

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5822 HOUSE JUDICIARY

226

VIII. Conclusion

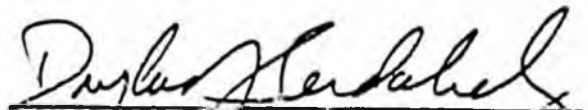
With the issuance of this Memorandum Decision, Findings Of Fact And Conclusions Of Law, and the accompanying remedial order, this four-year-old, complex prisoners' rights litigation, involving 13 Alaskan institutions, the FBOP-housed Alaskan inmates issues addressed in the parties' two partial settlement agreements, classification schemes for sentenced prisoners and pretrial detainees, and the various issues litigated at trial, comes to an end. With the conclusion of this litigation, however, the Court is aware that certain ongoing compliance monitoring activities will have to be performed by the Court and/or its Special Master regarding the partial settlement agreements as well as the remedial order. Nevertheless, the Court is mindful of the limited role which the judiciary can, and should, play in connection with prisoners' rights and prison conditions litigation. The Court wishes to emphasize that both as a legal and practical matter, courts cannot, and should not, become involved in the day-to-day operations or management of prisons. Rather, that function should, and must, necessarily be left to the sound discretion and expertise of competent and responsible correctional administrators and officials.

In this case, the Court has found that generally speaking, defendants' correctional administrators and officials -- particularly defendants' institution superintendents and high level agency management -- are well motivated professionals who are sincerely concerned about addressing the needs and problems of Alaska's correctional system. Moreover, the Court has found defendants to be responsive and cooperative with the Court in the past, and fully expects defendants to continue to be so in the future. It is evident to the Court that in complying with the Court's orders, and particularly in addressing the serious problems presented by burgeoning prison populations in the future, defendants will have to continue to draw upon their own creativity and expertise in fashioning solutions to such serious problems.

Yet, although considerable deference must and should be given to prison administrators in the administration of their institutions, particularly in the absence of constitutional or statutory violations, courts ultimately cannot "abdicate their constitutional responsibility to delineate and protect fundamental liberties." Pell v. Procunier, 417 U.S. 817, 827, 94 S.C. 2800, 2806, 41 L.Ed.2d 494, 504 (1974).

DATED at Anchorage, Alaska, this 15th day of

March, 1985.



DOUGLAS J. SERDAHELY
Judge of the Superior Court

HB

545

HOUSE COMMITTEE REPORT

3/21

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/14/90

JUDICIARY

Renewed 3/21

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 545

HOUSE BILL NO. 545 SENTENCING/REHABILITATION/PAROLE

"An Act relating to sentencing practices and procedures; expanding the circumstances in which a sentence may require participation in an appropriate rehabilitation or treatment program; redefining eligibility for discretionary parole; adding a related mitigating factor in the determination of presumptive sentences; and providing for an effective date."

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

[] have attached amendment(s)

[X] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] additional referral to the _____ Committee

FIN OK

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)

[X] fiscal impact Connecticut [] fiscal note(s) _____
[] zero fiscal note _____ [] zero fiscal note(s) _____
[] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

Do Not Pass No Rec Amend

<u>J. Ellis</u> ELLIS			
<u>Mr. L. Gruenberg</u> GRUENBERG			
<u>George Jacko</u> JACKO			
<u>B. Goll</u> GOLL			

J. Ellis
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An Act ... to establish alterna- BRU: Council on Domestic Violence
tive sentencing & related programs ... and Sexual Assault
 Sponsor: Representative Kopenen Component: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill is expected to have no fiscal impact on the Department of Public Safety.

Prepared by: Barbara Miklos ^{egm} Executive Director
 Division: Council on Domestic Violence and Sexual Assault

Phone: 465-4356
 Date: 3/23/90

Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Date: 3-23-90
 Page 1 of 1

BILL NO: HB 544

DATE: March 23, 1990

TITLE: An Act to establish
alternative sentencing
and related programs for
prisoners

CONTACT: Barbara Miklos
465-4356

COUNCIL ON DOMESTIC VIOLENCE
AND SEXUAL ASSAULT

The Council on Domestic Violence and Sexual Assault opposes HB 544 which authorizes the Department of Corrections to establish alternative sentencing and related programs for prisoners. Our opposition stems from the fact that this bill does not exclude violent criminals. We feel that it is not safe for sex offenders and other violent criminals to be monitored through alternative sentencing programs using house arrest or detention enforced through a phone check or radio monitoring.

Alternative sentencing programs should not be available to people who would pose a serious danger to the community. Although this legislation states the Commissioner of Corrections must determine that a prisoner "can live under reduced supervision without violating the law", and one of the criteria to be considered by the Commissioner before assigning a prisoner to an alternative sentencing program is "the best interests of the public", we are concerned that this legislation does not provide sufficient safeguards. The danger posed to the public by certain criminals is often minimized; we have found this to be particularly true in crimes of family violence.

It is not unusual for people to believe that child sexual abuse in families and domestic violence are situational crimes caused "by dysfunctional families". Yet, experts know that offenders of these crimes are a danger to the whole community. A study conducted by Gene Abel on outpatient child victim sex offenders showed:

The number of sex offenses (all categories) committed by these offenders is staggering. The sample of 411 men reported that they attempted nearly 239,000 crimes and completed 219,000. On average, offenders reported that they attempted 581 crimes, completed 533, and had 336 victims. The average number of victims for all child molesters was 75. The average (mean) number of completed crimes was 83 for incestuous offenders.

The Council on Domestic Violence and Sexual Assault recognizes the serious fiscal questions facing Alaska because of the increased and costly demands placed upon the criminal justice system. However, we believe other reforms could be implemented that pose lessor risks to Alaskans than alternative sentencing programs for violent offenders.

Barbara Miklos
Barbara Miklos
Executive Director

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act related to sentencing practices..."
Sponsor: Rep. Koponen
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	54.6	54.6	54.6	54.6	54.6	54.6
TRAVEL	11.2	11.2	11.2	11.2	11.2	11.2
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	22.4	22.4	22.4	22.4	22.4	22.4
MISCELLANEOUS						
TOTAL OPERATING	88.2	88.2	88.2	88.2	88.2	88.2

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	88.2	88.2	88.2	88.2	88.2	88.2
FEDERAL FUNDS						
OTHER						
TOTAL	88.2	88.2	88.2	88.2	88.2	88.2

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) This legislation would require additional parole board hearings and staff. We have included one probation officer II and board and travel costs for 24 days of parole hearings. The future capital and resultant operating costs of the Department would be affected over time, but this is difficult to predict at this time and therefore is not reflected in this fiscal note.

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

Approved by Commissioner: [Signature] Date: 03/20/90
Agency: Department of Corrections

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

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Commercial
& Investment
Real Estate

March 14, 1990

Legislative Information Office
Public Opinion Office
Anchorage
FAX # 562 4376

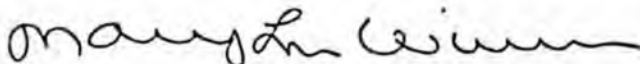
TO: Members of the Alaska Senate and House of Representatives

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



Certified Commercial Investment Member

CORRECTIONS

Introduction: Stiffer criminal penalties continue to be the policy preference of the public and elected officials at all levels for dealing with problems such as drunken driving, drug abuse, and abuse of spouses, children, and the elderly. This attitude is being reflected in state laws on criminal penalties, the devotion of resources to prosecution and courts, and in the attitudes of judges, juries, and parole commissions. A predictable result has been a sharp and continuing increase in the number of people in jails and state and federal prisons, despite little change in the crime rate. The impact on state and local government is compounded by the continuing escalation of standards for correctional institutions being imposed by litigation and state acceptance of federal court consent decrees.

The results add up to double-digit increases in state corrections budgets and are felt indirectly in pressures for states to increase aid to local governments and local taxing authority to deal with their financial pressures. Along with parallel double-digit increases in Medicaid, the results explain why state executive branch officials are having difficulties in producing balanced budgets for FY 1991 without recommending tax increases.

There is nothing politically exotic about expanding correctional systems. The costs create penalties in what can be allocated to more popular causes such as education and tax relief. Construction of new capacity often triggers local "not-in-my-backyard" opposition. Neither prisoners and their families nor prison employees are noticeably grateful to state officials for building additional prison capacity. Having a larger population in prison tends to frustrate achievement of other social policies, such as reducing dependency in single parent families and providing a workforce for economic development. And it hasn't produced a noticeable decline in crime rates.

As a result, there is some backlash against proposals to add to prison capacity. This has delayed prison construction programs in some states, but not generally derailed them. It has encouraged adoption of programs designed to limit prison population by alternatives such as community corrections, alternative sentencing, and early release. Officials of many states have been reluctant to dip very far into these alternatives, but comparative state statistics on incarceration rates and increases in prisoners suggest that some states are much more successful at limiting prison populations than others.

Demands for Correctional Space Strain Capacity and Budgets: The states are continuing to experience an explosion of the number of

prisoners. For example, Maryland officials recently announced they needed an emergency plan on top of the emergency plan that was approved in July at a cost of \$13 million to accelerate prison construction. The head of the corrections agency called projecting the prison population impossible. The increase had been running at about 145 prisoners a month through June but has been about 300 a month in the last several months.

Corrections financing will be a major issue in the 1990 West Virginia legislative session. The new governor and legislature acted quickly on a blue ribbon task force report in early 1989 to get the state's finances in order by substantial tax increases, but new spending for corrections wasn't a part of the effort. Recognizing growing costs, the need to replace some jail capacity with regional centers, and a court mandate to replace the state's maximum security institution by 1992, the governor proposed a one percent increase in the tax on insurance premiums in March. He quickly withdrew the proposal when it became obvious that neither the legislature nor the public wanted another round of tax increases. The alternatives now being considered involve bonding or the economic equivalent through lease purchase. The debt service costs would be handled through court fees and/or an increase in one or more state taxes, with sin taxes most prominently discussed.

In Illinois, a federal judge is fining Cook County (Chicago) officials for continuing to have inmates sleep on floors. The legislature recently approved construction of three prisons, but the corrections director appeared before the state's capital planning agency in October to say that an additional seven facilities will be needed. He conceded that he probably asked for more capital money for corrections than would be budgeted for capital for all state agencies.

The Magnitude of the Cost Increases: Nationwide, there was an increase of 63,315 prisoners in state institutions from the end of June last year to the end of June this year, an 11.4% increase. The cost of this increase was about \$1.6 billion in state operating budgets, using an average cost per inmate of \$25,000. (Many states use a lower estimate than this, but usually fail to count costs included in other agency budgets such as personnel administration, damage claims, unemployment compensation, and overhead. States also typically exclude costs not included in any current operating budget such as depreciation of prison facilities and accruing but unfunded liabilities for retiree health insurance.) Assuming that there is almost no excess capacity in prisons anywhere to absorb the increase without construction and a cost of \$50,000 per additional bed, the capital outlays associated with this FY 1989 prison population increase will be about \$3.2 billion. Excluded from these calculations are the costs of corrections programs outside of institutions, such as probation and parole, which tend to increase proportionally to the number of inmates in institutions.

This \$4.8 billion combination represents about 2% of state general fund tax revenues. So, nationwide, corrections increases associated with another year of prison population gains could easily eat up 15-30% of total state revenue increases. That is, 1-2% of a 6-9% overall increase. (States will avoid some of the construction costs by lease-purchase and

bonding, but the calculation excludes the annualization of operating costs incurred for only a part of the year this year and the new debt service costs appearing from past decisions to bond prison construction.) Combined with sharp increases in Medicaid and the costs of meeting inflation in other programs, the corrections increases are a large part of the cause of inflexibility in choices confronting state budget officials for FY 1991.

Prison Population Growth By State: The states vary considerably in the prisoner growth they experienced in the past year. The data are shown as Table 1.

TABLE 1: PERCENTAGE CHANGE IN PRISON POPULATION, JULY OF 1988 AND 1989

<u>RANK</u>	<u>STATE</u>	<u>PCT.</u>	<u>RANK</u>	<u>STATE</u>	<u>PCT.</u>	<u>RANK</u>	<u>STATE</u>	<u>PCT.</u>
1	RHODE ISLAND	38.0%	18	FLORIDA	13.0%	34	ARIZONA	7.7%
2	SOUTH DAKOTA	26.9	19	VIRGINIA	12.8	35	ARKANSAS	7.1
3	WEST VIRGINIA	25.3	20	MISSOURI	12.7	36	WASHINGTON	7.1
4	COLORADO	22.6	21	PENNSYLVANIA	12.2	37	VERMONT	7.0
5	CONNECTICUT	19.6	22	MONTANA	11.7	38	NEW MEXICO	6.6
6	SOUTH CAROLINA	15.8	23	INDIANA	11.6	39	NEBRASKA	5.8
7	MISSISSIPPI	15.6		NAT'L. AVG.	11.4	40	HAWAII	5.6
8	IDAHO	15.4	24	OKLAHOMA	11.3	41	LOUISIANA	5.6
9	NEW YORK	15.1	25	ALABAMA	11.2	42	WYOMING	5.5
10	KENTUCKY	15.0	26	OREGON	11.2	43	GEORGIA	5.4
11	CALIFORNIA	14.9	27	DELAWARE	10.9	44	MAINE	4.8
12	IOWA	14.9	28	NEW JERSEY*	10.8	45	ALASKA	4.0
13	MICHIGAN	14.9	29	MASSACHUSETTS	10.0	46	KANSAS	2.6
14	UTAH	14.9	30	ILLINOIS	9.8	47	TEXAS	2.0
15	NEVADA	14.5	31	MINNESOTA	9.1	48	NORTH CAROLINA	0.3
16	NEW HAMPSHIRE	13.1	32	MARYLAND	8.4	49	NORTH DAKOTA	-0.4
17	OHIO	13.1	33	WISCONSIN	8.1	50	TENNESSEE	-1.5

*PARTIALLY ESTIMATED

There is no obvious explanation for the rankings shown on the table. Prosperous and less prosperous states, agricultural and industrial states, states with rapid population growth and with stagnant populations, and states within regions are scattered throughout the rankings. The lack of an obvious demographic or economic explanation suggests that state policy choices may be causing the differences.

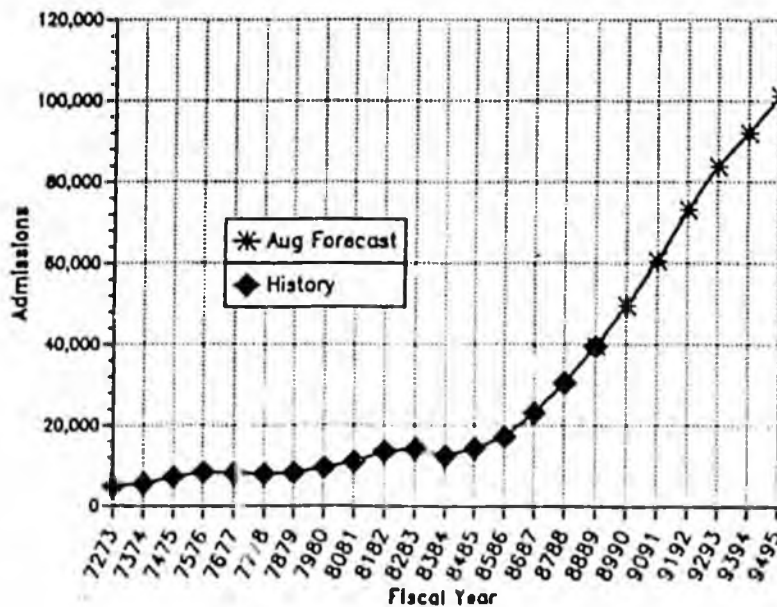
The diversity among states in one-year growth is mirrored by diversity in the percent of state population in prison, shown on Table 2. Eleven states are more than 50% different from the national average. In Nevada, there is a potential explanation in residents of other states who come to the state to gamble, but no obvious explanation for South Carolina's position. The nine states 50% or more below the national average are predominantly Northeastern states, where a lesser number of persons in prime crime-committing ages helps explain the diversity. But some regional patterns are apparent. Former Confederate states are in the top half, excepting Tennessee which is 36th. Agricultural and Northeastern states tend to dominate the bottom half.

TABLE 2: NUMBER OF PRISONERS SENTENCED FOR ONE YEAR OR MORE AS OF JUNE 30, 1989 PER 100,000 POPULATION

RANK	STATE	NO.	RANK	STATE	NO.	RANK	STATE	NO.
1	NEVADA	475		NAT'L. AVG.	260	34	SOUTH DAKOTA	171
2	SOUTH CAROLINA	402	18	NORTH CAROLINA	252	35	PENNSYLVANIA	160
3	LOUISIANA	379	19	ARKANSAS	246	36	TENNESSEE	153
4	DELAWARE	374	20	KANSAS	245	37	HAWAII	139
5	ALASKA	354	21	VIRGINIA	244	38	RHODE ISLAND	138
6	OKLAHOMA	349	22	TEXAS	239	39	NEBRASKA	136
7	ARIZONA	343	23	NEW JERSEY	230	40	WISCONSIN	134
8	MICHIGAN	324	24	OREGON	228	41	WASHINGTON	134
9	ALABAMA	321	25	INDIANA	220	42	UTAH	129
10	MISSISSIPPI	305	26	WYOMING	213	43	MASSACHUSETTS	123
11	MARYLAND	304	27	KENTUCKY	209	44	IOWA	117
12	FLORIDA	301	28	ILLINOIS	194	45	MAINE	107
13	GEORGIA	292	29	COLORADO	189	46	VERMONT	100
14	CALIFORNIA	277	30	CONNECTICUT	179	47	NEW HAMPSHIRE	99
15	NEW YORK	270	31	NEW MEXICO	179	48	WEST VIRGINIA	79
16	OHIO	260	32	IDAHO	175	49	MINNESOTA	68
17	MISSOURI	260	33	MONTANA	173	50	NORTH DAKOTA	62

Officials of most states are anticipating further increases in prison populations driven by more convictions for drug dealing and longer sentences for drug offenses, drunken driving, and habitual offenders. The details behind the forecasts vary by state and are complex, but Florida provides an illustration of the forces at work in the projections prepared through its Consensus Revenue Estimating Conference, which harmonizes diverse views on the economic and spending outlook to avoid confronting the legislature with disagreements among staff over these items. Figure 1 describes simply what the group is telling the legislature about corrections.

PRISON ADMISSIONS BY FISCAL YEAR



Besides adult corrections, states face the growing costs for probation and parole. From the end of 1986 to the end of 1987, there was an increase of 6% in probationers and an 11% increase in adults on parole. There has also been a double-digit increase in juvenile offenders in custody by state and local officials.

Crime and Corrections: Despite considerable research, the relationship between crime experienced by citizens and imprisonment remains a mystery. At one point, many believed that prisons would be the site for "rehabilitation," so that time in prison would cure crime because prisoners would learn how to live better -- to be honest, to perform in regular jobs, etc. Another theory more prominent in some circles is that the exposure to correctional institutions and those who live there actually encourages criminal behavior, so that sanctions short of prison are to be preferred.

The relationship between crime and corrections is so tenuous that what to expect from the two tables on crime incidence which follow isn't obvious. One alternative is that incarceration rates should be highest where the crime rates are highest and that growth in prison populations should be found in the same states where crime is growing most rapidly. Another alternative is the reverse -- that the states that are demonstrably the toughest on crime, as indicated by willingness and ability to put people in prison, would be those with the lowest crime rate.

Table 3 compares the states in crime rates -- the number of major crimes reported to police related to total population.

TABLE 3: TOTAL FBI INDEX CRIMES REPORTED TO POLICE PER 100,000 POPULATION, 1988

<u>RANK</u>	<u>STATE</u>	<u>NO.</u>	<u>RANK</u>	<u>STATE</u>	<u>NO.</u>	<u>RANK</u>	<u>STATE</u>	<u>NO.</u>
1	FLORIDA	8,938	17	OKLAHOMA	5,589	34	VERMONT	4,240
2	TEXAS	8,018	18	UTAH	5,578	35	ARKANSAS	4,220
3	ARIZONA	7,471	19	SOUTH CAROLINA	5,412	36	VIRGINIA	4,177
4	WASHINGTON	7,113	20	NEW JERSEY	5,295	37	INDIANA	4,150
5	OREGON	7,059	21	RHODE ISLAND	5,204	38	NEBRASKA	4,140
6	CALIFORNIA	6,636	22	CONNECTICUT	5,098	39	IOWA	4,077
7	NEW MEXICO	6,606	23	MASSACHUSETTS	4,991	40	IDAHO	3,973
8	NEVADA	6,453	24	ALASKA	4,922	41	WISCONSIN	3,972
9	GEORGIA	6,327	25	KANSAS	4,880	42	WYOMING	3,967
10	NEW YORK	6,310	26	NORTH CAROLINA	4,862	43	MISSISSIPPI	3,593
11	COLORADO	6,178	27	MISSOURI	4,845	44	MAINE	3,578
12	MICHIGAN	6,084	28	DELAWARE	4,799	45	NEW HAMPSHIRE	3,334
13	HAWAII	5,989	29	OHIO	4,645	46	PENNSYLVANIA	3,176
14	LOUISIANA	5,761	30	ALABAMA	4,562	47	KENTUCKY	3,135
15	MARYLAND	5,705	31	TENNESSEE	4,469	48	NORTH DAKOTA	2,728
	NAT'L. AVG.	5,664	32	MINNESOTA	4,315	49	SOUTH DAKOTA	2,581
16	ILLINOIS	5,621	33	MONTANA	4,267	50	WEST VIRGINIA	2,239

Nationally, there were 5,664 such reported crimes per 100,000 population or almost six major crimes in 1988 for each 100 people in the

nation. This number is over seven for two Northwestern states and Arizona, about eight in Texas and nearly nine in Florida. But eight states have rates below 3.8, more than a third below the national average. These rates don't show much of a regional pattern. For example, Wisconsin, Wyoming, Mississippi, and Maine -- four diverse states rarely found together in rankings of states on any subject -- appear together in the lower part of the table.

Table 4 compares the change in the crime index between 1987 and 1988. Overall, the index shows an increase of 2.1% in a nation experiencing about a 1% growth in population and probably a systematic increase in the tendency of its citizens to report certain types of crimes, such as rape, to the police. But there are great deviations from this national average. Twenty-one states report decreases, including over 5% in such diverse states as Michigan, Oklahoma, and Montana.

TABLE 4: PERCENTAGE CHANGE IN CRIME RATE, 1987-1988

<u>RANK</u>	<u>STATE</u>	<u>PCT. CHANGE</u>	<u>RANK</u>	<u>STATE</u>	<u>PCT. CHANGE</u>
1	GEORGIA	9.22	26	NEW JERSEY	0.67
2	NEW YORK	6.0	27	PENNSYLVANIA	0.4
3	VIRGINIA	5.5	28	NEBRASKA	0.2
4	MASSACHUSETTS	5.4	29	KANSAS	-0.5
5	FLORIDA	5.1	30	ARKANSAS	-0.6
6	SOUTH CAROLINA	4.9	31	UTAH	-0.7
7	NORTH CAROLINA	4.6	32	VERMONT	-0.7
8	MISSISSIPPI	4.5	33	NEW HAMPSHIRE	-1.1
9	MARYLAND	4.1	34	RHODE ISLAND	-1.5
10	ARIZONA	3.9	35	IOWA	-1.5
11	TEXAS	3.8	36	WYOMING	-1.6
12	ILLINOIS	3.8	37	LOUISIANA	-1.9
13	HAWAII	2.9	38	DELAWARE	-2.8
14	MISSOURI	2.9	39	SOUTH DAKOTA	-3.0
15	ALABAMA	2.5	40	NORTH DAKOTA	-3.7
16	WEST VIRGINIA	2.2	41	KENTUCKY	-4.1
	NAT'L. AVG.	2.1	42	COLORADO	-4.2
17	CALIFORNIA	2.0	43	TENNESSEE	-4.2
18	CONNECTICUT	2.0	44	IDAHO	-4.4
19	OHIO	1.5	45	WISCONSIN	-4.7
20	WASHINGTON	1.4	46	MICHIGAN	-5.8
21	OREGON	1.3	47	MINNESOTA	-6.5
22	NEVADA	1.3	48	OKLAHOMA	-7.2
23	MAINE	1.3	49	MONTANA	-7.2
24	NEW MEXICO	0.9	50	ALASKA	-8.5
25	INDIANA	0.7			

There is little apparent correlation between any of the statistics on incarceration, crime rates, and their increases presented in Tables 1-4. The exceptions are a few less populous states characterized by rural economies, declining or stable populations, and a disproportionately low percentage of persons in the primary crime committing ages from the late teens to early 30s -- the Dakotas and West

Virginia being the best example. These states tend to have low and decreasing crime rates and low incarceration rates that are increasing more slowly than the national average. Table 5 suggests the absence of relationships in other states by showing the rankings for selected states.

TABLE 5: RANKINGS OF SELECTED STATES ON CRIME AND INCARCERATION MEASURES
MOST RECENT YEARS AVAILABLE

STATE	AMOUNTS		CHANGE	
	CRIME	INCARCERATION	CRIME	INCARCERATION
FLORIDA	1	12	5	18
NEVADA	8	1	22	15
GEORGIA	9	13	1	43
RHODE ISLAND	21	38	34	1
TEXAS	2	22	11	47
SOUTH CAROLINA	19	2	6	6
ARIZONA	3	7	10	34
WASHINGTON	4	41	20	36
CALIFORNIA	6	14	17	11
NEW YORK	10	15	2	9
ILLINOIS	16	28	12	30
NEW JERSEY	20	23	26	28
MASSACHUSETTS	23	43	4	29
NORTH CAROLINA	26	18	7	48
PENNSYLVANIA	46	35	27	21

The table denies many potentially expected relationships. Crime increases are associated with sharp increases in people in prison in New York and South Carolina, but Rhode Island led the nation in adding prisoners but was 34th in increasing crime. The states with the four highest crime rates have incarceration rates ranging from seventh to 41st. The two states with the highest incarceration rates are eighth and 19th in crime rates. While much more refined statistical techniques could be applied to these data to produce more sophisticated results, the bottom line is apparent -- the relationship between crime and punishment among the states isn't close.

Causes of the Correctional Explosion: One clear reason for the sharp increase in correctional populations is the increase in commitments to prison for crimes which aren't even included in the traditional crimes (e.g., murder, burglary, and robbery) that are included in the crime index. Chief among these is drugs. For example, 31% of the people expected to be sent to prison in Massachusetts this year are headed there for drug charges, up from 5% ten years ago. Part of this may be related to an underlying phenomenon of incidence of drug offenses and the extent offenders are successfully prosecuted. But part is what the corrections commissioner calls "a more conservative philosophy by the judiciary in dealing with those who are charged with drugs."

A second source of added prison populations is a "get tough on crime" attitude that has effects throughout the criminal justice system. At the stage of definition of crimes and sentencing minimums, the attitude appears as mandatory sentences, longer sentences, and limits on parole and time off for good behavior. But it also affects decisions to prosecute, resources devoted to prosecution, and the attitudes of judges, juries, and those responsible for probation and parole decisions. In Georgia, for example, new legislation mandating a five-year minimum sentence without chance of parole accounts for 800 of the recent prisoner growth and tougher penalties for driving under the influence added 2,000. The Georgia parole board has been deviating from its own guidelines about a third of the time, making getting out on parole tougher.

The Backlash: Viewed as independent of cost, the policies of getting tough on crime have overwhelming support. This support tends to translate directly into support for toughness measures in the legislatures, tempered somewhat by generalized concerns about fiscal impact and fiscal notes in the states that use them in assessing changes in criminal law. Although there are a few research groups interested in the subject, there is no real constituency for anything but a get tough posture except as that constituency is built in reaction to costs.

The losers from a tougher sentencing policy, more prosecution, and reduced opportunities for parole and alternative sentences are -- aside from the lives directly affected -- those who mathematically must lose from any major pressure increasing state and local spending. They are some combination of: (1) taxpayers confronting higher taxes, and (2) groups making competing claims on state and local spending, particularly the large claims associated with education, health care, and social service programs. Both groups have, over the years, developed the policy of not being specific about the policies associated with the policy they urge. So taxpayer groups concentrate on tax limits and voting down taxes and spending groups concentrate on raising the spending in areas of interest to them, without generally taking a position on whether un earmarked taxes should be raised or other spending cut.

As a result, the states have been consistently pursuing policies that increase correctional spending without strong objection to that result per se from any quarter. When the results appear as corrections spending, they have generally been supported by both elected officials and the public, as indicated by relatively consistent voter approval of corrections and jail bond issues by margins at least as wide as those of other bond issues. The exception in November was Maine, where the adult facility expansion has been controversial for the usual reasons, plus a special issue, that initially killed it in the regular legislative session, over the compensation of local communities by in-lieu tax payments for state facilities like prisons and mental hospitals.

But the ultimate test of public support of the corrections cost consequences of getting tougher on criminals comes when the policy clashes with another strongly held public perspective, such as avoiding tax increases. At this point, corrections spending, including the growing

operating costs associated with opening new prisons, becomes what Oregon's Governor Goldschmidt has called "the gorilla that will eat the budget." A less picturesque perspective is provided by Florida's governor, who is trying to maintain a no-new-tax posture, a strong law and order stance, and a major concern with improving education in the face of rising enrollments. He has publicly expressed the concern that Florida simply can't be building both prisons and schools in large numbers.

The Alternatives: The pressure of higher costs has focused attention on whether it might be possible to use alternatives short of, and cheaper than, imprisonment in state institutions for some offenders and whether some sentences might be shorter. This is the focus of approaches developed by the National Conference of State Legislatures ("The Complex Case of Costly Corrections," State Legislatures, February 1989 and the study cited below), and the Council of State Governments (e.g., entire issue of The Journal of State Government, March/April 1989).

Minnesota and Washington are worthy of attention because they both rank relatively low in incarceration rates -- lower than would be expected from examining their crime rates, their demographic and economic circumstances, or the rates of neighboring states with similar characteristics. Both place more emphasis than most states in keeping non-violent offenders out of the state prison system. Minnesota, since 1973, has had a policy that encourages, and helps pay for, keeping minor offenders in county jails and community service jobs and sentencing guidelines that mandate local handling of people convicted of property crimes. Washington pursues similar policies, including a strong emphasis on psychological treatment and relatively short jail sentences, rather than prison, for sex offenders. The National Conference of State Legislatures (1050 17th St., #2100, Denver CO 80265) in State Legislatures and Corrections Policies: An Overview (1989) gives these two states credit for "a more efficient use of limited resources; a better ability to foresee and plan for problems in the system, and a reduction in sentencing disparities, while still heeding the public's demand for public safety and appropriate punishments."

"Community corrections" offers a comprehensive collection of alternatives. Examples are bills passed in Texas this year and in Michigan last year. These are designed to target groups of offenders for local punishment in lieu of state corrections, with an emphasis on reducing the strong incentives for local officials simply to shift prisoners, and their costs, to state penitentiaries. This typically involves increasing state support of the local alternatives, as discussed in detail with state-by-state statistics in NCSL's State Aid to Local Governments for Corrections Programs, but the approach is totally inapplicable in the smaller states, such as Delaware and Hawaii, that already pay essentially all corrections costs at the state level. Nationally, about 65% of those costs are defrayed by state governments, with percentages as low as 57% in Florida and Texas, 54% in Oregon, 53% in California, 51% in Pennsylvania, and 47% in Nevada.

Whether approached through an emphasis on community decisions or on state ones, such as length of sentences and early-release programs,

many of the approaches to cost reduction depend upon decisions that certain types of prisoners can serve shorter terms than they currently do, or no terms in formal prison settings at all. Developing an understanding of the different types of prisoners in order to do this was the emphasis of Mark Corrigan (National Institute for Sentencing Alternatives, Brandeis U.) who was the only speaker at a session on corrections alternatives at the NCSL summer meeting.

He told legislators that the substantive solutions to prison cost problems were available. But he suggested political leadership was necessary to recognize that "this is not only a substantive problem but a public perception one." The public perception he addressed was that decisions on sentencing and prison construction are based on Willie Horton and Ted Bundy being the ones involved -- high risk, violent offenders, who hurt people. Distinguishing those who hurt people from those who steal could, he suggested, lead to a "whole different kind of discussion." That discussion, he suggested, would be based on considering the rationale for holding particular prisoners in prison. However, he conceded that the public often wants all of the rationales -- (1) protection of the public by keeping dangerous criminals locked up, (2) retribution or punishment for violating the law, and (3) rehabilitation, turning criminals into honest hard-working citizens. Recognizing the differences, he said, would permit concluding that from 15 to 30% of the nation's prison population doesn't need to be locked up for public protection. Punishment for non-violent offenders, like forgers and fraudulent credit card users, could be achieved by methods other than putting them in prison cells.

He suggested that drug and alcohol abuse account for 40-60% of offenders and 25% or so are (with overlaps between the two groups) associated with mental illness. While not endorsing rehabilitation, he suggested that programs for getting at drug and alcohol problems are key to getting at corrections problems and said endorsement of such programs didn't imply a soft attitude on crime. He also indicated that retooling would be needed for state probation and parole bureaucracies which were developed with a rehabilitation concern and staffed with social workers, rather than being oriented to these devices as part of punishment.

Corrigan suggested that state elected officials should be concerned not only over corrections costs but because the problems were leading to increasing federal takeover of prison policy by the courts and litigation and because of concerns with security. He indicated that the corrections system "is broken from an operations perspective" and that "we are rolling the dice every day" by stretching the capacity of physical facilities and those who work there. He predicted that some governor or legislator is going to solve the corrections problem in the next decade and get credit for doing it. While this may be true, there appears to be little rush for the honor, with most discussion of alternatives couched in terms of necessities for dealing with mounting costs. One reason has been concern with public reaction.

Concerns with Alternatives: There is interest in alternatives that would stem the 90 prisoner-per-week growth in the 23,900 inmate Illinois

system. The obvious options are reducing or eliminating mandatory sentences (e.g., for residential burglary) or an early release program. But legislators who voted for such measures in the past have had those votes used against them in campaigns and are reluctant to appear soft on crime and interested in increasing criminal penalties as a way to deal with drug problems.

In Kansas, legislation reducing sentence length for many offenses helped lead to a one-time 7% decrease in inmates this summer, but the population is expected to resume its rise. Meanwhile, the system is trying to cope with about 6,000 prisoners and a court-imposed cap of 1,700 inmates at the state penitentiary which held as many as 2,400 this year. There is a comparable cap on another institution and a new cap of less than 1,300 to come into effect in 1991. The legislature has already taken many steps: (1) increased time off for good behavior, (2) a furlough program, (3) house arrests with electronic equipment, (4) boot camps, (5) a community corrections program in every county, (6) a state sentencing commission, which will presumably recommend shorter sentences for certain offenses, (7) several community residential centers for prisoners who have regular jobs, and (8) increased staffing for parole and probation. But Kansas legislators are reluctant to move too rapidly in these directions. In 1982, "Yorkie" Smith brutally murdered three local residents shortly after being paroled; last year, a paroled Kansas convict killed four persons; and some convicts have walked away from jobs they held while still under corrections custody. As the Senate President has commented: "If we have another Yorkie Smith, they are going to blame the Legislature for the actions we took to solve the problem, for the whole approach we've taken."

Savings Through Improved Planning And Management: Even if the number of prisoners is considered to be uncontrollable, there are many avenues of approach to reducing the costs of their incarceration. The most promising of these are based on taking a close look at the intensity, and thus cost, of supervision required of each type of inmate. The costs of prison construction and operations are considerably higher for persons held in maximum security facilities than those held in medium security facilities, which in turn are higher than those of confinement in minimum security facilities. There are substantial differences among states in how prisoners are classified, so moving prisoners to a lower classification is an alternative actively discussed in many states.

Just Paying The Bill As An Alternative: While budget pressures, if nothing else, have pushed state officials into consideration of the kinds of statistics presented in this issue, all of the discussion of alternatives to incarceration is built on the premise that there is something fundamentally wrong with what appears to be the prevailing public view.

There are substantial supporters of that view within state and federal governments. Their policy is that the criminal law system should be designed to work to protect citizens and prevent crime. From that perspective, the workload imposed on the correctional system is a by-product, but the basic policy should be to let the chips fall where they

may in terms of implications for prison capacity. It would be wrong to categorize this unwillingness to recognize external costs as unique to "conservatives." It is the view taken by "liberals" for their perception of defendants' rights in criminal cases -- protecting civil liberties and letting the consequences for crime rates and criminals not convicted fall out from those decisions, rather than being considered in their making.

The economic approach to such decisions is parallel to the approach that can be taken to other public sector spending decisions, such as those associated with supporting schools and repairing and building highways. A preoccupation with minimizing public sector costs can result in an escalation of private sector costs and perhaps total social costs. "Underspending" on highways results in higher private costs for fuel consumption, time wasted through congestion, accidents, vehicle wear and tear, and in broader terms penalizes the efficiency of the economy. "Underspending" on public schools forces many parents into use of expensive private schools, forces employers into extensive remediation and training programs of their own, and in broader terms penalizes the efficiency of the economy. "Underspending" on corrections allows crime to be higher than would otherwise be the case forcing added costs for finding and prosecuting repeat offenders, diverting resources to alarm systems and private security forces, driving retail stores and manufacturing away from crime-prone neighborhoods, and curtailing freedom from fear, particularly by the elderly -- thereby penalizing the efficiency of the economy in broad terms.

Once these effects are admitted to exist and to be relevant, the question becomes one of measurement. Measuring the private costs associated with different public spending levels is difficult for corrections, just as it is for education and highways. There are enormous conceptual problems. For example, taking \$100 from one person and giving it to another doesn't count in measures of GNP when done by government through taxes and welfare payments nor by private action through robbery. There are also massive measurement problems. Nonetheless, the data are used (e.g., an OpEd piece by an assistant U.S. Attorney General in the Wall Street Journal arguing that the cost of incarcerating a felon is 17 times less than having him on the street committing crime) and appear in academic publications (e.g., Public Administration Review, November 1985).

An apparent willingness to spend more for corrections is evident from public opinion polls. When asked, "In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?", 79% of a national sample (1987) said not harshly enough. A poll last September gave Kentucky voters the choice of two options to reduce prison overcrowding. Fifty-six percent opted for raising taxes while only 14% opted for "letting more prisoners out on early parole," while 20% volunteered the opinion that they didn't like either option.

The Outlook: The ballooning of state corrections costs is occurring at a time when crime isn't changing much. There are several competing ways to measure crime and many different starting points in time for comparisons. Which of these is chosen influences the results, but the

overall situation is one of basic stability in the 1980s. Furthermore, demographic trends suggest that crime rates shouldn't be increasing. The percentage of the population that is in the prime crime-committing years is decreasing and is expected to continue to do so. But there are clearly other forces at work such as public attitudes on crime and punishment and the impact that the drug problem has had on the crime problem. The role of these factors in the past and extrapolation of past trends is leading corrections officials of many states to predict continuing increases in prison populations and to seek additional resources based on these projections.

In the context of setting state budgets, it is difficult to see situations that would cause a sharp turnaround in the growth of prison populations and the tendency to seek additional resources based on these projections. Such a turnaround might develop sooner or later. This possibility is being recognized in some states by decisions that permit the future contraction of prison capacity in the event that the prison population explosion abates. However, the possibility of turnaround is one factor, along with cost, that has encouraged "temporary" crowding of facilities in the past, without relief so far in the conditions presumed to be temporary.

ENVIRONMENTAL PROTECTION

State and Federal Roles: Efforts by individual states to adopt environmental protection measures more stringent than federal ones are collected into the theme, "Without Leadership From Washington, The States Set The Environmental Agenda For The Nation," in Newsweek (Nov. 13):

A new age of environmental federalism has dawned. In a stunning switch, the states are no longer merely implementing federal standards but are setting the environmental agenda. Passing more -- and more -- stringent controls on pollution than Congress ever considered, states and cities are protecting ground water, recycling garbage, mandating "clean" fuels and reducing acid rain. Every state now regulates the emission of toxic chemicals into the air; the city of Philadelphia alone has set standards for 99 toxics, while the U.S. Environmental Protection Agency has issued only seven. The states are forging ahead on their own because Congress and the White House can't or won't champion meaningful environmental reform -- even on issues such as the greenhouse effect that have causes and consequences far beyond any state's borders.

The actions drawing the magazine's attention include: (1) tailpipe emission standards led by California, followed by Northeastern states, (2) low-volatility gasoline standards led by California and followed by federal rules, (3) mandatory recycling by local government with Minnesota and Oregon mentioned, (4) bans on chlorofluorocarbons by Vermont and municipalities in California and New Jersey, (5) acid rain limits by Wisconsin, Minnesota, and Massachusetts with federal legislation still pending, (6) requirements in Texas that publicly-owned vehicles convert

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

STEVE COWPER, GOVERNOR

REPLY TO:

P.O. BOX 1
JUNEAU, ALASKA 99811-2000
PHONE (907) 465-3376

March 13, 1990

The Honorable Niilo Koponen
Alaska State Legislature
P.O. Box V
Juneau, AK 99811
Niilo

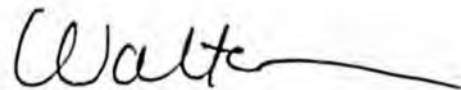
Dear ~~Representative~~ Koponen:

In response to your request, I have enclosed a copy of the chapter from Retraining Adult Sex Offenders: Methods and Models by Fay Honey Knopp that addresses the Oregon state program developed by Rob Freeman-Longo.

Mr. Freeman-Longo is currently under contract with our department to assist us in developing a more standardized approach to treating and managing sex offenders. As we discussed, I would be happy to arrange for Mr. Freeman-Longo to either meet with you or to address one of the legislative committees when he is in Juneau on April 2-3.

Please contact me so that we can make specific arrangements and provide you with any additional information you may need.

Sincerely,



Walter Majoros
Director, Statewide Programs

Enclosure

WM:lc

cc: Susan Humphrey-Barnett
Commissioner
Bill Parker, Special Assistant

RETRAINING ADULT SEX OFFENDERS:
METHODS & MODELS

By

Fay Honey Knopp

for

The Safer Society Program

of the

New York State Council of Churches

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THE SEX OFFENDER UNIT & THE SOCIAL SKILLS UNIT

**OREGON STATE HOSPITAL
SALEM, OREGON**

Multimodal evaluation and treatment programs for adult and for low-functioning sex offenders in a state hospital

CHAPTER 10
THE SEX OFFENDER UNIT & THE SOCIAL SKILLS UNIT
CORRECTIONAL TREATMENT PROGRAMS

*Oregon State Hospital
2600 Center Street N.E.
Salem, Oregon 97310*

The Sex Offender Unit (SOU) at Oregon State Hospital (OSH), modeled on the sex-offender program at Western State Hospital described in the preceding chapter, provides the widest range of sex-offender treatment modalities in any single residential setting in the United States. SOU, a voluntary program offered to imprisoned sex offenders during the last two and one-half to three years of their sentences, is one of three residential programs provided to sentenced sex offenders through the unique administrative structure of OSH's Correctional Treatment Programs (CTP). The two other specialized programs are residential groups for two traditionally neglected populations: (1) the Social Skills Unit (SSU), for sex offenders classified as "low-intellectual-functioning"; and (2) the MED unit, for sex offenders diagnosed as "mentally and emotionally disturbed." Each operates on a therapeutic format and is semiautonomous, with treatment programs tailored to its specific population. Though each unit evaluates its own residents, there is a broad and fruitful interprogram exchange of treatment and technological expertise.

CTP also offers, within Oregon State Penitentiary and Oregon State Correctional Institution, part-time treatment programs for sex offenders who do not qualify for or do not choose to be treated in the SOU.

In this chapter, we will focus on three unique and innovative areas of the CTP: (1) the rare cooperative effort between the corrections and mental health divisions of the state of Oregon, an effort that facilitates therapeutic programming; (2) the Sex Offender Unit's eclectic treatment repertoire; and (3) the Social Skills Unit, which treats sentenced sex offenders who have educational levels below fourth grade and/or serious deficiencies in adaptive behaviors.

THE CORRECTIONAL TREATMENT PROGRAMS (CTP)

In 1975, the Corrections Division and the Mental Health Division of the State of Oregon joined cooperatively to develop, operate, and maintain mental health services for clients of the Corrections Division.¹ Because the funding appropriation involved both mental health and corrections, two professions that traditionally do not work well together, the legislature requested a cooperative board be formed to assure the development of mutually acceptable rules and regulations. To further interagency cooperation, the legislature provided funds for this effort to the Department of Corrections' budget for transfer to the Department of Men's Health on a quarterly basis.

By early 1976, the Mental Health Programs in Corrections Policy Board was formed.² Its tasks were (1) to develop a cooperative agreement in which terms and conditions of treating mutual clients were outlined and (2) to develop the administrative rules of transfer for determining the clinical background of residents who would be eligible for the programs; the time frames for transfers; custody levels; and, finally, the terms under which an individual who volunteered for treatment could be terminated from the program and returned to the prison.

In 1978 the CTP was formally established at OSH with the hiring of Director Roger C. Smith, a criminologist and social worker by training. Smith, who reports directly to the OSH superintendent, contends the detailed policies governing the rules of operation contribute greatly to the smooth, cooperative nature of the programs.

Smith describes these residential programs as "transitional," since they serve people in the last few years of their incarceration.

Though this wasn't the model we originally envisioned, it seemed to me we had a limited number of beds and the most effective approach would be to catch people a few years before they were to be released, provide intensive residential treatment, and phase them slowly into the community. Since I come from the field of corrections, I know what the recidivism curve looks like when men go right from prison to the community, particularly for people who have poor social skills, few community support systems, and often problems with alcohol and drug abuse. [Smith, 1983]

1. In 1975, Oregon law provided for an alcohol and drug abuse program for prisoners at the OSH. That program, Cornerstone, was established in 1976 and incorporated into the CTP in 1978.
2. The board was composed of assistant administrators of both divisions, institutional superintendents, representatives from Field Services and Community Corrections, and a representative from the state's Community Mental Health Programs Director's Association.

A fourth CTP unit, the Correctional Institution Treatment Services (CITS),³ provides sex-offender treatment to the men imprisoned at Oregon State Penitentiary and Oregon State Correctional Institution.⁴ CITS contracts with up to 13 professional, part-time, outside consultants in an effort to furnish specialized and accountable services to the imprisoned. "From the prisoners' perspective," Smith says, "they are dealing with someone where there is a higher trust level than with a correctional staff member. From a therapeutic perspective, you can contract for the specific expertise which may not be available from regular staff. From an administrator's point of view, most importantly, you avoid staff "burnout" (Smith, 1983).

Smith (1983) cites the issue of aftercare as the most intense struggle that occurred between the mental health and correctional divisions:

Did we, the parole officer, or the community health or corrections agencies provide aftercare? We argued that our clients had been involved in specialized kinds of treatment and that there needed to be continuity. It wasn't simply a matter of shifting them smoothly from one system to the next, but a matter of the content of their treatment being consistent. Because they had compulsive forms of behavior, the patterns that aftercare had to be aware of were the same in the community as they were in the program, and we wanted to insure that continuity. It was a major battle for us.

Presently, the arrangement allows CTP to work very closely with specially trained parole officers and the community corrections staff. "We set up the aftercare contracts, and our therapists do the supervision in the community. We work hand-in-glove. It is very satisfactory," says Smith (1983).

3. CITS originally was funded by the 1975 legislature to provide alcohol and mental health services to the imprisoned. The 1977 legislature expanded these services to include mental and emotional disturbance services (including treatment for sex offenders) and Native American alcohol and drug abuse services. The 1979 legislature specifically authorized the CITS program to provide a "dangerous sex offender" program for offenders sentenced under ORS 426.670. Until 1980 CITS was operated out of the Mental Health Division's central office. OSH also provides sex-offender treatment in two other program areas: the Child and Adolescent Treatment Program and the Forensic Psychiatry Program. The latter determines "sexual dangerousness" of offenders for the courts and incarcerates those found "not guilty by reason of insanity." The program utilizes almost all of the SOU methodologies. The behavior of psychotic sex offenders is controlled with drugs.

4. In addition, CITS provides other mental health and diagnostic services to these men, as well as the women imprisoned at the Oregon Women's Correctional Center.

THE SEX OFFENDER UNIT: OVERVIEW

The SOU is unique for the range of treatment modalities offered to the 33 men who voluntarily enter the program during the last few years of their sentences at Oregon's two prisons (Oregon State Penitentiary, a maximum-security institution, and Oregon State Correctional Institution, a maximum-security institution for first offenders).⁵ With the recent availability of Depo-Provera, the SOU's treatment agenda includes all methodologies being utilized in other residential and community-based sex-offender treatment programs.

After a 60-day evaluation and observation period, if the sex offender is accepted into the program,⁶ he can expect to spend 24 to 30 months in treatment in the SOU's secure ward setting,⁷ three to six months on community release, and 18 months in comprehensive and intensive outpatient treatment.

Because release dates are set by the parole board within a few months of the offender entering prison, treatment in the SOU does not shorten the men's period of incarceration. "As a matter of fact," says Robert Freeman-Longo, Director of the SOU, "currently about half the men have written to the board and asked for an extension of their release dates so they can complete treatment. This program is tough, hard work for the offender, and the only reward for being in it is self-improvement" (Freeman-Longo, 1983).

Like the WSH program, the SOU is a self-help, peer-run therapeutic community with 10 steps of progress⁸ that the men must work through before graduating. As done in the parent program, SOU staff also will conduct psychiatric and psychological evaluations in the first 60 days, take an in-depth social and sexual history of the offender, and have him write a lengthy autobiography. The offender's sexual arousal patterns and fantasies will be physiologically monitored and behavioral techniques will be an integral part of his treatment plan for the remainder of his stay in the SOU. These

5. Oregon has a determinate sentence structure. Once a person is sentenced, within a few months of his entering prison the Parole Board reviews a number of predetermined factors and comes up with a parole-release date. However, if a person acts out while imprisoned, he can lose his good time, he may have another parole hearing, and the parole release date can be changed or the parole supervision period extended.
6. Persons are placed on a waiting list and usually are selected on the basis of the least amount of time left to serve on their sentences.
7. The hospital is classified as medium security, but the SOU ward is locked, with TV surveillance of critical areas. The psychiatric security aides have dual responsibilities for security and custody. As at the WSH program, staff perceive the program's best security as rooted in the values of the therapeutic community.
8. For a list of the 10 steps of progress, see Appendix L.

techniques range from what the program perceives as "the least intrusive" to the "most intrusive" forms. Treatment becomes progressively more intrusive if the offender's deviant sexual arousal fails to decrease.

Like at WSH, the group process at the SOU is the central feature of the program. Each resident spends a minimum of 26 hours a week in guided self-help group therapy sessions that meet twice each day. He also is exposed to a variety of educational modules.⁹ Unlike WSH, these include an ongoing learning process derived from Yochelson and Samenow's¹⁰ philosophy of "thinking errors."

If all else fails to control the offender's deviant fantasies, the use of Depo-Provera, recently added to the SOU repertoire, is an option. As with other SOU behavioral procedures and use of the penile plethysmograph, the injection of this drug requires that the offender sign a specific consent form.¹¹ The form stipulates that the men can withdraw their consent at any time during treatment.

SOU TREATMENT MODALITIES

We now will describe briefly the range of behavioral techniques employed in the program, the SOU's perspectives on the appropriate use of Depo-Provera, and the teaching concepts involved in the reporting of "thinking errors."

Behavioral Techniques

Ron Wall, SOU's Chief Behavioral Therapist, conducts assessments for the residents upon entrance to the program. Most of the men have been found to be "untreatable" in a community setting because their deviant behaviors are considered to be quite compulsive and deeply ingrained. Approximately half were sentenced for offenses involving rape and half for some form of child sexual abuse.

A variety of techniques are used to determine the nature and depth of the offender's deviancy. The plethysmograph measures his penile responses

9. For a brief listing of the educational modules, see Appendix M.

10. The authors believe that the "criminal personality" is radically different from the "non-criminal personality." Among other approaches, they identify "thinking errors" in patterns of thought that lead to criminal behavior. "By 'thinking errors' we mean mental processes required by the criminal to live his kind of life. They are 'errors' solely from the standpoint of society, and not from that of the criminal" (Yochelson & Samenow, 1977, Vol. I, p. 359).

11. For sample procedure and consent forms, see Appendices N, O, and P.

to tapes and slides, and he is asked to self-report on a sorting task of 260 cards depicting various sexual scenes. The offender is assessed for his deviant arousal to all themes. "Although he may come in as a rapist or child molester, he is assessed for arousal to male and female children, teens, and adults; as well as rape, child molestation, incest, and certain aggressive themes," says Freeman-Longo. "Often a man may have a history of rape but may be sexually aroused to children as well. We wait for six months before we have a complete psychosocial and psychosexual history. We are constantly updating during that period because, as more trust builds with the therapist who does the report, we get more accurate information" (Freeman-Longo, 1983).

Covert Sensitization. After assessment, a therapeutic regime is determined for each resident. Covert sensitization is usually the first behavioral technique employed, serving as a steppingstone into other types of aversion therapy. As now utilized by the SOU, covert sensitization involves the covert pairing of the offender's preassault or antecedent behaviors with an aversive scene that is a natural or social consequence of his deviant behavior. The offender develops these pairings by himself and records them on audio tape for the therapist or group to critique for content and compliance with instructions. "This teaches the offender to intervene early in his deviant-cycle behavior," says Wall (1983).

These aversive scenes also can be utilized when the offender has a deviant fantasy on the ward. For instance, if he is watching a TV program and sees a child on the screen and begins to fantasize, he is to remove himself from the situation and use one of his aversive scenes to intervene with his deviant fantasy.

Masturbatory Satiation. Covert sensitization is a less powerful therapy that is suited better to intervening with the preassault or antecedent behavior phase than the sexual assault phase, according to Wall. This, after many sessions with covert sensitization, the offender automatically moves on to masturbatory satiation. "We generally proceed to this kind of therapy without waiting for the arousal to decrease to 20 percent or less," he reports (1983).

In masturbatory satiation, the offender first masturbates for five to 10 minutes to an appropriate, adult, mutually consenting fantasy. After achieving orgasm the offender switches to a very short segment or phrase from his deviant fantasy. He will continue to ruminate on this phrase aloud

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

to tapes and slides, and he is asked to self-report on a sorting task of 260 cards depicting various sexual scenes. The offender is assessed for his deviant arousal to all themes. "Although he may come in as a rapist or child molester, he is assessed for arousal to male and female children, teens, and adults; as well as rape, child molestation, incest, and certain aggressive themes," says Freeman-Longo. "Often a man may have a history of rape but may be sexually aroused to children as well. We wait for six months before we have a complete psychosocial and psychosexual history. We are constantly updating during that period because, as more trust builds with the therapist who does the report, we get more accurate information" (Freeman-Longo, 1983).

Covert Sensitization. After assessment, a therapeutic regime is determined for each resident. Covert sensitization is usually the first behavioral technique employed, serving as a steppingstone into other types of aversion therapy. As now utilized by the SOU, covert sensitization involves the covert pairing of the offender's preassault or antecedent behaviors with an aversive scene that is a natural or social consequence of his deviant behavior. The offender develops these pairings by himself and records them on audio tape for the therapist or group to critique for content and compliance with instructions. "This teaches the offender to intervene early in his deviant-cycle behavior," says Wall (1983).

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and into a tape recorder for 50 to 55 minutes while continuing to masturbate. The therapist and group may critique the tape and the process used.

If the offender is unable or unwilling to masturbate, the procedure is varied by having the offender simply ruminare and verbalize without masturbating. This variation also precludes using the initial period for appropriate masturbation. Wall perceives the former method as more effective.

Olfactory Aversion. Both covert sensitization and masturbatory satiation are self-administered therapies, depending on the individual offender for control. Since a sex offender may be very compulsive in his deviancy, the SOU moves next into olfactory aversion, a more intrusive method used to control and reduce deviancy. "It is very difficult for an individual to create his own phobia," says Wall, "so we feel olfactory aversion provides him an opportunity to attain a phobic response" (Wall, 1983).

Pharmaceutical-strength ammonia fumes, administered through a nasal cannula, have been the primary agent used in olfactory aversion in the SOU. Placenta-culture fumes also are used on occasion.

A few physical problems have been noted as a result of offenders being exposed to ammonia fumes, particularly among residents inhaling them for more than the average 25 sessions of use. Says Wall,

We have developed a self-report form and periodic examinations by our doctor to be sure there are no medical problems. A few people have experienced some labored breathing after 100 or more sessions with ammonia, but they have been examined and there haven't been many medical problems. Nevertheless, we want to be careful in the use of it because it is a caustic odor. We have a checklist for reporting any serious nosebleeds, headaches, watering eyes, or pain in the nasal tract so we can keep a handle on it. [Wall, 1983]

Wall reports that, after about 25 sessions of olfactory conditioning, generally the individual reduces his arousal to significantly under 20 percent. However, as a result of spending excessive amounts of time in fantasy reinforced by masturbation, about 20 percent of the men in the program do not respond adequately to olfactory conditioning.

Aversive Galvanic Stimulation. Those men whose results with olfactory conditioning are inadequate then are recommended for AGS, or aversive galvanic stimulation. AGS is a term coined at OSH for electric shock aversion. It is sometimes used in conjunction with ammonia fumes. The AGS device has a small, centralized electrode that fits either on the forearm, thigh, or calf. It can be placed on any of these areas and be changed around.

Wall explains:

We hope that will add to the anxiety--not knowing where it will next be placed on their body. The shock is in the level of milliampers so it is a very small amount, but still we take precautions. It is a flashlight-battery-operated device. We are careful about crossing wires or having bare metal exposed where it could be accidentally touched. We have headphones that are rubber-insulated, so there is no chance of any transient current going anywhere else. It has worked very well and reduces arousal significantly. [Wall, 1983]

Masturbatory Reconditioning. SOU finds using masturbatory reconditioning alone as the least promising behavioral technique. This is true particularly for child molesters, who have high arousals to deviant themes and low arousals to appropriate themes. Wall reports that, after about 20 or 30 sessions of training the child molester to masturbate to appropriate themes, his arousal will increase to those themes but his deviant arousal does not decrease accordingly.

There doesn't appear to be anything happening to decrease the excitement of deviant themes, particularly with those individuals who are still working on their social, assertiveness, and empathy skills. Until they are very successful in being assertive, communicative, and empathic, I don't think the deviant arousal will decrease much. Generally we employ masturbatory reconditioning, sensate focus, and systematic desensitization with offenders who do not have sufficient appropriate sexual arousal. It is necessary to increase any deficits in appropriate sexuality to provide a healthy outlet for the offender and to replace the high excitement he formerly got to deviancy. [Wall, 1983]

Freeman-Longo notes that rapists also can lack arousal to appropriate sexual themes. When measured on the plethysmograph, at least two rapists' appropriate arousal registered in the 20 percentile range, while their deviant arousal registered at 100 percent. "We are involving them in more exercises and are considering using video," he says (Freeman-Longo, 1983).

Depo-Provera

If all of the aforementioned behavioral techniques fail to reduce the offender's deviant arousal sufficiently, the SOU offers the hormonal drug, Depo-Provera, as a "last-resort" treatment.¹² "Before we use Depo-Provera,"

12. The Behavioral Modification and Ethics Committee that approves all procedures used in the program gave permission for the use of this hormonal drug. See Appendices P and Q for a copy of procedural and resident request forms for using Depo-Provera (MPA--Medroxy-Progesterone Acetate).

says Freeman-Longo (1983), "every man goes through a careful screening. It is a totally voluntary participation in this as well as all adjunctive or behavioral therapies."

As of January 1984, four of the 33 men in the program were receiving injections of Depo-Provera. Once each week, they are given full-dosage injections (400 mg/cc) to reduce their testosterone "to that of a prepubertal male," according to Smith (Manzano, 1984).

One of the offenders receiving the hormone is serving a second sentence for sex abuse and a first for attempted rape, though he admits to attempting to rape 20 to 25 women and abusing some 200 victims. Before receiving Depo-Provera he had 16 to 20 deviant fantasies each day and now reports only one or two per week.

A second offender receiving the drug had molested children and exposed himself to several thousand women victims. He reports he is now able to look at women and not fantasize about their bodies and has noticed a marked decrease in the amount of time he spends fantasizing.

A third sex offender, despite 28 years behind bars and almost three years of intensive therapy in SOU, still had strong sexual urges toward children. He had admitted to committing his first forcible rape of two girls at age 11. He also confessed to molesting boys until he was 20, at which point he was sentenced for kidnapping a seven-year-old boy. Now 48, after receiving injections of Depo-Provera, he states that his desire for such acts is ending and he no longer is hanging on to the notion that someday he would get out and have sexual contact with a child.

The history of the fourth offender who recently began receiving the drug involves a number of violent crimes. He murdered his mother, raped numerous victims, and reported almost continuous fantasizing during his waking hours. "One fantasy seemed to lead into another and I spent more time in fantasy than out," he said. Though on Depo-Provera only a short time, he already reports an almost total absence of deviant fantasies.

"These four offenders, however, even after receiving Depo-Provera," cautions Wall, "continue to have high deviant sexual arousal as measured during plethysmograph assessments."¹³ Only after combined use of the drug

13. See Chapter 2, pp. 46 to 47 for comments on the effect of Depo-Provera on the physiological measurement of these clients' deviant arousal patterns.

with behavioral treatment methods have significant reductions in their deviant arousal been noted" (Wall, 1984).

Says the third offender, "I look at Depo-Provera as a tool, an aid to a lot of other things. The one thing I don't believe is that Depo-Provera is a magic panacea. And I guess I have a little bit of fear that it is going to end up like methadone or antabuse.... I don't want to see the drug used that way because I think there are too many kids out there that are going to get hurt" (Manzano, 1984).

Smith concurs: "We don't have a new miracle drug. We have a valuable new tool which, when used with other methods, has great promise in reducing sexual problems" (Manzano, 1984).

Cognitive Restructuring: "Thinking Errors"

One of the ongoing therapeutic modules in the 16 offered in SOU is designed to teach the residents to recognize and change cognitive distortions or "irresponsible" thinking. The goal is to alter thinking patterns drastically in pursuit of facilitating responsible decision making. Program content is derived from the premises and strategies set forth in Yochelson and Samenow's *The Criminal Personality* (1977) and from Samenow's training sessions with CTP staff. Perspectives include notions that, from childhood, the "criminal personality" is radically different from the "noncriminal personality." The search for power, control, and "high-voltage excitement," derived by doing the forbidden, are perceived as elements of a criminal (illegal) lifestyle. The "criminal" is thought to see himself as superior to other people, with his entire thinking structure based on illogical considerations that promote this view of himself and permit him to attempt to get whatever he wants. He is described as "superoptimistic" in believing he will never get caught. "Thinking errors" are identified as patterns of thought that lead to criminal behavior.¹⁴

Estelle Caldwell, Educational Coordinator/Trainer for the SOU, teaches the men to track their thinking in great detail and to report it. When someone does a phenomenological or "thinking report," it is as though "he turns on a movie camera inside his brain," says Caldwell, "and can see every thought go by on the reel of film. He reports it either verbally or in

14. See Yochelson and Samenow (1977), Vol. 1, pp. 251-453.

writing. I prefer that he write it down, because that gives me a much better tracking system for following what is going on and I don't miss as much" (Caldwell, 1983).

Ideally, Caldwell would like to have the men write all their thinking down; however, she is one of only three staff members who review the 35 to 40 reports per week. The number of reports per person varies from three per day to one per week. These limitations do not inhibit staff from telling a resident who is experiencing difficulties that he needs to write a report so he can find out what is going on in his thinking. In addition, each resident carries with him a "thinking log" in which he daily records his thinking. These logs are reviewed in therapy groups, and feedback is given by peers.

Part of Caldwell's work is teaching the discipline of tracking thinking. She helps the offender do a step-by-step analysis on how a particular piece of thinking builds into behavior. "Emotions are not something separate and apart," she says. "We approach it in a very cognitive fashion." She tells the offender, "If you track your thinking and pay attention to what you are thinking, the harm and damage you do to other people and to yourself can be circumvented long before the deviant thought becomes a behavior, or even long before it becomes a fantasy" (Caldwell, 1983).

Caldwell reviews the written reports and analyzes the men's thinking. She pencil-underlines key sentences or phrases, points out the patterns they are revealing, and helps interpret the meaning. For instance, consider the following sample of an initial thinking report:

I woke up this morning at 6 A.M. I was the wake-up man and had the clock set for 5 A.M. It rang at 5 A.M., I turned it off and went back to sleep. Jim wanted me to wake up at 5:30 A.M., but it didn't happen. I was embarrassed. I felt like an ass. I said to myself, "Shit, Jim is really going to be pissed at me." I wanted to hide from him. I didn't want to face what I did. Jim was counting on me and I let him down.

Caldwell's first comment might be, "The first step in the thinking is typical of your pattern of avoiding discomfort and being unwilling to be accountable in your behavior." Then, where the offender writes, "Jim was counting on me and I let him down," Caldwell might point out a second thinking error: "This is sentimentality, his fear of looking bad, more than it is true concern about letting Jim down." Three or four reports down the line, she might ask him to show her where he is repeating these same basic patterns. "The basic patterns are similar for everybody here," says Caldwell, "especially in regard

to looking bad and avoiding discomfort, the way anger is expressed, and the excitement experienced in terms of setting somebody up perhaps just to have an argument because they hope they are going to win" (Caldwell, 1983).

The most common "foundation" thinking errors (the elements of the belief system through which the person filters all information) among the sex-offender population, according to Caldwell, are fear, anger, concrete and rigid thinking (the inability/unwillingness to think conceptually), fragmentation (radical shift in mood and intention),¹⁵ sentimentality, minimization, and the comfort orientation (wanting to feel good all the time). "I have them pay attention to their tiniest thinking errors, because it may be their red alert," says Caldwell. "Once somebody gets to the point where they will identify the pattern and acknowledge it and say, 'Yes, this is what is going on in my thinking,' it does wonders to breakthrough their denial system, which has a tendency to flip-flop" (Caldwell, 1983).

Caldwell understands sex offenders' thinking patterns because they are similar to those of addicts and other offenders, with whom she has worked for many years.

When addicts get uncomfortable they will do anything they can to avoid feeling that discomfort. They are what I call "comfort-oriented folks." They will fluctuate back and forth between two sets of feelings. One set of feelings is what Samenow calls the "zero state," which I call the "state of immobilization." They feel like they are nothing, the lowest thing on earth and nothing can ever be different. They have a tendency at that point to see themselves as a victim--what I call being a "victim of the cosmos." They feel there is nothing they can do about anything and it immobilizes them. However, I would like to emphasize that sex offenders are not very different from any criminal in their thinking. Even the incest offender, who may have no other recorded criminal activity, has basic thinking error patterns. His crimes reveal themselves in his thinking as more "nonarrestable" type crimes, but crimes against others, nonetheless. [Caldwell, 1983, 1984]

Because sex offenders are so power- and control-oriented, they have a tendency to fantasize or start doing something to create an excitement so

15. An example of fragmented thinking is where a resident might say, "Today I know I am not going to have any deviant fantasies about female staff," and he means it. However, in a short time he may feel bored. He sees a female staff person and goes right into his fantasy structure. This is not the same as lying or manipulating, because when he makes the initial statement he means it. His sincerity is shortlived, however. It is a foreign experience for him and corrodes quickly (Caldwell, 1984).

they can swing back into the other set of feelings--the state of feeling powerful. Samenow calls this being "superoptimistic." Caldwell candidly labels it "the state of 'I have the world by the ass and I can do anything I want to do and nothing bad will ever happen to me and my life is going to be wonderful'" (Caldwell, 1983).

When I do my teaching with the men, we make them very aware of what part of the pendulum swing they are in at the moment. We ask them what is going on and where they are headed in their thinking. Their denial system is very intact. Even after they acknowledge that they did a creepy, horrid thing to another human being, the tendency is to flip-flop back and forth in that denial, depending on the level of discomfort they feel. Once their pattern is identified, they cannot deny they are going off into their cycle, because you have the information they gave you. [Caldwell, 1983]

When the thinking pattern is identified, it is used in the change process. Caldwell notes how the sex offender's superoptimism manifests itself when he "decides" he will change. "He will say, 'I'm going to change; therefore, I have changed!' He does not pay attention to the steps necessary in between 'I want' and 'I have actually done it'" (Caldwell, 1984).

The men learn to differentiate between what it means to adapt to their environment and actually change their thinking and behavior. With Caldwell, each person designs some form of intervention in his thought process. Other SOU modules on Rational Emotive Therapy (RET) and anger management contribute new insights and techniques:

A lot of our men have been victimized as kids or adolescents, or during imprisonment. They have a very difficult time differentiating between their actual victimization and feigned victimization. I do a great deal of work with them on how you tell the difference, for instance, between the anger you have toward your stepfather who molested you from the time you were six until you were 14, and the anger you have translated over to the staff person who is telling you that you can't do something you want to do. I am trying to teach him that this is not a very rational comparison to make and how to differentiate. I then talk to him about rational comparisons and use RET in a very practical fashion. [Caldwell, 1983]

RET teaches the men to recognize that their emotions are created from their thinking. Ron Reitman, a RET instructor, focuses on each person's series of beliefs and values and, in terms of reality testing, helps them to identify which are mistaken.

In identifying commonalities among sex offenders, such as anger,

power-thrusting, and control, the SOU staff find that many, in fact, feel emotionally and mentally very much out of control:

Their tendency is to want to control everything and everyone around them to create the illusion they are in control and that they do have power. The issue is tied up with pride, saving face, and not wanting to look stupid. Their fears are enormous and very disproportionate in terms of reality. That is one of the reasons why these men are so frightened of emotions. They don't understand emotion. It goes back to the pendulum swing: They are either totally devastated and everything is just too overwhelming, or they are totally wonderful and everything is going to be just fine--hearts and flowers and sentimentality to the maximum. They don't understand about being responsibly concerned about someone or confronting a person openly about negative behavior. They don't do that because there is that fear of looking bad, a fear of making a mistake. That is why anger is such a big issue. To them, to be angry is to be rageful and vengeful. To be angry is to be very powerful. [Caldwell, 1983]

Caldwell teaches the sex offenders about the psychology of anger and the physiology of excitement and how similar they are. She believes these two issues have a great deal to do with why their crimes get so violent:

With the excitement and the adrenalin starting to pump, they get revved up. Immediately they translate that into anger and don't recognize those feelings can happen from other things besides being angry. They have been culturally conditioned that anger is a man's emotion and that it is OK to be angry. But, once they get angry, they are out of control; they go into a rage, and there is an incredible amount of force in their anger, which they use as a threat around here. I find myself saying to them, "So you are angry, so what? Millions of people are walking around feeling angry but that doesn't mean they hurt somebody or act like a fool. Your emotion is no bigger than mine. I can get 10 times as angry with you as you are with me, but that doesn't mean I can put my hands on you." [Caldwell, 1983]

Wall trains the men in the techniques of anger management, control, and reduction¹⁶ and teaches them that anger can be a positive stimulus for changing a behavior or a situation. Anger is usually the sex offender's most frequently expressed emotion, while other important feelings remain unexpressed. Thus he is taught both to express his anger appropriately and to deal with his other repressed emotions as well. For the occasions when his anger borders on the extreme, he is taught to use simple relaxation techniques before expressing himself to others. Covert rehearsal and

16. An example of a treatment team anger plan for a SOU resident can be found in Appendix S.

role plays are practiced by the offenders to increase their skills. The therapy supervisors monitor the design of the formal "anger plan." Thus the offenders get the same message from everyone on staff and are less able to ignore or minimize the information.

The men record their sexual and other fantasies in weekly "thoughts/urges" reports. The behavioral therapists and therapy supervisors review the information and, if it is too vague, ask the men to repeat the process for another week until the patterns are identified. Other staff are consulted about various ways to intervene with the deviant or violent fantasies. After three months of prescribed interventions, additional fantasy reports are requested and examined.

Staff also examine in great detail the thinking that precedes or occurs during the fantasies. Caldwell has discovered that the men use the same set of thinking errors in their fantasies that they use in their regular thinking. She contends that these fantasies eventually corrode reality-testing abilities to the point where they cut off the person's perceptions of the consequences and the fantasies easily can become realities.

The men identify and record their deviant behaviors, their deviant behavioral cycles, and their basic patterns and foundation errors on big flip-charts. They present them to the class before posting them on the walls of the therapy room. "This exercise increases their knowledge that other people have similar patterns and increases their stamina for getting feedback in front of other people," says Caldwell. "What we are trying to understand are the thinking patterns *before* these cycles occur, before there is any noticeable behavior" (Caldwell, 1983). (See box on next page for samples of sex offenders' charts, taken from those on the walls of the two group therapy rooms.)

Preassault thought and action processes are categorized and recorded in great detail in each sex offender's file and also appear on his discharge contract,¹⁷ which each person signs before release. This insures that the sex offender is clearly aware that his sexual assault is not spontaneous and only rarely situational. It also provides him and his parole officer with a valuable tool for helping to identify the early thinking and behavioral signs that precede his sexual assaults.

17. For an example of a discharge contract using preassault information, see Appendix I.

CHARTS WRITTEN BY SOU RESIDENTS
OUTLINING DEVIANT AROUSALS, CYCLES, AND THOUGHT PROCESSES

<p><u>My deviant arousal</u> is pedophilia, girls and boys ages 5-14, rape and oral sodomy. I rub my penis on vagina, fellatio performed on me, fondling, attempted intercourse, mutual masturbation. I use coercion and manipulation on my victims.</p> <p><u>My observable behaviors are:</u> I become silent, sullen, avoid others. Face and ears become red. Mouth becomes a slash. Hands and feet agitate. Arms and legs crossed. Replies to questions will be short. Voice tone will lower, become monotone. Won't hold eye contact. Stare at floor, stare off or fixed stare. Rigid neck. Hunched shoulders.</p> <p><u>The thought process:</u> I don't think others really care about me. I want to give up. I think I'm in a rut. I get angry with myself. I generate revengeful thoughts. I think others are attacking me when confronting my behaviors. I think of things being catastrophic, making them into a major issue.</p>	<p><u>My deviant arousal</u> is pedophilia, boys and girls 14-16. I perform fellatio and cunnilingus on victims and fellatio on me by victims, fondle and masturbate victims, fetish with women's underclothes, rape females 16.</p> <p><u>My observable behaviors are:</u> My face will turn red. My eyes turn red, watery and downcast. I cross my arms. I will talk almost to a whisper. I isolate myself from others. I will give short, sarcastic answers to questions. I will glare at people. I put others down with sarcasm. I ignore others when they speak to me. I begin clenching my jaw when angry. I walk slow with my head down. I hesitate answering questions by bowed head. I blink my eyes.</p> <p><u>The thought process:</u> I think I am superior to others. I think I have less ability than others, so why try? I think no one cares for me. I think I must prove that I am right all the time. I don't think others can be trustworthy. I place high expectations upon others and myself.</p>
<p><u>My deviant arousal</u> is pedophilia, girls 8-17, rape women 17 and on, intercourse, I will threaten my victims with a weapon.</p> <p><u>My observable behaviors are:</u> My face and ears turn red and I pull on my chin. I spend a lot of time by myself. I give sharp, sarcastic answers. Agitate my hands. I cross my arms and legs tightly. I take a right and wrong stance verbally. I justify my behavior when confronted. I become forgetful. I avoid those I have conflicts with. I isolate by reading personal books.</p> <p><u>The thought process:</u> I think I am inadequate sexually and incompetent socially. I think others will reject me. I think people don't care about me. I get angry at myself. I think about giving up. I catastrophize situations. I think I will fail and be rejected. I think I can never do anything right.</p>	<p><u>My deviant arousal</u> is intimidating girls ages 14-17 and women ages 18-21 to commit fellatio on me and into copulation.</p> <p><u>My observable behaviors are:</u> I show anger inappropriately. I swear at people. I walk away from people, shake my head, no, I don't agree. Face gets red. Body gets tight. Legs crossed. I complain of being sick, fast heartbeat, more than from the norm. I push issues in confrontations.</p> <p><u>The thought process:</u> I feel set up by others, I feel inadequate, I feel people don't care. I fantasize hurting people. I assume at times no one cares to help me when they are busy. I feel people are always criticizing me. I feel at times people are fools. I catastrophize things using big words, making a small issue into a big issue.</p>

Caldwell finds the thinking errors of child molesters and rapists very similar. One noted difference is the way child molesters perceive themselves as victims. "The child molesters have a tendency to go immediately into the zero state, to be more passive-aggressive. The whole world is against them and they are helpless. To generalize, the rapists seem to be more extroverted with their aggression, and their feelings about loss of face are much more in tune with Samenow's standard view of criminal pride, being a man, and being macho" (Caldwell, 1983).

Caldwell concludes,

What we're trying to do is to teach people they are 100 percent accountable for their behavior. They may or may not be a product of their environment, but in the long and short of things it really doesn't make a bit of difference. Being a responsible human might not be the most exciting thing they have ever thought about, but in order to survive in the greater community, they are going to have to give up their mistaken ideas about what the world is about and realize that nobody owes them anything. They need to be responsible, but people are not going to stroke them for being responsible. It is an expectation. [Caldwell, 1983]

MONITORING SOU SUCCESS

Since its inception in 1979, the SOU has graduated 20 sex offenders into the aftercare phase of the program. Of the three who have completed their parole, all still are involved voluntarily in aftercare because they view it and SOU as good support systems. Thus far, two of the 20 have reoffended. Both committed thefts, the SOU requested their paroles be violated, and they were returned to prison. "We had some problems with three or four of the men who were the first to go through the program," says Freeman-Longo (1983). "These were the shining stars who went through very quickly, in 15 or 18 months. Some were not completely complying with parts of their discharge contracts and were getting back into their cycles. But we made some changes and our release procedures are now more stringent."

Release from SOU is carefully phased and support for the offender is unending. After completing step 10 (see Appendix L) and achieving minimum custody, the offender receives community passes until he acquires a job. During the first three to six months of work, he returns to the SOU each night. Social passes for up to 48 hours to go home to family or friends or to spend time in town with one of the other aftercare residents are also options during this period. The offender must live and work within 25 miles

of the hospital during the 18 months he is in aftercare and on parole. Staff approve his more permanent living arrangements. However, he still must return to SOU at least twice a week for evening groups (one solely for after-care men and the other with his original therapy group) and monthly for plethysmograph assessments. Failure to participate could be considered a violation of his parole.

A specially trained parole officer works with all SOU graduates. She has copies of their preassault deviant cycles, does home visits and urinalysis, and conducts supervisory meetings, which are purposely longer than a perfunctory 10 minutes. If an offender appears to be reverting to his old patterns, any of the following may happen: (1) he can be pulled out of the community and returned to the SOU, (2) he can have his parole revoked and be returned to prison, or (3) he can be required to spend all free time, outside of sleep and work periods, at the SOU.

Freeman-Longo says the door is always open at the SOU: "At any point in time from now until the day the sex offender dies, as long as this program exists, a graduate can come back here. If he runs into a problem and feels he might reoffend, we will take him in and put him through the treatment again--anything to prevent a reoffense. They know that this is a support system that always will be around as long as the program is funded. They don't have that kind of option elsewhere" (Freeman-Longo, 1983).

THE SOCIAL SKILLS UNIT: OVERVIEW

The 33-bed Social Skills Unit (SSU) provides three separate treatment programs for its population of low-functioning convicted felons with educational levels below fourth grade and/or serious deficiencies in adaptive behaviors.¹⁸ One of these programs is devoted exclusively to the treatment of sex offenders, who comprise roughly one-third of the SSU population. It

18. People diagnosed as "mentally retarded" (below 70 IQ) have first priority for selection, followed by those within the range of the borderline-normal adult. The average IQ in the SSU is the adult borderline range of 78. Occasionally SSU takes persons who are higher functioning but who, due to cultural deprivation and other serious adaptive skills problems, appear to be lower functioning. About 10 percent of the people are mentally ill but are so low functioning they are sent to SSU rather than MED. Others normally would be in the SOU, except that their IQ is below the program's criterion of 90 IQ or above.

is one of a few specialized residential¹⁹ treatment programs in the country serving the long-neglected sex offender who, because of low intellectual capacity, cultural and social deprivation, or deviant lifestyle, lacks the basic skills necessary to function adequately as an independent, productive member of society. As such, its treatment agenda is pioneering, innovative, and somewhat experimental.

James Haaven,²⁰ Director of the SSU, supervises all clinical treatment activities and facilitates the sex-offender group with a female behavioral co-therapist. Haaven finds the low-functioning sex offender²¹ a challenging and complex population to work with but is encouraged about the prognosis:

At first they look so hopeless, but when you start peeling it apart there is much you can do. After you work through the maze you often find a very inadequate person, deficient in heterosocial skills, sexually dysfunctional, and lacking sexual knowledge. These offenders have difficulty in their ability to discriminate sexual from nonsexual behavior, and deviant from nondeviant behavior. These offenders are no less dangerous than the higher-functioning sex offender, but the makeup of the problem is different. I believe there is less anger and aggression directed in a calculated fashion involved in the acts, but more striking out from frustration. That is why the assessment of a low-functioning sex offender is so important in identifying the cause. A great deal of what they are acting out sexually has to do with their inability to manipulate the system to meet their own needs in a socially responsible way and with the frustration and rejection they feel from living in the community. Because they are acting out a generalized frustration, they have a wide range of victims in terms of sex and age. They are less discriminating than the higher-functioning sex offender, who picks and chooses his victims because he has a very ingrained fantasy system that creates his arousal. Because people perceive the low-functioning sex offender as being involved in impulse situational offenses, they feel he is not as dangerous. I don't agree with that at all. He is just as dangerous. The pathology is similar, but the elements that go into it are different. The low-functioning sex offender

19. See the listing of sex-offender treatment programs in Appendix A, which includes the Moderate Security Unit, Princeton, New Jersey, a residential treatment unit with specialized sex-offender groups for males with IQs ranging from the fifties to the sixties. Also see the Special Problems Unit of the Department of Psychiatry, University of Tennessee, a nonresidential sex-offender treatment program that includes retarded adults. Also see Murphy, Coleman, and Haynes (1983), for description of procedures used in the program.
20. Haaven was formerly a sex-offender therapist at WSH and also directed a mentally-ill offender program in a hospital for the criminally insane.
21. The term "low-functioning" is used here to refer to people with mild mental retardation. It is important to note that, while the same term sometimes is used to describe people with severe or moderate retardation, we do not have that intention here. In this section, "low-functioning sex offender" means "mildly retarded or borderline-retarded sex offender."

needs to talk about his thoughts and feelings, and we need to encourage that in an eclectic way. I believe there is a good prognosis with many of them. [Haaven, 1983]

The goals of the SSU's sex-offender treatment program do not differ substantially from the goals of programs serving higher-functioning sex offenders. Broader goals include increasing the offender's level of social coping skills and reducing his criminality. More specific goals are described as (1) providing an environment where residents have an opportunity to witness their own dysfunctional behavior within the limits of the law; (2) increasing the degree to which residents will accept responsibility for their own behavior; (3) helping residents understand how to produce self-change; (4) providing an opportunity for residents to develop basic educational and living skills; and (5) insuring that residents who complete the program receive continued and consistent treatment in the community.

Within the SSU framework is the basic assumption that deviant behavior is learned. Treatment methodologies are similar to the SOU, with the primary difference being in application of these methods.

As with the other CTP units, upon admission the resident enters a 60-day observation and assessment period in which medical, psychological, psychiatric, academic, and social and leisure skills needs are assessed. Additionally, he is assessed for deviant arousal to all themes, using the plethysmograph to measure penile response to tapes and slides. His motivation for self-change and his willingness to invest in the goals and purposes of the treatment program also are evaluated. The program is voluntary, and the resident can be returned to the parent institution if his behavior is too disruptive for the SSU.

In the SSU, there is a residential treatment period of nine to 18 months, followed by a transitional phase of six months during which community-living skills training is heavily emphasized and treatment intensity maintained. The final phase of treatment is a 12-month aftercare period during which residents live in the community and receive ongoing treatment by attending group and individual counseling and following the conditions of their discharge contracts. Their treatment is directed by an aftercare therapist who is a staff member at the SSU.

Assessment of residents admitted to the SSU suggests that the majority, while lacking in social survival and academic skills and possessing considerable learning deficiencies, are not mentally retarded. They have antisocial

traits but don't clearly conform to the antisocial personality type. They tend to be passive and dependent on others for direction, and they lack impulse control. Generally, they are labeled "losers."

SSU TREATMENT MODALITIES

As in all CTP programs, treatment occurs within the context of the therapeutic community and rests on the assumption that the resident is capable of self-help--taking a responsible role in the functioning of the unit and in understanding his own behavior. Says Haaven (1983),

We have developed a milieu therapy approach that maximizes responsibility but also goes one step beyond. We try to facilitate an environment that will increase reasoning skills. This means staff must never do anything for a resident that he can do for himself. It also means that intervention occurs in a way in which the resident is presented with options. He then has to reason his preferred option. We find this has a lot of impact.

The sex offenders work and live in a separate section of the SSU.²² Treatment, both group and individual, is immediate and relevant to each resident's behavior and thinking patterns.

Cognitive Restructuring

Some of the approaches that were described previously as they are used in the SOU, such as Yochelson and Samenow's concept of "thinking errors," needed to be modified to be useful for the low-functioning sex offender. Thus, the SSU has its own innovative cognitive restructuring model called Mistaken Beliefs.²³ This model still is being tested and expanded but appears to be effective, according to Haaven:

The Samenow/Yochelson approach [of "thinking errors"] was the prescribed concept when we first started the program. I questioned its use with our people. I was interested in trying something cognitive, because it is an area that seems to be overlooked with this population, especially since many of them appear not to have the ability to reason. My thought was that, if you can teach them to brush their teeth, you can teach them to reason a little better.

22. While separating sex offenders invites some labeling by other residents, the SSU's community process overcomes such barriers. For instance, the other two SSU programs are invited to the sex-offender group for discussion of such mutual sexual issues as homosexuality and masturbation, or to parties in the sex-offender quarters. At the time of the interview there were eight child molesters and two rapists of adults in the sex-offender group (rapists of children are considered child molesters).

23. See Appendix II for a listing of the Seven Mistaken Beliefs, based on Yochelson and Samenow's (1977) "thinking errors."

There is no reason why cognitive restructuring doesn't have as much of a chance of success as behavioral methods if you put it into behavioral terms.

We thus have developed our own concept, merging the Samenow/Yochelson elements with Rational Emotive Therapy (RET). Our concern was that people who are borderline types of personalities do not fit well into the Samenow/Yochelson framework, which focuses on innate criminality and doesn't reflect the kind of person who reacts to fear of loss of respect and approval. We merged the two together and developed our own concept of "mistaken beliefs." It utilizes cognitive restructuring--identifying some of the scripts you tell yourself and then trying to replace those with disputing thoughts. In teaching this method we use a lot of repetition and labeling, rather than insight training. We've found that, while higher-functioning individuals learn things through different ways of reasoning (like induction, deduction, or logic), mentally retarded or lower-functioning individuals learn by labeling. They label things, the label fits, and they know what it is.

We have used that as our teaching tool. We will take their journals, which they write in daily, underline their thinking, and label it with the mistaken belief it expresses. They may not understand what that really means, but they learn to identify and label their thinking, and we use these labels as our treatment process. Eventually we replace it with a new statement, a disputing thought, a new label. Even though insightfully they don't understand the process, it provides them with a mechanism for identifying "danger signals" in their thinking.

We foster this process of cognitive restructuring in all of our treatment phases and in all of our treatment activities, including activity therapies. This labeling approach was focused on as a key concept of cognitive restructuring, [based on] the information we had gained on the results of our cognitive mapping tests on our residents and from our experiences as typified in the following example: We had a low-functioning sex offender with an IQ of approximately 65. He had lived in the community for over a year, despite a prior history of more than 19 years of incarceration and an inability to control his sexual offenses against children for longer than 30 days at a time. Before he left, I interviewed him constantly as to what his self-talk was when he would happen to see children in the community. He came up with a statement. He would tell himself, "those brats," and it became his cue to get away from the children and leave the area immediately. And evidently that is what he did when he saw little children.

We feel this is what we can do. Instead of insight training, we can introduce a label that turns on a light. This can be an impactful technique with this group. We are putting a great deal of emphasis in this area and believe much more can be done with cognitive restructuring as well as increasing reasoning ability. [Haaven, 1983]

Behavioral Techniques and Depo-Provera

The SSU, like the SOU, uses a wide variety of behavioral techniques in its treatment of sex offenders. These include covert sensitization, masturbatory

satiation and reconditioning, olfactory aversion, and aversive galvanic stimulation. Also, the SSU recently established procedures for the use of Depo-Provera. To date there are no hard data to indicate the effectiveness of these various approaches, except for covert sensitization, which has proved ineffective, possibly because it relies too heavily on self-expression and imagery. Haaven notes that, in his experience, behavioral techniques by themselves are not satisfactory interventions with low-functioning sex offenders. That is why he places a great deal of emphasis on cognitive restructuring. The use of the penile plethysmograph also has been incorporated into the cognitive restructuring model and appears to be promising. Haaven is encouraging the sex offenders to develop self-talk, using the plethysmograph for biofeedback. "In this way, we can give the men feedback as to how they can verbally affect their arousal level and then verbally decrease it. Right now it looks as if they are learning from this. They are picking up the terms and [substituting] new labels for old labels as to how this is impacting them. Time will tell, but it looks very exciting" (Haaven, 1983).

SSU CURRICULUM

All three treatment groups in the SSU follow the same intensive, structured schedules and rely on the Social Skills Developmental Change Model as the treatment guideline.²⁴ There is heavy emphasis placed on social skills development, presented in 36 classes grouped into six-week modules. Every six weeks there is a new term and then a break week. Residents must pass these classes, even though it may mean they will have to take them several times. Skills such as conversation, communication, assertiveness training, relaxation, and leisure skills are taught. A great deal of emphasis is placed on the Mistaken Ideas, Disputing Thoughts, Anger Management, and Sexual Education modules. As much as possible, staff design the activity classes to suit the individual resident's specific pathology. Staff try to avoid the traditional classroom setting and instead use more participatory or active instruction, including role playing, video feedback, and so forth. Residents seem to remember learning experiences best when that experience is either fun, bizarre, or dramatic.

24. For a brief outline of the Social Skills Developmental Change Model, see Appendix V.

There appears to be a high correlation between good time-management skills and adapting in the community. Training the low-functioning offender to maintain support systems, leisure skills, communication systems, and time management is valued more than teaching vocational skills in the SSU. "If they can't maintain their temperament in order to keep friends and their jobs," says Haaven (1983), "the vocational skills will do little good."

Haaven feels there is a great deal that can be done to increase academic skills among the lower-functioning sex offenders, through the way the milieu is organized and especially through the technique of journal writing. "Many of our people can't read or write, so we team everybody up. A person who can't read and write is always with someone who can. Everything he has to write, he tells to his literate partner, who writes it down. The non-literate person has to transcribe it from one paper to another, and by this kind of mimicking he learns. Their skills increase dramatically.²⁵ It has been very impressive" (Haaven, 1983).

SSU THERAPY GROUPS

The three separate SSU therapy groups meet simultaneously. Each group meeting has a special topic of emphasis. Initially, the sex-offender group focuses on openness and breaking down the barriers of denial. "We don't put a lot of emphasis on the crime itself," says Haaven (1983). "What we do emphasize is honest disclosure of the thoughts and behaviors of the crime. We know the first treatment plans have been successfully completed when the sex offender has given an accurate detailing that matches all the other reports of the crime we have received."

The sex offenders spend a great deal of time in understanding their own arousal cycle and discussing their past crimes and victimizations. They examine their own experiences as victims of abuse. Generally, low-functioning sex offenders have been institutionalized in a variety of settings for longer periods of time than other sex-offender populations. As a result, a high percentage (approximately 60 percent) were victims of sexual abuse themselves.

MONITORING SSU SUCCESS

Of 30 persons who have completed the SSU program, six were sex offenders.

25. SSU is developing a workbook on cognitive restructuring. It is being written at a fourth-grade level and includes cartoons. It should be available to outside groups by the end of 1984.

None of these have reoffended, and two have been in the community for more than two years.

Haaven points out that the SFU sex-offender population is comprised of people who have had a long history of repetitive crime and an inability to maintain relationships. "Most have not married or even had a close friend. Due to their lack of survival skills, poorly integrated sexual identities, and limited reasoning abilities, the incidence of acting out in an irresponsible way may be higher" (Haaven, 1983).

Nevertheless, Haaven believes low-functioning sex offenders may have a better prognosis of controlling their behaviors in the community than high-functioning sex offenders.

The reason I believe their control capability may be better, is that the variables causing their frustration can be addressed. Our people don't have the higher-functioning sex offenders' sophisticated and ingrained fantasy system or their manipulative system of grooming and arousal--the excitement of the planning of the act--which may be more difficult to address. We are encouraged. We are getting to the point though, that our unit feels as much a research unit as a residential treatment program, because everything we are doing is on a cutting edge. [Haaven, 1983]

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STATE OF ALASKA
THE LEGISLATURE

POUCH 7 STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 10, 1990

SUBJECT: House Bill 545 -- sectional analysis

TO: Representative Niilo Koponen
ATTN: Drena McIntyre

FROM: Jack Chenoweth
Legislative Counsel 

As the title notes, the measure is intended to modify current state sentencing practices and procedures, as follows:

-- the measure broadens the opportunity for the court to impose participation in a rehabilitation or treatment program as an element of its sentence;

-- it permits certain prisoners sentenced under presumptive sentences to be eligible for discretionary parole; and

-- it adds a factor to the list of mitigating factors that apply during a court's formulation of a sentence.

Each is more fully discussed in turn.

Bill section 1, reenacting AS 12.55.015(d), extends the court's authority to require participation in an appropriate training or rehabilitation program (1) as a condition of probation, (2) as a condition of suspended execution of sentence, or (3) as a condition of a suspended imposition of sentence. The re-enactment makes clear that, while time spent in participating in a rehabilitation or treatment program is to be counted as part of the defendant's sentence, that time does not reduce a mandatory minimum sentence imposed on the defendant.

Taken together, bill sections 2 and 4 permit a person who has been sentenced for a minimum term under a presumptive sentence and who has not been previously convicted of a felony eligible for consideration for discretionary parole during the minimum term by the state's Parole Board. The de-

Representative Niilo Koponen

Page 2

March 10, 1990

fendant's eligibility would be gauged on the same basis as a prisoner not serving a minimum term applying under a presumptive sentence.

The change made by bill section 3 adds "[demonstrating] . . . a strong potential for successful rehabilitation" as a mitigating element that shall be considered by the court in setting a sentence.

Bill section 5 makes the provisions authorizing discretionary parole to certain prisoners under presumptive sentences retroactive to persons sentenced since January 1, 1980.

The bill is given an immediate effective date by bill section 6.

JBC:mi
wkmi6/053

BILL NO: HB 545

DATE: March 23, 1990

TITLE: An Act relating to
sentencing practices and
procedures

CONTACT: Barbara Miklos
465-4356

The Council on Domestic Violence and Sexual Assault opposes HB 545 which expands circumstances in which a prison sentence may require participation in an appropriate rehabilitation or treatment program, redefines eligibility for discretionary parole and adds a related mitigating factor in determining presumptive sentencing. We will discuss the sections most pertinent to victims of domestic violence and sexual assault.

Section 1, AS 12.55.015(d), expands circumstances in which a sentence may require participation in an appropriate rehabilitation or treatment program. Under current law, courts probably do not have the power to order in-patient treatment as a condition of probation or parole. The Council supports changes to statutes that will allow inpatient treatment as a condition of probation or parole. However, we do not believe this bill adequately addresses all aspects of the laws that need to be changed. We are also concerned that the statement "when a treatment program is ordered by the court, time spent participating in the rehabilitation or treatment program must be counted as part of the defendant's sentence ..." could be construed to mean out-patient treatment. We would not support allowing a perpetrator of domestic violence who is sentenced to jail and treatment, to use the treatment in lieu of the jail time.

Section 3, AS 12.55.155(d), adds that "the defendant demonstrates to the Court a strong potential for successful rehabilitation" as a mitigating factor to presumptive terms. The Council on Domestic Violence and Sexual Assault has serious questions and concerns about this as a mitigating factor.

Who would judge that the defendant has demonstrated a strong potential for rehabilitation? How would someone "demonstrate potential"? It is recognized that sex offender treatment is a highly specialized area of psychology with few experts. Although there are therapists without a sex offender speciality who may feel they can assess rehabilitation potential, the consequences are too serious to be left to non-specialists. Mental health professionals without specialized expertise are more prone to errors such as undercalling risk, inattention or oversimplification of the variables that are relevant and making unrealistic or dangerous recommendations. This issue is particularly important in Alaska where there is a dearth of sex offender specialists. Even specialized sex offender therapists have not developed and tested a treatment model developed specifically for minority cultures. Assessment and treatment might therefore be biased.

Section 4, AS 33.16.090(b), would allow parole for persons who have not previously been convicted of a felony; this includes persons convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree. When the Legislature classified first degree sexual assaults as unclassified felonies, they recognized the seriousness of these crimes. Except for homicide, rape is the most serious violation of a person's body because it deprives the victims of both physical and emotional privacy and autonomy. When rape occurs, the victim's ego or sense of self as well as

COUNCIL ON DOMESTIC VIOLENCE
AND SEXUAL ASSAULT

POSTER

her body is penetrated and used without consent. She has lost a basic human need and right: control of physical and emotional self.

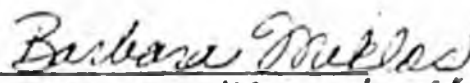
Although in many cases of child sexual assault physical force is not an issue, the damage to the victim is as serious and can be longer lasting because emotional damage is not as easily repaired as broken bones or bruises. Victims of child molestation are affected more severely by the crime than are victims of most crimes. Studies have revealed that a majority of prostitutes were molested as children. Female molestation victims often become abusers of alcohol or drugs and a large proportion of female patients in mental hospitals were molested as children. One researcher has estimated that "upwards of 80% of kids at juvenile hall had been sexually molested, regardless of the reasons that placed them there". Also of great concern is the probability that an overwhelming majority (75% according to one study) of child molesters and most rapists reported they were molested during childhood. The consequences of child sexual assault plus the ongoing trauma suffered by victims confirm the seriousness of the crime.

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

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

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

There is a great deal that is unknown about sex offenders and less that is understood. As the primary state agency representing victims of domestic violence and sexual assault, the Council thinks it is imperative that actions taken consider the protection of victims and that the State do all it reasonably can to prevent further victimization. The crimes addressed in this legislation are among the most serious violent crimes. We believe that the issues of sentencing and treatment should be reviewed in a careful and comprehensive manner looking at appropriate sentences for all offenses, not just the most serious.


Barbara Miklos *by ml*
Executive Director

H B

5 5 8

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 29, 1990

FURTHER REFERRALS:

Date of Committee Action: 4-18-90

The JUDICIARY Committee considered:

HB 558

HOUSE BILL NO. 558

SUITS TO ENFORCE ENVIRONMENTAL LAWS

"An Act authorizing suits to enforce environmental laws; and having the effect of amending Rules 24 and 82 of the Alaska Rules of Civil Procedure."

RECOMMENDATIONS:

- be replaced with CS HB 558 (Jud) the same title
 a new title
 have attached amendment(s)
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the Rules Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
 zero fiscal note _____
 zero with analysis _____

- fiscal note(s) _____
 zero fiscal note(s) see agenda 3/29/90
 zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

Mike Danis

Cliff Davison
Ed Ellis
John Farn

	Do Not Pass	No Rec	Amend
<u>Mike Miller</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Mike Miller
Chairman's Signature

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 12, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/26/90

The RESOURCES Committee considered:

HB 558

HOUSE BILL NO. 558

SUITS TO ENFORCE ENVIRONMENTAL LAWS

"An Act authorizing suits to enforce environmental laws; and having the effect of amending Rules 24 and 82 of the Alaska Rules of Civil Procedure."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

[] fiscal impact _____

[] fiscal note(s) _____

[X] zero fiscal note H. RES.

[] zero fiscal note(s) _____

[] zero with analysis _____

[] zero fn/analysis _____

SIGNING DO PASS:

Mike D.
Grant

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Cliff Davidson</u>	✓		
<u>Mike</u>		✓	
<u>Best</u>	✓		
<u>Bill</u>	✓		

Cliff Davidson
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Suits To Enforce Environmental
Laws
Sponsor: Rep. Koponen
Requestor: House Resources Committee

Agency Affected: All Agencies
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: House Resources Committee Phone: 465-4944
Division: Representative Curt Menard Date: 3/26/90

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):
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* Position Paper *
HB 558

House Bill 558 is intended to give citizens the right to bring polluters to justice when the state lacks either the resources or the will to do so. This measure is patterned after federal law, which has been in effect since the early 70's and has proven both judicially acceptable and practical.

The philosophy behind citizen suits is simple. Governments are not able to prosecute all violations of law, nor seek injunctive relief. People facing environmental pollution and its daily threat to human health and well-being nonetheless deserve the protection of the law. House Bill 558 would complement the Department's enforcement procedures and afford citizens the protection they currently do not have. In an era of limited or declining state revenues, the ability of citizens to have direct access to the courts is especially appropriate.

New Jersey
2A:35A-1

CIVIL AND CRIMINAL JUSTICE

CHAPTER 35A. ENVIRONMENTAL RIGHTS

- Section
2A:35A-1. Short title.
2A:35A-2. Legislative findings and determinations.
2A:35A-3. Definitions.
2A:35A-4. Actions to enforce laws on pollution, impairment or destruction of environment, or to protect environment; dismissal of frivolous actions.
2A:35A-5. Rebuttal to prima facie evidence or affirmative defense; rules of evidence.
2A:35A-6. Temporary or permanent equitable relief.
2A:35A-7. Determination and adjudication of impact of conduct on environment.
2A:35A-8. Remittitur for administrative or other proceedings; retention of jurisdiction; temporary equitable relief.
2A:35A-9. Security as condition for grant of injunction.
2A:35A-10. Award of attorney's and expert witness fees; application of doctrines of collateral estoppel and res judicata; consent of originating court for dismissal.
2A:35A-11. Notice of intention to commence action; persons to whom sent, waiver, exemptions.
2A:35A-12. Act as additional remedy.
2A:35A-13. Construction of act, rules, regulations and orders.
2A:35A-14. Severability.

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A thumbnail sketch of the Environmental Rights Act. Lewis Goldshore (Winter 1973) No. 70 N.J. State Bar J. 18.

Analysis of environmental legislation from 1970 to 1975 in New Jersey. Lewis Goldshore (Summer 1976) 1 Seton Hall Legis. J. 1.

Environmental protection: Perspective 1978. Lewis Goldshore (Fall 1978) No. 86 N.J. State Bar J. 44.

2A:35A-1. Short title

This act shall be known and may be cited as the "Environmental Rights Act."
L. 1974, c. 169, § 1, eff. Dec. 9, 1974.

Title of Act:

An Act concerning the commencement of actions for the protection of the environment and the public interest therein. L. 1974, c. 169.

Administrative Code References

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Law Review Commentaries

1985 environmental protection case law (found in a series). Lewis Goldshore and Marsha Wolf, 117 N.J.L.J. 375 (1986).

1985 environmental protection legislation (first in a series). Lewis Goldshore and Marsha Wolf, 117 N.J.L.J. 335 (1986).

2A:35A-2. Legislative findings and determinations

The Legislature finds and determines that the integrity of the State's environment is continually threatened by pollution, impairment and destruction, that every person has a substantial interest in minimizing this condition, and that it is therefore in the public interest to enable ready access to the courts for the remedy of such abuses.

CIVIL AND CRIMINAL JUSTICE

2A:35A-4
Note 1

Notes of Decisions

1. Construction and application

Policy of protecting state's environment from pollution, impairment and destruction is properly effectuated through the zoning power and may influence local zoning decisions. *Lusardi v Curtis Point Property Owners Ass'n*, 86 N.J. 217, 430 A.2d 881 (1981).

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a. "Person" includes corporations, companies, associations, societies, firms, partnerships and joint stock companies, individuals, the State, any political subdivision of the State and any agency or instrumentality of the State or of any political subdivision of the State.

b. "Pollution, impairment or destruction of the environment" means any actual pollution, impairment or destruction to any of the natural resources of the State or parts thereof. It shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper disposal of refuse, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic areas.

L. 1974, c. 169, § 3, eff. Dec. 9, 1974.

Law Review Commentaries

Environmental protection: Perspective 1978. Lewis Goldshore (Fall 1978) No. 86 N.J. State Bar J. 44.

Library References

Words and Phrases (Perm Ed.)

2A:35A-4. Actions to enforce laws on pollution, impairment or destruction of environment, or to protect environment; dismissal of frivolous actions

a. Any person may maintain an action in a court of competent jurisdiction against any other person to enforce, or to restrain the violation of, any statute, regulation or ordinance which is designed to prevent or minimize pollution, impairment or destruction of the environment.

b. Except in those instances where the conduct complained of constitutes a violation of a statute, regulation or ordinance which establishes a more specific standard for the control of pollution, impairment or destruction of the environment, any person may maintain an action in any court of competent jurisdiction for declaratory and equitable relief against any other person for the protection of the environment, or the interest of the public therein, from pollution, impairment or destruction.

c. The court may, on the motion of any party, or on its own motion, dismiss any action brought pursuant to this act which on its face appears to be patently frivolous, harassing or wholly lacking in merit.

L. 1974, c. 169, § 4, eff. Dec. 9, 1974.

Library References

Health and Environment § 25.5
Injunction § 114(1)
CJS Health and Environment §§ 61 to 66, 69, 71 to 73, 78 to 80, 82 to 86, 88 to 90, 94, 104, 110, 115 to 126, 128, 129, 132, 133, 135, 137 to 140, 142, 144 to 151
CJS Injunctions § 173 et seq.

Construction and application 1
Damages 5
Enforcement of laws and regulations 3.5
Injunctions 2
Review 4
Standing 1.5

Notes of Decisions

1. Construction and application

A non-plan applied as "a more specific stan

Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

Jan. 25, 1990

Kate Tesar
Staff Assistant
for Rep. Ulmer
P.O. Box V
Juneau, Ak. 99811
(Mail Stop: 3100)

re: Citizen Suit Legislation

Dear Ms. Tesar:

Per your request, we have made a survey of other states to assess the prevalence of provisions for citizen enforcement of state environmental laws.¹ The states surveyed are: Arizona, California, Colorado, Idaho, Illinois, Florida, Massachusetts, Minnesota, Montana, New York, Oregon, Washington, and Wyoming.

Two of these thirteen states--Illinois and Wyoming--have broad based provisions allowing citizens to enforce state environmental laws. See Ill. Rev. Stat. 1/2 SS 1045(b); and Wy. Rev. Stat. 35-11-901. Idaho allows citizens to enforce that state's hazardous waste laws. I.C. 39-4416 Finally, California allows citizens to enforce that state's coastal protection statute. Cal. Health Code 30803 and 30804.

Prof. Smith is currently compiling a review of literature regarding the pros and cons of citizen enforcement suits. We will send you the results of Prof. Smith's work as soon as it is completed.

Please call me if you have any questions.

Sincerely,

Mike Wenig

Mike Wenig
Staff Attorney

cc. Karen Wood, ACE

¹ The survey was conducted for Trustees by Willamette College of Law Prof. Susan L. Smith.



Koncor Forest Products Company

3501 Denali Suite 200
Anchorage, Alaska 99503
(907) 562-3335 FAX (907) 562-0599

March 21, 1990

Representative Peter Goll
P.O. Box V
Juneau, AK 99811

RE: HB 558,

Dear Representative Goll:

I am writing regarding HB 558 as introduced by representatives Koponen and Ulmer on February 12, and referred to the resources and judiciary committees. The proposed legislation allows for citizen suits to enforce permit specifications, State management plans, and environmental laws.

Koncor Forest Products has established an excellent environmental record. Last year we received recognition of such from the United Fishermen of Alaska. In spite of our company's responsible environmental policy, we are deeply concerned regarding this proposed legislation.

For our company to start up a timber harvest operation in the State of Alaska, we must receive numerous permits from the State including permits for tidelands use, sewage disposal, solid waste disposal, and stream crossings. In addition we must continually notify the State of our operational plans at least 30 days in advanced. Professional foresters, environmental engineers, and fisheries biologists who are familiar with our ongoing operations administer and enforce the provisions of these permits and notifications.

This proposed legislation would allow any concerned citizen to delay our operations, with no real cost to them. The bill would encourage frivolous suits to be used as a delaying tactic by those who perceive our operations as objectionable, regardless of our environmental standards. The plaintiff in such suits would have nothing to lose by attempting to second guess the agencies whom are intrusted to administer and enforce environmental statutes and regulations. Plaintiffs with few assets could significantly reduce our cash flow, giving us no realistic means of recovering the costs of injunctions or suspensions of operations. In the past these actions have bankrupted legitimate companies that were eventually proven to be doing their operations in an environmentally sound manner.

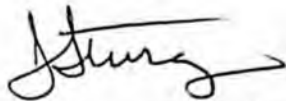
If there is a problem with the administration's ability to enforce environmental laws and regulations, then such problems should be remedied through adequate funding for these agencies, and proper administrative oversight. To enlist the public as a sort of vigilante resource protection advocate with the power incorporated by this bill, would be a set back for professional resource management and environmental protection.

If passage of this type of legislation is inevitable, then there must be protection for defendants of frivolous cases which are used simply to delay operations. One possible avenue would be a bonding requirement for plaintiffs, which provide defendants, public or private, a means by which they could recover both the costs of providing a defense, and the costs incurred by suspended operations.

The legislature must also consider the hidden costs in terms of State man hours committed to preparation and defense in such cases. The money would be far wiser committed to the existing regulatory programs.

Therefore I urge you not to support this proposed legislation.

Sincerely:



John L. Sturgeon, President
Koncor Forest Products

Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

Jan. 25, 1990

Kate Tesar
Staff Assistant
for Rep. Ulmer
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re: Citizen Suit Legislation

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Please call me if you have any questions.

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Mike Wenig

Mike Wenig
Staff Attorney

cc. Karen Wood, ACE

¹ The survey was conducted for Trustees by Willamette College of Law Prof. Susan L. Smith.

New Jersey
2A:35A-1

CIVIL AND CRIMINAL JUSTICE

CHAPTER 35A. ENVIRONMENTAL RIGHTS

- Section
2A:35A-1. Short title.
2A:35A-2. Legislative findings and determinations.
2A:35A-3. Definitions.
2A:35A-4. Actions to enforce laws on pollution, impairment or destruction of environment, or to protect environment; dismissal of frivolous actions.
2A:35A-5. Rebuttal to prima facie evidence or affirmative defense; rules of evidence.
2A:35A-6. Temporary or permanent equitable relief.
2A:35A-7. Determination and adjudication of impact of conduct on environment.
2A:35A-8. Remittitur for administrative or other proceedings; retention of jurisdiction; temporary equitable relief.
2A:35A-9. Security as condition for grant of injunction.
2A:35A-10. Award of attorney's and expert witness fees; application of doctrines of collateral estoppel and res judicata; consent of originating court for dismissal.
2A:35A-11. Notice of intention to commence action, persons to whom sent, waiver, exemptions.
2A:35A-12. Act as additional remedy.
2A:35A-13. Construction of act, rules, regulations and orders.
2A:35A-14. Severability.

Law Review Commentaries

A thumbnail sketch of the Environmental Rights Act. Lewis Goldshore (Winter 1975) No 70 N.J. State Bar J. 18.

Analysis of environmental legislation from 1970 to 1975 in New Jersey. Lewis Goldshore (Summer 1976) 1 Seton Hall Legis J. 1.

Environmental protection: Perspective 1978. Lewis Goldshore (Fall 1978) No 86 N.J. State Bar J. 44.

2A:35A-1. Short title

This act shall be known and may be cited as the "Environmental Rights Act."
L.1974, c. 169, § 1, eff. Dec. 9, 1974.

Title of Act:

An Act concerning the commencement of actions for the protection of the environment and the public interest therein. L.1974, c. 169.

Administrative Code References

Environmental health standards of administrative procedure, see N.J.A.C. 7:1H-2 et seq.

Law Review Commentaries

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CIVIL AND CRIMINAL JUSTICE

2A:35A-4
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CJS Injunctions § 173 et seq.

Construction and application 1

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Injunctions 2
Review 4
Standing 1.5

Notes of Decisions

1. Construction and application

Action plan applied as "a more specific stan-

Original sponsor(s): REP. KOPONEN, Ulmer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 558 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing suits to enforce environmental
7 laws."

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

9 * Section 1. AS 46.03.870(b) is amended to read:

10 (b) Except as provided [SPECIFIED] in AS 46.03.822 - 46.03.828
11 and except in an action under (d) of this section, a determination or
12 order of the department does not create a presumption of law or find-
13 ing of fact inuring to or for the benefit of persons other than the
14 state.

15 * Sec. 2. AS 46.03.870 is amended by adding new subsections to read:

16 (d) Except as provided in (e) of this section, a person may file
17 a civil action against a person who is alleged to be in violation of a
18 law, regulation, permit, plan, or order established under this chap-
19 ter, AS 46.04, or AS 46.09. A person may not file a civil action
20 under this subsection against the state, an agency of the state, a
21 public corporation of the state, or the University of Alaska.

22 (e) A person may not file a civil action under (d) of this
23 section

24 (1) until 60 days after the plaintiff has given notice of
25 the violation to the commissioner and to the person alleged to be in
26 violation of a law, regulation, permit, plan, or order; or

27 (2) if the commissioner has commenced and is diligently
28 prosecuting a civil action or administrative penalty proceeding to
29 require compliance with the law, regulation, permit, plan, or order.

1 (f) Notwithstanding (e)(1) of this section, a person may file a
2 civil action under (d) of this section immediately after giving notice
3 under (e)(1) of this section, in an action involving

4 (1) a hazardous waste as defined under AS 46.03.900;

5 (2) a hazardous substance as defined under AS 46.03.826 or
6 AS 46.09.900; or

7 (3) a hazardous air pollutant as defined under 42 U.S.C.
8 7412.

9 * Sec. 3. AS 46.03.890 is repealed and reenacted to read:

10 Sec. 46.03.890. ENFORCEMENT AUTHORITY. A police officer of the
11 state and a state employee authorized by the commissioner are author-
12 ized to enforce this chapter. This section does not limit the right
13 of a person under AS 46.03.870(d) - (f).

14 * Sec. 4. AS 46.03.870(a) is repealed.
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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 29, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4-18-90

The JUDICIARY Committee considered:

HB 565

HOUSE BILL NO. 565

OIL & OTHER ENVIRONMENTAL LAWS/PENALTIES

"An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with CSH/B565 (JUD) [] 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)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
 [] zero fiscal note _____
 [] zero with analysis _____

- [] fiscal note(s) _____
 zero fiscal note(s) DEC 2/22/90 - 7-6-2/22/90
 [] zero fn/analysis _____

SIGNING DO PASS:

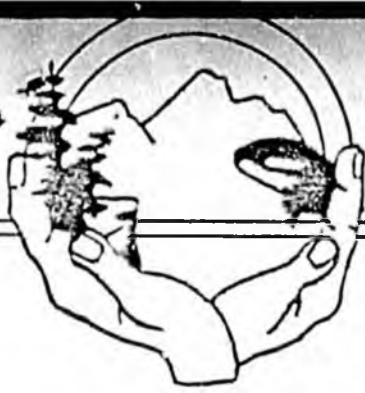
SIGNING:

(Check approp. column)

Do Not
Pass No Rec Amend

<u>[Signature]</u> Goll	<u>[Signature]</u> DAVIDSON			
<u>[Signature]</u> Gruenberg	<u>Mike Miller</u> Miller	✓		
<u>[Signature]</u> Ellis				
<u>[Signature]</u> DAVIS				

[Signature]
 Chairman's Signature



Oil Reform Alliance



4-18-90

AMENDMENT #1: INCREASE CIVIL PENALTIES FOR NONCRUDE OIL

Page 2, line 25, replace "12.50" with "\$50.00".

Page 2, line 28, replace "8.00" with "\$25.00".

Page 3, line 1, replace "\$6.00" with "\$10.00".

PG - MW.
mm - Obj. Duse.

Jdtple



Oil Reform Alliance



AMENDMENT #2: INCREASE CIVIL PENALTIES FOR CRUDE OIL AND
PRO-RATE PENALTIES ON SENSITIVITY OF RECEIVING ENVIRONMENT

Page 6, lines 1-6, delete.

Replace with:

"(A) \$50 per gallon of oil that enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$25 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;

(C) \$10 per gallon of oil that enters an unconfined saltwater environment, public land, or a freshwater environment without significant aquatic resources."

Handwritten notes:
Pg - MW
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pg 52
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COMPARISON OF
CIVIL PENALTY STRUCTURE BASE
FOR NONCRUDE OIL **

Rec'ing Environ.	1977 Hammond Proposed	Current Law SLA 78	SLA 78 with CPI	HB565 Amended Cowper	1990 ORA Proposed
FRESH	\$50	\$10	\$20	\$12.50	\$50
MARINE confined	25	2.50	5	8	25
MARINE unconfined	10	1	2	6	10

CPI: Consumer Price Index

NOTE: The Oil Reform Alliance recommends adopting the civil penalties originally proposed by the Hammond Administration in 1977 for both crude and noncrude oil.

4-18-90

↓
Rep. Menard

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 565 (Resources)

3

PG
MD
MW
obj. - name
obj.
Adopt

Page 9, after line 18:

Insert new bill sections to read:

"* Sec. 15. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.760(e) [46.03.760(a) OR (e)], 46.03.822, or AS 46.04.030(g) or to collect penalties imposed under AS 46.03.759 may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, or guarantor shall appoint an agent for service of process in the state. An insurer must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

* Sec. 16. AS 46.04.040(i) is amended to read:

(i) Financial responsibility under this section extends to a loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, [46.03.760(a)], or AS 46.04.030(g)."

Renumber the following bill sections accordingly.

PENALTY DETERMINATION

Freshwater 10.00/gallon
Product: Gasoline

Size: 10,000 gallons

	<u>Factor</u>
Toxicity - Highly Toxic	1.0
Degradability - Highly Degradable	.25
Dispersibility - Highly Dispersible	<u>.15</u>
	1.40
	mean = .47

$10.00 \times .47 = 4.70/\text{gallon} \times 10,000 \text{ gallons} = 47,000$
Times Five for Negligence

Crude

Toxicity - Moderately $.75 \times 27/30 = .68$

Degradability - Moderate $.5 \times 27/30 = .45$

Dispersibility - Moderate $.5 = \frac{.50}{1.63}$

mean = .54

$10.00 \times .54 = 5.40/\text{gallon} \times 10,000 \text{ gallons} = 54,000$

(1) The base civil penalty for discharges into various receiving environments is as follows:

	Freshwater	Marine	Public Land
Critical environmental resources	\$10.00	\$2.50	\$1.00
Very sensitive environmental resources	N/A	N/A	.75
Sensitive environmental resources	5.00	2.00	.50
Without significant environmental resources	1.00	1.00	.25

(2) Toxicity, degradability and dispersibility factors are as follows:

	Factor
(A) toxicity*	
(i) highly toxic	1.0
(ii) moderately toxic	0.75
(iii) less toxic	0.5
(iv) relatively nontoxic	0.25
(B) degradability**	
(i) low degradability	1.0
(ii) moderate degradability	0.5
(iii) high degradability	0.25
(C) dispersibility	
(i) high dispersibility	0.15
(ii) moderate dispersibility	0.5
(iii) low dispersibility	1.0

(3) The net civil penalty which will be assessed per gallon of oil discharged is calculated by multiplying the base penalty established in (1) of this section by the arithmetic mean of the toxicity, degradability, and dispersibility factors established in (2) of this section. If a portion of the oil enters more than one receiving environment, the civil penalty will be based upon the most sensitive receiving environment which that portion of the oil enters. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

*To determine the toxicity factor for a particular oil, the factor from the table is multiplied by a fraction whose numerator is the percent concentration of aromatics in the oil and whose denominator is 45. In no event shall the toxicity factor exceed 1.0.

The toxicity factor in crude oil is .75 multiplied by a fraction whose numerator is the API gravity of the crude oil and whose denominator is 30.

**The degradability factor for crude oil is .5 multiplied by a fraction whose numerator is 30 and whose denominator is the API gravity of the crude oil.

18 AAC 75.58
 private cases, conditions out of compliance provided for under 46.03.758. This section is subject to the discretion of the Department of Environmental Conservation. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.59
 convening of a meeting to review a report to the legislature for the calendar year, 4/19/78, Register 66

Authority: AS 46.03.758

18 AAC 75.60
 this chapter

(1) "estuary" means a body of water that has a free connection with the ocean and is measurably affected by the ocean's tides;
 (2) "freshwater" means water that is not saltwater and is not brackish water;
 (3) "inside waters" means waters lying inland of the mean high water line;
 (4) "marine saltwater wetland" means a wetland that is periodically or continuously or intermittently flooded by saltwater or brackish water to a depth of at least one foot;
 (5) "permafrost" means ground that remains at or below 32 degrees Fahrenheit for two or more consecutive years;
 (6) "Prince William Sound" means the body of water bounded by the coastline of the state of Alaska and the Federal Register;
 (7) "saltwater wetland" means a wetland that is periodically or continuously or intermittently flooded by saltwater to a depth of at least one foot.

Authority: AS 46.03.758



Northern Alaska Environmental Center

218 DRIVEWAY
FAIRBANKS, ALASKA 99701
(907) 452-5021

***** NEWS RELEASE *****

March 9, 1989
Release: Immediately

Contact: Rex Blazer
907-452-5021

HAZARDOUS AND TOXIC WASTES DUMPED, INJECTED INTO PIPELINE.
Environmentalists learned this week that the U.S. Environmental Protection Agency has determined that the NAPCO refinery near North pole, Alaska illegally dumped toxic and hazardous waste into the Alaska pipeline as well as the air, ground, and water of this suburban Fairbanks community.

"While it is legal to re-inject things like dirty fuel and oil into the pipeline, it most definitely is not to inject things like aniline, sodium hydroxide, and hydrogen peroxide" said Carl Reller, hazardous waste coordinator for the Northern Alaska Environmental Center. "These wastes ultimately end up at the Valdez terminal where the water soluble substances go directly into Valdez harbor, while the oil soluble wastes could damage refinery techniques and equipment."

The Alaska Department of Environmental Conservation has found more than a quarter of a million gallons of fuel in the ground under NAPCO thus far.

* MORE *

Only this week did environmentalists learn that on January 6 EPA quietly ordered MAPCO to begin an extensive and costly clean-up that will take nearly three years and require monitoring the ground water for decades. Over 10,000 people live within a three mile radius of the contaminated area, which is on land leased from the state by MAPCO.

Environmentalists called on the state Department of Environmental Conservation and EPA to establish an advisory group as provided for under the Resource Conservation and Recovery Act. "The drinking water wells for North Pole are less than a half mile from the contaminated zone and in the path of the toxic plume, yet the public has had no opportunity to become involved," Reller said. "MAPCO claimed that the public can't even be told the location of their monitoring wells. We feel the people of North Pole have the right to be involved in this critical process."

"The situation at MAPCO is extremely disturbing in light of other serious compliance problems stemming from North Slope oil development." said Rex Blazer, Executive Director of the Northern Alaska Environmental Center, who cited hazardous waste problems at Tesoro's Kenai refinery and a recently leaked EPA report which documented serious environmental damage resulting from improper and careless management of chemical and oil wastes on Alaska's North Slope. "If this

sort of thing is going on right next to our major population centers and indeed within a few miles of regulatory agency offices, how can we trust the oil industry to operate in compliance with environmental laws in the distant and more sensitive lands of the Arctic National Wildlife Refuge?"

* END *

MAPCO Oil Refinery
Compliance Chronology

July 13, 1984

DEC conducts a Superfund inspection of MAPCO using an independent contractor. Toxic chemicals are present which if spilled or discarded would be hazardous waste.

August 1986

DEC conducts a second Superfund inspection of MAPCO using an independent contractor. Toxic chemicals are present and MAPCO employees explained that when old or used they are dumped into the pipeline.

March 5, 1987

EPA headquarters requests DEC to conduct an official hazardous waste inspection of MAPCO. DEC reports that the injection of hazardous waste into the pipeline is not "disposal". DEC notes that north slope oil production facilities dump waste into the pipeline as do pump stations along the way. DEC verbally asks for a copy of a log book which contained the record of what was injected into the pipeline. MAPCO denies DEC the logbook. DEC labels their conclusions as a "training enforcement exercise".

May 15, 1987

The federal Government Accounting Office (GAO) opened an investigation into allegations that DEC compromised their enforcement at MAPCO.

MAY 15, 1987

EPA orders MAPCO to provide information concerning their hazardous waste management activities.

May 16, 1987

MAPCO states: "One, we do not handle toxic waste at the North Pole refinery. Two, We have not injected toxic waste into the Trans Alaska Pipeline. Three, we have not pumped hazardous waste into the pipeline." DEC denies enforcement of MAPCO was compromised

June 24, 1987

DEC agrees with the Ombudsman's findings that "DEC has not fulfilled the spirit and letter of the law."

July 9, 1987

A special investigator from the GAO office meets with DEC employees.

July 15, 1987

The DEC Commissioner meets with the EPA Administrator in Washington D.C.

Tesoro Oil Refinery
Compliance Chronology

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Tesoro Spills Over 100,000 pounds of hazardous waste. DEC

August 12, 1980 Tesoro claims records are missing.

Tesoro notifies EPA of hazardous waste activities.

September 1980 Information from Tesoro concerning spills and

DEC inspects Tesoro hazardous waste pits and issues a Compliance Order requiring Tesoro to stop violating Alaska law, no record of compliance was found. Hazardous waste pits are inspected.

October 8, 1980 Tesoro claims records are missing.

Tesoro requests DEC to allow hazardous waste disposal pits be permitted as normal solid waste landfills, application is seriously deficient, DEC denies permit.

November 11, 1980

Tesoro files a RCRA part A application for hazardous waste activity, application is incomplete.

November 14, 1980

Tesoro receives a report from their consultant identifying pits containing over one million pounds of hazardous waste.

1981-1982 Tesoro claims it does not have an RCRA permit.

Tesoro claims DEC provided verbal approvals for hazardous waste activities, no written records were kept.

January 1982

EPA acknowledges Tesoro's claim that the refinery is designed to manage up to 30,000,000 pounds of hazardous waste each day (three types of RCRA waste).

April 14, 1983

Tesoro attempts to use hazardous waste for berm material to "protect" the hazardous waste pits, request is denied by EPA.

September 10, 1983

Closure costs are estimated to be \$1,500,000.

November 10, 1983

Tesoro proposes to dump hazardous waste into Cook Inlet via a ballast water treatment plant, EPA initially denies then later approves Tesoro's request.

July 5, 1984

EPA meets with Tesoro and informs them of nine hazardous waste violations.

July 6, 1984

DEC inspects Tesoro and finds unpermitted hazardous waste activities.

MAPCO Oil Refinery
Compliance Chronology

2

September 2, 1987

The Alaska Ombudsman reviews DEC's comments and restates the problems of lax enforcement and closes the case.

February 23, 1988

EPA and MAPCO agree to resolve hazardous waste violations through an Administrative Order.

April 7, 1988

The GAO with holds the MAPCO/DEC report as "confidential". The DEC Commissioner states, "I can only assume we handled the matter properly."

June 16

August 1 and

September 7, 1988

EPA and MAPCO negotiate the Compliance Order.

July 20, 1988

EPA conducts an intensive hazardous waste investigation of the MAPCO refinery using an independent contractor.

October 23, 1988

EPA and MAPCO complete a draft Compliance Order.

December 1988

EPA determines MAPCO dumped hazardous and toxic waste into the pipeline, into surface waters, and on the ground. MAPCO is declared as having a "RCRA surface impoundment", the most difficult kind of hazardous waste dump to clean up (EPA Docket 1087-12-01-3008a).

January 1989
