ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6345 SENATE JUDICIARY

749

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 423
PUBLISH DATE: 1/31/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: "Misconduct involving weapon... in violation of domestic restraining order"
Sponsor: Senator Pearce, et. al.
Requestor:

Agency Affected: Corrections
BRU:
Component:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	100.0	100.0	100.0	100.0	100.0	100.0
SUPPLIES	64.5	64.5	64.5	64.5	64.5	64.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	20.0	20.0	20.0	20.0	20.0	20.0
MISCELLANEOUS						
TOTAL OPERATING	194.5	194.5	194.5	194.5	194.5	194.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	194.5	194.5	194.5	194.5	194.5	194.5
FEDERAL FUNDS						
OTHER						
TOTAL	194.5	194.5	194.5	194.5	194.5	194.5

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Department of Corrections records show 705 arrests in 1989 (for criminal trespass 1° & 2° and harassment) of whom 105 served time. An estimated 10 inmates would fall under this new section charged with a Class C felony, 0-5 years. Average 1 year sentence x 10 inmates x $80/day less 1/3 good time = $194,472.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: March 22, 1990

Approved by Commissioner: D. Hoffman-Scarcelli
Date: March 22, 1990
Agency: Department of Corrections

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

S B 442

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862

MEMORANDUM

DATE: February 12, 1990

TO: Senator Paul Fischer, Chairman
Senate HESS Committee

FROM: Senator Jack Coghill

SUBJECT: SB 442 Sponsor Statement

Senate Bill 442, "An Act allowing a public or private school to adopt a policy authorizing the use of corporal correction" is scheduled to be heard in your committee today.

As I'm sure you are aware, in June of 1989, the State Board of Education adopted regulations which affect all public and private schools in Alaska. These regulations take the authority to administer corporal correction away from the governing body of each school. They are in direct conflict with the separation of church and state, and with state law giving primary control to local school boards. Furthermore, AS 47.17 is our Child Protection Act. This Act protects children from physical injury that may result from disciplinary actions associated with school, home or any other child care environment.

I don't believe that the State Board of Education is staying within the education statutes (Title 14) which do not prohibit the use of corporal correction. We need to give this authority back to the governing body of each school where it belongs.

I appreciate you scheduling SB 442 to be heard in your committee in such a timely manner. Please give it your full consideration.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 998
907 465 3800

RECEIVED

MEMORANDUM July 31, 1989

SUBJECT: Corporal punishment regulations
(Work Order No. 6-1550)

TO: Representative Peter Goll
Administrative Regulation Review Committee

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

You have asked if recent regulations adopted by the state Board of Education regarding corporal punishment are a proper exercise of the board's authority and if the regulations conflict with any other state law. As explained in this memo, I believe that the regulations are within the statutory authority of the state board, and do not conflict with existing state law.

1. Are the regulations a valid exercise of the board's authority?

Under AS 14.07.060 the state board is required to adopt regulations "necessary to carry out the provisions of" title 14. Regulations must be adopted under the Administrative Procedure Act (AS 44.62). Under AS 14.07.020, the Department of Education is required to exercise general supervision over public schools, and to impose by regulation, standards that will assure "healthful and safe conditions" in both public and private schools of the state. While it is arguable that corporal punishment is not a health issue, the state board did receive evidence of both the physical and psychological consequences of corporal punishment. It is also significant that the board has narrowly defined "corporal punishment" as physical force applied for disciplinary purposes. Finally, given the broad authority of the state board and the department over public schools the adoption of regulations prohibiting corporal punishment appears to be within the authority of the state board.

Regarding private schools, under AS 14.45.100 the state board does have the authority to impose regulations that relate to physical health. The regulations do not prohibit corporal punishment in private schools, but merely require adoption of a written policy and specifies elements that the policy must contain. Again, while the relationship between health and discipline can be argued, the connection seems sufficient to justify the authority exercised by the state board.

2. Does the prohibition of corporal punishment conflict with AS 11.81.430 or any other state statute?

Under AS 11.81.430(a)(2), a teacher may use reasonable and appropriate nondeadly force upon a student, if authorized by school regulations. The use of force authorized under AS 11.81.430, relates to those instances in which the force would otherwise constitute an offense under Title 11. For example, physical force exercised by a teacher that might constitute a criminal assault is not a crime, if it is justified under AS 11.81.430(a)(2). Therefore, it appears that the purpose of this statute is to avoid criminalizing certain behavior and not to generally authorize the use of corporal punishment in public schools. Assuming that is true, then that purpose is not in conflict with regulations prohibiting corporal punishment adopted under Title 14. While not entirely clear, I believe that the justification provisions in AS 11.81.430(a)(2) do not authorize the use of corporal punishment, but are exceptions to what would otherwise be criminal behavior.

Aside from the language in AS 11.81.430, I cannot find any other state statute that would arguably relate to the corporal punishment regulations adopted by the state board.

I have enclosed additional materials relating to the regulations adopted by the state board, including a transcript of a public hearing on the issue. If you have further questions, please contact me.

MFF:gc:mi
G11/030

Enclosure

STATE OF ALASKA
DEPARTMENT OF EDUCATION

STEVE COWPER, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET
P.O. BOX F
JUNEAU, ALASKA 99811-0500

M E M O R A N D U M

State of Alaska
Department of Education

TO: Interested Parties

DATE: June 15, 1989

FILE NO:

TELEPHONE NO: 465-2800

FROM: Steve Hole
Deputy Commissioner

SUBJECT: Corporal Punishment Regulations

The State Board of Education on June 5, 1989 approved a regulation banning the use of corporal punishment in public schools. The board also approved a regulation requiring private schools that elect to administer corporal punishment to adopt policies governing its use.

The regulations approved by the Board are attached.

CORPORAL PUNISHMENT REGULATIONS
Alaska State Board of Edcation
Approved June 5, 1989

4 AAC 07.010 is amended by adding a new subsection to read:

(c) The use of corporal punishment in Alaska public schools is prohibited. (Eff. / / ; Register)
Authority: AS 14.07.020(a)(1)
AS 14.07.020(a)(2)
AS 14.07.020(a)(7)
AS 14.07.060

4 AAC 07.900 is adopted to read:

4 AAC 07.900. DEFINITIONS. As used in this chapter

(1) "corporal punishment" means the application of physical force to the body of a student for disciplinary purposes. It does not include the use of reasonable and necessary physical restraint on a student to protect the student or others from physical injury, to obtain possession of a weapon or other dangerous object from a student, to maintain reasonable order in the classroom or on school grounds or to protect property from serious damage or destruction.
(Eff. / / ; Register)
Authority: AS 14.07.020(a)(1)
AS 14.07.020(a)(2)
AS 14.07.020(a)(7)
AS 14.07.060

4 AAC 42.200 is adopted to read:

4 AAC 42.200. CORPORAL PUNISHMENT IN PRIVATE SCHOOLS. (a) Each private school that operates a pre-elementary, elementary, or secondary education program must adopt a written policy governing the use of corporal punishment, as that term is defined in 4 AAC 07.900. Unless the policy prohibits corporal punishment, it must

(1) describe the role of the person or persons authorized to administer corporal punishment;

(2) describe the circumstances under which corporal punishment may be used;

(3) describe the type and amount of corporal punishment permitted, including any instruments that may be used;

(4) describe any requirements governing privacy or the presence of witnesses; and

(5) require that parental consent must be obtained before corporal punishment is used. The consent may be given before each use of corporal punishment or a general consent for a period of time may be used.

(b) The requirements of (a) of this section do not apply to a school in which only the children of a single family are enrolled, and the schooling is provided by the parent or legal guardian of the children.

(c) Each school required to have a policy under (a) and (b) of this section must distribute its current policy to the parents of each student and must have its current policy on file with the Alaska Department of Education, P.O. Box F, Juneau, Alaska 99811. Corporal punishment may be administered only in accordance with the policy on file with the department.

(d) Because it relates to the physical health of private school students, exempt schools under AS 14.45.100 -- 14.45.130 are not exempt from this regulation. (Eff. / / ; Register)

Authority: AS 14.07.020(a)(7)
AS 14.07.060
AS 14.45.100

child study team, the test results would not be a valid estimate of the student's current achievement level. If the student's current individualized education program (IEP) under 4 AAC 52.140 contains recommendations regarding group standardized testing, then those recommendations should be applied, making a special meeting unnecessary.

(c) Bilingual students who are identified in language proficiency categories A or B under 4 AAC 34.050 may be excluded from testing if they have been in U.S. schools for less than three full school years. All students with three or more full school years in U.S. schools must be tested. (Eff. 3/15/89, Register 109)

Authority: AS 14.07.020
AS 14.07.060

CHAPTER 07. STUDENT RIGHTS AND RESPONSIBILITIES

4 AAC 07.010. ESTABLISHMENT OF DISTRICT GUIDELINES AND PROCEDURES; PROHIBITED DISCIPLINE. (a) Each school district shall develop and adopt policies regarding student rights and responsibilities. These policies must address both substantive and procedural matters relating to standards of student behavior, treatment, and discipline. A uniform discipline policy must be in effect throughout the district for the purpose of establishing standards and procedures in matters relating to student discipline. The procedures, at a minimum, must address the following:

(1) routine discipline case procedure; and

(2) chronic or serious discipline case procedure.

(b) All district policies must be consistent with the federal and state constitutions, state statutes and regulations as written or construed by courts of competent jurisdiction.

(c) The use of corporal punishment in Alaska public schools is prohibited. (Eff. 8/30/75, Register 55; am 3/1/78, Register 65; am 8/25/89, Register 111)

Authority: AS 14.07.020(a)
AS 14.07.060

4 AAC 07.900. DEFINITION. As used in this chapter, "corporal punishment" means the application of physical force to the body of a student for disciplinary purposes. It does not include the use of reasonable and necessary physical restraint of a student to protect the stu-

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WILLIAM BENTLEY BALL

May 4, 1989

Hon. Barney Gottstein
President
State Board of Education
P.O. Box F
Juneau, AK 99811

Re: Draft Regulations on Corporal Punishment
Our File No. 605.88

Dear Mr. Gottstein:

I write you today as national counsel to Association of Christian Schools International (ACSI). ACSI embraces in its membership 2,471 evangelical Protestant schools throughout the United States. Its members in Alaska are deeply concerned over the proposed regulations pertaining to corporal punishment which have been proposed by the Alaska Department of Education. They have sought my legal opinion as to these. Having reviewed the draft regulations in light of applicable legal considerations, I thought I should send my opinion on to you and your Board members. Because you and I are total strangers one to another, I have enclosed a brief summary statement of my legal background.

Before attempting to explore the legal issues which may have bearing on the proposal, I feel it important to assure you that my clients deeply appreciate the humane interests which lie behind our state and federal laws for the protection of children. In no sense do ACSI schools deny the right of society to enact reasonable laws for the common good.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

child study team, the test results would not be a valid estimate of the student's current achievement level. If the student's current individualized education program (IEP) under 4 AAC 52.140 contains recommendations regarding group standardized testing, then those recommendations should be applied, making a special meeting unnecessary.

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Authority: AS 14.07.020
AS 14.07.060

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Authority: AS 14.07.020(a)
AS 14.07.060

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dent, or others, from physical injury, to obtain possession of a weapon or other dangerous object from a student, to maintain reasonable order in the classroom, or on school grounds, or to protect property from serious damage or destruction. (Eff. 8/25/89, Register 111)

Authority: AS 14.07.020(a)
AS 14.07.060

CHAPTER 12. CERTIFICATION OF PROFESSIONAL PERSONNEL

4 AAC 12.025. CERTIFICATION FOR TEACHERS PROVIDING SPECIAL EDUCATION. (a) A person employed by or on behalf of a school district to teach special education to handicapped children must possess a Type A teacher certificate issued under 4 AAC 12.020 with an endorsement based upon completion of an approved teacher training program in special education.

(b) A person who has the primary responsibility for the evaluation of, the planning of educational programs for, or the teaching of or training of staff to teach children who are visually impaired or deaf must have an endorsement in the education of children with the relevant impairment.

(c) A person employed by or on behalf of a school district to teach special education to preschool handicapped children, who does not hold an endorsement in preschool handicapped education must, in addition to the requirements in (a) of this section, complete 7½ hours of inservice training in early childhood special education before or during the first year of employment in teaching preschool handicapped children. This subsection is repealed July 1, 1993.

(d) Effective July 1, 1993, a person employed by or on behalf of a school district to teach special education to preschool handicapped children, who does not hold an endorsement in preschool handicapped education, must have completed six semester hours in early childhood special education in addition to the requirements in (a) of this section. (Eff. 7/16/89, Register 111)

Authority: AS 14.07.060
AS 14.20.020
AS 14.30.250

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WILLIAM BENTLEY BALL

May 4, 1989

Hon. Barney Gottstein
President
State Board of Education
P.O. Box F
Juneau, AK 99811

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Before attempting to explore the legal issues which may have bearing on the proposal, I feel it important to assure you that my clients deeply appreciate the humane interests which lie behind our state and federal laws for the protection of children. In no sense do ACSI schools deny the right of society to enact reasonable laws for the common good.

Having studied the draft changes to the Administrative Code, I believe them to overstep what is legally permissible. First, the proposed 4 AAC 42.200 is clearly in conflict with relevant Alaskan statutory law. Second, irrespective of Alaskan statutes, it would unconstitutionally infringe on the religious rights of those non-tax-aided religious schools whose doctrinal principles govern school discipline.

As to my first point: Alaska's private school enactment of 1984 contains a provision exempting all religious or other private schools from provisions of law except such as pertain to physical health, fire safety, sanitation, immunization and physical examinations. The legislative purpose of the Act is clearly stated, that "the state shall not control or interfere with the rights of conscience and religious liberty." The "religious liberty" thus protected by the Act is, of course, the liberty of a particular religious body to observe and practice its religious teachings in their full integrity. Obviously this liberty does not extend to religious practices which pose significant threats to people. But neither is it limited so as to bar religious groups from the observance of practices required by the teachings of their faith and which do not pose such threats. Obviously whole classes of persons and activities in our society are not to be governmentally regulated on the ground that there occur exceptions to good conduct by some within those classes.

ACSI's schools are pervasively religious entities. They would not exist except for their religous mission to children. A critically important area of the religious life of the ACSI school is that of discipline. The ACSI schools, as an absolute requirement of religious faith, must adhere to Biblical principles of discipline. These are founded on love. They include the allowance of corporal punishment. They hence are inherently an aspect of the exercise of religion protected by the 1984 Act. In no way, I should add, is the "physical health" exception provided for in that Act applicable to the ACSI schools in their disciplinary practices. No general health problem whatever has been posed by private schools in Alaska and, in particular, none by religious schools, insofar as discipline is concerned. Should any individual instance of child abuse arise in any public or private school, or elsewhere, legal safeguards relevant thereto already exist for the protection of children.

As to my second point: the proposed regulation would plainly be violative of rights of ACSI's schools protected by the Religion Clauses of the First Amendment to the Constitution of the United States. I have stated above the essential fact that the exercise of discipline within an ACSI school is part of the school's exercise of its religion. That being so, it is familiar law that government may not interfere with the exercise of religion without proof that its interference is justified by a "compelling state interest." Hobbie v. Unemployment Appeals Commission, 480 U.S. 130, 141 (1987). Proof of some mere "public interest" will not suffice. The courts have many times stated that, to interfere with the First Amendment liberties of speech, press or religion, government must prove a supreme societal interest as its justification - indeed one that cannot be realized by any less restrictive means. Wisconsin v. Yoder, 406 U.S. 205 (1972); Callahan v. Woods, 736 F.2d 1269, 1272 (9th Cir. 1984).

Coming now to examine 4 AAC 42.200 in light of those requirements, it is apparent that it would be unconstitutional as applied to non-state-aided religious schools:

1. There is no evidence that any supreme societal interest supports the proposed regulation. I do not express any opinion as to regulating the public schools in the administration of corporal discipline. What is totally clear is that no general threat to the health of children has ever arisen in Alaska resulting from disciplinary practices of Alaska's religious schools.

2. It is clear that AAC 42.200, if adopted, would create excessive governmental entanglements with religious schools in violation of the requirements of the Establishment Clause of the First Amendment. The Supreme Court has many times stated that the church-state separation principle precludes government involvement with religious bodies which involvement produces "a kind of continuing day-to-day relationship which the policy of [religious] neutrality seeks to minimize." Walz v. Tax Commission, 397 U.S. 664, 674 (1970). The Court, in Lemon v. Kurtzman, 403 U.S. 602, 618 (1971), warned of the dangers of "sustained and detailed administrative relationships [between government and religious schools] for enforcement of statutory or administrative standards."

4 AAC 42.200 calls for the kind of involvements of the State in the affairs of religious schools which is constitutionally forbidden. There is no point to having those schools submit the "policy" unless the State can pass upon the policy and supervise performance under the policy. The clear implication is that the State will review whether the person who "may administer corporal punishment" is a person or class of persons of whom the State approves. Otherwise why ask who the person is to be? As to "type of corporal punishment permitted," "the circumstance under which it is permitted," "requirements governing privacy and the presence of witnesses," it is plainly pointless to require the submission of that information unless the State considers that its function is to approve or disapprove these specific parts of the "policy."

It is further noted that 4 ACC 42.200 states: "Corporal punishment may only be administered in accordance with the policy on file with the department." This means either that the Department must assure that the policy is so administered or it means nothing. If the Department is not going to take steps to correct the school when it deviates from its stated policy, what point is there in requiring the school to submit its policy? It appears obvious that it is the intention of 4 AAC 42.200 to give the Department power to police the schools in the observance of their corporal punishment policies.

Considering that 4 AAC 42.200 calls for intrusion by the State into a central area of the religious administration of religious schools, and that such intrusion is not justifiable under the heading of compelling state interest, it is my considered opinion that, in spite of the undoubted good motivations which may have given rise to its being proposed, it is an unconstitutional measure insofar as it would be made applicable to such schools.

Very truly yours,

William B. Ball

WBB:dh
Enc.

cc: Commissioner Bill Demmert
Mr. Burt Carney
Dr. Paul A. Kienel

WILLIAM BENTLEY BALL

In the private practice of law in the Harrisburg firm of Ball, Skelly, Murren & Connell.

A constitutional lawyer who has been lead counsel in litigations in 22 states and in 19 cases in the Supreme Court of the United States, including the landmark decision in the Amish case, Wisconsin v. Yoder. Life Member, American Law Institute. 1982 Clarence Darrow Award. Member, National Committee, The Human Life Foundation, Inc. Messiah College Distinguished Public Service Award, 1985.

Lectures and debates on constitutional law issues at University of Sydney (Australia), University of Minnesota, University of Chicago, Amherst College, Harvard Graduate School of Education, University of Pennsylvania. Keynote speaker National Conference on Governmental Intervention in Religious Affairs, 1981 (Natl. Council of Churches, Synagogue Council of America, U.S. Catholic Conference).

Member, bars of New York, Pennsylvania, Supreme Court of the United States; U.S. Court of Appeals, 7th Circuit; U.S. Court of Appeals, 3rd Circuit; U.S. Court of Appeals, 5th Circuit; U.S. Court of Appeals, 6th Circuit; U.S. Court of Appeals, 9th Circuit; U.S. Court of Appeals for the District of Columbia.

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WILLIAM BENTLEY BALL

May 26, 1989

Thomas E. Wagner, Esq.
Deputy Attorney General
State of Alaska
P.O. Box K
Juneau, AK 99811

Dear Mr. Wagner:

Before leaving for the Memorial Day weekend, I wanted to get this letter off to you. Thank you for accepting my call. I tried to reach my clients in Alaska this afternoon but without success.

In our conversation, you stated that the State, under 4 AAC 42.200, is seeking only to make a survey of disciplinary policies, and that its request to know who is to administer punishment is not a request for names, but merely whether the "who" is a staff person or the parent. You further stated that the State would not, and legally could not, on the basis of the responses, regulate any particular school.

If the foregoing is the State's firm opinion, then I respectfully suggest that language be added to 4 AAC 42.200 expressly stating that, or, as a less desirable alternative, that the Attorney General issue a concurrent opinion stating that. Then my clients would be able to react. One additional thought about the above suggested amendment. It should specifically provide the confidentiality of all responses.

I do see a significant difference between a regulation which is, and is intended to be, solely a statewide survey of practices and one which is a fishing expedition intended to set up religious schools for intrusive surveillance and enforcement or punitive actions.

My clients will of course have to follow their conscientious conclusion in their reaction to the proposal as above interpreted by you. They have told me, prior to our talk, that they would risk jail rather than permit the State to make them abandon policies which are religiously required but which are safe and reasonable.

Very truly yours,

William B. Ball

WBB:dh

cc: Mr. Burt Carney
Mr. Mac Culver
Dr. Paul A. Kienel

MEMORANDUM

State of Alaska
Department of Law

TO: Members, State Board of Education
DATE: June 3, 1989
FILE NO.: 993-88-0117
TEL. NO.: 465-3603
SUBJECT: Regulations relating to corporal punishment in schools

FROM: Thomas E. Wagner
Assistant Attorney General
Human Services-Juneau

Attached are copies of two letters from William Bentley Ball, one to the board president dated May 4, 1989, and one to me dated May 26, 1989. Representative Randy Phillips requested that our office give the board a written response to Attorney Bentley's position.

I. Corporal punishment as a health and safety issue

In his May 4 letter, Mr. Bentley claims the proposed regulations do not relate to the physical health of students in private schools. He asserts that no general health problem has been posed by discipline practices in private schools.

It is clear that the board's authority to regulate private schools is limited to health and safety issues. The board is empowered by AS 14.07.020(7) to

> prescribe by regulation, after consultation with the state fire marshal and the state sanitarian, standards in addition to the requirements of AS 18.15.145 that will assure healthful and safe conditions in the public and private schools of the state including a requirement of physical examinations and immunizations in pre-elementary schools; the standards for private schools may not be more stringent than those for public schools.

(Emphasis added). AS 14.45.100 exempts certain religious or other private schools, those that elect to comply with AS 14.45.100 -- 14.45.130, from

> "other provisions of law and regulations relating to education exept law and regulations relating to physical health, fire safety, sanitation, immunization, and physical examination."

(Emphasis added). Thus, the board has no current statutory authority to regulate the use of corporal punishment in private schools for pedagogical reasons alone, but may regulate in that area for health and safety reasons.

There was probably insufficient evidence presented at the board's subcommittee hearings on corporal punishment, which I attended, on which to base a conclusion that corporal punishment practices in private schools in Alaska currently constitute a pervasive health problem. Several witnesses, sometimes citing biblical references, testified about corporal punishment being applied with a "rod." Others testified that a paddle was used. There was no testimony that corporal punishment in Alaska schools, public or private, has commonly led to serious physical injuries. Many of the school representatives that testified in favor of permitting corporal punishment said that the practices in their schools were reasonable and not excessive. The board did not get information from all schools, nor about all the practices used, i.e., what instruments were being used, to what extent, and what protections were being observed to guard against abusive incidents.

The board was presented with evidence that spanking or paddling can cause physical injury, ranging from only temporary reddening, welts, or bruises on the buttocks, to hematoma (bleeding deep into the muscles of the buttocks), bruising of the coccyx, fracture of the sacrum, and tearing of the nerves that innervate the pelvic area or, if the paddle hits below the buttocks, on the back of the upper thighs, bruising of the sciatic nerves. Taylor and Maurer, Think Twice: The Medical Effects of Corporal Punishment, at p. 30. There was evidence that paddling of the buttocks sends force waves through the entire length of the spine, and may damage the brain. Id., p. 32. Damage can occur to a boy's genitals by blows to the buttocks if the instrument hits the scrotum or if the penis is rammed against the object the child is leaning on. Id., p. 33. Finally, although no such abusive incident in Alaska was reported to the board, there have been news stories from other states about of children being severely beaten, even beaten to death, in incidents of excessive use of corporal punishment.

There was evidence indicating that childhood incidents of corporal punishment can have long term psychological consequences, from nightmares to post-traumatic stress syndrome, to psychological problems, such as sexual dysfunction later in life. In fact, Taylor and Maurer, at p. 36, argue that beating a child on the buttocks must be recognized as a form of sexual abuse. Although the breadth of the board's statutory authority is not precisely clear from the statutory phrases "healthful and safe conditions" and "physical health", it is by no means certain that the courts would consider the psychological damage described in this paragraph to come within the board's authority. To avoid legal challenges about the scope of the board's authority, we suggest the board limit its regulations to those that can be supported under a rationale of protecting against physical damage caused by physical trauma.

We believe the board's proposed regulations, as they relate to private schools, are related to physical health in two ways. First, by requiring the schools to have a policy in place regarding the use of corporal punishment, school policymakers are required to think about the issue beforehand, and to set parameters for their personnel. Limitation of corporal punishment to striking only certain parts of a student's body, requiring that the student be clothed, permitting only a certain number of blows, requiring that the spanking be done with the open hand, prohibiting the use of certain types of instruments, requiring that the punishment be administered only by the principal or some other person who is not the person calling for the punishment, and requiring the presence of adult witnesses, are all policies a school might consider to reduce the possibility that a child will be injured by excessive punishment given in anger.

Parents seeking a school for their children will be able to evaluate the policies of the different schools. Because even parents who desire to have their children attend schools where corporal punishment is an option will probably want assurances that the school's practices are reasonable, and that precautions have been taken to minimize the risk of serious injury, the requirement that each school have a public policy will help the marketplace work to increase health and safety. Requiring that corporal punishment be limited to that described in the policy will offer parents some assurance against excesses.

The regulations are related to heal . a second way. By requiring schools that use corporal punish to report their policies and extent of and the circumstance: rounding the use of corporal punishment, the board can be ma: re of the extent to which various practices are used in Alask r the board finds certain common practices which appear to h: high risks to the physical health of the students, it can con: further research into potential medical effects, and adopt fu er regulations if warranted. Essentially, the board is inquirin nto the practices in use in the private schools so that it can ca: out its duty to "assure healthful and safe conditions" in thos schools. In my telephone conversation with Mr. Ball, I indicated my belief that it was the board's intent at this time only to gather information, and that it would need to take further regulatory action, and justify that action, if it became aware of any particular practices it wished to regulate further. It was not proposing, as Ball assumed in his May 4 letter, to approve or disapprove any particular school's policy.

In our opinion, it is within the scope of the board's statutory authority to require both the existence of a written policy, made available to the parents and the department, at

schools that use corporal punishment, and the reporting of the actual use of corporal punishment. The first requirement uses the market to enhance health and safety while the second is reasonable to enable the board to carry out its statutory duty to develop standards that will assure healthful and safe conditions. As Mr. Ball himself recognized in his May 26 letter, the board's monitoring of practices in private schools with an eye toward future regulations if needed, is less intrusive into the schools' operations, than would be passing, on a case-by-case basis, on the propriety of each school's policy.

II. The identification of who may administer corporal punishment

Mr. Ball was also concerned that, by requiring the school's policy to include "who may administer corporal punishment," the board sought the name of each person authorized by the school to administer corporal punishment so that it could pass on whether it thought that person was "fit" to do so. I told Mr. Ball I thought the board's intent was to learn the role of the person authorized to administer corporal punishment: would the classroom teacher be authorized to do so, or only the school administrator? In some schools, the parents themselves are called to the school to administer the punishment. If I am correct regarding the board's intent, the proposed regulation should probably be reworded to reflect that intent.

III. Confidentiality and Enforcement

In his May 4 letter, Mr. Ball suggested that, if the board requires reports of incidents of corporal punishment, it should specifically provide for the confidentiality of responses. Mr. Ball's point is well taken. It could be embarrassing to a student or the student's parents to have an incident of this nature made public. Disclosure that a particular student was subjected to corporal punishment could implicate the child's constitutional right to privacy or the student's rights under the regulations governing the Family Educational Rights and Privacy Act of 1974 ("FERPA"). In some of the smaller schools, the sex and grade of the student may be sufficient information to be able to identify the student involved.

AS 01.25.120(a)(4) permits a state agency to refuse to disclose records required to be kept confidential by a federal law or regulation. Federal regulations adopted under FERPA permit a private school covered by FERPA to release personally identifiable educational records to the state educational agency, provided the state agency takes steps to protect the personally identifiable information and destroys that kind of information when no longer necessary to monitor compliance with federal requirements. 34 C.F.R. 99.31(a)(3)((iii); 34 C.F.R. 99.35. In this case, some

of the private schools being regulated might not be subject to FERPA requirements, because they are not supported by federal education money. Further, the state would not be requesting the records for the purpose of monitoring compliance with federal requirements. Thus it is doubtful that the department can provide for confidentiality under AS 09.25.120(a)(4).

AS 09.25.120(a)(3) provides for confidentiality of "medical and related public health records". Although we have stated above that we believe the issue of corporal punishment is related to health and physical safety, we do not believe the reports required by the proposed regulations would be "medical and related public health records." Accordingly, we see no basis for nondisclosure of the records.

A related concern, not raised by Mr. Ball, is the Department of Education's lack of enforcement tools. If private schools fail to make the required reports, or fail to make the reports in sufficient detail to permit the department to identify practices that may be identified as health risks, it may be cumbersome to enforce the proposed reporting requirements. For the above reasons, the board may wish to reword the proposed reporting regulation by removing the requirement that the grade and sex of each student subjected to corporal punishment be reported. Alternatively, the board may wish not to require reporting of corporal punishment incidents, but instead to rely only on the policies filed with the department to determine whether further regulation is needed.

cc: Hon. Randy Phillips

P.O.Box 770029
Eagle River, Ak. 99577
Phone (907) 688-6888

May 22, 1989

Mr. Barney Gottstein, President
State Board of Education
P.O.Box F
Juneau, Ak. 99811

Dear Mr. President:

I have witnessed the violence and immoral behavior in the elementary, junior hi & high schools in Eagle River as late as 1988. As a grandparent, I urged my children to send their kids to a private school where that type behavior is not condoned or tolerated, and education has a priority.

Your proposed changes to the State Education Regulations on all forms of corporal punishment are unsatisfactory and unnecessary. These changes appear to be designed and motivated by some unstated agenda.

Let's get down to the basics. The public school system in Alaska is out of control. There is little, if any, protection for our children in school who become prey to violence inflicted by contemporaries, and there is little evidence that imparting knowledge(education) has any priority in the local schools.

Your problems in the school system are much more severe than corporal punishment and a make-work reporting scheme. You must look: get down in the trenches. Go see the overcrowded classroom, the teacher with an overload or the kid so stoned he/she bumps into walls and cars. How about the kid who can neither read nor write graduating from the Anchorage school system! Don't let someone tell you that these are isolated incidents. 'Tis more normal than unusual.

The worst part of this whole saga is that we, in the business community, are expected to hire these disfunctional graduates. So, over, $6300/student/year is spent and the product is flawed. What a crying shame!

You are a man of many achievements and recognized as a leader in the business community. I, like you, recognize that 99.99% of all actions by a man are volitional: we always have

Rolf W. Numme
8402 Decoy Blvd.
Juneau, AK 99801
May 23, 1989.

William G. Demmert, Commissioner
State of Alaska, Department of Education
P. O. Box F
Juneau, AK 99811-0500

Dear Sir:

I am writing this letter in regards to the Department of Education's proposed regulations which would require private schools to submit a plan to the Department regarding our use of corporal punishment. As a concerned citizen who supports private Christian schools, I am strongly opposed to any regulations which would interfere with the maintaining of discipline within our schools.

As a Christian, I believe that corporal punishment, when used in conjunction with solid moral training which our schools provide, is very beneficial to the character development of a child. I believe that the church is an extension of the home and the school, an extension of the church and home. In short, values imparted in the school should be consistent with the values of the home and church.

The regulations which the Department is proposing, therefore, are a direct infringement on my basic constitutional rights. I brought my wife and family to Alaska six years ago because of the freedom which was available here in Alaska to set up schools in which we could teach our children the values consistent with our Christian faith. Therefore, I would encourage you and the Department to take this and the sentiments of other like-minded Christians into consideration.

Respectfully,

Rolf W. Numme

May 12, 1989
POB 526
Delta Junction
Alaska 99737

William G. Demmert
Commissioner
Department of Education
Goldbelt Place
801 West 10th Street
P.O. Box F
Juneau , Alaska
99811-0500

Reference: Memorandum 89-08 / Corporal Punishment

Dear Sir:

I am totally opposed to this proposed regulation of prohibiting corporal punishment in public schools and I am opposed to any attempt to regulate corporal correction in any private or 'denominational' school.

Parents are the God given authority over their children. If parents in a local community vote to enact this sort of legislation for their public school then so be it. I am opposed to a State Department dictating to a local community whether or not their children may receive corporal correction from their local public school. I am sure that parents who do not want their children corrected physically may simply inform the principal's office and their wishes would be fulfilled.

The regulation proposal to control corporal correction in private schools again preempts the parental authority over their children. Any parent who entrusts their children to the non-public sector has already counted the cost for this type of education and I am quite sure if they are not satisfied with the school policies they could either withdraw the student or as stated above insist that their child be exempted from corporal correction by the school staff.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

P.O.Box 770029
Eagle River, Ak. 99577
Phone (907) 688-6888

May 22, 1989

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State Board of Education
P.O.Box F
Juneau, Ak. 99811

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You are a man of many achievements and recognized as a leader in the business community. I, like you, recognize that 99.99% of all actions by a man are volitional: we always have

in the regulation of the state education. I am very disappointed that you have failed to exercise leadership in a most trusted position: one that ultimately affects our children for the rest of their lives. You have had the opportunity to influence for good and failed. Thus, your many achievements pale in view of this most serious event.

Who really cares about a few spanked butts! Let's get down to the real issues. Hath education a priority in this state?

Sincerely,

Thomas H. Webster

cc
Senator Sam Cotten
Senator Rick Halford
Representative Randy Phillips
Governor Steve Cowper

Rolf W. Numme
8402 Decoy Blvd.
Juneau, AK 99801
May 23, 1989.

William G. Demmert, Commissioner
State of Alaska, Department of Education
P. O. Box F
Juneau, AK 99811-0500

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The regulation proposal to control corporal correction in private schools again preempts the parental authority over their children. Any parent who entrusts their children to the non-public sector has already counted the cost for this type of education and I am quite sure if they are not satisfied with the school policies they could either withdraw the student or as stated above insist that their child be exempted from corporal correction by the school staff.

I am alarmed that this sort of State control would be attempted here in Alaska. Our state was founded by independent men and women who traditionally valued the freedoms the forefathers of the United States of America bequeathed to its citizens. I see this type of regulation attempt as an affront to a parent's right to see that his children are raised in the manner that he wishes.

Sincerely,

Howard Echo-Hawk

cc: The Delta Paper
Fairbanks News Miner
Anchorage Daily Times
Anchorage News
Tok Mukluk News
Copper Valley Views
Copper Valley Country Journal
Nome Nugget
Juneau Daily Paper
Representive Dick Schultz
Senator Jack Coghill
Governor Cowper
Delta Public School Board

All Newspapers Listed in the 89 milepost.

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862

May 25, 1989

Commissioner William Demmert
Department of Education
P.O. Box F
Juneau, AK 99811

Dear Commissioner Demmert:

For the second time in two years, I would like to communicate my strong objections to your departments proposed regulations prohibiting corporal punishment in public and private schools.

These proposed regulations are an unnecessary intrusion of state government into the administrative policies established by local public school boards. They also represent an unconstitutional intrusion into the administration of schools with religions affiliations. I also believe there are serious implications for rural settlements where children are taught at home, by one or more of the available adults who may or may not be a parent or legal guardian to each of the children.

Contained in your "Notice of Proposed Changes in the Regulations of the State Board of Education" is the statement that this proposed action "is not expected to require an increased appropriation." I believe you have failed to consider the appropriation that would be necessary for the Department of Law to defend the unconstitutional relationship of this action with respect to private schools.

You have also neglected to recognize how the review of the private schools disciplinary policies and reporting requirements would be administered by your department staff, if these regulations are adopted. The implication is that if existing staff has the time to deal with the paper work these regulations will generate, there must be excess funds and personnel within your departments budget.

You will recall that the legislature has repeatedly considered banning corporal punishment in our schools. The legislation to accomplish this has repeatedly failed. These proposed regulations constitute an "end run" of the legislative process. The legislative intent of "physical health"

contained in AS 14.45.100 --14.45.130 does not encompass corporal punishment.

AS 47.17 was enacted in 1971 to specifically address the potential "harm" to children these proposed regulations appear to be concerned with. You will recall that AS 47.17 is our Child Protection Act. This Act more than adequately protects our school aged children from potential physical injury as a result of disciplinary actions, that may be associated with any school, home, or child care environment. To broach the constitutional division of church and state, or to breach the the relationship of the family with the state, in any manner other than those intrusions that presently exists, is clearly not within your departments administrative authority.

I strongly urge you to withdraw the proposed regulations concerning corporal punishment, contained in Memorandum Number 89-90.

It is clear to me that these regulations will only create a nightmare of paper work for both the private and home schools of this state, and for your agency. This added paper work serves no function other than to increase the cost of private and home education and they will eventually result in added nonfunctional costs of government. I find this sort of proposed regulatory action irresponsible to the needs our children's education.

Please consider all the ramifications your proposed regulation on this matter will have. I believe you will once again come to the same conclusion I have. Your most prudent decision is to withdraw the proposal.

Sincerely,

Senator John B. (Jack) Coghill

Alaska State Legislature

REPRESENTATIVE
MIKE W. MILLER
P.O. Box 55094
North Pole, Alaska 99705
(907) 488-2687

District 18
North Pole
Badger Road
Elelson
Moose Creek
Salcha

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-4976

House of Representatives

March 16, 1988

The Honorable William G. Demmert
Commissioner, Department
of Education
P.O. Box F
Juneau, Alaska 99811

Dear Commissioner:

As members of the Alaska State Legislature, we would like to register our objection to the regulation proposed in your departmental memorandum 88-14 which would prohibit the use of corporal punishment in all Alaskan schools.

You are undoubtedly aware that legislation to ban the use of corporal punishment has been considered by the Legislature during the last three legislative sessions. Despite these attempts to institute a statewide ban, corporal punishment is currently permitted at the discretion of local school boards. We believe local school boards are the proper deliberative bodies to decide what type of discipline shall be administered in their respective school districts. We object to promulgation of regulations having the same effect as legislation which has repeatedly been denied passage.

We would like to register our strong objection to the inclusion of private schools in the proposed regulation. In a joint meeting of the House and Senate Health, Education and Social Services Committees, which took place on March 6, 1986, extensive testimony was taken on Senate Bill 282 and House Bill 480. Testimony at this hearing indicated extensive public support for the right of parents to enroll their children in private educational programs which embraced more rigorous curriculum and disciplinary standards than most public schools. The testimony highlighted the fact that the private schools across the state were successful in obtaining deregulation of their programs in 1984 and suddenly legislation was under consideration which would begin to re-regulate them. We believe this argument is still valid and take exception to the inclusion of private schools in the proposed regulation.

Commissioner, we respectfully request that the Department of Education withdraw the corporal punishment regulations proposed in its memorandum number 88-14 dated February 22, 1988.

Sincerely,

Representative Mike Miller

Rep. Randy Phillips

Rep. Robyn Taylor

Rep. Drue Pearce

Rep. Alyce Hanley

Rep. Bill Hudson

Rep. Curt Menard

Rep. Heinrich Springer

Rep. Fritz Pettyjohn

Rep. Steve Frank

Rep. Jim Zawacki

Rep. H.A. "Red" Boucher

Rep. Virginia Collins

Rep. Al Adams

Rep. Steve Rieger

Rep. Bette Cato

Senator Paul Fischer

Rep. Max Gruenberg

S B

445

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

1/15

February 7, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the establishment of a subsidized guardianship program for hard-to-place children who are in the custody of the Department of Health and Social Services. This bill addresses one facet of permanency planning for foster children.

The purpose of this proposed legislation is to provide the Department of Health and Social Services with another tool to assist children who require long-term foster placement. Many times it is not possible, or not in the child's best interest, to free the child for adoption. Many foster parents who have had a child placed with them on a long-term basis might not wish to adopt the child but are willing to take on legal responsibility beyond foster parenthood for the foster child growing up in their home. However, if assuming guardianship would mean that the state will release the child from state custody and leave the foster parents without needed financial resources to provide for the child, foster parents might reasonably be reluctant to become a hard-to-place child's legal guardian. This proposed legislation will allow the state to continue to subsidize the child's care even though the state no longer has legal custody of the child.

The bill would amend AS 25.23.200, which currently provides that foster parents who are caring for a hard-to-place child and who have applied to adopt the child and receive a subsidy for the care and support of the child, must be evaluated as to their suitability as adoptive parents. The amendment to AS 25.23.200 would require that persons who are caring for a hard-to-place child and who wish to be appointed the child's guardian and receive a subsidy, would, in the same manner, be evaluated as to their suitability as guardians.

Under existing AS 25.23.210, the amount and duration of a monthly subsidy for a hard-to-place child is left to the discretion of the commissioner of the Department of Health and Social Services, but cannot exceed the existing rate being paid by the department for foster care.

Section 2 of the bill amends AS 25.23.220 to require that when a guardianship with subsidy has been ordered by the court and the court has released the child from the state's legal custody, the guardian will be independent of the department except for an annual evaluation by the department of the need for continued subsidy and the amount of the subsidy.

Sections 3 and 4 of the bill amend the definitions in AS 25.23.240(5) and (7), respectively, to add a reference to guardianships.

The subsidy program proposed in this bill recognizes that not only subsidized adoption but subsidized guardianship will be of benefit to the children of our state who are not able to grow up in their birth families.

Sincerely,

Steve Cowper
Governor

FISCAL NOTE

REQUEST: CS SB 445 (HESS) 3/13/90

Revision Date: _____

Title: An Act relating to Subsidized Guardianship . . .

Sponsor: Rules Committee

Requestor: Governor

Agency Affected: Health & Social Services

BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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)

FY 90 fiscal impact is "0."

Changes in CS SB 445 (HESS) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

DCM - S-HESS

Prepared by: Russ Webb, Director

Phone: 465-3170

Division: Family and Youth Services

Date: _____

Approved by Commissioner: Myra M. Munson

Date: Feb 5, 1990

Agency: Department of Health & Social Services

Distribution (by preparer):

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 445
PUBLISH DATE: 2/7/90 V/S

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to Subsidized Guardianship . . .
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Health & Social Services
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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)

FY 90 fiscal impact is "0."

Prepared by: Russ Webb, Director
Phone: 465-3170
Division: Family and Youth Services
Date:
Approved by Commissioner: (RW) Myra M Munson / Myra M. Munson
Date: Feb 5, 1990
Agency: Department of Health & Social Services

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

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX H
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

April 5, 1990

RECEIVED
APR 05 1990
JAN FAIKS
SENATE OFFICE

Senator Jan Faiks
Alaska State Senate
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

Senate Bill 445, an Act relating to subsidized guardianship, has been referred to the Senate Judiciary committee.

This legislation will offer this department an alternate method of assisting children who require long-term foster placement. In cases in which adoption is not appropriate, a family may be willing to become the long-term legal guardian of the child. This legislation offers the statutory change necessary so that this department can continue to pay for the child's care while in the guardianship relationship.

It should be noted that SB 445 carries a "0" fiscal note. This is possible because the dollars that make up the subsidy for the guardianship would have been paid for foster care in the absence of a guardianship option.

I respectfully request that SB 445 be scheduled in the Senate Judiciary committee as soon as possible. If you require additional information, please let me know.

Sincerely,

Myra M. Munson
Commissioner

MMM/JAL/cb

S B 448

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SB 448
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title : "An Act creating a sentencing commission..."
Sponsor : Rules Committee
Requestor : Governor

Agency Affected : Dept. of Administration
BRU : Public Defender Agency
Components : Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	3.3	3.4	3.5	3.6	3.7	3.8
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.3	3.4	3.5	3.6	3.7	3.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	3.3	3.4	3.5	3.6	3.7	3.8
FEDERAL FUNDS						
OTHER						
TOTAL	3.3	3.4	3.5	3.6	3.7	3.8

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The Public Defender Agency supports the concept of a sentencing commission to deal with issues such as uniformity in sentencing, alternatives to mandatory sentences for first offenders (without parole) and the rising prison population. Because it is anticipated that

(Continued over)

Prepared by : John B. Salemi, Public Defender
Division : Public Defender Agency
Phone : 279-7541
Date : 2/16/90

Approved by Commissioner : Frank S. Baxter
Agency : Department of Administration
Date : 2/20/90

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 448

membership by the Director of the Public Defender Agency will necessitate periodic travel to Juneau for meetings, a modest fiscal impact in terms of travel and expenses will occur.

Budget Analysis

Travel - 6 round-trips at $384	=	$2304
Per diem - 12 days at $80	=	960
TOTAL		$3264

STEVE COWPER
GOVERNOR

148

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 7, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill creating a sentencing commission.

Over the past decade, the prison population in Alaska has increased every year. In the period from 1980 to 1988, Alaska had the largest percentage increase in prison population, and the fourth highest rate of incarceration, of all 50 states. Disagreement exists over both the cause of the increase and the manner in which state government should respond to the expanding prison population.

Based on research and data collected in other states, it is obvious that the increased rate of incarceration has not, and will not, solve the crime problem in Alaska. Neither will the development of intermediate and alternative sanctions, by itself, eliminate prison overcrowding. Building more prisons is one way to deal with expanding prison populations. However, with prison construction costs ranging from $50,000 to $100,000 per bed, the ultimate price of building more jails (which includes both real costs and the effect on our ability to pay for other important public needs) is formidable. A change in our sanctioning policy is the only real means of controlling ever-expanding prison populations.

This bill creates a commission composed of executive-, legislative-, and judicial-branch employees, as well as members of the public. The commission's job would be to review sentencing patterns and practices, as well as crime rates, and to make recommendations for long-term management

of Alaska's prison population. The legislation requires the commission to make annual recommendations for legislative and administrative action on sentencing laws.

I urge your favorable action on this bill.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 448
PUBLISH DATE: 2/7/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act creating a sentencing commission; and..."
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Office of the Governor
BRU: Commissions and Special Offices
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	140.0	144.9	149.7	155.0	160.4	
TRAVEL	39.1	39.1	39.1	39.1	39.1	
CONTRACTUAL	91.3	74.7	74.7	74.7	74.7	
SUPPLIES	6.2	6.2	6.2	6.2	6.2	
EQUIPMENT	28.2	.5	.5	.5	.5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	304.8	265.4	270.2	275.5	280.9	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	304.8	265.4	270.2	275.5	280.9	
FEDERAL FUNDS						
OTHER						
TOTAL	304.8	265.4	270.2	275.5	280.9	

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: Michael A. Nizich, Director
Phone: 465-3616
Division: Division of Administrative Services
Date: 2/6/90

Approved by Commissioner: Garrey Peska, Chief of Staff
Date: 2/6/90
Agency: Office of the Governor

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

Sentencing Commission
Analysis:

PERSONAL SERVICES 140.0

Fiscal note assumes Anchorage location of commission staff. Request for New Position forms are attached. Salary shown are step A for FY 91. Personal Services request for subsequent years includes a one-step merit increase for all positions.

TRAVEL 39.1

Travel assumes six annual commission meetings.

Anchorage: 4 meetings

travel @ 366/person x 5 people	=	1,830	
per diem @ 80/day x 3 days x 7 people	=	1,680	
four meetings @		3,510	= 14,040

Juneau:

travel @ 390/person x 11 people	=	4,290	
per diem @ 80 x 3 days x 12 people	=	2,880	

Administrative staff

travel @ 366/person x 2 person	=	732	
per diem @ 90 x 3 days x 2 people	=	480	8,382

Fairbanks:

travel @ 390/person x 10 people	=	3,900	
per diem @ 90 x 3 days x 11 people	=	2,970	

Administrative staff

travel @ 390/person x 2 people	=	780	
per diem @ 80 x 3 days x 2 people	=	540	8,190

Additional administrative travel: = 8,500

includes legislative hearings;
out-of-state travel to meet with
sentencing experts

Total Travel: 39,112

CONTRACTUAL 91.3

Professional Services:		
Services for programmer, sentencing analysts, statisticians, corrections specialists, and other related professionals		35,000
Communication:		
Telephone (toll costs, base/local fixed costs, centrex network costs) 900/mo x 12 months	10,800	
Telecopier charges -- 25/mo x 12 months	300	
Teleconference charges -- 6 @ 450	2,700	
Postage -- 300/mo x 12	3,600	17,400
Transportation:		
Freight and express charges -- 75/mo x 12		900
Advertising, Printing & Binding:		
Subscriptions	75	
Advertising -- 6 meetings x 750	4,500	
Printing -- 6 newsletters x 800 each	4,800	
Annual report	10,000	
Forms, misc.	750	20,125
Minor Repair, Maintenance		1,200
Rental for Space:		
Space requirement per Department of Administration standards:		
693.5 SF x 2.00/SF x 12 months =		16,644
Total Contractual:		91,269

SUPPLIES AND MATERIALS 6.2

Office and library supplies, 350/mo x 12 =	4,200	
Data processing supplies =	2,000	6,200

EQUIPMENT 28.2

Communication Equipment:			
Phones			1,800
Data Processing Equipment:			
3 PCs with 1 lazer printer			16,000
Furniture/Office Equipment:			
Furniture/work station equipment	=	7,500	
2 5-drawer lateral file cabinets	=	900	
Photocopier	=	2,000	15,850
Total Equipment:			28,200

1.	POSITION TITLE: Executive Director				RANGE/STEP: 24/A	BARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	56,244	
6.	Benefits	12,726	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	69.0
10.	Travel	02	5.5
11.	Contractual	03	3.8
12.	Commodities	04	.8
13.	Equipment	05	8.1
14.	Other		
15.	TOTAL COST		87.2

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	87.2
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
KEY NUMBER - - - - -

JUSTIFICATION:

Executive Director, Sentencing Commission. Att ney with 4-6 years experience in criminal justice. Responsible for overall supervision, working with Commission, legislators, other agencies and public; evaluating existing laws, programs and policies and advocating proposed legislation; anlysis of sentencing patterns and factors.

REQUEST FOR NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

FY 91

Revised Date

-1137(7/88)-13

	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
1.	Project Assistant				16/A					
	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
2.	PFT	12				Anchorage				
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	32,580	
6.	Benefits	7,534	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	40.1
0.	Travel	02	5.5
1.	Contractual	03	3.0
2.	Commodities	04	.8
3.	Equipment	05	7.5
4.	Other		
5.	TOTAL COST		56.9

	RECEIPT CODE	FUNDING SOURCE	
6.		Federal Receipts 1002	
7.		G.F. Match 1003	
8.		General Funds 1004	56.9
9.		I-A Receipts 1005	
0.		Program Receipts 1028	
1.		Other	

JUSTIFICATION:

Assist Exec. Director with sentencing analyses and reports. Maintain data base, data collection and compilation; prepare reports and analysis of sentencing patterns and effects of other sentencing factors; liaison with contractors.

FOR B&H USE ONLY
KEY NUMBER - - - - -

REQUEST FOR NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

FY 91

Revised Date

-1137(7/88)-13

1.	POSITION TITLE Executive Secretary				RANGE/STEP 12/A	BARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	24,984	
6.	Benefits	5,868	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	30.9
10.	Travel	02	
11.	Contractual	03	1.8
12.	Commodities	04	.8
13.	Equipment	05	7.5
14.	Other		
15.	TOTAL COST		41.0

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	41.0
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
KEY NUMBER - - - - -

JUSTIFICATION:

Secretarial support to Executive Director and Sentencing Commission staff. Assist with coordination of Commission meetings, public hearings, travel arrangements, process fiscal and personnel documentation.

REQUEST FOR
NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

Revised Date

FY 91

I-1137(7/88)-13

BEDSPACE

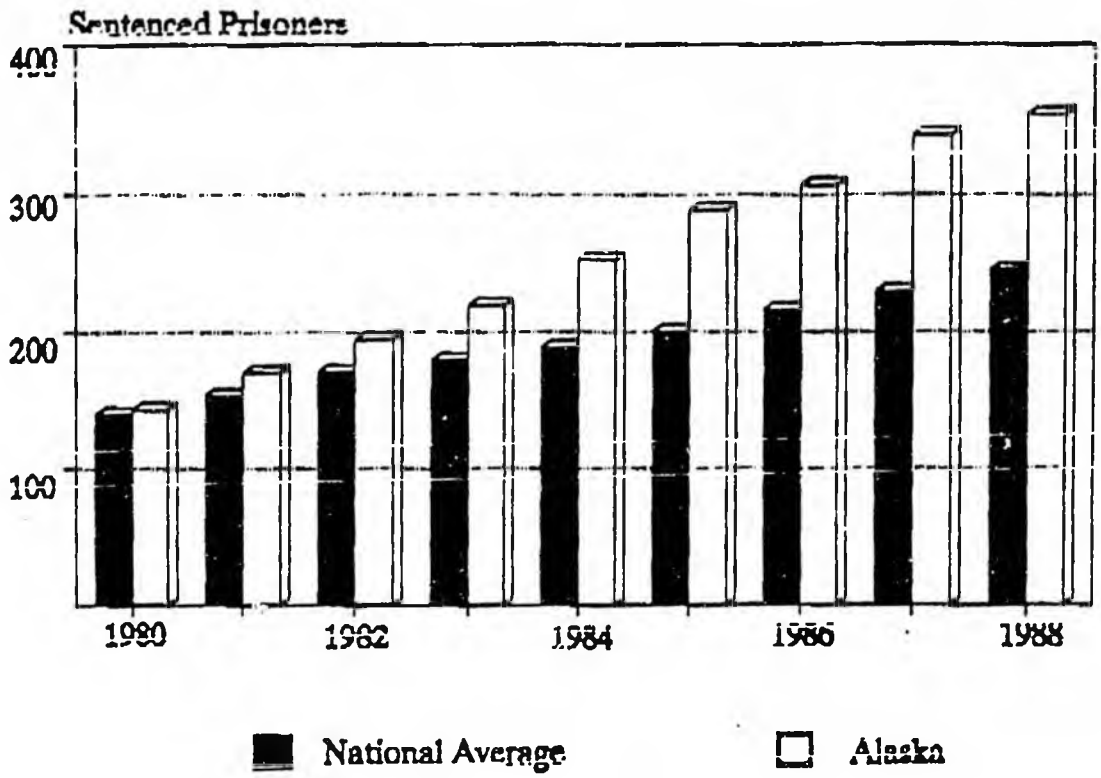
	6/89	12/89	6/90	12/90	6/91	12/91	6/92	12/92	6/93	12/93
Total Population:	2606	2844	2922	3000	3078	3156	3234	3312	3390	3468
Less FBP:	95	75	75	75	75	75	75	75	75	75
Less CRC:	200	200	200	200	250	250	250	250	250	250
Less MN:	5	5	5	5	5	5	5	5	5	5
In-State Population:	2306	2564	2642	2720	2748	2826	2904	2982	3060	3138
Available Beds In-State:	2516	2516	2516	2516	2516	2516	2516	2676	2996	2996
* Un-triple Bunk YKCC:										
* Close Small FCC Dorms:										
* Close LCCC Dorm:										
* Un-double Bunk Cells at PCC:										
New Palmer Minimum:							120			
New Unit for Long-Term Women:							40			
2nd Half of SCCC:								320		
							2676	2996		
Available Beds Less In-State Population:	+210	- 48	-126	-204	-232	-310	-228	+14	-64	-142

* Unable to close any beds due to increasing prison population

Rev. 11/14/89
Corrected Copy

Trends in
Alaska Corrections

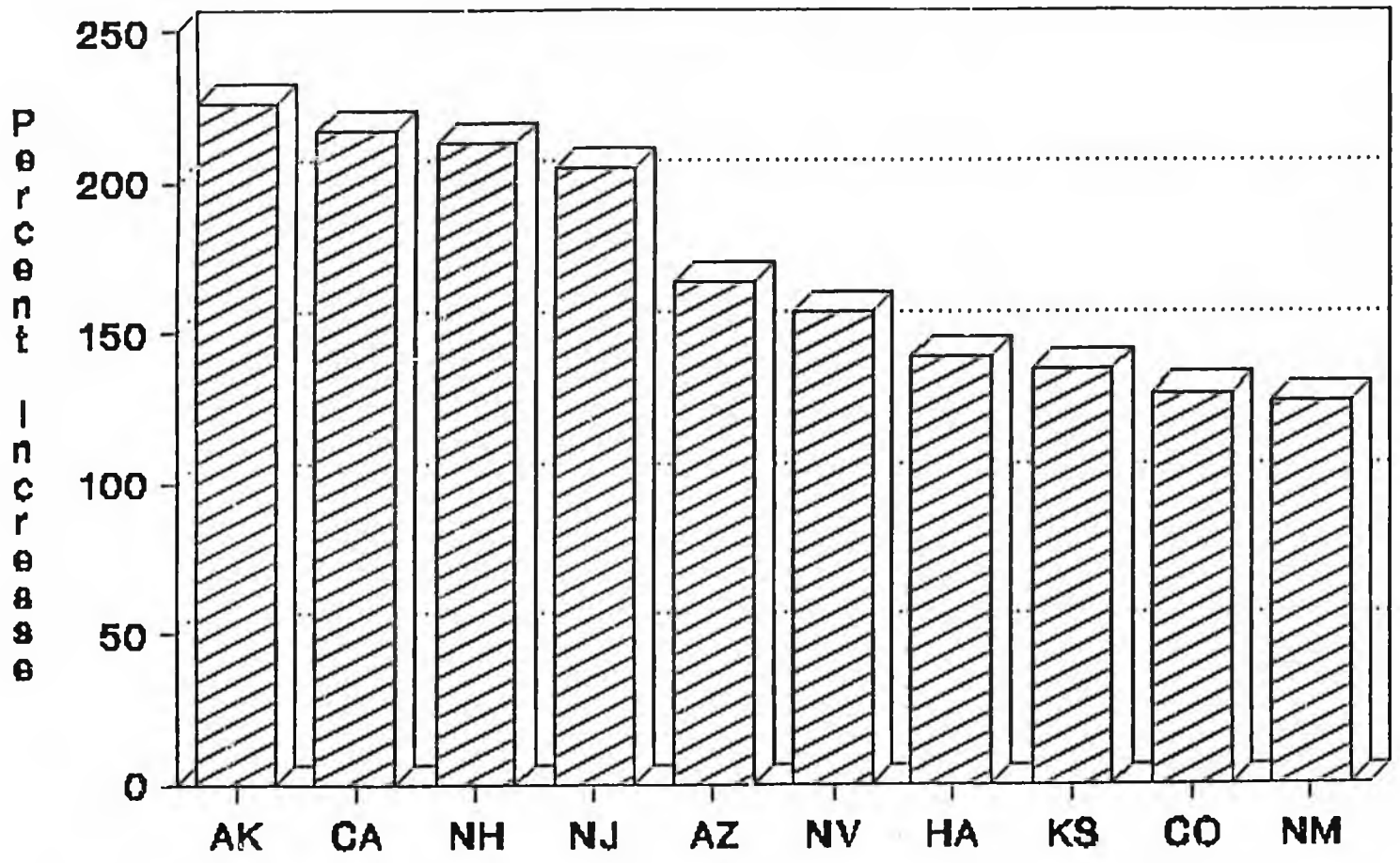
Rates of Incarceration *
National Average vs Alaska



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

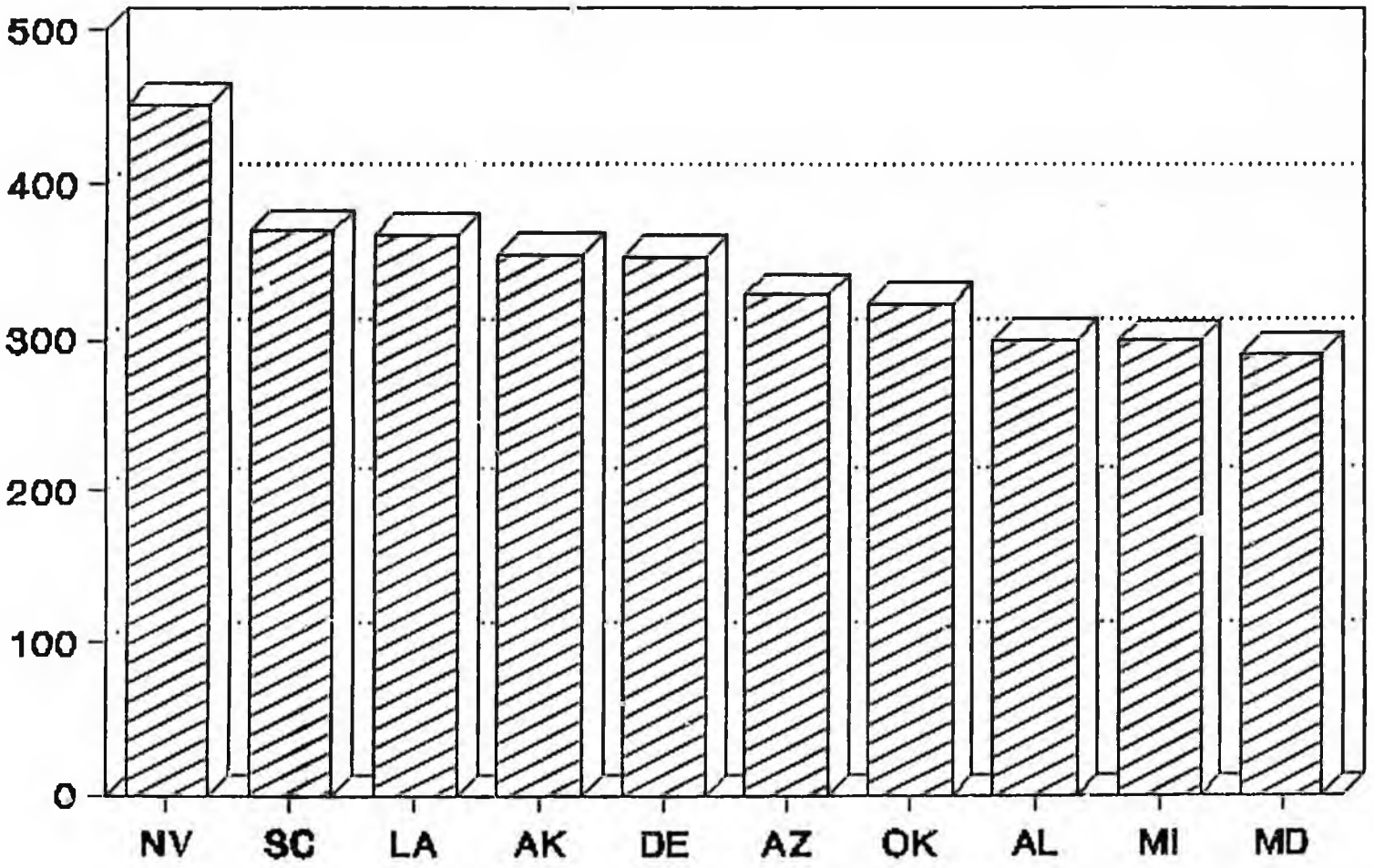
Crime Rate

10 States with the largest percent increase in prison population 1980-88



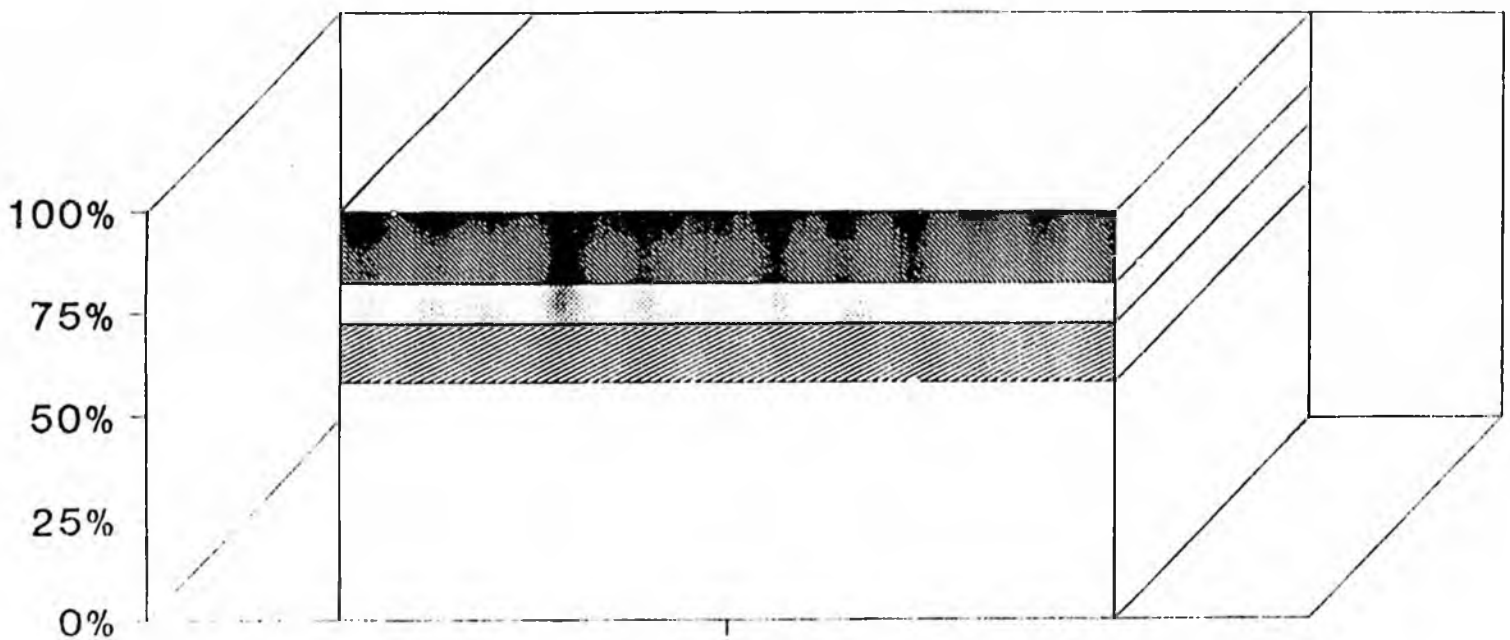
Prisioners per 100,000 residents

10 States with the highest incarceration rates in 1988

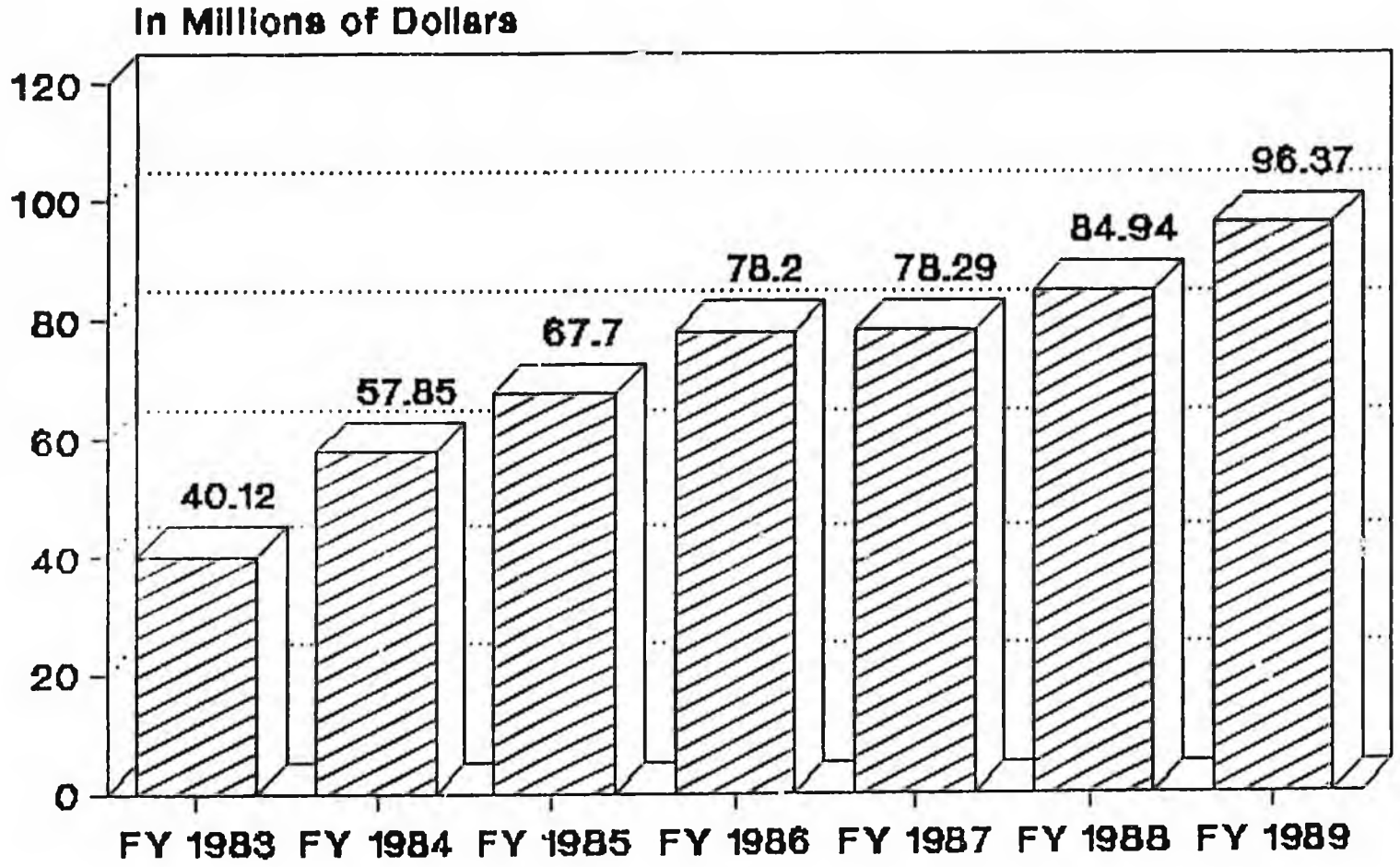


Prisioners per 100,000 residents

Inmate Offense Catagories
December 31, 1988



Department of Corrections
Operating Budget FY 1983 to FY 1989



* Fiscal Year Actuals

(RATIO OF APPROP)

N C C D

FOCUS

THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY

JULY 19[illegible]

Ranking the Nation's Most Punitive and Costly States

By James Austin, Ph D and Marci Brown

HIGHLIGHTS

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

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

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

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

The major findings of this report are:

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

IMPRISONMENT VS. TOTAL INCARCERATION RATES

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

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

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

Table 1: Imprisonment vs. Incarceration Rates

Rank	State	1987 Population*	1987 Prisoners	Imprisonment Rate***	Rank	State	1987 Persons in Jail**	Jail Rate***	1987 Juveniles in Custody	Total Incarceration Rate****
1	D.C.	622	3,448	1,197.4	1	D.C.	1,676	269.1	413	1,533.0
2	Alaska	525	2,528	481.5	2	Nevada	1,925	191.1	482	679.3
3	Delaware	644	2,931	455.1	3	Louisiana	10,300	230.8	1,028	598.6
4	Nevada	1,007	4,434	440.1	4	Alaska	0 +	0 +	178	515.6
5	South Carolina	3,425	12,668	369.8	5	California	60,802	219.7	14,712	515.1
6	Louisiana	6,461	15,375	344.7	6	Arizona	5,137	151.7	1,019	505.1
7	Arizona	3,386	10,948	323.3	7	South Carolina	3,675	107.2	715	497.9
8	Alabama	4,083	12,827	314.2	8	Florida	24,602	204.6	2,311	493.7
9	Georgia	6,222	18,575	298.5	9	Delaware	0 +	0 +	169	481.6
10	Maryland	4,535	13,447	297.0	10	Georgia	9,504	152.7	1,538	472.8
11	Oklahoma	3,272	9,639	294.6	11	Alabama	4,326	105.9	804	439.8
12	Florida	12,023	32,465	269.9	12	Maryland	4,985	109.9	1,032	429.6
13	North Carolina	6,413	17,269	269.0	13	Tennessee	10,314	216.3	1,038	395.0
14	Mississippi	2,625	6,831	260.2	14	Oklahoma	2,734	83.55	446	393.8
15	Michigan	9,200	23,879	259.6	15	Texas	23,453	139.6	2,421	385.3
16	California	27,663	66,975	242.1	16	Virginia	7,738	131.0	1,456	381.4
17	Kansas	2,476	5,881	237.5	17	New Jersey	13,107	170.6	1,997	374.9
18	Connecticut	3,211	7,511	233.9	18	New York	23,694	132.9	2,226	374.5
19	Texas	16,789	38,821	231.2	19	Michigan	8,547	92.90	1,816	372.2
20	New York	17,825	40,842	229.1	20	North Carolina	5,380	83.89	812	365.5
21	Arkansas	2,388	5,443	227.9	21	Kansas	1,914	77.30	676	342.1
22	Virginia	5,904	13,321	225.6	22	Ohio	8,729	80.94	3,126	334.7
23	Ohio	10,784	24,240	224.8	23	Arkansas	1,982	82.99	249	321.4
24	Missouri	5,103	11,357	222.6	24	Oregon	2,469	90.63	592	313.6
25	Hawaii	1,083	2,268	209.4	25	Mississippi	1,018	38.78	355	312.5
26	Oregon	2,724	5,682	201.2	26	Indiana	4,710	85.25	1,320	304.8
27	Indiana	5,531	10,827	195.8	27	New Mexico	1,628	95.2	491	304.5
28	Wyoming	490	960	191.8	28	Wyoming	377	76.93	173	304.1
29	New Jersey	7,672	13,662	178.1	29	Illinois	12,616	108.9	1,930	297.0
30	New Mexico	1,500	2,668	176.5	30	Missouri	2,856	55.92	815	294.5
31	Illinois	11,582	19,850	171.4	31	Kentucky	4,696	125.9	607	289.1
32	South Dakota	709	1,135	160.1	32	Washington	5,281	116.3	1,134	276.5
33	Tennessee	4,855	7,624	157.0	33	Colorado	3,793	115.0	503	270.2
34	Idaho	998	1,482	148.5	34	Wisconsin	5,750	119.6	886	258.7
35	Kentucky	3,727	5,471	146.8	35	Pennsylvania	13,195	110.5	1,103	256.1
36	Montana	809	1,187	146.7	36	Connecticut	0 +	0 +	227	241.0
37	Colorado	3,296	4,808	145.9	37	South Dakota	294	41.46	228	233.7
38	Rhode Island	986	1,429	144.9	38	Montana	412	50.92	228	225.8
39	Vermont	548	759	138.5	39	Idaho	630	63.12	117	223.3
40	Pennsylvania	11,936	16,267	136.3	40	Hawaii	0 +	0 +	149	223.2
41	Washington	4,538	6,131	135.1	41	Nebraska	1,174	73.65	274	221.7
42	Nebraska	1,594	2,086	130.9	42	Iowa	2,736	96.54	427	212.6
43	Wisconsin	4,807	6,001	124.8	43	Massachusetts	4,740	80.95	212	191.1
44	Utah	1,680	1,888	112.4	44	Utah	1,066	63.45	217	188.8
45	Maine	1,187	1,328	111.9	45	Maine	572	48.18	214	178.1
46	Massachusetts	5,855	6,238	106.5	46	New Hampshire	807	76.34	126	170.3
47	Iowa	2,834	2,863	101.0	47	Rhode Island	0 +	0 +	105	155.6
48	New Hampshire	1,057	867	82.0	48	Minnesota	3,106	73.15	581	146.8
49	West Virginia	1,897	1,461	77.0	49	West Virginia	1,154	60.83	141	145.3
50	North Dakota	672	430	64.0	50	Vermont	0 +	0 +	15	141.2
51	Minnesota	4,246	2,546	60.0	51	North Dakota	245	36.45	69	110.7
REGION					REGION					
SOUTH		83,885	221,592	264.2	WEST		81,320	167.6	19,995	432.7
WEST		69,699	111,719	224.8	SOUTH		117,735	140.4	15,335	422.8
MIDWEST		59,538	111,095	186.6	NORTHEAST		36,115	111.6	6,225	300.8
NORTHEAST		50,277	88,903	176.8	MIDWEST		52,675	88.5	11,948	295.1
TOTALS		243,399	533,309	219.1	TOTALS		309,845	127.3	53,503	368.4

* Total population in thousands

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

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

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

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

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

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

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

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

but have not addressed other elements of sentencing decision making. Florida's prison sentencing guidelines are undermined by severely overcrowded prisons that have necessitated wholesale early release of large numbers of inmates.

Although no single state has structured comprehensively its sentencing policy and correctional resources, the experience of those that have tried illustrates the promise and potential of this pioneering public policy effort. This paper attempts to (1) review the goals of structuring statewide sentencing policy, (2) describe the scope and agenda that must be tackled, and (3) discuss practical and political issues involved in creating a commission.

The Goals of Structured Sentencing

The most common and most important goals of structured sentencing are to:

- Ensure uniformity in sentences and eliminate insupportable disparities based on race, gender, or socioeconomic factors;
- Increase the severity of correctional sanctions in direct proportion to the seriousness of the offense and the criminal history of the offender;
- Guide judicial decision making while providing adequate opportunities for the exercise of discretion when substantial and compelling circumstances exist;
- Reassert legislative control over sentencing policy in a coordinated and comprehensive way, as opposed to a piecemeal approach;
- Coordinate the full range of criminal sanctions from fines and probation supervision in the community to total confinement; and
- Coordinate sentencing policies with correctional policies and resources.

In a state where these goals are broadly shared by the various actors and institutions involved in sentencing, a commission represents a promising vehicle to achieve structured sentencing. What follows is a step-by-step description designed to help legislators in drafting legislation to establish a sentencing commission.

A COMMISSION ON STRUCTURED SENTENCING

A commission to structure sentencing policy is created and overseen by the legislature as a means of developing a comprehensive policy. Once a sentencing policy is established, the commission's role shifts to monitoring the effect of sentencing policy on correctional facilities and resources and to advising the legislature on changes and modifications in sentencing policy.

The commission approach offers the advantage of managing some of the rough-and-tumble politics and potential demagoguery surrounding sentencing issues. A commission also provides a vehicle through which all the necessary parties—legislators, judges, corrections officials—can participate equally and cooperatively.

The product of the commission's deliberations can take different forms, depending upon a state's tradition of separation of powers. In Washington, the sentencing commission's recommendations were submitted to the legislature and adopted by statute. In Oregon and Louisiana, the sentencing policy will be promulgated in administrative rules. In Minnesota, the initial guidelines were established by rule, but all modifications must be reviewed by the legislature before going into effect. Most sentencing experts agree that voluntary judicial guidelines are not an effective means of implementation because they are advisory in nature and lack the mandating force of legislative policy. [8, p. 98, and 1, p. 171]

Statutory enactment has the strongest legal standing and has the advantage of legislative review of both the substantive policy as well as the all-important financial implications on corrections resources. Although the administrative rules process means a more passive and limited legislative review, it may minimize the danger of piecemeal amendment or limit the politics of emotion aimed at selected parts of the sentencing policy. More important, the administrative rules process cannot deal with allocation of resources to implement a sentencing policy.

Legislators interested in establishing a commission on structured sentencing must not only draft the legislation setting forth the scope of work and operating details but also foster the necessary environment of interbranch cooperation.

Creating the Right Climate

Sentencing policy requires an interbranch effort built on appreciation for the unique role that each branch plays in sentencing. Constitutionally and practically speaking, statewide sentencing policy can be established only by the legislature. Clearly, however, judges have the most experience and direct involvement with the day-to-day application of sentencing policy to individual cases. Corrections administrators, prosecutors and defense lawyers, parole officials, and the public also have real and vital interests in sentencing and, therefore, must have a role in the commission process.

An interbranch partnership is required for several reasons. Judicial guidelines alone lack the enforcement needed to ensure compliance and cannot address questions of financial and space needs resulting from sentencing policy. Executive branch innovations at best can only

structure parole decision making or make limited changes within available criminal justice resources. Legislative action can mandate and coordinate statewide policy, but legislative initiatives pursued without judicial support and involvement will likely be stillborn in the implementation process.

Sentencing policy and procedure represent a unique area of substantive law that sharply magnifies the special relationship between the legislature and the judiciary. Oregon Attorney General David Frohnmayer, writing in a 1986 issue of *State Government*, notes that courts are not as well suited as the legislature or the executive branch to resolve major issues of public policy, yet the requirements of legal interpretation inescapably lead to creation of laws. Moreover, he argues that legislatures invite judicial activism by the prodigiousness of their lawmaking and the tendencies toward overly vague language and broad delegations of power. The tension between judicial and legislative roles has been dramatized in many substantive areas of law but is heightened in sentencing since it represents a major judicial function. The challenge for legislators interested in sentencing reform is to recognize and channel the institutional tensions creatively.

Defining the Scope of Work

The legislature defines the scope of study and work of a commission and, by so doing, can enhance or handicap the likelihood of success. If the legislature fails to mandate a comprehensive approach, then a commission cannot be faulted for recommending a piecemeal policy. If the legislature directs the commission to look only at sentencing commitments to state prisons and not the full range of correctional sanctions, then the concerns of local governments and the availability of community-based sentencing options may not be adequately considered.

The most common problems involving the scope of work stem from three primary issues. First, sentencing guidelines should consider the full range of correctional sanctions from prison incarceration to community supervision and fines. Most of the early guideline experiments focused little attention on intermediate and non-imprisonment sanctions, even though three out of four offenders are sanctioned in the community. More recent commission efforts (e.g., in Louisiana and Oregon) are attempting to build sentencing schemes that take into account the use and availability of local jails, residential treatment programs, probation, and community service. Absent specific guidelines structuring the imposition of non-imprisonment sentences, the potential for disparate and disproportionate sentences is great, and the ability to plan for and develop needed community resources is limited.

Correctional resources are not uniformly available in each community; some locales are rich in program options while others are lacking. Furthermore, since jails and many community-based correctional programs are locally funded, a comprehensive state sentencing policy must address state and local finance issues. Failure to address the full range of sentencing sanctions virtually ensures inequities, according to Kay Knapp, director of the Institute for Rational Public Policy, Inc.

Second, legislatures should give their commissions specific directives as to the extent to which they need to take into account existing constraints on correctional resources. They should also require sentencing commissions to report on the short- and long-term fiscal impacts of their proposed guidelines. For example, the recently enacted enabling legislation creating the Kansas Sentencing Commission states, "In developing its recommended sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities."

Where commissions are not required to consider existing constraints on resources, they may promulgate guidelines that result in the need for a substantial increase in new prison construction. While this may be an acceptable outcome in some states, most are already struggling to deal with existing prison crowding and cannot afford to enact policies that further exacerbate the problem. Pennsylvania is an example of a state that enacted guidelines that resulted in the imprisonment of more offenders for longer periods of time. Adopted in 1982, Pennsylvania's minimum sentencing guidelines contributed to increases in the percentage of convicted offenders incarcerated and average prison sentences. [8, p. 69]

Third, sentencing reform should not be confused (and therefore not combined) with criminal code revision. Some states that have tried to accomplish code revision within the context of a sentencing commission have found their efforts stalled. Most recodification efforts are guided by the Model Penal Code, which reflected the philosophies of the 1940s and 1950s when "indeterminate" sentencing was the norm. While the model code establishes a common vocabulary and consistent logic within criminal statutes, it is wholly inadequate in the process of addressing modern sentencing reform. [4, p. 49]

One significant stumbling block of the Model Penal Code is its classification system of offenses (three felony punishment classes, two misdemeanor classes, and one violation class). States that have developed sentencing guidelines typically end up with more refined distinctions of offense seriousness. For example, Minnesota's guideline system ranks 10 offense severity levels, not including first degree murder, which carries a mandatory life sentence. Washington established a 14-tier ranking of offense seriousness. The more refined rankings weight factors such as type and extent of harm, culpability, and victim vulnerability.

The second major problem presented by the Model Penal Code is its focus on "worst case" behavior and assigning an appropriate maximum penalty. Most sentencing guidelines, as a practical matter, reflect "usual case" penalties with adequate provisions for judges to increase the sanction in light of aggravating circumstances. The "usual case" approach also allows judges to base sentencing on the offender's actual behavior in the crime rather than the offense for which he was convicted. (For a detailed discussion of these problems, see Tonry's "Sentencing Guidelines and the Model Penal Code" [9].)

Setting the Agenda of Policy Choices

The enabling legislation should spell out the major issues to be addressed by the commission. Key policy issues include:

- Ranking offenses (including attempts, solicitations, and conspiracies) by degree of seriousness;
- Determining the role of and measuring criminal history as a factor in sentencing;
- Defining a dispositional policy that determines which offenders are confined in state prisons and which are sanctioned in other ways (i.e., custodial dispositions, fines, restitution, and probation);
- Establishing the length of sentences (prison and otherwise) and the extent of other stipulated penalties of community service or fines;
- Developing policy and procedures governing when a judge may depart from the guidelines to order a more or less severe sentence; and
- Structuring policies and procedures (for example, plea bargaining agreements or parole decisions) to ensure consistency in all aspects of sentencing policy.

Within each of these six policy areas, a commission will face many diverse and complex questions. A brief discussion of some of the questions a commission will confront follows.

Ranking the Gravity of Different Offenses. A commission must develop a consensus hierarchy of criminal activity. In effect, a commission makes a collective judgment about what crimes are least serious or most serious and therefore deserving of harsher punishment. At a broad policy level, the rankings reflect judgments about harm or potential harm to the victim or community, the culpability of the offender, and physical injury to the victim. A commission may choose to make case-level differentiations as well. For example, the proposed Oregon crime ranking subdivides drug offenses using factors such as the type of substance involved, the intent to generate substantial profits, and the connection, if any, to an organized trafficking operation.

The Role of Criminal History. Commissions typically develop a scoring system to assign a numerical weight to offender characteristics including prior felony and misdemeanor convictions, juvenile record, and probation or parole status at the time of the offense. Other considerations may include: Should offenses against people and property offenses be weighted differently? Should extended periods of crime-free behavior diminish the weight given to old convictions? How should multiple convictions arising out of a single incident be counted?

The rankings of offense seriousness and offender characteristics are usually displayed on a two-dimensional grid, yielding a matrix on which sentencing policy can be based. Next the commission must deal with the two major policy issues that drive prison populations and other correctional resources: (1) the dispositional policy or, more simply put, what sentences (prison, probation, or otherwise) are most appropriate for which offenders, and (2) the durational policy or, in other words, how long or how extensive a sentence should be given for a particular offense and to the offender. In effect, the commission draws lines through the matrix to represent when an offender will be sanctioned in the community or in prison and assigns time periods to each cell within the matrix. The designated time period in each cell is usually termed the "presumptive sentence," the sentence presumed to be most appropriate. (See Figure 1.)

Dispositional Policy. A commission makes fundamental philosophical judgments about how much weight to give to offense seriousness and criminal history when choosing a sentencing option. A "just-deserts" policy emphasizes offense seriousness and mandates a sentence based on the offense with little regard to prior criminal activity. Conversely, a policy aimed at incapacitating repeat offenders would give much greater weight to criminal history.

In Minnesota, when establishing an in/out policy for the use of imprisonment, the guidelines commission initially identified those offenses for which imprisonment should always or never be recommended. Using information on past sentencing practices, the commission could project the population impact of the different weightings of offense seriousness and offender history on prison capacity—the more punishment-oriented the policy, the higher the commitments to prison. In addition, the commission weighed the political implications of different in/out policies. [7, p. 82]

As a practical matter, developing a dispositional policy will not deviate from past judicial sentencing practices in the vast majority of cases. Where new guidelines deviate from past practice, however, the debate is likely to be quite sharp and focused on fundamental philosophical issues.

Durational Policy. A commission articulates specific confinement periods and the extent or severity of other sanctions. Because structured sentencing substitutes shorter "real-time" sentences for symbolically longer indeterminate sentences, the durational policy attracts controversy even when it closely resembles actual judicial practice.

Some of the questions involved in the durational policy are: Should a single, fixed sentence be provided or a sentencing range? To what extent should prison capacity constrain the development of sentence lengths? How should sanctions other than prison be weighted and what tradeoffs allowed when a community has limited correctional alternatives? Should fines be graduated according to the offender's ability to pay, and when should fines be allowed to substitute for custodial options or community service requirements? When multiple convictions are involved, how should concurrent or consecutive sentences be calculated? How should post-imprisonment supervision be calculated?

Several states are exploring one promising approach to incorporating community corrections into dispositional and durational policy. The approach involves two elements: (1) a refinement of sentencing guidelines to include different levels of probation sentences, and (2) a system of exchanges or equivalencies among various non-imprisonment sanctions. For example, Oregon's proposed sentencing guidelines establish three probation levels for

FIGURE 1.
MINNESOTA'S SENTENCING GUIDELINES MATRIX

Severity Levels of Conviction Offense		Criminal History Score						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12*	12*	12*	13	15	17	19 18-20
Theft-Related Crimes ($2,500 or less) Check Forgery ($200-$2,500)	II	12*	12*	13	15	17	19	21 20-22
Theft Crimes ($2,500 or less)	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
Nonresidential Burglary Theft Crimes (over $2,500)	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
Residential Burglary Simple Robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Criminal Sexual Conduct, 2nd Degree (a) & (b)	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated Robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Criminal Sexual Conduct, 1st Degree Assault, 1st Degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
Murder, 3rd Degree Murder, 2nd Degree (felony murder)	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, 2nd Degree (with intent)	X	216 212-220	236 231-241	256 250-262	276 250-283	296 288-304	316 307-325	336 326-346

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence
*One year and one day
Second numbers, e.g., 18-20, denote range within which a judge may sentence without the sentence being deemed a departure
Source: Minnesota Sentencing Guidelines Commission, 1988

which a maximum number of jail days can be ordered (i.e., 30, 60, or 90 days) and a maximum amount of time (measured in "custodial units") in other community programs can be required. The guidelines also establish equivalent custodial units—one day of jail confinement or residential treatment is considered equal to two days of home arrest or electronic surveillance. Eight hours of community service would be equivalent to one-third of a day of jail confinement or residential placement. Depending upon the availability of local resources and the circumstances of the offender, a judge could order any combination of jail confinement, community service, custodial treatment, work release, or restitution within the allowance of custody units specified in the guidelines. A judge is not limited in imposing additional conditions of probation that do not involve custody of the offender.

Departure. Structured sentencing plans typically provide a means for judges to deviate from the prescribed sentence and order a less or more stringent sentence due to mitigating or aggravating circumstances. In developing a departure policy, a sentencing commission deals with both substantive criteria and standards for departing from the presumptive sentences and procedural requirements that must be followed.

Examples of departure criteria include mental capacity, deliberate cruelty, extreme vulnerability of the victim, the offender's role in the crime, and cooperation with the investigation. In Minnesota, the commission also developed a list of factors, primarily demographic and socioeconomic, which should not be used as the basis for departures.

Departure procedures may require a sentencing evidentiary hearing, written justification of departure, appellate review of departures, and limitations on extent of departure.

Related Policies and Procedures. A commission may need to propose additional legislation to reallocate sentencing authority to implement a structured sentencing policy. For example, in a bill enacted this year establishing a state sentencing commission, the Kansas Legislature specifically directed the commission, in its report to the legislature, to make recommendations regarding whether there is a continued need for and what is the projected role of, if any, the Kansas parole board and whether the policy of allocating good time credits for the purpose of determining an inmate's eligibility for parole or conditional release should be continued. (Kansas Senate Bill No. 50, 1989 Session)

Statutory enactment to establish appellate review may be necessary. Washington's guidelines include standards to limit the discretion of prosecutors on charging and plea bargaining. Minnesota's guidelines (and Oregon's proposed guidelines) outline how probation revocation is to be coordinated with sentencing guidelines. In sum, the commission must ensure coordinated procedures that reinforce the goals of sentencing equity and systemwide uniformity.

Some or all of these issues may be necessary to detail in the enabling legislation to frame the scope and agenda of a sentencing commission.

Organizing a Commission

A commission acts on behalf of the legislature to develop a consensus sentencing policy that is politically salable and can be implemented, monitored, and enforced. The commission not only recommends substantive policy but also facilitates political tradeoffs and compromises. The commission in many ways has to act like a legislature; therefore, the composition, staffing, schedule, and procedures of a commission are important elements to be covered in enabling legislation.

Membership. The commission members must have the ability to work together on sentencing policy issues as well as the capacity to build support and commitment for sentencing policy among interested groups through-

out the state. Commission members may be selected because of their ability to articulate and represent the concerns and views of interest groups, but they also must be able to assume a statesman-like perspective, compromising when necessary on issues of overriding system values and goals. [7, pp. 213-218]

The size of different sentencing commissions has varied from as few as nine members (Minnesota, although later increased to 11) to as many as 21 members (Louisiana). No specific number holds any particular magic; however, a commission needs to be large enough to achieve broad-based representation from the interested institutions and groups and yet small enough to be able to function effectively as in a consensus-building process.

Because of the need for interbranch participation, the membership typically includes legislators, judges (both from trial-level courts and from the appellate or supreme court), prosecutors, defense attorneys, law enforcement officers, probation and parole officers, corrections administrators, and public members. Whether the commission has direct legislator members or other forms of legislative participation will depend upon the state tradition and specific constitutional provisions governing separation of powers. Membership may be designated by specific position, for example, the state attorney general, or by general description. Limiting the number of specifically designated positions allows the appointing authority greater latitude to select members for other desired characteristics such as availability, flexibility, and commitment to sentencing reform.

Length of term varies from two years (e.g., some Louisiana members) to six years (e.g., in Tennessee), with most commissions using staggered terms. A minimum of two years is useful to provide continuity of membership through the initial development of sentencing policy; the longer terms obviously provide more stability and continuity. Some experts argue against coterminous tenure because of the potential for substantial turnover and disruption of continuity. [7, pp. 208-209]

The method of appointment will depend in large part on political tradition and constitutional constraints in a state. In designing the appointment process, a legislator also must evaluate what method is most likely to result in members who have credibility and standing among the interested groups and can represent a point of view without being inflexible. Some states have reserved the power of appointments for the governor (e.g., Louisiana and Washington). In Minnesota, the chief justice of the supreme court makes all judicial appointments, and several states have reserved some appointments for legislative leaders (e.g., Pennsylvania, Tennessee, and New Mexico). Some states specifically allow organized constituencies, such as the trial lawyers association or the judges conference, to suggest a list of potential nominees (e.g., Minnesota).

The commission chairmanship is a position akin to that of a legislative committee chair—providing leadership within the commission, guiding decision making, forging diverse points of view into a consensus, and being accountable to the interests of the governor and the legislature. In most commissions, the chair is usually appointed by the governor. Direct appointment of a chair usually means greater accountability and can ensure that the chairman shares the same goals as key public officials. Election has the advantage of underscoring the consensus nature of commission decision making, but it may not necessarily result in the selection of the strongest or most effective chair.

Staffing and Support Resources. Given the need for extensive data analysis, sentencing commissions require an independent and professional research staff, supplemented by temporary staff during the six- to nine-month data collection stage. Policy analysis, computer, administrative, and political skills are also required of the staff to organize the commission's work, to structure the policy issues for commission resolution, to assist commission members with important conceptual and political decisions, and to act as effective liaisons with all three branches of government and with state and local actors in the criminal justice system. The number of staff will depend in part upon the time frame in which the commission must complete its work.

Data collection efforts are extensive, and sometimes easily underestimated or poorly planned. Commissions typically analyze data from 30 to 50 percent of all criminal cases in a one- or two-year period, collecting from each case up to 100 pieces of information dealing with demographic characteristics, criminal history, court decisions, charging and convicting offenses, available dispositions and correctional resources, and more. Because of its fundamental importance, data collection cannot be skipped, but it can be mishandled. For example, in developing voluntary judicial guidelines, commission staffs collected 220 variables on 5,117 cases in Florida and 132 variables on 1,864 criminal counts in Maryland. One evaluator observed that the data collection efforts in both states bogged down and led to significant delays and robbed the projects of time and resources for important activities such as support building, training, and implementation procedures. [1, p. 164]

Data analysis programs usable on personal computers have been developed to facilitate research and develop models to forecast the financial and population implications of different sentencing options in different correctional settings such as jail, community supervision, or prison. Software is available in the public domain, in other words, free of charge.

Adequate time is necessary for staff and commission members to accomplish the task of policy development. A minimum of 18 months is required, but up to 36 months may be a more desirable schedule. Most states have mandated a two-year schedule for development of sentencing policy. Louisiana is unique in having no statutorily set deadline for reporting. As a practical matter, deadlines are useful for forcing policy choices and compromise. In addition, an extended study period may result in data being outdated before they are utilized.

The cost of undertaking a structured sentencing project will vary, depending upon the size of the state. As a general rule, an annual

appropriation for a small to medium-sized state of $250,000 to $450,000 will be required, contingent upon whether the commission is developing or monitoring ongoing sentencing policy, according to Knapp. Funds are used for staff, equipment, travel, meetings, and administrative expenses. For example, the Washington sentencing commission received an appropriation of $391,000 in its first biennium (1984 to 1986) of operation and $558,000 in its second biennium. New Mexico's sentencing commission is in the process of attempting to develop structured sentencing policy with a 1988-1989 appropriation of $246,250. In addition to state appropriations, a number of states are receiving federal funds and technical assistance through the Bureau of Justice Assistance's Structured Sentencing Program.

Process Considerations. The development of a structured sentencing policy requires study of past practices but, more important, development of a new consensus about appropriate punishments for offenders. Consensus must be forged not only among the commission members but also among those in the corrections community and the general public. In some states, sentencing commissions have fallen far short of the promise of reform because of political conflict within them. Other reform efforts have failed upon implementation because of pockets of resistance in the criminal justice system. Therefore, the process used to develop the sentencing policy will contribute substantially to its credibility and political acceptance.

The decision-making style of the commission should be designed to maintain internal commitment to the process and the work product. The nature of sentencing policy—reflecting a broad range of different and legitimate perspectives—will require the incorporation of different points of view and tradeoffs among the interested parties. An inclusive, consensus-building process is essential as opposed to a simple majority-rules voting procedure.

Subcommittees have proven to be an effective, necessary tool for organizing the work of a sentencing commission on several fronts simultaneously. Typically, subcommittees are assigned the task of overseeing data collection and identifying options, while the resolution of policy questions is reserved for the full commission as a means of underscoring the need for broad consensus. Louisiana has opted not to use subcommittees, a choice that may require more time of commission members but also may preserve the greatest degree of cohesion in decision making.

External support-building activities are essential and may include public hearings with participation by interested groups, open meetings held in locations throughout the state, comments solicited on working papers, personal contact between commission members and key community leaders, ad hoc advisory groups, newsletters and interim reports to disseminate information. For example, the success of Minnesota's commission was in no small part furthered by "an aggressively open political process" including several rounds of public hearings designed to disseminate information as well as solicit public input. [6, p. 15]

Implementing and Enforcing a Sentencing Policy

The long-term effectiveness of structured sentencing policy can be summed up in four questions:

- Does the policy have enforcement power?
- Is the policy specific and clearly articulated?
- Are resources sufficient to implement the policy?
- Is there an ongoing mechanism to monitor compliance and recommend changes in policy when necessary?

Legal Enforcement. The critical enforcement mechanism is appellate review—the process of appeals court review of judicial sentences that fall outside the presumptive sentence prescribed by the policy. Appellate review gives either the state or the defendant the right to appeal sentencing decisions. Traditionally, appellate review has been limited to the legality of the sentence imposed, but with structured sentencing, appellate review provides a means to judge the appropriateness of the sentence as well as judicial compliance with sentencing policy. The enabling statutes for sentencing commissions in Minnesota, New Mexico, Tennessee, and Washington provided for appellate review.

Appellate review also provides a means for the development of case law on issues not addressed by the sentencing commission; however, case law may provide mixed results. [4, p. 18] The case law resulting from appeals in Washington and Minnesota has primarily focused on the threshold, extent, and substantive standards of departure. The experience of these two states suggests that departure issues should be scrutinized by other state sentencing commissions.

Policy Clarity. The clarity of the sentencing policy in large part will determine whether it is self-enforcing. The more specific the policy is, the easier it is for appellate courts to exercise review. If a commission defers policy issues or leaves certain criteria vague or broad, then courts must develop a body of case law to provide the necessary guidance. But court review is always limited by the circumstances of a particular appeal and, therefore, is an inadequate mechanism for policymaking.

In addition, if the sentencing policy is not comprehensive and fails to structure all dispositional choices and decisions affecting sentence length, then the goals of equity and uniformity cannot be achieved. There is evidence, for example, in Minnesota that inconsistent and inequitable punishments have resulted from the failure to structure community-based sanctions. [12 (1989), pp. 29-33]

Coordination of Resources. By definition, *structured sentencing* means coordinating correctional resources within a consistent policy. A clear, predictable sentencing policy will allow a legislature to anticipate correctional needs—from prison beds and treatment facilities to probation officers and agents for fine collection. Since sentencing commissions have no power of appropriation, they cannot mandate additional resources if they develop a sentencing policy resulting in more offenders than prisons or community-based programs can handle. Thus, an important commission task is making other

decision makers aware of the policy and fiscal tradeoffs. Failure to consider the capacity of correctional resources may produce a rational, equitable, but unenforceable policy.

Legislatures in Oregon, Tennessee, and Washington directed their sentencing commissions to address specifically the adequacy of correctional resources needed to implement the new sentencing policy effectively. In Washington and Oregon, the enabling legislation directed the commissions to develop policies that would not exceed currently available prison space or recommend a sentencing alternative that specifies increased correctional resources. In other words, the enabling legislation ensured the legislatures comprehensive data if faced with a need for additional correctional facilities to enforce longer, tougher sentences. In Tennessee, the submission of four plans to the legislature allows lawmakers to compare different sentencing philosophies with varying price tags. To address correctional resources successfully, each policy choice must be evaluated in terms of its impact on current prison population or program capacity. If left as a postscript or afterthought, resource issues can undo a commission's work.

Ongoing Monitoring. Once a sentencing policy is established, a commission's work is not done. Ongoing monitoring is necessary to adapt to changes in public opinion, crime patterns, or demographic shifts. In the states with established commissions, the enabling legislation usually anticipates a life for the commission beyond the initial development of structured sentencing guidelines. For example, the Minnesota and Washington commissions collect data and analyze trends in sentencing, review any proposed legislation affecting sentencing, conduct studies of selected issues, promulgate interim rules, and propose sentence modifications annually to the legislatures. Since the nature and demographics of the offender population change, a commission's monitoring can assist legislators in projecting future needs in corrections and developing new sanctions. Moreover, a commission can maintain the necessary interbranch cooperation needed to address sentencing policy.

CONCLUSION

Structured sentencing offers the most promising vehicle for legislators interested in achieving uniformity and equity in sentencing and coordinating the full range of correctional resources now and in the future. The pioneering experience of other states is instructive not only about what works or does not work but also about the magnitude and difficulty of the task.

The essential ingredients for success include: a commitment of interbranch cooperation that leads to a comprehensive policy and a consensus product; a carefully organized, well-run sentencing commission that has the membership and resources necessary for the task; a clear, unambiguous policy that is implemented with adequate legal authority; and an enforcement and monitoring mechanism to ensure implementation.

Strong policy leadership is critical. Within each of the three branches, there will be pockets of ignorance about and resistance to sentencing reform. Only through the cooperative efforts of key individual judges, legislators, and administrators will these hurdles be overcome.

Many of the problems that a sentencing commission may encounter can be anticipated and drafted into the enabling legislation. The other ingredients will depend upon the strength of the commission's membership, the political climate of support within a state's criminal justice community, and a sponsoring legislator's best judgment about the appropriate political timing to attempt broad-based reform.

BIBLIOGRAPHY

1. Carrow, Deborah M. "Judicial Sentencing Guidelines: Hazards of Middle Ground." *Judicature*, no. 4-5, October-November 1984.
2. Fairchild, Mary. "Just Deserts for Criminals." *State Legislatures* 10, no. 5, May-June 1984.
3. Knapp, Kay A. "Next Step: Non-Imprisonment Guidelines." *Perspectives*, Winter 1988.
4. Knapp, Kay A. "Structured Sentencing: Building on Experience." *Judicature*, no. 1, June-July 1988.
5. Knapp, Kay A. "What Sentencing Reform in Minnesota Has and Has Not Accomplished." *Judicature*, no. 4-5, October-November 1984.
6. Knapp, Kay A. "The Impact of Minnesota Sentencing Guidelines: Three Year Evaluation." St. Paul, Minn.: Minnesota Guidelines Commission, September 1984.
7. Parent, Dale G. *Structuring Criminal Sentences: The Evolution of Minnesota's Sentencing Guidelines*. St. Paul, Minn.: Butterworth Legal Publishers, 1988.
8. Tonry, Michael H. *Sentencing Reform Impacts*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, February 1987.
9. Tonry, Michael H. "Sentencing Guidelines and the Model Penal Code." *Rutgers Law Review*, no. 3, Spring 1988.
10. von Hirsch, Andrew. "The Enabling Legislation." Andrew von Hirsh, Kay A. Knapp, and Michael Tonry, eds. *The Sentencing Commission and Its Guidelines*. Boston: Northeastern University Press, 1987.

State Guidelines and Reports

11. Minnesota Sentencing Guidelines Commission. *Minnesota Sentencing Guidelines: An Historical Overview and An Analysis of Appellate Case Law*, July 1987.
12. Minnesota Sentencing Guidelines Commission. *Report to the Legislature*. Annual reports for 1987, 1988, and 1989, and special report 1989.
13. Minnesota Sentencing Guidelines Commission. *Guidelines and Commentary*, revised August 1988.
14. Oregon Criminal Justice Council. *Proposed Rules for the Implementation of Sentencing Guidelines*. November 1988.
15. Pennsylvania Commission on Sentencing. *Sentencing in Pennsylvania*, Annual Report 1987-88.
16. Tennessee Sentencing Commission. *1988 Chairman's Report and Recommendations Research Results*, January 1989.
17. Washington Senate Counsel & Research. *Minnesota's Sentencing Policies*. Research Memorandum, January 1987.
18. Washington Legislative Budget Committee. *Impact of the Sentencing Reform Act*. Report no. 87-2, January 1987.

Statute Citations

Kansas Senate Bill no. 50, 1989 Session.

Laws of Florida, Chapter 83-87.

Louisiana Revised Statutes, Chapter 1-A, Title 15, sec. 306-313.

Minnesota Statutes, Chapter 244.09-244.11.

New Mexico Laws of 1988, Chapter 116, 38th Legislature, 2nd Session.

Pennsylvania Cons. Stat. §2151-2156, §9781, and §9721.

Washington Sentencing Reform Act of 1981—Title 9 RCW 94A.030-94A.440.

Tennessee Laws of 1985, Public Chapter no. 7, First Extraordinary Session.

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450

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 450
PUBLISH DATE: 2/8/90

FISCAL NOTE

REQUEST:

Revision Date: 2/8/90
Title: An Act Relating to Child Abuse and Neglect
Sponsor: Judiciary
Requestor:

Agency Affected: DHSS, DFYS
BRU: Social Service
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
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)

FY 90 fiscal impact is "0".

The Division receives over 10,000 reports of harm to children each year. Many of these reports concern harm caused by persons who are not responsible for the welfare of the child victim. These are forwarded to law enforcement agencies. The precise number of these cannot be estimated nor is it possible to estimate the increased number which will result from passage of SB450. It

Prepared by: Russell Webb
Phone: 465-3170
Division: Family & Youth Services
Date: 2/13/90

Approved by Commissioner: Myra M. Munson, Commissioner
Date: 2/13/90
Agency: Department of Health and Social Services

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

ANALYSIS:

is expected that the increase will be small and can be absorbed with existing resources.

Alaska State Legislature

Senate Judiciary Committee

February 8, 1990

MEMORANDUM

TO: All Senators

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee

SUBJECT: SB 450 "An Act relating to child abuse and neglect."

Today the Judiciary Committee is introducing Senate Bill 450, which will clarify the current laws relating to the reporting of child abuse or neglect. The need for this legislation became apparent during the recent hearings held by the committee on SB 355, relating to sex offenses by persons in positions of special trust.

AS 47.17 presently requires certain persons, such as school administrators, health professionals, and social workers, to immediately report to DHSS any cause to believe that a child has suffered harm as a result of abuse or neglect.

While the legislative intent behind this statute is clear, the committee has learned that in practice, the specific language has been interpreted in different ways by various school districts and others of whom reporting is required. For example, it has actually been argued in court documents and elsewhere that the law cannot constitutionally require persons to report child abuse; that the requirement for "immediate" notice fails to advise persons how soon they must report abuse; that the terms "sexual abuse" and "maltreatment" are unconstitutionally vague; and that school districts have the right to conduct their own investigation of suspected abuse before deciding whether or not to report it to the trained investigators at DHSS.

SB 450 corrects these interpretations of the current law.

The committee will hold a statewide teleconference on this legislation on Tuesday, February 13, from 1:30 to 3:30 in the Butrovich Room. Senators are welcome to attend.

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Alaska State Legislature

Senate Judiciary Committee

March 6, 1990

MEMORANDUM

TO: All Senators

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee

SUBJECT: SB 450 "An Act relating to child abuse and neglect."

CSSB 450 (Jud) is before the Senate for consideration today. This bill was introduced by the Judiciary Committee to clarify current laws relating to the reporting of child abuse or neglect. The need for this legislation became apparent during the recent hearings held by the committee on SB 355, relating to sex offenses by persons in positions of special trust.

AS 47.17 presently requires certain persons, such as school administrators, health professionals, and social workers, to immediately report to the Department of Health and Social Services (DHSS) any cause to believe that a child has suffered harm as a result of abuse or neglect.

While the legislative intent behind this statute is clear, the committee has learned that in practice, the specific language has been interpreted in different ways by various school districts and others of whom reporting is required. For example, it has been argued in court documents and elsewhere that the law cannot constitutionally require persons to report child abuse; that the requirement for "immediate" notice fails to advise persons how soon they must report abuse; that the terms "sexual abuse" and "maltreatment" are unconstitutionally vague; and that school districts have the right to conduct their own investigation of suspected abuse before deciding whether or not to report it to DHSS or the police.

SB 450 corrects these interpretations of the current law, by bringing the language of the statute in line with the intent of the original drafters. It also adds additional protection for minors, by requiring abuse reports from drug and alcohol

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abuse counselors; by requiring school districts to train employees on the recognition of abuse and neglect; by authorizing DHSS and the police to interview victims of abuse at their school; by requiring abuse committed by teachers to be reported to the Professional Teaching Practices Commission; and by defining "child abuse or neglect" to include mental injury. A sectional analysis discussing these changes in detail is attached.

Passage of CSSB 450 (Jud) is essential if the child abuse reporting system is to work as we intended it would when the law was originally enacted. The protection it provides to our children is vital, and the clarity it provides to the current law will be of great assistance to those who are required to make reports. I urge your support for this legislation.

Sectional Analysis
CSSB 450 (Judiciary)

Section 1: [AS 47.17.010] The amendment conforms the purpose clause to the definition of "child abuse or neglect" set out in section 16. In addition, the amendment clarifies that if there is a reasonable cause to suspect child abuse, a report should be made to the department. At present, some reporters believe that they must conduct an investigation to determine whether child abuse or neglect has occurred before reporting the abuse to the department. In order to make sure that investigations regarding child abuse and neglect are conducted by individuals trained to do investigations, and to avoid subjecting a child to multiple interviews, the standard for reporting is changed in AS 47.17 from "cause to believe" to "reasonable cause to suspect." The change in language is consistent with the Department of Law's interpretation of existing law, and reflects the belief that public policy is better served by DFYS investigating possibly unfounded reports of child abuse than by failing to investigate where abuse may prove to have occurred. The "reasonable cause to suspect" standard has been upheld in the face of constitutional vagueness challenges in People v. Cavaiani, 432 N.W.2d 409 (Mich. App. 1988) and State v. Hurd, 400 N.W. 2d 42 (Wis. App. 1986). A definition of "reasonable cause to suspect" is set out in section 19.

Section 2: [AS 47.17.020(a)] As described under section 1, the "cause to believe" language is changed to "reasonable cause to suspect." In addition, section 2 adds paid employees of substance abuse counseling or treatment programs to the list of person required to report child abuse or neglect. These persons were previously excluded from the list because a reporting obligation would conflict with federal confidentiality requirements for substance abuse treatment providers. However, federal law has recently been changed to allow substance abuse treatment providers to report child abuse or neglect. See 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3.

Section 3: [AS 47.17.020(b)] As described under section 1, the "cause to believe" language is changed to "reasonable cause to suspect."

Section 4: [AS 47.17.020(c)] For purposes of clarity, the undefined word "immediate" is replaced with "immediately," a term defined in section 19.

Section 5: [AS 47.17.020(e)] Under present law, some reports of child abuse are required to be made to the department and others are required to be made to the nearest law enforcement agency. This has caused confusion for some reporters; others simply make all reports to the department. The amendment conforms

the law to existing practice, and requires all reports of suspected child abuse or neglect to be made to the department. However, since law enforcement agencies will continue to have the responsibility for investigating cases involving abuse by persons not responsible for the welfare of a child, and cases involving possible criminal conduct, the amendment imposes an obligation on the department to immediately report such cases to the nearest law enforcement agency.

Section 6: [AS 47.17.020(f)] In cases where a child has been abused by a teacher or other school employee working in the school in which the child is enrolled as a student, during a school sponsored activity, or on school premises, the amendment requires the investigating agency to report the abuse to the school. If a teacher is the abuser, the district is obligated to report the conduct of the teacher to the Professional Teaching Practices Commission within 10 days.

Section 7: [AS 47.17.022] Under current law, state agencies that employ persons required to report abuse or neglect of children must provide training on the recognition and reporting of child abuse and neglect. The amendment places an identical obligation on school districts (this obligation is consistent with the training requirement set out in 4 AAC 06.045). In addition, the mandatory curriculum for the training is expanded to include training about how DFYS and law enforcement agencies handle reports of child abuse or neglect.

Section 8: [AS 47.17.023] As described under section 1, the "cause to believe" is changed to "reasonable cause to suspect." In addition, for purposes of clarity, the undefined word "promptly" is replaced with "immediately," a term defined in section 19.

Section 9: [AS 47.17.025(a)] As a result of the change in the definition of "child abuse or neglect" described under sections 1 and 16, the amendment makes a technical change to AS 47.17.025.

Section 10: [AS 47.17.027] A new section is added to the statute to allow the department and law enforcement officials to interview a child at school, without prior notification to, or permission from, the person responsible for the child's welfare, if the person responsible for the child's welfare is alleged to have abused or neglected the child. The section also clarifies that a school official may be present during the interview unless the child objects, or the investigating agency determines that the school official is interfering with the investigation.

Section 11: [AS 47.17.040(b)] The Alaska Supreme Court has repeatedly expressed its aversion to the imposition of criminal sanctions in the absence of proof that an offender was aware or