ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5820 HOUSE JUDICIARY

From: Tina Martini
Box 900203
Fairbanks, Ak. 99775

To: Rep. Johnny Ellis and Mark Boyer
Alaska State Legislature
Box V (MS 3100)
Juneau, AK. 99811

Dear Representatives,

I am very sorry I was unable to make it for testimony on March 7th's teleconference. My child was very sick. I hope that this letter will suffice.

I next want to thank Johnny Ellis for introducing House bills 538 and 539.

Finally, I am writing my testimony that was to be heard on the 7th. I have had the experience as a child of being separated from my father. When my parents were divorced, my mother gained custody of 4 children. I love my mother dearly and feel that she raised us well. One thing that I still feel bothers me is that when she gained that custody, visitation with my father was non-existent. Just because my mother didn't get along with him, we weren't to like him either. Countless times when he would call us, we would get upset and begin missing him and wanting to see him. All of us were denied to see him or even to write to him. When my step-father stepped into the picture, my father's efforts to see us diminished. Being a teenager then, it was hard for me to accept this new person as my Dad. His attitude was that if he was paying to raise us, we were to show him the

respect by calling him Dad and we weren't allowed to even mention our natural father's name. My whole teenage life was traumatic. I needed to know where my Dad was and at times I needed the support of his love and tenderness.

When I turned 20, I went on a mission to find out where my father lived. I had finally found him in California. I still love him, write to him and visit him. I understand that the feelings of my step-father were crushed for seeing my natural father, but no amount of money can replace or destroy the love I had for my Dad. I am also not saying that I didn't appreciate the work and let-downs my step-father had to go through, but I feel my feelings weren't even considered. If I would have known that I wasn't going to see my Dad for over 8 years, I wouldn't have agreed to be adopted by my Step-father. I am speaking for the kids that are denied their natural parents love. It is damaging to the growth of a child.

I am still in awe that the courts consistently decide in favor of one parent having control over the rearing of children. I believe that my Dad couldn't get along with my mother, but that didn't mean that I had the same problem. I'd like to see the legislature look at the real situation and try to make the laws fair for all of humankind. We voted you guys in office believing that great things would get done. I still have faith.

Thanks for listening to me.

Sincerely Yours,

Gina Martini

Courtesy of: DADS

THE PRINCE GEORGE'S COUNTY GOVERNMENT
OFFICE OF CHILD SUPPORT ENFORCEMENT, SUITE 405
14701 Gov. Oden Bowie Drive, Upper Marlboro, MD 20772
952-4822

April 9, 1986

M E M O R A N D U M

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Report on Visitation Pilot Project

As you know the Office of Child Support Enforcement is currently conducting a Visitation Pilot Project at the recommendation of the Visitation Task Force with the support and approval of the County executive, legislative and judicial branches of government.

On January 23, 1986, Ms. Rita Gunn, an experienced counselor and social work administrator accepted a temporary (700 hour) Counselor Coordinator I position with this agency to carry out this project.

VISITATION PROJECT STATISTICS

At the end of the first quarter of calendar year 1986 the results of Ms. Gunn's efforts are as follows:

Number of Hours Worked	:203
Number of Visitation Complaints Received	: 92
Number of Visitation Complaints Resolved	: 75
Number of Visitation Complaints Reopened	: 5
Number of Visitation Complaints Carried Over	: 17

Average Number of Complaints Received Per Week	: 9.2
Average Number of Complaints Resolved Per Week	: 7.5
Average Number of Telephone Contacts Per Complaint	: 2.33
Average Time Spent Per Case	: 2 hours 15 minutes

VISITATION PROJECT OPERATION

Ms. Gunn's primary method of operation is to call the custodial or non-custodial parent who has requested her services by contacting our office or the courts. From this call she determines the nature of the complaint, confirms the status of child support payments in the case, researches the case file to determine the nature of court-ordered visitation and explains that she will contact the other party to the case.

The other party is then contacted. In this call she explains the nature of the complaint, listens to the "other side of the story", explains legal requirements and remedies and attempts to resolve the complaint.

Further calls continue to be made to either party until resolution is reached. Her goal is to establish compliance to the court order by both parties, to initiate dialog between the parties regarding the child(ren)'s best interests and to remove herself from the process allowing the parties to work together to assure continued regular visitation and support.

VISITATION PROJECT ADMINISTRATION

Ms. Gunn works eight hours on Thursdays and Fridays and four hours on Saturdays.

She has designed and completes a bi-weekly Visitation Activity Report which is provided to the Executive Director of the Office of Child Support Enforcement. She has also drafted a statement of Prince George's County's Visitation Policy which will be developed into a brochure and mailed to all the Office of Child Support Enforcement clients and obligors. This draft is now being reviewed by the courts and the county administration.

Completed case notes, included on a Visitation Counselor's Report also designed by Ms. Gunn, are filed in case files. These notes will also be filed in corresponding court jackets and are available to all parties should visitation issues eventually require litigation.

VISITATION PROJECT ANALYSIS

To date, one part-time visitation counselor has been able to handle the workload. However, we expect that publication and mailing of the brochure will generate sufficient numbers of new complaints to require increased staffing. Therefore, the Office of Child Support Enforcement has included a request for a full-time Counselor Coordinator I position in the Fy-86 budget request.

If this request is approved, further analysis will be conducted at the end of the second quarter of calendar year 1986 prior to submission of a request to fill this position. Should data not indicate increased need, the position will be filled at 50% until workload necessitates greater staff time for this function.

Should you have any further questions or require further information regarding this project, please don't hesitate to contact me.

MS/mjfh

cc: Visitation Task Force

THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF CHILD SUPPORT ENFORCEMENT
14701 Governor Oden Bowie Drive, Suite 405
Upper Marlboro, Maryland 20772 952-4822

July 15, 1986

M E M O R A N D U M

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Report on Visitation Pilot Project

Visitation project statistics for the period from April 1, 1986 through June 30, 1986 are as follows:

Number of Hours Worked:	282
Number of Visitation Complaints Received:	138
Number of Visitation Complaints Resolved:	125
Number of Visitation Complaints Reopened:	10
Number of Visitation Complaints Carried Over:	23

Average Number of Complaints Received Per Week:	11.5
Average Number of Complaints Resolved Per Week:	10.4
Average Number of Telephone Contacts Per Complaint:	2.2
Average Time Spent Per Case:	1 hour, 17 minutes

We have created a permanent Visitation Counselor position with a county classification of Community Developer I/II. Recruitment will begin as soon as a personnel register is available. Ms. Gunn will continue in her temporary (700 hour) position until the permanent position is filled.

Although her efficiency in handling these complaints has increased as illustrated by the drop in time spent per case from 2 hours 15 minutes in the first quarter of operation to one hour 13 minutes in the second quarter, she has been unable to complete additional work such as development of a brochure and compilation of collection data on visitation cases. Therefore the permanent position will be filled as a full-time rather than half time position.

Should you have any further questions or require further information regarding this project, please don't hesitate to contact me.

MS/mjfh
cc: Visitation Task Force

THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF CHILD SUPPORT ENFORCEMENT
14701 Governor Oden Bowie Drive, Suite 405
Upper Marlboro, Maryland 20772 952-4022

January 21, 1987

M E M O R A N D U M

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Visitation Report

Visitation Statistics for the period from October 1, 1986 through December 31, 1986 are as follows:

NUMBER OF HOURS WORKED	480
NUMBER OF VISITATION COMPLAINTS RECEIVED:	278
NUMBER OF VISITATION COMPLAINTS RESOLVED:	227
NUMBER OF VISITATION COMPLAINTS REOPENED:	19
NUMBER OF VISITATION COMPLAINTS CARRIED OVER:	75

AVERAGE NUMBER OF COMPLAINTS RECEIVED PER WEEK:	23
AVERAGE NUMBER OF COMPLAINTS RESOLVED PER WEEK:	19
AVERAGE NUMBER OF TELEPHONE CONTACTS PER COMPLAINT:	2.99
AVERAGE TIME SPENT PER CASE:	1 hour, 37 minutes

MS/mjfh

IMPORTANT

Note:

The above data means an 80% "resolution" rate at an average settlement time of 1 hour, 37 minutes per case. In a telephone conversation with county officials, we learned the average salary cost per case is about $15.00

- National Council for Children's Rights

FROM: NORTH CAROLINA BAR ASSOC. REPORT

Final Report

of the

Advisory Committee on Child Custody

and Visitation Dispute Mediation

March, 1989

FOREWORD

This report is about children who are hurting.

Consider this typical scene that occurs almost daily in crowded courtrooms across North Carolina...

Many of those present have been in court before and are back because their cases were not reached. The court dockets are crowded.

Two of those present are children of a broken home. We can call them Johnny and Ann. Johnny is twelve years old. His sister Ann is ten.

A man in uniform says: "All 'rise."

A judge enters and takes his place behind the bench. After everyone is seated, he notices Johnny and Ann. He can barely see their small faces above the back of the front row of seats. He wonders about their presence.

The children think about their parents as they watch the judge call the calendar.

They have just spent a great weekend with their father. He asked for assurance from them that they wanted to come and live with him. He had given each a new bicycle. They did want to come and live with him and they had said so. They didn't tell him that they wanted to live with Mom too.

Before they left for the weekend their mother had asked for assurance that the children wanted to remain with her. She had just discussed a beach trip with them for next summer. They did want to live with her and had said so. They didn't tell her that they wanted to live with Dad too.

The judge hears several matters before lunch. As he prepares to leave the courtroom for lunch, he sees a number of grown folks gathering around the two children. The children seem anxious. The grown folks seem determined.

The judge leaves the courtroom because he doesn't feel that it is proper to stay and listen. It occurs to him again that the courtroom is not a good place to determine child custody matters. Perhaps he could talk to the parties and their attorneys after lunch. He thinks about what he can say or do. He thinks about other children who have passed through his courtroom... he thinks about alternatives.

This report is about alternatives.

INTRODUCTION

Powerful currents of social change have worked a revolution in domestic law during the past decade; during that time, North Carolina adopted the Uniform Child Custody Jurisdiction Act, a "no fault" divorce statute, and an Act providing for the fair distribution of marital assets upon divorce by recognizing the value of a homemaker spouse's contributions to the marriage. Antenuptual agreements are now recognized and regulated by statute.

In the area of child placement and custody decisions, the last vestiges of the "maternal preference" rule were repealed, joint custody was expressly recognized as an option, and the visitation rights of grandparents were addressed. Despite this legislative activity, further changes in the traditional methods of decision-making were demanded, as both the professional and popular literature began to document and publicize the harmful effects of using the adversary system to make placement decisions. There is general agreement that "in the long run a custody battle severely victimizes the children involved, creates lifelong hostilities and distrust between parents and children, as well as between the two adults, and squanders the mental, emotional, and financial resources of the family.[1] "More people are resorting to the courts to settle the question of how to restructure their families. This not only threatens to scar a large number of our children who end up being psychologically battered by the enraged parents and the callous approach of the adversary system, it also puts a tremendous burden on the judge."[2]

In the traditional adversary system setting, a definite win-lose component makes adversaries and competitors of the parents and draws their attention from the polar star of the child's best interests. In a litigation setting, child custody is only part of a broader set of economic issues, such as child support, alimony, divorce, and a division of marital property. Unless severed from those issues, custody and visitation decisions may become bargaining chips in the overall negotiations.

We have recently begun to realize the continuing damage litigation inflicts on the reorganizing family unit. Unlike non-domestic cases in which the parties normally need have no post-trial contact, the child's caretakers will need to cooperate in matters involving the child's best interests for years. If they are unable to do so, the damage to the child is limitless. Rather than preparing parents for life after court, traditional litigation often leaves festering wounds which lead not only to future turmoil and disruption, but to relitigation.

In an era of high divorce rates and increased custody litigation, practical considerations require that we acknowledge lengthening dockets and resulting trial delays, an increase in non-domestic litigation with increasing demands on court resources, and rising attorney fees. Both public pressures and the efforts of court professionals have led to a movement toward alternatives to traditional methods of dispute resolution. In the area of child custody, all of the above currents met in 1983 when the General Assembly voted to establish and fund a child custody mediation pilot program in Mecklenburg County. Mediation is a method of resolving disputes in which a neutral third party helps parties in conflict define

---

1 Wooley, The Custody Handbook 213 (1979).

2 Id. at 260

the issues involved, talk about their differences of opinion, and reach their own agreement. In the context of custody disputes, the goal of mediation is a "parenting agreement," setting out custody and visitation terms and conditions. In the Mecklenburg program, mediators were provided through a contract with United Family Services, a United Way agency. Mecklenburg's program was evaluated by the North Carolina Bar Association Committee on Dispute Resolution in 1986. The committee's January 1987 Study and Evaluation noted the enthusiastic reception by bench and bar, and recommended that the Mecklenburg program continue as a "mandatory prerequisite to child custody litigation," and that mediation "be made available in other judicial districts if they are willing to make a commitment to the training and retention of high quality mediators."[3] Senator Helen Marvin of Gastonia introduced legislation during the 1987 General Assembly session to establish custody mediation programs across the state. Despite her efforts, budgetary considerations and the lack of highly trained mediators made it impractical to expand the Mecklenburg-type model statewide at that time. Gaston County (Judicial District 27-A) was added as a pilot district and a program began there in December 1987.[4]

The enabling legislation (1987 N.C. Sess. Laws, C. 830, s. 16(d)) provided in part that:

> The Administrative Office of the Courts shall recommend to the 1989 General Assembly a statewide custody mediation program, or it shall recommend that the pilot programs be allowed to expire.

In response to that mandate, Director Franklin Freeman established an advisory committee to consider the role that mediation might fill in the courts. This committee was comprised of eight district court judges from each division across the state -- from urban, semi-urban, and rural areas, from single-county and multi-county districts -- in short, a group representative of our court system. Janet Mason of the Institute of Government served as an ex officio non-voting committee member, with Kathy Shuart of the Administrative Office of the Court's Division of Management Support serving as staff. The committee was charged with considering "the role of mediation as a method of handling custody and visitation issues in domestic cases,"[5] and advising the director as to courses of action which might be presented to the General Assembly. If the committee consensus favored mediation, it was then to define the issues, make recommendations as to due process and procedural requirements, and suggest mediator qualifications and implementation strategies.

---

3 Committee on Dispute Resolution, Mandatory Child Custody Mediation Program in Mecklenburg County: A Study and Evaluation (Raleigh: North Carolina Bar Association, 1987), pp. 1 and 8.

4 Divorce Mediation in North Carolina, Vol. 1, No. 1 (North Carolina Bar Association, May 1988), p. 4.

5 Letter dated September 6, 1988, from Franklin Freeman Jr., to members of the Committee.

The Committee met in Salisbury on October 7, 1988, in Gastonia on November 4, 1988, and in Raleigh on December 15-16, 1988, and on January 6, 1989. Oral reports were presented by Chief District Court Judges Jim Lanning and Larry Langson on the pilot programs in Mecklenburg and Gaston Counties. Chief District Court Judge Earl Fowler, Jr., reported on the program he initiated in Buncombe County in which parties are encouraged by the court to attempt mediation, which is made available through a local dispute settlement center using volunteer mediators or through a mental health professional. Ron McCullom, a mediator with the Mecklenburg program, explained the mediation process and its goals. Claire Millar, Executive Director of the Orange County Dispute Resolution Center, and Dee Reid, Coordinator of the Mediation Network of North Carolina, discussed the work of the dispute resolution centers, which presently provide mediation services in fourteen North Carolina counties. Frank Laney of the North Carolina Bar Association provided the association's perspective. In addition to numerous informal conferences and discussions by individual committee members with other judges, members of the bar, and other interested persons, the committee members read extensively in the professional literature and reports from sister states regarding implementation of custody mediation programs. Through the efforts of Kathy Shuart, mediation programs in Connecticut, Florida, Maine, and Michigan were examined in some detail, and outlines of programs in Delaware, Kansas, Michigan, and Nevada considered.

After considering all available information and weighing both advantages and disadvantages, the Committee recommends that mediation of contested custody and visitation issues be institutionalized as a process to be applied routinely in all of our district courts. Complex issues, many requiring hard decision, are raised by that decision. In an effort to satisfy the director's charge, those broad issues are discussed separately below, with the reasoning of the committee summarized, and available alternative solutions noted where appropriate.

ISSUES, FINDINGS AND RECOMMENDATIONS

Issue One: What mediation formats are available and appropriate for North Carolina?

The present movement toward fashioning alternatives to the traditional adversary system of dispute resolution has resulted in a system in North Carolina which includes elements of arbitration, mediation, and conciliation.

The first community dispute settlement center in North Carolina was established in 1978 in Chapel Hill. Additional centers have been established in Chatham County, Guilford County, Wake County, Durham, Winston-Salem, Charlotte, Asheville, Henderson County, Alamance County, Cumberland County, Goldsboro-Wayne County, Orange County, Iredell County, and Polk County. These centers rely on mediation techniques using trained volunteers to promote agreements between the parties to a dispute. Models for delivery of these services vary to some extent from county to county, and funding sources are uncertain and varied; they share, however, a common element of approval and acceptance by both the communities served and the local court systems.

In 1986, following authorization by the 1985 General Assembly, the Supreme Court adopted rules establishing pilot arbitration projects in the 3rd, 14th, and 29th Districts, serving a total of 10 counties. Early indications are that trials are requested in less than 12 percent of cases heard by arbitrators.

In Wake, Buncombe, and Mecklenburg Counties, pilot programs using summary jury trials are being used with great initial success.6

In the Raleigh area, the Christian Conciliation Service attempts to settle disputes using a combination of mediation and arbitration. In a number of other North Carolina cities, Family Services, Inc., a United Way Agency, offers family mediation. There are also many private professional counselors and mediators throughout the state.

Although some of our citizens struggling through family difficulties have voluntarily chosen to use mediation-type services to resolve their differences, a large number of domestic disputes enter the court system. The increasing number of filings threatens the ability of the judicial system to deliver quality resolution services and there is no agreement as to a proper remedy. Nor is the wisdom and propriety of the state's mandating pre-trial mediation in filed cases settled by any means. In enacting legislation in this area, lawmakers must first determine the proper degree of participation by the courts in the mediation process.

In "A Guide to Implementing Divorce Mediation Services in the Public Sector," author Elizabeth Comeaux suggests that there is an "involvement" continuum, and a court may be more directly, or less directly, involved with the application of mediation to the court's caseload.[7]

At one end of the continuum is the **facilitation model**, in which the court may choose to allow mediation to occur, but not make a "substantial public commitment."[8] Under this model, mediation is left to private professionals or volunteers (e.g., dispute settlement centers); nothing is provided at public expense; but the jurisdiction, by local court rule (or by the state court system, by Supreme Court rule; or the General Assembly, by statute), may define mediation, cite it as an alternative, and clarify issues such as confidentiality. This model (without either rule or legislative definition) exists throughout the state in that parties always have the right to take these disputes to private mediators; that is, no legislation exists forbidding mediation.

The second model is the **encouragement model** in which the court offers incentives to the parties or suggests mediation when the parties appear before the court, or provides at the clerk's filing desk brochures from a local dispute settlement center.[9] There may already be a number of judicial districts in North Carolina operating under this model. For example, Orange County Dispute Settlement Center Director Claire Millar's description of the court referral process in Orange County appears to function like this model.

---

6 Frank C. Laney, "Alternatives to Trials: North Carolina's Dispute Resolution Program," Popular Government (Fall 1988), p. 12

7 Elizabeth Comeaux, "A Guide to Implementing Divorce Mediation Services in the Public Sector," Conciliation Courts Review , Vol. 21 No. 2, December 1983, at 3.

8 Id. at 3.

9 Id. at 3.

The Buncombe County arrangement, as described by Chief Judge Earl Fowler, also seems to fit this model. The court recommends that mediation be attempted, and parties and counsel are provided with the names of the local dispute settlement center (which is located in the courthouse) and of a local mental health professional who serves as a private mediator.

The third model is one in which the court actually provides mediation services (provision model). Comeaux describes this model as follows:

> These jurisdictions are the most effective in generating mediation users and educating the public about the procedure. The routine exposure of large numbers of the divorcing population to the services of publicly employed mediators lends visibility and credibility to the mediation alternative. It also reduces the refusal rate common to many mediation programs as a result of public ignorance and professional skepticism about mediation. Finally, public sector mediation services may stimulate the development and use of private sector organizations. Once educated, many people will doubtlessly prefer to select a private mediator just as they now select a therapist or lawyer. Indeed, once the public is educated and the private sector is developed, it is possible that some government instituted, public sector mediation services could ultimately be phased out (except for services to indigents).[10]

Finally, the fourth approach is an enhancement of the encouragement model: the mandatory model. By definition, mediation cannot be forced; under this model, parties are not just encouraged, but are required to attempt mediation before they can litigate. To meet the court's requirement, parties must go through an orientation session in which the process is explained and questions are answered. It is the court's way of ensuring that parties are educated about this option. Comeaux states, "This approach may be viewed alternately as a strong statement of public policy concerning the locus of responsibility for resolving family disputes, and/or as a means of conserving judicial resources.[11]

The committee unanimously agreed that in the absence of exclusionary circumstances such as abuse, mediation is preferable to litigation as a forum for resolving custody and visitation issues. However, the committee also recognizes that the public and bar are resistant to new procedures, and that a "voluntary" mediation program would likely result in limited usage. Therefore, a mandatory referral model is recommended in which the parties are required to participate in an orientation session in which they learn about the process of mediation. They may thereafter choose, without penalty, to return to litigation, although it is expected that many couples will choose to remain in mediation. In the present pilot programs in Mecklenburg and Gaston Counties, approximately one-half of those referred to mediation choose to continue the mediation process past orientation. Judges in those districts report that many parties who were initially opposed to mediation remain in the program and reach parenting agreements. Even those not reaching agreement are likely to settle their cases prior to trial,

---

10 Id. at 3.

11 Id. at 3.

which is probably at least partially attributable to the avenues of communication opened up by the mediation process. Attorneys in the pilot districts also report that parties are more likely to settle remaining financial matters where the custody and visitation issues are successfully negotiated. Finally, initial indications suggest that relitigation of custody-related disputes is less likely, confirming the experience of other jurisdictions utilizing mediation services.

On balance, the committee feels that the mildly coercive mandatory referral model is more than justified by benefits to children and their families at the time of initial fragmentation, helps families learn to restructure themselves, and benefits the entire court system in the long term.

Issue Two: How should mediation services be provided and administered?

Comeaux suggests that there are four alternative methods of providing and administering mediation services,[12] and our review of other states' programs and our own experiences in North Carolina support that assessment. In summary, mediation services may be provided:

1. Within the local court system. Mediators are members of the court staff in the local jurisdiction and are hired and supervised by local court officials.

2. By a separate unit administered statewide. Mediators are hired jointly by local court officials and a statewide administrative authority. Policy guidelines are established by the statewide authority, which provides training and coordination; day-to-day supervision falls to local court officials. Our Guardian ad Litem program operates under this kind of arrangement.

3. By contracting for services. The court may contract with individuals or agencies for mediation services. Minimum requirements for those providing services may be established statewide, and local court officials and state officials would enter into contracts with providers. The pilot programs in Mecklenburg and Gaston counties fall within this category.

4. By a current support service group. Groups currently providing support services to domestic court may also have a mediation component which is presently not being used for court cases. For example, there is a close working relationship between local courts and Departments of Social Services in collection of clients' child support. The same departments may have trained domestic mediators on staff who currently mediate domestic disputes between clients. Those mediators may also be available for court referrals.

In determining which method is most appropriate for our court system, the committee recognizes that some combination of alternatives might be appropriate. This decision depends in large part on the resources available within the locale and the demand of local caseloads. In addition, each method has strengths and weaknesses which must be considered. The following factors should be considered in determining how to provide and administer services within our unified statewide court system:

---

12 Id. at 7.

1. Availability of resources. In our urban jurisdictions, it is likely that any of the service-provider models is a possibility. In more rural jurisdictions, we may not have that flexibility. In fact, we may be introducing a service for which there is no local provider. Under these circumstances, service providers must be recruited to the locale, provided by a state office or neighboring jurisdiction, or developed through training of local personnel. As a by-product of this approach, alternative dispute resolution services may be made available throughout the state. Fortunately, as a result of workshops sponsored by the Mediation Network, over 100 volunteer mediators were trained to mediate custody disputes in North Carolina.[13] Whether they will be available as a resource depends, of course, on whether the model adopted utilizes volunteer mediators.

2. Caseload demands. The number of custody and visitation disputes in a district requiring referral will determine in part the type program established. In a low-demand district, the court may decide to economize by contracting on an "as-needed" basis. Where there is a large caseload and high demand, a court-staff mediator arrangement may be indicated.

3. Management, supervision, and accountability. Mediation of custody and visitation issues is under consideration because of the growing conviction that the mediation forum is better suited than the litigation forum to focus on the best interests of the child. Referral to mediation does not, however, mean an end of court involvement and control. On the contrary, a heightened degree of management will be necessary to ensure both a continuing focus on the best interests of the child and fair treatment of all adult parties. It is essential, therefore, that where the court refers all such matters to mediation, those providing mediation services be fully accountable to the court. The degree of involvement by the court will depend in part, of course, on the mediation model adopted. Service would be more consistent if provided by a statewide unit, and the need for local supervision would be accordingly lessened. It is more likely, however, that the several districts will fashion individual and unique programs, requiring close supervision.

Although the district bench must of necessity supervise daily progress of individual cases, assistance from the Administrative Office of the Courts will be necessary in terms of policies, guidelines, educational orientations, coordination, and supervisory procedures. This would ensure some uniformity of the quality of mediation services throughout the state.

The committee recommends therefore that the Administrative Office of the Courts develop minimum acceptable standards for delivery of mediation services, and for monitoring delivery of those services by mediators.

Issue Three: What are the procedural issues in a custody and visitation mediation program?

Some of the procedural issues that need to be considered in establishing a custody and visitation mediation program have been discussed earlier; however, we raise them here as a group because each should be addressed in enabling legislation, court rule, and administrative guidelines. They include:

---

13 The N.C. Mediator, Fall 1988, p. 5.

1. Definition of mediation and its goals. Mediation is defined as a "dispute resolution process utilizing a neutral third-party to facilitate problem solving between parties in conflict" in a report on the pilot program in Mecklenburg County prepared by the North Carolina Bar Association's Committee on Dispute Resolution. The report went on to define the goal of a child custody mediation program as enabling "parents to generate their own resolutions and develop a written agreement, the parenting agreement, that sets out the custody terms and conditions."[14]

> By definition mediation is voluntary, but in some areas parties are being required to try mediation first before coming to court. The mediator has no coercive power. He or she is not bound by a "win or lose" perception of a problem, but rather can concentrate on the underlying relationship of the parties, and by helping them to identify their needs reach a solution through compromise. Professor Fuller has referred to the central quality of mediation as "its capacity to re-orient the parties toward each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward each other."[15]

In a pamphlet distributed to parents entering the Custody/Visitation Mediation Program in Gaston County, the goal of mediation is well stated as "reorganiz(ation of) the family, not to 'award' custody to one parent and make a 'visitor' of the other."

Although the mediator is often referred to as a "neutral," most mediators consider that they are neutral only as between the adult parties, their task being to focus discussion on ways the family can restructure itself in the best interests of the children involved.

2. Scope. The committee recommends that only custody and visitation issues be referred to mediation by the court, so that the mediation sessions can focus only on the best interests of the child without dealing with the financial matters involved in property settlements, alimony claims, and child support awards. While there is admittedly some correlation between the parenting arrangement and the support award, consideration of that issue in a mediation context could divert the parties from the true purpose of mediation. Where disputes arise after the entry of a court order relative to the modification or enforcement of the custody provisions of that order, those issues would also be routinely referred to mediation under the committee's recommendation.

---

14 Committee on Dispute Resolution, Mandatory Child Custody Mediation Program in Mecklenburg County: A Study and Evaluation (Raleigh: North Carolina Bar Association, 1987), pp. 1 and 8.

15 Task Force on Dispute Resolution of the North Carolina Bar Foundation, Dispute Resolution (Raleigh: North Carolina Bar Association, 1985), pp. 10-11.

Nor would it seem that cases should be diverted from mediation solely because one of the parties resides outside the county or district. If the parties can litigate their case within a specified area, they can normally mediate the same issues within that area. Obviously, the court could excuse a party from mediation if referral would cause undue hardship, as in the case of an out-of-state party.

Since the purpose of mediation is to benefit the children affected by it, parties would not be excused because of indigency, as either a sliding scale fee arrangement would compensate for their indigency or the court could forgive or reduce fees if necessary.

Since the mechanics of mediation should be left in large part to be shaped by local rule, the committee recommends that details such as the number and duration of mediation sessions be left for the several districts.

3. Timing of mediation referrals. While the committee recommends that all issues of custody and visitation be referred for mediation, the timing and mechanics of referral should be reserved to the individual districts. Individual caseloads, local calendar rules, and expressed preferences of the domestic bar might mandate referral at different points in the litigation continuum. Administrative guidelines should encourage local officials to address these issues in local rules to ensure an effective and efficient procedure.

4. Confidentiality. Unless they are guaranteed confidentiality, parties are not likely to be advised by counsel to freely participate in the mediation experience. The pilot program legislation provided that

> (f) Mediation proceedings shall be held in private and shall be confidential. All verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to this section are absolutely privileged and inadmissible in court.

Although aware of the relationship between guaranteed confidentiality and successful mediation, the committee was concerned that there be no immunity for crimes committed in the presence of the mediator, such as assault and communicating threats. There was also concern that information about continuing criminal activity, such as child or spouse abuse or neglect, not be protected in a subsequent criminal proceeding. Nor should anyone be excused from statutory reporting requirements which require all citizens to report suspected child abuse or neglect to the Department of Social Services.

The committee recommends, therefore, that any legislation provide that there be no privilege as to communications made in furtherance of a crime or fraud, and no grant of immunity from criminal conduct.

5. Privacy. Persons participating in the actual mediation process will of necessity vary from case to case. Whether to include step-parents and the children themselves must be left to the demands of the individual case and the mediator's sound discretion. The pilot legislation provided that the mediator might "exclude counsel from participation in the proceedings if the court finds that

exclusion is appropriate." The committee recommends the deletion of any exclusionary language, since the mediator may -- with the assistance of the supervising court -- take such drastic action if required in a particular case. Counsel are welcome at the sessions, but experience in the pilot districts has indicated that counsel seldom participate in the mediation sessions.

6. Education of the public, the bar, and the bench. The experience of court officials in the pilot districts and in Buncombe, Orange, and Chatham counties underscores the importance of notification to the general public and education of those who will have direct contact with the procedure, including District Court judges, the domestic bar, and the parties to contested domestic actions. Because parties must communicate in good faith in the mediation hearing in order to resolve their disputes, it is critical that they understand the mediation process and enter into the hearing with an open mind, predisposed toward the process. Counsel's understanding of the mediation process and a mediated agreement is critical, as the attorney will set the tone for the client who is entering into mediation. Even a well-designed mediation program will fail without the support of the bar. The Chief District Judge in each of the mediation districts stresses the importance of continual bar education, despite the demands this places on scarce judicial time. Judicial education is equally important, as the judge assigning cases to mediation may be the first to explain to the parties what is involved in the mediation process and how it should be approached.

The committee recommends that a district applying for approval of a mediation project be willing to make a commitment to educate the general public, along with members of the domestic bar and the bench. Dialogue with community leaders and interested lay persons in the community may lead not only to volunteers for a new program, but to long-term support for the effort.

7. Form of the agreement. In the pilot districts, parents who resolve their disputes draft a parenting agreement which states the resolution in simple terms. In Mecklenburg County, this agreement becomes an order of the court through a simple form order which incorporates the agreement by reference. In Gaston County, the terms of the parenting agreement are incorporated into the usual form of consent agreement by the attorneys, which is then signed by the parties and a judge and filed with the court.

Although the mechanics of recognition of a parenting agreement might best be reserved to the several districts, it is important for the purposes of interstate enforcement that a parenting agreement be accorded the respect due any consent order. Otherwise, serious enforcement difficulties arise if one of the parties to a parenting agreement removes a child from the state in violation of the agreement. It is also important that there be a consistent practice within a judicial district.

8. Mediator qualifications. The committee was concerned that the court protect the parties to a mandatory referral custody/visitation mediation program by ensuring the integrity of the mediation process and the competence of those serving as mediators. Unfortunately no formula exists to ensure integrity and competence. Even among dispute resolution professionals there is considerable

debate concerning mediator qualifications, particularly educational degree requirements. In its October 1988 report, the Society of Professionals in Dispute Resolution Commission on Qualifications stated that "(t)here are no obvious answers to what constitutes a qualified neutral or which of the policy options described is appropriate to ensure that those who practice are qualified to do so."[16] Regarding degree requirements, the commission further stated:

> We recognize the knowledge acquired in obtaining various degrees can be useful in the practice of dispute resolution. At this time and for the foreseeable future, however, no such degree in itself ensures competence as a neutral. Furthermore, requiring a degree would foreclose alternative avenues of demonstrating dispute resolution competent.[17]

The pilot legislation required that

> (d) For a person to qualify to provide mediation services under this section, that person shall show that he:
>
> > (1) has a law degree, or at least a master's degree in psychology, social work, family counseling or a comparable human relations discipline, and
> >
> > (2) has at least 40 hours of training in mediation techniques by a qualified instructor of mediation. A qualified instructor of mediation is a professional who has provided mediation services for at least 30 cases, has publicly and explicitly identified his services to include mediation, and has the educational background stated in subsection (1). A counseling service is not a mediation service unless the derivation of a written statement between disputants is the explicit objective of the service. Marital counseling, psychotherapy, and family therapy are not mediation services.

Preliminary results from Maine, after a decade of practical experience, found "no correlation . . . between the educational or experiential qualifications of mediators and their performance. While the attributes of an effective mediator may be hypothesized they are not known."[18]

---

16 Society of Professionals in Dispute Resolution Commission on Qualifications; Summary of Issues and Preliminary Principles; October 1988, p.1.

17 Id. at 4.

18 Lincoln Clark, Mediator Qualifications and Effectiveness, p. 1.

Balancing the court's need to protect the parties and the lack of clearly-defined, objective qualification criteria by which to guarantee competence, the committee recommends that educational degree requirements and specialized training requirements similar to those in the pilot program legislation should be considered by the Administrative Office of the Courts in establishing specific qualification guidelines, certification procedures, and performance evaluation standards and procedures. The committee also suggests that because the field of dispute resolution is rapidly changing, the Administrative Office of the Courts should monitor the issue of qualification criteria and update eligibility requirements as appropriate.

Issue Four: How might a statewide custody and visitation mediation program be funded?

The committee's review of programs across the country indicated a variety of funding alternatives: court system funded; user funded; funding through special tax or filing fee assessments; and some combination of the above.

Due to time constrictions, the committee is not in a position to recommend a funding strategy. How a statewide program is funded will depend in large part on the model that is adopted, qualifications adopted for mediators, and the overall cost of operating that model. Costs will be substantially less, of course, if the dispute settlement centers and similar community resources already in place can furnish an administrative framework for the mediation program. Where trained volunteers are used in mediation, such as in Buncombe County, the per case costs are dramatically less than in the pilot districts.

It appears that the funding arrangement for the pilot programs in which the state's appropriation is partially offset by user fees should be considered on a statewide basis. User fees would be determined by the Administrative Office of the Courts, utilizing a sliding scale approach which would ensure a fair distribution of the costs of the program and further guarantee that no children would be denied the benefits of mediation because of the indigency of their parents.

Issue Five: How might a statewide custody and visitation mediation program be implemented?

The committee remains committed to statewide application of the mediation process to custody and visitation disputes, but recognizes the demands on local and state resources in implementing mediation throughout 100 counties and 34 District Court judicial districts, the need to establish court rules and administrative guidelines, and the need to identify and certify qualified mediators. Therefore, the committee recommends a phased-in approach to statewide implementation, beginning with districts which have programs in place. Implementation could then proceed across the state as funding and certified mediators become available. The Administrative Office of the Courts would be in the best position to accept applications from the several districts, and determine an implementation schedule.

CONCLUSION

Mediation offers an exciting alternative to the traditional adversary system of resolving custody and visitation disputes in North Carolina. The committee recommends its use throughout the state as an effective method of making child-centered placement decisions, anticipating benefits not only to parents and children but to an overcrowded court system. Although significant numbers of cases will be successfully negotiated through mediation, the majority of filings will be dealt with in traditional fashion. Children in cases which are not mediated will still be part of an adversary system which may require their attendance at court proceedings and possibly their testimony there. There is presently no requirement that judges who make placement decisions have specialized training or equivalent experience, nor are impartial expert witnesses usually available to the court. Children do not have party status in custody cases, and thus are not usually represented by an advocate.

As Judge Ed McCormick says in the vignette which serves as a Foreword to this Report, we are searching for alternatives. Mediation will not replace traditional litigation, but will provide a valuable option to the courts. If lasting damage is to be avoided to the children of divorce, other options must be explored, other courses charted. The committee recommends that the legislature consider the entire existing statutory framework regulating child placement decisions, with a view toward an overall revision which would guarantee that such decisions be child-centered.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

Mary Van Nimwegen

HOUSE HESS

MARCH 7, 1990 8:30 A.M.

HB 538

HB

539

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 9, 1990 FURTHER REFERRALS:

FINANCE

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 539

HOUSE BILL NO. 539 APPROP: CHILD VISITATION MEDIATION

"An Act making a special appropriation to the office of public advocacy for a child visitation mediation demonstration project; and providing for an effective date."

RECOMMENDATIONS:

[ ] be replaced with _____ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact_____

[ ] zero fiscal note_____

[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s)_____

[ ] zero fn/analysis _____

SIGNING DO PASS:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

_____
Chairman's Signature

HOUSE COMMITTEE REPORT

B

4/9

(7)

Date Referred: February 12, 1990 FURTHER REFERRALS: JUDICIARY FINANCE

Date of Committee Action: 4/6/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 539

HOUSE BILL NO. 539 APPROP: CHILD VISITATION MEDIATION

"An Act making a special appropriation to the office of public advocacy for a child visitation mediation demonstration project; and providing for an effective date."

RECOMMENDATIONS:

[X] be replaced with CSHB 539 (HESS) [ ] the same title [X] a new title

[ ] have attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

[ ] zero fn/analysis _____

SIGNING DO PASS:

J Ellis ELLIS

Mark Boyer BOYER

GRUENBERG

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
FURNACE		X	
DAVIS		X	

J Ellis

Chairman's Signature

NATIONAL COUNCIL FOR CHILDREN'S RIGHTS™

721 2nd Street, N.E., Washington, D.C. 20002 Telephone (202) 547-NCCR (6227) Telecopier (202) 546-7689

April 15, 1988

State Representatives Max Gruenberg and Peter Goll,
co-chairmen, House Judiciary Committee
Alaska State Legislature
J' eau, Alaska 99811

Dear Chairmen Gruenberg and Goll,

We have been asked by Sandy Armstrong, the coordinator of our Alaska Chapter of the National Council for Children's Rights, to provide information to you.

1. Interference with access (visitation) is a national problem. Various researchers find that custodial parents interfere with access (visitation) in 25% to 50% of cases nationwide. In Wallerstein and Kelly's book entitled "Surviving the Breakup" (Basic Books, 1980), the researchers found that some custodial parents prevented the access of the child with the other parent out of anger or spite, while in other cases, custodial parents made excuses, such as saying "Johnny has something else to do today," or by deprecating the other parent in front of the child. Having sole custody is a tremendous power, and it can be used constructively, by respecting the active parenting of the other parent, or it can be used destructively, to undermine the child's relationship with the other parent.

2. Access (visitation) enforcement programs have proven very successful in places where they have been tried. One example is the Michigan "Friend of the Court" (FOC) program. In Michigan, staff investigates access as well as child support complaints.

(more)

Michigan collects more in child support per administrative dollar than any other state. Michigan collects $8.33 in support for every dollar spent to collect. Michigan officials such as Debbie Stabenow of the House of Representatives, and Dee Van Horn, administrator of the FOC, credit Michigan's balanced approach with this success.

Our National Council received an award for convincing Prince George's County, Maryland, outside Washington, D.C., to hire access mediators to resolve access (visitation) complaints. When one parent complains, the access mediator phones or meets with the other parent, to find out why the visitation order is not being followed. Either parent may file a complaint. The County reports an 80% success record at resolving these complaints, at an average salary time of 1 hour, 37 minutes, at an average cost of about $15 per case.

Apparently, just having someone in authority care enough about these issues to contact the other parent, and to help educate parents about their responsibilities, sends a powerful message. Allowing phone OR face-to-face meetings provides flexibility for the program.

3. The benefit of a continuing relationship of children with both parents after separation and divorce is vitally important to children. A divorcing spouse may never want to see the other spouse again, but children do not lose their longing for the "absent" parent even years after the divorce, according to research by John Guidubaldi, Kent State University, Kent, Ohio, who has conducted the largest (699 children) study of children of divorce in the country. Guidubaldi recommends more access to the non-custodial parent than is currently generally provided as one means of helping children of divorce. His findings that divorce is a long-time stressor of children, and that children long for the "absent" parent even years after the divorce is supported by Wallerstein and Kelly, and other researchers.

4. Bill Number CS for House Bill Number 538 is a reasonable approach to helping children of separation and divorce. Section ((B))((2))((f)) of the bill, which lets a child 13 or older refer a person with custody or visitation rights to the project, is good, because visitation is a child's right, as well.

The bill would create an Advisory Council on which two non-custodial and two custodial parents would join with a legislator, person experienced in mediation, and a representative of the judicial branch. Because custodial and non-custodial parents have keen perspective on the problems the Council would examine, the Council would seem to have excellent balance.

In Michigar and Prince George's County, there are open referrals, without having to first screen them by the judiciary. This is important to the speedy resolution of as many complaints as possible.

Thank you both for your support you can give to this bill, which will do so much to help keep Alaska children "out of the middle" of battles between their parents. If you would like additional information, please let me know.

Thank you for helping to strengthen the American family.

Sincerely yours,

David L. Levy, Esquire
President, NCCR

DLL/vdd

6-1917H
Chenoweth
4/4/90

Funding Information: General Fund $120,000
Other Funds - 0 -
$120,000

Original sponsor(s): REP. ELLIS, Menard

IN THE HOUSE BY THE HESS COMMITTEE

CS FOR HOUSE BILL NO. 539 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Alaska Judicial Council for a child visitation mediation project; and providing for an effective date."

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

* Section 1. The sum of $120,000 is appropriated from the general fund to the Alaska Judicial Council for a child visitation mediation project.

* Sec. 2. The unexpended and unobligated portion of the appropriation made by this Act lapses into the general fund June 30, 1992.

* Sec. 3. The appropriation made by sec. 1 of this Act takes effect only if the Alaska Judicial Council establishes a child visitation diation project in accordance with law.

* Sec. 4. This Act takes effect on the effective date of an Act enacted by the Sixteenth Alaska State Legislature authorizing the Alaska Judicial Council to establish a child visitation mediation project.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

Mary Van Nimwegen

HOUSE HESS.

March 7, 1990 8:30 A.M.

HB 539

HB

544

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 21, 1990 FURTHER REFERRALS:
(Finance added 3/21) FINANCE

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 544

HOUSE BILL NO. 544 PRESUMPTIVE SENTENCING

"An Act authorizing the Department of Corrections to establish alternative sentencing and related programs for prisoners."

RECOMMENDATIONS:
[ ] be replaced with _____ [ ] the same title [ ] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

_____
Chairman's Signature

HOUSE COMMITTEE REPORT

3/21

(7)
Date Referred: February 12, 1990 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/14/90

sentence added 3/21

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 544

HOUSE BILL NO. 544 PRESUMPTIVE SENTENCING

"An Act authorizing the Department of Corrections to establish alternative sentencing and related programs for prisorers."

RECOMMENDATIONS:
[ ] be replaced with _____ [ ] the same title [ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

FIN

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact Corrections
[ ] zero fiscal note
[ ] zero with analysis

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:	SIGNING: (Check approp. column)	Do Not Pass	No Rec	Amend
GRUENBERG	ELLIS			
JACKO				
GOLL				

Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 544 No. 1
PUBLISH DATE: HOUSE 3/21/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act authorizing the Department of Corrections to establish..."
Sponsor: Reps. Koponen, Gruenberg
Requestor:

Agency Affected: Department of Corrections
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	84.6	84.6	84.6	84.6	84.6	84.6
TRAVEL	7.5	7.5	7.5	7.5	7.5	7.5
CONTRACTUAL	180.0	180.0	180.0	180.0	180.0	180.0
SUPPLIES	25.0	25.0	25.0	25.0	25.0	25.0
EQUIPMENT	101.0		96.0		96.0	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	398.1	297.1	393.1	297.1	393.1	297.1
CAPITAL	96.0		96.0		96.0	
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	302.1	297.1	297.1	297.1	297.1	297.1
FEDERAL FUNDS						
OTHER	96.0		96.0		96.0	
TOTAL	398.1	297.1	393.1	297.1	393.1	297.1

POSITIONS:

FULL-TIME	1	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: 03/20/90

Approved by Commissioner: Susan Humphrey-Barnett
Date: 03/20/90
Agency: Department of Corrections

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ANALYSIS

This legislation, as currently worded could have a tremendous fiscal impact upon the Department of Corrections. Legal counsel has advised us that the phrase "alternative sentencing programs and training, counseling, and " may be interpreted to expand the State's liability in the areas of training and counseling and cause the need to expend significantly more monies in this area to limit this liability. A conservative estimate of yearly funding to provide inmates with additional training and counseling is $398.1 and is based upon requested but unfunded FY91 needs in statewide programs.

March 4, 1990

Rep. Nula Kapsner
PO Box V
Juneau, AK. 99811

Ruby W. Cook
4580 Hubert Martin Rd.
Cumming, GA 30130

Dear Sir.

I would like to thank you for drafting HB 545 - AS 33 regarding Parales for first time felony offenders.

My son William J Cook is in the Fairbanks Correctional Center on a sex offender charge. He was given a 12 year non-Parolable sentence in April 1986. The reason for the sentence is the judge said he was not remorseful and would not admit to the crime.

Since that time he has admitted guilt and has completed the two year sex offender treatment Program. He has never been written up and has been a (I think)

model [redacted] Prisoner. He has worked in various jobs while in Prison and at the Present Time is in the Law Library. On the Past Couple of years he has also become a Certified Paralegal and is an associate member of the American Bar Association. He is now in the Process of trying to Complete his College degree and Plans on getting a degree in Law. Also, a Lawyer in Fairbanks has told him he has a job for him as a Paralegal in his law firm as soon as he is released.

It appears to me it would save Alaska, as well as other states, a lot of money if they would adopt a bill like you have drafted.

Thanks again for drafting this bill. Good luck with it and. God Bless you.

Sincerely
Ruby Cook

[illegible]
[illegible]

[illegible]

March 22, 1982

[illegible] Committee
[illegible]
[illegible] Al 36611

Dear Sirs:

I respectfully urge you to vote for HB 548 and SB 332.

The 1980 F.B.I. Uniform Crime Reports and Bureau of Justice Statistics show some facts that should concern all Alabians. Alaska's incarceration rate is the 5th highest in the nation. Only 3 other states and the District of Columbia imprison more of their residents than Alaska. The crime rate in Alaska is just barely above the mid-line with 24 states having a larger crime rate and 26 states having less. Now time we are 5th highest in incarceration and 25th in crime.

[illegible] prisons are expensive to build, maintain or operate [illegible] are notoriously poor in rehabilitation. We [illegible] Some of Alaska need to come up with better solutions [illegible] the crime problem.

[illegible] agree that the breakup of families contributes to the crime rate. Our laws should be overhauled to enable us restore and keep families together while providing protection from violent offenders.

There is one aspect of HB 548 that I am a bit uncertain about. I am not sure how to interpret Section [illegible] do not believe in forced treatment. If Section 1 [illegible] forced treatment except in the most extreme circumstances perhaps this part should be examined again. As I read and [illegible] this paragraph in HB 548 I feel very unsure of [illegible] your support. Please do not [illegible] in order to make [illegible] available but voluntary except the most extreme cases.

[illegible] two bills with a possible amendment [illegible] suggested above, will bring a measure [illegible] legislation that [illegible] current [illegible] laws. [illegible] try to make Alaska a safer [illegible] of [illegible].

Please [illegible]

Sincerely,

Ruth E. Talley

[illegible]

[illegible]

Willie Hoppner
Pouch V
Juneau, AK 99811

Dear Willie:

I wish to express my views on Alaska's presumptive sentencing laws. I feel it is absolutely imperative that legislation be introduced and passed to change the current presumptive sentencing laws.

Incarceration does not solve problems. Psychologists feel that incarceration only deepens criminal behavior. Presumptive sentencing has not reduced the crime rate or the rate of recidivism. Presumptive sentencing has only caused overcrowding and created an entire new class of victims. The children left behind, in a single parent family, because of presumptive sentencing are the victims. Those children left behind, suffering the economic and [illegible] loss of a parent, are the ones being punished.

The Constitution of the United States provides for a [illegible] legal process. For it [illegible] that process, as provided for in the Constitution, by legislation, [illegible] a judge [illegible] using his intelligence or integrity in passing judgement [illegible] the judge [illegible] legislated [illegible]. There are honorable fair intelligent judges who have been left powerless, their hands tied, by current law. The legislature cannot hear each individual case. That is not the job of the legislature but rather the job of the judge and the jury. As the law stands, the judge and jury hear the case but the legislature sentences.

I urge you to correct this problem as soon as possible. How many better ways could $[illegible] million be spent instead of on a new prison? Schools? Roads? Treatment programs to correct criminal behavior rather than worsen it? We need to repeal presumptive sentencing for first offenders. Presumptive sentencing has its place for repeat offenders, [illegible] but not EVERY first offender needs to be incarcerated.

I also feel [illegible] presumptive sentencing [illegible]. The [illegible] of the family unit [illegible]

[illegible] your time and consideration [illegible]

Diane Kulek

TO: Rep. Niilo Kiponen
Pouch V, Capitol
Juneau, Ak 99811

FROM: Thomas R Kuleck
Box 317
Fairbanks, Ak 99707

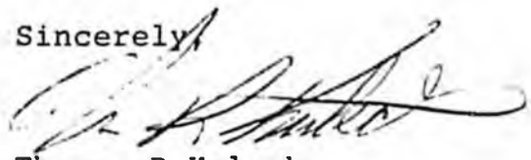
SUBJECT: Presumptive Sentencing of First Offenders

Mr. Koponen,

I am writting to express my concern about the practice of presumptive sentencing of first time offenders. It seems that the state of Alaska has taken a position that negates the power of the individual judge to weigh each case, based on its merits. In effect, they tell every judge they are not competent to do the job they are paid for. My particular case would tend to bear this out. I am presently incarcerated for a non-violent crime that bears a mandatory presumptive sentence. During some 60 hours of psychiatric evaluation it was determined that the major, if not the only, component to my offense was Post Traumatic Stress Disorder. All of the evaluating persons have recommended that I be placed in residential therapy at the American Lake Combat Veterans Center, Tacoma, Wa. Unfortunately, because of the presumtive sentencing, this will never happen. Is the state willing to accept the responsibility for my illness? I think not. At present there are many incarcerated veterans diagnosed as having PTSD with no treatment being made available. What of the judge being able to tailor a sentence to the individual? Again, not possible due to presumptive sentencing. I wonder, is the state more interested in "the pound of flesh" or in rehabilitation?

Presumptive sentencing has shown itself to be the same failure that capital punishment is, and has been. It's long overdue to look at the cause of crime and treat it. The good citizens of this state cannot, and will not, continue to support a prison system that warehouses rather than rehabilitate. The elimination of presumptive sentencing is a step in the right direction. Thank you for your time and interest.

Sincerely,



Thomas R Kuleck

3505 Mink Lane
Fairbanks, AK 99712
February 7, 1994

Representative Nils Koponen
P.O. Box V
Juneau, AK 99811

Dear Rep. Koponen

I am writing to inform you of my opinion of article 17. I sincerely believe it is the most bumbling mistake that Alaska could make. Little by little Alaska's small town attitude is turning into that of the lower 48. The death penalty is just another ploy, a sign that we are getting meaner.

I don't know what your view of this issue is but I would like to encourage you to vote against the death penalty. It is a law that can be misused and is not a true representation of the "American Way."

Sincerely,

Jesse E. Hoffman

P.O. Box [illegible]
Fairbanks, AK 997[illegible]
January 30, 1990

Niilo Koponen
Room [illegible]
Juneau, AK 99811

Dear Niilo:

Enclosed please find a copy of one more letter I've written to some of your colleagues. [illegible] sent me a copy of your votes for this year on presumptive sentencing. I ABSOLUTELY agree! It is very reassuring to know that there is at least one sane intelligent member of the legislature that holds the same opinion I do. I hope my letters have been of some help. If there is anything else please let me know.

I've lost my job as my sons and I will be leaving Alaska this spring. My husband remains incarcerated. The treatment of Viet Nam veterans suffering from Post Traumatic Stress Disorder is another issue that will have to be looked at. My husband desperately needs treatment in a Combat Veterans Program. Alaska has no treatment program for combat veterans and the state seems to think it is more important to extract a pound of flesh first. Unfortunately my husband is at real risk for suicide because he is unable to receive the treatment he needs to have. Our hands are tied. He has been accepted for treatment at the American Lake Combat Veterans Program in Washington but whether he survives to receive that treatment is [illegible].

I wish to thank you for your interest and concern in this matter. Please feel free to use my letter if it will help.

Sincerely,

Diane [illegible]

4390 Matt Hwy.
Cumming, Georgia
March 3, 1990

Mr. Nils Koponen
P.O. Box V
Juneau, AK 99811

Dear Mr. Koponen:

Thank you for supporting the bill that would give first time felony offenders parole. My Nephew William Cook is a first time offender in the Fairbank Correctional Institute. He has never done anything wrong in his life except this one time. Please allow me to try to briefly discribe William's Conduct to you.

William was an only Child with an over Protective father. He was never allowed to do very many things And When he was eighteen years old he joined the army. He Married a women With three Children. He loved these small Children without a doubt and they loved him. When the girls grew up he did teach them

in a moment of Weakness. I do not know all of the details that happened. I do know however that both girls said that they went to the family and Children's service because they were angry with him and when they found out how serious the offense was that they went to the Welfare Dept. to explain but was not allowed to do so. They are both happily married and visit their step-father often in Prison.

Since William has been in Prison he has been a model Prisoner, works in the law library and has finished his education and is a certified Paralegal. He has had several lawyers who have promised him a job the minute he is free because they have seen the work that he has done in appeals for other Prisoners.

If William could be paroled, he would not be a burden to the American Tax Payer and would contribute something to the society in which he lives.

I will make this plea to you would you please look into his Case William J. Cook Fairbanks Correctional Institute and help him

in any way possible. I do not know what happened to William. I do know that he is a kind generous person. I believe that he has been punished enough for this one time mistake. He has been in Fairbanks since April of 1986.

Thank you for your Concern and may God bless you in your effort to help first time offenders.

Sincerely yours,
Lois Garner

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM March 10, 1990

SUBJECT: House Bill 544 -- sectional analysis

TO: Representative Niilo Koponen
ATTN: Drena McIntyre

FROM: Jack Chenoweth
Legislative Counsel

The measure directs the commissioner of corrections to initiate and carry out alternative sentencing practices in lieu of imprisonment and to provide training and counseling programs in addition to those now operated or provided by that department.

The range of alternative sentencing options contemplated by the measure is spelled out in bill section 4, offering a definition of the term. The general characteristics of alternative sentencing involve the prisoner's being free of institutional incarceration as well as the constraints associated with placement in a correctional restitution center or furlough assignment. Suggested alternative sentencing options explicitly identified in this section of the measure include home arrest and enforced detention.

The key alternative sentencing provision is bill section 3, adding a new section to AS 33.30. The section spells out the permissible elements of an alternative sentencing program, allowing the commissioner to establish the program by agency regulation. Under AS 33.30.096(a), to qualify for alternative sentencing, the commissioner must first determine that "with reasonable probability, a prisoner can live under reduced supervision without violating the law" or any conditions imposed to regulate the prisoner's personal conduct. That determination is to be made with reference to the four factors identified in that subsection; before placing the prisoner in an alternative sentencing venue, the commissioner must consider all factors identified in that subsection. Additionally, in allowing assignment to an alternative sentencing venue, AS 33.30.096(b) defines the minimum safeguards that the commissioner must impose.

One portion of the amendment made by bill section 1 and the amendment made by bill section 2 are technical conforming changes, included in recognition of the alternative sentencing option that are set out in proposed AS 33.30.096.

Bill section 1 also incorporates, as a new duty imposed on the commissioner of corrections, the responsibility to provide training and counseling programs to persons who have been committed to the commissioner's custody.

JC:mi
wkmi6/052

Harold Wirum
& Associates
Architects

500 L Street, Suite 500 • Anchorage, Alaska 99501-5996 • Tel. 907/276-3400 • Fax 907/258-7368

March 14, 1990

Legislative Information Office
Public Opinion Office
Anchorage

FAX # 562 4376

TO: Members of the Alaska Senate and House of Representives

This is to urge your support of

House Bill No. 544 - Re alternative sentencing and related programs for prisoners
and
House Bill No. 545 - Relating to sentencing practices and procedures

I believe these bills should be supported in the best interest of the general public - can save the state millions of dollars in cost - and will benefit deserving defendants and first-time offenders in cases where alternative sentencing is deemed appropriate.

Sincerely,

C. Harold Wirum

MARY LOU WIRUM
500 L Street, Suite 501
Anchorage, Alaska 99501
(907) 276-3628
Fax (907) 258-7368

Commercial & Investment Real Estate

March 14, 1990

Legislative Information Office
Public Opinion Office
Anchorage
FAX # 562 4376

TO: Members of the Alaska Senate and House of Representatives

I am writing to urge your support of
House Bill No. 544 - Re alternative sentencing and related programs for prisoners.
and
House Bill No. 545 - Relating to sentencing practices and procedures.
which I believe would benefit deserving defendants, and first time offenders, who have demonstrated excellent prospects for rehabilitation, as well as better serve the public by ensuring that a greater number receive counseling, occupational and living skills therapy - as well as save the State millions of dollars in cost. A large percentage of the prison population are first-time offenders, have most of their lifetimes still ahead of them, and are serving time in connection with drug-and-alcohol-related crimes, living in a prison-setting which is not conducive to the positive growth and rehabilitation which is desired. After serving appropriate sentences in terms of repayment for their offenses, these bills will parole deserving defendants under appropriate terms so that their growth and rehabilitation can continue in a normal (non-prison) setting. These young people can become contributing members of society - and hopefully can play a role in the education and determent of other young people who are susceptible to the same fate.

Most of the general public is uninformed concerning such matters unless personal experience has forced the learning experience upon them. Perhaps you as Legislators will first view this as unpopular vote-wise. However, I urge you to support these bills for the benefit of those defendants deemed deserving of alternative sentencing, and in the best interest of the general public as well.

Respectfully submitted,

Mary Lou Wirum

CCIM Certified Commercial Investment Member

The Complex Case of Costly Corrections

By Julie Lays

One out of every 420 Americans is behind bars today—at a staggering price. Can we afford to be tough on crime?

Julie Lays is an assistant editor of State Legislatures.

After Oklahoma state Senator John McCune, a 20-year legislative veteran, advocated early release of some non-violent inmates to ease the costly prison overcrowding problem in Oklahoma, he was defeated in the next election.

McCune, once the Senate's expert on prisons, acknowledged that support for alternatives to incarceration is viewed by many as being "soft on crime." "It cost me my seat," he said.

Yet the increasingly high costs of corrections are causing prudent lawmakers to realize how "getting tough on crime" is tough on the state budget. More stringent law enforcement, higher conviction rates and longer sentences are making already crowded prisons and jails even worse. The expense of building new prisons, as well as such operating costs as health care, salaries, food, clothing and security devices, continues to increase.

"The cost of operating the nation's prisons and jails has tripled during the past decade," says James Austin, director of research for the National Council on Crime and Delinquency. "Many states are now seeing that escalating prison budgets threaten to curtail vital services for health, education and transportation. Unless there is a significant reversal in these trends, prisons will continue to be the growth industry for most states. We are simply punishing beyond our means."

Nationwide, the prison and jail population has doubled in the past decade. There are about 600,000 prisoners in state facilities today—that is one of every 420 Americans—the highest rate in the Western world. State spending for corrections continues to grow at a faster rate than total state spending.

According to the Criminal Justice Institute, 68.4 percent of American prisons are operating above capacity, 36.7 percent are operating above 125 percent capacity, 21.7 percent above 150 percent, and 1.7 percent above 200 percent. In fact, at least 37 states are now under court orders to reduce prison overcrowding. This leads many lawmakers to assume the solution lies in building new prisons. But it is an expensive solution.

A new 500-bed prison typically costs between $15 million and $60 million. According to the *Corrections Compen-*

By permission of Johnny Hart and NAS Inc.

dium, depending on the type (low, medium or maximum security) and the location of the prison, new prison beds can cost between $3,500 and $116,000 to construct. The average cost is about $42,000 per bed.

In North Carolina, the largest prison construction program in the state's history is under way—the construction of 2,554 beds and facilities at a cost of $29.3 million. In Michigan they're building 19 new prisons. "There's no bigger growth industry in the last two years in Michigan than the corrections department," said Senator Jack Welborn. Alabama has spent $90 million in the last five years for prison construction; that translates into almost $1,000 per Alabama family per year. "Texas needs to build 25,000 beds immediately," says the mission statement of the Texas Department of Corrections, "and then one prison every eight months to infinity" to keep up with the incarceration rates. And California estimates it will take up to $6 billion worth of construction to solve its prison and jail crowding crises.

"This is craziness," said Senator Sue Wagner, referring to her state of Nevada, which has the highest incarceration rate in the country. "I can't believe the citizens of my state want to build a new prison every time we legislators get together in Carson City."

While building prisons is costly, keeping them going is even more expensive. Prisons are complete, miniature communities that provide health care, vandal-proof shelter, food, water and sewer, recreation and employment all in a secure environment. "Construction costs are only a fraction of the operating costs of prisons," said Tennessee Senator Bill Richardson. Keeping an inmate in prison usually runs between $10,000 and $39,000 a year. In some states costs are far higher.

And if you think more liberal use of the death penalty would save money, think again. According to Jonathan Gradess, executive director of the New York State Defenders Association, the cost of life imprisonment for 40 years is around $602,000 while the expense of a model New York capital case across the first three levels of review—the trial and penalty phase, the appeal and the review in the U.S. Supreme Court—is about $1.8 million. He agrees with Justice Thurgood Marshall's statement of 15 years ago: "When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in

Ways to Cut Costs Are Already in Motion

• *Intensive Probation.*

Georgia's intensive probation program, a model for projects in several other states, began in 1982. Costs are controlled by keeping certain non-violent offenders out of state prisons, sentencing them instead to intense probation that requires five face-to-face contacts per week with a surveillance officer, 132 total hours of mandatory community service work, mandatory employment, a weekly check of arrest records, and routine and unannounced alcohol and drug testing. Offenders spend six to 12 months in the program followed by a year on regular probation. Most have committed property or drug-related offenses. The program costs an average of $1,600 per offender per year compared to $9,000 to incarcerate one inmate.

• *House Arrest.*

Florida has led the way in this area, but many states are beginning to see the benefits of such programs. The North Carolina General Assembly appropriated $253,000 last year to expand the electronic house arrest program, whose first-year funding was $65,000.

Wyoming is experimenting with a house arrest program at a start-up cost of only $30,000. It's Surveillance and Tracking of Offenders Program (STOP) places non-violent property offenders under house arrest monitored by special electronic devices, allowing them to leave home only to go to work or to pre-approved appointments. Governor Mike Sullivan said the cost of STOP is $14 a day compared with $35 a day in the state prison.

• *Sentencing Guidelines.*

Chase Riveland, director of the Washington Department of Corrections, estimates that sentencing guidelines have saved his state the cost of three new prisons. Some $30 million has also been returned to the general fund. In fact, the guidelines have been so successful in reducing prison populations that Washington can rent cells to other states, housing their inmates for $60 per day, per cell. The program is expected to bring the state $20 million between 1987 and 1989.

• *Prison Industries.*

In California the Prison Industry Authority, which employs more than 5,000 inmates, says it saves taxpayers $17 million annually in housing and program costs. By 1991 this savings is projected to increase to $55 million.

In Minnesota, between 5 percent and 10 percent is deducted from inmates' wages if they earn more than $50 every two weeks, allowing the corrections department to transfer up to $100,000 each year to the Public Safety Department's Crime Victims Reparations Board. The funds are used to pay such victims' costs as medical bills, counseling expenses, funeral expenses, support for dependents and loss of wages.

In Illinois, prisoners have been trained in the removal of asbestos and have begun to remove the material from correctional facilities. Correctional Industries Superintendent Robert Orr projects the cost of using the inmates for one building at $150,000, compared to an estimate of $300,000 to $500,000 if a private contractor did the work.

Best Western International, a non-profit association of hotel and motel owners, installed and paid for a computerized telephone reservation system in a minimum-security facility near Phoenix, Ariz. The company trains inmates and pays them the same wages as other agents. Prisoners get to keep a third of their pay, a third goes to the state to offset the cost of incarceration, and a third goes to a trust fund set up for inmates being released.

—*Julie Lays*

Annual Cost of Sentencing Options

(Exclusive of Construction Costs)

Option	Annual Cost
Routine probation	$ 300- 2,000
Intensive probation	$1,500- 7,000
House arrest	
Without electronics	$1,350- 7,000
With telephone call-back system	$2,500- 5,000
With passive electronic monitoring	$2,500- 6,500
With active electronic monitoring	$4,500- 8,500
Local jail	$8,000-12,000
Local detention center	$5,000-15,000
State prison	$9,000-20,000

Source: Joan Petersilia in Expanding Options for Criminal Sentencing, *Santa Monica, Calif.: The RAND Corporation, November 1987.*

prison for life."

Prisons are assailing state revenues. In Ohio, the corrections budget increased 16.5 percent last year while the general budget grew only 4 percent. Texas general budget grew by 6.8 percent, its corrections budget by 33.8 percent. California's operating budget for the department of corrections reached $1.2 billion in 1985 and is expected to hit $3 billion by 1990. According to Greg Schmidt, chief consultant to the California Senate Judiciary Committee, the department of corrections has become "California's version of the Defense Department."

In 1987, according to the Census Bureau, the 50 states spent more than $11.7 billion on corrections, including $9.3 billion for current operations and $1.4 billion for construction.

One reason corrections costs are taking up a bigger portion of the general state budget is that state aid for local corrections programs is now the fastest growing category of state aid to local government. Total state spending for corrections was $11.7 billion in 1987; local aid is 8 percent of all state corrections expenditures. In fiscal 1987, states provided $932.5 million in aid to local governments. This represents nearly four times as much corrections aid as was provided in 1980.

Of course, state corrections aid to local governments varies tremendously from state to state. In five states—Connecticut, Delaware, Hawaii, Rhode Island and Vermont—all corrections expenditures are made by the state government. Nineteen states did not offer local aid in 1987. In the remaining states there are wide differences in how specific responsibilities are allocated. For example, some states house state prisoners in local jails but in other states they must be housed in state prisons. In fact, many states use local jails to house state prisoners without fully reimbursing the local governments.

"We need to look more strongly at alternatives instead of building more prisons," says Parker Evatt, a member of the South Carolina House of Representatives for 13 years and now the commissioner of the South Carolina Department of Corrections. "Our prison system is growing by about 800 people per year. That's a new prison every year. Let's look at more home arrest, intensive probation, restitution centers, halfway houses and parole and probation. Let's really use electronic monitoring instead of playing with it."

Are these alternative programs cheap? No. Are they cheaper than incarceration? Usually. For example, Georgia has a number of alternative programs—from basic probation to intensive probation and home confinement to "boot camp" for young convicts—that range in daily costs from 75 cents to $36.50 per person. The cost of keeping an inmate in a Georgia prison is estimated at $36.85 per day.

Intensive probation supervision is one alternative being tried in 40 states. Most programs require community service, periodic checks of local arrest records, curfews or house arrest, random drug and alcohol testing, restitution to victims, employment and payment of a probation fee.

Home arrest, often using electronic monitoring devices, is another strategy being used in at least 50 different locations. Home arrest allows non-violent criminals to be incarcerated in their homes rather than in premium prison cells. If they leave home without permission, the electronic anklets or bracelets will report that to the police.

Sentencing guidelines have been used successfully in a couple of states not only to standardize penalties but also to reduce costs. The guidelines are based on a grid that coordinates the specific offense with the criminal record. The systems ensure that costly prison space is reserved for truly dangerous criminals, while the non-violent offenders are subject to a variety of alternative punishments.

Can states save money through inmates' labor? Most states operate prison industries, which can take at least three different forms: production of such things as desks and license plates, for use directly by government; use of prisoner labor for prison maintenance; and private sector jobs within prison walls.

Forty-eight states and the federal prison system have more than 50,000 prisoners working in prison industries producing more than $860 million in annual sales, mainly to federal, state and local governments and non-profit organizations. About 10 percent of all inmates work in prison industries.

A major benefit of prison industries is that they are usually self-supporting or even if they are not, they are less expensive than alternative inmate services such as vocational training and basic education. In some states, inmate wages, which averaged about $3 per day in 1986, have deductions made to reimburse the corrections department for a portion of the cost of the inmate's incarceration, to contribute to the financial support of their families, and to pay into victims' compensation funds. In addition, 16 states have experimented to a lesser degree with private-sector prison industries in which inmates work for a private firm operating within the prison. Inmates may earn the minimum wage and contribute relatively large amounts toward the costs of their incarceration.

With new prisons needed every day to keep up with the "lock 'em up" philosophy prevalent today, something is going to have to give. Until the public accepts alternatives to incarceration as legitimate punishment, legislators will be faced with tough decisions.

N C C D

FOCUS

THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY

JULY 1988

Ranking the Nation's Most Punitive and Costly States

By James Austin, Ph D and Marci Brown

HIGHLIGHTS

This issue of NCCD FOCUS represents the second annual "Ranking the Nation's Most Punitive States." The United States, now with more than 625,000 inmates in prison, has long been recognized as a country that imprisons a large portion of its population. Since 1980, the nation's imprisonment rate has nearly doubled.[2] Presently, over 40 states are under some form of litigation related to crowding or unconstitutional conditions of confinement.

This surge in the number of inmates has been interpreted by some as an indication of a more punitive attitude toward the crime problem that characterizes the politics of contemporary criminal justice. Punitive attitudes have traditionally been cited as the reason certain states and regions have higher imprisonment rates than the nation as a whole.

As states respond to the pressure of overcrowding, more attention is being paid to comparing states in terms of their use of other forms of control in addition to prisons. And, states are also concerned with the high costs of these systems. State and federal prison population data, the most obvious means of calculating comparative imprisonment rates, reflect only a single component of a jurisdiction's correctional system and exclude other far-reaching forms of incarceration and control, including jails, juvenile facilities, and parole and probation.

For these reasons, the domain of prison control must be evaluated in relation to, and in many cases as overlapping with, the control exercised by other correctional control systems. This has become all the more obvious in recent years, as many states, facing crisis situations in their prisons, have placed many offenders in a wide variety of non-prison correctional settings.

The major findings of this report are:

- The nation's use of prisons, jails, probation and parole continues to grow at record levels. More than one out of every 100 persons are under the control of the criminal justice system.[3]
- Washington, D.C., ranks number one in all forms of punishment and criminal justice expenditures. Despite an enormous investment in criminal justice agencies, policy makers have recently chosen the nation's capitol as the site for further investment in more incarcerative policies.
- The South continues to have the highest regional imprisonment rate and the highest total control rate. However, the West, fueled by dramatic increases in California, has the highest regional total incarceration rate (including jails and juvenile facilities, as well as prisons).
- In 1987, it cost each man, woman, and child $211 per year to fund state and local criminal justice systems. This figure compares with $95 in 1979.
- There is a strong correlation between rates of criminal justice expenditures and crime rates. States that spend the most on criminal justice have the highest crime rates. Despite a continuing increase in expenditures for criminal justice agencies and in the use of formal punishment, crime rates continue to escalate.

IMPRISONMENT VS. TOTAL INCARCERATION RATES

The most commonly used gauge of the punitive nature of a state or geographic region is the imprisonment rate. This rate typically refers to the number of persons in prison on a given day, per 100,000 state population. Southern states have historically had the highest levels of imprisonment in the country, which has been interpreted by some experts as reflecting the conservative political and social values of that region.

Table 1 shows the rates of imprisonment for the 50 states and Washington, D.C. Among the 15 states with the highest rates of imprisonment, 11 were Southern states (including Washington, D.C.). The table also shows that the Southern region had the highest imprisonment rate followed by the West, Midwest and Northeast. Among the 15 states with the lowest rates of imprisonment, seven states were in the Northeast and six were in the Midwest.

Overall, state rankings for imprisonment varied little from last year's report, which used 1986 data. However, a few states showed significant increases or decreases in their imprisonment rate between 1986 and 1987. Interestingly, Washington, D.C., which has the highest imprisonment rate in the nation, increased its imprisonment rate from 1,078.4 in 1986 to 1,197.4 per 100,000 in 1987. Alaska is second with a rate of 481.5 per 100,000 and replaces

Table 1: Imprisonment vs. Incarceration Rates

Rank	State	1987 Population*	1987 Prisoners	Imprisonment Rate**	Rank	State	1987 Persons in Jail**	Jail Rate**	1987 Juveniles in Custody	Total Incarceration Rate***
1	D.C.	622	7,448	1,197.4	1	D.C.	1,476	269.1	413	1,533.0
2	Alaska	525	2,528	481.5	2	Nevada	1,925	191.1	482	679.3
3	Delaware	666	2,931	455.1	3	Louisiana	10,300	230.8	1,028	508.6
4	Nevada	1,007	4,434	440.3	4	Alaska	0 *	0 *	178	515.4
5	South Carolina	3,425	12,684	369.8	5	California	60,802	219.7	14,712	515.1
6	Louisiana	4,461	15,375	344.7	6	Arizona	5,137	131.7	1,019	305.1
7	Arizona	3,386	10,948	323.3	7	South Carolina	3,675	107.2	715	497.9
8	Alabama	4,083	12,827	314.2	8	Florida	24,602	206.6	2,311	491.1
9	Georgia	6,222	18,573	298.5	9	Delaware	0 *	0 *	168	481.4
10	Maryland	4,535	13,467	297.0	10	Georgia	9,504	152.7	1,338	472.8
11	Oklahoma	3,272	9,639	294.6	11	Alabama	4,326	105.9	804	439.8
12	Florida	12,023	32,443	269.9	12	Maryland	4,985	109.9	1,032	429.6
13	North Carolina	6,413	17,269	269.0	13	Tennessee	10,514	216.5	1,038	395.0
14	Mississippi	2,625	6,831	260.2	14	Oklahoma	2,734	83.53	446	389.8
15	Michigan	9,200	23,879	259.6	15	Texas	23,453	139.6	2,421	385.3
16	California	27,663	66,975	242.1	16	Virginia	7,738	131.0	1,456	381.4
17	Kansas	2,476	5,881	237.5	17	New Jersey	13,107	170.8	1,997	374.9
18	Connecticut	3,211	7,511	233.9	18	New York	23,696	132.9	2,226	374.5
19	Texas	16,789	38,821	231.2	19	Michigan	8,567	92.60	1,816	372.2
20	New York	17,825	40,862	229.1	20	North Carolina	5,380	83.89	812	365.5
21	Arkansas	2,388	5,461	227.9	21	Kansas	1,916	77.30	676	342.1
22	Virginia	5,906	13,321	225.6	22	Ohio	7,729	80.94	3,126	334.7
23	Ohio	10,784	24,240	224.8	23	Arkansas	1,982	82.99	249	321.4
24	Missouri	5,103	11,357	222.6	24	Oregon	2,469	90.63	592	313.6
25	Hawaii	1,083	2,288	209.4	25	Mississippi	1,018	38.78	355	312.5
26	Oregon	2,724	5,682	201.2	26	Indiana	4,710	85.15	1,320	304.8
27	Indiana	5,531	10,827	195.8	27	New Mexico	1,428	95.2	491	304.5
28	Wyoming	490	960	191.8	28	Wyoming	377	76.93	173	308.1
29	New Jersey	7,672	13,682	178.1	29	Illinois	12,816	108.9	1,930	297.0 *
30	New Mexico	1,500	2,668	176.5	30	Missouri	2,854	55.92	815	294.5
31	Illinois	11,581	19,830	171.4	31	Kentucky	4,696	123.9	607	289.1
32	South Dakota	709	1,133	160.1	32	Washington	5,281	116.3	1,134	276.5
33	Tennessee	4,855	7,624	157.0	33	Colorado	3,795	113.0	503	276.5
34	Idaho	998	1,482	148.5	34	Wisconsin	3,750	110.6	686	258.7
35	Kentucky	3,727	5,471	146.8	35	Pennsylvania	13,195	110.5	1,103	256.1
36	Montana	809	1,187	146.7	36	Connecticut	0 *	0 *	227	241.0
37	Colorado	3,296	4,808	145.9	37	South Dakota	296	41.66	228	233.7
38	Rhode Island	988	1,429	144.9	38	Montana	612	50.92	228	225.8
39	Vermont	548	759	138.5	39	Idaho	610	61.12	117	223.3
40	Pennsylvania	11,936	16,267	136.3	40	Hawaii	0 *	0 *	149	223.2
41	Washington	4,536	6,131	135.1	41	Nebraska	1,176	73.65	274	221.7
42	Nebraska	1,596	2,086	130.7	42	Iowa	2,736	96.54	427	212.6
43	Wisconsin	4,807	6,001	124.8	43	Massachusetts	4,740	80.95	212	191.1
44	Utah	1,680	1,888	112.4	44	Utah	1,066	83.45	217	188.8
45	Maine	1,187	1,328	111.9	45	Maine	572	48.16	214	178.1
46	Massachusetts	5,855	6,238	106.5	46	New Hampshire	807	78.34	126	170.3
47	Iowa	2,834	2,865	101.0	47	Rhode Island	0 *	0 *	105	155.6
48	New Hampshire	1,057	867	82.0	48	Minnesota	3,106	73.15	581	146.8
49	West Virginia	1,897	1,461	77.0	49	West Virginia	1,154	60.83	141	145.3
50	North Dakota	672	430	64.0	50	Vermont	0 *	0 *	15	141.2
51	Minnesota	4,246	2,546	60.0	51	North Dakota	245	36.45	69	110.7
REGION					REGION					
SOUTH		83,885	221,592	264.2	WEST		83,320	167.6	19,995	432.7
WEST		68,699	151,719	220.8	SOUTH		117,735	140.4	15,333	422.8
MIDWEST		59,538	105,095	176.6	NORTHEAST		56,115	111.6	6,223	300.8
NORTHEAST		50,277	88,903	176.8	MIDWEST		52,675	88.5	11,948	295.1
TOTALS		249,399	533,309	213.8	TOTALS		309,845	124.3	53,303	388.6

* Total population in thousands

** Average daily jail populations for 1987 are estimates drawn from published reports and phone calls to individual state officials

*** Per 100,000 total population (1987), as reported in the 1987 UCR.

**** Number of persons in prison, jail, and juvenile facilities per 100,000 total population (1987)

* In the states of Alaska, Connecticut, Delaware, Hawaii, Rhode Island and Vermont, which maintain combined prison and jail systems all inmates are accounted for in the prison figures

Nevada as the state with the highest imprisonment rate. However, Alaska's high ranking is misleading as its prison figures include persons awaiting trial or serving short sentences. In most other states these inmates are counted in jail populations.

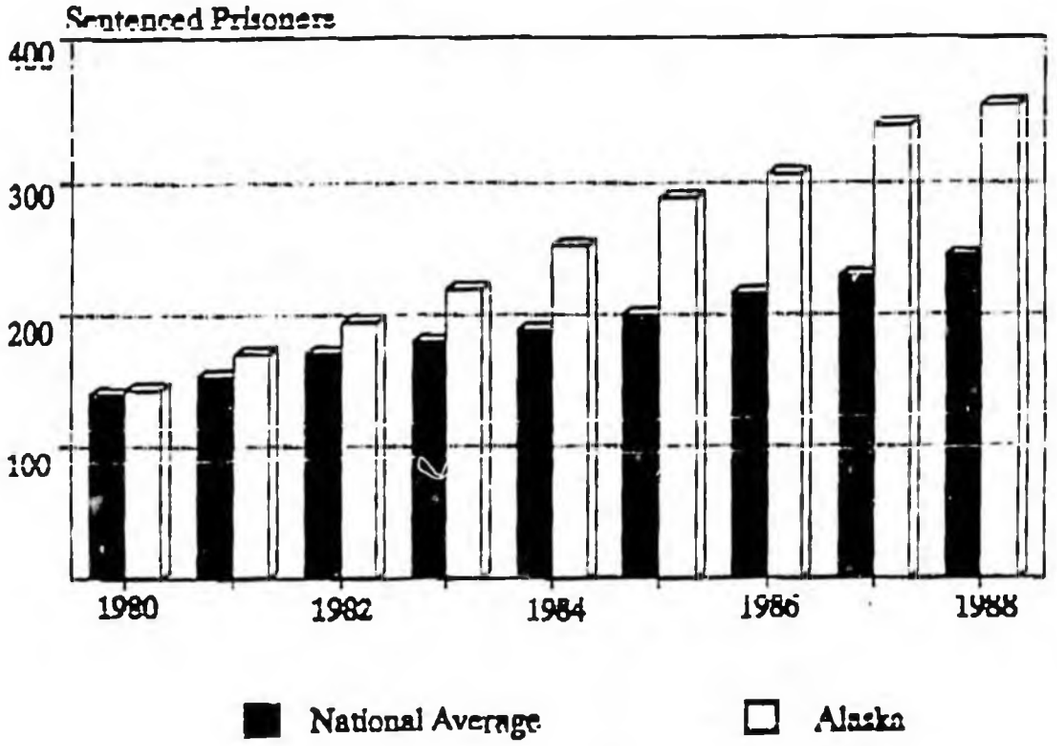
To correct for this bias, we created a "total incarceration rate" which includes prison and jail populations and juveniles in custody.[4] When the states are ranked according to this criterion, the West replaces the South as the nation's leader with a rate of 432.7 per 100,000. Nevada reassumes its number one state ranking, and D.C. continues to have the highest rate of incarceration (four times the national average). California's dramatic increase in prison, jail and juvenile facility populations is the main reason the West has taken the lead in incarceration. Since the previous NCCD report, California added about 6,500 inmates to its prison population, more than 19,000 inmates to its jail population, and 2,100 children to its juvenile facilities.

When the total incarceration measure is compared to the imprisonment rate, significant changes occur among the states with respect to their national ranking. Tennessee, for example, moves from 33 to 13 in total incarceration, in part because the state houses many state prisoners in local jails due to a consent decree restricting prison populations. The same phenomenon also explains increases in rankings for other states including New Jersey, Texas, and Louisiana.

Connecticut, on the other hand, moves down to a rank of 36 for total incarceration compared to a rank of 18 for imprisonment. Similar declines for other states, such as Hawaii, Rhode Island and Vermont, simply reflect that they also have consolidated jail and prison systems.

Trends in Alaska Corrections

Rates of Incarceration * National Average vs Alaska



* Rate per 100,000 resident population
Figures from Bureau of Justice Statistics, U.S. Department of Justice

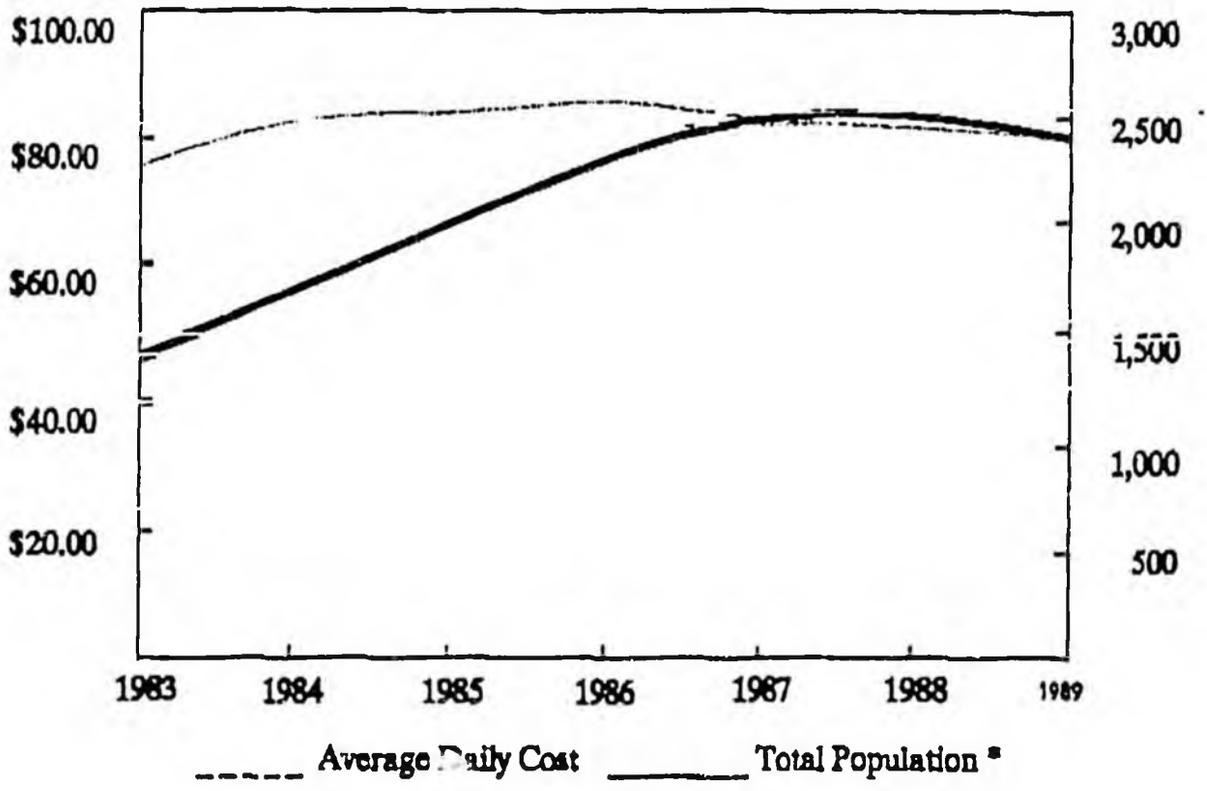
Department of Corrections

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
Number of Inmates	2,027	2,340	2,491	2,541	2,603	2,846
Number of Employees	993	1,003	999	1,150	1,269	1,277
Operating Budget	$71,497.2	$78,470.6	$78,291.4	$84,935.2	$94,624.3	$96,759.9

11/89

Trends in Alaska Corrections

Population vs Cost of Supervision
Fiscal Year 1983 - 1989



* Total population on December 31st of each year

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 544 No. 1
PUBLISH DATE: HOUSE 3/21/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act authorizing the Department of Corrections to establish..."
Sponsor: Reps. Koponen, Gruenberg
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	84.6	84.6	84.6	84.6	84.6	84.6
TRAVEL	7.5	7.5	7.5	7.5	7.5	7.5
CONTRACTUAL	180.0	180.0	180.0	180.0	180.0	180.0
SUPPLIES	25.0	25.0	25.0	25.0	25.0	25.0
EQUIPMENT	101.0		96.0		96.0	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	398.1	297.1	393.1	297.1	393.1	297.1
CAPITAL	96.0		96.0		96.0	
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	302.1	297.1	297.1	297.1	297.1	297.1
FEDERAL FUNDS						
OTHER	96.0		96.0		96.0	
TOTAL	398.1	297.1	393.1	297.1	393.1	297.1

POSITIONS:

FULL-TIME	1	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: 03/20/90

Approved by Commissioner: Susan Humphrey-Barnett
Date: 03/20/90
Agency: Department of Corrections

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ANALYSIS

This legislation, as currently worded could have a tremendous fiscal impact upon the Department of Corrections. Legal counsel has advised us that the phrase "alternative sentencing programs and training, counseling, and " may be interpreted to expand the State's liability in the areas of training and counseling and cause the need to expend significantly more monies in this area to limit this liability. A conservative estimate of yearly funding to provide inmates with additional training and counseling is $398.1 and is based upon requested but unfunded FY91 needs in statewide programs.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

MICHAEL CLEARY, DEMETRY KENEZUROFF, HARRY MORGAN, BOB OWEN, THOMAS WALTER, and ERNEST MORGAN, on behalf of themselves and all other persons who are now or will be similarly situated,	)
Plaintiffs,	)
vs.	)
ROBERT SMITH, Commissioner, Department of Health and Social Services; ROGER ENDELL, Director, Division of Adult Corrections, Department of Health and Social Services; VERNON CAULKINS, Assistant Director, Division of Adult Corrections, Department of Health and Social Services; REVEREND WILLIAM LYONS, BEVERLY DUNHAM, FREDERICK PETTYJOHN, AL WIDMARK, and CONRAD MILLER, all of the Alaska Parole Board; SAMUEL TRIVETTE, Executive Director of the Alaska Board of Parole; and their subordinates, employees, and agents,	)
Defendants.	)

Case No. 3AN-81-5274 Civil

MEMORANDUM DECISION
AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction

In this Memorandum Decision, the Court explains its principal findings of fact and conclusions of law adopted in this case. Separate, detailed sets of findings of fact and conclusions of law, along with a separate order setting forth specific remedies, have been issued simultaneously with this Memorandum Decision.

Initially, the Memorandum Decision summarizes the Court's findings of fact and conclusions of law. The Decision then discusses the procedural background of this complex litigation, and then addresses general principles of law applicable to this case, as well as general findings of the Court. Thereafter, the Decision separately considers each issue litigated at trial, namely, overcrowding, health care, search and seizure, staffing, training, programs, access to files, regulations and

urinalysis testing. Remedies and attorneys' fees and costs are briefly discussed at the end of the Decision.

II. Summary

The Court's most significant findings of fact and conclusions of law, and remedies, are summarized on an issue-by-issue basis below.

A. Legal Principles Generally

Consistent with applicable federal authority, the Court has adopted the "cruel and unusual punishment" standard evolved under the Eighth Amendment to the United States Constitution for analyzing prison conditions of convicted and sentenced prisoners, and the punishment standard evolved under the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution for analyzing prison conditions for pretrial detainees. The Court has also adopted the "totality of conditions" analysis of federal cases under federal law in examining plaintiffs' federal and state constitutional claims in this case.

The Court has also interpreted the cruel and unusual punishment prohibition of Article I, §12 of the Alaska Constitution for sentenced offenders, as well as the due process clause of Article I, §7 of Alaska's Constitution for pretrial detainees, in a manner similar to the federal standards. The Court has additionally looked to relevant Alaskan statutory authorities, e.g. AS 33.30.020, in considering plaintiffs' claims.

B. Analysis Of Individual Issues

1. Overcrowding

Generally, the Court concludes that defendants' institutions were not, at the time of trial, unconstitutionally overcrowded. In so holding, the Court concludes that "double bunking" of cells is not unconstitutional per se, but that the "totality of conditions" of each institution must be considered.

The Court finds and concludes that the single largest and most difficult problem facing defendants and DOC is "overcrowding:" defendants' ability to provide, through limited resources, constitutionally adequate housing, staffing and programming for Alaska's spiraling prison population. Alaska's

prisons were, at the time of trial, generally filled to their operating capacities and/or extended capacities, and indeed, have occasionally exceeded such capacities. The Court concludes that in order to prevent unconstitutionally overcrowded housing conditions from occurring in such prisons, presumptive population "caps" or ceilings for each institution, and for the state-wide system generally, must be established. In a "tentative decision," the Court has tentatively established such population "caps" for each institution and for the system. After an opportunity for comment from the parties, such decision will be transformed into a final order.

The Court also finds that defendants' prison population projections for the near future, and plans to accommodate such population increases, are unreliable. First, although defendants have examined the frequency of prison admissions over the recent past, defendants admittedly have not studied the effects of Alaska's presumptive sentencing scheme, and have not factored such effects into their population projections. Understanding the effects of Alaska's presumptive sentencing scheme on Alaska's increasing prison populations is, in the Court's view, critical to making credible population projections in the future. Second, the Court finds that defendants' ambitious construction and expansion plans to meet such increased populations also lack credibility. One set of plans was presented at trial, and a vastly different set of plans was offered at a post-trial, post-legislative hearing. Accordingly, the Court has ordered defendants to conduct a reliable study of the effects of Alaska's presumptive sentencing on DOC's prison population projections, and to report to the Court, at a subsequent hearing, on such revised population projections along with defendants' revised plans to meet prison population increases.

The Court has also ordered certain other relief in connection with the housing of inmates in nonresidential areas of defendants' institutions, multiple occupancy of punitive and administrative cells, and defendants' long term plans for Third

Avenue, Ridgeview, and dormitory residential arrangements at the various institutions.

The Court also finds that the costs of increased prison populations present serious financial burdens to defendants. Specifically, the Court finds the cost of maintaining a prisoner in an institutional bed to be approximately $75.00 per day; in a halfway house bed to be approximately $43.00 per day; and under parole or probationary supervision to be approximately $2.50 per day; and the ratio of operating costs to construction costs, over 30 years, to be 16 to 1.

The Court also concludes that to meet Alaska's spiraling prison population, defendants will likely have to involve various alternatives currently available to them, including procuring or building new housing, expanding the use of halfway houses, increasing the use of work and rehabilitation furloughs, and continuing the use of the executive clemency or commutation program.

2. Health Care

The Court finds and concludes that generally, defendants' health care system meets constitutional and statutory requirements. Areas where improvements are indicated include backup physician services in the Anchorage bowl area, mental health and psychiatric or psychological services in the more remotely located institutions, increased dental care services, increased medical-related transportation services, and a medical records clerk position for Anchorage.

The Court has also required defendants to promulgate a regulation or policy requiring medical personnel only to dispense medications to inmates.

3. Search And Seizure

The Court concludes that prisoners retain diminished rights to privacy under the federal and state constitutions. The Court also concludes that random and unannounced cell searches or "shake-down" searches, even in the absence of the

prisoner, do not violate federal or state constitutional privacy provisions.

With respect to "strip" searches or visual body cavity searches, the Court concludes that under Alaska's Constitution, defendants must have, in non-emergency, non-contact visit situations, a reasonable basis to conclude that contraband is being concealed by inmates on their person before conducting such searches.

With respect to intrusive body cavity searches, the Court concludes that under Alaska's Constitution, defendants must have a showing of probable cause to believe that contraband is being secreted in a prisoner's body cavity before conducting an intrusive body cavity search. Additionally, such searches must be conducted by medical personnel only.

Defendants have been ordered to submit proposed regulations and/or policy statements conforming to the Court's conclusions and holdings.

4. Adequacy of Staffing

Generally, the Court finds and concludes that defendants' level of staffing throughout its institutions meets minimal constitutional and statutory requirements. In so holding, however, the Court notes that defendants' expert, Dr. Allen Ault, recommended that defendants obtain 184 new staff positions system-wide in 1984, but that the legislature appropriated funds for less than 50% of such positions recommended. The Court also notes that certain institutions, notably CIPT, were marginally staffed at the time of trial. The Court generally finds that staffing needs will increase with increased prison populations, additional institutions, and programming needs. Accordingly, the Court has ordered defendants to report to the Court, at a hearing in the future, on the level of staffing funded by this year's legislative session.

5. Training

The Court finds and concludes that generally, the training procedures and activities of defendants are

constitutionally adequate. The Court declines to require, as a matter of constitutional or statutory requirement, any particular entrance-level screening instrument to be utilized by defendants. The Court finds that the recommendation of experts to the effect that additional training in areas such as cross-cultural awareness, interpersonal skills, communications abilities and the like, are sensible, and recommended. The Court has required defendants to submit to the Court a proposed regulation or policy statement regarding the retraining of corrections officials who have been disciplined or suspended.

6. Rehabilitative Programming

The Court has held that under the "reformation principle" of Article I, §12 of the Alaska Constitution, prisoners have a right to receive, and correctional officials have an obligation to provide, at least minimal rehabilitative programming offerings, adopted in good faith and on a rational basis by correctional officials, and designed to assist prisoners in reforming their criminal conduct and rehabilitating themselves into useful, contributing members of society. Statutory authority, including AS 33.30.020, likewise requires the provision of some rehabilitative programming to prisoners, including pretrial detainees. The Court also holds that prisoners have standing to litigate the issue of their right to receive reformation programming or treatment.

In so holding, however, the Court concludes that neither the Alaska Constitution nor Alaska statutes guarantee or assure any particular prisoner or groups of prisoners that they will, in fact, be rehabilitated or reformed by the end of their incarceration. Nor has the Court held that prisoners must receive rehabilitative programming at all times during their period of incarceration. Finally, the Court has not held that any single or particular model or theory of rehabilitative programming -- including the so-called "cognitive deficit theory" or model urged by the plaintiffs at trial -- is mandated by Alaska's Constitution or statutes.

The Court generally finds that, with certain exceptions, the defendants' programming offerings throughout their institutions meet the requirements of Article I, §12 of the Alaska Constitution as well as relevant statutory provisions.

The Court finds, however, that as of the time of trial, no ongoing evaluation study has been utilized by defendants to determine the efficacy of their programming. Accordingly, the Court has ordered defendants to develop and implement a medium and long term evaluation study, including recidivism studies, to provide defendants with information by which they may be able to evaluate the efficacy of rehabilitative programs, and mixes of programs, offered to particular inmates.

The Court also concludes that defendants' policy of requiring prisoners to have a high school or G.E.D. diploma and to score at the 9th grade functional level on the Iowa Basic Skills Test, before being given access to post-secondary educational classes, is arbitrary, inconsistent with applicable statutes, and invalid. Defendants are ordered to discontinue this policy.

The Court finds that the use of entry-level, basic needs screening procedures and tests is desirable, but requires defendants to utilize testing instruments which are validated and "normed" for prisoners taking the test, particularly including minority prisoners, such as Alaska Natives.

Finally, the Court has ordered the provision of additional limited programming offerings at Fairbanks Correctional Center for women inmates, Third Avenue, and Ketchikan Correctional Center (post-secondary educational offerings).

Of general concern to the Court is the serious problem of idleness which exists to varying degrees throughout the institutions in Alaska's correctional system. The availability of meaningful work opportunities, along with rehabilitative programming offerings, would reduce the level of idleness throughout the system, increase rehabilitative prospects, and decrease the risks of violence, conflict and tension.

7. Access To Files

The Court concludes that there is no merit to plaintiffs' contention that defendants' procedures and restrictions on access to prisoners' files violate prisoners' statutory or constitutional rights.

8. Constitutionality Of Regulations

The Court concludes that three of defendants' regulations are invalid or unconstitutional, and must be revised.

Specifically, the Court holds that 7AAC 60.400(b)(21), which defines "prohibited conduct," including a "major infraction" is unconstitutionally vague.

The Court also holds that 7AAC 60.320(a), and 7AAC 60.330, which disqualify prisoners from consideration for eligibility for work furloughs until they have six months or less remaining on their sentences is arbitrary, irrational, and inconsistent with AS 33.30.250(g).

The Court also holds that 7AAC 60.335, pertaining to the revocation of furlough without a prerevocation hearing, in the absence of an emergency, is unconstitutional.

The Court has ordered defendants to submit revised drafts of the foregoing regulations, consistent with these holdings, within 30 days.

9. Constitutionality Of Urinalysis Testing Program

The Court has rejected as without merit plaintiffs' claims that disparate sentences imposed on different inmates resulting from positive urinalysis tests are unconstitutional or unlawful.

The Court also finds that defendants' present policy and practice of preserving urine samples until the conclusion of any disciplinary proceeding, to enable a prisoner to have a separate analysis conducted thereon at his own expense, is appropriate and should be continued in the future.

C. Remedies

The Court has ordered a number of specific remedies in a simultaneously-issued remedial order.

Generally, the Court does not intend to engage in any day-to-day management or administration of Alaska's prisons or prison system. Rather, the Court will monitor compliance with the partial settlement agreements previously entered herein, as well as the remedial order issued simultaneously herewith. In so doing, the Court will continue to use a Special Master as may be appropriate, and will continue to require periodic compliance reporting and/or will hold such additional hearings in the future as may be appropriate.

D. Attorneys' Fees And Costs

The Court has concluded that on balance, plaintiffs are the prevailing parties in this litigation, in view of the substantial change in defendants' policies, practices and procedures effected, prompted and/or adjudicated as a result of the two settlement agreements previously entered herein, and the trial herein.

III. Procedural Background

This complex prisoners' rights class action was originally brought in 1981. Over the ensuing several years, the scope of the litigation was expanded, through four successive amendments to the complaint, to assert the alleged rights of three "sub-classes" of plaintiffs-prisoners confined in correctional institutions maintained by the State of Alaska and in institutions maintained by the Federal Bureau of Prisons (FBOP") under contract to the State of Alaska. In their Fourth Amended Complaint For Declaratory Judgment And Injunctive Relief, filed herein on April 22, 1983, the various sub-classes of plaintiffs challenged a variety of conditions at each of the adult correctional institutions operated by or under contract to Alaska's Department of Corrections ("DOC" or "Department"). The plaintiffs sought extensive declaratory judgment and injunctive relief in their complaints pursuant to federal and state constitutions and statutes, and 42 U.S.C. §1983.

Parties

More specifically, sub-class A of the plaintiffs' class consists of all persons who are or will be confined as pretrial detainee prisoners in adult correctional institutions owned or operated by the State of Alaska. Sub-class B consists of all other prisoners who are, or will be, so confined with certain limited exceptions. Sub-class C consists of all Alaskan prisoners who are or will be confined in penal institutions outside of the State of Alaska which are owned or operated by FBOP.

The defendants named in this action are the Commissioner of the Department of Health and Social Services, Robert Smith; the Commissioner of DOC, formerly the Division of Adult Corrections, Roger Endell; the Deputy Commissioner of Corrections, Kevin Bruce (substituted by operation of law by Vernon Caulkins, Assistant Director, Division of Adult Corrections); the members of the Alaska Parole Board and the Executive Director of the Alaska Parole Board.

Partial Settlement Agreements

In 1982, during the pendency of this litigation, the parties engaged in extensive settlement discussions toward the end that many of the issues and claims initially brought by the plaintiffs were settled. As a result of such negotiations, two detailed and extensive settlement agreements were reached.

The first settlement agreement, the Partial Settlement Agreement And Order As To Sub-classes A and B, was executed by the parties, approved by the plaintiffs' class action, and ultimately approved by the Court on January 21, 1983. Among other things, this settlement agreement resolved issues and plaintiffs' claims regarding the following conditions or issues relating to the in-state correctional facilities: lighting, heat, ventilation and noise; clothing, bedding, hygiene and sanitation; exercise and recreation; prisoner visitation rights; telephone and mail communications; attorney-client relationships and activities; law library and prisoner access to the library and books; safety issues; certain counseling, drug and alcohol treatment issues; food service issues; certain issues regarding staff training; fire and safety and other codes; provision of certain inmate information; certain pretrial detainee rights; certain rehabilitation and treatment issues; certain pre-release and post-release support services; certain staffing issues; the establishment of a "classification" system; the development of disciplinary procedures; the establishment of staff advocates; issues regarding administrative segregation of prisoners; parole preparation issues; a procedure prohibiting retaliation against the filing of grievances; various fire and life safety issues; certain health care issues; the submission of periodic compliance reports; reasonable plaintiffs' attorney fees and costs; commissary issues; transportation issues; certain overcrowding questions; certain issues regarding religion; various infractions and penalty procedures; and other matters. As discussed below, this partial settlement agreement left unresolved a

limited number of claims of subclasses A and B, which were ultimately tried.

The second settlement agreement, Settlement Agreement And Order With Respect To Sub-Class C, executed by the parties, approved by the subclass C plaintiffs, and ultimately approved by the Court on February 4, 1982, addressed the return of Alaskan prisoners housed in FBOP facilities on or before December 31, 1987, on the condition that DOC receive legislative appropriations sufficient for the construction of a sizeable correctional facility; the development of interim standards for the transfer of Alaskan prisoners to FBOP facilities; the development of procedures for psychiatric transfers; the development of interim standards for return; the need for tentative release dates; the availability of legal materials; access to attorneys issues; the development of standards for determining statutory good time; certain Parole Board procedures; the establishment of DOC staff positions for dealing with inmates incarcerated in FBOP facilities; the establishment of classification hearings; the question of access to records; compliance procedures; and also the issue of plaintiffs' attorney fees and costs. The second settlement purported to settle all of sub-class C's claims in this litigation.[1]

Special Master For Noncompliance Issues

In connection with the foregoing settlement agreements, the Court appointed a local attorney, Eric T. Sanders, to serve as the Court's Special Master to monitor compliance with

---

[1] A separate "Interim Settlement Agreement Regarding Third Avenue Correctional Institution" and pertaining to the availability of exercise and recreation at such institution, ventilation and fire and life safety issues, was executed by the parties and approved by the Court on August 13, 1982. Similarly, a second "Interim Settlement Agreement Regarding Pretrial Detainees At Fairbanks And Juneau Correctional Institutions" providing for separate housing for felons and pretrial detainees, telephone call procedures, recreation, medical care, punitive segregation procedures, contact visitation procedures, and other issues, was executed by the parties and approved by the Court on August 4, 1982.

the agreements and to initially hear any contentions regarding noncompliance with or violations of the provisions of the agreements. Several hearings on such noncompliance (or contempt allegations) have been, and are being, held by the Special Master.[2] Such issues were not presented at the trial herein, and will not be addressed in the instant Memorandum Decision or accompanying findings of fact and conclusions of law.

Classification Procedure

A separate set of hearings and proceedings has been held regarding the development of a classification plan by defendants for convicted and sentenced inmates as well as for pretrial detainees. The hearings on such issues and related proposed administrative regulations were also not a part of the instant trial proceedings, and will also not be addressed in this Memorandum Decision or the accompanying findings of fact and conclusions of law.

Issues Remaining For Trial

Following the execution of the two partial settlement agreements, the parties continued their negotiations over the remaining issues in this action. By September, 1983, the parties were able to resolve only three additional issues: plaintiffs' claims regarding a marriage policy, access to cabin paper and pens, and visitation hours. The parties were unable to reach agreement on any other issues, which were then remaining to be tried.

A dispute arose between the parties as to what issues had been settled, and what issues remained preserved for trial in this matter. See Statement of Unresolved Issues, filed by plaintiffs on September 23, 1983; and defendants' Statement of

---

[2] In late 1984, following DOC Commissioner Endell's July, 1984 testimony indicating a disinclination to return Alaskan inmates housed in FBOP facilities to Alaskan facilities due to inadequate financial resources, Subclass C brought a contempt or non-compliance motion and sought a hearing. That matter is still pending.

Issues, filed on September 26, 1983. Following consideration of defendants' Motions For Partial Dismissal And Exclusion Of Evidence, as well as the parties' cross-motions for summary judgment on the urinalysis testing question, the Court issued two orders on January 3, 1984, clarifying the issues remaining for trial as follows:

1. Overcrowding (generally);

2. Health care (limited to the issues of medical staffing and practices or procedures generally);

3. Search and seizure (excluding defendants' procedures regarding inmate mail and telephone monitoring);

4. Adequacy of staffing;

5. Training of staff members;

6. Adequacy of educational, work and rehabilitation programs (including the alleged unconstitutional denial of inmate access to higher education);

7. Inmate access to records and files;

8. Constitutionality of regulations contained in 7 AAC 60 (except as specifically addressed in the Partial Settlement Agreement); and

9. Constitutionality of defendants' urinalysis testing program (insofar as this issue was left open following the Court's ruling on the parties' cross-motions for summary judgment as to this issue). See Order Granting in Part and Denying in Part Defendants' Motions for Partial Dismissal and Exclusion of Evidence; and Order Regarding Parties' Cross Motions for Summary Judgment on the Issue of Defendants' Urinalysis Testing Policies and Procedures; both dated January 3, 1984.

The thirteen in-state correctional facilities (owned or operated by DCC) which were the subjects of plaintiffs' class claims, are:

1. Third Avenue (in Anchorage)

2. Ridgeview (a misdemeanant housing facility in Anchorage)

3. Cook Inlet Pre-Trial ("CIPT") (a pretrial detainee facility in Anchorage)

4. Wildwood (near Kenai)

5. Fairbanks

6. Nome

7. Lemon Creek (in Juneau)

8. Johnson Human Services Center ("JHSC") (a women's and juvenile facility in Juneau)

9. Hiland Mountain Correctional Center ("HMCC") (a men's facility near Eagle River)

10. Meadow Creek Correctional Center ("MCCC") (a women's facility near Eagle River)

11. Ketchikan

12. Palmer Minimum (a minimum security work camp)

13. Palmer Medium[3]

Throughout the course of this litigation, several pretrial orders were issued and trial dates set. Ultimately, the trial commenced on January 4, 1984, and continued for approximately two months. The issues were tried to the Court, sitting without a jury. The parties presented nearly 100 witnesses (both live and by deposition), extensive briefing and legal argument, and various demonstrative aids, charts and diagrams. Approximately 290 plaintiffs' exhibits and 80 defendants' exhibits were admitted into evidence at trial. Following the conclusion of the case, the parties submitted, on April 5, 1984 and April 19, 1984, written summations along with proposed findings of fact and conclusions of law, totaling hundreds of pages.

---

[3]The DOC-operated facility at 6th and C Streets in Anchorage was the subject of a prior suit, Mosely v. Beirne, 3AN-76-1899 Civil. After a final post-trial order was entered therein by Judge Carlson, that action was consolidated into this action. No evidence was presented at trial regarding conditions at 6th & C.

New DOC facilities at Nome, Bethel and "Goose Bay" (near Wasilla) were not yet built or opened at the time of trial, but were, to varying degrees, discussed at trial.

Tours Of Prisons

Following the conclusion of the main trial herein, and during late March of 1984, the Court took a "view" or personally inspected each of the thirteen facilities which had been the subject of litigation in this trial. On such inspection tours, the Court was accompanied by counsel for both parties and/or their representatives, as well as the Special Master on certain occasions. After each inspection tour, the Court dictated on a cassette tape a summary of the activities which occurred at such institution, and made such cassette tapes a part of the record of this trial proceeding.

July 13 And 23, 1984 Hearing

At the trial, the testimony of certain key officials of defendant DOC, such as Commissioner Roger Endell and Deputy Commissioner Kevin Bruce, outlined DOC's proposed building and expansion plans designed to accommodate increases in Alaska's prison population. Such plans, in turn, depended upon funding from the 1984 Alaska Legislature, which was in session at the time of this trial. In view of the dependency of such plans on the appropriation of funding by the legislature, the Court felt it would be useful to hold a supplemental evidentiary hearing, following the conclusion of the 1984 legislative session, in order to update defendants' evidence in these areas. Two days of hearing were held on July 13, 1984 and July 23, 1984. Additional testimony was taken from various witnesses, including Susan Knighton, Commissioner Endell, and Programming Director Susan Humphrey Barnett. The parties then submitted, on August 2 and 3, 1984, supplemental proposed findings of fact and conclusions of law pertaining to the evidence adduced at the July 13 and 23 hearing.

Motions

At the close of plaintiffs' evidence during trial herein, defendants filed, on January 23, 1984, a Motion for Judgment in Favor of Defendants on Specified Issues. Defendants sought therein judgment on the issues of search and seizure, use

of urinalysis testing, adequacy of prison staffing, training of prison staff, access to inmate files, and health care. The motion was taken under advisement at the time, and the trial proceeded to a conclusion.

Similarly, in July of 1984, defendants filed another motion, i.e., their Motion for Judgment on Search and Seizure Issues. The parties submitted additional briefing and memoranda on this latter motion. Both of defendants' motions will be addressed under the appropriate subject headings below.

With the submission of the parties' supplemental proposed findings of fact and conclusions of law following the July 13 and 23 hearing, the trial proceedings on the issues litigated were concluded, and the Court took the matters under advisement. The instant Memorandum Decision, along with the accompanying findings of fact and conclusions of law and order, set forth the Court's adjudications of each of these issues.

IV. Legal Principles - Generally

A. The Federal Constitutional Standards

For purposes of defining the applicable federal constitutional standard to be applied to the conditions challenged in Alaska's prison system, pretrial detainees and convicted prisoners must be considered separately.

1. Convicted Prisoners

Convicted prisoners are protected by the Eighth Amendment to the United States Constitution which prohibits the imposition of cruel and unusual punishment. The Eighth Amendment has been made applicable to the states through the Fourteenth Amendment. Like most constitutional declarations, the exact meaning of "cruel and unusual punishment" is less than clear. Consequently, courts have, in interpreting this concept, looked to the broad principles underlying the constitutional terms. "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. [T]he words of the Amendment are not precise, and ... their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86, 100-101, 78 S.Ct. 590, 598, 2 L.Ed.2d 596 (1958) (footnote omitted). The Amendment prohibits penalties "that transgress today's 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency.'" Hutto v. Finney, 437 U.S. 678, 685, 98 S.Ct. 2565, 2571, 57 L.Ed.2d 522 (1978) (quoting Estelle v. Gamble, 429 U.S. 97, 102, 197 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976). Conditions of confinement, even those that compose the punishment at issue, "must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347, 69 L.Ed.2d 59, 69 (1981).

2. Pretrial Detainees

The conditions under which unconvicted persons are imprisoned are to be judged by the due process standard of the

Fifth and Fourteenth Amendments. Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). Since the due process clause prohibits punishment prior to conviction, the constitutional issue rests on a determination of whether the conditions of confinement are punitive in nature. This inquiry, in turn, looks first to whether the detention officials have acted with intent to punish the inmates. Even if no express intent is shown, such unconstitutional intent to punish may be inferred by the court. This inference hinges upon whether "a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective" or whether "it is arbitrary or purposeless." Bell v. Wolfish, 441 U.S. at 539. "Legitimate governmental objectives" include insuring the detainees' presence at trial, managing the facility and maintaining jail security. Id. at 540. In deciding whether a specific condition bears a reasonable relation to a legitimate corrections objective, courts must be mindful that, "in the absence of substantial evidence in the record to indicate that [corrections] officials have exaggerated their response to [considerations of management, security and order], courts should ordinarily defer to their expert judgment in such matters." Id. at n.23, (quoting Pell v. Procunier, 417 U.S. 816, 827, 41 L.Ed.2d 495 (1974).

In addition, the Court in Bell recognized that pretrial detainees "retain at least those constitutional rights that ... are enjoyed by convicted prisoners." Id. at 545, 99 S.Ct. at 1877. Within a given institution, then, conditions found to constitute cruel and usual punishment when imposed on convicted inmates would also be viewed as unconstitutional punishment when imposed on similarly situated unconvicted detainees. See Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3rd Cir. 1979); Detainees of Brooklyn House of Detention for Men v. Malcolm, 520 F.2d 392, 398 (2d Cir. 1975).

In applying these constitutional standards, courts must be mindful of their limited role in reviewing the practices

of penal institutions. In the absence of constitutional (or statutory) violations, courts normally should defer to the judgment of prison administrators. See Bell v. Wolfish, supra, 441 U.S. at 538-539, 99 S.Ct. at 1873-1874; Pell v. Procunier, 417 U.S. 817, 827, 94 S.Ct. 2800, 2806, 41 L.Ed.2d 495, 504 (1974). Nevertheless, courts must not "abdicate [their] constitutional responsibility to delineate and protect fundamental liberties." Pell, 417 U.S. at 827, 94 S.Ct. at 2806, 41 L.Ed.2d at 504.

3. "Totality of Conditions" Analysis

In cases challenging conditions of confinement in prisons, some courts have employed a "totality of conditions" approach, whereby the constitutionality of challenged conditions is examined not only as to each condition in isolation, but also as to the cumulative effects of the conditions on the inmate population. The rationale to this approach is stated in Laaman v. Helgemoe, 437 F.Supp. 269, 323 (D.N.H. 1977) (cited with approval in Rhodes v. Chapman, 452 U.S. 337, 364, 69 L.Ed.2d 59, 80 (1981) (Brennan, J., concurring)):

> The touchstone is the effect upon the imprisoned. Where the cumulative impact of the conditions of incarceration threatens the physical, mental, and emotional health and well-being of the inmates and/or creates a probability of recidivism and future incarceration, a federal court must conclude that imprisonment under such conditions does violence to our societal notions of the intrinsic worth and dignity of human beings and, therefore, contravenes the Eighth Amendment's proscription against cruel and unusual punishment.

4. "Basic Needs" Analysis

Several United States Circuit Courts of Appeals, however, have rejected the "totality of conditions" analysis for a "basic needs" approach, reasoning that:

> 'An institution's obligation under the eighth amendment is at an end if it furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety.'
>
> . . .
>
> There is no Eighth Amendment violation if each of these basic needs is separately met. A number of conditions, each of which

> satisfy Eighth Amendment requirements, cannot in combination amount to an Eighth Amendment violation.

Hoptowit v. Ray, 682 F.2d 1237, 1246-47 (9th Cir. 1982) (citation omitted).

5. United States Supreme Court's Approach

The "totality of conditions" approach seems to have been adopted by the Supreme Court in several cases. For instance, in Hutto v. Finney, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978), the Court affirmed a lower court's remedial order regarding isolated confinement by noting that:

> The court was entitled to consider the severity of . . . [past constitutional] violations in assessing the constitutionality of conditions in the isolation cells. The court took note of the inmates' diet, the continued overcrowding, the rampant violence, the vandalized cells, and the 'lack of professionalism and good judgment on the part of maximum security personnel.' The length of time each inmate spent in isolation was simply one consideration among many. We find no error in the court's conclusion that, taken as a whole, conditions in the isolation cells continued to violate the prohibition against cruel and unusual punishment.

437 U.S. at 687, 98 S.Ct. at 2571, (emphasis added; citation omitted). And in Rhodes v. Chapman, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981), the Court stated that:

> Conditions other than those in Gamble [denial of medical care] and Hutto [deprivation of basic human needs, including nourishment], alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities. Such conditions could be cruel and unusual under the contemporary standard of decency that we recognized in Gamble.

452 U.S. at 347, 69 L.Ed.2d at 69. In his concurring opinion in Rhodes, Justice Brennan explained that:

> It is important to recognize that various deficiencies in prison conditions 'must be considered together.' The individual conditions 'exist in combination; each affects the other; and taken together they [may] have a cumulative impact on the inmates.' Thus, a court considering an Eighth Amendment challenge to conditions of confinement must examine the totality of the circumstances.[8] Even if no single condition of confinement would be unconstitutional in itself, 'exposure to the cumulative effect

> of prison conditions may subject inmates to cruel and unusual punishment.'
>
> n. The Court today adopts the totality-of-the-circumstances test.

452 U.S. 337, 362-63 (concurring opinion) (citations omitted).

To the extent applicable, this Court has also adopted and applied the "totality of conditions" approach in analyzing plaintiffs' federal constitutional claims in this case. Thus, the Court has looked to the entire record at trial in analyzing each of the specific claims or issues presented at trial.[4]

B. The Alaska Constitutional Standards

1. Convicted Prisoners

Alaska's Constitution also contains a "cruel and unusual punishment prohibition," similar to the Eighth Amendment to the United States Constitution. Specifically, Article I, § 12 of Alaska's Constitution provides:

> Section 12. Excessive Punishment. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and [unusual] punishments inflicted. Penal administration shall be based on the principle of reformation and upon the need for protecting the public.

The standard for determining what constitutes cruel and unusual punishment was set out by the Alaska Supreme Court in Green v. State, 390 P.2d 433, 435 (Alaska 1964):

> Only those punishments which are cruel and unusual in the sense that they are inhuman or barbarous, or so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice may be stricken as violating the due process [and cruel and unusual punishment] clauses ... .

(Footnotes omitted); see also Thomas v. State, 566 P.2d 630, 635 (Alaska 1977).

---

[4]Although plaintiffs were precluded from asserting, on the eve of trial, a separate "totality of conditions" claim, since that issue was not included in plaintiffs' September 23, 1983 Statement of Unresolved Issues, the Court did expressly allow plaintiffs to make legal arguments and to propose remedies pursuant to such theory on the basis of the evidence actually adduced at trial. See January 3, 1984 Order Granting In Part And Denying In Part Defendants' Motions For Partial Dismissal

Since this standard is, if anything, more stringent than the "evolving standards of decency" test which this Court must apply in an Eighth Amendment analysis, any conduct violative of the state constitutional standard will also necessarily violate the federal constitutional standard, and so, no separate analysis under the state constitution is required.

2. Pretrial Detainees

Consistent with the foregoing federal constitutional analysis and authorities, this Court holds that the due process clause of Alaska's Constitution, Article I, §7, applies to persons who are not convicted of crimes but who have been arrested and detained or incarcerated prior to trial.

Under both Article I, §7 and Article I, §12 of the Alaska Constitution, the Court has adopted and applied the federal "totality of conditions" analysis in determining whether violations of state constitutional provisions have occurred or are about to occur.

3. Alaska Statutes

Finally, in connection with certain issues raised by plaintiffs at trial, the Court has also looked to relevant Alaskan statutes, in addition to state and federal constitutional authority, in resolving such issues. See e.g., AS 33.30.020; .050; .225(a); .250(a) and .260.

And Exclusion Of Evidence, at 2 n.1.

V. Analysis Of Individual Issues

A. Overcrowding

Generally

The issue of overcrowding in this case has two aspects. First is the impact which population densities, both systemwide and institutionwide, have upon essential services provided by the Department of Corrections. These services (e.g. educational programs, health care, correctional staffing) constitute separate issues in this case, and the effects of overcrowding on the adequacy of such resources are considered as separate issues, and as factors in a totality of conditions evaluation.

The other aspect of the overcrowding issue, considered here, concerns the housing itself provided to the inmates. Federal issues raised in this regard are whether, under the Eighth Amendment, or the due process clause of the Fourteenth Amendment to the United States Constitution, the housing conditions constitute cruel and unusual punishment for convicted and sentenced felons or punishment for pretrial detainees. Stated differently, the question is whether such housing conditions "transgress today's 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency.'" Hutto v. Finney, 437 U.S. 678, 685, 98 S.Ct. 2565, 2571, 57 L.Ed.2d 522 (1978) (quoting Estelle v. Gamble, 429 U.S. 97, 102, 197 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976). To the same effect, the cruel and unusual punishment issue is presented under Article I, §12 and Article I, §7 of Alaska's Constitution. As noted above, the Court has applied the "totality of conditions" analysis in examining these constitutional issues.

In evaluating the totality of conditions of defendants' housing facilities, the Court must consider all the housing-related factors and, relying on its own experience and knowledge of contemporary standards, arrive at its conclusion as to whether society's standards of decency are being met. Coker v. Georgia, 433 U.S. 584, 597 (1977) (plurality opinion).