

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

8672

6380 SENATE JUDICIARY

789

1 governmental entity occurs, the certificate, order, decision, or regu-
2 lation of the commission prevails.

3 * Sec. 20. AS 43.05 is amended by adding a new section to read:

4 Sec. 43.05.075. CONCEALING OR FALSIFYING EVIDENCE. A person may
5 not wilfully, in connection with a compromise or offer of a compromise
6 under AS 43.05.070 or in connection with a closing agreement or offer
7 to enter a closing agreement under AS 43.05.060,

8 (1) conceal from an officer or employee of the state prop-
9 erty belonging to the estate of the taxpayer or other person liable
10 for the tax; or

11 (2) receive, destroy, mutilate, or falsify a book, docu-
12 ment, or record or make a false statement under oath relating to the
13 estate or the financial condition of the taxpayer or other person
14 liable for the tax.

15 * Sec. 21. AS 43.05.110 is amended to read:

16 Sec. 43.05.110. PROPERTY IN POSSESSION OF DECEASED EMPLOYEE.
17 The personal representative of a deceased employee of the department
18 who has possession or control of a tax list, record, return, paper,
19 document, or book or money collected shall deliver it to the depart-
20 ment. [A PERSONAL REPRESENTATIVE WHO REFUSES OR WILFULLY FAILS TO DO
21 SO IS GUILTY OF A MISDEMEANOR.]

22 * Sec. 22. AS 43.05.130 is amended to read:

23 Sec. 43.05.130. PENALTY [MISDEMEANOR]. A person who, by conduct
24 not described in AS 43.05.290, violates a provision of AS 43.05.010 -
25 43.05.130 or a regulation adopted under those provisions [It] is
26 guilty of a misdemeanor, and upon conviction is punishable by a fine
27 of not more than \$1,000 for each offense.

28 * Sec. 23. AS 43.55.016(c) is amended to read:

29 (c) The cents-per-Mcf amount equals \$.064 per 1,000 [THOUSAND]

1 cubic feet of taxable gas produced from the lease or property [AS
2 ADJUSTED BY AS 43.55.012].

3 * Sec. 24. AS 43.55.020(e) is amended to read:

4 (e) Gas produced in excess of that needed for safety purposes,
5 except gas used in the operation of a lease or property in drilling
6 for or producing oil or gas, or for repressuring, is considered, for
7 the purpose of AS 43.55.011 - 43.55.150 and in the amount used, as gas
8 produced from a lease or property. Gas flared beyond the amount
9 authorized for safety by the Alaska Oil and Gas Conservation Commis-
10 sion under AS 31.05 is considered as gas produced, except that it is
11 subject to a penalty equal to the tax computed under AS 43.55.016 [AS
12 ADJUSTED BY AS 43.55.012] per 1,000 [THOUSAND] cubic feet of gas for
13 the month in which the gas was flared.

14 * Sec. 25. AS 43.55.090 is amended to read:

15 Sec. 43.55.090. REFUNDS. In case of overpayment, duplicate
16 payment or payment made in error, the department may refund the amount
17 of the overpayment under AS 43.15.010 [ISSUE A CERTIFICATE STATING THE
18 FACTS AND THE AMOUNT OF THE REFUND TO WHICH THE TAXPAYER IS ENTITLED.
19 UPON PRESENTATION OF THE CERTIFICATE TO THE DEPARTMENT OF ADMINISTRATION,
20 THE DEPARTMENT OF ADMINISTRATION SHALL ISSUE A WARRANT FOR THE
21 REFUND. THE REFUND SHALL BE PAID OUT OF THE UNAPPROPRIATED GROSS
22 PRODUCTION TAX IN THE TREASURY].

23 * Sec. 26. AS 44.19.104(a) is amended to read:

24 (a) Members serve for overlapping four-year terms. [THE FIRST
25 MEMBERS APPOINTED SERVE FOR ONE, TWO, THREE AND FOUR-YEAR TERMS AS
26 DETERMINED BY THE GOVERNOR.] The chairman serves for a term set by
27 the commission, not to exceed four years.

28 * Sec. 27. AS 44.19.155(b) is amended to read:

29 (b) Each public member appointed by the governor under (a)(1) of

1 this section serves a term of two years and until a successor is
2 appointed and qualified [, EXCEPT THAT THE TERM OF OFFICE OF A PUBLIC
3 MEMBER FIRST APPOINTED UNDER (a)(1)(A), (a)(1)(C), (a)(1)(E) AND
4 (a)(1)(G) OF THIS SECTION SHALL BE ONE YEAR]. A public member may be
5 reappointed.

6 * Sec. 28. AS 44.21.258(b) is amended to read:

7 (b) The members of the commission shall serve staggered terms of
8 five years [, WITH THE INITIAL TERMS DETERMINED BY LOT].

9 * Sec. 29. AS 44.27.043 is amended to read:

10 Sec. 44.27.043. TERMS OF OFFICE. The term of office of each
11 member is three years [; HOWEVER, OF THE MEMBERS FIRST APPOINTED,
12 THREE ARE TO BE APPOINTED FOR TERMS OF ONE YEAR, FOUR FOR TERMS OF TWO
13 YEARS, AND FOUR FOR TERMS OF THREE YEARS]. All vacancies are to be
14 filled for the balance of the unexpired term in the same manner as
15 original appointments.

16 * Sec. 30. AS 44.33.310(3) is amended to read:

17 (3) "economic disaster" means that the annual income to
18 workers in the designated area dropped below the average annual income
19 for the base period for workers in the designated area and the drop in
20 income is of such magnitude that the average family income of all
21 residents of the designated area as determined by the department is
22 below the poverty guidelines issued by the federal Department of
23 Health and Human Services [FEDERAL SOCIAL SECURITY ADMINISTRATION
24 POVERTY GUIDELINE], adjusted by the department to reflect subsistence
25 economic patterns and appropriate cost-of-living differentials; the
26 availability of alternate employment shall be considered in determin-
27 ing whether an economic disaster has occurred under this paragraph.

28 * Sec. 31. AS 44.46.030(c) is amended to read:

29 (c) [OF THE MEMBERS OF THE BOARD FIRST APPOINTED BY THE

1 GOVERNOR, THREE SHALL BE APPOINTED FOR A TERM OF ONE YEAR; THREE FOR A
2 TERM OF TWO YEARS; AND TWO FOR A TERM OF THREE YEARS. THE INITIAL
3 TERMS BEGIN ON JULY 1, 1971. THEREAFTER, ALL APPOINTMENTS SHALL BE
4 MADE FOR TERMS OF THREE YEARS BEGINNING ON JULY 1 OF THE YEAR IN WHICH
5 THE APPOINTMENT IS MADE.] Members of the board serve at the pleasure
6 of the governor for staggered terms of three years. In the case of a
7 vacancy other than one arising by expiration of term, an appointment
8 to fill the vacancy shall be made for the remainder of the unexpired
9 term.

10 * Sec. 32. AS 44.85.030 is amended to read:

11 Sec. 44.85.030. MEMBERSHIP AND VACANCIES. The bond bank author-
12 ity consists of the following five directors: the commissioner of
13 revenue, the commissioner of community and regional affairs, who shall
14 each be a director ex officio with voting privileges, and three direc-
15 tors appointed by the governor. The appointment of each director other
16 than the commissioner of revenue and the commissioner of community and
17 regional affairs is subject to confirmation by the legislature. The
18 three directors appointed by the governor serve at the governor's
19 pleasure for four-year terms. They must be residents of the state and
20 qualified voters at the time of appointment and shall comply with the
21 requirements of AS 39.50 (conflict of interest). [THE DIRECTORS FIRST
22 APPOINTED SHALL HAVE TERMS OF TWO, THREE AND FOUR YEARS RESPECTIVELY.]
23 Each director shall hold office for the term of appointment and until
24 a successor has been appointed and qualified. A director is eligible
25 for reappointment. A vacancy in a directorship occurring other than
26 by expiration of term shall be filled in the same manner as the origi-
27 nal appointment but for the unexpired term only. Each director before
28 entering upon the duties of office shall take and subscribe to an oath
29 to perform the duties faithfully, impartially, and justly to the best

1 of the director's ability. A record of the oath shall be filed in the
2 office of the governor.

3 * Sec. 33. AS 44.88.030(c) is amended to read:

4 (c) Members of the authority described in (a)(2) and (a)(3) of
5 this section serve two-year terms. [HOWEVER, THE INITIAL APPOINTMENT
6 OF ONE MEMBER DESCRIBED IN (a)(3) OF THIS SECTION SHALL BE FOR A
7 ONE-YEAR TERM.]

8 * Sec. 34. AS 47.80.050(a) is amended to read:

9 (a) Council members serve staggered terms of [MEMBERS' TERMS
10 ARE] three years. [OF THE INITIAL APPOINTEES, ONE-THIRD SHALL BE
11 APPOINTED FOR ONE-YEAR TERMS, ONE-THIRD FOR TWO-YEAR TERMS, AND ONE-
12 THIRD FOR THREE-YEAR TERMS.]

13 * Sec. 35. AS 23.15.520(3); AS 23.35.150(2), 23.35.150(4); AS 39.50.-
14 200(b)(47); AS 42.40.920(a); AS 43.05.010(17), 43.05.120; AS 43.20.340(3);
15 AS 43.23.095(2), 43.23.095(3); AS 43.31.420(2); AS 43.55.900(5); AS 43.56.-
16 210(3); AS 43.75.140(2); AS 43.80.100(3); AS 44.47.310(5); AS 47.07.-
17 020(b)(10), and 47.07.035(17) are repealed.

18 * Sec. 36. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

REQUEST:

Revision Date: _____ Affected Agency: Legislative Affairs Agency
 Title: "An Act making corrective
amendments to the Alaska Statutes..." BRU: Legislative Council
 Sponsor: Rules Comm. by Leg Council Components Legal Services
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

| OPERATING | FY91 | FY92 | FY93 | FY94 | FY95 | FY96 |
|------------------------|------|------|------|------|------|------|
| 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 Fund | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| Full-Time | 0 | 0 | 0 | 0 | 0 | 0 |
| Part-Time | 0 | 0 | 0 | 0 | 0 | 0 |
| Temporary | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

NO FISCAL IMPACT

Prepared By: Pamela Stoops, Director Phone: 465-3850
 Division: Administrative Services Date: 1/15/90

Approved By: Warren Endicott, Executive Director
 Agency: Legislative Affairs Agency Date: 1/15/90

DISTRIBUTION (BY PREPARER)
 LEGISLATIVE FINANCE
 LEGISLATIVE SPONSOR

REQUESTOR
 OFFICE OF MANAGEMENT & BUDGET
 AGENCY (IES)

HB

465

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 465 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to telephone access and monitoring
7 inside correctional facilities."

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

9 * Section 1. AS 33.30.231(a) is amended to read:

10 (a) A [EXCEPT AS PROVIDED IN (b) OF THIS SECTION, A] prisoner
11 shall have reasonable access to a telephone except when access is
12 suspended as punishment for conviction of a rule infraction or pending
13 a hearing for a rule infraction involving telephone abuse. A sus-
14 pension under this subsection must be reasonable in length and may not
15 prohibit telephone communication between the prisoner and an attorney
16 or between the prisoner and the office of the ombudsman.

17 * Sec. 2. AS 33.30.231(c) is amended to read:

18 (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to
19 preserve the security and orderly administration of the correctional
20 facility [INSTITUTION] and to protect the public, the commissioner may
21 authorize the use of monitoring or recording equipment to listen to a
22 telephone conversation of a prisoner incarcerated following conviction
23 of a crime, if a warning is posted by the telephone informing the
24 prisoner that a call may be monitored or recorded. A recording of a
25 telephone call made under this subsection shall be kept confidential,
26 and access to the recording and its contents is limited to persons who
27 are acting within the scope of their official duties and whose access
28 to specific recordings has been authorized by the facility superinten-
29 dent. A telephone call between an attorney and a prisoner or between

1 the office of the ombudsman and a prisoner may not be monitored or re-
2 corded except when authorized by a court.

3 * Sec. 3. AS 33.30.231(b) is repealed.
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State of Alaska
Ombudsman

Duncan C. Fowler

April 19, 1990

Jan Faiks, Chair
Senate Judiciary Committee
Alaska State Senate
Post Office Box V
Juneau, Alaska 99811-3000

RECEIVED

APR 20 1990

JAN FAIKS
SENATE OFFICE

Reply to:

- P.O. Box 102636
Anchorage, AK 99510-2636
(907) 563-3673
(800) 478-2624
- P.O. Box WO
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
- P.O. Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257

RE: HB 465 (JUD)

Dear Senator Faiks:

A bill relating to inmate telephone calls, HB 465 (JUD), has been referred to your committee for review. I know it is getting near the end of the session. I hope you will be able to schedule this bill before your committee.

My interest in this bill is twofold. Although the bill does help bring state law into line with the *Cleary Partial Settlement Agreement*, it also insures certain phone communications with this office will not be abused.

When the Alaska Ombudsman Act passed in 1975, inmates did not have the same access to telephones as today. However, the 1975 act did provide that all inmate mail, to or from the ombudsman, be promptly handled unopened by officials. That provision recognized the state's potential for liability in institutional settings (medical as well as correctional). It guaranteed a way for those in custody to seek and receive help in confidence without potential abuse by their "keepers."

From my perspective, HB 465 (JUD) modernizes the provisions of the Ombudsman Act. It provides access and prohibits monitoring of inmate calls to this office. And, frankly, it is cheaper and faster for us to deal with inmate complaints over the telephone than it is by mail.

Please let me know if you can schedule this bill. I would be happy to appear before your committee and answer any questions you may have regarding my interest in this legislation. This is a bill that Commissioner Humphrey-Barnett and I have worked on and both support.

Sincerely,

Duncan C. Fowler
Ombudsman

DCF:pjc

cc: Susan Humphrey-Barnett, Commissioner
Department of Corrections
Mike Stark, Assistant Attorney General

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to access and monitoring of telephone calls in correctional facilities.

The bill repeals limitations on access to telephones by prisoners who are classified maximum custody or in segregation. The bill also repeals the authority to monitor telephone calls of prisoners who have not been convicted of a crime. It leaves intact the authority to monitor calls of convicted prisoners.

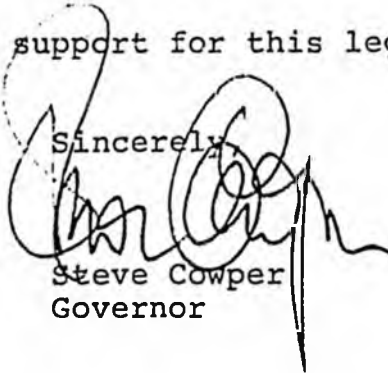
In 1983, the superior court in Cleary v. Smith signed an order granting reasonable access to telephones for all prisoners except those in punitive segregation. The order also prohibited monitoring telephone calls of pretrial detainees. In 1986, as a response to telephone abuses by a relatively small number of prisoners, the legislature passed AS 33.30.231 (sec. 6, ch. 88, SLA 1986). That statute precludes access to telephones, except to call an attorney, for inmates classified maximum custody or in segregation, and authorizes the monitoring of telephone calls of all prisoners. This bill would repeal those provisions in the statute which conflict with the court order. While the plaintiffs in Cleary have challenged the constitutionality of AS 33.30.231 in light of the 1983 court order, the state and Cleary plaintiffs have reached agreement on how to avoid this costly litigation and still afford adequate protection to the public from inmate telephone abuses.

The Department of Corrections will shortly be implementing a collect-call-only system (except to attorneys) for

prisoners, which will identify the caller as a prisoner and permit the person called an opportunity to refuse the call. This system, coupled with enactment of this bill, will protect the public from telephone abuses yet still allow the level of communication by prisoners envisioned in the 1983 court order.

I respectfully request your support for this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to telephone access inside correctional facilities."
 Sponsor: Rules
 Requestor: Governor

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| 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 | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: 12/27/89

Susan Humphrey-Barnett

Approved by Commissioner: Susan Humphrey-Barnett Date: 12/27/89
 Agency: Department of Corrections

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

Sec. 33.30.221. Superintendent of correctional facility may administer oaths and acknowledgments. The superintendent of a correctional facility or the superintendent's assistant may administer oaths to and take acknowledgments from a prisoner, but may not request or accept compensation from a prisoner for acts performed under this section. (§ 6 ch 88 SLA 1986)

Secs. 33.30.225 — 33.30.227. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.231. Telephone access and monitoring inside correctional institutions. (a) Except as provided in (b) of this section, a prisoner shall have reasonable access to a telephone.

(b) A prisoner who is classified maximum custody, is placed in segregation as punishment for a rule infraction, or is placed in segregation because the prisoner poses a threat to others or to the security of a correctional facility may not have access to a telephone except to communicate with an attorney, to otherwise communicate as provided in AS 12.25.150, or in an emergency as determined appropriate by the commissioner.

(c) Notwithstanding AS 42.20.300 and 42.20.310, in order to preserve the security and orderly administration of the institution and to protect the public, the commissioner may authorize the use of monitoring or recording equipment to listen to a telephone conversation of a prisoner if a warning is posted by the telephone informing the prisoner that a call may be monitored or recorded. A telephone call between an attorney and a prisoner may not be monitored or recorded except when authorized by a court. (§ 6 ch 88 SLA 1986)

Sec. 33.30.241. Effect of judgment of conviction on civil rights. (a) A person who is convicted of a felony involving moral turpitude as defined in AS 15.60.010 is disqualified from voting in a state or municipal election until the person's unconditional discharge.

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

(c) In this section "unconditional discharge" has the meaning given in AS 12.55.185. (§ 6 ch 88 SLA 1986)

Cross references. — For loss and restoration of voting rights after certain felony convictions, see AS 15.05.030.

H B

466

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to tobacco."
Sponsor: Representative Gruenberg
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

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 | | | | | | |
|---------|--|--|--|--|--|--|

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|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: March 2, 1990
 Approved by Commissioner: Richard I. Pegues / FOR
Douglas B. Bailly (Attorney General) Date: March 2, 1990
 Agency: Department of Law

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

The Hon. Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 466 -- (prohibition on the
free distribution or sampling
of tobacco products)

Dear Representative Gruenberg:

You have asked us if the state is preempted by federal law from enacting a prohibition on the free distribution or sampling of tobacco products. There is a prohibition against providing free tobacco in HB 466.

Because of the short period of time in which our response has been requested, we have not done an extensive analysis of this issue. However, our initial review leads us to believe that while it may be a close question, there is a legitimate argument that the state is not preempted by federal law from enacting a prohibition against the free distribution or sampling of tobacco products.

Under the supremacy clause of the United States Constitution, Article VI, cl. 2, Congress can pass laws that will completely govern an area, thus preempting any state action in that area. However, in determining whether state action is preempted in any particular area we must analyze whether there is an actual conflict between state and federal legislation and whether there was an intent behind the federal legislation to preclude state action. See Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1962).

House Bill 466 states (with certain exceptions for tobacco stores and trade conventions), "A person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales." HB 466, p. 1, lines 23-25. Federal statute provides that "no requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes [when the packages are properly labelled]." 15 U.S.C.A. 1334(b) (1970).

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

CORRECTION

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

HB

466

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to tobacco."
 Sponsor: Representative Gruenberg
 Requestor: House Judiciary

Agency Affected: Department of Law
 BRU: Legal Services
 Components: Operations

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- |

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|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

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|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | |
|---------------|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | |
| OTHER | | | | | |
| TOTAL | | | | | |

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services
 Approved by Commissioner: Richard I. Pegues / FOR
Douglas B. Bailly Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: March 2, 1990
 Date: March 2, 1990

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. HB 466

This bill amends AS 11.76 by adding a new section that provides that a person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales. The bill does allow a person to provide small samples of tobacco without charge or for a nominal fee to a person 19 years of age or older for the purpose of promoting retail sales, if the samples are provided in a retail store that sells primarily tobacco, or at trade shows or conventions from which the general public is excluded, or in conjunction with a separate sale of tobacco by a retailer, manufacturer, or distributor.

There has apparently been some discussion, on the part of tobacco industry representatives, that state jurisdiction of tobacco promotions is preempted by 15 U.S.C. 1334(b), which places responsibility for regulating tobacco advertising at the federal level. It is the Department of Law's view, however, that the distribution of free samples falls under 15 U.S.C. 1332(6), which places the responsibility for the regulation of the distribution of tobacco, whether for sale or not, at the state level. If the bill is approved and is then subsequently challenged in court, the department will handle a challenge using its existing staff. Consequently, fiscal note costs are not required.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

The Hon. Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 466 -- (prohibition on the
free distribution or sampling
of tobacco products)

Dear Representative Gruenberg:

You have asked us if the state is preempted by federal law from enacting a prohibition on the free distribution or sampling of tobacco products. There is a prohibition against providing free tobacco in HB 466.

Because of the short period of time in which our response has been requested, we have not done an extensive analysis of this issue. However, our initial review leads us to believe that while it may be a close question, there is a legitimate argument that the state is not preempted by federal law from enacting a prohibition against the free distribution or sampling of tobacco products.

Under the supremacy clause of the United States Constitution, Article VI, cl. 2, Congress can pass laws that will completely govern an area, thus preempting any state action in that area. However, in determining whether state action is preempted in any particular area we must analyze whether there is an actual conflict between state and federal legislation and whether there was an intent behind the federal legislation to preclude state action. See Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1962).

House Bill 466 states (with certain exceptions for tobacco stores and trade conventions), "A person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales." HB 466, p. 1, lines 23-25. Federal statute provides that "no requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes [when the packages are properly labelled." 15 U.S.C.A. 1334(b) (1970).

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

The key question is whether or not giving away tobacco is "advertising or promotion." While giving away tobacco could be considered part of a promotional scheme, it is not "advertising" in the traditional sense. Furthermore, under 15 U.S.C.A. 1332(6) (1970), Congress defined the term "sale or distribution" as "including sampling or any other distribution not for sale." If Congress had meant to preempt state action in this area it arguably would have used the same terms ("sale or distribution") in 15 U.S.C.A. 1334(b) and would have clearly stated that states cannot interfere with the sale or distribution of tobacco. By not doing so, even though Congress has obviously taken action in this field, states do not appear to be explicitly forbidden from enacting legislation limiting the distribution of tobacco.

This analysis is further supported by the rule of statutory construction that states:

Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling.

2A C. Sands, Sutherland Statutory Construction 51.05, at 315 (4th ed. 1973) (footnotes omitted), cited in State v. Green, 586 P.2d 595, 602 (Alaska 1978).

House Bill 466 and federal law can be read in harmony with one another. Promotion is a general term, and does not necessarily cover the distribution of an item. Furthermore, even if the two laws did conflict, prohibiting the distribution of tobacco could be found to simply specify in a "more detailed manner" something that is not allowed under the general ambit of "promotion."

Finally, Congress's statement of intent in 15 U.S.C.A. 1331 does not specifically preclude states from limiting distribution of tobacco. Rather, it precludes the states from enacting "diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." Id. At least three other states have enacted statutes similar to the one proposed by HB 466. As we have noted,

The Hon. Max Gruenberg
Alaska State Legislature

March 2, 1990
Page 3

although it may be a close issue, we believe the better view is that states are not automatically preempted from enacting a restriction on the free distribution of tobacco.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: *Elizabeth J. Kerttula*
Elizabeth J. Kerttula
Assistant Attorney General

EJK:jf

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)
914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

April 30, 1990

MEMORANDUM

TO: Members of the Senate Judiciary Committee
FROM: Representative Max Gruenberg *Max*
RE: CSHB 466 (Judiciary), "An Act
relating to tobacco"

I would very much appreciate your support of HB 466, the anti-tobacco sample bill.

Under the present law it is legal to give adults unsolicited free samples of cigarettes and other tobacco products.

HB 466 prohibits giving away tobacco products in order to promote retail sales except in limited circumstances, such as in tobacco shops or conventions.

Deaths and serious illnesses from tobacco use are some of society's most serious substance abuse problems. This bill discourages tobacco use by prohibiting this type of aggressive marketing.

HB 466 passed the House by a vote of 29 - 4.

Thank you.

POSITION PAPER
CS HB 466

"An Act relating to tobacco."

BACKGROUND

This bill would prevent tobacco sampling, restrict the availability of tobacco samples, and place limits on methods of distributing tobacco. It defines, as a violation, the distribution of tobacco to any person without charge or at nominal cost for the purpose of promoting retail tobacco sales, with some exceptions involving sales of tobacco to adults, or at promotional conventions and trade shows not open to the public.

ANALYSIS

The following statistical and research data was obtained from two principle sources: a 1989 report of the Surgeon General to Congress, "Reducing the Health Consequences of Smoking, 25 Years of Progress" (SGR), and a report dated February 20, 1990 to Congress by the Center for Disease Control's Office on Smoking and Health, "Smoking and Health, A National Status Report, 2nd Edition" (OSH).

Limiting access to tobacco is an important public health measure for the following reasons:

1. Tobacco use has clearly been shown to cause, or increase the risk of, some of the leading causes of mortality in the United States, including cancer, heart disease and stroke. In fact, smoking causes more premature deaths than cocaine, heroine, alcohol, fire, automobile accidents, homicide, and suicide combined (OSH).
2. Smoking is an especially serious health problem in Alaska, which has the highest rate of both smoking and lung cancer mortality in the country. The OSH report states, based on 1985 data, that while the national smoking prevalence rate is 26.5%, in Alaska the rate for persons over 20 is 43.4% for males, and 28.9% for females. A recent survey of Alaska adolescents' health-related behavior suggests that smoking prevalence in this group may be much higher, particularly in rural areas. The OSH report states

that the direct and indirect costs of smoking-related adverse health effects to Alaska residents is \$82.3 million annually, and that the smoking-attributable years of potential life lost for Alaskans is 4,762 years.

3. Availability and price effect tobacco use, especially with young people. Virtually all adult smokers began using tobacco before age 20. Research indicates that if persons do not begin smoking by age 20 they rarely do so later. Those who begin smoking early in life have more trouble quitting, smoke more heavily, and have a higher risk of developing smoking related disease. Delaying the onset of smoking behavior, by prohibiting sampling, will likely have the effect of reducing both the incidence of new smokers and the prevalence of smoking and the associated adverse health effects.
4. The Surgeon General's report states that retailers are the primary source of tobacco used by minors. Vending machines and free samples are both cited as sources of tobacco for the youngest children, possibly due to refusal by retailers to sell to them directly because of statutory restrictions. Therefore, this bill may be particularly effective in preventing tobacco use by this group, which is arguably the least able to make informed judgements about using tobacco and is at the greatest risk for adverse health effects if they begin using tobacco.

The right of states to restrict tobacco use has a long legal history in the United States, dating to a Supreme Court decision in 1900. In general, the federal government has not restricted the distribution of tobacco, leaving this to the states (SGR). Twelve (12) states and at least 12 municipalities have laws restricting the distribution of samples of tobacco products.

Free sampling of tobacco products is an inappropriately aggressive marketing tactic because tobacco is an extremely harmful and addictive drug.

The likely effect of this bill would be to discourage tobacco use. In particular, it would tend to prevent people

from beginning to smoke, or limit the amount they smoke, by limiting their access to free tobacco samples.

POSITION

The Department of Health and Social Services strongly supports this bill.

Recommended by: *Sally Mead*
Sally Mead, Coordinator
Office of Prevention

Date: 3/16/90

Approved by: *Myra M. Munson*
Myra M. Munson, Commissioner
Department of Health and
Social Services

Date: 3/19/90

Tanana Chiefs Conference, Inc.

122 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-8251
Fax (907) 451-8936

March 29, 1990

Representative Ben Grussendorf
Chairman, Rules Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau AK 99811

Dear Chairman Grussendorf:

Tanana Chiefs Conference, Inc. (TCC) supports HB 466, a bill prohibiting distribution of free tobacco samples.

We are all aware of the health effects of tobacco consumption. There exists a need to restrict free distribution of these products especially to young people. The tobacco industry depends on young people as the new generation of addicts. Studies show 18% to 21% of all high school students are smokers. Teenagers spend over one billion dollars a year on tobacco. It is much more difficult to start smoking as an adult than it is to start as a young teenager.

The tobacco industry aims much of their marketing techniques at the teenager population - it is their guarantee that a steady stream of customers are insured. A large amount of the marketing monies are used to give away free samples. These samples are given away at sporting and music events, events that are often frequented by young people. Distribution of free samples makes it much easier for our youth and others to pick up that cigarette for the first time and smoke.

Tanana Chiefs wants to make it difficult to learn to smoke by supporting legislation that prohibits this activity, that prohibits smoking in educational and health facilities, that increases taxes on tobacco products, and to penalize those entrepreneurs who sell tobacco products to our youth.

COPY

But do their daughters smoke?

WASHINGTON — While you read this column, three Americans will die of smoking-related illnesses. Not surprising, considering that in 1986 the Surgeon General reported, among other horrific things, benzene concentrations in cigarettes up to 2,000 times greater than the amounts that caused Perrier water to be pulled from markets worldwide. What is surprising, and will flabbergast future generations, is that public policy is so flaccid regarding the nation's foremost cause of preventable death.

Policy may become more muscular in the aftermath of an anomalous controversy, one concerning a major corporation's attempts to market in a normal way a legal, indeed subsidized, product. The product is addictive (80 percent of adults using it want to quit; two-thirds have tried and failed), sickening and often lethal when used as it is intended to be used.

Today's subject is cigarettes and the task, not exactly chivalric, is one of protecting "virile females."

According to a company marketing memo, virile females are 18 to 26, have no education beyond high school, work in entry-level service or factory jobs, wear jeans and knit tops, watch "Roseanne," enjoy such events as motorcycle races, tractor pulls, monster truck competitions. Virile females are the market segment targeted by the new brand "Dakota," which may be promoted by Dakota-sponsored "Nights of the Living Hunks" and male strip shows.

Reynolds recently retreated from a plan to test-market a brand, "Uptown," targeted at blacks in inner cities, a group that already smokes much more than whites. (Billboards — advertisements that cannot be turned off or otherwise avoided



George F. Will is a Pulitzer prize-winning columnist for the Washington Post.

— hawking cigarettes are concentrated most heavily in inner cities.)

Tobacco companies bring a chilly clarity to the task of coping with a shrinking market. They use sophisticated marketing like a sniper's rifle, drawing beads on the most vulnerable, manipulable Americans. The rate of smoking is two-and-a-half times as high among Americans who have not finished high school as among college graduates.

America pays \$52 billion annually — \$221 per American — in health care, insurance costs and lost productivity because of tobacco, which every year kills more Americans than World War II did. The toll from tobacco is far higher than from cocaine, crack and heroin, combined. One thousand deaths a day, one every 90 seconds. If an industrial accident killed everyone in the Augusta, Ga., metropolitan area, the nation would be horrified. That is the scale of the annual tobacco disaster.

Last week, Sen. Edward Kennedy chaired a spirited hearing that considered, among other good ideas, Sen. Bill Bradley's proposal to deny tax deductions for tobacco advertising — \$2.5 billion of it annually. The companies, spending \$8.9 million a day on advertising and promotions,

cheekily claim it is all aimed at winning market shares, and none of it is aimed at children.

But about half of all smokers start by the time they are 15; few start after 21. Only 10 percent of smokers switch brands in a year. Death and intelligence cost the cigarette companies 6,000 customers a day. That many new smokers must be found daily to keep the companies running in place.

Cigarette advertising plays upon teenagers' desire for autonomy and anxiety about social acceptance and sexual allure. If just 3 percent of cigarette sales are to underage children, that market segment spends \$1 billion, giving the companies \$150 million in profits.

New smokers are disproportionately women and minorities. Forty years ago, just 3 percent of women with cancer had lung cancer. Now 20 percent do.

You say cigarette advertising is off television? Look again. Cigarette signs are in most of the key television camera sight lines in sports arenas and stadiums. On NBC's 43-minute telecast of the 1989 Marlboro Grand Prix, there were 4,987 images of Marlboro signs, 519 of Marlboro billboards and 249 of the Marlboro car. The brand name was visible 46 of the 93 minutes — 49 percent of the telecast.

Targeted marketing, a common tactic, is now considered disgusting when the targeted group is picked because it is badly educated and informed, and hence manipulable, and the product being marketed is injurious. But senior executives who set the tobacco companies' marketing strategies do not have daughters who fit the "virile female" profile.

One wonders: Do the executives' daughters smoke? If so, are the executives pleased? If so, are they not strange parents?

AMERICAN LUNG ASSOCIATION of ALASKA

Dedicated to the prevention and control of lung disease

DATE: FEBRUARY 27, 1990

TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE
ALASKA STATE LEGISLATURE

FROM: WALTER L. HAYS, EXECUTIVE DIRECTOR 
AMERICAN LUNG ASSOCIATION OF ALASKA

RE: HB 466

I am writing in support of HB 466 currently under review by your committee.

There is an increasing awareness in our society about the health hazards of tobacco use. The National report by former Surgeon General Koop that categorically defines tobacco as an addictive substance, the recent federal bill that bans smoking on 99% of all domestic airlines flights and the recent statements by Health and Welfare Secretary Sullivan regarding the target marketing of tobacco products to specific populations are all indications of the growing public awareness of the issues related to smoking and health.

The prohibition of the distribution of most tobacco samples would be a positive step forward for Alaska. Currently, Minnesota and Utah have enacted such laws. Similar legislation has been introduced in New York and Washington. In 1989, Nebraska banned the distribution of smokeless tobacco products.

Additionally, sixteen (16) major metropolitan areas have laws restricting the distribution of tobacco product samples. These cities include: Austin, Texas; Cambridge, Mass; Cincinnati, Ohio; Atlanta, Georgia; Amherst, Mass; and St. Paul, Minn.

The simple documented fact is that access does impact consumption. We have current report of rural Alaskan communities where 60-70% of older teens are regular smokers.

This act will be a positive step forward for all Alaskans in the regulation of an addictive and potential harmful product and the promotion of better community health.

Gruenberg

Local Address: P.O. Box 1285, Kotzebue, Alaska 99752

AMERICAN  LUNG ASSOCIATION of ALASKA

27 February 1990

Dedicated to the prevention and control of lung disease

Representative Max F. Gruenberg, Jr., Co-Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

We have a serious drug problem in Kotzebue that your committee can help us fix. As you may know, tobacco products kill more Americans than all the other recreational drugs combined—nearly 400,000 people die a year from tobacco-related illnesses.

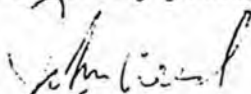
Most Alaskans addicted to nicotine get hooked at an early age, and that is how you can help with your support of HB 141, which would license the sale of tobacco products.

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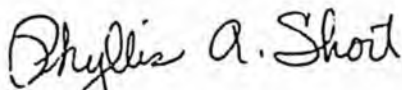
We also support HB 466, which deals with the distribution of tobacco products, as well as SB 222 (and its counterpoint in the House), which would further restrict smoking in public places.

Attitudes have changed dramatically about tobacco use in our society in the past few years. Alaska has always been on the forefront of this movement, and your support of this legislation would demonstrate your commitment to the anti-drug campaign in America. Thank you.

Sincerely yours,



John Creed, Kotzebue Facilitator
American Lung Association of Alaska



Phyllis Short, Board Member, Kotzebue
American Lung Association of Alaska

cc: Walter Hays
Senator Al Adams
Representative Eileen MacLean

CORRECTION

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

Tanana Chiefs Conference, Inc.

122 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-8251
Fax (907) 451-8936

March 29, 1990

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COPY

Your Committee is the last Committee to review this bill in the House. Your earliest consideration to scheduling this bill would be much appreciated. Thank you.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Michael Graf

Michael Graf, Director
Community Health Services

LAC/de

cc: House Rules Committee Members

But do their daughters smoke?

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, Alaska 99752

LUNG ASSOCIATION of ALASKA

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uenberg, Jr., Co-Chair
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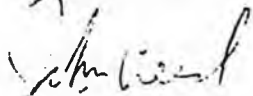
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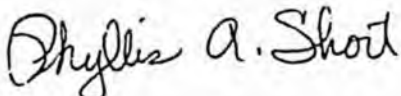
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John Creed, Kotzebue Facilitator
American Lung Association of Alaska



Phyllis Short, Board Member, Kotzebue
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cc: Walter Hays
Senator Al Adams
Representative Eileen MacLean

CORRECTION

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Local Address: P.O. Box 1285, Kotzebue, Alaska 99752

AMERICAN LUNG ASSOCIATION of ALASKA

27 February 1990

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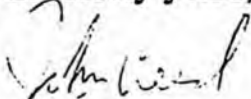
Most Alaskans addicted to nicotine get hooked at an early age, and that is how you can help with your support of HB 141, which would license the sale of tobacco products.

We have a problem in Kotzebue with one store in particular that routinely sells tobacco products to children. While most local store owners are responsible people who do not sell tobacco to children, this one store may be helping to addict a whole new generation of children to nicotine. If that store needed a license to sell tobacco products, the police would have a license to revoke if it broke the law.

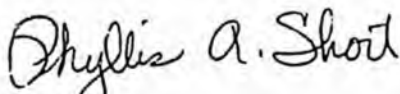
We also support HB 466, which deals with the distribution of tobacco products, as well as SB 222 (and its counterpoint in the House), which would further restrict smoking in public places.

Attitudes have changed dramatically about tobacco use in our society in the past few years. Alaska has always been on the forefront of this movement, and your support of this legislation would demonstrate your commitment to the anti-drug campaign in America. Thank you.

Sincerely yours,



John Creed, Kotzebue Facilitator
American Lung Association of Alaska



Phyllis Short, Board Member, Kotzebue
American Lung Association of Alaska

cc: Walter Hays
Senator Al Adams
Representative Eileen MacLean

HB

491

STEVE COWPER
GOVERNOR



448

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.

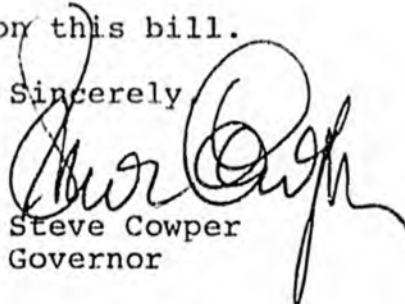
Based on research and data collected in other states, it is obvious that the increased rate of incarceration has not, and will not, solve the crime problem in Alaska. Neither will the development of intermediate and alternative sanctions, by itself, eliminate prison overcrowding. Building more prisons 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

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 Social 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 *MAN* Phone: 465-3616
 Division: Division of Administrative Services Date: 2/6/90

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

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Manager
- Impacted Agency(i)

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 Project Assistant | | | | RANGE/STEP 16/A | DARG. UNIT | PAGE/LINE | GOV. | APPROV. | DISAPP |
| 2. | TYPE OF POSITION PPT | 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 | 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 |

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.

| | | | |
|----|--------------|-----------------------|------|
| | 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 102B | |
| 1. | | Other | |

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

REQUEST FOR
NEW POSITION

AGENCY Office of the Governor
BRU Commissions and Special Offices
COMPONENT _____

Page 2 of 3
Revised Date _____

FY 91

| | | | | | | | | | | | | |
|-----|---------------------------------------|-----------------------|-----------|------------|--|-----------------------|-------------------|------|---------|--------|------|--|
| 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 | | | | JUSTIFICATION: | | | | | | | |
| 4. | TYPE OF EXPENDITURE | | | | <p>Secretarial support to Executive Director and Sentencing Commission staff. Assist with coordination of Commission meetings; public hearings, travel arrangements, process fiscal and personnel documentation.</p> | | | | | | | |
| | 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 - - - - -

REQUEST FOR
NEW POSITION

AGENCY Office of the Governor
BRU Commissions and Special Offices
COMPONENT _____

FY 91

Page 3 of 3
Revised Date _____

Changes Made in Proposed Judiciary CS for HB 491

| CSHB 491 (Jud) am | SCS CSHB 491 (Jud) |
|---|---|
| <p data-bbox="234 392 627 435"><i>Composition of Commission:</i></p> <ul data-bbox="234 478 995 1470" style="list-style-type: none"><li data-bbox="234 478 468 520">• 13 members:<li data-bbox="234 563 995 777">(1) 3 appointed by governor with consideration to geographic representation and interests of victims, local law enforcement officers, rehabilitation specialists and other groups closely concerned with sentencing policies;<li data-bbox="234 1255 883 1298">(2) Commissioner of corrections or designee;<li data-bbox="234 1298 883 1340">(3) Commission of public safety or designee;<li data-bbox="234 1340 712 1383">(4) Attorney general or designee;<li data-bbox="234 1383 702 1426">(5) Public defender or designee;<li data-bbox="234 1426 936 1470">(6) Board of Parole presiding officer of designee; | <p data-bbox="995 392 1415 435"><i>Composition of Commission:</i></p> <ul data-bbox="995 478 1759 1470" style="list-style-type: none"><li data-bbox="995 478 1266 520">• 14 members:<li data-bbox="995 563 1759 734">(1) Person with law enforcement background appointed by governor from nominations of Alaska Peace Officers Association;<li data-bbox="995 734 1759 862">(2) Two persons who are members of crime victims advocacy or assistance organizations appointed by governor;<li data-bbox="995 862 1759 990">(3) Person with understanding of concerns of Alaska Natives relating to criminal justice system appointed by governor;<li data-bbox="995 990 1759 1084">(4) Person with background in criminal rehabilitation appointed by governor;<li data-bbox="995 1084 1759 1255">(5) Person with academic background in criminal justice issues, appointed by governor after considering nominations from dean of School of Public Policy of the University of Alaska;<li data-bbox="995 1255 1159 1298">(6) Same<li data-bbox="995 1298 1159 1340">(7) Same<li data-bbox="995 1340 1159 1383">(8) Same<li data-bbox="995 1383 1159 1426">(9) Same |

Changes Made in Proposed Judiciary CS for HB 491

| CSHB 491 (Jud) am | | SCS CSHB 491 (Jud) |
|---|-----------|--------------------|
| (7) Chief justice of supreme court or another justice or court of appeals judge as designated by chief justice; | (10) Same | |
| (8) Superior court judge designated by chief justice; | (11) Same | |
| (9) District court judge designated by chief justice; | | |
| (10) Senate president or another senator; | (12) Same | |
| (11) House speaker or another representative. | (13) Same | |

BEDSPACE

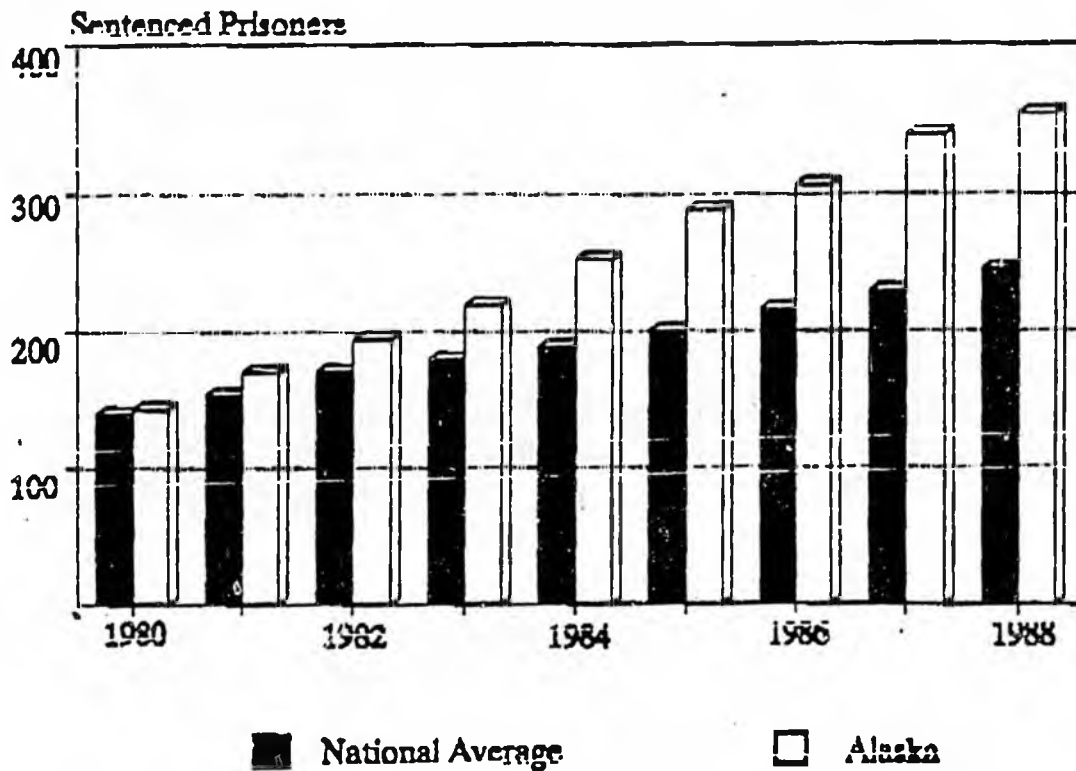
| | <u>6/89</u> | <u>12/89</u> | <u>6/90</u> | <u>12/90</u> | <u>6/91</u> | <u>12/91</u> | <u>6/92</u> | <u>12/92</u> | <u>6/93</u> | <u>12/93</u> |
|---|-------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------------|--------------------|--------------|
| 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: | <u>5</u> | <u>5</u> | <u>5</u> | <u>5</u> | <u>5</u> | <u>5</u> | <u>5</u> | <u>5</u> | <u>5</u> | <u>5</u> |
| 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 FCC: | | | | | | | | | | |
| New Palmer Minimum: | | | | | | | 120 | | | |
| New Unit for Long-Term Women: | | | | | | | 40 | | | |
| 2nd Half of SCCC: | | | | | | | | <u>320</u> | | |
| Available Beds Less In-State Population: | +210 | - 48 | -126 | -204 | -232 | -310 | -228 | <u>2676</u> +14 | <u>2996</u> -64 | -142 |

Rev. 11/14/89
Corrected Copy

* Unable to close any beds
due to increasing prison
population

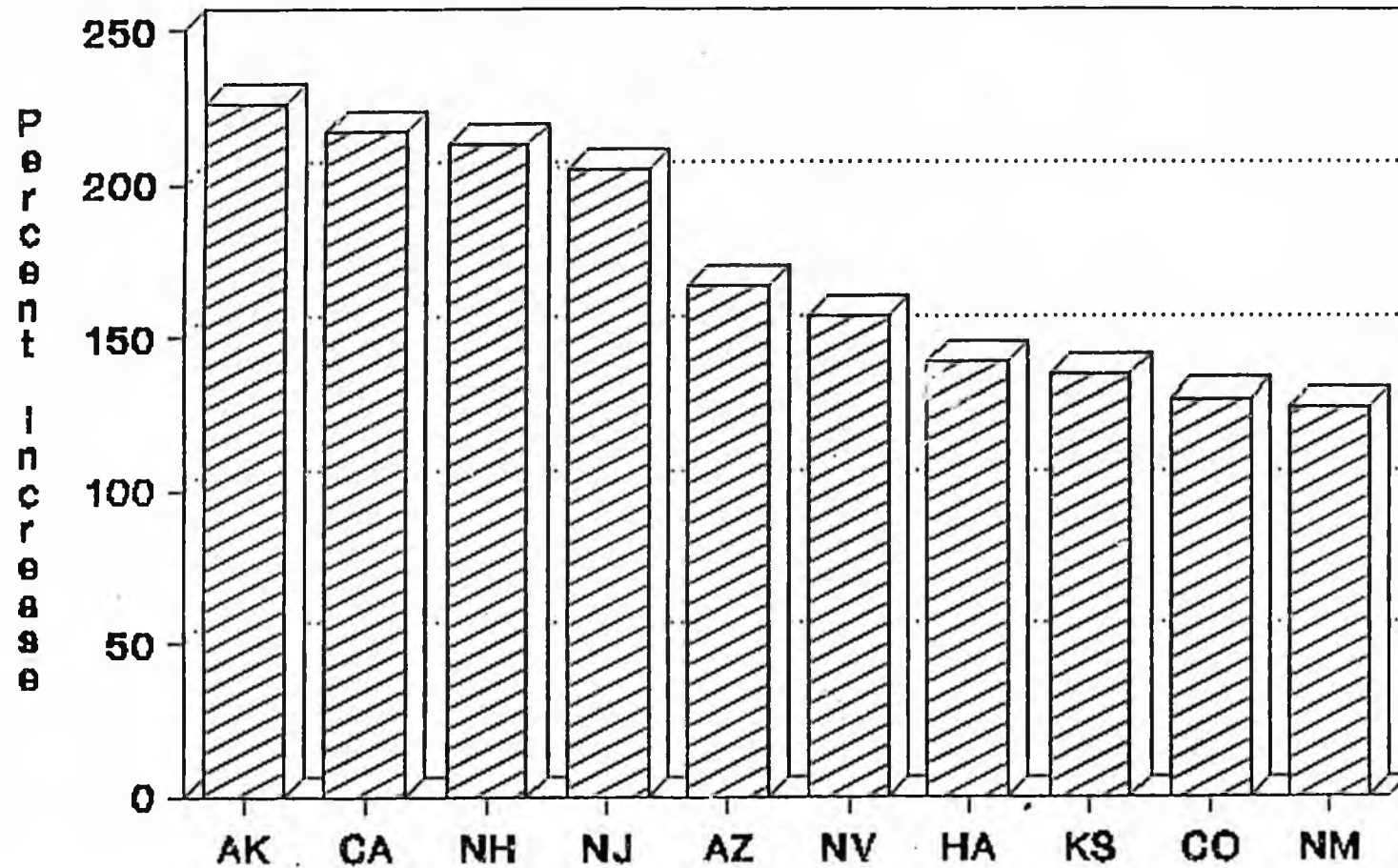
Trends in Alaska Corrections

Rates of Incarceration *
National Average vs Alaska



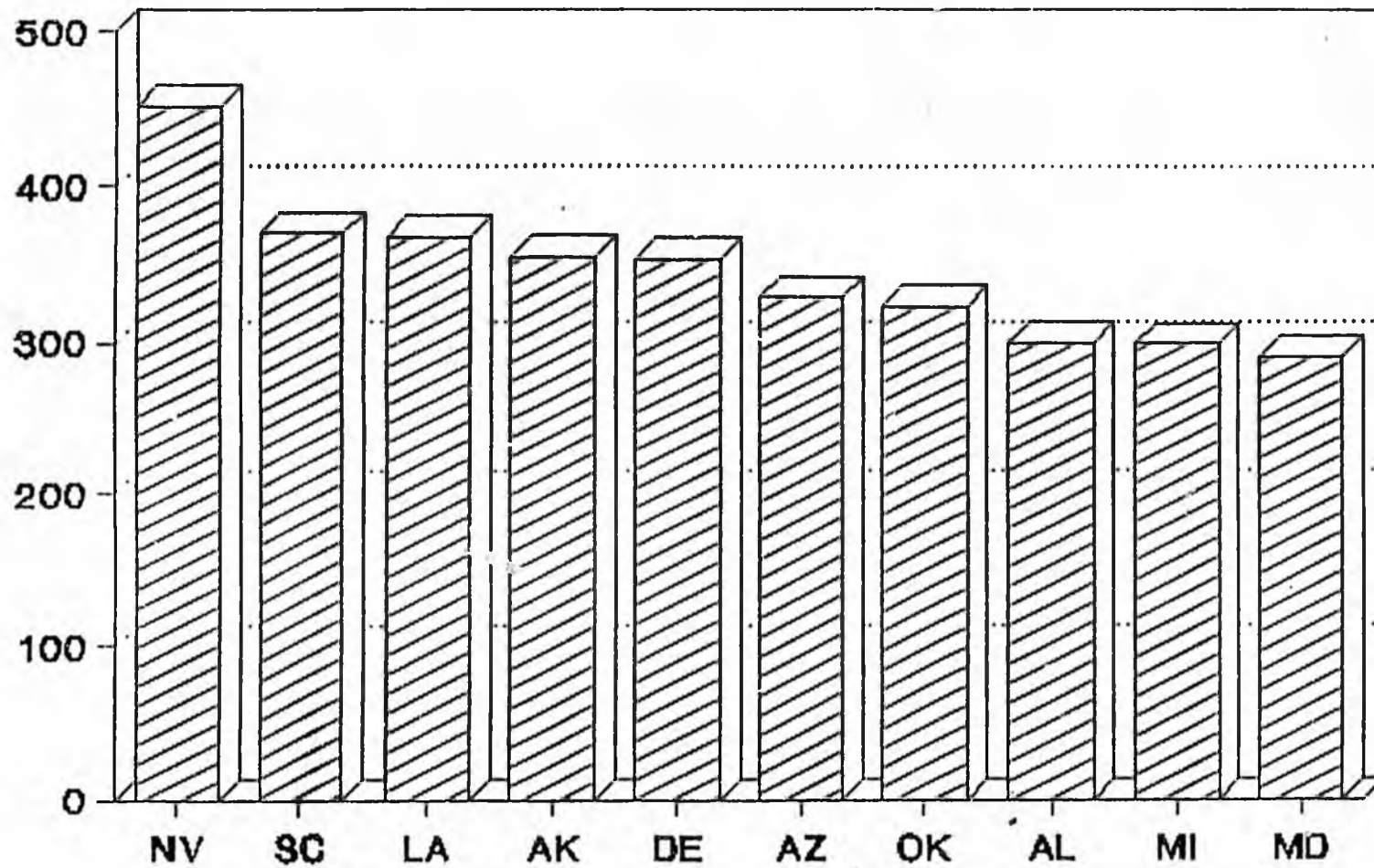
* Rate per 100,000 resident population
Figures from Bureau of Justice Statistics, U.S.
Department of Justice

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



Prisoners per 100,000 residents

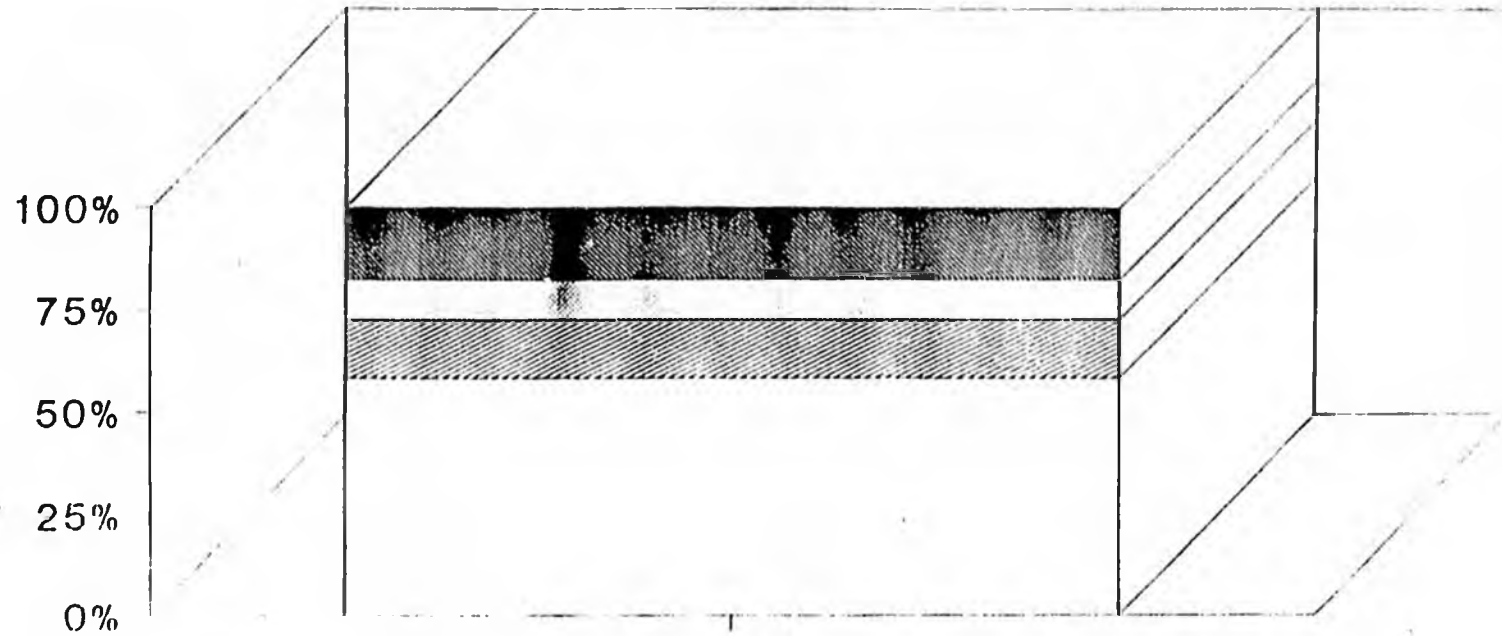
10 States with the highest incarceration rates in 1988



Prisoners per 100,000 residents

Inmate Offense Categories

December 31, 1988

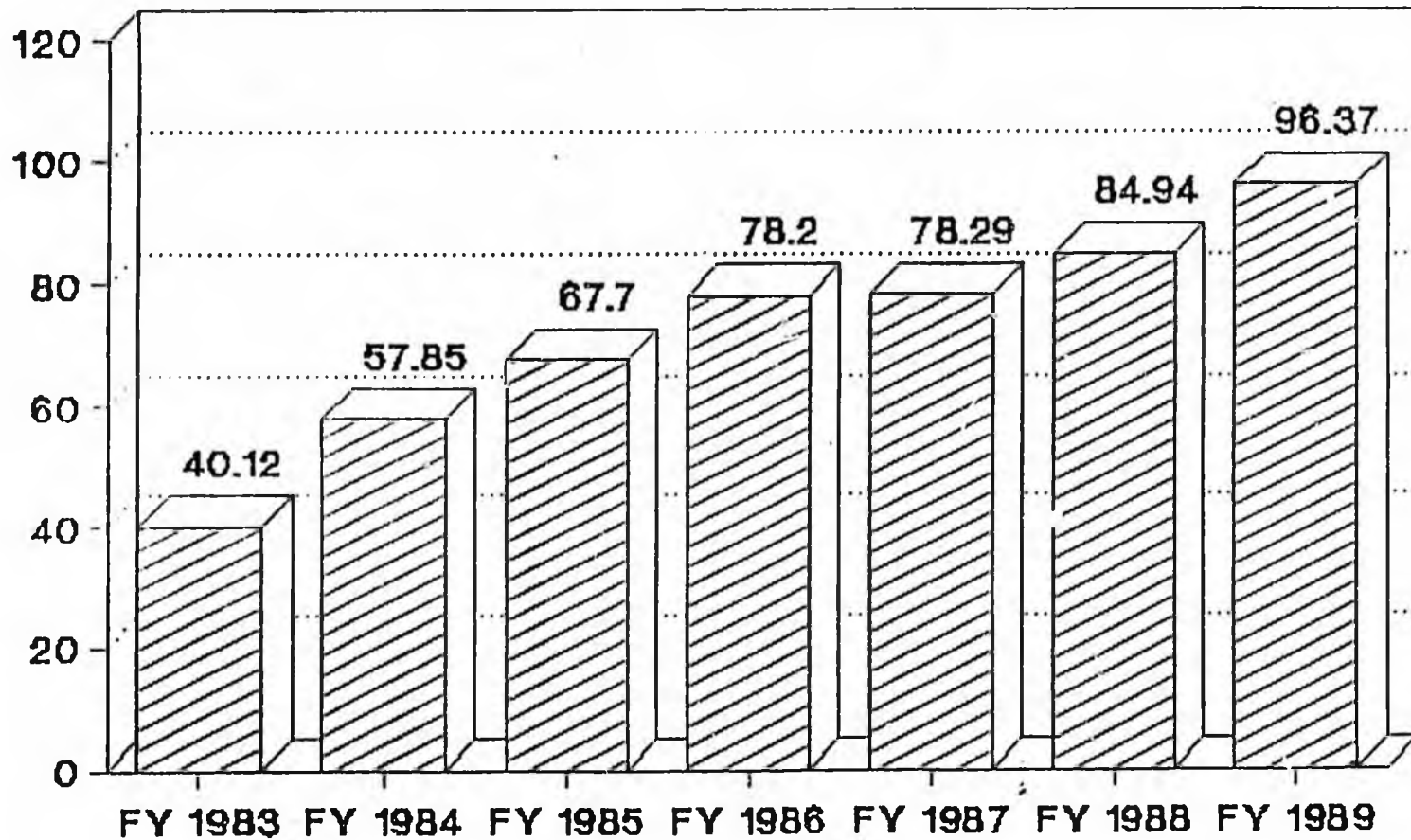


Violent Offenses
Substance Abuse

Property Offenses
All Others

Department of Corrections Operating Budget FY 1983 to FY 1989

In Millions of Dollars



* Fiscal Year Actuals

(Ratio of Actuals)

FOCUS

THE NATIONAL COUNCIL ON CRIME
AND DELINQUENCY

JULY 1988

Ranking the Nation's Most Punitive and Costly States

By James Austin, Ph.D. and Marci Brown

HIGHLIGHTS

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

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

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

For these reasons, the domain of prison control must be evaluated in relation to, and in many cases as overlapping with,

the control exercised by other correctional control systems. This has become all the more obvious in recent years, as many states, facing crisis situations in their prisons, have placed many offenders in a wide variety of non-prison correctional settings.

The major findings of this report are:

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

use of formal punishment, crime rates continue to escalate.

IMPRISONMENT VS. TOTAL INCARCERATION RATES

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

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

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

Table 1: Imprisonment vs. Incarceration Rates

| Rank | State | 1987 Population* | 1987 Prisoners | Imprisonment Rate*** | Rank | State | 1987 Persons in Jail** | Jail Rate*** | 1987 Juveniles in Custody | Total Incarceration Rate**** |
|------------------|----------------|------------------|----------------|----------------------|------------------|----------------|------------------------|--------------|---------------------------|------------------------------|
| 1 | D.C. | 622 | 448 | 727.4 | 1 | D.C. | 1,674 | 269.1 | 413 | 1,333.0 |
| 2 | Alaska | 525 | 2,528 | 481.5 | 2 | Nevada | 1,925 | 191.1 | 442 | 679.3 |
| 3 | Delaware | 644 | 2,931 | 455.1 | 3 | Louisiana | 10,300 | 230.8 | 1,028 | 998.6 |
| 4 | Nevada | 1,007 | 4,434 | 440.1 | 4 | Alaska | 5 | 0 | 1,178 | 515.4 |
| 5 | South Carolina | 1,425 | 12,864 | 369.8 | 5 | California | 60,802 | 219.7 | 14,712 | 515.1 |
| 6 | Louisiana | 4,461 | 15,375 | 344.7 | 6 | Arizona | 5,137 | 131.7 | 1,019 | 505.1 |
| 7 | Arizona | 3,384 | 10,348 | 303.1 | 7 | South Carolina | 3,675 | 107.3 | 146 | 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 | 149 | 481.4 |
| 10 | Maryland | 4,335 | 13,467 | 289.0 | 10 | Georgia | 9,504 | 152.7 | 1,338 | 472.8 |
| 11 | Oklahoma | 3,272 | 9,639 | 294.8 | 11 | Alabama | 4,328 | 105.9 | 804 | 459.6 |
| 12 | Florida | 12,023 | 37,445 | 249.9 | 12 | Maryland | 4,065 | 109.9 | 1,022 | 439.6 |
| 13 | North Carolina | 6,411 | 17,249 | 240.0 | 13 | Tennessee | 10,514 | 218.3 | 1,038 | 395.0 |
| 14 | Mississippi | 2,625 | 6,831 | 259.2 | 14 | Oklahoma | 2,734 | 85.55 | 146 | 391.8 |
| 15 | Michigan | 9,200 | 23,879 | 259.6 | 15 | Texas | 25,453 | 139.6 | 2,421 | 383.3 |
| 16 | California | 27,463 | 46,975 | 242.1 | 16 | Virginia | 7,738 | 111.0 | 1,456 | 381.4 |
| 17 | Kansas | 2,474 | 5,841 | 237.5 | 17 | New Jersey | 13,107 | 170.8 | 1,997 | 374.9 |
| 18 | Connecticut | 3,211 | 7,511 | 233.9 | 18 | New York | 23,694 | 132.9 | 2,228 | 374.5 |
| 19 | Texas | 18,789 | 38,821 | 206.7 | 19 | Michigan | 6,547 | 92.90 | 1,816 | 372.2 |
| 20 | New York | 17,425 | 40,842 | 229.1 | 20 | North Carolina | 5,380 | 83.89 | 812 | 365.5 |
| 21 | Arkansas | 2,188 | 4,443 | 203.0 | 21 | Kansas | 1,914 | 73.10 | 142.1 | 342.1 |
| 22 | Virginia | 5,904 | 1,321 | 225.6 | 22 | Ohio | 8,729 | 80.84 | 3,124 | 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 | 10.63 | 542 | 313.8 |
| 25 | Hawaii | 1,083 | 2,508 | 229.4 | 25 | Mississippi | 1,018 | 38.78 | 353 | 312.5 |
| 26 | Oregon | 2,724 | 5,482 | 201.2 | 26 | Indiana | 4,710 | 85.15 | 1,320 | 304.8 |
| 27 | Indiana | 5,531 | 10,823 | 195.8 | 27 | New Mexico | 1,428 | 95.2 | 491 | 304.5 |
| 28 | Wyoming | 490 | 945 | 191.8 | 28 | Wyoming | 177 | 35.9 | 173 | 304.1 |
| 29 | New Jersey | 7,672 | 15,662 | 204.1 | 29 | Illinois | 12,616 | 128.9 | 1,930 | 297.0 |
| 30 | New Mexico | 1,500 | 2,648 | 176.5 | 30 | Missouri | 2,854 | 55.82 | 815 | 294.5 |
| 31 | Illinois | 11,582 | 19,850 | 171.4 | 31 | Kentucky | 4,696 | 125.9 | 607 | 299.1 |
| 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 | 1,797 | 115.0 | 503 | 276.2 |
| 34 | Idaho | 988 | 1,482 | 148.5 | 34 | Wisconsin | 5,750 | 159.6 | 686 | 258.7 |
| 35 | Kentucky | 3,727 | 5,471 | 146.8 | 35 | Pennsylvania | 13,145 | 110.5 | 1,103 | 256.1 |
| 36 | Montana | 809 | 1,187 | 146.7 | 36 | Connecticut | 0 | 0 | 227 | 241.0 |
| 37 | Colorado | 3,294 | 4,808 | 145.9 | 37 | South Dakota | 294 | 41.66 | 258 | 235.8 |
| 38 | Rhode Island | 984 | 1,429 | 144.9 | 38 | Montana | 412 | 10.82 | 128 | 225.8 |
| 39 | Vermont | 548 | 759 | 138.5 | 39 | Idaho | 630 | 43.12 | 117 | 221.3 |
| 40 | Pennsylvania | 11,936 | 16,767 | 139.3 | 40 | Hawaii | 0 | 0 | 149 | 221.2 |
| 41 | Washington | 4,538 | 6,131 | 135.1 | 41 | Nebraska | 1,174 | 75.65 | 274 | 221.7 |
| 42 | Nebraska | 1,594 | 2,286 | 130.9 | 42 | Iowa | 2,736 | 46.54 | 427 | 212.6 |
| 43 | Wisconsin | 4,807 | 6,001 | 124.8 | 43 | Massachusetts | 4,740 | 30.95 | 212 | 191.1 |
| 44 | Utah | 1,640 | 1,888 | 115.1 | 44 | Utah | 1,066 | 63.43 | 217 | 188.8 |
| 45 | Maine | 1,187 | 1,328 | 111.9 | 45 | Maine | 572 | 48.18 | 214 | 174.1 |
| 46 | Massachusetts | 5,855 | 6,238 | 107.2 | 46 | New Hampshire | 807 | 76.34 | 128 | 170.1 |
| 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 | 73.13 | 581 | 146.8 |
| 49 | West Virginia | 1,897 | 1,441 | 77.0 | 49 | West Virginia | 1,134 | 60.83 | 141 | 145.1 |
| 50 | North Dakota | 672 | 430 | 64.0 | 50 | Vermont | 0 | 0 | 15 | 141.2 |
| 51 | Minnesota | 4,244 | 2,546 | 60.0 | 51 | North Dakota | 245 | 36.45 | 69 | 110.7 |
| REGION | | | | | | REGION | | | | |
| SOUTH | | 83,885 | 221,592 | 264.2 | WEST | | 83,320 | 147.6 | 19,995 | 432.7 |
| WEST | | 49,699 | 111,719 | 224.8 | SOUTH | | 117,735 | 140.4 | 15,135 | 422.8 |
| MIDWEST | | 59,538 | 111,095 | 186.6 | NORTHEAST | | 56,115 | 111.6 | 4,225 | 100.8 |
| NORTHEAST | | 50,277 | 88,903 | 176.8 | MIDWEST | | 52,675 | 84.5 | 11,948 | 295.1 |
| TOTALS | | 243,399 | 533,309 | 219.1 | TOTALS | | 309,945 | 127.1 | 53,303 | 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 15 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.

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 promul-

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 compre-

hensive 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.



gated 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 Frohnmayr, 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 com-

mission 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 19-20 |
| 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 | 22 | 25 24-26 |
| Nonresidential Burglary Theft Crimes (over \$2 500) | IV | 12* | 15 | 18 | 21 | 24-26 | 32 | 41 37-45 |
| Residential Burglary Simple Robbery | V | 18 | 23 | 27 | 30 | 38 | 46 | 54 50-58 |
| Criminal Sexual Conduct, 2nd Degree (a) & (b) | VI | 21 | 26 | 30 | 34 | 44 | 54 | 55 60-70 |
| Aggravated Robbery | VII | 24 23-25 | 32 30-34 | 41 38-44 | 49 45-53 | 55 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 | 255 250-262 | 276 250-283 | 296 298-304 | 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.

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 protected 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.

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.

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. 154]

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.



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A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 491 (Jud)

Page 1, line 28:

Following "Alaska", insert "Anchorage"

go0340hJ.
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5/1/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 491 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating a sentencing commission; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 44.19 is amended by adding new sections to read:

10 ARTICLE 16. SENTENCING COMMISSION.

11 Sec. 44.19.561. CREATION OF COMMISSION. The Alaska Sentencing
12 Commission is established in the Office of the Governor.

13 Sec. 44.19.563. COMPOSITION. (a) The commission consists of 14
14 members as follows:

15 (1) a person with a law enforcement background, appointed
16 by the governor after considering nominations from the Alaska Peace
17 Officers Association;

18 (2) two persons who are members of a crime victims advocacy
19 or crime victims assistance organization, appointed by the governor;

20 (3) a person with an understanding of the concerns of
21 Alaska Natives relating to the criminal justice system, appointed by
22 the governor;

23 (4) a person with a background in criminal rehabilitation
24 programs, appointed by the governor;

25 (5) a person with an academic background in criminal jus-
26 tice issues, appointed by the governor after considering nominations
27 from the dean of the School of Public Policy of the University of
28 Alaska;

29 (6) the commissioner of corrections or a deputy

1 commissioner of corrections designated by the commissioner;

2 (7) the commissioner of public safety or a deputy commis-
3 sioner of public safety designated by the commissioner;

4 (8) the attorney general or the designee of the attorney
5 general;

6 (9) the public defender or the designee of the public
7 defender;

8 (10) the chief justice of the supreme court or another
9 justice of the supreme court or a judge of the court of appeals desig-
10 nated by the chief justice;

11 (11) a superior court judge designated by the chief justice;

12 (12) the senate president or another senator designated by
13 the senate president; and

14 (13) the speaker of the house of representatives or another
15 member of the house designated by the speaker of the house of repre-
16 sentatives.

17 (b) The commission, by majority vote of the membership, shall
18 elect a chair and other officers it considers necessary from among its
19 membership to serve on a yearly basis.

20 (c) The term of office of a member appointed under (a)(1) of
21 this section is three years. A vacancy shall be filled for the bal-
22 ance of the unexpired term in the same manner as original appoint-
23 ments.

24 Sec. 44.19.565. COMPENSATION. Members of the commission serve
25 without compensation, but are entitled to per diem and travel expenses
26 authorized for boards and commissions under AS 39.20.180.

27 Sec. 44.19.567. MEETINGS. A majority of the members constitutes
28 a quorum for conducting business and exercising the powers of the
29 commission. The commission shall meet at the call of the chair, at

1 the request of the majority of the members, or at a regularly sched-
2 uled time as determined by a majority of the members.

3 Sec. 44.19.569. PURPOSE. The purpose of the commission is to
4 evaluate the effect of sentencing laws and practices on the criminal
5 justice system, and to make recommendations for improving criminal
6 sentencing practices. In so doing, the commission shall consider

7 (1) statutes and court rules related to sentencing of
8 criminal defendants;

9 (2) sentencing practices of the judiciary, including the
10 use of benchmark sentences;

11 (3) alternatives to traditional forms of incarceration;

12 (4) the use of parole and probation in sentencing criminal
13 defendants;

14 (5) the adequacy, availability, and effectiveness of treat-
15 ment and rehabilitation programs;

16 (6) crime rates, including the rate of violent crime, in
17 this state compared to other states;

18 (7) incarceration rates in this state compared to other
19 states; and

20 (8) the projected financial effect of changes in sentencing
21 laws and practices.

22 Sec. 44.19.571. METHODOLOGY. In making recommendations, the
23 commission shall

24 (1) solicit and consider information and views from a
25 variety of constituencies in order to represent the broad spectrum of
26 diversity that exists with respect to possible approaches for sentenc-
27 ing criminals in the state; and

28 (2) base recommendations on the following factors:

29 (A) the seriousness of each offense in relation to

1 other offenses;

2 (B) the effect of an offender's prior criminal history
3 on sentencing;

4 (C) the need to rehabilitate criminal offenders;

5 (D) the need to confine offenders to prevent harm to
6 the public;

7 (E) the extent to which criminal offenses harm victims
8 and endanger the public safety and order;

9 (F) the effect of sentencing in deterring an offender
10 or other members of society from future criminal conduct;

11 (G) the effect of sentencing as a community condem-
12 nation of criminal acts and as a reaffirmation of societal norms;

13 (H) the elimination of unjustified disparity in sen-
14 tences; and

15 (I) the resources available to criminal justice system
16 agencies.

17 Sec. 44.19.573. POWERS AND DUTIES. To accomplish its purpose,
18 the commission may

19 (1) hire an executive director and additional administra-
20 tive staff as may be necessary to the commission's function, or place
21 the commission staff under the executive director of the Alaska Judi-
22 cial Council;

23 (2) select and retain the services of consultants whose
24 advice is considered necessary to assist the commission in obtaining
25 information;

26 (3) accumulate and compile information concerning sentenc-
27 ing practices; and

28 (4) recommend legislative and administrative action on
29 sentencing practices.

1 Sec. 44.19.575. ANNUAL REPORT AND RECOMMENDATIONS. The commis-
2 sion shall submit to the governor and the legislature an annual report
3 of its proceedings for the previous calendar year and shall submit
4 recommendations for legislative and administrative action. Reports
5 and recommendations required under this section shall be submitted no
6 later than January 1 of each year.

7 Sec. 44.19.577. DEFINITION. In AS 44.19.561 - 44.19.577, "com-
8 mission" means the Alaska Sentencing Commission established in AS 44.-
9 19.561.

10 * Sec. 2. TRANSITIONAL PROVISIONS. The initial appointments to the
11 Alaska Sentencing Commission under AS 44.19.563, as added by sec. 1 of this
12 Act, shall be made and the first meeting of the commission shall be con-
13 vened by July 1, 1990. The first report required under AS 44.19.575, as
14 added by sec. 1 of this Act, shall be submitted no later than January 1,
15 1991.

16 * Sec. 3. This Act is repealed June 30, 1993.

17 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).
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BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 448

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act creating a sentencing commission; and
7 providing for an effective date."

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

9 * Section 1. AS 44.19 is amended by adding new sections to read:

10 ARTICLE 16. SENTENCING COMMISSION.

11 Sec. 44.19.525. CREATION OF COMMISSION. The Alaska Sentencing
12 Commission is created in the Office of the Governor.

13 Sec. 44.19.535. COMPOSITION. (a) The commission consists of
14 the following 13 members:

15 (1) three persons appointed by the governor, one of whom is
16 appointed after consultation with the Alaska Peace Officers'
17 Association;

18 (2) the commissioner of corrections or a deputy
19 commissioner of corrections designated by the commissioner;

20 (3) the commissioner of public safety or a deputy
21 commissioner of public safety designated by the commissioner;

22 (4) the attorney general or a deputy attorney general
23 designated by the attorney general;

24 (5) the public defender or the designee of the public
25 defender;

26 (6) the presiding officer of the board of parole or a
27 member of the board of parole designated by the presiding officer;

28 (7) the chief justice of the supreme court or another
29 justice of the supreme court designated by the chief justice;

1 (8) a judge of the court of appeals designated by the chief
2 justice;

3 (9) a superior court judge designated by the chief justice;

4 (10) the senate president or another senator designated by
5 the senate president; and

6 (11) the speaker of the house of representatives or another
7 member of the house designated by the speaker of the house of
8 representatives.

9 (b) The commission, by majority vote of the membership, shall
10 elect a chair and other officers it considers necessary from among its
11 membership to serve on a yearly basis.

12 (c) The term of office of a member appointed under (a)(1) of
13 this section is three years. Terms shall be staggered, and a member
14 may not serve more than two consecutive terms. A vacancy shall be
15 filled for the balance of the unexpired term in the same manner as
16 original appointments.

17 Sec. 44.19.545. COMPENSATION. Members of the commission serve
18 without compensation, but are entitled to per diem and travel expenses
19 authorized for boards and commissions under AS 39.20.180.

20 Sec. 44.19.555. MEETINGS. A majority of the members constitutes
21 a quorum for conducting business and exercising the powers of the
22 commission. The commission shall meet at the call of the chair, at
23 the request of the majority of the members, or at a regularly
24 scheduled time as determined by a majority of the members.

Advisory
25 Sec. 44.19.565. PURPOSE. The purpose of the commission is to
26 evaluate the impact of crime rates and sentencing laws on the criminal
27 justice system, and to make recommendations for improving criminal
28 sentencing practices.

29 Sec. 44.19.575. METHODOLOGY. In making recommendations, the

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1 commission shall
2 (1) solicit and consider information and views from a
3 variety of constituencies in order to represent the broad spectrum of
4 diversity that exists with respect to possible approaches for
5 sentencing criminals in the state; and

6 (2) base recommendations on the following factors:

7 (A) the seriousness of each offense in relation to
8 other offenses;

9 (B) the effect of an offender's prior criminal history
10 on sentencing;

11 (C) the need to rehabilitate criminal offenders;

12 (D) the need to confine offenders to prevent harm to
13 the public;

14 (E) the extent to which criminal offenses harm victims
15 and endanger the public safety and order;

16 (F) the effect of sentencing in deterring an offender
17 or other members of society from future criminal conduct;

18 (G) the effect of sentencing as a community condem-
19 nation of criminal acts and as a reaffirmation of societal norms;

20 (H) the elimination of unjustified disparity in sen-
21 tences; and

22 (I) the resources available to criminal justice system
23 agencies.

24 Sec. 44.19.585. POWERS AND DUTIES. To accomplish its purpose,
25 the commission may

26 (1) hire an executive director and additional
27 administrative staff as may be necessary to the commission's function;

28 (2) select and retain the services of consultants whose
29 advice is considered necessary to assist the commission in obtaining

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1 information;

2 (3) accumulate and compile information concerning
3 sentencing laws; and

4 (4) recommend legislative and administrative action on
5 sentencing laws.

6 Sec. 44.19.595. ANNUAL REPORT AND RECOMMENDATIONS. Each year
7 the commission shall submit to the governor and the legislature a
8 report of its proceedings for the previous calendar year and shall
9 submit recommendations for legislative and administrative action.
10 Reports and recommendations required under this section shall be
11 submitted no later than the 10th day of each regular session of the
12 legislature.

13 * Sec. 2. AS 44.66.010(a) is amended by adding a new paragraph to read:

14 (17) Alaska Sentencing Commission (AS 44.19.525) - June 30,
15 1994.

16 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).