy to Jud. Committee for files + update of progress as it goes thru Committee

January 18, 1985

Mr. Jack Kleinkauf
642 W. 34th, #314
Anchorage, Alaska 99503

Dear Jack:

Thanks for your letter which just arrived in my office regarding stiffer penalities for drunk drivers. I also have noted the article you enclosed.

The issue of drunk driving has become a major concern for many Alaskans, including myself. As a legislator and parent, I also feel that stiffer penalties are needed to deal with the problem more effectively. I believe you will be interested to know that I have been a strong advocate for imposing stiffer penalties for those convicted of drunk driving, and I will continue to do what I can to see that concerns of individuals, such as yourself, are addressed.

As Chairman of the Senate Judiciary Committee, I'm certain this issue will come before the Committee for further legislative review. I'm glad to know you share my views on this important topic, and you can count on my support to see that further efforts are taken to curb the problem of drunk drivers.

Sincerely,

Patrick M. Rodey

Trish,
I'm checking on the necessary changes in the Criminal code to allow consecutive sentencing.

December 6, 1984

Senator Patrick M. Rodey
2335 Lord Baranoff
Anchorage, Alaska 99503

Dear Senator Rodey:

The accompanying article from the Anchorage Daily News provides the incentive for this letter to you as an Alaska Legislator.

There has been a great deal of effort on the part of a lot of people in this State to do something about those who drive while drunk. I hope you have read of some of these efforts.

It seems that those who are finally caught and brought to trial have received sentences that do not reflect the severity of the offense, either because of plea bargaining, lack of evidence or a lenient Judge. Not so in this case.

In the Brewer case, the Judge was visibly upset because he could not sentence in relationship to the offense. Mr. Brewer ws sentenced ten years for each of the deaths he caused and five years for assault - a total of twenty-five years.

But because of Alaska Law, these sentences MUST run concurrently rather than consecutively-resulting in a ten year sentence. The reason given by the attorney was that both of the deaths and the injury were caused in the same incident.

Is this what the Legislature had in mind for "stiffer penalities" for drunken drivers? If such is the case, the moral of the story is to "kill a whole carload because they can get you only for one!"

Respectfully yours,

Jack Kleinkauf
642 West 34th #314
Anchorage, Alaska 99503

JK/kkn

Enclosure: News article

Man gets 10 years in auto death case

Anchorage Superior Court Judge Ralph Moody Tuesday said he wished he could hand down a longer sentence as he gave Michael Brewer 10 years in jail for causing the deaths of two people last October when he ran a red light in downtown Anchorage.

Helen Garnand and her 7-year-old daughter, Michelle Garnand, died after Brewer, 26, ran a red light at 15th Avenue and I Street, striking the car Garnand was driving. Another daughter, Charlotte Garnard, was injured.

Moody said he could not attach a lengthy period of probation to the sentence because Alaska's mandatory sentencing scheme dictated what the sentence would be.

"My hands are tied," he said. Moody said he would have preferred a 20-year sentence, with 10 to serve and 10 years' probation so the court could supervise Brewer after his release.

Brewer had pleaded no contest to two counts of manslaughter and one count of second-degree assault.

Moody handed down 10-year sentences on the manslaughter counts and a five-year sentence on the assault charge.

All the sentences run concurrently, and Brewer will be released without probation or parole.

The District Attorney initially charged Brewer with two counts of second-degree murder in the deaths, then reduced the charges on evidence Brewer was not driving as fast as investigators first thought.

Moody considered a previous felony conviction for selling 4 ounces of marijuana in 1980 in determining the mandated sentence length.

I have Rodger check on this - Can we change to allow "consecutive sentence"

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 28, 1985

Rick Gottardi
P.O. Box 309
Juneau, Alaska 99802

Dear Mr. Gottardi:

This is in response to your recent correspondence concerning presumptive sentencing laws in the State of Alaska.

I would like to be able to offer you an immediate solution to your problems, but I am unable to at this time. The issue of presumptive sentencing is of great concern to many legislators and I am sure the issue will be discussed at some point this legislative session.

Please be advised that I am forwarding copies of your letter to Senator Rodey, Chairman of the Senate Judiciary Committee, and Representative Mike M. Miller, Chairman of the House Judiciary Committee, so that they may notify you of any upcoming legislation and hearings.

Sincerely,

Bill Ray

Bill Ray
Senator
District C

Senator Mr, Bill Ray
165 Behrends Avenue
Juneau, Alaska 99801

January 17-1985

Rick Hottarde
P.O. Box 309
Juneau, Alaska 9980[illegible]

Yes sir, I was wondering if you for-see in the future any modifications in the Justice system regarding the presumptive sentencing laws of the criminal Justice system, which doesn't let any person sentenced to a presumptive term, be eligible for parole, I think presumptive sentencing is, or should be un-constitutional, I believe any person should be afforded the right to be eligible for parole, even though that person may have made quite a few mistakes, he or she should by right be eligible for parole at some point in there sentence, plus it costs quite a bit to alaskans to have the presumptive sentencing in effect, because of the longer prison sentences and the more people each year that end up in prison for long terms, means more prisons have to be built more money spent, as it is prisons are filling up fast, and not enough prisoners are getting out to make room for the new, there coming in faster than there going out, due to the presumptive sentencing law now in effect since 1980, I think if the presumptive law were to change, or was cancelled out, where-in everyone would be eligible for parole at some point in there sentence, I think we would find a much smoother correctional system, people getting out to make room for the new, would slow the building of new correctional facility costs down, just one facility has many costs, the presumptive sentencing law should be abolished, which would make for a smoother operating Justice system, and would keep

the costs down to a good or fair level, The presumptive — sentencing laws or law is the most un-constitutional law — I've ever heard of, Is there any one you know of who might have more information on this subject ???

Any way I'm a prisoner at the Lemon Creek facility, I have been in prison for five years straight I'm never eligible for parole, my crimes are two burglaries, two escapes, one assault, two property damage charges in my five years in prison I've never gotten any rehabilitation education or life skills, this is wasting my life, I was age 20 when I first come to prison, I'm a hyper active individual, and prison life is eating me alive, since I've been in prison I've been beaten up, had my nose broken twice, stabbed in the back once, been sexually assaulted, I guess this is rehabilitation, I've had it real rough, I tried to run away from this situation a couple times, and have caught more time in jail, I never ran with the intent to commit my crimes, I ran to save myself from more injuries, I sure wish I could go home from this nightmare, I've seen things in a different light, I only — started out with a one year prison term, and now have — 5 years, with no hope for parole, I've never asked for any real help to try to get out of here, because I don't know who to ask for help, I really need to get out of here, my family is falling apart emotionally, driven to drinking problems, due to my confinement, I come to Alaska when I was 8 years old and haven't been out of Alaska since that time, never been any where or seen any thing but Alaska, I'm now age 25, my Grandparents one of which passed away a couple years ago —

who I never even got to meet, another one is real ill, there thinking they will never see me before they pass away, I have to agree I probably never will even get out of prison alive, there just has to be some useful way besides prison that I can pay my debt to society like community services or join the service, something useful, prison is such a waste, there must be something I can do to get out of prison, I'm willing to do anything besides just sit and waste my life in prison, I'm not a dangerous offender, I'm wondering if you know of any one who might be able to help me get out of prison??? I have a real fear of dying in here before my term is up, I would appreciate any help, or information on how I can get help?

Sincerely

Rick Gottardi
P.O. Box 309
Juneau, Alaska 99802

GEORGIA DEPARTMENT OF CORRECTIONS
Floyd Veterans Memorial Building
Room 756 - East Tower
Atlanta, Georgia 30334

David C. Evans
Commissioner

February 11, 1986

M.. Robert H. Ziegler, Sr.,
Senator
Capitol Room 111
Box V, Pouch 5
Juneau, Alaska 99811

Attention: Mr. Guy Van Dorn

Dear Mr. Van Dorn:

Your interest in Georgia' s Alternative Sentencing Options especially the Special Alternative Incarceration Unit (SAI) is appreciated. I am enclosing some information which, I hope, will provide you with the operational perspectives of the program you desire.

The Special Alternative Incarceration Unit (SAI)Shock Incarceration is for the young, impressionable offender (aged 17-25), the sentencing judge may impose, as a special condition of probation, a term of ninety (90) days to be served in a special facility for probationers. The regimen at this unit of a recently-constructed state institution is patterned after military boot camp, with very few privileges and many constructive physical activities. The probationer has very little time for anything other than work activity. If he does not abide by the rules and regulations of the unit, his probation may be revoked and he will enter the general state prison population. If he does make acceptable adjustment to the unit, he may be returned to regular supervision upon release from the program. The overall thrust of this program is to make the offender aware of the realities of prison life.

The enclosed packet will provide you the array of sentencing alternatives short of incarceration. While we realize that prisons must exist, we also recognize that prisons are becoming an increasingly scarce resource and must be used only when an offender' s crime or lifestyle precludes community supervision.

After your review of this packet, please let me know if you have questions or if I may provide more information. Again, thank you for your interest in Georgia.

Sincerely,

Helen Scholes
Community Service Coordinator
Probation Division

HS/es

Enclosure

lected for the purpose of restitution may be used only for that purpose. 1971 Op. Att'y Gen. No. 71-182.

When a trust of funds collected pursuant to this section fails of accomplishment, the funds should be returned to the probationer who is similar to the grantor of an implied or resulting trust. Op. Att'y Gen. No. 71-182.

But where neither the intended recipient nor the probationer can be found, and the sum collected pursuant to this section is quite small, the money should continue to be held, since the escheat procedure would consume the fund. 1971 Op. Att'y Gen. No. 71-182.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 567-579.

C.J.S. — 24 C.J.S., Criminal Law, §§ 1571, 1572, 1618.

ALR. — Power to impose sentence with direction that after defendant shall have served part of time he be placed on probation for the remainder of term, 147 ALR 656.

Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest, or the like, 45 ALR3d 1022.

What constitutes "good behavior" within statute or judicial order expressly conditioning suspension or sentence thereon, 58 ALR3d 1156.

Propriety, in imposing sentence for original offense after revocation of probation, of considering acts because of which probation was revoked, 65 ALR3d 1100.

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim, 79 ALR3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs, 79 ALR3d 1025.

Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation, 79 ALR3d 1068.

Validity of requirement that, as condition of probation, defendant submit to warrantless searches, 79 ALR3d 1083.

Propriety of conditioning probation on defendant's not associating with particular person, 99 ALR3d 967.

Propriety of conditioning probation on defendant's serving part of probationary period in jail or prison, 6 ALR4th 446.

Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants, 19 ALR4th 1251.

Power of court to revoke probation for acts committed after imposition of sentence but prior to commencement of probation term, 22 ALR4th 755.

Propriety of conditioning probation on defendant's not entering specified geographical area, 28 ALR4th 725.

42-8-35.1. "Special alternative incarceration."

(a) In addition to any other terms or conditions of probation provided for under this chapter, the trial judge may provide that probationers sentenced for offenses committed on or after January 1, 1984, to a period of time of not less than one year nor more than five years on probation as a condition of probation must satisfactorily complete a program of incarceration in a "special alternative incarceration" unit of the department for a period of 90 days from the time of initial incarceration in the unit.

(b) Before a court can place this condition upon the sentence, an initial investigation will be completed by the probation officer which will

indicate that the probationer is qualified for such treatment in that the individual does not appear to be physically or mentally handicapped in a way that would prevent him from strenuous physical activity, that the individual has no obvious contagious diseases, that the individual is not less than 17 years of age nor more than 25 years of age at the time of sentencing, and that the department has granted provisional approval of the placement of the individual in the "special alternative incarceration" unit.

(c) In every case where an individual is sentenced under the terms of this Code section, the clerk of the sentencing court shall, within five working days, mail to the department a certified copy of the sentence and indictment, a personal history statement, and an affidavit of the custodian provided by the sheriff of the county.

(d) The department will arrange with the sheriff's office in the county of incarceration to have the individual delivered to a designated facility within a specific date not more than 15 days after receipt by the department of the documents provided by the clerk of the court under this Code section.

(e) At any time during the individual's incarceration in the unit, but at least five days prior to his expected date of release, the department will certify to the trial court as to whether the individual has satisfactorily completed this condition of probation.

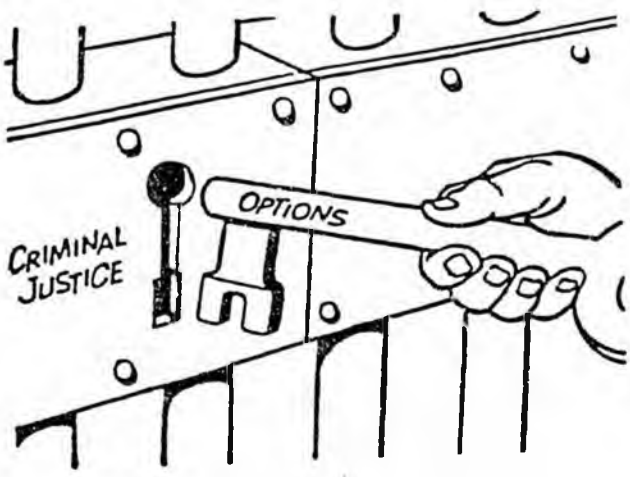
(f) Upon the receipt of a satisfactory report of performance in the program from the department, the trial court shall release the individual from confinement in the "special alternative incarceration" unit. However, the receipt of an unsatisfactory report will be grounds for revocation of the probated sentence as would any other violation of a condition or term of probation. (Ga. L. 1982, p. 1097, § 1; Code 1981, § 42-8-35.1, enacted by Ga. L. 1982, p. 1097, § 2; Ga. L. 1983, p. 3, § 31; Ga. L. 1984, p. 446, § 1.)

Effective date. — This Code section became effective November 1, 1982. (See 1982 Acts in history line for similar provisions given effect before November 1, 1982.)

The 1983 amendment, effective January 25, 1983, part of an Act to correct errors and omissions in the Code, revised language in this Code section (see also editor's note).

The 1984 amendment, effective March 14, 1984, in subsection (a), inserted "for offenses committed on or after January 1, 1984," following "provide that probationers sentenced", substituted "90" for "180" following "department for a period of", and deleted the former second sentence dealing with earned time in 'special alternative incarceration' units; in subsection (b), substituted "an initial investigation will be completed by the probation officer which will indicate" for "the chief probation officer of the circuit must certify to the sentencing court", substituted "does

SENTENCING OPTIONS
STATE OF GEORGIA



PROBATION DIVISION
DEPARTMENT OF CORRECTIONS
Floyd Veterans Memorial Building
Room 954, East Tower
July, 1985

David C. Evans
Commissioner

Vince Fallin
Deputy Commissioner

PROGRAM COST: COMMUNITY CORRECTIONS

Public fear of crime and concern for appropriate punishment is both understandable and legitimate. However, while prisons can remain to punish the most violent and repetitive offenders, there does exist a wider range of alternatives which can both hold the offender accountable and, often times, offer restitution to the victim. Community-based sanctions can offer a far less costly way of both punishing less serious offenders and reducing pressure on our overcrowded prison system. By responsibly working with less serious offenders in such community-based programs as regular probation supervision, Intensive Probation Supervision, Diversion Centers, and Special Alternative Incarceration, prisons can be reserved for only the most violent and repetitive criminals.

Following is a cost comparison of major sentencing options available to the judiciary. The options presented are in order of restrictiveness to the offender, and are based on one-year costs for each option:

COMMUNITY-BASED OPTIONS

	Average Days of Special Supervision	X	Per Day Cost	+	Regular Supervision	=	Yearly Cost
Basic Probation Supervision:	Not Applicable				365 Days X 72¢ per day	=	$263
Intensive Probation Supervision:	240	X	$4.50 = $1,080	+	125 X 72¢	=	$1,170
Diversion Center:	120	X	$21.75= $2,610	+	245 X 72¢	=	$2,786*
Special Alternative Incarceration:	90	X	$30.43= $2,739	+	275 X 72¢	=	2,937*

* While cost differences between Diversion Center and Special Alternative Incarceration programs appear at first to be minimal, it must be pointed out that the 120-day Diversion Center placement results in the offender maintaining employment and paying taxes, room and board, fines, restitution, dependent support, medical/dental care, etc. The 90-day Special Alternative Incarceration program requires total confinement at taxpayer expense.

INSTITUTIONAL OPTION (1 YEAR CONFINEMENT)

365 days X $30.43 per day (includes capital outlay) = $11,107

SENTENCING OPTIONS

OPTIONS	CIRCUIT	Alapaha	Alcovy	Appalachian	Atlanta	Atlantic	Augusta	Blue Ridge	Brunswick	Chattahoochee	Cherokee	Clayton	Cobb	Conasauga	Cordele	Coweta	Dougherty	Douglas	Dublin	Eastern	Flint	Griffin	Gwinnett	Houston	Lookout Mt.	Macon	Middle	Mountain	Northern	Northeastern	Ocmulgee	Oconee	Ogeechee	Pataula	Piedmont	Rockdale	Rome	Southern	S. Georgia	Southwestern	Stone Mountain	Tallapoosa	Tifton	Toombs	Waycross	Western
Pre-Trial Diversion					•	•		•	•		•		•				•			•				•		•																			
Pre-Trial Release					•			•					•							•										•																
Basic Probation Supervision *	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Intensive Probation Supervision	•		•	•	•	•	•	•	•	•	•	•	•	•	•	•			•	•	•	•	•	•		•	•	•	•	•	•	•	•			•	•		•	•				•	•	•
Diversion Center	•	•	•	+ 4) •	•	•	+ •	•	•	•	•	•	+ •	•	•	•	+ •	•	•	•	•	+ •	•	•	+ •	•	•	•	+ •	•	•	•	•	•	•	+ •	+ •	•	•	•	•	•	+ •	•	+ •
Special Alternative Incarceration	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	+ •	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•

* Basic Probation Supervision also may include fines, restitution, community service, special conditions, dependent support, etc., as specific and additional components of the program.

\+ Denotes location of Diversion Facility; however, available for referral from any circuit.

BASIC PROBATION SUPERVISION

1.	Number of probationers under supervision:	107,712
2.	Number of field probation officers:	585
3.	Number of field offices:	109
4.	Fiscal Year 1984 performance:	
	Presentence investigations:	9,065
	Child Support collected:	$23,477,115
	Fines collected:	$15,402,036
	Restitution collected:	$3,705,023
	Probation Fees collected:	$2,491,482
	% Successfully terminating probation:	87%
5.	Per diem cost each offender:	$.72

Program Objectives

The primary purpose of probation services is to provide supervision which is consistent with the public interest and safety; to provide quality and timely presentence investigations for the courts; and to recognize, plan for, and implement specialized programming for identified probation populations.

Basic field probation supervision is the cornerstone for all Probation Division activity. Each specialized diversion program (Intensive Probation Supervision, Community Service, Diversion Centers, and Special Alternative Incarceration) direct their efforts to stabilizing the offender so that he/she may be transferred to regular supervision, and then ultimately to successful termination from supervision. Probation and its adjunct diversion programs and mechanisms offer the most promising and effective alternative to imprisonment through expanding community-based programming.

Probation Adjuncts

- An externally-validated Classification System for probationers, based on a Needs/Risk Scale of eighteen factors, allows probation staff to readily determine the amount of surveillance, degree of treatment need, and frequency of contact necessary for effective supervision. The level of supervision can range from one contact per month to one each week.

- A Workhour Formula based on the Classification System allows the Probation Division to improve supervision by determining manpower needs and caseload requirements.

- A probation fee may be imposed by the sentencing judge on a probationer as a means to help offset the costs of supervision.

- Community service may be required to more pointedly impress upon the probationer the collective concern of society over his criminal activity.

- Restitution and fines may be a component in basic probation supervision or any of its specialized programs.

- Special Conditions of Probation may be imposed to restrict the probationer's freedoms, to limit movement, or to require attainment of additional rehabilitative services to the offender.

- A "split-sentence" may be imposed upon an offender who, in the opinion of the court, needs both a prison experience and community supervision upon release.

The services being provided, enhanced, and expanded by the Probation Division offer cost-effective alternatives to incarceration. These services can provide meaningful supervision while maintaining protection of the public as a primary focus.

INTENSIVE PROBATION SUPERVISION (IPS)

1.	Number of existing IPS programs:	33
2.	Current offender caseload capacity:	990
3.	Current annual diversion capability:	1,910
4.	Program length:	6-12 months
5.	Availability:	IPS circuits only
6.	Per diem cost each offender:	$4.50
7.	Source of program funding:	Probation Fee

Program Objectives

The major thrust of the IPS program is that of addressing prison overcrowding by offering a sentencing option that entails highly-structured, rigidly-monitored supervision. The program utilizes a team of two (2) probation employees supervising a caseload of no more than twenty-five (25) probationers, thus ensuring the capability of near-daily contact with the probationer and surveillance of his/her activities.

Program Elements

1. Weekly staff/probationer contacts range from minimum of five in initial phase (3 months) to twice per week in final phase (6-12 months).
2. Employment given highest priority.
3. Minimum of 132 hours community service required.
4. Mandatory curfew.
5. Weekly check of local arrest records.
6. IPS probationers entered on statewide computer network.
7. Travel outside county of residence not allowed without prior approval.
8. Law enforcement requested to help monitor activities.
9. Routine drug/alcohol screen.

Program Eligibility

- Must be identified as an offender who is being diverted from the state prison system.
- Should present no unacceptable risk to the safety and security of the community.
- Offense must not carry mandatory prison sentence.
- Term of court on current sentence of incarceration must not be expired.
- Offender's sentence must not be under appeal.

DIVERSION CENTERS

1.	Number of existing centers:	14
2.	Additional planned centers:	3
3.	Current center offender capacity:	600
4.	Current annual diversion capability:	1,800
5.	Average days in program:	120
6.	Availability:	Statewide referral
7.	Per diem cost each offender:	$21.75

Program Objectives

The Diversion Center program plays a role in helping to address this state's issue of prison overcrowding. This short-term residential program allows the sentencing judge to impose a harsher sentence than "street" probation, yet not so harsh as incarceration. The Diversion Center program also permits offenders the opportunity to stabilize their lives through Center educational, counseling, and socialization programs.

Program Elements

All Diversion Center residents are:

1. Under the supervision of Center staff, including 24 hour-a-day supervision by Correctional staff.

2. Required to be employed on a full-time basis, with all earnings turned in to Business Office personnel for disbursement for room and board; court-ordered fines, restitution and fees; dependent's support; medical/dental expenses; and other financial obligations

3. Required to participate in counseling, educational, and life skills programs as deemed necessary.

4. Required to complete a minimum of 30 - 50 hours of community service work.

5. Screened for alcohol/drug abuse.

6. Allowed to leave Center grounds only for work, counseling, education, or other approved destinations.

7. Returned to regular probation supervision upon successful completion of the Diversion Center program.

Program Eligibility

The prospective Diversion Center referral should be:

1. Aged 17 or older.

2. Convicted of a property crime not involving use of a weapon, act of violence, or sex-related.

3. In suitable health, capable of maintaining full-time employment.

4. An offender who is not a chronic drug/alcohol abuser.

SPECIAL ALTERNATIVE INCARCERATION (SAI) PROGRAM

1.	Location of program:	Dodge Correctional Institution
2.	Current capacity:	100
3.	Current annual diversion capability:	400
4.	Availability:	Statewide referral for selected felons
5.	Length of program:	90 days
6.	Per diem cost each offender:	$30.43

Program Objectives

The overall purpose of the SAI program is to offer the courts an alternative to long-term incarceration and serve as a rehabilitative mechanism by combining an initial ninety (90) day period of confinement with probation supervision following the brief prison experience. The program addresses the needs of the sentencing judge faced with a young, impressionable offender who does not need long-term incarceration, but needs a short period of confinement to experience the harsh realities of prison life.

Program Elements

1. Program participants separated from general inmate population; supervised by specially-trained correctional staff.

2. Activities patterned after that of military basic training; little idle or discretionary time.

3. Work and constructive physical activity stressed as the major part of the program experience.

4. Successful program participation results in release at the end of ninety (90) days; with transfer to regular probation supervision.

5. Failure to comply with program requirements results in request for revocation, with possibility of sentence of probation being revoked.

Program Eligibility

To be eligible for program inclusion, the offender must:

- Be male
- Be not less than 17 nor more than 25 years of age
- Have no previous incarceration in an adult penal institution

- Be convicted of a felony
- Have no physical limitation which would exclude labor requiring strenuous physical activity
- Have no mental disorder or retardation which would prevent him from strenuous physical activity

COMMUNITY SERVICE

1.	Number of probationers performing community service (past fiscal year):	6,790
2.	Number of hours served by probationers:	954,126
3.	Approximate labor value for community service work performed in communities (calculated at minimum wage of $3.35 per hour):	$3,196,322

Note: Figures do not include residents at diversion centers hours.

Program Objective

Community service programs promote a work ethic approach to punishment and establish accountability for criminal acts. Work performed by offenders benefit the community in needed areas of service in a cost-effective manner. One of the primary goals of community service, as a punishment option, is to deter criminal behavior. It is a highly visable program which fosters citizen and agency involvement in the criminal justice process and decreases the use of incarceration in a relatively inexpensive manner.

Program Information

By Legislative definition, community service is "uncompensated work by an offender with an agency for the benefit of the community pursuant to an order by a court as a condition of probation."

A number of community service programs now exist in Georgia. Generally, they have been limited in scope to certain judicial circuits and coordinated by the local probation staff. The Legislative Acts (Ga. Code 42-8-70 and DUI Leg. Ga. Code 40-6-39) provides community service as a sentencing option and is predicted to increase drastically the Probation Division's work load. Ten (10) Community Service Coordinators were funded in FY'86 to coordinate community service in ten (10) circuits which have experienced the most impact of this legislation. Through a coordinated effort, the probation staff is working to implement an effective and efficient expansion of community service programs throughout the State. Technical assistance will be provided to counties or cities developing community service upon request.

Program Eligibility

The Probation Division's administration of community service programs will be limited to offenders who receive probated sentences from those courts that are served by the statewide probation system (Ga. Code Section 42-8-34 and 42-8-39). Community service is imposed by the court as a part of the sentence as a condition of probation.

The Probation Division will administer intake, placement, general counseling, follow-up, and monitoring of the offender's compliance of court-ordered community service hours. In addition, appropriate agencies will be identified and screened for possible community service worksites. Necessary data will be collected for program evaluation purposes.

The procedures for managing community service programs can be outlined as follows:

- Conduct investigations to determine offender placement suitability.
- Contact appropriate local court approved agencies.
- Initiate appropriate documentation for the court in sentencing, revocation or release of probationer performing community service.
- Establish record keeping and reporting procedures with agencies.
- Serve as a liaison between agencies and probationers in areas of controversy.
- Monitor and follow-up of probationer's performance.

PRETRIAL DIVERSION/INTERVENTION

1. Diversion programs operate under a wide variety of legal or administrative authority.
   - 1/3 of all Diversion programs in the United States are administered by the Prosecutor's Office.
   - 1/4 (or 27%) are court programs under administration of probation agencies.
   - Others fall in public agencies or private non-profit.
2. Number of Pretrial Diversion programs in Georgia: 10

Program Objectives

Pretrial diversion programs are designed to restore victim's loss through payment of restitution. The diversion program is designed to reduce present criminal activities and deter future criminal involvement of selected offenders by providing them opportunities to affect such changes.

General Objectives

- To provide the criminal justice system with an alternative to the traditional methods of processing selected non-violent, non-aggressive offenders.
- To reduce the population of the jail by providing a mechanism for the more efficient processing of priority cases.
- To provide first offenders opportunities to avoid the consequences of criminal conviction and criminal record.

Program Information

Legislation (HB-1101) passed by the 1984 General Assembly authorized the Department of Offender Rehabilitation to establish and operate pretrial release and pretrial diversion programs as rehabilitative measures for persons charged with misdemeanors and felonies with the approval of local court officials.

A limited number of programs are coordinated by the Probation Division due to the lack of staff and resources. General guidelines for developing and governing pretrial programs established and operated by the Department of Offender Rehabilitation are still in the developmental stages and will require the approval of the Board of Offender Rehabilitation upon completion.

In addition, a number of pretrial programs are operational through the Correctional Services Division of the Georgia Department of Labor.

Program Eligibility

Some programs require the defense attorney petition the court for a case to be considered for pretrial diversion. Other program participants are selected by the District Attorney or Solicitor. The staffing and organization of programs varies because of variations in communities, in availability of local resources, funds and structure of existing criminal justice systems.

Program general requirements consist of:

- Volunteer to participate and approval of District Attorney or Solicitor.
- Be at least 17 years of age.
- Agree in writing to waive right to speedy trial.
- Enter a contractual agreement which outlines restitution required, court cost, supervision requirements for specific time.
- As a rule, only offenders with no prior conviction will be eligible for program participation.
- Case must be prosecutable.

PRETRIAL RELEASE

1.	Release programs operate under a variety of legal or administrative authority.	
2.	Number of programs operating in Georgia:	6
3.	Program authority:	H.B. 1101
4.	Number of programs in United States: (More than 1/4 of all programs are administered by probation departments.)	400

Program Objectives

Pretrial release programs have been in existence in this country for over 15 years. Though release programs have undergone considerable changes during this time, and indeed no two programs are exactly alike, the basic function of all pretrial release programs remains the same. This function is to provide a viable alternative to the traditional bail system; one which does not discriminate against indigent offenders, but bases the release decision on verified community stability and prior criminal behavior. Release programs operate under the hypothesis that the forfeiture of a sum of money has been highly over-rated as a deterrent to flight, and that the offender's personal ties to the community may be the real guarantee of his appearance for trial. Therefore, the goals of most pretrial programs are to:

- Establish a more effective and less discriminatory system of bail.
- Bring the pretrial functions under the control of the court.
- Relieve jail overcrowding, thereby saving money in jail expenses and maintenance of pretrial detainees.

The responsibilities of a pretrial program is to gather and submit to the court verified data on jailed offenders for judicial review in order to determine release eligibility.

Program Elements

The purpose of bail as recognized by the law is to insure that the accused will return to court for trial. Under the traditional bail system, the arrested person has three options to procure his release from custody prior to his trial; post a property bond, a cash bond, or a commercial bond. All these methods require financial resources. The traditional system is ineffective because it is not directly related to the basic reliability of the accused to appear in court.

A pretrial release program is beneficial to:

- Court - relieves jail overcrowding and provides more efficient case flow management.
- Individual offender - return to job.
- Community - tax savings.

Other benefits of the program cannot be measured quantitatively, but are nevertheless real and very important, such as the prevention of embitterment that may lead a first offender into a more anti-social attitude and more crime.

General Procedures

- Interview and initial screening
- Verification of data
- Recommendation
- Establish release conditions:
  a. regular reporting
  b. notification of changes in personal status, employment, residence, etc.
- Apprehension - failure to comply with courts conditions

Program Authority

- Local court rule.
- Legislation (HB 1101) passed by the 1984 General Assembly authorized the Department of Offender Rehabilitation to establish and operate pretrial release and pretrial diversion programs as rehabilitative measures for persons charged with misdemeanors and felonies with the approval of local court officials.

GEORGIA DEPARTMENT OF CORRECTIONS
Floyd Veterans Memorial Building
Room 756 - East Tower
Atlanta, Georgia 30334

David C. Evans
Commissioner

February 11, 1986

Mr. Robert H. Ziegler, Sr.
Senator
Capitol Room 111
Box V, Pouch 5
Juneau, Alaska 99811

Attention: Mr. Guy Van Dorn

Dear Mr. Van Dorn:

Your interest in Georgia Alternative Sentencing Options especially the Special Alternative Incarceration Unit (SAI) is appreciated. I am enclosing some information which, I hope, will provide you with the operational perspectives of the program you desire.

The Special Alternative Incarceration Unit (SAI) Shock Incarceration is for the young, impressionable offender (aged 17-25), the sentencing judge may impose, as a special condition of probation, a term of ninety (90) days to be served in a special facility for probationers. The regimen at this unit of a recently-constructed state institution is patterned after military boot camp, with very few privileges and many constructive physical activities. The probationer has very little time for anything other than work activity. If he does not abide by the rules and regulations of the unit, his probation may be revoked and he will enter the general state prison population. If he does make acceptable adjustment to the unit, he may be returned to regular supervision upon release from the program. The overall thrust of this program is to make the offender aware of the realities of prison life.

The enclosed packet will provide you the array of sentencing alternatives short of incarceration. While we realize that prisons must exist, we also recognize that prisons are becoming an increasingly scarce resource and must be used only when an offender's crime or lifestyle precludes community supervision.

After your review of this packet, please let me know if you have questions or if I may provide more information. Again, thank you for your interest in Georgia.

Sincerely,

Helen Scholes
Community Service Coordinator
Probation Division

HS:hem

Enclosure

CC: Vince Fallin

HB 554 file presumptive sentencing

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

Patrick Rodey
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Rodey,

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 have been able to come into play.

Initially, the idea of presumptive sentencing was proposed for repeat offenders. Many people are of the opinion that repeat offenders are not being given adequate sentences. Then 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 jail sentences that simply are not justified. (Under Chaney, the case which sets out criteria used by judges to set jail terms, that 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 its 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 for 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

THE PRESUMPTIVE SENT.

Fairbanks North Star Borough

Mayor: Juanita Helms

March 10, 1986

Honorable Don Clocksin
Alaska State Legislature
Pouch V (Mail Stop 3100)
Juneau, Alaska 99811

Dear Representative Clocksin:

The Fairbanks North Star Borough has reviewed HB 554, which addresses presumptive sentencing for certain felony crimes. We recognize the need for a means to reduce overcrowding the state jails. However, to be acceptable, any reduction in presumptive jail terms should be replaced with a suitable alternate sentence. We have investigated one alternative that may be suitable for some offenses, described in the attached program outline. The concept of Community Work Service has received support from the Fairbanks City Council, the Fairbanks North Star Borough Assembly, and the Greater Fairbanks Chamber of Commerce Board of Directors as shown in the attached resolutions.

While the program described is a locally run program, we subsequently held discussions with the Department of Corrections and the Department of Law's Pretrial Diversion Program, and currently feel the best way to implement such a program is through expansion of the current Pretrial Diversion Program. Such an expansion would require additional funding for both administration of the program and for direct supervision of the work performed. The direct supervision is essential to the success of this type of program, and could be contracted to an organization to avoid adding positions to the state payroll.

P.O. Box 1267 Fairbanks, Alaska 99707 (907) 452-4761

In summary, the Fairbanks North Star Borough urges you to consider such a program as a means of reducing overcrowding in the jails and would lend its support to a substitute measure including community work service in place of the reduced jail term.

Sincerely,

Juanita Helms

Juanita Helms
Borough Mayor

JH:rlf

Attachments

cc: Interior Delegation
Representative Albert Adams, Chairman, House Finance Committee
Senator Jan Faiks, Chairman, Senate Finance Committee
Representative Max F. Gruenberg, Jr., Co-chairman, House Health, Education and Social Services Committee
Senator Patrick Rodey, Chairman, Senate Judiciary Committee
Linda Anderson, Legislative Liaison

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/7/89
Date

02-519 (REV 8/78)

RICO

Introduced: 2/8/85
Referred: Judiciary and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 184

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to illegally controlled enterprises and the forfeiture of property that is used in violation of state law; and providing for an effective date."

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

* Section 1. DECLARATION OF LEGISLATIVE PURPOSE. The legislature has determined that the acquisition, establishment, or operation of legitimate and illegitimate enterprises in Alaska through a pattern of criminal activity is inimical to the continued health of our economic and social systems. The purpose of this Act is to provide appropriate penalties and severe financial disincentives that can be applied to combat this type of conduct. The legislature intends that this Act be liberally construed to effectuate its remedial purpose.

* Sec. 2. AS 11 is amended by adding a new chapter to read:

CHAPTER 59. ILLEGALLY CONTROLLED ENTERPRISES.

ARTICLE 1. PROHIBITED ACTIVITIES.

Sec. 11.59.010. UNLAWFUL ACTS. It is unlawful for a person to

(1) acquire or maintain, directly or indirectly, an interest in or control of an enterprise through racketeering;

(2) participate in or conduct, directly or indirectly, the affairs of an enterprise through racketeering; or

(3) use or invest property derived, directly or indirectly, from racketeering, or the proceeds of that property, to acquire or maintain an interest in or control of an enterprise or to participate

in or conduct the affairs of an enterprise.

Sec. 11.59.020. DEFINITION OF "RACKETEERING." (a) As used in AS 11.59.010, "racketeering" means a pattern of illegal activity that involves two or more instances of illegal activity.

(b) As used in this section and AS 11.59.030, "illegal activity" means

(1) a felony against the person under AS 11.41;

(2) a crime against property under AS 11.46, punishable as a class B felony;

(3) a felony against public administration under AS 11.56, a felony against public order under AS 11.61, a felony involving alcoholic beverages under AS 04 or a felony involving securities or takeover bids under AS 45.55 or 45.57;

(4) a crime involving controlled substances under AS 11.71, punishable as an unclassified or class A or B felony;

(5) promoting prostitution in the first degree under AS 11.66.110, promoting gambling in the first degree under AS 11.66.-210; and possession of gambling records in the first degree under AS 11.66.230;

(6) felony conduct which is defined as "racketeering activity" under 18 U.S.C. sec. 1961(1).

(c) As used in this section, a "pattern" of illegal activity means that the instances of illegal activity had the same or similar purposes, results, victims, participants, or methods of commission, or were interrelated by distinguishing characteristics.

Sec. 11.59.030. PROOF OF RACKETEERING. (a) The instances of illegal activity used to establish racketeering, as defined in AS 11.-59.020, must include

(1) one instance of illegal activity that is in violation

of Alaska law;

(2) one instance of illegal activity that occurred after the effective date of this Act; and

(3) one instance of illegal activity that was committed three years before or after the alleged acquisition or maintenance of an interest in or control of the enterprise, or the alleged participation in or conducting of the affairs of the enterprise as described in AS 11.59.010.

(b) The requirements of (a) of this section may be satisfied by a single instance of illegal activity.

(c) Past illegal activity may be used to establish racketeering as defined in AS 11.59.020 if less than five years have elapsed between the date of the most recent instance of illegal activity and the immediately preceding instance of illegal activity.

(d) Illegal activity that is used to establish racketeering as defined in AS 11.59.020 may be proved by

(1) a certified copy of a judgment of conviction;

(2) proof beyond a reasonable doubt in a criminal prosecution under AS 11.59.040 or 11.59.050; or

(3) proof by a preponderance of the evidence in a proceeding under AS 11.59.070 -- 11.59.120.

(e) For purposes of calculating the three-year period specified in (a)(3) of this section and the five-year period specified in (c) of this section, any period of imprisonment, probation, parole, conditional executive clemency, suspended imposition of sentence, formal deferred prosecution or formal pretrial diversion must be excluded.

ARTICLE 2. CRIMES INVOLVING ILLEGALLY CONTROLLED ENTERPRISES.

Sec. 11.59.040. ILLEGAL CONTROL OF AN ENTERPRISE IN THE FIRST

DEGREE. (a) A person commits the crime of illegal control of an enterprise in the first degree if the person violates AS 11.59.050, and if one of the instances of illegal activity used to establish racketeering as defined in AS 11.59.020 was

(1) an unclassified or class A felony in Alaska; or

(2) a crime in Alaska or in another jurisdiction having elements similar to a current class A felony or unclassified felony in Alaska.

(b) Illegal control of an enterprise in the first degree is an unclassified felony and is punishable as specified in AS 12.55.125(i).

Sec. 11.59.050. ILLEGAL CONTROL OF AN ENTERPRISE IN THE SECOND DEGREE. (a) A person commits the crime of illegal control of an enterprise in the second degree if the person violates AS 11.59.010 or attempts or solicits a violation of AS 11.59.010.

(b) Illegal control of an enterprise in the second degree is a class A felony.

Sec. 11.59.060. CHARGING UNDERLYING ACT. In a criminal prosecution under AS 11.59.040 or 11.59.050, a violation of a criminal law that is used to prove racketeering as defined in AS 11.59.020 may be charged as a separate count in the same indictment or information as the violation of AS 11.59.040 or 11.59.050.

ARTICLE 3. CIVIL REMEDIES.

Sec. 11.59.070. EFFECT OF CONVICTION ON OTHER PROCEEDINGS. A criminal conviction for a violation of AS 11.59.040 or 11.59.050 estops the defendant from denying the essential allegations of the crime in any subsequent proceeding brought by any party under this chapter, a forfeiture proceeding under AS 09.50, or under any other provision of law.

Sec. 11.59.080. CIVIL ACTION FOR TREBLE DAMAGES. (a) A person,

including the state or other governmental agency, that is injured in business or property by reason of a violation of AS 11.59.010 may bring an action in the superior court for three times the amount of damages sustained.

Sec. 11.59.090. PROPERTY SUBJECT TO FORFEITURE. Property, or the proceeds of property, is subject to forfeiture to the State of Alaska under AS 09.50 if

(1) acquired or maintained in violation of, or in the course of violating, AS 11.59.010;

(2) used or invested in violation of, or in the course of violating, AS 11.59.010; or

(3) derived, directly or indirectly, from racketeering, as defined in AS 11.59.020.

Sec. 11.59.100. INJUNCTIVE RELIEF. (a) In addition to any other action authorized by law, the attorney general may bring a separate ex parte action in the superior court to enjoin a violation of AS 11.59.010. The superior court may prevent or restrain violations of AS 11.59.010 by issuing appropriate temporary or permanent orders which may include divestiture of any interest in an enterprise, performance bonds, reasonable restrictions on future activities or investments, the attachment and freezing of assets, prohibitions against engaging in the same type of activities as the enterprise engaged in, and dissolution or reorganization of any enterprise, making appropriate provision for the rights of innocent persons.

(b) At any time after a civil or criminal proceeding arising out of a violation of AS 11.59.010 has been instituted, the superior court may issue appropriate orders and injunctive relief that may include the remedies listed in (a) of this section, or any other order to prevent disposal or diminution in value of property subject to

forfeiture under AS 11.59.090(1) or (2) or subject to a claim for damages under AS 11.59.080.

(c) Upon a criminal conviction or a civil judgment, including an order of forfeiture, arising out of a violation of AS 11.59.010, the superior court may issue appropriate orders that may include the remedies listed in (a) of this section.

Sec. 11.59.110. CIVIL INVESTIGATIVE DEMAND. (a) Whenever there is reason to believe that a person or enterprise may be in possession, custody, or control of a document or other material that may be relevant to an investigation relating to a violation of AS 11.59.010, the attorney general may, before the institution of a civil or criminal proceeding, issue a written investigative demand requiring the production of the material for examination.

(b) A demand for material must

(1) state the nature of the conduct that is under investigation;

(2) describe the class or classes of documentary or other material to be produced with such definiteness and certainty as to permit the material to be readily identified; and

(3) state that the demand must be complied with immediately if there is reason to believe that the material sought may be concealed, destroyed, or tampered with, or specify a date that will provide a reasonable period of time within which the material may be assembled and made available for inspection and copying or reproduction.

(c) Service of a demand for materials under this section may be made by

(1) delivering a copy to a partner, executive officer, managing agent, or general agent of an enterprise, or to an agent

authorized to receive service of process on behalf of an enterprise, or to any individual person;

(2) delivering a copy to the principal office or place of business of the person to be served; or

(3) depositing a copy in the United States mail, by registered or certified mail addressed to the principal office or place of business of the person to be served.

(d) A person upon whom a demand issued under this section has been served shall make the material available for inspection and copying by the attorney general at the principal place of business of the person, or at such other place as the attorney general may direct. Failure to comply with a civil investigative demand under this section is punishable in the superior court as contempt, to the same extent as a contempt of any order issued from that court.

(e) The attorney general may take physical possession of any materials produced, and is responsible for their return under this section. No material may be made available for examination by an individual other than the attorney general, without the consent of the person who produced the material. Under such reasonable terms as the attorney general prescribes, documentary material must be available for examination by the person who produced the material, or an authorized representative of that person.

(f) Within 90 days after the production of an original document or other material, or upon the completion of the investigation for which the original material was produced under this section, or upon completion of a case or proceeding arising from an investigation, whichever is sooner, the attorney general shall return all original material which has not passed into the control of a court or grand jury. For good cause, the superior court may grant the attorney

general an extension of time to return the material.

Sec. 11.59.120. ATTEMPT OR SOLICITATION TO VIOLATE AS 11.59.010. As used in AS 11.59.070 -- 11.59.120, the term "violation of AS 11.59.010", or a similar phrase, includes an attempt or solicitation under AS 11.31 to violate AS 11.59.010.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 11.59.900. DEFINITIONS. As used in this chapter, unless the context requires otherwise,

(1) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of persons associated in fact although not a legal entity;

(2) "property" means any thing of value, including real or personal property, claims against or interests in business or property, contractual rights, securities, income, profits, any interest in an enterprise, or any other business or financial interest.

* Sec. 3. AS 09.50 is amended by adding a new article to read:

ARTICLE 7. FORFEITURE.

Sec. 09.50.400. PROCEDURES APPLICABLE IN FORFEITURE PROCEEDINGS. The State of Alaska is authorized to initiate a proceeding to forfeit property if the property is made subject to forfeiture by state law. Unless otherwise specifically provided in a state law authorizing forfeiture, the procedures applicable to the forfeiture of property are specified in AS 09.50.400 -- 09.50.480.

Sec. 09.50.410. SEIZURE AND CUSTODY OF PROPERTY. (a) Property may be seized by a peace officer under an order issued by a court upon a showing of probable cause that the property is subject to forfeiture. The property may be seized without a court order if

(1) constitutionally permissible or otherwise authorized by law;

(2) the property has been the subject of a judgment in favor of the state in a forfeiture proceeding; or

(3) there is probable cause to believe that the property is subject to forfeiture and is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order, which may be obtained in an ex parte proceeding, based on probable cause that the property is subject to forfeiture.

(b) Property seized under (a) of this section must be held in the custody of the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner to retain custody, subject only to the orders and decrees of the court. If property is seized under this section, the commissioner of public safety or an authorized municipal law enforcement agency may

(1) place the property under seal;

(2) remove the property to a place designated by the court; or

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(c) Within 10 days after a seizure under this section, the commissioner of public safety or authorized municipal law enforcement agency shall make an inventory of any property seized, including controlled substances, and shall estimate the value of any item seized other than controlled substances. As used in this section, "controlled substance" includes "imitation controlled substance" as defined in AS 11.73.099.

Sec. 09.50.420. NOTICE OF SEIZURE AND FORFEITURE ACTION; ANSWERS. (a) Within 30 days after a seizure under AS 09.50.410, the commissioner of public safety shall, in any manner authorized for service of process under rules of civil procedure, give notice of the

seizure to any person known to have an interest in the property if it has an estimated value of $500 or more, or whose interest in the property is ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the property. The notice required by this subsection need not be given if the state has filed a motion to forfeit or a complaint under AS 09.50.430(a) within 30 days after seizure of the property.

(b) Within 30 days after the filing of a civil in rem action or a motion to forfeit in a civil or criminal action, the commissioner of public safety shall,

(1) in any manner authorized for service of process under rules of civil procedure, provide a copy of the complaint or motion to any person known to have an interest in the property, other than the defendant, when a motion for forfeiture has been filed in a criminal proceeding; and

(2) begin to publish notice of the action to forfeit property with an estimated value of $500 or more in a newspaper of general circulation in the judicial district where the property was seized, or if the property has not been seized, the judicial district where the forfeiture action was filed; if no newspaper is published in that judicial district, the notice must be published in a newspaper published in the state and distributed in that judicial district; the notice must be published once each week during four consecutive calendar weeks.

(c) Upon service of process or publication under (b) of this section, a person claiming an interest in the property, or a defendant in a criminal proceeding who has been served with a motion to forfeit, shall file an answer within the time permitted for answering civil complaints under applicable rules of civil procedure. The answer must

set out the reasons why the property is not subject to forfeiture or why the claimant is entitled to remission under AS 09.50.470. The answer must include the nature of the claimant's interest in the property, the date it was acquired, the consideration paid, and the circumstances under which it was acquired. If an answer is not filed within the required time period, the property must be forfeited to the state without further proceedings or showings.

(d) The notice requirements of this section do not apply to controlled substances under AS 11.71 or imitation controlled substances under AS 11.73.

Sec. 09.50.430. PROCEEDINGS RESULTING IN FORFEITURE; BURDEN OF PROOF. (a) A forfeiture proceeding is initiated by the state by the filing of a motion to forfeit in a criminal case or in a civil proceeding relating to the conduct making the property subject to forfeiture, or by the filing of a complaint in a separate in rem proceeding.

(b) Questions of fact or law in a forfeiture proceeding under this section must be determined by the court sitting without a jury. In a forfeiture proceeding the state must prove by a preponderance of the evidence that the property is subject to forfeiture under the law authorizing forfeiture. A forfeiture proceeding, including discovery, may be held in abeyance until the conclusion of a pending criminal action relating to the conduct making the property subject to forfeiture.

Sec. 09.50.440. DEFENSES EXEMPTED. It is not a defense to a proceeding to forfeit property under AS 09.50.430 that a criminal proceeding has resulted in a conviction of a lesser included offense or an acquittal.

Sec. 09.50.450. PETITION FOR RELEASE OF SEIZED PROPERTY. (a) A claimant may at any time petition the court for release of property

seized under AS 09.50.410 if the claimant

(1) has filed a timely answer under AS 09.50.420(c); or

(2) before the initiation of a forfeiture action, files a notice of claim setting out the nature of the claimant's interest in the property, the date it was acquired, the consideration paid, and the circumstances under which it was acquired.

(b) The court may release property that is not likely to be used as evidence by the state or a defendant in a criminal proceeding, or by any party in a civil proceeding, if

(1) the claimant gives adequate assurance that the property will remain subject to the court's jurisdiction;

(2) the court finds that the release is in the best interests of the state; and

(3) the claimant provides a bond or other valid and equivalent security equal to twice the estimated value of the property.

Sec. 09.50.460. PETITION FOR DISPOSITION OF SEIZED PROPERTY. (a) The state may petition the court for disposition of seized property before the termination of court proceedings. A claimant may also seek a petition for disposition before the termination of court proceedings if the claimant

(1) has filed a timely answer under AS 09.50.420(c); or

(2) before the initiation of a forfeiture action, files a notice of claim setting out the nature of the claimant's interest in the property, the date it was acquired, the consideration paid, and the circumstances under which it was acquired.

(b) The court may grant a petition for disposition if the property is not likely to be used as evidence by the state or a defendant in a criminal proceeding, or by any party in a civil proceeding, and the court finds that the disposition is in the best interests of the

state and the preservation and maintenance of the value of the property seized. Proceeds from the disposition plus interest to the date of termination of the court proceedings become the subject of the forfeiture action.

Sec. 09.50.470. FORFEITURE AND REMISSION. (a) Once the state has established that property is subject to forfeiture under the law authorizing forfeiture, the property must be forfeited to the state, except that a claimant who has filed an answer under AS 09.50.420(c) may prove by a preponderance of the evidence that the claimant is entitled to remission because the claimant

(1) has a valid interest in the property, acquired in good faith;

(2) did not participate in the conduct that resulted in the property being subject to forfeiture; and

(3) did not know or have reasonable cause to believe that the property had been or would be used or derived in a manner making the property subject to forfeiture.

(b) Upon a showing that a claimant is entitled to remission under (a) of this section, the court shall order that

(1) if the claimant is entitled to the property, it must be delivered to the claimant immediately;

(2) if the claimant is entitled to some value less than the total value of the property, the claimant may choose to receive either the value of the interest or, upon payment of the difference in value, the entire property.

(c) The court may, as part of a sentence, or as a condition of a probation or suspended imposition of sentence, order the payment of reasonable maintenance, storage, disposal, publication, attorney fees, or other costs associated with the forfeiture or remission of

property.

Sec. 09.50.480. STATE DISPOSAL OF FORFEITED PROPERTY. Property forfeited under this chapter, other than controlled substances, must be disposed of by the commissioner of administration in accordance with applicable law. Controlled substances and imitation controlled substances must be disposed of under AS 17.30.126. The commissioner of administration may, consistent with other applicable law,

(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of the law or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law;

(5) forward it to the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol.

* Sec. 4. AS 11.41.520 is amended by adding a new subsection to read:

(e) As used in this section, "obtains the property of another" includes the collection of a debt that was undertaken with the express or implied understanding between the debtor and the creditor that delay in making repayment, or failure to make repayment, could result in commission of any of the acts described in (a)(1) -- (7) of this section.

* Sec. 5. AS 11.66.270 is amended to read:

Sec. 11.66.270. FORFEITURE. If used in violation of AS 11.66.-200 -- 11.66.280, the following property is subject to forfeiture under AS 09.50 [SHALL BE FORFEITED]:

(1) a gambling device or gambling record;

(2) money, not found on the person, used as a bet or stake;

(3) money, used as a bet or a stake which is found on the person of one who conducts, finances, manages, supervises, directs, or owns all or part of an unlawful gambling enterprise.

* Sec. 6. AS 11.73.060(a) is amended to read:

(a) Property used during or in aid of a violation of this chapter may be forfeited to the state to the extent permitted under and in accordance with the provisions of AS 17.30.110 -- 17.30.126 and AS 09.50.

* Sec. 7. AS 12.55.035(b)(1) is amended to read:

(1) $75,000 for an unclassified felony [MURDER IN THE FIRST OR SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, KIDNAPPING, OR MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE].

* Sec. 8. AS 12.55.125(i) is amended to read:

(i) A defendant convicted of illegal control of an enterprise in the first degree, sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and must [SHALL] be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;

(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused

serious physical injury during the commission of the offense, 10 years;

(3) if the offense is a second felony conviction, 15 years;

(4) if the offense is a third felony conviction, 25 years.

* Sec. 9. AS 17.30.110 is repealed and reenacted to read:

Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. (a) The following property is subject to forfeiture under AS 09.50 and AS 17.30.126:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance in violation of this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles, or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other property

(A) furnished by a person in exchange for a controlled substance in violation of this chapter or AS 11.71;

(B) used to facilitate a violation of this chapter or AS 11.71; or

(C) which constitute proceeds derived from a violation of this chapter or AS 11.71; and

(7) a firearm carried during, or used in furtherance of a violation of this chapter or AS 11.71.

(b) In this section, "violation of this chapter or AS 11.71" includes an attempt or solicitation under AS 11.31 to violate this chapter or AS 11.71.

* Sec. 10. AS 17.30.126 is amended by adding a new subsection to read:

(c) As used in this section, "controlled substance" includes "imitation controlled substance" as defined in AS 11.73.099.

* Sec. 11. AS 17.30.112 -- 17.30.124 are repealed.

* Sec. 12. This Act takes effect January 1, 1986.

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January 4, 1984

Senator Patrick M. Rodey
Aglietti, Pennington & Rodey
1200 Airport Heights Road, Suite 520
Anchorage, Alaska 99508

Dear Pat:

Enclosed please find an advanced copy of the Administration's RICO Bill. As I indicated to you I obtained this advance copy as a favor from Dan Hickey and he has asked me to share it with no one but you.

Very truly yours,

BIRCH, HORTON, BITTNER
PESTINGER & ANDERSON

Timothy Petumenos

TP:sab
Encl.

IN THE _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to illegally controlled enterprises and the forfeiture of property that is used in violation of state law; and providing for an effective date."

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

* Section 1. DECLARATION OF LEGISLATIVE PURPOSE. The legislature has determined that the acquisition, establishment, or operation of legitimate and illegitimate enterprises in Alaska through a pattern of criminal activity is inimical to the continued health of our economic and social systems. The purpose of this Act is to provide appropriate penalties and severe financial disincentives that can be applied to combat this type of conduct. The legislature intends that this Act be liberally construed to effectuate its remedial purpose.

* Sec. 2. AS 11 is amended by adding a new chapter to read:

CHAPTER 59. ILLEGALLY CONTROLLED ENTERPRISES

ARTICLE 1. PROHIBITED ACTIVITIES

Sec. 11.59.010. UNLAWFUL ACTS. It is unlawful for a person to

(1) acquire or maintain, directly or indirectly, an interest in or control of an enterprise through racketeering or by using or investing property derived from racketeering;

(2) participate in or conduct, directly or indirectly, the affairs of an enterprise through racketeering by using or investing property derived from racketeering.

Sec. 11.59.020. DEFINITION OF "RACKETEERING." (a) As used in

AS 11.59.010, "racketeering" means a pattern of illegal activity that involves two or more instances of illegal activity.

(b) As used in this section and AS 11.59.030, "illegal activity" means

(1) a felony against the person under AS 11.41;

(2) a crime against property under AS 11.46, punishable as a class B felony;

(3) a felony against public administration under AS 11.56, a felony against public order under AS 11.61, ~~or~~ a felony involving alcoholic beverages under AS 04 OR A FELONY INVOLVING SECURITIES OR TAKEOVER BIDS UNDER AS 45.55 OR 45.57;

(4) a crime involving controlled substances under AS 11.71, punishable as an unclassified or class A or B felony;

(5) promoting prostitution in the first degree under AS 11.66.110, promoting gambling in the first degree under AS 11.66.-210; and possession of gambling records in the first degree under AS 11.66.230;

(6) felony conduct which is defined as "racketeering activity" under 18 U.S.C. sec. 1961(1).

(c) As used in this section, a "pattern" of illegal activity means that the instances of illegal activity had the same or similar purposes, results, victims, participants, or methods of commission, or were interrelated by distinguishing characteristics.

Sec. 11.59.030. PROOF OF RACKETEERING. (a) The instances of illegal activity used to establish racketeering as defined in AS 11.-59.020 must include

(1) one instance of illegal activity that is in violation of Alaska law;

(2) one instance of illegal activity that occurred after the effective date of this Act; and

(3) one instance of illegal activity that was committed three years before or after the alleged acquisition or maintenance of an interest in or control of the enterprise as described in 11.59.-010(1), or the alleged participation in or conducting of the affairs of the enterprise as described in AS 11.59.010(2).

(b) The requirements of (a) of this section may be satisfied by a single instance of illegal activity.

(c) Past illegal activity may be used to establish racketeering as defined in AS 11.59.020 if less than five years have elapsed between the date of the most recent instance of illegal activity and the immediately preceding instance of illegal activity.

(d) Illegal activity that is used to establish racketeering as defined in AS 11.59.020 may be proved by

(1) a certified copy of a judgment of conviction;

(2) proof beyond a reasonable doubt in a criminal prosecution under AS 11.59.040 or 11.59.050; or

(3) proof by a preponderance of the evidence in a proceeding under AS 11.59.070--11.59.120.

(e) For purposes of calculating the three year period specified in (a)(3) of this section and the five year period specified in (c) of this section, any period of imprisonment, probation, parole, conditional executive clemency, suspended imposition of sentence, formal deferred prosecution or formal pretrial diversion shall be excluded.

ARTICLE 2. CRIMES INVOLVING ILLEGALLY CONTROLLED ENTERPRISES

Sec. 11.59.040. ILLEGAL CONTROL OF AN ENTERPRISE IN THE FIRST DEGREE. (a) A person commits the crime of illegal control of an enterprise in the first degree if the person violates AS 11.59.050 and one of the instances of illegal activity used to establish

racketeering as defined in AS 11.59.020 was

(1) an unclassified or class A felony in Alaska; or

(2) a crime in Alaska or in another jurisdiction having elements similar to a current class A felony or unclassified felony in Alaska.

(b) Illegal control of an enterprise in the first degree is an unclassified felony and is punishable as specified in AS 12.55.125(b).

Sec. 11.59.050. ILLEGAL CONTROL OF AN ENTERPRISE IN THE SECOND DEGREE. (a) A person commits the crime of illegal control of an enterprise in the second degree if the person violates AS 11.59.010 or attempts or solicits a violation of AS 11.59.010.

(b) Illegal control of an enterprise in the second degree is a class A felony.

Sec. 11.59.060. CHARGING UNDERLYING ACT. In a criminal prosecution under AS 11.59.040 or 11.59.050, a violation of a criminal law that is used to prove racketeering as defined in AS 11.59.020 may be charged as a separate count in the same indictment or information as the violation of AS 11.59.040 or 11.59.050.

ARTICLE 3. CIVIL REMEDIES

Sec. 11.59.070. EFFECT OF CONVICTION ON OTHER PROCEEDINGS. A criminal conviction for a violation of AS 11.59.040 or 11.59.050 estops the defendant from denying the essential allegations of the crime in any subsequent proceeding brought under this chapter, a forfeiture proceeding pursuant to AS 09.50, or under any other provision of law, by any other party.

Sec. 11.59.080. CIVIL ACTION FOR TREBLE DAMAGES. (a) A person, including the state or other governmental agency, that is injured in business or property by reason of a violation of AS 11.59.010 may bring an action in the superior court for three times the amount of

damages sustained.

Sec. 11.59.090. PROPERTY SUBJECT TO FORFEITURE. The following property is subject to forfeiture to the State of Alaska pursuant to AS 09.50:

(1) property used to acquire or maintain an interest in or control of an enterprise, or to conduct or participate in the affairs of an enterprise, in violation of AS 11.59.010(1) or (2); and

(2) property, including any interest in an enterprise, derived or acquired, directly or indirectly, from a violation of AS 11.59.010(1) or (2).

Sec. 11.59.100. INJUNCTIVE RELIEF. (a) In addition to any other relief under this chapter, the attorney general may bring an action in the superior court to enjoin a violation of AS 11.59.010. The superior court may prevent or restrain violations of AS 11.59.010 by issuing appropriate temporary or permanent orders which may include divestiture of any interest in an enterprise, performance bonds, reasonable restrictions on future activities or investments, the attachment and freezing of assets, prohibitions against engaging in the same type of activities as the enterprise engaged in, and dissolution or reorganization of any enterprise, making appropriate provision for the rights of innocent persons.

(b) At any time after a civil or criminal proceeding arising out of a violation of AS 11.59.010 has been instituted, the superior court may issue appropriate orders and injunctive relief that may include the remedies listed in (a) of this section, or any other order to prevent disposal or diminution in value of property subject to forfeiture under AS 11.59.090(1) or (2) or subject to a claim for damages under AS 11.59.080.

(c) Upon a criminal conviction or a civil judgment, including an

order of forfeiture, arising out of a violation of AS 11.59.010, the superior court may issue appropriate orders that may include the remedies listed in (a) of this section.

Sec. 11.59.110. CIVIL INVESTIGATIVE DEMAND. (a) Whenever there is reason to believe that a person or enterprise may be in possession, custody, or control of a document or other material that may be relevant to an investigation relating to a violation of AS 11.59.010, the attorney general may, before the institution of a civil or criminal proceeding, issue a written investigative demand requiring the production of the material for examination.

(b) A demand for material must

(1) state the nature of the conduct that is under investigation;

(2) describe the class or classes of documentary or other material to be produced with such definiteness and certainty as to permit the material to be fairly identified; and

(3) state that the demand must be complied with immediately if there is reason to believe that the material sought may be concealed, destroyed, or tampered with, or specify a date that will provide a reasonable period of time within which the material may be assembled and made available for inspection and copying or reproduction.

(c) Service of a demand for materials under this section may be made by

(1) delivering a copy to a partner, executive officer, managing agent, or general agent of an enterprise, or to an agent authorized to receive service of process on behalf of an enterprise, or to any individual person;

(2) delivering a copy to the principal office or place of

business of the person to be served; or

(3) depositing a copy in the United States mail, by registered or certified mail addressed to the principal office or place of business of the person to be served.

(d) A person upon whom a demand issued under this section has been served shall make the material available for inspection and copying by the attorney general at the principal place of business of the person, or at such other place as the attorney general may direct. Failure to comply with a civil investigative demand under this section is punishable in the superior court as contempt, to the same extent as a contempt of any order issued from that court.

(e) The attorney general may take physical possession of any materials produced, and is responsible for their return under this chapter. No material may be made available for examination by an individual other than the attorney general, without the consent of the person who produced the material. Under such reasonable terms as the attorney general prescribes, documentary material must be available for examination by the person who produced the material, or an authorized representative of that person.

(f) Within 90 days after the production of an original document or other material, or upon the completion of the investigation for which the original material was produced under this section, or upon completion of a case or proceeding arising from an investigation, whichever is sooner, the attorney general shall return all original material which has not passed into the control of a court or grand jury. For good cause, the superior court may grant the attorney general an extension of time to return the material.

Sec. 11.59.120. ATTEMPT OR SOLICITATION TO VIOLATE AS 11.59.010. As used in AS 11.59.070--120, the term "violation of AS 11.59.010", or

a similar phrase, includes an attempt or solicitation under AS 11.31 to violate AS 11.59.010.

ARTICLE 5. GENERAL PROVISIONS

Sec. 11.59.900. DEFINITIONS. As used in this chapter, unless the context requires otherwise,

(1) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of persons associated in fact although not a legal entity;

(2) "person" includes any individual or entity capable of holding a legal or beneficial interest in property, including a natural person, a government as defined by AS 11.81.900(b), and any entity listed in AS 01.10.060(7);

(3) "property" means any thing of value, including real or personal property, claims against or interests in business or property, contractual rights, securities, income, profits, or any other business or financial interest.

* Sec. 3. AS 09.50 is amended by adding a new article to read:

ARTICLE 7. FORFEITURE

Sec. 09.50.400. PROCEDURES APPLICABLE IN FORFEITURE PROCEEDINGS. The State of Alaska is authorized to initiate a proceeding to forfeit property if the property is made subject to forfeiture by state law. Unless otherwise specifically provided in a state law authorizing forfeiture, the procedures applicable to the forfeiture of property are specified in AS 09.50.400--09.50.480.

Sec. 09.50.410. SEIZURE AND CUSTODY OF PROPERTY. (a) Property may be seized by a peace officer under an order issued by a court upon a showing of probable cause that the property is subject to forfeiture. The property may be seized without a court order if

(1) constitutionally permissible or otherwise authorized by

law;

(2) the property has been the subject of a judgment in favor of the state in a forfeiture proceeding; or

(3) there is probable cause to believe that the property is subject to forfeiture and is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order based on probable cause that the property is subject to forfeiture, which may be obtained in an ex parte proceeding.

(b) Property seized under (a) of this section must be held in the custody of the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner to retain custody, subject only to the orders and decrees of the court. If property is seized under this section, the commissioner of public safety or an authorized municipal law enforcement agency may

(1) place the property under seal;

(2) remove the property to a place designated by the court; or

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(c) Within 10 days after a seizure under this section, the commissioner of public safety or authorized municipal law enforcement agency shall make an inventory of any property seized, including controlled substances, and shall estimate the value of any items seized other than controlled substances. As used in this section, "controlled substance" includes "imitation controlled substance" as defined in AS 11.73.099.

Sec. 09.50.420. NOTICE OF SEIZURE AND FORFEITURE ACTION; ANSWERS. (a) Within 30 days after a seizure under AS 09.50.410, the commissioner of public safety shall, in any manner authorized for

service of process under rules of civil procedure, give notice of the seizure to any person known to have an interest in the property if it has an estimated value of $500 or more, or whose interest in the property is ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the property. The notice required by this subsection need not be given if the state has filed a motion to forfeit or a complaint under AS 09.50.430(a) within 30 days after seizure of the property.

(b) Within 30 days after the filing of a civil in rem action or a motion to forfeit in a criminal action, the commissioner of public safety shall,

(1) in any manner authorized for service of process under rules of civil procedure, provide a copy of the complaint or motion to any person known to have an interest in the property, other than the defendant when a motion for forfeiture has been filed in a criminal proceeding; and

(2) begin to publish notice of the action to forfeit property with an estimated value of $500 or more in a newspaper of general circulation in the judicial district where the property was seized, or if the property has not been seized, the judicial district where the forfeiture action was filed; if no newspaper is published in that judicial district, the notice must be published in a newspaper published in the state and distributed in that judicial district; the notice must be published once each week during four consecutive calendar weeks.

(c) Upon service of process or publication under (b) of this section, a person claiming an interest in the property, or a defendant in a criminal proceeding who has been served with a motion to forfeit, shall file an answer within the time permitted for answering civil

complaints under applicable rules of civil procedure. The answer must set out the reasons why the property is not subject to forfeiture or why the claimant is entitled to remission under AS 09.50.470. The answer must include the nature of the claimant's interest in the property, the date it was acquired, the consideration paid, and the circumstances under which it was acquired. If an answer is not filed within the required time period, the property must be forfeited to the state without further proceedings or showings.

(d) The notice requirements of this section do not apply to controlled substances under AS 11.71 or imitation controlled substances under AS 11.73.

Sec. 09.50.430. PROCEEDINGS RESULTING IN FORFEITURE; BURDEN OF PROOF. (a) A forfeiture proceeding is initiated by the state by the filing of a motion to forfeit in a criminal case OR IN A CIVIL PROCEEDING RELATING TO THE CONDUCT MAKING THE PROPERTY SUBJECT TO FORFEITURE, or by the filing of a complaint in a separate in rem proceeding.

(b) Questions of fact or law in a forfeiture proceeding under this section must be determined by the court sitting without a jury. In a forfeiture proceeding the state must prove by a preponderance of the evidence that the property is subject to forfeiture under the law authorizing forfeiture. A forfeiture proceeding, including discovery, may be held in abeyance until the conclusion of a pending criminal action ~~involving~~ RELATING TO THE CONDUCT MAKING the property subject to forfeiture.

Sec. 09.50.440. DEFENSES EXEMPTED. It is not a defense to a proceeding to forfeit property that a criminal proceeding has resulted in a conviction of a lesser included offense or an acquittal.

Sec. 09.50.450. PETITION FOR RELEASE OF SEIZED PROPERTY. (a) A claimant may at any time petition the court for release of property seized under AS 09.50.410 if the claimant

(1) has filed a timely answer under AS 09.50.420(c); or

(2) before the initiation of a forfeiture action, files a notice of claim setting out the nature of the claimant's interest in the property, the date it was acquired, the consideration paid, and the circumstances under which it was acquired.

(b) The court may release property that is not likely to be used as evidence by the state or a defendant in a criminal proceeding, or by any party in a civil proceeding, if

(1) the claimant gives adequate assurance that the property will remain subject to the court's jurisdiction;

(2) the court finds that the release is in the best interests of the state; and

(3) the claimant provides a bond or other valid and equivalent security equal to twice the estimated value of the property.

Sec. 09.50.460. PETITION FOR DISPOSITION OF SEIZED PROPERTY. (a) The state may petition the court for disposition of property before the termination of court proceedings. A claimant may also seek a petition for disposition before the termination of court proceedings if the claimant

(1) has filed a timely answer under AS 09.50.420(c); or

(2) before the initiation of a forfeiture action, files a notice of claim setting out the nature of the claimant's interest in the property, the date it was acquired, the consideration paid, and the circumstances under which it was acquired.

(b) The court may grant a petition for disposition if the property is not likely to be used as evidence by the state or a defendant in a criminal proceeding, or by any party in a civil proceeding, and the court finds that the disposition is in the best interests of the state and the preservation and maintenance of the value of the property seized. Proceeds from the disposition plus interest to the date of

termination of the court proceedings become the subject of the forfeiture action.

Sec. 09.50.470. FORFEITURE AND REMISSION. (a) Once the state has established that property is subject to forfeiture under the law authorizing forfeiture, the property must be forfeited to the state, except that a claimant who has filed an answer under AS 09.50.420(c) may prove by a preponderance of the evidence that the claimant is entitled to remission because the claimant

(1) has a valid interest in the property, acquired in good faith;

(2) did not participate in the violation of the law that resulted in the property being subject to forfeiture; and

(3) did not know or have reasonable cause to believe that the property had been or would be used or derived in violation of the law that resulted in the property being subject to forfeiture.

(b) Upon a showing that a claimant is entitled to remission under (a) of this section, the court shall order that

(1) if the claimant is entitled to the property, it must be delivered to the claimant immediately;

(2) if the claimant is entitled to some value less than the total value of the property, the claimant may choose to receive either the value of the interest or, upon payment of the difference in value, the entire property.

(c) The court may, as part of a sentence, or as a condition of a probation or suspended imposition of sentence, order the payment of reasonable maintenance, storage, disposal, publication, attorney fees, or other costs associated with the forfeiture or remission of property.

Sec. 09.50.480. STATE DISPOSAL OF FORFEITED PROPERTY. Property

forfeited under this chapter, other than controlled substances, must be disposed of by the commissioner of administration in accordance with applicable law. Controlled substances and imitation controlled substances must be disposed of under AS 17.30.126. The commissioner of administration may, consistent with other applicable law,

(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of the law or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law;

(5) forward it to the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol.

* Sec. 4. AS 11.66.270 is amended to read as follows:

Sec. 11.66.270. FORFEITURE. If used in violation of AS 11.66.200--11.66.280, the following property <u>is subject to forfeiture pursuant to AS 09.50</u> [SHALL BE FORFEITED]:

(1) a gambling device or gambling record;

(2) money, not found on the person, used as a bet or stake;

(3) money, used as a bet or a stake which is found on the person of one who conducts, finances, manages, supervises, directs, or owns all or part of an unlawful gambling enterprise.

* Sec. 5. AS 11.73.060(a) is amended to read as follows:

(a) Property used during or in aid of a violation of this chapter may be forfeited to the state to the extent permitted under and in accordance with the provisions of AS 17.30.110--17.30.126 and AS 09.50.

* Sec. 6. AS 17.30.110 is repealed and reenacted as follows:

Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. (a) The following property is subject to forfeiture pursuant to AS 09.50 and AS 17.30.-126:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance in violation of this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other property

(A) furnished by a person in exchange for a controlled

substance in violation of this chapter or AS 11.71;

(B) used to facilitate a violation of this chapter or AS 11.71; or

(C) which constitute proceeds derived from a violation of this chapter or AS 11.71; and

(7) a firearm carried during, or used in furtherance of a violation of this chapter or AS 11.71.

(b) In this section, "violation of this chapter or AS 11.71" includes an attempt or solicitation under AS 11.31 to violate this chapter or AS 11.71.

* Sec. 7. AS 17.30.126 is amended by adding a new subsection to read as follows:

(c) As used in this section, "controlled substance" includes "imitation controlled substance" as defined in AS 11.73.099.

* Sec. 8. AS 11.41.520 is amended by adding a new subsection to read:

(e) As used in this section, "obtains the property of another" includes the collection of a debt that was undertaken with the express or implied understanding between the debtor and the creditor that delay in making repayment, or failure to make repayment, could result in commission of any of the acts described in AS 11.41.520(a)(1)--(7).

* Sec. 9. AS 12.55.035(b)(1) is amended to read as follows:

(1) $75,000 for <u>an unclassified felony</u> [MURDER IN THE FIRST OR SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, KIDNAPPING, OR MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE];

* Sec. 10. AS 12.55.125(b) is amended to read as follows:

(b) A defendant convicted of murder in the second degree, kidnapping, <u>illegal control of an enterprise in the first degree,</u> or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years

but not more than 99 years.

* Sec. 11. AS 17.30.112--17.30.124 ~~and 17.30.130~~ are repealed.

* Sec. 12. This Act takes effect January 1, 1985.

COMMENTARY AND SECTIONAL ANALYSIS TO THE 1985 ACT RELATING TO ILLEGALLY CONTROLLED ENTERPRISES

Introduction

In 1970, Congress passed the Racketeer Influenced and Corrupt Organizations title of the Organized Crime Control Act of 1970. The legislation was designed to provide adequate criminal penalties and civil remedies to combat large-scale and sometimes highly sophisticated criminal activity. The federal law was based on the premise that a pattern of crime that was engaged in by a single person, or an organized group of persons, posed a much greater danger to society than individual unrelated criminal acts. Concerned that repeated instances of criminal activity were being used to finance the infiltration and takeover of legitimate businesses, and that crime itself had effectively become a business, Congress enacted new statutes to help respond to these two serious problems.

The federal legislation only applies to conduct which affects interstate commerce. That showing might be possible in many cases. Nevertheless, individual states have recognized that the resources available to the federal government are generally inadequate to respond to criminal activity that primarily affects state interests. Additionally, the prosecution of criminal conduct that occurs

within a state and does not directly affect federal interests has traditionally been viewed primarily as a state, rather than a federal responsibility.

During the past 14 years, at least 19 states have adopted legislation which has authorized a state response to some of the concerns addressed by Congress in 1970. (A list of those states is included as Appendix "A".) Significantly, states such as Oregon and Arizona, which like Alaska had only recently revised their criminal codes, concluded that existing laws were inadequate to respond to the problems addressed by the federal legislation. While each of the 19 states has relied on the federal legislation as a model, none has simply enacted the federal law verbatim. Instead, each has selected the best features of the federal legislation.

A similar approach was followed by the Alaska legislature in 1978 when it revised the criminal code. While individual sections were based on provisions appearing in the Model Penal Code, the criminal code revision was tailored to respond to particular Alaskan problems and concerns. A similar approach has also been followed in this legislation. While this bill differs from federal law in a number of important respects, the basic goal remains the same: to assist public officials and individual citizens in their effort to combat the criminal infiltration of

legitimate businesses and to provide appropriate penalties against those who engage in the business of crime.

Section 1. Declaration of Legislative Purpose

This section states the purpose of this bill and requires that its provisions be interpreted liberally by the courts to effectuate that remedial purpose. The purpose of the bill has already been addressed in the introduction to this commentary. The direction that the Act be liberally construed by the courts extends to both the civil and criminal provisions included in this bill. See U.S. v. Forsythe, 560 F.2d 1127, 1135 (3rd Cir. 1975).

Section 2. Illegally Controlled Enterprises

ARTICLE 1. PROHIBITED ACTIVITIES

Sec. 11.59.010. UNLAWFUL ACTS

This section defines the three prohibited acts that form the basis for both the criminal penalties and civil remedies that are authorized in this bill. The section is based substantially on 18 U.S.C. sec. 1962, and it is expected that the numerous federal decisions interpreting the scope of that statute will be of assistance to Alaska courts in interpreting any ambiguities in the Alaska

statutory language. As a general matter, if a specific decision under the federal legislation is intended to be binding on the Alaska courts in interpreting this Act, it is expressly cited in this commentary.

Each of the three instances of prohibited conduct require that "racketeering" be involved. The term "racketeering" is defined in AS 11.59.020, and is discussed in the commentary accompanying that section. It should be noted that at least two instances of illegal activity will be required to establish racketeering. Additionally, the instances of illegal activity must be part of a pattern of illegal activity, and not simply two isolated unrelated crimes.

Each of the three unlawful acts also requires that an "enterprise" be involved. The term enterprise is defined in AS 11.59.900(1), as including any "individual, partnership, corporation, association, or other legal entity, and any union or group of persons associated in fact although not a legal entity." As noted by the United States Supreme Court "[t]here is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact." United States v. Turkette, 452 U.S. 576, 580 (1981). The scope of this definition is discussed further in the commentary accompanying AS 11.59.900(1).