

ALASKA LEGISLATURE COMMITTEE FILES 1983-1988

80/2

4136 SJUD HB 104 - HB 114

1016

- | | |
|---------------------------------|--------------------------|
| 1) Brett E. Thompson | 22) Mark Zaska |
| 2) Ross H. Shorey | 23) Wayne Smalley |
| 3) Ed. [unclear] | 24) David Amore |
| 4) J. [unclear] "Big" [unclear] | 25) Johnny Karpoff |
| 5) Clifford M. [unclear] | 26) Vernon J. [unclear] |
| 6) Inez A. [unclear] | 27) Otis [unclear] |
| 7) Solomon Walker | 28) W. [unclear] Phillip |
| 8) Loretta M. Williams | 29) Warren [unclear] |
| 9) Carl [unclear] | 30) Agnes M. [unclear] |
| 10) Michael K. [unclear] | 31) [unclear] |
| 11) Jimmy J. Sweet | 32) Peter [unclear] Jr. |
| 12) Dana R. Sweet | 33) Lloyd Kettick |
| 13) [unclear] Stewart | 34) Phil [unclear] |
| 14) Bill Wilson | 35) Albert [unclear] |
| 15) Thomas Alexie | 36) [unclear] |
| 16) Alexie Alexie | 37) Joe Johnston |
| 17) Gordon Heinrich | 38) Robert Hernandez |
| 18) Buddy [unclear] | 39) Wayne C. [unclear] |
| 19) Russell J. [unclear] | 40) L. [unclear] |
| 20) [unclear] | 41) [unclear] |
| 21) [unclear] | 42) Gary [unclear] |

- 1) Daniel T. McElhara
- 2) Ross Anderson
- 3) Jim - [unclear]
- 4) [unclear]
- 5) [unclear]
- 6) Robert [unclear]
- 7) [unclear]
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- 9) [unclear]
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- 11) [unclear]
- 12) Joe [unclear]
- 13) Bill [unclear]
- 14) [unclear]
- 15) [unclear]
- 16) Maurice W. Slack Sr.
- 17) [unclear]
- 18) RON K. Sexton
- 19) [unclear]
- 20) [unclear]
- 21) Eric J. Cranston

- 22) [unclear]
- 23) [unclear]
- 24) [unclear]
- 25) [unclear]
- 26) [unclear]
- 27) Harold Swartz
- 28) John A. Hawkins
- 29) Steve Tom
- 30) Harold W. Ashenfitter
- 31) Vernon Brown
- 32) [unclear]
- 33) [unclear]
- 34) Guy Carother
- 35) [unclear]
- 36) [unclear]
- 37) Tom Egan
- 38) Jim Bridges
- 39) [unclear]
- 40) David W. [unclear]
- 41) Bobbie Robinson
- 42) [unclear]

- 1) Donald L. Criner 22)
- 2) Paul W. [unclear] 23)
- 3) Richard H. [unclear] 24)
- 4) David [unclear] 25)
- 5) J. S. Burt 26)
- 6) [unclear] Davies 27)
- 7) Andrew C. Thayer 28)
- 8) [unclear] 29)
- 9) James R. [unclear] 30)
- 10) [unclear] 31)
- 11) Greg Blacklock 32)
- 12) Robert H. Hayes 33)
- 13) Kenneth L. Sellers 34)
- 14) Marvin S. Ball 35)
- 15) Sid Miller 36)
- 16) [unclear] 37)
- 17) [unclear] 38)
- 18) [unclear] 39)
- 19) John [unclear] 40)
- 20) [unclear] 41)
- 21) David [unclear] 42)

- 1) Crystal Campbell
- 2) Robin Block
- 3) Pamela Grantham
- 4) Shirley Clarkson
- 5) Cheryl A. Brown
- 6) Lisa Ludwig
- 7) Mary Perone
- 8) Linda Smith
- 9) Susan K. Pearson
- 10) Betty Anderson
- 11) Betty Bratt
- 12) Marian D. Wukudu
- 13) Jack H. Dancy
- 14) Margaret A. Anderson
- 15) Eileen P. Dowolik
- 16) Judy R. Alexander
- 17) Sharon Rose
- 18) Muriel M. Hest
- 19) Len L. Moss
- 20) Alena H. Phang
- 21) Ernestine Walker

- 22) Anita D. Soltau
- 23) Candy L. Cross
- 24) Peggy S. Ewell
- 25) Cheryl Simpson
- 26) Kenneth P. Smith
- 27) L. Alvin
- 28) Paula K. Gunders
- 29) K. H. Fickel
- 30) ~~William D. Stephens~~
- 31) Betty Rasmussen
- 32) Edith J. Noling
- 33) Blanche Johnson
- 34) Gene J. Newat
- 35) Martha K. Lika
- 36) Dana Sena
- 37) Yvette Richards
- 38) Sarah Vincent
- 39) Adele Martin
- 40) Richard Wheeler
- 41) Gerry Paak
- 42) Leo P. Preett

- 1) Kim Patterson
- 2) ~~Steve~~ Protopogolnik
- 3) Jan Zimmer
- 4) Dana D Sweet
- 5) Tommy Teayoumech
- 6) David R. Washito
- 7) C. H. Best
- 8) Roddy Hart
- 9) Greg B. Pijer, Sr
- 10) ~~Rich~~ End
- 11) William Fikes
- 12) Calvin Howard
- 13) William Stamorcus
- 14) Kim C. Hanson
- 15) ~~David D. Young~~ ~~David D.~~
- 16) ~~Richard A. Richard~~ ~~W. J.~~
- 17) Michael H. Bateman
- 18) Larry Anderson
- 19) Zedek Dony
- 20) John Crawford
- 21) Leroy Coates

- 22) Jim Bly
- 23) Mulla A. Decker
- 24) Willie Geels
- 25) Tony R. Smith
- 26) Philip J. Van Hout
- 27) John Ecker
- 28) Wm C. Bynum
- 29) Robert E. Muller
- 30) Wayne Leeper
- 31) Gareth Allen
- 32) Don B. Stickman
- 33) James B. Fleming
- 34) DAVID B. WATSON
- 35) Martin Stone Sr
- 36) Robert L. Glickler
- 37) Randall Johnson
- 38) Leonard Lavendure
- 39) Rene - J. L.
- 40) Wesley Decker
- 41) O. E. Smith
- 42) Dorothy Lee Hewitt

- 1) Kenneth Carlson 22)
- 2) Dan Bolhouse 23)
- 3) Joseph Morris 24)
- 4) Walfred H. Bereskin 25)
- 5) _____ 26)
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3691), 578 P.2d 971 (1978); Putnam v. State, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980); State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984); Cleary v. State, Sup. Ct. Op. No. 1257 (File No. 2623), 548 P.2d 952 (1976); Salazar v. State, Sup. Ct. Op. No. 1404 (File No. 2567), 562 P.2d 694 (1977); Cleary v. State, Sup. Ct. Op. No. 1431 (File No. 3059), 564 P.2d 374 (1977); Amidon v. State, Sup. Ct. Op. No. 1434 (File Nos. 2511, 2512), 565 P.2d 1248 (1977); Black v. State, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977); Sumabat v. State, Sup. Ct. Op. No. 1648 (File No. 3739), 580 P.2d 323 (1978); Hansen v. State, Sup. Ct. Op. No. 1689 (File No. 3412), 582 P.2d 1041 (1978); Kanipe v. State, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981).

Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge. — See Parks v. State, Sup. Ct. Op. No. 1529 (File No. 3209), 571 P.2d 100 (1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record

indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. Pascoe v. State, Sup. Ct. Op. No. 2249 (File No. 4290), 628 P.2d 547 (1980).

Case remanded for resentencing. — See Neal v. State, Sup. Ct. Op. No. 2341 (File No. 4787), 628 P.2d 19 (1981).

Case remanded for sentence review. — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence it imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Sec. 12.55.125. Sentences of imprisonment for felonies. (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years.

(b) A defendant convicted of murder in the second degree, kidnapping, 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.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and 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, five years;

(2) if the offense is a first felony conviction, other than for manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven

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

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

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and 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 second felony conviction, four years;

(2) if the offense is a third felony conviction, six years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, two years.

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and 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 second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum term may not be suspended under AS 12.55.080;

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

(3) imprisonment for the prescribed minimum term may not be otherwise reduced.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

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

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided.

(i) A defendant convicted of 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 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. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28-30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1-3 ch 92 SLA 1983)

Cross references. — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010.

Effect of amendments. — The first 1982 amendment in subsection (b), deleted "or" preceding "kidnapping" and inserted "or misconduct involving a controlled substance in the first degree."

The second 1982 amendment in subsection (c), redesignated former paragraphs (1)-(3) as present paragraphs (2)-(4), added present paragraph (1), and substituted "possessed a firearm, used a dangerous instrument" for "possessed or used a firearm" and "seven years" for "six years" in present paragraph (2). The amendment also substituted "under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section" for

"under (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) of this section" in the introductory language of subsection (g), corrected the section number set out in paragraphs (1) and (2) of subsection (g), and added subsection (i).

The first 1983 amendment inserted "or sexual abuse of a minor in the first degree" in the introductory language of subsection (i).

The second 1983 amendment in (c)(2) added "or knowingly directed . . . at the time of the offense," added paragraph (3) of subsection (d), added paragraph (3) of subsection (e), and made other minor punctuation changes.

Editor's notes. — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

NOTES TO DECISIONS

- I. General Consideration.
II. Presumptive Sentencing.

I. GENERAL CONSIDERATION.

Limited use of both suspended jail time and probation is permitted under AS 12.55.155. *Lacquement v. State*, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982). See also *Friedberg v. State*, Ct. App. Op. No. 258 (File No. 7015), 663 P.2d 558 (1983).

Probationary sentences. — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for rehabilitation through probationary supervision. *State v. Coats*, Ct. App. Op. No. 291 (File No. 7102), 669 P.2d 1329 (1983).

Under former law where statutory

mitigating factors warrant a sentence of 90 days to three years, extraordinary circumstances might justify a sentence of straight probation. *State v. Brinkley*, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

Placement of offenders. — It is within the sentencing judge's authority to make a recommendation to the commissioner regarding the appropriate placement of the offender. Under AS 33.30.100, the commissioner has the power to effectuate such a recommendation by placing the offender in the appropriate facility, and although the commissioner is not bound by the sentencing court's recommendation, a demonstrated failure to provide an appropriate rehabilitation program or to further the purposes of the sentence may justify judicial intervention. *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

HB/29

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* DELIVER TO: JPOH
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* ORIGINAL
* SENT: 02/07/85 TIME: 10:43
* FROM: LANA TRUJILLO
* SUBJECT: POM
* PRINT DATE: 02/07/85 TIME: 10:43
*
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18

TO: REP. CLOCKSIN, DAVIS, FULLER, GRUENBERG, GRUSSENDORF, HURLEY, KOPONEN, MARTIN, MILLER (NP), MILLER (JNU), PETTYJOHN, PHILLIPS, PIGNALBERI, SUND, TAYLOR, THOMPSON AND WALLIS

FROM: FRANCES PURDY, 1101 CORDOVA, #426, ANCHORAGE, 99501, 274-3896(HM), 264-4876(WK)

RE: HB 104

THERE IS NO RESEARCH TO SHOW THAT PERSONS WHO ADHERE TO RULES IN PRISON ARE MORE LIKELY TO ADHERE TO RULES ONCE OUT OF PRISON. SPECIFICALLY, VIOLENT VIOLATIONS TOWARD FAMILY MEMBERS, SUCH AS INCEST, DOMESTIC VIOLENCE, ELDER ABUSE, AND CHILD ABUSE AND NEGLECT.

*
* DELIVER TO: JPOM *
* *
* ORIGINAL *
* SENT: 01/13/86 TIME: 11:54 *
* FROM: MICKI HENSON *
* SUBJECT: POM *
* PRINT DATE: 01/13/86 TIME: 17:34 *
* *

61

TO: ALL LEGISLATORS

FROM: LANA DAILEY, 705 MULDOON SP. 216, ANCHORAGE, 99504 PHONE 337-7760

HB 104 GOOD TIME
I WANT THE PRESUMPTIVE SENTENCING CHANGED AND THE GOOD TIME BILL PASSED.

MBP v. MBP v. Patents J 016 Jun 3 478 877

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* DELIVER TO: JPOM
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* ORIGINAL
* SENT: 02/14/85 TIME: 15:04
* FROM: LANA TRUJILLO
* SUBJECT: PDM
* PRINT DATE: 02/14/85 TIME: 15:04
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TO: ALL LEGISLATORS

GILBERT DELKITTIE, EAGLE RIVER CORRECTIONAL CENTER, P.O. BOX 600, EAGLE RIVER, 99577, 694-9852

I WANT TO SUPPORT HB 104 BECAUSE I THINK IT WOULD BE BETTER FOR US INMATES SO THAT WE COULD GET BACK INTO SOCIETY AND BE ACTIVE.

from bill
 file
 HB 104

Kathy -
do my previous
letter on this bill



Senator Vic Fischer

Alaska State Legislature
1024 W. 6th Avenue, Suite 204C
Anchorage, Alaska 99501 (907) 278-3654
During Session • Pouch V • Juneau, Alaska 99811 (907) 465-4954

February 25, 1986

M E M O R A N D U M

To: Senator Pat Rodey, Chair
Senate Judiciary Committee

From: Senator Vic Fischer *Vic*

Re: HB 140 - relating to good time

In the last few months, I've received several letters from constituents urging my support for HB 140. As you know, HB 140 has been endorsed by hundreds of Alaskans as a fair and equitable way to address our current crisis of overcrowded prisons.

I would appreciate it greatly if you would let me know when HB 140 will be scheduled for a hearing before the Judiciary Committee.

*I called
& told
him 3/4*

DEPARTMENT OF CORRECTIONS

REPLY TO

POUCH T
JUNEAU, ALASKA 99811
PHONE (907) 465-3376

March 5, 1986

The Honorable Jan Faiks
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Faiks:

I have finally realized what you must have been referring to in your criticism of the March 2nd Anchorage Times article (copy enclosed), "Crisis Behind Bars." You stated during the Senate Judiciary Committee meeting that I have been quoted as saying that, "the Senate wasn't listening to me." I knew that didn't make sense, because I do not criticize individual legislators, the legislature as a body, or any of its committees so I checked and rechecked the article.

The only portion of the story which might conceivably be related to your concern is contained at page A-8, first column, the second full paragraph. I assume that you referred to the last sentence in that paragraph which reads: "We don't disagree, but when we go to the Senate Finance Committee, they're not behind us."

Please understand that taken out of context, the word "they're" might be understood to mean the Senate Finance Committee. That would be a serious error. In context the word "they're" refers to "...police, prosecutors and victims' groups..." in the previous sentence of the same paragraph.

The full paragraph reads:

"What happens is we find it cheaper for people to doubt the nature or severity of the problem. It costs a lot less if you don't believe us," he said. "The police, prosecutors and victims' groups, which we generally work closely with, believe it's nice to lock up these bad guys. We don't disagree, but when we go to the Senate Finance Committee, they're not behind us."

My meaning was clearly that the police, prosecutors and victims' groups do not normally assist the Department of Corrections when it comes time to present our case for necessary capital or operating funds to the Finance Committee. They, the police, prosecutors and victims' groups, are not behind us in helping to explain our dilemma to the Committee.

The Honorable Jan Faiks

-2-

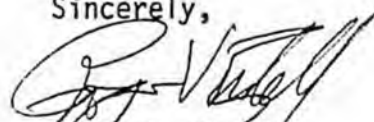
March 5, 1986

I hope you understand my surprise at being accused of attacking the Legislature or any of its Committees. I would consider that kind of behavior to be unproductive as well as unprofessional. I continue to have the highest regard for you and the other members of the Legislature as well as legislative staff. We all have a difficult and often thankless job to do and misunderstandings clearly interfere with the tasks before us.

It is difficult for me to apologize for an article in the newspaper which I did not write. I am sorry, however, that my remarks were so seriously misunderstood. Because this issue may have also been misinterpreted by other members of the Senate Finance or Judiciary Committees, I have taken the liberty of copying those members with this letter.

Thank you for giving me the opportunity to respond.

Sincerely,



Roger V. Endell
Commissioner

RVE:cc

Enclosure

cc: Senate Finance Committee
Senate Judiciary Committee

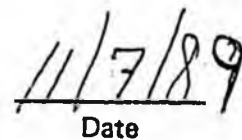


RECORDS CERTIFICATION



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Signature of Camera Operator


Date

H B

1 2 4

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: SCS CSHB114 (HESS)
 Title: "An Act relating to correctional facilities and the imprisonment and rehabilitation of offenders."
 Sponsor: RULES/Governor
 Requestor: SENATE JUDICIARY
 Date of Request: _____

FISCAL DETAIL
 Agency Affected: Public Safety
 BRU: DPS Administration
Alaska State Troopers
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The Department of Public Safety has no medical funds to provide for pre-arraignment or emergency medical costs. If unforeseen medical cost arise from prisoner transportation or during the arrest of persons, the Department has no funds available to pay for the services.

Prepared by: Terry P. Hanson *TPH* Phone: 465-4322
 Division: Commissioner's Office Date: 4/03/86
 Approved by Commissioner: [Signature] Date: 4/13/86
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - SCS CSHB 114 (HESS)

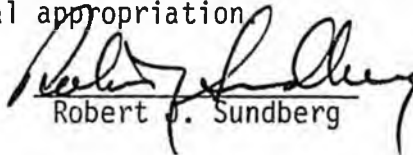
Support

April 3, 1986

SCS CSHB 114 (HESS) - "An Act relating to correctional facilities, and the imprisonment and rehabilitation of offenders."

The Alaska State Troopers could be affected by the proposed Section 33.30.071(c). The law enforcement agency taking custody will be, by statute, responsible for all injuries or medical problems the subject may have incurred prior to our taking custody. This will have even greater impact on municipal police agencies than on this Department.

In cases of major injuries to persons being taken into custody or other major medical problem of persons being transported, the Department may have to request a special appropriation.


Robert J. Sundberg

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



P O BOX V
STATE CAPITOL
JUNEAU ALASKA 99811
(907) 465-3834
(907) 465-3762

Senate Committee on Health, Education and Social Services

LETTER OF INTENT

SCS FOR CS FOR HOUSE BILL 114 (HESS)

In passing SCS for CS for House Bill 114 (HESS), an act relating to correctional facilities, and the imprisonment and rehabilitation of offenders, the legislature intends that the phrase "minimal negative impact on an existing private industry or labor force in the state," located in various sections of the bill (relating to work programs and correctional industries), be interpreted so as to prevent competition by prison work programs with private sector employment.

The standard of "minimal negative impact on an existing private industry or labor force in the state" has been utilized by the Correctional Industries Commission in its evaluation of proposed industries under AS 33.32.015(b) (3) and AS 33.32.080(c) since the creation of the Commission in 1982. The legislature intends that the Commission continue to apply this standard in such a way as to prohibit competition with private industry.

 *
 * DELIVER TO: TCJNU *
 *
 * ORIGINAL *
 * SENT: 04/24/86 TIME: 15:09 *
 * FROM: TCANC *
 * SUBJECT: FINAL STATS-SEN. JUDIC. HB114 *
 * PRINT DATE: 04/24/86 TIME: 15:09 *
 *

*** FINAL T/C STATS ***

DATE: 04-24-86 _____
 SITE: ANCHORAGE _____
 SPONSOR: SENATE JUDICIARY _____
 SUBJECT: HB 114: CORRECTIONAL FACILITIES AND REHAB. _____
 LOCAL MODERATOR: SAM ROSE _____

TESTIFIED:
 NAME/REPRESENTING ADDRESS PHONE
 TIM CRAWFORD/ALASKA CLEANERS 715 W. FIREWEED LN. ANCH. *will be*
 ANNA BELL STEVENS 520 W. 24TH ANCHORAGE *submitting a*
written statement

OBSERVED:
 NAME/REPRESENTING ADDRESS PHONE
 DARLA L HURST 520 W. 24TH ANCHORAGE

TESTIFIED: 2 _____ TIME START: 1:30 PM
 OBSERVED: 1 _____ TIME END: 2:45 PM
 TOTAL: 3 _____

Sen. Roder
C-504

Recommended revisions to SCS CSHB 114 (HESS) by Tim Crawford,
General Manager for Alaska Cleaners:

Mr. Crawford's primary concern with the bill is Section 3, relating to "Free Venture" Correctional Industries. The bill states that Corrections will provide security and inmate workers to a private industry or organization, space and utilities may also be provided. Private industry, under a "Free Venture" arrangement, would provide machinery, tools, supplies, materials, and insurance. Inmates would be paid at the minimum hourly wage.

The bill states that "Free Venture" would only be entered into if the services or products "will have minimal negative impact on an existing private industry or labor force in the state." The bill does require that the Correctional Industries Commission made up of seven members which must include a representative of private industry, organized labor, agriculture, and the general public, and one ex-offender use this guideline in evaluating all free venture proposals and that all free venture proposals go to competitive bid. These conditions, the Department of Corrections feels, provide adequate safeguards for private industry encountering unfair competition.

Mr. Crawford finds the "minimal negative impact" language unacceptable because it provides no assurance that the state, by combining inexpensive inmate labor and the capital of private industry, could result in direct competition with existing businesses that provide a similar service.

The proposed recommendations are:

Page 22 line 18 "If the Correctional Industries Commission established in 33.070 approves, employ prisoners to provide services or products as needed by private industry provided that any such services would not be similar to any then being provided within the state that any products manufactured would not be similar to any products then being manufactured within the state.

Page 23 line 1 "Subject to the provisions of AS 37.05, enter into joint cooperative ventures with private industry for the establishment and operation of "Free Venture" industries under AS 33.32.017, if the Correctional Industries Commission determines that any service provided by the "Free Venture" industry would not be similar to any then being provided within the State, or, that any products manufactured would not be similar to any products then being manufactured within the state.

These recommendations were offered to the Senate Hess Committee, but were not adopted. The bill is now in Senate Judiciary.

Done,
J. Ben Holder

April 24, 1986

Mr. Chairman & members of the Senate Judiciary Committee:

Alaska Cleaners provides commercial laundry service to most of South Central Alaska with our routes serving the cities of Fairbanks, Valdez, Palmer, Wasilla, Seward and Kenai in addition to Anchorage.

We are not opposed to work as a rehabilitation tool and fully support the importance of this tool for the prison system in spite of the fact that we and our industry have already suffered a revenue loss with the installation of laundry facilities in the prisons of South Central Alaska. With the growing prison populations we project a considerable amount of pressure on the prison systems goal of providing rehabilitation thru work and as a consequence we anticipate an even greater loss of income and jobs due to the probable necessity of other State agencies having their laundry needs serviced by the prison system as current Statues so permit and while we are not comfortable with this inevitable progression of the Correctional Industries program we never the less continue to support the program.

We are, however, vehemently opposed to having the State of Alaska either acting alone or in some sort of joint venture involved in directly providing services or products that would compete with existing free enterprise serving private industry. Specifically we continue to oppose HB 114 as it potentially would allow the State of Alaska to subsidize a private business that would then be in a position to provide unfair competition with other established private industry.

The supporters of this legislation and the current Statues tell me that we should not be concerned as we are well protected by the mechanism of the public hearing process thru the Prison Industries Commission and the wording of the Statues which state that any service or products provided by the prison system must have "minimal negative impact on existing private industry or labor force in the state." I am afraid that I do not find a great deal of comfort or protection by either of these mechanisms in as much as they are both highly subjective and subject to the vicissitudes of political controversy.

Members of the Senate Judiciary Committee

I have a long letter from Nadine Winters of the Department of Corrections stating that "products and services that are not provided by Alaskan businesses are targeted." Commissioner Endell also made similar statements during the Senate HESS Committee teleconference on HB 114. In fact as you are aware the HESS Committee apparently was concerned enough regarding the ambiguity and subjectivity of the phrase "minimal negative impact on existing private industry or labor force in the state" that they attached a Letter of Intent to HB 114 to clarify that phrase. Specifically the Letter of Intent states: "..., be interpreted so as to prevent competition by prison work programs with private sector employment."

If everyone appears to agree that it is not the intent of the legislation to compete with private industry and if it takes a Letter of Intent attached to the bill to explain that fact then why the heck can't the language of HB 114 be changed to reflect that perspective by being quite specific?

I would therefore respectfully request that this Committee give serious consideration to the following proposed changes to HB 114.

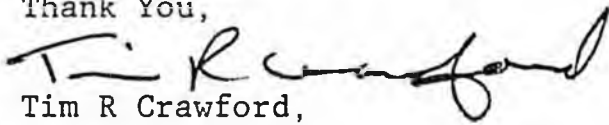
Sec 7 AS 33.32.015(b) [starting at line 18 on page 22]

- (3) If the Correctional industries commission established in AS 33.32.070 approves, employ prisoners to provide services or products as needed by private industry provided that any such services would not be similar to any then being provided within the State and that any products manufactured would not be similar to any products then being manufactured within the State.
- (4) Authorize a prisoner to engage in productive employment within or outside a correctional facility or enter into a contract under AS 33.30.151 for the employment of a prisoner if the Correctional Industries Commission determines that any such employment would not be engaged in providing any services similar to ones then being provided within the State nor engaged in the manufacture of products then being manufactured within the State.
- (5) Subject to the provisions of AS 37.05, enter into joint cooperative ventures with private industry for the establishment and operation of "Free Venture" industries under AS 33.32.017, if the Correctional Industries Commission determines that any service provided by the "Free Venture" industry would not be similar to any then being provided within the State, or, that any products manufactured would not be similar to any products then being manufactured within the State.

Members of the Senate Judiciary Committee

The proposed changes are quite specific and eliminate the subjectivity of current and proposed phrase "minimal negative impact on an existing private industry or labor force in the state." Should these proposals fail to be accepted by this Committee then I would hope that some one will be able to explain why in as much as they explicitly address what seems to be the unanimous consensus.

Thank You,

A handwritten signature in cursive script, appearing to read "Tim R Crawford". The signature is written in dark ink and is positioned above the typed name.

Tim R Crawford,
General Manager

HB 114 -

Please notify Annabel Stevens of Local 333 Laundry & Dry Cleaning workers, when the bill is up in committee. H - 279-9200

W - 265-4816

She wants the opportunity to testify via teleconference.

Concerned about the free venture portion (p. 19) Sec. 33.32.017.
where private industry can set up with institutions.

2/24/86

The bill is now in Senate HESS

ALASKA CLEANERS

NOT IN JUDGET

February 3, 1986

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

Attn: Patrick Rodey

I am extremely concerned about several of the sections contained within HB 114, "An Act Relating to Correctional Facilities and the Imprisonment and Rehabilitation of Offenders." In fact we vehemently oppose specifically the amendments to AS 33.32.015 and the creation of the new section AS 33.32.017 contained within HB 114.

The new section AS 33.32.017 would considerably broaden the current options of the Correctional Industries program by permitting private enterprise to not only utilize "cheap" (minimum wage) labor from the pool of Offenders but would additionally permit the State to supply the space and utilities for "free" as well.

As I understand the legislative intent of the Correctional Industries Act it was to provide "rehabilitative" work for offenders in activities which would contribute to their support. We have no quarrel with these objectives even though we have already lost a considerable volume of laundry business with the installation of laundry facilities within the various institutions which has allowed them to process their own laundry.

I do understand that in theory the Correctional Industries Program is somewhat constrained by AS 33.32.015 "...if the services or products have potential for contributing to the economy of the State and will have a minimal negative impact on an existing private industry or labor force in the State." I doubt that anyone can be truly comfortable with this subjectivity; for example should the State decide to compete directly with us (as they can by current statute) it would not be hard to rationalize that in as much as we only have 225 employees against a statewide labor force of some 242,000 that any injury to our business

or any loss of jobs from our business would only have a minimal negative impact. Now is that a scary proposition. Many business's within the State must now live with this "sword" hanging over us and our survival depends only upon the moods of the Commissioner of Health and Social Services together with the Correctional Industries Commission. Not a comfortable prospect to operate a business with.

HB 114 would present us with a cannon staring at us to go along with the already existing sword of the Commission and Commissioner. With adoption of HB 114 many business's would face the prospect of a double threat in that not only will we have to worry about competing with the State directly but would also have to worry about competing against another business that would be being subsidized by the State.

As an example our particular business is quite labor intensive, requires considerable floor space and uses large amounts of energy. In fact our business is quite an ideal business to subject to the "Free Venture" concept. I have examined just the laundry portion of our business and have concluded that I could save at least 33% of our current operational expenses (and that analysis includes a labor adjustment of using 3 offenders to replace 2 current employees) with the use of offenders for labor and with the State supplying our space and utility requirements with ourselves being required to only pay minimum wage to the State for the hours worked by the offenders. We would, of course, have to discharge some 100 or so honest, tax paying, union members (what the heck, that's only 100 against 242,000; just minimal impact) and then the real fun would begin as just how long would our competitors and their employees survive if we had a State subsidized cost advantage of some 33%.

This particular legislation is not only unconscionable but it is insidious as well as I am afraid to inform my competitors about the dangers of this bill as I fear one or more of them might decide to take advantage of the Free Venture program should it become law (and it should be recognized that there would be a considerable advantage to the "first one" chosen in any given industry). In fact I fear to raise the alarm within the general business community for the same reasons, as ours would not be the only industry to be threatened.

To name just a few examples that come to mind: Body shops, any of the automotive repair services, catters (food preparation), truss building, preformed walls for the construction industry, TV and radio repair services, jewelry and watch repair, fish canning and processing, manufacture of steel tanks, manufacture of other steel products, welding services, small appliance repair, and even a few of the professional services like Bookkeeping and computer services.

I sincerely hope that both you and your staff recognize the inherent dangers contained within this legislation that would allow the State to create unfair competitive advantages for a few "chosen" business's that would result in the loss of jobs within the private sector as well as aiding the creation of potential monopolies. Current Statues allow sufficient oppertunity for the offenders in our institutions to have "rehabilitative" work programs and additional options cannot be justified.

This unconscionable and insidious legislation must be stopped. Please vote to remove the proposed AS 33.32.017 and the amentments too AS 33.32.015 from HB 114.

Thank you.

A handwritten signature in black ink, appearing to read "Tim R. Crawford". The signature is fluid and cursive, with a large initial "T" and "C".

Tim R. Crawford
General Manager

Offered: 4/25/85
Referred: Finance

See p. 15

Original sponsor: Rules/Governor

Carney Soan

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 114 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to correctional facilities, and the
7 imprisonment and rehabilitation of offenders."

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

9 * Section 1. AS 09.20.020 is amended to read:

10 Sec. 09.20.020. DISQUALIFICATION OF JURORS. A person is dis-
11 qualified from serving [TO ACT] as a juror if the person

12 (1) has served as a juror in the state within one year of
13 the time of examination for service; or

14 (2) has been convicted of a felony for which the person has
15 not been unconditionally discharged. Unconditional discharge has the
16 meaning given in AS 12.55.185 [FELONY AND THE CIVIL RIGHTS OF THE
17 PERSON HAVE NOT BEEN RESTORED].

18 * Sec. 2. AS 11.56.340 is repealed and reenacted to read:

19 Sec. 11.56.340. UNLAWFUL EVASION IN THE FIRST DEGREE. (a) A
20 person commits the crime of unlawful evasion in the first degree if,
21 while charged with or convicted of a felony,

22 (1) the person fails to return to official detention within
23 the time authorized following temporary leave granted for a specific
24 purpose or limited period; or

25 (2) while on furlough under AS 33.30.101 - 33.30.131 the
26 person fails to return to the place of confinement or residence within
27 the time authorized by those having direct supervision.

28 (b) Unlawful evasion in the first degree is a class A misdemea-
29 or.

1 * Sec. 3. AS 11.56.350 is repealed and reenacted to read:

2 Sec. 11.56.350. UNLAWFUL EVASION IN THE SECOND DEGREE. (a) A
3 person commits the crime of unlawful evasion in the second degree if,
4 while charged with or convicted of a misdemeanor,

5 (1) the person fails to return to official detention within
6 the time authorized following temporary leave granted for a specific
7 purpose or limited period; or

8 (2) while on furlough under AS 33.30.101 - 33.30.131 the
9 person fails to return to the place of confinement or residence within
10 the time authorized by those having direct supervision.

11 (b) Unlawful evasion in the second degree is a class B misde-
12 meanor.

13 * Sec. 4. AS 12.47.050(d) is repealed and reenacted to read:

14 (d) Notwithstanding a contrary provision of law, a defendant
15 receiving treatment under (b) of this section may not be released

16 (1) on furlough under AS 33.30.101 - 33.30.131, except for
17 treatment in a secure setting; or

18 (2) on parole.

19 * Sec. 5. AS 33.30 is amended by adding new sections to read:

20 ARTICLE 1. ESTABLISHMENT, CONTROL, AND MANAGEMENT.

21 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

22 (1) establish, maintain, operate, and control correctional
23 facilities suitable for the custody, care, and discipline of persons
24 charged or convicted of offenses against the state or held under
25 authority of state law;

26 (2) classify prisoners;

27 (3) for persons committed to the custody of the commis-
28 sioner, establish programs, including furlough programs that are
29 reasonably calculated to

- 1 (A) protect the public;
2 (B) maintain health;
3 (C) create or improve occupational skills;
4 (D) enhance educational qualifications;
5 (E) support court-ordered restitution; and
6 (F) otherwise provide for the rehabilitation and
7 reformation of prisoners, facilitating their reintegration into
8 society;

9 (4) provide necessary medical services for prisoners in
10 correctional facilities or who are committed by a court to the custody
11 of the commissioner, including examinations for communicable and
12 infectious diseases; and

13 (5) provide necessary psychological or psychiatric treat-
14 ment if a physician or other health care provider, exercising ordinary
15 skill and care at the time of observation, concludes that

16 (A) a prisoner exhibits symptoms of a serious disease
17 or injury that is curable or may be substantially alleviated; and

18 (B) the potential for harm to the prisoner by reason
19 of delay or denial of care is substantial.

20 Sec. 33.30.021. REGULATIONS. The commissioner shall adopt
21 regulations to implement this chapter.

22 Sec. 33.30.031. CONTRACT FOR CONFINEMENT AND CARE OF PRISONERS.

23 (a) The commissioner shall determine the availability of state cor-
24 rectional facilities suitable for the detention and confinement of
25 persons held under authority of state law. If the commissioner deter-
26 mines that suitable state correctional facilities are not available,
27 the commissioner may enter into an agreement with a public or private
28 agency to provide necessary facilities. Correctional facilities
29 provided through agreement may be in this state or in another state.

1 The commissioner may not enter into an agreement with an agency unable
2 to provide a degree of custody, care, and discipline similar to that
3 required by the laws and regulations of this state.

4 (b) Unless the purpose is to involve prisoners in a program
5 established under AS 33.30.091 - 33.30.131 or to confine prisoners
6 convicted of a misdemeanor, the commissioner may not enter into an
7 agreement with a privately operated correctional facility under (a) of
8 this section.

9 (c) An agreement with a private agency to provide necessary
10 facilities under (a) of this section is subject to the provisions of
11 the Fiscal Procedures Act (AS 37.05).

12 (d) A person employed outside the facility while confined in a
13 privately operated correctional facility established under (a) of this
14 section is subject to the provisions of AS 33.30.131.

15 (e) The commissioner may enter into an agreement with the United
16 States, another state, a municipality of this state, or another state
17 agency, to provide a correctional facility for the custody, care, and
18 discipline of a person held under authority of the law of that juris-
19 diction.

20 Sec. 33.30.041. LEASE OF CORRECTIONAL FACILITY TO MUNICIPALITY.

21 (a) If the commissioner determines that it would be in the best
22 interest of the state, the commissioner may enter into an agreement
23 with a municipality of the state for the lease of a state correctional
24 facility or for the use and operation of a state correctional facility
25 for the joint benefit of the municipality and the state.

26 (b) An agreement executed by the commissioner under (a) of this
27 section must provide that

28 (1) the state has the right to detain or confine a prisoner
29 held under authority of law in the correctional facility;

1 (2) the administrator of the correctional facility agrees
2 to implement an order, concerning a prisoner, issued by a court of the
3 state;

4 (3) the administrator of the correctional facility shall
5 comply with the law, and regulations adopted by the commissioner,
6 relating to the custody, care, and discipline of a prisoner detained
7 or confined in the correctional facility; and

8 (4) the commissioner may inspect the correctional facility
9 at any time to determine the conditions under which a prisoner is
10 detained or confined.

11 (c) The agreement executed by the commissioner under (a) of this
12 section may require the administrator of the correctional facility to
13 comply with requirements that the commissioner considers necessary for
14 the protection of the public or for the quality of care and programs
15 for prisoners required by this chapter and regulations adopted by the
16 commissioner.

17 ARTICLE 2. COMMITMENTS, PROGRAMS, AND FURLOUGHS.

18 Sec. 33.30.051. COMMITMENT TO COMMISSIONER. A person convicted
19 of an offense against the state shall be committed to the custody of
20 the commissioner for the term of imprisonment that the court directs.

21 Sec. 33.30.061. COMMISSIONER TO DESIGNATE FACILITY. (a) The
22 commissioner shall designate the correctional facility to which a
23 prisoner is to be committed to serve a term of imprisonment or period
24 of temporary commitment. The commissioner may designate a facility
25 without regard to whether it is maintained by the state, is located
26 within the judicial district in which the prisoner was convicted, or
27 is located in the state.

28 (b) The commissioner may designate an out-of-state facility
29 under this section only if the commissioner determines that

1 rehabilitation or treatment of the prisoner will not be substantially
2 impaired.

3 Sec. 33.30.071. RESPONSIBILITY FOR PRISONERS PENDING COMMITMENT.

4 (a) Notwithstanding AS 33.30.011(1), the commissioner of public
5 safety shall provide for the custody, care, and discipline of prison-
6 ers pending arraignment, commitment by a court to the custody of the
7 commissioner of corrections, or admission to a state correctional
8 facility. Except as provided in (c) of this section, the responsibil-
9 ity for providing necessary medical services for prisoners remains
10 with the commissioner of corrections under AS 33.30.011(4). The
11 commissioner of corrections and the commissioner of public safety are
12 not responsible for providing custody, care, and discipline for a
13 person detained under AS 47.30.705 or AS 47.37.170, unless the person
14 is admitted into a state correctional facility.

15 (b) The responsibility of the commissioner of public safety
16 under (a) of this section does not begin until a prisoner is accepted
17 into the custody of the commissioner of public safety, or admitted
18 into a correctional facility or other facility designed for holding
19 prisoners, and the commissioner of public safety is notified of the
20 acceptance or admission.

21 (c) Medical services for a prisoner who is unconscious or in
22 immediate need of medical attention before admission to a correctional
23 facility or commitment by a court to the custody of the commissioner
24 of corrections shall be provided by the law enforcement agency having
25 custody of the prisoner. The law enforcement agency may require the
26 prisoner to compensate the agency for the cost of medical services
27 provided for a preexisting medical condition not arising out of the
28 prisoner's arrest.

29 Sec. 33.30.081. TRANSPORTATION OF PRISONERS. (a) The

1 commissioner of public safety is responsible for transporting a pris-
2 oner to and from the court having jurisdiction over the prisoner and
3 for delivering a prisoner to a correctional facility upon temporary or
4 final commitment by a court or upon transfer of a prisoner from one
5 correctional facility to another either inside or outside the state.

6 (b) The commissioner of corrections shall make available return
7 transportation to the place of arrest for a prisoner who is released
8 from custody in a state correctional facility.

9 (c) The commissioner of public safety shall make available
10 return transportation to the place of arrest for a prisoner who is
11 released from custody before admission to a state correctional facili-
12 ty.

13 (d) The commissioner of corrections shall adopt regulations
14 governing the furnishing of transportation, discharge payments, and
15 clothing to prisoners upon release from a state correctional facility
16 at any stage of a criminal proceeding.

17 Sec. 33.30.091. DESIGNATION OF PROGRAMS. Except as provided in
18 AS 33.30.111, the commissioner may assign a prisoner committed to the
19 commissioner's custody to a program established under AS 33.30.011(3)
20 considering

- 21 (1) safeguards to the public;
- 22 (2) the prospects for the prisoner's rehabilitation;
- 23 (3) the availability of program and facility space;
- 24 (4) the prospect of future judicial proceedings requiring
25 the presence of the prisoner;
- 26 (5) the nature and circumstances of the offense for which
27 the prisoner was sentenced;
- 28 (6) the needs of the prisoner as determined by a classi-
29 fication committee and any recommendations made by the sentencing

1 court;

2 (7) the record of convictions of the prisoner with particu-
3 lar emphasis on crimes specified in AS 11.41;

4 (8) the use of drugs or alcohol by the prisoner;

5 (9) the length of the prisoner's sentence; and

6 (10) other criteria considered appropriate by the commis-
7 sioner, including experimental evaluation of correctional programs
8 that are consistent with protection of the public and reformation of
9 the prisoner.

10 Sec. 33.30.101. FURLOUGHS. (a) The commissioner shall adopt
11 regulations governing the granting of prerelease and short-duration
12 furloughs to prisoners to

13 (1) obtain counseling and treatment for alcohol or drug
14 abuse;

15 (2) secure or attend vocational training;

16 (3) obtain medical or psychiatric treatment;

17 (4) secure or engage in employment;

18 (5) attend educational institutions;

19 (6) secure a residence or make other preparation for re-
20 lease;

21 (7) appear before a group whose purpose is a better under-
22 standing of crime or corrections; or

23 (8) for any other rehabilitative purpose the commissioner
24 determines to be in the interests of the prisoner and the public.

25 (b) If the commissioner determines with reasonable probability
26 that a prisoner can live under reduced supervision without violating
27 the law or the conditions established for the conduct of the prisoner,
28 the commissioner may grant a furlough after considering

29 (1) the factors in AS 33.30.091;

1 (2) violations, if any, by the prisoner of a condition of a
2 prior furlough;

3 (3) the history, if any, of institutional misconduct by the
4 prisoner; and

5 (4) the best interests of the prisoner and the public.

6 Sec. 33.30.111. PRERELEASE FURLOUGHS. (a) Furlough programs
7 established under AS 33.30.101 must include prerelease furloughs
8 designed to facilitate the reintegration of a prisoner into society.

9 (b) A facility that is specifically adapted to provide a resi-
10 dence outside prison, including a halfway house, group home, or other
11 placement that provides varying levels of restriction and supervision,
12 may be used for a prisoner on a prerelease furlough.

13 (c) The restrictions and supervision required for a prerelease
14 furlough shall provide safeguards that minimize risk to the public and
15 include, as a minimum,

16 (1) frequent contact with the prisoner by persons supervis-
17 ing the prisoner;

18 (2) knowledge by supervisory staff of the location of the
19 prisoner;

20 (3) periodic reports by supervisory staff to the commis-
21 sioner on the performance of the prisoner while on furlough; and

22 (4) a residential setting in which persons supervising a
23 prisoner are obliged to immediately report to the commissioner any
24 violation of a condition set for the prisoner's conduct.

25 (d) Notwithstanding AS 33.30.101(b), and other eligibility
26 criteria established by the commissioner, that relate to risks to the
27 public posed by the proposed furlough of a prisoner,

28 (1) a prisoner sentenced to a definite term of imprisonment
29 of more than one year but less than five years is not eligible for a

1 prerelease furlough until the prisoner has served at least one-third
2 of the sentence;

3 (2) a prisoner sentenced to a definite term of imprisonment
4 of five years or more is not eligible for a prerelease furlough until
5 the prisoner has served at least one-third of the sentence or is
6 within three years of the release date, whichever is later; and

7 (3) a prisoner who is denied discretionary parole under
8 AS 33.15.080 may not be granted a prerelease furlough for a period of
9 at least one year following the denial unless the board of parole
10 expressly waives this provision.

11 (e) A prisoner may request a prerelease furlough under proce-
12 dures adopted by the commissioner. If the commissioner denies a
13 request for a prerelease furlough, the commissioner shall provide the
14 prisoner with a written explanation of the reasons for the denial.

15 (f) Upon request of the victim, in the case of a prisoner con-
16 victed of a crime against a person, notice of the commissioner's
17 intent to consider the prisoner for a prerelease furlough shall be
18 sent to the victim. The victim may comment in writing on the intent
19 of the commissioner to release the prisoner on prerelease furlough
20 status. The commissioner shall consider the comments of the victim
21 before making a final decision to release a prisoner on a prerelease
22 furlough. If the victim requests notification, the commissioner shall
23 make every reasonable effort to notify the victim of an intent to
24 release the prisoner on a prerelease furlough. The notice must con-
25 tain the expected date of the prisoner's release, the geographic area
26 in which the prisoner will reside and other pertinent information
27 concerning the prisoner's release that may affect the victim.

28 Sec. 33.30.121. SHORT-DURATION FURLOUGHS. (a) A short-duration
29 furlough is an authorized leave of absence from a correctional

1 facility for a period not to exceed 12 hours at any one time, except
2 for

3 (1) family visitations, that may not exceed one week or
4 occur more frequently than once in each two-month period; or

5 (2) medical treatment, for which the furlough may not last
6 longer than necessary for the treatment.

7 (b) A short-duration furlough may be granted to a prisoner at
8 any time under regulations adopted by the commissioner.

9 Sec. 33.30.131. PRERELEASE OR SHORT-DURATION FURLOUGH INVOLVING
10 EMPLOYMENT. (a) The commissioner may grant a prerelease or short-
11 duration furlough to permit a prisoner to participate in suitable
12 employment under conditions and at wages that represent the prevailing
13 standard for the area. A prisoner may not participate in employment
14 where an organized labor dispute is in progress.

15 (b) Unless alternative arrangements are expressly approved by
16 the commissioner, when a prisoner is employed outside a correctional
17 facility as part of a prerelease or short-duration furlough program,
18 the earnings of the prisoner shall be delivered to the commissioner.
19 If an employer transmits the earnings to the commissioner, the em-
20 ployer has no liability to the prisoner for the earnings. The commis-
21 sioner shall disburse the earnings of the prisoner, in an order deter-
22 mined appropriate, under procedures adopted by the commissioner to

23 (1) pay for the room, board, and personal expenses of the
24 prisoner in an amount or at a rate determined by the commissioner;

25 (2) pay any restitution or fine ordered by the sentencing
26 court;

27 (3) reimburse the state for an award made for violent
28 crimes compensation under AS 18.67 arising out of the criminal conduct
29 of the prisoner;

1 (4) pay a civil judgment arising out of the criminal con-
2 duct of the prisoner; and

3 (5) support the dependents of the prisoner, and to provide
4 child support payments as required by AS 09.65.132.

5 (c) After making the disbursements authorized under (b) of this
6 section, the commissioner shall retain the balance remaining in the
7 account of the prisoner and give it to the prisoner upon release. The
8 commissioner may permit the prisoner to draw upon a portion of this
9 money for other purposes that the commissioner considers appropriate.

10 (d) Only the earnings retained by the commissioner under (c) of
11 this section are subject to lien, attachment, garnishment, execution,
12 or other proceedings to encumber money or property.

13 Sec. 33.30.141. EFFECT OF VIOLATION OF FURLOUGH CONDITIONS OR
14 FAILURE TO RETURN. (a) If, after a hearing, a prisoner on a furlough
15 is found to have violated the conditions established for the prison-
16 er's conduct, the commissioner may immediately require the return of
17 the prisoner to actual confinement for a period not to exceed the
18 balance of the term of imprisonment or initiate disciplinary proceed-
19 ings authorized by regulations adopted by the commissioner or both.

20 (b) The failure of a prisoner on a furlough to return to the
21 place of confinement or residence within the time specified by those
22 having direct supervision over the prisoner is an unlawful evasion
23 under AS 11.56.340 - 11.56.350.

24 ARTICLE 3. GENERAL PROVISIONS.

25 Sec. 33.30.151. EMPLOYMENT OF PRISON INMATES. (a) It is the
26 policy of the state that prisoners be productively employed for as
27 many hours each day as feasible, not to exceed 40 hours a week unless
28 overtime has been specifically approved by the commissioner.

29 (b) The commissioner may enter into contracts or cooperative

1 agreements with any public agency for the performance of conservation
2 projects. The commissioner may enter into a contract with an indi-
3 vidual or agency for the employment of prisoners if the work to be
4 performed will have minimal negative impact on an existing private
5 industry or labor force in the state as determined by the Correctional
6 Industries Commission under AS 33.32.015.

7 (c) The commissioner may direct a prisoner to participate in a
8 type of productive employment listed in (d)(1), and (d)(4)-(6) of this
9 section while the prisoner is confined in a correctional facility. A
10 prisoner who refuses to participate in productive employment when
11 directed under this section is subject to disciplinary sanctions
12 imposed in accordance with regulations adopted by the commissioner.

13 (d) In this section "productively employed" includes the follow-
14 ing kinds of employment:

15 (1) routine maintenance and support services essential to
16 the operation of a correctional facility;

17 (2) education including both academic and vocational;

18 (3) industrial, agricultural, and service activities con-
19 ducted in accordance with AS 33.32;

20 (4) public conservation projects including but not limited
21 to forest fire prevention and control, forest and watershed enhance-
22 ment, recreational area development, construction and maintenance of
23 trails and campsites, fish and game enhancement, soil conservation,
24 and forest watershed revegetation;

25 (5) renovation, repair or alteration of existing correc-
26 tional facilities as permitted by AS 44.65.050(d); and

27 (6) other work performed inside or outside of a correction-
28 al facility if the work has minimal negative impact on an existing
29 private industry or labor force in the state as determined by the

1 Correctional Industries Commission under AS 33.32.015.

2 Sec. 33.30.156. PAY OF PRISON INMATES. Each prisoner who is
3 productively employed, as defined in AS 33.30.151(d)(1) or 33.30.-
4 151(d)(3) - (6), may receive for that work compensation at a rate
5 determined by the commissioner under AS 33.32.050 if the money is
6 available from legislative appropriations. The provisions of AS 33.-
7 32.050 and AS 33.32.040(b) apply to prisoners employed in the correc-
8 tional industries program and to prisoners productively employed in
9 activities outside that program.

10 Sec. 33.30.161. TRANSMISSION OF DOCUMENTS. (a) When a prisoner
11 is admitted to a correctional facility, a copy of the commitment shall
12 be delivered with the prisoner as evidence of the authority of the
13 correctional facility to hold the prisoner.

14 (b) When a person is sentenced to a term of imprisonment, copies
15 of the pre-sentence report, sentencing report prepared under AS 12.-
16 55.025, and any other information of the probation office or of the
17 court that may affect the person's rehabilitation shall be transmitted
18 to the superintendent of the correctional facility in which the pris-
19 oner will be confined.

20 (c) The commissioner shall adopt regulations providing for the
21 security, confidentiality, and use of documents transmitted under (b)
22 of this section.

23 Sec. 33.30.171. SUPERINTENDENT OF CORRECTIONAL FACILITY MAY
24 ADMINISTER OATHS AND ACKNOWLEDGMENTS. The superintendent of a correc-
25 tional facility or the superintendent's assistant may administer oaths
26 to and take acknowledgments from a prisoner, but may not request or
27 accept compensation from a prisoner for acts performed under this
28 section.

29 Sec. 33.30.181. TELEPHONE ACCESS AND MONITORING INSIDE

1 CORRECTIONAL INSTITUTIONS. (a) Except as provided in (b) of this
2 section, a prisoner shall have reasonable access to a telephone.

3 (b) A prisoner who is classified maximum custody, is placed in
4 segregation as punishment for a rule infraction, or is placed in
5 segregation because the prisoner poses a threat to others or to the
6 security of a correctional facility may not have access to a telephone
7 except to communicate with an attorney, to otherwise communicate as
8 provided in Rule 5(b) of the Alaska Rules of Criminal Procedure, or in
an emergency as determined appropriate by the commissioner.

see AS

12.25.150(b)

10 (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to
11 preserve the security and orderly administration of the institution
12 and to protect the public, the commissioner may authorize the use of
13 monitoring or recording equipment to listen to a telephone conversa-
14 tion of a prisoner who has been convicted of an offense if a warning
15 is posted by the telephone informing the prisoner that a call may be
16 monitored or recorded. A telephone call made by or to a prisoner who
17 has not been convicted or a telephone call between an attorney and a
18 prisoner may not be monitored or recorded except when authorized by a
19 court.

20 Sec. 33.30.191. EFFECT OF JUDGMENT OF CONVICTION ON CIVIL
21 RIGHTS. (a) A person who is convicted of a felony involving moral
22 turpitude as defined in AS 15.60.010 is disqualified from voting in a
23 state or municipal election until the person's unconditional dis-
24 charge.

25 (b) A person who is convicted of a felony is disqualified from
26 serving as a juror until the person's unconditional discharge.

27 (c) In this section "unconditional discharge" has the meaning
28 given in AS 12.55.185.

29 Sec. 33.30.201. DISPOSAL OF ABANDONED PERSONAL PROPERTY. (a)

1 Except as provided in (b) of this section, it is the obligation of
2 each person committed to the custody of the commissioner to provide
3 for the appropriate disposition of all of the person's property re-
4 maining at a correctional facility within 90 days of the date of the
5 person's release or transfer from the correction facility.

6 (b) The commissioner shall provide for the shipment to the
7 receiving facility of a reasonable amount of a prisoner's property, as
8 determined by the commissioner, when the prisoner is transferred from
9 one correctional facility to another.

10 (c) A prisoner's personal property that remains at a correction-
11 al facility after 90 days from the date of the prisoner's release or
12 transfer is considered abandoned, and shall be delivered to the De-
13 partment of Administration for disposal under AS 44.71.010.

14 (d) The state is not liable for any loss or damage to personal
15 property properly determined to be abandoned under (c) of this sec-
16 tion.

17 Sec. 33.30.211. EXCESS MONEY AS CONTRABAND. (a) A prisoner who
18 possesses money in an amount greater than that permitted by the com-
19 missioner is subject to disciplinary sanctions under regulations
20 adopted by the commissioner.

21 (b) Money in the possession of a prisoner in an amount greater
22 than that permitted by the commissioner is contraband. If, after a
23 hearing under regulations adopted by the commissioner, a prisoner is
24 found to have been in possession of contraband under this section, the
25 contraband shall be forfeited and deposited into the general fund.

26 Sec. 33.30.221. FORFEITURE OF PROPERTY. A conviction of a
27 person for a crime does not work a forfeiture of property, except in
28 cases where a forfeiture is expressly provided by law.

29 Sec. 33.30.231. CRIME AGAINST SENTENCED PRISONER. A person who

1 commits a crime against a sentenced prisoner is punishable as if the
2 prisoner was not sentenced and incarcerated.

3 Sec. 33.30.901. DEFINITIONS. In this chapter, unless the con-
4 text requires otherwise,

5 (1) "commissioner" means the commissioner of the Department
6 of Corrections;

7 (2) "correctional facility" or "facility" means a prison,
8 jail, camp, farm, half-way house, group home, or other placement
9 designated by the commissioner for the custody, care, and discipline
10 of prisoners; a "state correctional facility" means a correctional
11 facility owned or run by the state;

12 (3) "court" means the supreme court, the court of appeals,
13 the superior court, the district or magistrate court, or a justice or
14 judge of a court;

15 (4) "crime against a person" means a crime as set out in
16 AS 11.41, except custodial interference under AS 11.41.320 and 11.41.-
17 330; or a crime against a person in this or another jurisdiction
18 having elements substantially identical to those of a crime as set out
19 in AS 11.41, except custodial interference under AS 11.41.320 and
20 11.41.330;

21 (5) "department" means the Department of Corrections;

22 (6) "furlough" means an authorized leave of absence from
23 actual confinement for a designated purpose and period of time;

24 (7) "health care provider" means

25 (A) a physician's assistant or nurse practitioner
26 licensed to practice in the state and working under the direct
27 supervision of a licensed physician or psychiatrist; or

28 (B) a mental health professional as defined in AS 47.-
29 30.915;

1 (8) "municipality" means a borough or city in the state, or
2 a municipality unified under AS 29.68.240 - 29.68.440, authorized by
3 law to establish a correctional facility;

4 (9) "prisoner" means a person, other than a juvenile, held
5 under authority of state law in official detention as defined in
6 AS 11.81.900(b);

7 (10) "temporary commitment" means detention of a person for
8 any period under authority of state law, but does not include confine-
9 ment upon conviction and judgment of a court of this state;

10 (11) "victim" has the meaning given in AS 12.55.18.

11 * Sec. 6. AS 33.32.015(b) is amended to read:

12 (b) The commissioner of corrections may

13 (1) subject to the Fiscal Procedures Act (AS 37.05), use,
14 purchase, lease, equip, and maintain buildings, machinery, and other
15 equipment, and may purchase materials and enter into contracts, which
16 may be necessary for the correctional industries program;

17 (2) provide for prisoners to be employed in rendering
18 services and producing articles, materials, and supplies needed by a
19 state agency, a political subdivision of the state, an agency of the
20 federal government, other states or their political subdivisions, or
21 for use by nonprofit organizations;

22 (3) if the Correctional Industries Commission established
23 in AS 33.32.070 approves, employ prisoners to provide services or
24 products as needed by private industry if the services or products
25 have potential for contributing to the economy of the state and will
26 have minimal negative impact on an existing private industry or labor
27 force in the state;

28 (4) authorize a prisoner to engage in productive employment
29 within or outside a correctional facility or enter into a contract

1 under AS 33.30.151 for the employment of a prisoner if the Correction-
2 al Industries Commission determines that the employment will have
3 minimal negative impact on an existing private industry or labor force
4 in the state; and

5 (5) subject to the provisions of AS 37.05, enter into joint
6 cooperative ventures with private industry for the establishment and
7 operation of "Free Venture" industries under AS 33.32.017, if the
8 Correctional Industries Commission determines that the "Free Venture"
9 industry will have minimal negative impact on an existing private
10 industry or labor force in the state.

11 * Sec 7. AS 33.32 is amended by adding a new section to read:

12 Sec. 33.32.017. "FREE VENTURE" CORRECTIONAL INDUSTRIES. (a)
13 Upon recommendation of the Correctional Industries Commission estab-
14 lished under AS 33.32.070, the commissioner may establish "Free Ven-
15 ture" correctional industries for the sale of goods or services to the
16 public or private sector. A "Free Venture" correctional industry is a
17 correctional industry that is operated and managed in total or in part
18 by a private industry or organization within a correctional facility
19 under an agreement entered into under AS 33.32.015(b)(5).

20 (b) The commissioner shall provide appropriate space, utilities,
21 security and inmate workers to the private industry or organization.

22 (c) The private industry or organization shall provide all
23 machinery, tools, supplies, materials, transportation, training,
24 supervisory personnel, management marketing, and insurance necessary
25 for the operation of the "Free Venture" industry.

26 (d) In exchange for the space, utilities, and inmate workers
27 provided to it, the private industry or organization shall pay to the
28 commissioner a weekly payment in an amount not less than the sum of
29 the existing minimum hourly wage, established under AS 23.10.065,

1 multiplied by the total number of hours worked during that week by
2 inmates employed in the "Free Venture" correctional industry.

3 (e) The private industry or organization shall indemnify, save
4 harmless, and defend the state, its agents, officers, and employees
5 from liability of any kind resulting from injuries or damages sus-
6 tained by a person or property as a result of the use of the goods or
7 services of the "Free Venture" industry.

8 * Sec. 8. AS 33.32.030 is amended by adding a new subsection to read:

9 (f) The provisions of this section do not apply to "Free Ven-
10 ture" industries established under AS 33.32.017.

11 * Sec. 9. AS 39.35.360(e) is amended to read:

12 (e) An employee of a detention facility provided by a local
13 government unit to the territorial or state government under AS 33.-
14 30.031 or former AS 33.30.060, who continues in state employment upon
15 transfer of the facility to the state, is entitled to credited service
16 for prior service with the facility if the employee remains in contin-
17 uous employment with the state until July 1, 1976. To obtain credited
18 service the employee is required to make retroactive contributions for
19 the period of service between January 1, 1961, and the effective date
20 of the transfer of the facility to the state.

21 * Sec. 10. AS 44.65.050 is amended by adding a new subsection to read:

22 (d) The Department of Corrections and the Department of Trans-
23 portation and Public Facilities may enter into agreements under this
24 chapter for the construction, renovation, repair or alteration of
25 state correctional facilities as defined in AS 33.30.301. An agree-
26 ment entered into under this subsection is limited to an estimated
27 cost of \$100,000 for each project as determined by the terms of the
28 agreement.

29 * Sec. 11. The following laws are repealed: AS 33.30.010, 33.30.020,

1 33.30.030, 33.30.040, 33.30.050, 33.30.060, 33.30.070, 33.30.080, 33.30.-
2 090, 33.30.100, 33.30.110, 33.30.120, 33.30.130, 33.30.140, 33.30.150,
3 33.30.160, 33.30.170, 33.30.180, 33.30.185, 33.30.190, 33.30.225, 33.30.-
4 227, 33.30.250, 33.30.260, 33.30.290, 33.30.300, 33.30.310, 33.30.320, and
5 33.30.900.

6 * Sec. 12. Regulations adopted under a statute amended or repealed by
7 this Act continue in effect until amended or repealed by the commissioner
8 of corrections, except to the extent that a regulation is inconsistent or
9 in conflict with a provision of this Act.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

REPLY TO:

- CRIMINAL DIVISION CENTRAL OFFICE
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428
- OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

April 9, 1986

Honorable Pat Rodey
Chairman
Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Rodey:

I am writing you on behalf of Attorney General Harold Brown and Commissioner of Corrections Roger Endell regarding Senate CS for CS for HB 114 (HESS). As you know, this bill proposes a rewrite of most of Alaska's laws pertaining to corrections (AS 33.30).

This bill passed the House last session and was passed out of the Senate HESS committee two weeks ago with a number of amendments. In our view the bill is in excellent shape, especially in light of the comprehensive treatment it received before the HESS committee.

Attached for your consideration are two minor amendments. The first clarifies the intent of an amendment adopted by the HESS committee, and the second corrects a typographical error.

In addition, I have enclosed for the benefit of the members of the Judiciary committee a detailed sectional analysis of the bill which has been updated to include the amendments made by the HESS committee.

The Administration views this bill as extremely important to the effective operation of ALaska's correctional system, and because of the passage of time feels there is some urgency in having the bill addressed by the Judiciary committee at your earliest convenience.

Honorable Rat Rodey
Chairman

April 9, 1986
Page -2-

If you, the members of the Judiciary committee or your staff have any questions, please contact me or Nadine Winters at the Department of Corrections.

Very truly yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

Enclosures

cc: Roger Endell (w/enclosures)
Commissioner
Department of Corrections

Honorable Tim Kelly (w/enclosures)
Honorable Jan Faiks (w/enclosures)
Honorable Rick Halford (w/enclosures)
Honorable Robert Zeigler (w/enclosures)

I. Proposed Amendment to Senate CS for CS for HB 114 (HESS)

Page 8, line 3: between "section" and "," add the words:

"or as necessary in a criminal action pending against the prisoner".

Explanation - This amendment clarifies the intent of this section, which is not to interfere with the court's authority to order transportation of a person facing criminal charges.

II. Proposed Amendment to Senate CS for CS for HB 114 (HESS)

Page 22, line 26: change AS 33.30.151 to 33.30.191.

Explanation - This amendment corrects a typographical error.

COMMENTARY AND SECTIONAL ANALYSIS
FOR THE 1986 AMENDMENTS TO ALASKA'S LAWS ON
CORRECTIONAL FACILITIES AND THE IMPRISONMENT
AND REHABILITATION OF OFFENDERS
SENATE CS FOR CS FOR HB 114 (HESS)

Introduction

This Act represents a comprehensive attempt to update Alaska's laws on correctional facilities and the imprisonment and rehabilitation of offenders. Many of these laws have not changed since Alaska became a state, while the legal and administrative problems confronted by Alaska's correctional system are dramatically different than they were 25 or even 10 years ago. This Act incorporates changes necessary to respond to both decisions by the courts and the practical necessities of administering the Alaska correctional system in the 1980's.

Section 1. AS 09.10.140, Disabilities for Minority and Incompetency.

This section repeals the provision in former AS 09.10.140 which tolled the statute of limitations of the time period in which a prisoner could commence a court action which accrued during imprisonment. Because the right to access to the courts is no longer precluded for prisoners under AS 33.30.241 of this Act, it would give a prisoner an unequal advantage over a normal citizen to retain the tolling of the

statute of limitations. This is more fully explained in the commentary to section 33.30.241.

Section 2. AS 09.20.020, Disqualification of Jurors.

This section amends one of the two statutory bases for which a person is disqualified from serving as a juror. Under this section, a person convicted of a felony is disqualified from serving as a juror until the person is unconditionally discharged from any supervision. Under former AS 09.20.020, a person was disqualified from serving as a juror if the person was convicted of a felony and had not had his or her civil rights restored. This is a technical amendment only.

This amendment to AS 09.20.020 is necessary to conform with new AS 33.30.241, which provides, as one of the effects of a felony conviction, disqualification from serving as a juror until the person's unconditional discharge.

Sections 3-4. AS 11.56.340 and AS 11.56.350, Unlawful Evasion in the First and Second Degrees.

These sections repeal and reenact criminal statutes relating to unlawful evasion from custody to provide specific references to AS 33.30.101--33.30.131 pertaining to furlough of prisoners. These sections make clear that failure of a

prisoner on furlough to return to the place of confinement or residence within the time authorized by those having direct supervision over the prisoner constitutes the crime of unlawful evasion. The degree of the crime remains the same as provided for under existing law.

Section 5. AS 12.47.050(d), Disposition of Defendant Found Guilty But Mentally Ill.

Prior to amendment, AS 12.47.050(d) prohibited a prisoner found guilty but mentally ill who is receiving treatment from being released on furlough under AS 33.30.150, 33.30.250, or 33.30.260, or on parole. This section makes technical changes to reflect the new statutes pertaining to furlough of prisoners, AS 33.30.101--33.30.131. It also creates an exception to this general rule by permitting a guilty but mentally ill prisoner to be furloughed to a secure setting for purposes of treatment.

Under AS 33.30.101(a)(3) and AS 33.30.121(a)(2), a prisoner requiring medical or psychiatric treatment outside of a correctional facility may be furloughed for this purpose. Permitting a prisoner found guilty but mentally ill to be furloughed to a facility such as the Alaska Psychiatric Institute is consistent with the clear intent to protect the public and

at the same time to provide necessary treatment through a furlough to a secure setting.

Section 6. AS 33.30.011--33.30.901, Correctional Facilities and Programs.

This section adds new sections to provide an updated statutory scheme pertaining to correctional facilities and management and control of Alaska's prisoners. A brief analysis of each section and its intent follows:

ARTICLE 1. ESTABLISHMENT, CONTROL, AND MANAGEMENT.

Section 33.30.011. Duties of Commissioner.

This section sets out the duties of the commissioner of corrections. Subsection (1) combines the responsibilities set out in former AS 33.30.010 and 33.30.040 and makes clear that management and control of correctional facilities, as well as the responsibility for providing for the custody, care, and discipline of prisoners, rests with the commissioner.

Subsections (2) and (3) incorporate the responsibilities set out in former AS 33.30.020 (classifying prisoners and establishing programs for their rehabilitation). Subsection (3) expands those responsibilities by setting out specific

goals which the programs are reasonably calculated to achieve. In addition, it requires the commissioner to establish furlough programs which are addressed in sections 33.30.101--33.30.131.

Subsection (4) requires the commissioner to provide necessary medical services for prisoners, a responsibility provided for in former AS 33.30.050. Necessary medical services includes treatment for dental, visual and audio problems.

Subsection (5) requires the commissioner to provide necessary psychological or psychiatric treatment for prisoners under the standard articulated by the Alaska Supreme Court in Rust v. State, 582 P.2d 134, opinion on reh. 584 P.2d 38 (Alaska 1978). This subsection requires a physician or other health care provider to exercise professional judgment under the Rust standard in determining the need for psychological or psychiatric care. Health care provider is defined in the definition section, 33.30.901 so as to be consistent with professional standards of medical practice and Alaska's mental health statutes (AS 47.30.915).

Section 33.30.021. Regulations.

This section requires the commissioner to adopt regulations to implement this chapter and thus does not constitute a substantive change from former AS 33.30.030.

Section 33.30.031. Contract for Care and Confinement of Prisoners.

Subsections (a) and (b) authorize the commissioner to determine the availability of state correctional facilities for state prisoners, and to contract with public or private entities to provide necessary facilities when state facilities are not available. These subsections are based on former AS 33.30.060 and AS 33.30.062 [SLA 1985 ch. 72 (SB 4 - Restitution Center bill)].

Subsection (b) also clarifies the authority of the commissioner to house prisoners (both felons and misdemeanants) who are on furlough or who are placed in a restitution center in a privately operated facility (e.g. halfway house or privately operated restitution center). Although this authority existed under a reasonable interpretation of a number of prior statutes, it was not expressly set out for furloughees.

Subsection (c) mandates that any agreement with a private agency to provide necessary facilities is subject to the competitive bidding requirements set out in the Fiscal Procedures Act (AS 37.05).

Subsection (d) makes clear that a prisoner on furlough or in a restitution center, a probationer, or a parolee who is housed in a privately operated correctional facility and who is working will be required to pay for all or part of the prisoner's living expenses, as well as contribute to court ordered fines and restitution, awards made to victims which arose out of the prisoner's criminal conduct, and to support the prisoner's dependents. A judgment, court order, or order of the child support enforcement agency to make child support payments has priority over other financial obligations as set out in AS 09.65.132. These requirements are fully set out in AS 33.30.131.

Subsection (e) permits the commissioner to enter into an agreement with other jurisdictions or another state agency in this state (e.g., juveniles in the custody of the commissioner of health and social services) to provide a correctional facility for persons in custody. This subsection incorporates the provisions of former AS 33.30.070 and various interstate compacts located in AS 33.36.

Section 33.30.041. Lease of Correctional Facility to Municipality.

This section is essentially a reenactment of former AS 33.30.080 and permits the commissioner to lease a state

correctional facility to a municipality or to jointly operate such a facility with a municipality if determined to be in the best interest of the state.

ARTICLE 2. COMMITMENTS, PROGRAMS, AND FURLOUGHS.

Section 33.30.051. Commitment to Commissioner.

This section is essentially identical to former AS 33.30.090 and reflects that convicted prisoners are committed to the custody of the commissioner.

Section 33.30.061. Commissioner to Designate Facility.

This section is based primarily on former AS 33.30.-100 and 33.30.110 and makes clear that it is the commissioner who determines which facility a prisoner is to be sent to serve a term of imprisonment or period of temporary commitment. While it is not explicitly stated, the authority of the commissioner to designate a facility for a prisoner under subsection (a) is intended to include the authority to order a prisoner transferred from one facility to another (included in former AS 33.30.120).

Subsection (b) makes clear that before the commissioner may designate an out-of-state facility for a prisoner to

serve a term of imprisonment, the commissioner must determine that the prisoner's access to rehabilitation or treatment programs will not be substantially impaired.

Section 33.30.071. Responsibility for Prisoners Pending Commitment.

This section is based primarily on former AS 33.30.-130 and describes who is responsible for a state prisoner pending initial court appearance and clarifies what agency is responsible for providing medical services for a prisoner.

Pending arraignment, commitment by a court to the custody of the commissioner of corrections, or admission to a state correctional facility a state prisoner is the responsibility of the commissioner of public safety. However, medical care remains the responsibility of the commissioner of corrections unless a prisoner in police custody is in immediate need of medical care prior to admission into a correctional facility. Under these circumstances, the law enforcement agency having custody of the prisoner is responsible for providing necessary medical care. However, the law enforcement agency is not precluded from requiring the prisoner to compensate the agency for medical services provided for a medical condition which existed prior to and did not arise out of the arrest.

This section also clarifies what has been a gray area in the past. If an intoxicated person is taken into protective custody under AS 47.37.170, or taken into custody for an emergency mental evaluation under AS 47.30.705, the state is responsible for the cost of care only if the person is admitted into a state facility. If the person is admitted into a municipal facility, then the municipality must bear the cost. This is a just way to share the burden of a statewide problem.

Section 33.30.081. Transportation of Prisoners.

This section reenacts former AS 33.30.130(b) and AS 33.30.160 reflecting that the commissioner of public safety is primarily responsible for transporting state prisoners. It is recognized that the commissioner of corrections has been assuming an increasingly greater role in the transportation of non-high risk prisoners through an agreement with the commissioner of public safety. This section in no way disapproves of this practice. If the respective agencies and the legislature become satisfied that corrections personnel have received sufficient training to transport high risk prisoners while adequately protecting the public, it may well become an efficient and cost effective measure to statutorily transfer this responsibility to the commissioner of corrections in the future.

Subsections (b)-(d) also codify present practice whereby a state prisoner released from a state correctional facility is provided the fare for return transportation to the point of arrest by the commissioner of corrections. When the release is from a facility other than a state correctional facility, the fare for return transportation is provided by the commissioner of public safety.

Subsections (e)-(h) are intended to help resolve two longstanding problems related to prisoner transportation. The first problem is the involvement of the courts in ordering prisoners transported to various locations for such occasions as funerals, births, hospitals to visit sick relatives, etc. These orders have frequently required state troopers to drop more important work, tied up critical manpower, and failed to consider risks to the public presented by some very dangerous prisoners. Subsection (e) will leave it to the discretion of the commissioner whether a prisoner may be transported for a purpose unrelated to a court action.

Subsection (f) sets out the standard under which a judge may order the personal appearance of a prisoner to testify in court -- i.e., the prisoner's personal appearance is essential to a just determination of a court action. This is a recognition of a prisoner's right to access to the courts, but not necessarily to personally appear in court either as a

witness or a party to a lawsuit (except the prisoner's own criminal action). Frequently, telephone or deposition testimony will suffice; however, the court before whom any action is pending will make the final decision. This is an approach taken by several states (e.g., Minnesota and New York) in recognition of the risk to the public in the possible escape of prisoners and the fact that prisoners often times file actions just to get out of a correctional facility. See, also, discussion of section 33.30.241. It is also an attempt to maximize the time of state troopers in law enforcement related activities as opposed to prisoner transportation.

Additionally, subsections (g) and (h) address a serious concern of the department of public safety -- namely the cost of transporting, escorting and guarding prisoners who testify in civil actions. These amendments will relieve the state from subsidizing private civil litigants by requiring the litigants to pay for the transportation costs of prisoners who testify in the case. This is especially critical in a time of declining revenues. Under subsection (h), a prisoner who is a party to a civil action but who is indigent will still have his or her transportation costs provided by the state.

Section 33.30.091. Designation of Programs.

This section sets out the criteria the commissioner should consider in assigning a prisoner to any program established for the treatment and care of prisoners. It also makes clear that assignment of a prisoner to a pre-release furlough program is governed by AS 33.30.111, and assignment of a prisoner to a restitution center is governed by AS 33.30.161.

The Alaska Supreme Court has held that where a prisoner has a serious particular identifiable medically-related problem associated with the prisoner's criminal behavior (i.e., alcohol, psychological or drugs), then the prisoner must be provided access to some program reasonably related to addressing the causes of these problems. See, Good v. State, 590 P.2d 420 (Alaska 1979); Abraham v. State, 585 P.2d 526 (Alaska 1978); Rust v. State, supra.

However, the case law also strongly supports the proposition that the commissioner of corrections has the discretion to determine what particular programs will be made available to a prisoner, especially a prisoner who does not have a serious medically-related problem associated with his or her criminal behavior, and the appropriate time the programs will be made available.

As long as a decision as to what type of program and when that program is provided is neither arbitrary nor vindictive, these decisions are left solely to the discretion of the commissioner. La Barbera v. State, 598 P.2d 947, 949 (Alaska 1979); Good v. State, supra, Brandon v. State, 581 P.2d 1116, 1119 n.11 (Alaska 1978); McGinnis v. Stevens, 543 P.2d 1221, 1237 (Alaska 1975).

This section is consistent with these principles.

Section 33.30.101. Furloughs.

This section sets out the purposes for which a prisoner may be granted a furlough and the factors which must be considered before a furlough is granted. Former AS 33.30.150, 33.30.250 and 33.30.260 described available furlough programs. This section and AS 33.30.111--33.30.141 address furlough programs in a much more comprehensive fashion. The types of furloughs available to prisoners (pre-release and short-duration) and the particular requirements are addressed in AS 33.30.111 and AS 33.30.121 and the commentary to these sections.

Section 33.30.111. Pre-Release Furloughs.

This section describes pre-release furloughs which will be the principal type of furlough granted to a prisoner.

A pre-release furlough is an authorized absence from actual confinement for any of the purposes set out in AS 33.30.101.

Under subsection (b), a prisoner on a pre-release furlough will reside in a facility with varying levels of restriction and supervision depending upon the needs of the prisoner and the risks to the public. This may range from a secure halfway house to furlough in a remote location in the state. Subsection (c) sets out minimum levels of restriction and supervision for all prisoners on a pre-release furlough to monitor the prisoner's performance and adequately protect the public.

Subsection (d) makes clear, in addition to other eligibility criteria established by the commissioner which must relate to risks to the public, that a prisoner is not eligible for a pre-release furlough until at least one third of the sentence has been served (similar to discretionary parole eligibility) or where the sentence is longer than five years when the prisoner is within three years of release. These time requirements reflect the view that the reintegration of a prisoner into society requires a portion of the sentence being served before a prisoner may venture into the community.

Under subsection (e) a prisoner who is denied a furlough must be provided a written explanation of the reasons for the denial.

Lastly, subsection (f) incorporates the portion of the victim's rights bill passed by the Thirteenth Alaska Legislature which requires that a victim of a crime against a person be permitted to comment on the proposed furlough and, upon request, be notified of the furlough if it is granted.

Section 33.30.121. Short-Duration Furloughs.

This section describes the second type of furlough which may be granted a prisoner, a short-duration furlough. A short duration furlough is one in which a prisoner may be released for a period not to exceed 12 hours at any one time, except for a family visitation (similar to former AS 33.30.150) or for medical treatment which may last only as long as the necessary treatment. A short-duration furlough may be granted to a prisoner at any time under regulations adopted by the commissioner. This is consistent with former law and recognizes the rehabilitative value of family visitations for low risk prisoners as well as the occasional practical necessity of furloughing a prisoner to a location outside a correctional facility for medical treatment.

Section 33.30.131. Prerelease or Short-Duration Furlough or Correctional Restitution Center Placement Involving Employment.

This section authorizes the commissioner to collect the earnings of a prisoner who is working outside a correctional facility while on a furlough or housed in a restitution center to pay for the room and board of the prisoner as well as for court ordered fines and restitution, awards made to victims which arose out of the prisoner's conduct, and to support the prisoner's dependents. The priority for child support payments established in AS 09.65.132 is recognized here.

The obligation of a prisoner on furlough or in a restitution center to make payments for the purposes set out in this section is extended to probationers and parolees who are working and residing in a privately operated correctional facility under AS 33.30.031.

Section 33.30.141. Effect of Violation of Furlough Conditions or Failure to Return.

This section explains that the penalties for violating the conditions established for a prisoner's conduct while on furlough may range from criminal prosecution for unlawful evasion to immediate return to actual confinement in a correctional facility as well as disciplinary proceedings.

Sections 33.30.151--33.30.181, Correctional Restitution Centers.

These sections are identical to four provisions enacted last session in SLA 1985 ch. 72 (SB 4 - Correctional Restitution Center bill). These sections create restitution centers, establish criteria for placement in a center, require appointment of a community advisory committee for each center, and set out restrictions for prisoners placed in a restitution center.

ARTICLE 3. GENERAL PROVISIONS

Section 33.30.191. Employment of Prison Inmates.

This section reenacts prior law relating to the employment of prisoners (former AS 33.30.225) and expands these provisions in a number of ways. It expands the kind of work a prisoner may do to include renovation, repair or alteration of existing correctional facilities as permitted by AS 44.65.-050(d), a provision located in section 11 of this bill. This will provide gainful employment to prisoners thus helping to alleviate the problem of prisoner idleness, and also provide a substantial cost savings to the state.

Former AS 33.30.225(b), which is reenacted in subsection (b) of this section, permitted the commissioner to enter into a contract with a public agency for the employment of prisoners in conservation projects. Subsection (b) however, expands the commissioner's authority, clarifying an area which has limited the department's ability to involve prisoners in productive employment. This subsection permits the commissioner to enter into a contract with any individual or agency for the employment of prisoners if the work to be performed will have minimal negative impact on an existing private industry or labor force in the state as determined by the Correctional Industries Commission under AS 33.32.015. This is not intended to result in the sole benefit of an individual who may see the opportunity for inexpensive labor. Rather, it is intended to expand the rehabilitative opportunities available to prisoners, increase their opportunity to have funds available upon release from custody, and minimize the dangers inherent in inmate idleness.

As in former AS 33.30.225, this section permits the commissioner to discipline prisoners who refuse to work.

Section 33.30.201. Pay of Prison Inmates.

This section reenacts prior law regarding pay of prisoners who are working (former AS 33.30.227). In addition,

this section makes clear that inmates who are paid by the department for working are not covered by workers' compensation. This is simply a clarification of policy previously established by the legislature when it enacted the correctional industries program (AS 33.32) in 1982.

Section 33.30.211. Transmission of Documents.

This section is substantially the same as former AS 33.30.185 and explains what documents must be delivered to the correctional facility where the prisoner will be confined. As in former AS 33.30.185, it requires the commissioner to adopt regulations providing for the security and confidentiality of delivered documents.

Section 33.30.221. Superintendent of Correctional Facility May Administer Oaths and Acknowledgments.

This section reenacts former AS 33.30.190 by authorizing a correctional superintendent or assistant superintendent to notarize a prisoner's legal papers at no charge to the prisoner.

Section 33.30.231. Telephone Access and Monitoring Inside Correctional Institutions.

This is a new section which addresses access to telephones for prisoners and monitoring of prisoner telephone calls. Under subsection (a), prisoners must be given reasonable access to a telephone. Reasonable access will be determined by the commissioner.

Subsection (b) provides a limitation on access to a telephone for prisoners who present a security threat or who are in punitive segregation for rule violations. Access for these prisoners is limited to calls to attorneys or in an emergency as determined appropriate by the commissioner.

Subsection (c) permits the commissioner to authorize the monitoring or recording of telephone calls of prisoners in order to preserve the security and orderly administration of a correctional facility and to protect the public. The prisoner must be informed of the monitoring capability. Telephone calls between a prisoner and an attorney may not be monitored except when authorized by a court.

Section 33.30.241. Effect of Judgment of Conviction on Civil Rights.

This section clarifies a gray area that has existed for several years under former AS 33.30.310 and 33.30.320. AS 33.30.310 provided that the civil rights of a person who received a sentence of imprisonment for a term less than for life were suspended during the term of the sentence. AS 33.-30.320 provided that a person who received a life sentence was thereafter considered civilly dead.

Former AS 33.30.310 and 33.30.320 are representative of the type of statute adopted at one time by nearly all states, but which have since been repealed or modified by legislative action or court decision in the great majority of jurisdictions due in large part to the recognition of their adverse impact on the rehabilitation of prisoners and the evolving standards of treatment due prisoners. By 1973, only 13 states retained civil death statutes. See, Johnson v. Rockefeller, 58 F.R.D. 42, 48-50, 49 n.10 (S.D.N.Y. 1973). The number is considerably less today. A major problem with these statutes has been the almost universal failure to delineate what rights are civil rights. Even when courts have indicated that a right is a civil right, they have held that not all civil rights are suspended because of other superceding rights which derive from state or federal constitutions. See, e.g.,

Bush v. Reid, 516 P.2d 1215 (Alaska 1973), where the Alaska Supreme Court held that although a parolee fell within the prescriptions of AS 33.33.310, he nonetheless had the right to file a civil action in court, notwithstanding this clearly being a civil right. See, also, Salisbury v. List, 501 F. Supp. 105 (D. Nevada 1980) and Hudson v. Rhodes, 579 F.2d 46 (5th Cir. 1978), where these two courts disagreed on the right of an inmate to marry.

In recognition of the need to clarify which specific civil rights are affected by a criminal conviction, this section thus clearly delineates two specific rights which are suspended as a result of conviction for a crime until the prisoner's unconditional discharge. They are the right to vote for a person who is convicted of a felony involving moral turpitude (consistent with AS 15.05.030), and the right to serve on a jury for a person convicted of a felony who has not been unconditionally discharged. In section 2 of this bill, AS 09.20.020 is amended to conform with the suspension of the right to serve on a jury provided for in this section.

The right to commence a civil action in a court (i.e., access to the courts) is a civil right which some courts have ruled is suspended as a result of conviction for a crime. See, e.g., Tabor v. Hardwick, 224 F.2d 526 (5th Cir. 1955). However, suspending this right raises substantial

constitutional questions as reflected in the Alaska Supreme Court's decision in Bush v. Reid, supra, and Johnson v. Rockefeller, supra at 48. Under this section, access to the courts is no longer limited.

One reason courts have upheld suspending this civil right was that the statute of limitations of the period in which a prisoner could commence a court action was tolled for the duration of the prisoner's sentence. This tolling was provided for in AS 09.10.140. Thus, while a normal citizen may only have two years to file a tort action from the date the action accrues, a prisoner with a 30-year sentence would have 32 years to file the same action. Rather than continue the constitutionally questionable practice of suspending access of prisoners to the courts under former AS 33.30.310 (which not all courts have done) and correspondingly giving prisoners a much longer time than a normal citizen in which to file a court action, it is determined that the better policy is to allow prisoners the same right to commence a court action as any other citizen and to repeal the provision in AS 09.10.140 which tolled the statute of limitations for prisoners. This has been done by amending AS 09.10.140 in section 1 of this bill.

Making clear that a prisoner has the same right to commence a legal action as a normal citizen does not mean that the prisoner has the same right to personally appear in court,

particularly in a court action which is unrelated to the prisoner's confinement. While the right of a prisoner to personally appear in court is ultimately up to the judge before whom the matter is pending, it is important to note that courts and legislatures have recognized the legitimate security interests of corrections and law enforcement officials in not having to transport prisoners to court, particularly in matters unrelated to their confinement. See, e.g., Hubbard v. Montgomery, 372 So.2d 315, 317 (Ala. 1979); Johnson v. Rockefeller, supra at 48. See, also, New York Civil Rights Law §§ 79 and 79-a. This is a recognition that, "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Price v. Johnston, 334 U.S. 266, 285 (1948). Appearance through an attorney or by deposition will adequately safeguard a prisoner's interest in most cases. See, e.g., Alaska R. Civ. Pro. 27, 30.

Section 33.30.251. Disposal of Abandoned Personal Property.

This is a new section which addresses the practical problems of lack of space to store abandoned prisoner property and lack of a mechanism to dispose of the property.

Under this section, a prisoner's property remaining at a correctional facility which is not disposed of by the

prisoner within 90 days of release or transfer is deemed abandoned, and will be delivered to the Department of Administration for disposal as if it were surplus state property. When a prisoner is transferred from one correctional facility to another, the commissioner is responsible for shipping a reasonable amount of the prisoner's personal property. The abandonment provisions only apply to property remaining after the shipment.

Section 33.30.261. Excess Money as Contraband.

This is a new section which authorizes the commissioner to impose disciplinary sanctions upon a prisoner who is found in possession of money in an amount greater than that permitted by the commissioner. If after a hearing, which satisfies minimum due process requirements, a prisoner is found to have possessed money in an amount greater than that permitted, the excess money is declared contraband and must be forfeited and deposited into the general fund.

The purpose of this section is to respond to the problem of prisoners who possess excess amounts of money which creates risks both to the personal safety of the prisoner in possession of the money as well as to the security of the institution. Similar statutes have been upheld as reasonable efforts to provide for the safety of prisoners and the security