ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
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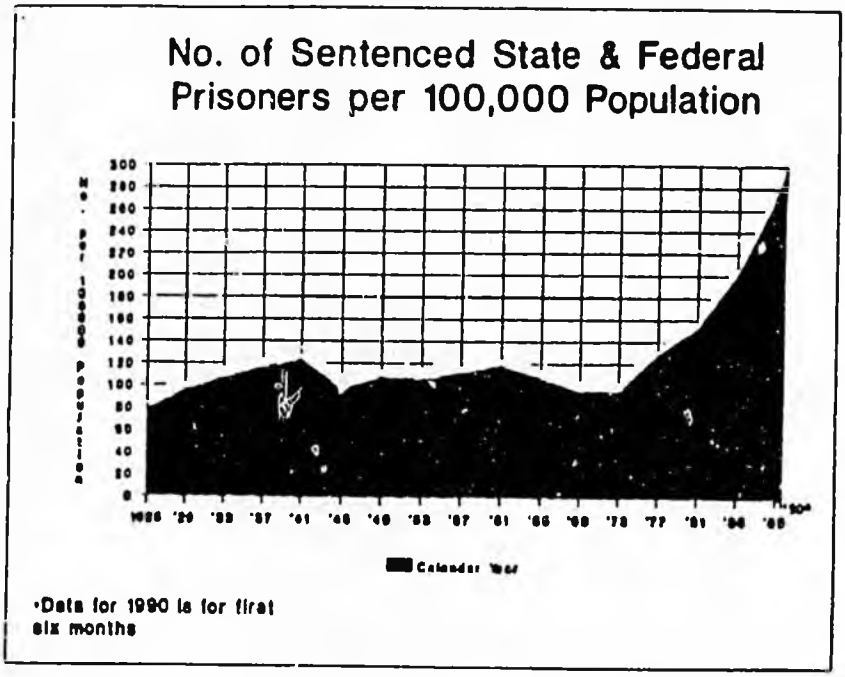
The growth is not slowing. It is getting steeper. During the past few years, the rate of growth has been roughly 7% to 8% per year.[4] During 1989, however, the prison population grew at a rate of 13.1%. We added more than 82,000 inmates last year, more than during any previou twelve months in our history.[5] That is the equivalent of 1600 more inmates, or four new prisons, per week.

The phenomenal growth rate continued during the first half of 1990, rising another 42,862 inmates--a 12% annual growth rate. The Director of the Justice Department's Bureau of Justice Statistics reported the twelve month growth as "the largest annual growth in 65 years of prison population statistics."[6]

The number of inmates per capita has grown at the same rate. See Chart 2. In 1980 we incarcerated 138 Americans per 100,000 adults in the population.[7] On June 30, 1990, the number had grown to 289 per 100,000 adults.[8]



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[4] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1989, at 1 (Washington, D.C., May 1990).

[5] Ibid.

[6] Department of Justice press release, supra note 3.

[7] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: State and Federal Prisoners, 1925-85, supra, note 1.

[8] Department of Justice Press Release, supra, note 3.

Add the number of inmates in local jails (344,000 in 1988).[9] The result is more than 1 million Americans behind bars, or one for every 250 adults.

If all of our prison and jail inmates were in one place, its population would exceed that of nine states. Vermont, Rhode Island, North Dakota, South Dakota, Delaware, Montana, Wyoming, Nevada and Alaska each have fewer inhabitants than do our prisons and jails combined.

There are almost 2.5 million persons on probation[10] and another 400,000 on parole.[11] Altogether there are almost 4 million Americans under correctional supervision. One in 49 adults is serving a criminal sentence.[12] One in 27 men.[13] Among men between the ages of 20 and 29, 1 in 4 blacks, 1 in 10 Hispanics and 1 in 16 whites are serving a criminal sentence.[14]

The rates of growth are different in different states. The populations in ten states have increased by more than 150% during the past ten years: California (263%); New Hampshire (258%); New Jersey (249%); Alaska (234%); Nevada (193%); Arizona (192%); Ohio (162%); Pennsylvania (162%); Hawaii (157%); Utah (154%).[15]

We have been building new prisons at an unprecedented rate. In 1989 alone, we added 40,000 to 60,000 new beds[16] (an 8 to 10%

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[9] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Census of Local Jails 1988 (Washington, D.C., February 1990).

[10] U.S. Department of Justice, Bureau of Justice Statistics, Probation and Parole (Washington, D.C., November 1989).

[11] Ibid.

[12] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Probation and Parole 1988 at 1 (Washington, D.C., November 1989).

[13] Ibid.

[14] Marc Mauer, Young Black Men and The Criminal Justice System: A Growing National Problem, at 3 (The Sentencing Project, Washington, D.C., February 1990).

[15] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1989, supra, note 4 at 3.

[16] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1989, supra, note 4 at 7. (differences based on highest and lowest rated capacities)

increase) at a capital cost of about $1.5 billion.[17] As a nation, we will spend about $16 billion this year to build and operate prisons and jails.[18]

But we are falling hopelessly behind. At last report, only 10 states were operating at or below 95% or their rated capacity (using the highest of several measures of rated capacity).[19] The Federal system and those of 38 states are filled beyond their highest rated capacities. Prisons in the District of Columbia and 42 states and territories are under federal court order for unconstitutional crowding.[20]One in every eight jails has a federal court "cap."[21]

The consequence--a proliferation of "back door" release mechanisms, including more liberal parole policies, increased good time, and emergency release programs when institutions reach their federally-imposed "caps."

It is interesting to note that all seven states reporting a prison population decline during the first six months of 1990 (Colorado, New Mexico, Rhode Island, Tennessee, Alaska, Oregon, and West Virginia) are all under court orders dealing with unconstitutional conditions of confinement.

Why are we doing this--spending fortunes in public funds, at a time of hugh public budget deficits, to lock up more and more people?

It is not because of increased crime. While per capita imprisonment has increased by more than 100% during the past ten years, per capital reported crime has decreased by 3.5%.[22] Per

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[17] Estimate, based on average construction cost of $50,000 per cell. National Council on Crime and Delinquency, NCCD Focus (San Francisco, California, December 1989).

[18] Marc Mauer, Americans Behind Bars: A Comparison of International Rates of Incarceration, at 3 (The Sentencing Project, Washington, D.C., January 1991).

[19] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1989, supra, note 4 at 7.

[20] National Prison Project, Status Report: The Courts and Prisons, Page i (Washington, D.C., January 1, 1990).

[21] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Census of Local Jails 1988, supra, note 8 at 7.

[22] U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports 1989, at 48 (Washington, D.C. 1990).

capita violent crimes have increased by 11%,[23] but per capita murders and burglaries have both actually decreased, by 15% and 24% respectively, over that time.[24] The number of households touched by crimes of violence and theft has dropped from one in three in 1975 to one in four in 1989.[25]

It is true that crime rates in America remain high. One in every 13 households is affected by a burglary or violent crime committed by a stranger each year.[26] But it is not true that higher crime rates justify the increases in incarceration that we have experienced.

What other explanations are there?

- Public opinion. Crime has become a major political issue in this country. Public officials attempt to outdo each other in their "get tough on crime" rhetoric, thereby reinforcing public misperceptions that crime is increasing. In particular, the public perceives, unrealistically, that tougher law enforcement can rid our streets of drugs.

- Mandatory minimum sentences. The legislative response is ever higher mandatory minimum sentences, which have one overall effect--to force judges to send first offenders, especially first-time drug offenders, to prison.

- Technology. Better law enforcement information systems produce more complete prior criminal history information. An offender who would have appeared to be a first-offender ten years ago is now shown to have several prior convictions. As a result, he will get a much longer sentence.

  Massive urine testing is a second technological factor. Most states now require persons on probation or parole to submit regular urine samples. Courts revoke their status if the samples show drug use. The number of persons entering prison from parole violations is increasing faster than the number of new admissions from court. In California today, more persons are coming into the prisons from parole violations than from new sentenc-

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[23] Ibid.

[24] Ibid.

[25] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Households Touched by Crime, 1989, at 1 (Washington, D.C., September 1990.

[26] Id., at 5.

es (including probation violations). The primary reason for parole revocation is "dirty urine."

What should we do?

No one today contends that we should attempt to return to the level of incarceration of 1970, or even 1980. But we do need to stop the trend of ever-higher prison populations. Enough is enough, for our public pocketbooks if for no other reason.

The decade of the '80s was a time for expanding our correctional capacity. The decade of the '90s needs to be devoted to making more effective use of that capacity--by ensuring that space is available to lock up all truly dangerous criminals. To do that, we have to find other ways to punish the non-dangerous.

Two knowledgeable commentators have observed recently that our current process is both too lenient and too severe.[27] Because we have few options other than prison and probation, judges put some persons on probation, when they need a more severe sanction, only because their crimes don't warrant jail. Others go to prison merely because their crimes are "too serious" for probation.

A number of programs have been developed in recent years to punish criminals without locking them up. Electronic monitoring to incarcerate an offender in his own home is one. Fines, community service, and restitution are others. Shock probation (including a very short prison stay), night and weekend confinement, and "boot camps" for drug offenders are still others.[28]

But there is no single answer for the whole country. Our correctional and crime problems differ in different parts of the country and from state to state. Each state will therefore have to devise its own unique answer.

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[27] Norval Morris and Michael Tonry, Between Prison and Probation--Intermediate Punishments in a Rational Sentencing System (New York, Oxford University Press 1990). See also, Daniel J. Freed and Barry Mahoney, Between Prison and Probation: Using Intermediate Sanctions Effectively, The Judges' Journal, Vol. 29, No. 1 at 6 (Winter 1990).

[28] For information on the general topic see Petersilia, Expanding Options for Criminal Sentencing (The Rand Corporation, Santa Monica, California, November, 1987); Electronic Monitoring and Correctional Policy: Techniques and Applications (NIJ Research Report, NCJ 104817); Fines as Criminal Sanctions (NIJ Research in Brief, NCJ 106773); Shock Incarceration: An Overview of Existing Programs (NIJ Issues and Practices, NCJ 114902); Roger J. Lauren, Community Managed Corrections (American Correctional Association, 1988).

What can the organized bar do?

Get involved.

The integrity and legitimacy of our legal system is at stake. The public's view of the courts and the justice system--and hence its view of the legal profession as a whole--is determined by its perception of how well the criminal justice system is working. It is not working very well today.

Almost every state has some sort of statewide advisory committee working on its correctional problems. A representative of the organized bar on such a group could make a difference. Judges and prosecutors, especially those who have to stand for election, have great difficulty taking a strong public position that could be mischaracterized as "soft on crime." Criminal defense lawyers do not have the same public credibility on this issue that the leaders of the organized bar can have.

Lawyers are needed for prison conditions litigation. ABA President Jack Curtin has asked the National Conference of Bar Presidents to create a special committee on this topic. Its goal would be experimental programs in several jurisdictions involving the bar in ensuring that our bulging prisons and jails operate consistently with constitutional requirements.

The ABA's criminal Justice Section stands ready to assist, with information, materials, and speakers with up-to-date information on the problem and possible solutions.

CRIME: Despite popular theories, the answer is not bigger jails

Continued from Page E-1

tion derived from his role in co-authoring a 1975 survey of 231 studies on offender rehabilitation spanning the previous 30 years. Titled "The Effectiveness of Correctional Treatment," it became the most politically influential criminological study of the past half century.

The time was ripe. From 1963 to 1973, murder, assault and burglary rates doubled while robberies tripled. Martinson's views were enthusiastically embraced by the national media, often under the headline, "Nothing Works." Yet curiously, all the Sturm und Drang was over something that scarcely existed. Even at the height of the so-called "rehabilitative era," a corrections department spending more than 2 percent of its budget on treatment was unusual. But the attack was taken up by liberals and conservatives alike — many of whom felt that belief in rehabilitation, as Harvard's James Wilson put it, "requires not merely optimistic but heroic assumptions about the nature of man."

But as Berkeley criminologist Elliott Currie would later explain, "programs cited by Martinson and other critics as evidence that rehabilitation did not work were often not only underfunded and understaffed, but typically staffed by poorly trained and often unmotivated people. These early critics of rehabilitation made little effort to separate reasonably serious and intensive programs from those — vastly more common — that at best offered minimal counseling or tutoring to people who were otherwise allowed to languish in the enforced bleakness of institutions or in the shattered, dead-end communities from which they had come."

The classic 30-year "Cambridge-Somerville Youth Study" is a premier example. In the Harvard-sponsored program begun in 1937, researchers followed 320 boys for 30 years. The boys were assigned to 10 "counselors" who had no training in mental health or psychotherapy and were told to do "whatever they thought best." Each youth was seen only five times annually during the early years of the project. Not surprisingly, the program had little effect on subsequent criminal behavior.

□

Part of the problem in evaluating rehabilitation is deciding what constitutes success. For example, in studying the effectiveness of family therapy with hard-core delinquents (each having 20 or more previous convictions), one survey found that after 15 months, 60 percent of those in therapy had re-offended. However, 93 percent of the matched "non-therapy" control group re-offended. A medical procedure that suppressed symptoms in 40 percent of a group of chronically ill patients, 93 percent of whom deteriorate without treatment, would be seen as a virtual triumph. In corrections, however, such results are usually regarded failure.

Moreover, simply residing in some com-

Thus contemporary corrections theory offers a choice between equally unattractive extremes: ineffective probation-parole or debilitating prisons.

of the boys in some areas will appear in juvenile court during their teen years. Among young black men in certain parts of the country, seven out of 10 can anticipate being arrested at least once. Though this may suggest failure, it may not measure individual criminal behavior. Indeed, among chronic delinquents the simple fact of rearrest may be less important than whether the young offender is winding down his criminal activity.

But the biggest problem in getting a fair hearing for rehabilitation is that so many efforts have failed spectacularly. A team of researchers from the Academy for Contemporary Problems found that the "velocity of recidivism" among youthful offenders actually increased with each trip to a state reform school for rehabilitation. Rand Corp. researchers repored similar patterns among adults.

Nonetheless, some theorists maintain that the very fact that a prison is dangerous and violent makes it rehabilitative. It's a variation on the "Scared Straight" theory. Unfortunately, repeated studies have shown that it doesn't work.

□

So, runs the presently popular notion, if we can't get a complete "cure," why not simply lock up all offenders? Simon Dinitz from the Academy for Contemporary Problems' "Dangerous Offenders Project" considered this Draconian option. He estimates that incarcerating every first-time felony offender for five years would likely yield no more than a modest 7.3 percent decrease in crime rates. But U.S. prisons (already overcrowded) would have to increase their populations 300 to 500 percent, entailing construction costs of $130 billion and increasing annual operating budgets from $12 billion to between $36 billion and $60 billion. And even that would not guarantee that crime rates would stay down for long. Those in prison are often replaced by others waiting in the wings (particularly among drug offenders). More ominously, such a policy would yield 3 to 5 million slightly more hardened ex-convicts dumped into the streets every five years.

The most unusual case for incapacitation was made late last year by Richard Abell, an assistant attorney general in the Justice Department. Writing in Policy Review, and using figures compiled by a Justice economist, Abell concluded that we save $40 million annually in crime costs for every 100 offenders we incarcerate — based on the extraordinary assumption that a typical offender commits 187 crimes per year at an average $2,300 per crime, or $430,100 annually.

of California researchers Franklin Zimring and Gordon Hawkins noted that at a rate of 187 crimes per offender per year, putting a half-million more persons in prison would lower the number of crimes nationally by almost 80 million — thus making the nation crime-free, since there are about 45 million crimes reported annually. By Abell's calculations, in fact, crime must have disappeared sometime in late 1985 as a result of the doubling of prison and jail populations from approximately 300,000 in 1976 to about 800,000 in 1985. Nonetheless, President Bush — who pledged during the campaign to double the federal prison-building budget over four years — has used the same argument.

All this suggests that we are willing to invest large sums in variations on themes of retribution and deterrence. Yet Canadian psychologist Paul Gendreau and University of Ottawa sociologist Robert Ross, citing sophisticated new mathematical analyses of the data on rehabilitation, concluded that "the (substantiated) claims for effective rehabilitation of offenders far outdistanced those of the major competing ideology: applied deterrence or punishment."

□

As early as 1976, a Rand Corp. report had suggested that the "nothing works" conclusion was probably premature. Three years later, a National Academy of Sciences panel concluded that "when it is asserted that 'nothing works,' the panel is uncertain as to just what has been been given a fair trial." And now, in their latest survey of the rehabilitative literature, from 1980 to 1987, Gendreau and Ross found "reductions in recidivism, sometimes as substantial as 80 percent had been achieved in a considerable number of well-controlled studies. Effective programs were conducted in a variety of community and (to a lesser degree) institutional settings, involving pre-delinquents, hard-core adolescent offenders and recidivistic adult offenders, including criminal heroin addicts."

The literature of the '80s demonstrates that a number of techniques can reduce recidivism among both property and violent offenders. These include substance-abuse treatment (combining intensive counseling with drug screening), family therapy, individual therapy stressing support rather than pathology and punishment, and — particularly with young offenders — assigning "advocates" to work with individuals on a daily basis, including crisis intervention at odd hours. In Massachusetts, Harvard researchers found that reconvictions fell among older former reform-school youth when a range of such alternatives was available. In those regions of the state remained the same or increased.

Educational programs for hard-core adult offenders have also shown promising results. Inmates of a Canadian federal prison, many with long and serious criminal histories, were assigned randomly either to normal prison routine, or to a special humanities program stressing individual tutoring using Socratic dialogue. In a report prepared for the Canadian government, psychologist D.J. Ayers and his colleagues found that after 20 months of post-prison follow-up, the recidivism rate of those in the program was 14 percent as compared to a 52-percent rate for those randomly assigned to prison routines.

Discovering what works is less a matter of deciding on a specific treatment technique than of creating programs that are intensive, taken seriously, last a reasonable period of time and focus on high-risk offenders. (In fact, programs directed at low-risk offenders can sometimes be counter-productive if they are allowed to pick up antisocial skills and attitudes from higher-risk persons.) Canadian psychologists D.A. Andrews and J. Kelssling found that effective therapy promoted prosocial attitudes, rewarded non-criminal pursuits, made use of a wide range of community resources, taught skills for handling relapse and treated the offender with respect and empathy — many of the very qualities that characterize effective psychotherapy with non-offenders.

Ironically, even Martinson himself changed his mind on the efficacy of rehabilitation. In a 1979 article in the Hofstra Law Review, he wrote that "startling results are found again and again ... for treatment programs as diverse as individual psychotherapy, group counseling, intensive supervision and what we have called individual help." The man who started it all had come full circle. But by then no one was listening. And apparently they still aren't. On Jan. 18, the U.S. Supreme Court confirmed the abandonment of rehabilitation. In Mistretta vs. U.S., the Court upheld federal sentencing guidelines which all but remove rehabilitation from serious consideration. The dissonant reverberation from a decade earlier has become the national anthem. As a result, federal prison populations are expected to double.

Thus contemporary corrections theory offers a choice between equally unattractive extremes: ineffective probation-parole or debilitating prisons. Finding help is akin to asking a doctor for headache relief and being told there are only two treatments — an aspirin or a lobotomy. Harsher sentences, warehouse prisons and an ideology which militantly rejects the idea of salvaging offenders are the rule of the land. Meanwhile, violent crime surges. We must now wait for the swing of the pendulum. It may be a long wait.

□ Jerome Miller, director of National Center on Institutions and Alternatives, also headed Massachusetts and Pennsylvania youth corrections systems.

Doing dishes, not time. *Sentencing adviser Christopher McPhatter, left, meets with a Fayetteville, N.C., client.*

Personalized penalties

LAW ■ Sentencing consultants stress rehabilitation over imprisonment

Once a model soldier, George Jenkins now is a model for easing the prison-crowding crisis. But it did not seem destined to turn out that way when Jenkins returned home to North Carolina after earning a Bronze Star and a Purple Heart in Vietnam. He started out by continuing the drug habit he had picked up in Southeast Asia. Convictions on two successive drug charges were followed by a year in federal prison on a firearms offense. Then he was back in court for helping to steal $2 million in farm equipment. As a four-time offender, Jenkins (not his real name) was a prime candidate for a lengthy stay behind bars.

Shackled. *Cabinet's electronic monitor.*

Enter a new breed of crime expert, the sentencing consultant. Seeing hope for Jenkins despite his extensive criminal past, a local nonprofit group called Western Carolinians for Criminal Justice got a character reference from his employer at a steel plant and had him evaluated by a psychologist, who found that Jenkins suffered from post-traumatic stress disorder as a result of his battle experiences. The organization presented the judge with a 6-point sentencing plan that began with outpatient psychiatric treatment at a veterans' center and included repayment to his victims for theft losses and 300 hours of work for the local fire department. All this while, Jenkins would be subject to unannounced checks from court officers and urine tests for drug use. The judge accepted the plan over the objections of probation officers. And his judgment paid off: Now 38, Jenkins has abided by the rules and has stayed out of trouble for almost four years, keeping one of North Carolina's scarce prison beds open for a truly violent offender.

Sentencing experts are plying their trade in a crunch era for prisons. Crime is rising—the FBI said this week that reports of violent offenses were up 5 percent in the first six months of 1989—and so are mandatory penalties. Federal and state penal institutions recorded their biggest population increase ever in the same period, when the rolls grew by 46,000 to 673,000. Including local jails and detention centers for juvenile delinquents, the number of Americans in custody has exceeded the million mark. As the numbers ratchet upward, a growing corps of specialists is making a career out of helping those they believe can be rehabilitated rather than warehoused with hard-core offenders. Fewer than two dozen such experts were in business as recently as 1980. According to The Sentencing Project, a Washington, D.C.-based group that promotes sentencing reform, that number has jumped to more than 115.

Paying debts. Former prison wardens, probation officers and defense lawyers are entering the personalized-sentence business to fill gaps in the justice system. Theoretically, judges are supposed to assess defendants' backgrounds before pronouncing sentences. In practice, "overworked officials crank out presentence reports" that give judges little guidance, says Thom Allen, a public defender

turned sentencing arranger in New Jersey.

Criminal defense lawyers are committed to acquitting clients or at least hammering out plea bargains that minimize prison time but do little for the cause of rehabilitation. Sentencing consultants argue that courts should emphasize paying convicts' debts and preventing repeat crime. "Defendants can be held accountable in ways other than prison terms," says Joan Gauche of Sentencing Options, a nonprofit agency in Portland, Me., that arranges alternatives. Such options are particularly appealing to judges deciding the fates of white-collar defendants who pose little risk of violent crime. The sentencing of Oliver North in the Iran-Contra scandal to 1,200 hours of community service with an inner-city antidrug program provoked little public outrage. In Maine last year, Gauche helped arrange an unusual sentence for an organizer of a huge marijuana-smuggling ring: Open and operate a hospice for AIDS patients.

It is tougher to argue the case for aiding street criminals, but sentencing advocates insist that a carrot-and-stick approach will help many of them walk a straighter path. Such efforts seem to fly in the face of a powerful trend: Reflecting the get-tough attitude of a public tired of high crime rates, state legislatures and Congress have steadily increased sentences for offenses such as drug sales and burglary. Consultants frequently bow to these laws and recommend at least *some* prison time for clients, coupled with an earlier-than-usual release that includes mandatory work or training. Violating any rules quickly lands a participant back in custody.

No joy ride. To avoid the impression that convicts who benefit from consultants' proposals are getting off easy, programs tend to choose neutral-sounding names. The North Carolina agency that arranged George Lee Jones's sentence, for example, advertises itself as a "community penalties program" to make the point that it believes in punishment. The agency's director, Grady Waccaster, is a former prison warden who believes many offenders *should* be locked up. "I'm no liberal bleeding heart," Waccaster says. "But if a guy is manageable, I'll go to bat for him to stay out of prison."

Convicts affirm that they regard nonprison sentences as punishment. The sheriff's office in Tennessee's Knox County proposes sentences for felons that couple drug or alcohol treatment with victim restitution and 96 hours of community service. "I've never heard any participant say it's easy," says Linda McLaughlin, director of Community Alternatives to Prison, who notes that the sentences cost taxpayers an average of $3,300 per offender, compared with $21,000 to house them in prison. Mark Morgan of Washington, D.C., a three-time convict whose required service as a drug counselor thrust him into a new career managing a methadone center, says: "I didn't like my sentence, but it made me a more responsible person." Many suspects actually prefer incarceration when the alternative is living at home with such strictures as random drug tests and constant electronic monitoring to check their movements. "In prison they just have to make their bed, and don't have to work or enter treatment," says David Norat, who arranges alternative sentences in Kentucky.

One promising target group for new sentencing schemes is special populations who commit crimes at disproportionately high levels. One such group is the mentally retarded, who occupy as many as 1 in 5 prison beds. Norat, who sets up treatment for such defendants, cites the case of a retarded man who sodomized a teenage boy, an offense carrying a required prison term of about 20 years. Concluding that such a sentence would help neither victim nor defendant, Norat recommended instead that the defendant finance psychological counseling for the victim, which the family could not afford, and enroll himself in treatment. A judge agreed and reduced the charge. Norat's office has had 42 plans for the retarded accepted in its year of operation, saving the state hundreds of thousands of dollars in incarceration costs.

Community service: *Mark Morgan runs a methadone clinic.*

The jury remains out on the long-term benefits of alternative sentencing. In North Carolina's program, the most extensive in the country, judges have accepted 1,080 of 1,271 plans proposed in recent years. Convicts have performed 36,543 hours of community service and paid their victims $332,000. Fewer than 200 have had their probation revoked for new offenses. Backers say this record is better than any claimed by advocates of punitive incarceration. "Prison populations have doubled in eight years, but that has demonstrably not reduced crime," says Malcolm Young of the Sentencing Project.

Economic spurs. Judges and prosecutors are beginning to endorse the work of sentencing consultants, but their enthusiasm stems from more than humanitarian concerns. "Economics is forcing us to explore these programs," says Cornelius Sullivan, a trial judge in Mount Holly, N.J. "We just opened up a $13 million jail, and the county does not want to spend any more money on cells."

The rise of sentencing consultants is unlikely to stem the fast flow of new convicts into the penal system. So far, experts have been able to handle only a minuscule number of cases. Most special sentences are available only to those who are able to finance their preparation, which costs anywhere from several hundred to several thousand dollars. The Maine sentencing project, which recently obtained money to extend its services to needy defendants, is one of the few exceptions. For most convicts, creative sentencing remains but a modest way to set them straight while holding down the galloping costs and stunning failure of incarceration. ■

by Tod Gost

A Conservative Perspective

Alternatives to Incarceration

by Charles Colson and Daniel W. Van Ness

Conservative politicans are leading the search for alternatives to prison. Such programs are more effective and less costly in the battle against crime than imprisonment for non-violent offenders.

In Michigan, conservative Republican legislators Jack Welborn and William Van Regenmorter worked with liberal Democrat Carolyn Cheeks Kilpatrick to pass a Community Corrections Act (CCA). The result: Non-violent offenders will be punished in their communities instead of prison, which will save money and ease the state's prison overcrowding crisis.

In Indiana, Republican State Sen. Ed Pease led a successful legislative effort to establish home detention as a means of easing the pressure of the state's expanding prison population. Russ Pulliam, editorial writer of the conservative Pulliam newspaper chain, voiced support for the legislation as "one step in the right direction for the future of the criminal justice system in Indiana" (*Indianapolis News* Jan. 20, 1988). (The bill was included in The Council of State Governments' *Suggested State Legislation*, 1989).

In Florida, conservative businessman Jack Eckerd and former Federal Bureau of Prisons Director Norm Carlson are leading a campaign for expanded use of house arrest, drug treatment and restitution centers as alternatives to imprisonment for non-violent offenders.

In Alabama, conservative Democratic Rep. Claud Walker is sponsoring a Community Corrections Act aimed at reducing the large percentage of non-violent inmates in state prisons. Alabama Commissioner of Corrections Morris Thigpen and the Alabama Sheriffs Association are backing the bill.

In Arizona, Republican State Sen. Tony West sponsored the Community Punishment Act. The legislation, which recently passed with the support of Arizona Chief Justice Frank Gordon and Maricopa County Chief Presiding Judge B. Michael Dann, will provide communities with state money to establish restitution, community service, victim-offender reconciliation and other non-prison programs for non-dangerous offenders.

Conservatives are often typecast as champions of the "lock 'em up and throw away the key" battle cry of this "get tough on crime" era. Yet, increasingly, all around the country, conservatives of both parties are advocating alternatives to incarceration for non-violent offenders. They may well be the single most potent force for practical, prudent criminal justice reform today.

What's Going On?

No one can deny the crying need for reform in our nation's criminal justice system. In December 1988 there were 627,402 state and federal prisoners in American institutions — twice as many as in 1978 (Department of Justice press release April 23, 1989). The prison population explosion has filled prisons to overflowing. Federal prisons are 73 percent over capacity, while state prisons are on average 20 percent over capacity, according to the Bureau of Justice Statistics (BJS 1988a).

Prison systems in 45 states have been sued because of overcrowding. In 37 states, at least one

Charles Colson serves as chairman of the Board of Prison Fellowship Ministries, a Christian outreach to prisoners, ex-prisoners and their families. Former special counsel to President Nixon, Colson spent seven months in prison for a Watergate-related offense.

Daniel W. Van Ness is president of Justice Fellowship, the criminal justice reform arm of Prison Fellowship Ministries. Justice Fellowship advocates alternatives to incarceration for non-violent offenders, a formal role for victims in criminal cases, victim-offender reconciliation and victim assistance.

major institution is under court order or consent decree. In nine of those 37 states, the entire prison system is under court order. Litigation is pending in eight states (National Prison Project 1988).

The future looks no brighter. The National Council of Crime and Delinquency (NCCD 1988a) estimates that U.S. prison populations will increase by an additional 50 percent in the next 10 years.

Non-violent offenders who might be sentenced to alternative punishments are taking up precious prison space that should be reserved for violent criminals.

Although our country is incarcerating more people than ever, violent and property crimes continue to escalate (BJS 1988b). The indiscriminate "get tough" approach is a grand success in filling prisons. But it fails miserably at reducing crime.

Thankfully, many conservatives actively are pushing saner, wiser solutions to crime's stranglehold on our nation and the prison population explosion.

Why conservatives? Based on Justice Fellowship's work with politicians across the United States, it's clear that many see alternatives to incarceration for non-violent offenders as a natural extension of conservative political philosophy. Legislators cite the following principles: Punishment is appropriate; it should serve victims' needs; public safety is essential; local is better, and wise use of limited government resources is needed.

Let's look at each.

Punishment is appropriate. Since the first "penitentiary" was established in 1790, American criminal justice has been predicated on the belief that crime is the result of environmental or psychiatric factors. Criminals were seen as victims and were sent to prison to be rehabilitated.

This human engineering approach has proven a dismal failure. Studies over the last two decades consistently have concluded that three out of four ex-offenders are rearrested within four years of their release form prison (Federal Bureau of Investigation 1975; Petersilia, Turner and Peterson 1986). Far from rehabilitating offenders, prisons seem better suited to train them in the finer arts of crime.

Pursuing false dreams of rehabilitation undermines the principle of personal accountability. No matter how many environmental factors weigh upon the individual, committing a criminal act is a personal choice. By treating victimizers as victims, society robs them of the dignity belonging to moral agents. They are denied the opportunity to "pay the price" and move on with life. C. S. Lewis ([1949] 1983) put it this way, "To be punished, however severely, because we have deserved it, because we 'ought to have known better' is to be treated as a human person made in God's image."

Treatment programs should be available to offenders who would be helped by them — but justice requires that offenders also must be held accountable for their behavior.

The issue should not be *whether* to punish but *how*. The problem is that our society has increasingly equated "punishment" with "prison" and seems unable to conceive of the notion of punishments aside from prison. Prisons are, of course, necessary for violent offenders. But nearly 50 percent of the American prison population is behind bars for non-violent offenses. Many of them would pose little danger to their communities; they are imprisoned solely for punishment.

For the reasons that follow, many conservatives are concluding that society is not well served by punishing non-violent offenders behind bars. Sound alternatives to prison are available. Restitution, community service and intensive supervision probation are tough and effective punishments that limit freedom and place demands for compensation upon offenders.

Punishment should serve victims' needs. While victims suffer most from crime — physically, emotionally and financially (to the tune of $13 billion per year) (BJS 1988c) — victims' interests are represented least. From the moment a crime is committed, through the time the offender is convicted and sent to prison, the victim is virtually ignored by the criminal justice system. As Roberta Roper, whose daughter was murdered seven years ago, said, "Crime doesn't pay — but victims do."

This injustice has sparked the growth of victims' rights groups across the United States. In addition to supporting an increased role for victims in the system, many have promoted restitution and other alternatives to incarceration — not to make life easier for offenders but to benefit victims.

For example, the Alabama Victims Compensation Group and Victims of Crime Against Leniency are supporting the Alabama Community Corrections Act because it holds offenders accountable for their crimes and provides for victim assistance officers to help victims secure restitution and compensation. In Maryland, Justice Fellowship worked with the effective and well-respected Stephanie Roper Committee to promote recently passed mandatory restitution legislation.

Victim restitution must become an essential part of criminal punishments. This a matter of simple justice. In an article describing the Sentencing Improvement Act of 1983, U.S. Sens. William Armstrong, R-Colorado, and Sam Nunn, D-Georgia, (1986) recognized the importance of alternative punishments based on restitution:

"Because of growing public concern for crime victims, the restitution concept holds great promise of gaining broad public support. . . . Recent surveys indicate that a great percentage of Americans would prefer to have the non-violent offender repay his victim rather than serve time at public expense."

Public safety is essential. Non-violent offenders who might be sentenced to alternative punishments are taking up precious prison space that should be reserved for violent criminals. (As noted, nearly half of all state prisoners were convicted of non-violent crimes. And 34 percent have *never* committed a violent crime (BJS 1988d).)

But, prisons are so overcrowded that many states rely on early release to reduce prison populations. This means that some dangerous offenders are let out well before they have served their full sentence. This is the irony of the "get tough" response to crime: By indiscriminately sending more people to prison, communities are less safe.

The case of Charlie Street is illustrative. Street was released from Florida's Martin Correctional Institution in the fall of 1988 after serving only half of his sentence for attempted murder. Ten days later, he gunned down two Dade County police officers — a tragedy that could have been avoided if Street had been kept off the streets and in prison where he belonged. As Jack Eckerd wrote in the *Orlando Sentinel* (Dec. 4, 1988), "We must restore sanity to the system, slamming the door and keeping it shut on violent and career criminals like Charlie Street, while expanding alternate punishments for non-violent offenders."

Any discussion of public safety eventually includes the issue of deterrence. The argument that prisons alone deter is defeated by the facts. Swift and certain punishment deters, not harsh punishment that is neither swift nor certain.

Consider the odds. The federal government reports that out of 100 crimes, 33 will be reported to the police and seven will result in an arrest. Four will end with a conviction, with one offender going to jail, one to prison and two to probation. In other words, for every 100 crimes committed in the United States, one person goes to prison (Colson and Van Ness 1989).

Can we reasonably believe that doubling or tripling the number of people in prison would significantly deter crime? Would a 2 or 3 percent chance of imprisonment actually deter more crime than a 1 percent chance of imprisonment?

Fortunately, experienced criminal justice practitioners know that tough alternative punishments are feared more by convicted offenders than prison. Trial judges in Florida, for example, say that defendants request prison sentences to avoid the state's tough Community Control Program.

Alternatives promote public safety in other ways as well. For example, they keep the non-violent offender out of prison, the ideal training ground for becoming a more accomplished and dangerous criminal. The Rand Corporation found in a 1986 study (Petersilia, Turner and Peterson) that a group of probationers committed fewer new crimes than an identical group of ex-prisoners. The researchers concluded that "imprisonment was associated with a higher probability of recidivism."

A federal study of Georgia's Intensive Probation Supervision program (National Institute of Justice 1987) found that probationers committed fewer new crimes than comparable prisoners and no violent new crimes.

Community safety depends on increased use of community sanctions.

Can we reasonably believe that doubling or tripling the number of people in prison would significantly deter crime? Would a 2 or 3 percent chance of imprisonment actually deter more crime than a 1 percent chance of imprisonment?

Local is better. Many alternatives to incarceration significantly benefit local communities. Community corrections acts, for example, allow communities to tailor programs to meet their own needs, by dealing with non-violent offenders in their own ways. This also means that communities are involved with their own offenders, who will most likely continue to live in the community after serving their sentences.

Local punishments benefit the state as well. Every offender who stays in a local program is one less person taking up scarce prison space at state expense.

Community service performed by offenders can be another important local benefit. Instead of sending offenders to state prisons, some communities reap the benefits of free or low-pay labor for charitable or governmental agencies. Genesee County, New York, has honed this practice into an art form. Since the establishment of the county's widely acclaimed Genesee Justice program in 1981, offenders performed more than 97,000 hours of community service for 118 community agencies, a total value of $389,000 (Genesee County Sheriff's Department 1988).

Wise use of limited government resources. There is no question that states will have to increase their prison capacities. But state governments cannot afford to rely on prison construction as the sole means to solve the overcrowding crisis. It costs an average of $15,900 to keep an inmate in prison for one year (Camp and Camp 1988). In fiscal 1987 alone, state and federal governments spent almost $5 billion in new prison construction (American Correctional Association 1988).

This is placing an extraordinary strain on state budgets. Norman Carlson (1988), writing of the situation in Florida, summarizes the dilemma facing many states, "Constructing sufficient prison space is not a viable solution. The tremendous costs involved in building and operating the required number of new prisons would overwhelm the limited resources available in the state treasury and would compete with other high priority needs, such as education, medical care and transportation."

No one could deny the severity of America's criminal justice crisis. The time has come for real solutions rather than overheated rhetoric that fuels public passions, reinforces stereotypes about prisons and prisoners and, in the end, results in taxpayers being punished far more than offenders.

Explaining why he worked so hard for passage of the Michigan Community Corrections Act, Michigan State Rep. William Van Regenmorter (1988) said, "Michigan's prison system has been overcrowded since 1975. (In) . . . 1984, the system held about 300 prisoners more than its intended capacity. To combat this problem, the Department of Corrections constructed many new prisons, almost doubling the system's capacity in just three years. The result of this expensive building program? The system was still overcrowded, this time by some 3,000 prisoners!"

And because of the extraordinary increase (141 percent over the last five years), in the corrections budget — due to the massive prison construction program (*Grand Rapids Press* Jan. 2, 1989) — Michigan now faces cuts in social service programs.

New prison construction costs an average of $80,000 per maximum security cell. The total cost of all current or planned prison construction will be $25 billion (NCCD 1988b). States cannot afford to make such budget-busting investments in concrete and steel condominiums with bars.

To reduce overcrowding and avoid bankrupting other key state programs, conservatives argue in favor of investing in alternatives to prison, so that prisons can be reserved for the dangerous offenders who must be locked away from society. Some states are taking initiatives to do so.

Program Profiles

Community Corrections Acts (CCAs). These acts provide a statewide mechanism allowing local governments to design, develop and deliver — and state governments to fund — local correctional tools such as intensive supervision, restitution, community service, and drug and alcohol treatment. Thirteen states now have CCAs.

Tennessee diverted 504 offenders from prison in fiscal 1987-88 at a cost of $7,599 per offender, compared to the state average of $19,710 for incarceration. In addition, offenders sentenced to community corrections paid $59,145 in restitution to victims and performed 76,294 hours of community service. The estimated total savings to the state was $6.1 million (Mike Jones, Tennessee Department of Corrections, telephone interview, September 1988).

Virginia diverted 699 felons from its prisons and jails in fiscal 1987-88. As a result, it saved more than $8 million, which does not include savings realized by diverting more than 6,500 local felons and misdemeanants from jails. Diverted offenders performed 229,812 hours of community service and paid $76,870 in restitution (Gwen Cunningham, Virginia Department of Corrections, telephone interview, September 1988).

House arrest confines offenders to their own homes. They are not allowed out except for approved activities such as health care, special religious services, community service or employment, which in turn most often leads to restitution payments to victims (Petersilia 1987). Many jurisdictions are using electronic surveillance measures to ensure compliance.

Florida's Community Control Program is a nationally recognized house arrest program. Established in 1983, Community Control uses community service and restitution sanctions for some 8,000 offenders statewide. The cost to the state is $2,650 per year per offender, which is 80 percent less than the $13,140 cost for imprisonment (Carlson 1989). By reducing prison commitments by 180 people a month, Community Control has proven a valuable weapon in Florida's fight against overcrowding. Because only 9 percent of its offenders commit new crimes, it is also an effective weapon against crime.

Intensive Probation Supervision (IPS). The key to this program's success is low caseloads. Ideally, officers maintain caseloads of 15-25 people — as opposed to the supervision possible when harried officers in "normal" probation programs carry caseloads of between 120 and 300 offenders. In many IPS programs, offenders must make daily contact with their officers. Most intensive supervision programs require offenders to maintain employment or go to school and to abide by a strict curfew. Many also include restitution and community service as sanctions.

Illinois regularly supervises 570 offenders in its IPS program — a ratio of 25 offenders for every two officers. The annual cost per offender is $2,367. Since the program was established in 1984, Illinois has collected approximately $1 million in restitution, taxes, fines and court costs. Its Intensive Probation Supervision participants

performed 146,349 hours of public service valued at $489,921. All told, the state saved $7.7 million in the last five years through IPS (Anderson 1988). And prospects look good for expanding the program to more offenders.

Restitution centers are residential facilities designed to house offenders requiring more supervision than regular or intensive supervision probation but less than total confinement in prison. These centers, which are a tightened-up version of "work release" with a focus on restitution, are used in six states as an alternative to imprisonment.

Georgia's restitution centers can house 2,600 offenders yearly. During fiscal 1987, the state collected from offenders $256,817 in restitution, $626,516 in family support, $1.4 million in room and board, $940,274 in fines and court fees and $1.4 million in taxes. The offenders also performed community service worth $266,516. The annual cost per offender was $8,249. Seventy-five percent of the residents successfully complete the program (Larry Anderson, Georgia Department of Corrections, telephone interview, 1988).

Florida's Probation and Restitution Centers can hold 382 offenders, far below the 900 offenders who would have qualified for the program in 1987, according to a 1988 report by the state Office of the Auditor General. The annual cost per offender is $10,909, which the state partially defrays by collecting average annual fees of $1,900 per offender. Jack Eckerd and Norm Carlson are among those calling for expanded use of these centers in Florida.

Conclusion

No one could deny the severity of America's criminal justice crisis. The time has come for real solutions rather than overheated rhetoric that fuels public passions, reinforces stereotypes about prisons and prisoners and, in the end, results in taxpayers being punished far more than offenders.

Historically, conservatives have been at the forefront of many great movements in the West: the battle for abolition of the slave trade and of slavery, the fight to end industrial abuses in the late 19th century and in efforts to establish public education. We believe the criminal justice arena is one in which conservatives are beginning to lead the way toward measures that will benefit offenders, victims, correctional officials and taxpayers.

[illegible] Pursuing [illegible] offenders [illegible] take the [illegible] and cooperation [illegible] [illegible] with moderate [illegible] criminal justice policy.

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Reducing Prison Admissions:
The Potential of Intermediate Sanctions

by Joan Petersilia and Susan Turner

States are placing under intensive supervision offenders who don't need to be confined to prison, but who require more oversight than afforded by regular probation or parole. Intensive supervision programs can reduce prison crowding and are an important option for fitting the punishment to the crime and the criminal.

Spurred by the crisis in prison crowding, more than 40 states offer intermediate sanction programs for offenders who might otherwise go to prison. These community-based programs are designed to be tougher than traditional probation, but less punitive and costly than imprisonment. Intensive supervision, electronically monitored house arrest and community service sentences are among the most popular programs. Although most of these programs are less than five years old, proponents believe that participants have lower recidivism rates than those on regular probation or parole. If that belief is accurate and if participants would have been sentenced to prison in the absence of the programs, then intermediate sanctions could have important benefits. They could take some pressure off crowded prison systems without threatening public safety, keep offenders and their families together and off welfare rolls, and rehabilitate as well as punish.

Whether these programs will deliver such benefits depend largely on how many prison-bound offenders are appropriate candidates for intermediate sanctions. We recently conducted a nationwide survey of intermediate-sanction programs and identified the criteria these programs commonly use for selecting participants (Petersilia 1987). This article applies these criteria to offenders sentenced to U.S. prisons in 1986 to estimate how many of them would have qualified for intermediate sanction programs, had such programs been in existence.[1] Our analyses are based on the Bureau of Justice Statistics' 1986 *Survey of Inmates of State Correctional Facilities* (NPS). The NPS contains interviews of a sample of imprisoned offenders, which when weighted produces a database reflecting the total U.S. state prison population. The NPS records information on each respondent's criminal background, use of drugs and alcohol, personal background and violent offenders, their victims (Innes 1988).

By using information on sentence length for NPS offenders' convictions, we approximated an "admissions" cohort to use for this research project.[2]

Determining Eligibility

Intermediate-sanction programs use a variety of criteria to select eligible participants. Generally, the criteria reflect a jurisdiction's principles regarding punishment and its degree of prison crowding. Jurisdictions with tough punitive philosophies and the budgets to back them up use more restrictive, stringent criteria. Others, which have a history of community-based sanctions or face greater austerity, adopt less stringent criteria.

As examples of these differences, the Texas intensive supervision program accepts sex offenders, but the New Jersey program bars them.

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jurisdictions strictly exclude drug and alcohol abusers from their programs, but in others they are prime candidates. Montgomery County, Md., for example, selects first-offender felons with alcohol, drug or mental health problems, but offenders with chronic substance abuse problems are ineligible for intensive supervision programs in Georgia and Texas (Bryne 1986 and McCarthy 1987).

Although specific criteria differ across jurisdictions, intermediate-sanction programs generally target one of four groups:

1) All felons, excluding murderers and rapists.

2) Only non-violent felons.

3) Only felons convicted of auto theft, forgery, fraud, driving under the influence (DUI), traffic, public disorder, probation or parole revocation, and court offenses.

4) Persons revoked for probation or parole violations.

Having identified the target group, programs further limit eligibility by considering the offender's criminal record, including sentence length and history of violence and drug or alcohol abuse. Less common criteria are recency of last conviction and incarceration, the offender's dependence on crime for a livelihood and history of mental illness. These further restrictions can severely reduce the number of eligible candidates regardless of the initial target group.

For example, Oregon's initial criteria for intensive-probation supervision excluded persons with any violent indications, not just those convicted for violence. With such stringent criteria, few prison-bound offenders qualified. Consequently, program managers adjusted the criteria downward until enough offenders qualified to make the program worthwhile.

To identify the range of eligibility criteria that states use, we relied on a nationwide RAND survey of intermediate sanction programs (Petersilia 1987). For our analysis of the NPS, we simulated the most common intermediate sanction criteria in use. The key variables we used in the eligibility analysis are defined in table 1.

Table 1: DEFINITION OF KEY VARIABLES

I. CURRENT COMMITMENT OFFENSE IS: The current commitment offense definitions use four increasingly restrictive criteria, based on the seriousness of the conviction offense..

TARGET GROUP #1 — ALL OFFENDERS, EXCLUDING MURDER AND RAPE
The most serious current commitment offense is one of the following:

Robbery	Drug
Assault	Driving Under Influence (DUI)
Burglary	Court Offenses
Auto Theft	Probation/Parole Revocations

TARGET GROUP #2 — NON-VIOLENT OFFENDERS
The most serious current commitment offense is one of the following:

Burglary	DUI
Auto Theft	Court Offenses
Drug	Probation/Parole Revocations

TARGET GROUP #3 — MINOR PROPERTY OFFENDERS
The most serious current commitment offense is one of the following:

Auto Theft	Court Offenses
DUI	Probation/Parole Revocations

TARGET GROUP #4 PROBATION/PAROLE REVOCATIONS:
The most serious current commitment offense is one of the following:
Probation/Parole Revocation**

II. PRIOR INCARCERATIONS: The offender has been sentenced to jail or prison before (prior incarcerations include juvenile or adult incarcerations at the local, state or federal level).

III. HISTORY OF VIOLENCE: The offender had been sentenced before (either to probation, jail or prison) for a violent offense (i.e. robbery, assault/other violent, rape, murder/manslaughter).

IV. DRUG INVOLVED: The offenders either admitted a dependence on drugs or the current conviction is for drug trafficking, possession or use.

V. ALCOHOL INVOLVED: The offender admitted having developed a dependence on alcohol

**While these persons were returned to prison without receiving a new prison sentence from the court, they may have committed a new crime. The NPS does not enable us to determine how many of these revocation cases result from a new criminal arrest versus a violation of the technical conditions of probation or parole.

few Are Chosen

Our analyses suggest that many of those admitted to prison appear to be candidates for intermediate sanctions, particularly if programs are limited to non-violent offenders. Applying the criteria used by different jurisdictions helps develop a more precise picture.

Most intermediate sanction programs define eligibility in terms of the current offense first, then apply additional restrictions such as excluding violent offenders. We began by considering how many offenders would qualify for program admission if we applied the four target offense groups defined earlier: 1) all felons, excluding murderers and rapists, 2) non-violent felons, 3) "minor property" offenders, and 4) probation and parole revocations. We then successively applied the commonly used program restrictions, (i.e., excluding those with prior incarcerations). After each additional restriction, fewer prison-bound offenders would qualify for intermediate sanctions (see figures 1-4). When all offenders except convicted murderers and rapists are considered, 87 percent of the prison-bound offenders are eligible (figure 1). With the added restriction of no prior jail or prison sentences, the percentage of "still-eligibles" drops to 33 percent (figure 1).

Making offenders with prior incarcerations ineligible for intensive programs reduces the eligible offenders drastically (figures 1-4). Once repeat offenders who served time are excluded, the percentage eligible is little affected by excluding those with prior convictions for violence.

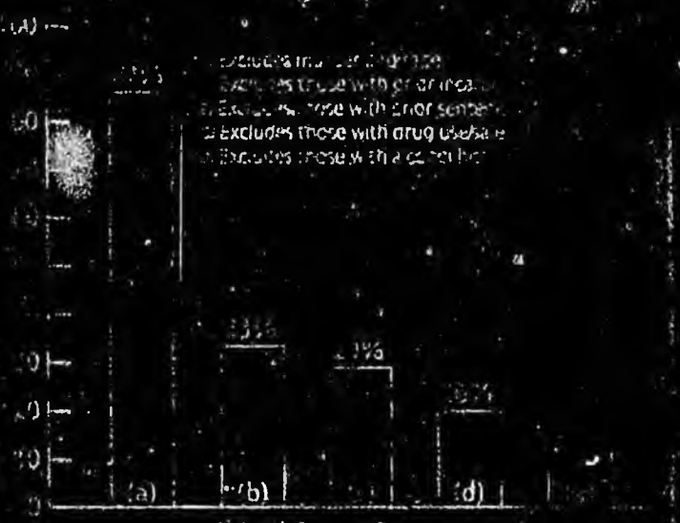
Policy Implications

The initial target group greatly affects the estimated number of prison-bound offenders eligible for intermediate sanctions (figures 1-4). Targeting non-violent felons (figure 2) and property and probation or parole violators (figure 3) could make a substantial difference — if the eligibility criteria were adjusted to reflect the political climate in a jurisdiction and the profile of offenders sentenced there. Jurisdictions might have different needs and uses for intermediate sanction programs, depending on these aspects. Deliberations on policy and programs often overlook this, although it is crucial to planning, budgeting and, most importantly, results.

At the other end of the spectrum, targeting only probation or parole revocation cases (figure 4) would render the programs less effective in reducing prison crowding. The number of probation and parole revocations is growing and many believe it does not make sense to use scarce prison space for such people, especially if their revocations resulted from technical violations. Nevertheless, our results indicate that just 4 to 14 per-

PERCENTAGE OF PRISONERS ELIGIBLE FOR INTERMEDIATE SANCTIONS AFTER APPLYING RESTRICTIONS

Figure 1



Initial Target Group:
All Offenders Except Murderers and

Figure 2

Initial Target Group:
All Non-Violent Offenders

prison-bound offenders would qualify intermediate sanctions if being a parole or ...tion violator was the sole criminal convic... considered.

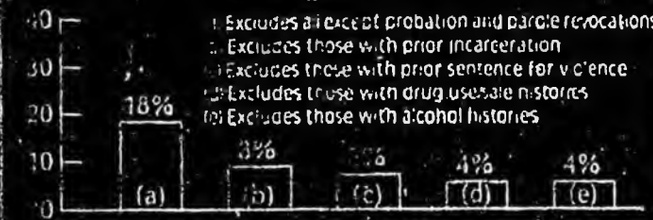
If states want to ease prison crowding thro... intermediate sanctions, they need to look at ... kinds and proportions of criminals in their ju... dictions. For example, states might decide ... roups targeted for intermediate sanctions ba... the type of crimes committed — some ... risons house more offenders convicted of ser... ...mes than others. In other analyses, we ... ...0 percent of prison admissions nationw... were convicted of non-violent offenses, who...

PERCENTAGE OF PRISONERS ELIGIBLE FOR INTERMEDIATE SANCTIONS AFTER APPLYING RESTRICTIONS

Figure 3.

Initial Target Group:
Minor Property Offenders

Figure 4



Initial Target Group:
Probation and Parole Revocation Cases Only

an estimated 35 percent of California admissions are non-violent offenders. Further, 40 percent of inmates nationwide report having no prior incarcerations, whereas fewer than 5 percent of California prison inmates fall in that category.

These findings reinforce the need for individual states and jurisdictions to learn the characteristics of their offender populations before assessing alternative sentencing strategies. In states that have a higher proportion of non-violent offenders with relatively minor records, intermediate sanctions might ease the pressure to build more cells. Jurisdictions with high proportions of violent or felony offenders, however, might consider making the eligibility criteria for non-violent offenders less stringent. Otherwise, the short- and long-term effects on prison crowding will be negligible. By putting the non-violent felons into intermediate sanctions regardless of prior incarceration for non-violent crimes or substance abuse problems, these jurisdictions could help the states reserve prison space for repeat violent offenders. Our results suggest that under those criteria as many as 22 percent of prison-bound offenders can be diverted to intermediate sanctions.

In considering the criteria, policy-makers should carefully consider the substance abuse categories. The public is concerned about drug traffic and abuse, and wants drug offenders, especially pushers, punished severely. It would be a shame, however, if this sentiment made policy-makers impose a "no substance abuse" criterion on intermediate sanctions programs. In areas where offenders with alcohol and drug problems are targeted for intermediate sanctions, the early evidence is positive. Because of the program curfews, close supervision, monitoring and urine testing, these states are having success rates with drug users. Of the first offenders admitted to Georgia's widely publicized intensive probation supervision program, for example, only 4 percent committed new crimes while under supervision. An evaluation of the program suggests that persons with drug histories benefitted most by the program (Erwin and Bennett 1987).

Our results encourage optimism about the effects intermediate sanctions might have on prison crowding. However, we believe that this optimism should be guarded. In recent years, a greater percentage of persons sentenced to prison are repeat offenders who are becoming progressively less "qualified" in judicial and public opinion for anything other than prison.

Also important in judging the potential impact of alternative programs is that estimates of eligible offenders differ when the eligibility criteria are applied to those offenders "already in prison" as opposed to "prison-bound" offenders. Compared to the general prison population, a lesser percentage of the new admissions (our prison-bound example) have been convicted of violent crimes or have long records. Once imprisoned, however, serious offenders stay longer, adding their numbers to the more serious offenders who arrived earlier. The less serious offenders are released more quickly. As a result, the prison population on any given day reflects the accumulation of these more serious offenders. If our intermediate sanction criteria were applied to the population in prison on a given day as opposed to the population being sentenced to prison, we would find fewer offenders eligible for the alternative programs.

It is also important to understand that when a sizeable number of prison-bound offenders is diverted into intermediate-sanction programs, the diversion will not have a particularly large effect on the average population on any given day. For example, using our data, if we diverted from prison 25 percent of the prison-bound offenders (those convicted of offenses such as DUI, court offenses and probation and parole revocations), the estimated reduction in the prison population would be 15 percent after one year, with no subsequent reductions in the years to follow. Alternatively, if we diverted the 25 percent mentioned above and lengthened the sentences of persons convicted of burglary

...ment area and are ruled out for those with no prior history of violence (35 percent of the prison-bound offenders), the estimated reduction in the prison population after two years would be 27 percent, with no further reductions in the years to follow. These estimates assume no other changes in the types of offenders sentenced to prison or sentence lengths.

Additional concerns relate to the potential impact of alternative sanctions on the prison population. As evaluations of alternative sanction programs are beginning to show, not all offenders classified as eligible will be placed in alternatives. Oftentimes, numerous parties (sometimes including the offender) must unanimously agree to place an offender in an alternative program. In addition, some offenders who are eligible are not identified as eligible. This can happen if the screening process does not target all sources of potential candidates for the alternative. These factors reduce the number of offenders placed in alternative sanctions.

Furthermore, prison populations are not static. Many states are increasing the length of stay for selected offenders[6], potentially diminishing our estimated impact of "front-end" changes, which are designed to impact who goes to prison in the first place. As James Austin, research director for the National Council on Crime and Delinquency said, " . . . Such reductions can be made, but only if a state adjusts both the admissions flow and, more importantly, the length of stay."

Our analyses suggest the need to examine not only the numbers of eligible prison-bound offenders, but to project the impact of these "front-end" changes on the prison population.

Conclusion

In sum, we believe intermediate sanctions could relieve the pressure for more prison cells over the long haul. The extent of the effect, however, depends greatly on understanding what types of offenders are sentenced to prison in a given state and whether the local community will accept these offenders being diverted to it. If the eligible pool becomes so reduced by overly restrictive criteria, the potential to reduce prison crowding is negated. But, the effect on prison crowding is not the surest justification for intermediate sanctions. More compelling justifications are that we could sanctions to match the range of criminal behavior, that public safety would be served better by providing an alternative for serious felony offenders now placed in traditional probation because of prison crowding, and that remaining in the community with their families might prevent some offenders from becoming more serious criminals.

Notes

[6] Our estimations apply to offenders being sentenced to prison on admission cohort, as distinguished from a sample of offenders in a prison on any given day. An admissions cohort will contain a smaller percentage of people convicted of violent crimes and of people with lengthy criminal records than those in prison on any given day.

[7] To obtain an admissions cohort, we selected offenders from the NPS survey who entered prison between Oct. 1, 1985 and Jan. 31, 1986. This gave us four months of data. If we went back further in time, too many offenders had already left prison.

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183

Alaska State Legislature

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Representative David Finkelstein

CHAIR
Labor and Commerce Committee
House Ethics Committee

Resources Committee
Military and Veterans Affairs
Budget Subcommittee

TO: House Judiciary Committee

FROM: Rep. David Finkelstein

DATE: March 9, 1992

SUBJECT: CSHB 183 (STA), relating to the Fair Campaign Practices Code.

CSHB 183 (STA) establishes a Fair Campaign Practices Code that all political candidates are asked to voluntarily sign when they register for office. The official election pamphlet will state whether or not candidates have signed the code.

The purpose of this legislation is to set a higher standard of conduct for candidates and help clean up political campaigns in Alaska. Although the bill contains no penalties for failing to sign or violating the code, when candidates sign the code they will be publicly committing themselves to conduct honest campaigns. Experience in other states indicates a Fair Campaign Practices Code may help reduce dishonest negative campaigning.

NCSL Report

STATE LEGISLATIVE EFFORTS TO REGULATE NEGATIVE CAMPAIGN ADVERTISING

OVERVIEW. Negative campaign advertising attracted unprecedented attention in 1988 as President Bush's successful campaign ads attacked the credibility of opponent Michael Dukakis. Local and state politicians continued to stage controversial campaigns in 1989, spending millions of dollars on negative ads in races for governors' seats in Virginia and New Jersey and mayors' offices in New York and Cleveland. While negative campaign advertising is not a new phenomenon, the way political consultants assess negative ads has changed. Many candidates--previously cautioned that nasty ads could result in backlash votes against them--are now counseled that negative ads command more viewer attention and switch more votes than positive ads.

And while the true merits of negative campaign advertising are arguable, there is an inarguable political reality now faced by candidates for public office: negative ads are a fact of political life. Despite complaints from some voters and legislators that "attack" ads demean the electoral process and deter voters from participating, legal scholars warn that the constitutional issues raised when regulating the free speech of candidates are difficult, if not impossible, to overcome. Even so, state legislative efforts to regulate negative campaign ads continue.

SURVEY RESULTS. The following summary and table show the results of a 50-state telephone survey conducted by the National Conference of State Legislatures in December 1989. The individuals contacted in each state were those working in state departments, agencies or commissions charged with enforcing election and campaign laws. Contacts were asked the following with regard to their states: (1) is there a fair campaign practices code, voluntary or mandatory, that applies to candidates for state office?; (2) does this code provide sanctions for violations?; (3) are there other statutory provisions that affect negative ads (other than disclaimer or disclosure provisions)?; (4) have there been any court challenges to these provisions?; and (5) have there been any legislative proposals to regulate negative campaign ads since 1985 (responses to this question are not necessarily exhaustive). Names and telephone numbers of contacts providing information are listed on the table.

Fair Campaign Practices Codes: Seven state legislatures have endorsed or adopted a fair campaign practices code (CA, IL, MT, NY, WA, WV, WY). These codes are generally signed by candidates on a voluntary basis. Code provisions typically include a clause similar to that found in Washington's code, vowing to "not participate" in "personal vilification, defamation, and other attacks on any opposing candidate or party" (WAC Sec. 390-32). The Connecticut General Assembly enacted a voluntary code in 1974, but repealed the code in 1978.

Laws Prohibiting False Campaign Statements: Laws in twenty-one states (AK, CA, CO, FL, IN, LA, MA, MI, MN, MS, MT, NV, NC, ND, OH, OR, TN, UT, WA, WV, WI) prohibit false campaign statements. In Michigan and Nevada, these prohibitions apply specifically to false incumbency designations; in California, misrepresentation of party support is the type of false statement prohibited. Seven state prohibitions (in AK, CO, IN, MN, ND, OR, TN) apply only to *written* false statements. Most states punish violations as misdemeanors. Nebraska's campaign falsity statute, enacted in 1978, was repealed in 1986.

Court Challenges: Key provisions of New York's Fair Campaign Code were struck down as unconstitutionally overbroad in *Vanasco v. Schwartz*, 401 F. Supp. 87, aff'd 423 U.S. 1041 (1975). The *Vanasco* ruling, which has become the leading opinion on campaign falsity statutes, held that any state regulation of campaign speech must be premised on the "actual malice" standard applicable to public figures according to *New York Times Co. v. Sullivan*, 376 U.S. 251 (1964). Similarly, Nebraska's campaign falsity statute (NRS Sec. 49-14,132) was ruled "constitutionally invalid as overbroad" by the Nebraska Supreme Court and was repealed in 1986. *See, Fowler v. Nebraska Accountability Commission*, 330 N.W.2d 136 (1983). Ohio's current prohibition against false statements was ruled unconstitutional by a federal district court in 1987 (*Pestrak v. Ohio Elections Commission*, 670 F.Supp. 1368 (1987)); that ruling is now on appeal. A successful 1989 challenge to the constitutionality of Louisiana's false statement prohibition is also on appeal. *See State v. Burgess*, 543 S.2d 1332 (1989).

Legislative Proposals Since 1985: While some survey contacts report increasing, bipartisan legislative interest in regulating negative campaign ads, others say such efforts in their states would be met with solid opposition. States where recent legislative proposals in this area have received bipartisan support include Alaska, Connecticut, Florida, Iowa, Maine, Minnesota, New Jersey, New York and Pennsylvania. 1990 proposals in Florida and New Jersey would require that a candidate's own voice and/or photograph be used in campaign ads that make reference to an opposing candidate.

The State Election Commission and the Secretary of State invite you to subscribe and adhere to the Code of Fair Campaign Practices. If you desire to participate, please file this document with the county clerk if you are running for a county office or with the Secretary of State if you are running for legislative, statewide or federal office.

CODE OF FAIR CAMPAIGN PRACTICES

Names of individuals signing this Code will be provided to the public.

STATE ELECTION COMMISSION

Dr. Allan S. Hammock, Chairman
Benjamin Bryant
Terry D. Reed
Barbara H. Ruley
Ken Hechler, Ex Officio Member

There are basic principles of decency, honesty and fair play which every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free choice and the will of the people may be fully and clearly expressed on the issues before the Country.

THEREFORE:

I SHALL CONDUCT this campaign openly and publicly, discussing the issues as I see them, presenting positions and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of candidates or political parties which merit such criticism.

I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or his or her personal or family life.

I SHALL CONDEMN the use of campaign advertising or communication of any sort which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate or issue raised in any campaign.

I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical health status, or age.

I SHALL NOT USE OR PERMIT any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections, or which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, or voting, or intended to affect voting through the buying of influence or votes.

I SHALL NOT COERCE election help or campaign contributions for myself or my committee or for any other candidate from my employees or from any person under my authority, influence or control.

I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support derived from any individual or group which resorts to the methods and tactics which I condemn on behalf of or in opposition to any candidacy. I shall accept responsibility to take firm action against any subordinate or associate who violates any provision of this code or the laws governing elections.

I PERSONALLY SUPPORT a limit on campaign expenditures that when reasonable, sufficient and fairly applied, does not limit or restrict the expression of ideas of the candidate or others on behalf of the candidate, but instead challenges individuals to engage in open dialogue on the issues rather than merely to purchase the excessive repetition of images and slogans.

ACCORDINGLY, I WILL ADHERE to the following limits on campaign spending:

	PRIMARY	GENERAL
U.S. Senate	[illegible]000	1,000,000
U.S. House of Representatives	[illegible],000	250,000
Governor	1,000,000	1,000,000
Constitutional Officers	100,000	100,000
Supreme Court	125,000	125,000
State Senators	25,000	25,000
House of Delegates	12,500	12,500

I SHALL DEFEND AND UPHOLD the right of every qualified voter to full and equal participation in the electoral process.

AS A PUBLIC OFFICIAL, I PLEDGE to conduct my official duties in the public interest of all people without discrimination against any person, faction or group. Furthermore, as a public official I pledge not to utilize my office personnel or equipment on behalf of any ballot issue or candidate.

I, the undersigned, a candidate for election to public office in the State of West Virginia, or the chairperson of a political committee supporting one or more candidates for election, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct this campaign in accordance with the above principles and practices.

_____ Date

_____ Signature

It is suggested that you might want to publicize the fact that you have signed this Code, and challenge your opponent(s) to do likewise.

Montana

13-35-230. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. 23-47-137 by Sec. 37, Ch. 334, L. 1977; R.C.M. 1947, 23-47-137.

13-35-231. Unlawful for political party to endorse judicial candidate. A political party may not endorse, contribute to, or make an expenditure to support or oppose a judicial candidate.
History: En. 23-47-138 by Sec. 38, Ch. 334, L. 1977; R.C.M. 1947, 23-47-138; amd. Sec. 223, Ch. 571, L. 1979.

Cross-References
Election of Supreme Court Justices, 3-2-101, 3-2-102.
Election of District Court Judges, 3-5-201, 3-5-202.
Election of Justice of the Peace, 3-10-201.
Violation as misdemeanor, 13-35-103.

13-35-232. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. 23-47-139 by Sec. 39, Ch. 334, L. 1977; R.C.M. 1947, 23-47-139.

13-35-233. Solicitation of votes on election day. (1) It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day. Failure to remove billboards, yard signs, or posters on election day is not considered a violation.

(2) A person convicted of solicitation of votes on election day is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined not to exceed $1,000, or both.
History: En. Sec. 1, Ch. 539, L. 1979.

13-35-234. Political criminal libel — misrepresenting voting records. (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.
History: En. Sec. 2, Ch. 539, L. 1979; amd. Sec. 1, Ch. 545, L. 1983.

Cross-References
When owner of radio station not held responsible for defamatory broadcast, 27-1-811.
Misdemeanor penalty, 46-18-212.

Part 3
Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or his personal or family life.

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone."

History: En. Sec. 1, Ch. 475, L. 1979.

13-35-302. Candidates to be given opportunity to subscribe to campaign practices code — publicity. (1) The commissioner of campaign practices shall prepare a form which contains the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) Each candidate required to file statements or reports with the commissioner shall be sent a copy of this form. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form shall be sent for each election as soon as feasible. The signed form shall be returned to the commissioner.

(3) The commissioner shall supply the secretary of state, the county registrars, and the city and town clerks with forms. Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner, the secretary of state, a county registrar, or a city or town clerk and may sign the form and deliver it to the commissioner.

History: En. Sec. 2, Ch. 475, L. 1979.

CHAPTER 36

CONTESTS

Part 1 — General Provisions

Chapter Cross-Referenc
Salaries withheld durir
2-16-202.
Role and duties of
Recorder, 7-4-2611.
Challenges to local gov
tions, 7-7-105.
Definitions applicable
13-1-101.

13-36-101. Gro
public office. An ele
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(1) on the ground
provision of the law re
(2) whenever the p
the election, eligible to
(3) on account of il
vass of votes.
History: En. Sec. 43, Ini
R.C.M. 1935, Sec. 94-1434
59, Ch. 368, L. 1977; R.C.M

Cross-References
Definition of "elector" a
13-1-101.

13-36-102. Time
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test. The contestant sh

League of Women Voters of Wyoming

FAIR CAMPAIGN PRACTICES STATEMENT

Every candidate for public office in the State of Wyoming has a moral obligation to observe and uphold principles of decency, honesty and fair play, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

(1) CANDIDATES shall conduct their campaigns honestly, discussing the issues, as they see them, without misstatement, presenting their record and policies with sincerity and frankness, and may criticize the record and positions of their opponents or their political parties. Candidates or their campaigns shall refrain from knowing misrepresentation of an opponent's actions, positions or record for political advantage.

(2) CANDIDATES shall refrain from the use of character defamation, whispering campaigns, libel, slander, or baseless attacks on any candidate or his or her personal or family life.

(3) CANDIDATES shall not use or permit any appeal to negative prejudice based on race, sex, religion, national origin, physical health status or age.

(4) CANDIDATES shall refrain from corrupting or undermining our American system of free elections, or that which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, enrolling to vote, or voting.

(5) CANDIDATES shall not coerce election help or campaign contributions for themselves or for any other candidate from their own or public employees.

(6) CANDIDATES shall immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of their candidacy or in opposition to that of their opponents, to the methods and tactics which violate this statement. CANDIDATES shall accept responsibility for any subordinate who violates any provision of this statement or the laws governing elections.

JSG - 02/18/80

Joseph S Golden, President
O. Box 2882
Cheyenne, WY 82003

(7)

HOUSE COMMITTEE REPORT

Date Referred: March 1, 1991

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/14/92

The STATE AFFAIRS Committee considered: HB 183

HOUSE BILL NO. 183 FAIR CAMPAIGN PRACTICES CODE

"An Act relating to the Fair Campaign Practices Code."

RECOMMENDATIONS: [X] the same title
be replaced with CSHB 183 (STA) [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[X] zero fiscal note Div of Elections

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eugene A. Kubera	✓				
Mike Greenberg	✓				
Mike Miller	✓				
[illegible]	✓				
[illegible]	✓				

Eugene A. Kubera
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 18, 1992 FURTHER REFERRALS: Finance

Date of Committee Action: 3/11/92

The JUDICIARY Committee considered: HB 183

HOUSE BILL NO. 183 FAIR CAMPAIGN PRACTICES CODE

"An Act relating to the Fair Campaign Practices Code."

RECOMMENDATIONS: [X] the same title
be replaced with CSHB 183 (JUD) [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[X] zero fiscal note(s) Elections 1/14/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Dowley	X	Terry Maxton		✓	
[illegible]	X				
[illegible]	—				
[illegible]	✓				
Mike Miller	✓				
Mark Stanley	✓				

Dave Dowley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 183

Revision Date:
Title: Fair Campaign Practices Code

Sponsor: Representative Finklestein
Requestor: House State Affairs

Department Affected: Office of the Governor-Elections
BRU: Division of Elections
Component: 11-Primary and General Elections

COMPONENT SERIAL NO. 0 0 2 2

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Elizabeth Ziegler, Deputy Director
Phone: 465-4611
Division: Elections
Date: 01/16/92

Approved by Commissioner: Brent L. Hinkstan
Agency: Office of the Governor
Date: 01/16/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/07/91
HB183.FN

HB

187

TO: ALASKAN LEGISLATORS
PO BOX V
JUNEAU, AK 99811

ATTN: Representative Dave Kubina

FROM: CONCERNED ALASKAN DART PLAYERS

IN REGARD: REGULATIONS GOVERNING DART PLAY IN ALASKA

Recent actions by the Alcohol Beverage Control Board have brought dramatic attention to the sport of darts. Please help dart players by supporting or changing legislation which would allow tournaments to be held without violation of Alaskan statutes. The following facts and examples will illustrate why darts need and deserve your support.

Approximately 2500 Alaskan dart players participate in local and national league play. Darts is a sport like bowling and marksmanship where skill and technique are critical factors in determining the outcome of the game. Under AS 11.66.280 Dart Associations have been threatened with violations of the gamboling laws. By prosecuting darts under this statue, the ABC and Gaming commission is defining darts as a game of chance. This is not the case. By adding the word "Darts" to the definition of marksmanship in Alaska Administrative Code 15 AAC 105 160, darts would be immune from prosecution and placed in the category where they belong.

Dart Associations in this state are run as non-profit organizations. Positions on the Board of Directors and Executive Board are voluntary positions whose sold purpose is to manage and formulate league play and tournaments, not unlike softball, bowling, and pool. Dart Associations throughout the state host many charitable tournaments such as; Darts for Diabetes, Hospice of Tanana Valley, Jerry's Kids (MS), Youth League, Chile Abuse and Youth Scholarship Programs.

Thank you for the opportunity to explain why dart players need changes made if the sport is to continue to grow and flourish in Alaska. Please inform me of actions needed to correct this inappropriate persecution. Dart players and their supporters are more than willing to advocate and support any legislator or agency that will benefit the sport of darts.

Thank you for your support.

Sincerely,

Sylvia W. Hughes
PO Box 1564
Valdez AK 99686

P. O. Box 372
Valdez, AK 99686

February 20, 1991

Honorable Gene Kubina
House of Representatives
P. O. Box V
Juneau, AK 99811

Dear Representative Kubina:

Attached is the Notice of Violation which was served at the Elks Lodge last Thursday evening.

Everyone understands the first part of the violation concerning the use of the Elks Lodge for a public event. We do not have problem with that. The problem occurs when darts are considered gambling because the entry fee is $15.00. This would preclude the Association from even having a dart tournament at the Civic Center.

According to Gary Wing, an investigator with Alcoholic Beverage Control Board, all forms of tournament play such as pool and horseshoe tournaments will be affected. He stated that a pool tournament had been shut down last week.

He referred me to William Cassleman who is with the Fairbanks office that issues the Games of Chance and Skill permits. Mr. Cassleman said that everything could be solved by adding the word "darts" to the definition of marksmanship in the Alaska Administrative Code 15 AAC 105 160.

We sure would appreciate anything you could do to help us. If it is necessary for the dart players around the state to call their representatives, just let me know. We've talked to people in Anchorage, Fairbanks and Kenai and we're all ready.

Very truly yours,

Candy Baca

835-2214

Alaska State Legislature

Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee

Representative Eugene Kubina

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-4859

During Interim:
P.O. Box 2463
Valdez, Alaska 99686
(907) 835-2111

MEMO

To: Representative Donley, Chair
Judiciary Committee

From: Representative Gene Kubina

Re.: HB 187; An act relating to the definition of "contest of skill" in the charitable gaming statutes.

Date: 19 March 1991

The Labor and Commerce Committee passed HB 187 out of committee today. I would appreciate having this bill brought before your committee at the earliest date.

I have enclosed a copy of the bill, sponsor statement, position paper from the Dept. of Commerce, and several letters. If I can provide any other backup, please contact me.

Alaska State Legislature

Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee

Representative Eugene Kubina

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-4859

During Interim:
P.O. Box 2463
Valdez, Alaska 99686
(907) 835-2111

SPONSOR STATEMENT

Sponser: **Representative Gene Kubina**

Subject: **House Bill 187 - Contests of Skill: Darting**

Date: **12 February 1991**

HB187 is intended to amend AS 05.15.180(b) in order to make darts, and other contests of skill, permissible forms of charitable gaming.

In order to keep the code consistent throughout, HB187 also amends 05.15.210(7) to extend the definition of contest of skill.

Rationale: this amendation clarifies the current laws in order to make certain such charitable activities, involving contests of skill, are within the proper constructs of state law.

As the law currently stands, private organizations will be unable to continue such traditional charitable functions as dart tourneys.

Discussion with John Hanson, head of the charitable gaming section of the Division of Occupational Licensing, Department of Commerce and Economic Development, have resulted in the development of this bill.

POSITION PAPER

Department of Commerce & Economic Development

HB 187 An Act relating to the definition of contest of skill in the charitable gaming statutes.

The Department of Commerce and Economic Development supports passage of House Bill 187.

Glenn A. Olds, Commissioner

Date: 3-18-91

GAO/wfd4386W
31891a

(7)

[redacted]OUSE COMMITTEE REPO[redacted]

Date Referred: March 4, 1991

FURTHER REFERRALS: Judiciary, Finance

Date of Committee Action: 3-19-91

The LABOR AND COMMERCE Committee considered: HB 187

HOUSE BILL NO. 187 DART TOURNAMENTS/CONTESTS OF SKILL

"An Act relating to the definition of contest of skill in the charitable gaming statutes."

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

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[X] zero fiscal note Commerce + Econ Dev [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Lynn Pat Parnell		✓	
		Pam McLean		✓	
Kim Brotcke					
		Robin L. Taylor		X	
Gary Nemec		Dave Donley		X	
David Finkelstein					

David Finkelstein
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 21, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 5-17-91

The JUDICIARY Committee considered: HB 187

HOUSE BILL NO. 187 DART TOURNAMENTS/CONTESTS OF SKILL

"An Act relating to the definition of contest of skill in the charitable gaming statutes."

RECOMMENDATIONS: CSHB 187 ☒ the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
☒ no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ ☒ zero fiscal note(s) Commerce 3-21-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Terry Mooter		✓	
		Debbie Dudley		✓	
		Pat Greenhaw		✓	
		Jim Ellis		✓	
		Martin Pat Parnell		✓	

Debbie Dudley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 187

Revision Date:

Department Affected: Commerce & Economic Dev.

Title: An Act relating to the definition of contest of skill in the charitable gaming statutes.

BRU: Occupational Licensing - Gaming

Component: Administration

Sponsor: Reps. Kubina, Navarre, et al.

Requestor: Reps. Kubina, Navarre, et al.

COMPONENT SERIAL NO. 0 3 5 6

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Ann P. Boudreaux, Director Phone: 465-2534

Division: Occupational Licensing Date: March 18, 1991

Approved by Commissioner: Glenn A. Olds Asst. Comm.

Agency: Department of Commerce & Economic Development Date: March 18, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE

HB

194

LAW OFFICES
DILLON & FINDLEY
ONE SEALASKA PLAZA, SUITE 202
JUNEAU, ALASKA 99801

PAUL L. DILLON
THOMAS W. FINDLEY
RICHARD D. MONKMAN

TELEPHONE (907) 586-4000
FACSIMILE (907) 586-3777

April 2, 1991

Robert A. Harrington
Investigator
State of Alaska Board of Marine Pilots
Department of Commerce and Economic Development
P.O. Box D - Lic
Juneau, Alaska 99811 - 0800

HAND DELIVERED

Re: Captain Terry K. Bennett

Dear Mr. Harrington:

This office represents Captain Terry K. Bennett, who has asked us to respond to your letter of February 13, 1991 (received February 19, 1991).

As I understand the facts, you received a complaint from Captain Bennett's competitor, the Southeastern Alaska Pilots' Association, alleging that during the summer of 1990 Captain Bennett had failed to collect the "published tariff" for marine pilot services.

I note that the Board of Marine Pilots has authority to adopt "under the Administrative Procedure Act [...] standards by which pilotage fees may be established." AS 08.62.020(a)(1). However, the "published tariffs" to which your letter refers were not properly adopted under the Administrative Procedure Act ("APA"), but simply appear in your office's printed booklet of statutes and regulations pertaining to marine pilots as an addendum.

As you are aware, the legislature very broadly defined what constitutes a regulation under the APA. See generally, AS 44.62.640; Kelly v. Zamerello, 486 P.2d 906, 910 - 11 (Alaska, 1971). Unless properly adopted, regulations are unenforceable. Ibid.

The Alaska Supreme Court recently had occasion to discuss the definition of a "regulation" in this context:

> The legislature specifically defined "regulation" to "include[] ... 'policies' ... and the like, that have the effect of rules, orders, regulations or standards of general application." AS 44.62.640(a)(3). Indicia for identifying a "regulation include (1) whether the practice implements, interprets or makes specific the law enforced or administered by the state agency, and (2) whether the practice "affects the public or is used by the agency in dealing with the public."

Gilbert v. State, Dep't of Fish & Game, ___ P.2d ___, Op. No. 3649, at 13 - 14 (December 7, 1990) (emphasis and ellipses original), citing Kenai Peninsula Fishermen's Co-op Ass'n v. State, Board of Fisheries, 628 P.2d 897, 905 (Alaska 1981).

The "published tariff" appears indisputably to be a "standard of general application" which "makes specific the law enforced or administered by" the Alaska Board of Marine Pilots. In order to be valid, therefore, the "published tariff" must have been properly adopted as a regulation under the APA - which it was not. Kelly v. Zamerello, 486 P.2d at 910 - 11. As the Supreme Court recently noted, where a regulation has not been properly adopted,

> '[t]here can be no future reliance on this particular policy or option either in the regulation-making process or as a basis for emergency orders until the procedures required by the APA are observed.'

Gilbert, Op. No. 3649 at 15, quoting Kenai Peninsula Fishermen's Co-op, 628 P.2d at 906.

Thus, it is our conclusion that the complaint by Captain Bennett's competitor does not provide a basis for any action by your office. Further, the courts would look askance at any attempt to enforce these invalid regulations through the "bootstrap" of 12 AAC 56.140, referenced in your letter. As valid rates have not been adopted by the Board, the regulation to apply is 12 AAC 56.130.

It is also worth noting that the Board of Marine Pilots probably no longer has the authority to adopt and enforce specific tariffs. Even if the proper procedures were followed, the APA provides that regulations are:

> not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

AS 44.62.030.

The Board previously had authority to "regulate pilot fees" under former AS 08.62.040(a)(4), § 2 ch 106 SLA 1970. However, the legislature removed this authority, and now the Board only has authority to:

> Adopt regulations under the Administrative Procedure Act (AS 44.62) establishing standards by which pilotage fees may be established [...]

AS 08.62.040(a)(4), §§ 2, 3 ch 143 SLA 1980 (emphasis added).

It is likely that even had the "published tariffs" been properly adopted under the APA, the courts would not allow the Board to go beyond its authority to "establish[] standards" by which pilots and pilot associations may set the rates charged to their customers. The legislature greatly reduced the Board's authority in this area with the 1980 amendments to AS 08.62.040.

Thus, adoption of "pilotage fees" instead of "standards by which pilotage fees may be established" would be inconsistent with statute, not reasonably necessary to carry out the statutory purpose, and unenforceable. Kelly v. Zamerello, supra; State, DOT/PF v. Alyeska Pipeline Service Company, 723 P.2d 76, 78 (Alaska 1986).

Lastly, I must note that any attempt by the Board to enforce the "published tariff" would run afoul of both state and federal antitrust laws. This is an area which is some sensitivity to this Board, which is presently being sued in federal court for alleged violations of the antitrust laws.

The complaint by Captain Bennett's competitor amounts to a request that the Board enforce the fixing of prices for marine pilot services. The fixing of prices by competitors is an illegal horizontal restraint of trade under both the Sherman Act, 15 USC § 1, and the Alaska Monopolies Act, AS 45.50.560. The Board's sanctioning of, and participation in, the fixing of pilot charges would violate the antitrust laws unless this activity falls within one of the recognized exceptions. Goldfarb v. Virginia State Bar, 421 US 773 (1975).

There is only one exception which could apply here, the state action doctrine. Simply put, the antitrust laws are not intended to restrain state regulatory action, nor to impose liability on those who act in anticompetitive ways because they are required to do so by a state regulatory agency. Parker v. Brown, 317 US 341 (1941) (Sherman Act); AS 45.50.572(g) (Alaska Monopolies Act). However, the state action doctrine is not a blanket immunity:

> The national policy in favor of competition cannot be thwarted by casting a gauzy cloak of state involvement over what is essentially a private price-fixing arrangement. As Parker teaches, "a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful [...]"

California Liquor Dealers v. Midcal Aluminum, Inc., 445 US 97 (1980).

The state action doctrine is applied through a "rigorous two-pronged test." Parker. The challenged restraint of trade must be one which is "clearly articulated and affirmatively expressed as state policy" by the legislature. Lafayette v. Louisiana Power & Light Co., 435 US 389, 410 (1978) (opinion of Brennan, J.).

> [T]his issue requires a two-step analysis: First, whether the activity complained of is authorized; second, whether the state intends to displace competition with regulation.

Lancaster Community Hospital v. Antelope Valley Medical Group, ___ F.2d ___, 60 BNA Trade Regulation Reports 174, 175 n.4 (9th Circuit 1991).

If this test is met, the anticompetitive conduct additionally "must be actively supervised by the State itself." Ibid; see also California Liquor Dealers, 445 US at 105 and Patrick v. Burgett, 486 US 94 (1988). Only if all the factors noted are present does the state action doctrine apply to exempt price-fixing from the antitrust laws.

On the first prong, as noted earlier, the legislative policy as stated in AS 08.62.040(a)(4) is not "forthrightly stated and clear in its purpose," California Liquor Dealers at 105, if that purpose is to allow the Board to set rates. Compare, New Motor Vehicle Board v. Orrin W. Fox Co., 439 US 96 (1978) (state law clearly required state approval of locations for new automobile dealerships) and Southern Motor Carriers Rate Conference v. United States, 471 US 48 (collective rate making "clearly sanctioned by the legislature").

The Alaska legislature substantially limited the Board's prior authority to "regulate pilot fees" when it amended the statute. Now, it only allows the Board to "establish standards by which pilotage fees may be established." AS 08.62.040(a)(4). Allowing the Board to establish standards by which pilots may set their own fees is not a "clearly articulated and affirmatively expressed" state policy in favor of price-fixing. Parker.

On the second prong, review of the Pilot Act does not indicate an "affirmatively expressed and clearly articulated" state policy to displace competition in the pilot industry with state regulation. Lafayette; California Liquor Dealers. The statute provides a de minimus framework for regulation by the Board. Compare, e.g., AS 08.62 with AS 42.05 (Alaska Public Utilities Commission). The statutory change discussed above cuts against a finding that the second prong of the Parker test is met.

Last, even if both of these prongs were met, it must be shown that the the anticompetitive conduct at issue is "actively supervised by the State itself." Lancaster Community Hospital. This requires a concrete showing that the State actually, actively, and consistently regulates the activity in question. Patrick.

As far as I have been able to ascertain, during the last decade the Board has not taken any supervisory action involving pilot fees whatsoever. Indeed, the Southeastern Alaska Pilots' Association has consistently paid its contract pilots fees which are roughly 30% to 40% below the "published tariffs." There has been no supervision - or criticism - of this practice by the Board of Marine Pilots.

Thus, it appears that any attempt by the Board to enforce the "published tariffs" would violate both federal and state antitrust laws.

Under these circumstances, Captain Bennett respectfully requests that you seek the advice of legal counsel before proceeding any further with this particular investigation. I would of course be very glad to discuss this matter with your counsel.

Sincerely yours,

DILLON & FINDLEY

By: _____
Richard D. Monkman

RDM/oth

cc: Gary Amendola, Assistant Attorney General

ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT 1
HYDER
KETCHIKAN
KUPREANOF
MEYERS CHUCK
PETERSBURG
SAXMAN
WRANGELL

HOME
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DURING SESSION
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JUNEAU, AK 99811
PHONE 465-3424

Representative Cheri L. Davis

MEMORANDUM

TO: Representative Dave Donley,
Chairman, Judiciary Committee

FROM: Representative Cheri Davis

DATE: April 9, 1991

RE: Scheduling of House Bill 194

Please accept this memorandum as my request for House Bill 194 to be scheduled for a hearing in your committee.

The version of the bill that you will be hearing in your committee is a compromise between pilots and the industry, except for regionalization. The regionalization issue will be worked on later this week.

If you have any questions, please do not hesitate to contact me.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

April 18, 1991

BILL NUMBER: CSHB 194 (L&C)

TITLE: Relating to the Board of Marine Pilots, marine pilots, and marine pilot organizations; and providing for an effective date.

DEPARTMENT POSITION: Support with amendment

ANALYSIS: This bill clarifies and strengthens the authority of the Marine Pilots Board. Its passage would insure that competent marine pilots would be on board certain vessels in Alaska State waters, thus increasing the level of safety of vessel operations and protecting our marine environment.

The Department of Environmental Conservation believes that the mandatory use of local marine pilots with knowledge of the area in which they operate is an integral part of oil spill prevention. State licensed pilots was a major recommendation of both the Alaska Oil Spill Commission (Recommendation #20) and the States/British Columbia Oil Spill Task Force (Recommendation #15).

PROPOSED AMENDMENT: The Department would propose that the bill be amended to require the Board consult with DEC in establishing training standards for those marine pilots and deputy marine pilots operating in regions where there is crude oil tanker traffic.

John A. Sandor
Commissioner

LEGISLATURE OF THE STATE OF ALASKA
HOUSE JUDICIARY COMMITTEE

TESTIMONY OF
PAUL G. KIRCHNER
GENERAL COUNSEL, AMERICAN PILOTS' ASSOCIATION
ON
HOUSE BILL 194

April 18, 1991

My name is Paul G. Kirchner. I am with the law firm of Kurrus & Kirchner in Washington, D.C. and serve as General Counsel to the American Pilots' Association (APA). It is a pleasure to testify here today on behalf of the APA on House Bill 194, the proposed "Alaska Marine Pilotage Act."

INTEREST OF THE APA

The APA is a national trade association composed of state pilot associations located in each of the coastal states and the three groups of pilots operating in the Great Lakes under the authority of the United States Coast Guard. There are 57 state pilot associations in the APA. They contain a total of approximately 1,050 licensed, active pilots.

Among the objectives of the APA is the promotion of public safety and protection of life, property and the environment through measures to maintain and strengthen the state pilotage system. The foundation of that system, and the primary reason for the traditionally high standards of the state pilot profession,

is effective state regulation. For that reason, the APA wholeheartedly supports Alaska, or any other state, assessing its pilotage statute and regulations and making improvements where necessary or appropriate. We are happy to render any assistance that we can in such efforts. The perspective that the APA can offer is its familiarity with the experiences of the pilotage systems of other states and an understanding of the federal government's role in pilotage and how it affects state pilotage regulation.

We have followed closely the efforts of the State of Alaska to reassess and upgrade its pilotage regulatory system. As this process has entered the legislative phase, the APA member groups in Alaska, the Southeastern Alaska Pilots' Association and the Southwest Alaska Pilots' Association, have kept us apprised of the issues that have been raised and the legislation that has been proposed or introduced, particularly H.B. 194.

GENERAL COMMENTS ON H.B. 194

The APA congratulates Representative Davis and the other sponsors of H.B. 194. This bill, in our opinion, significantly improves the State's present pilotage regulatory system. It provides for: a strong pilot board with sufficient statutory authority and direction, regulated tariff rates, meaningful licensing and training requirements, oversight of pilot organizations, and effective penalties for violations of the State's compulsory pilotage requirement. These are the essentials of an effective state pilotage system.

We are also pleased that H.B. 194 clearly recognizes that pilots perform a vital public service that is essential to navigation safety, to the protection or the marine environment and the persons and property of the State's citizens, and to the economic well-being of the State. It is important that the shipping industry and the public, generally, understand the role of the state pilot and the State's compelling interest in regulating the pilotage of vessels moving in its waters.

With our support for H.B. 194, we offer the following specific comments on several items in the bill.

COMMENTS ON SPECIFIC PROVISIONS OF H.B. 194

1. Section 1 - Findings

The APA recommends that all state pilotage statutes contain a strong statement of legislative findings and intent. It is not clear, however, whether the statement of findings in Section 1 will be codified. If, in its present form, it is not to be placed in the pilotage statute, we would recommend that it be reconstituted as a separate section in AS 08.62. The findings should be readily available, both practically and as a matter of law, to guide the pilot board and to those who are affected by the pilotage statute.

Finding number (2) could perhaps be stated more clearly. The essential service that pilots provide to the state is the exercise of independent judgment in which the public interest will always take precedence over the interests of the vessel operator or of the pilot whenever a conflict among these interests may arise.

Although we would agree that pilots can best exercise such independence of judgment when they operate as independent contractors, the emphasis should be on the former.

Finding number (6) particularly highlights the value of codifying the statement of findings. In situations when the authority of the pilot board may be called into question, it would be important to be able to refer to the legislature's direction that the Board's authority is broad and extends, specifically, to establishing pilotage regions, tariffs, and training and licensing criteria.

Finding number (8) is a useful and important statement. Not only does it accurately describe the role that pilot organizations should play in a state system, it provides the predicate for state regulation and recognition of pilot organizations.

2. Section 4 - Powers and Duties of the Board

This is a good mix of specific statutory direction as to the things that the board must do and broad discretion as to the things that the board may do in carrying out the purposes and policy of the statute. Both are necessary features.

Ideally, a grant of authority could be permissive only so that a pilot board or any other administrative body would have the flexibility to apply the legislative will to changing circumstances. The actual does not always equal the ideal, however. There have been some unfortunate occasions in state pilotage regulation in which a state pilot board has, for various reasons, not done what a pilot board should do and, specifically, not what

it was intended to do by the legislature. Proposed, reenacted AS 08.62.040 takes the proper approach expanding the functions that the board must perform under paragraph (a) while continuing the board's authority in paragraph (b) to do those other things that the board may determine are appropriate or necessary, particularly in response to changing circumstances.

The language of paragraph (b) could possibly be revised, however, to make clear the expansive nature of the board's discretionary authority. We understand that the apparently broad authority granted in the present AS 08.62.040(b), which is continued in the bill, has not been interpreted as such by the State's Office of Attorney General. The following language is suggested to broaden the scope of paragraph (b):

> (b) The board may make, adopt and enforce all rules and regulations that it deems reasonable, necessary and expedient for carrying out the provisions and purposes of this chapter, including but not limited to, rules and regulations for the purpose of regulating the training, licensing and conduct of pilots; establishing marine pilotage regions and pilotage tariffs; compelling the use of pilots required under this chapter; ensuring proper, safe, economically viable pilotage operations; and facilitating the efficient administration of this chapter.

3. Section 15 - Liability

We support this proposed new section, which delineates the extent of liability that a pilot or a pilot organization may have in the event of damage or loss occasioned by the pilotage of a vessel. Limitation of liability is economically justifiable and appropriate. It will not decrease safety in any way or contravene any other state interest. In my opinion, it is a legally valid

exercise of a State's right and duty to ensure reasonable pilotage rates and an adequate supply of competent, qualified pilots.

4. Section 17 - Regional Organizations of Marine Pilots

Paragraph (b) of proposed new section 08.62.175 stating that the board may recognize organizations of marine pilots is confusing. First, it seems inconsistent with proposed section 08.62.040 (Section 5), which states that the board shall recognize such organizations. Second, it is not clear what "recognize" means and what are the benefits or obligations of a recognized organization. For example, as far as we can see, there is no requirement that an organization of marine pilots must be recognized, even under proposed 08.62.040 requiring the board to recognize organizations. Presumably, an organization could elect not to seek recognition and would not suffer for making such an election. Even without being recognized, it is still eligible for the limited immunity from the state antitrust restrictions that is offered under Section 23 of the bill, which applies to "licensed marine pilot organizations" (we assume that the term "licensed" is used there to refer to marine pilots, not pilot organizations).

We would recommend the following: (1) require all licensed pilots to belong to a recognized organization of marine pilots; (2) require that the board shall recognize any organization of marine pilots that meets requirements similar to those set forth in proposed paragraph (c); and (3) extend the antitrust immunity only to recognized organizations.

With reference to proposed paragraph (c), the required approval of the board should not be limited to approval of articles, bylaws and rules meeting the tests of subparagraphs (1)-(3). The organizations themselves should be subject to approval (i.e., recognition) on the basis of the tests of subparagraphs (1)-(3) plus a requirement that each organization demonstrate that it has the necessary equipment, financial wherewithall and experience to provide the level and quality of service required by the State. The articles, by-laws and rules would simply be evidence of the organization's compliance with the requirements of the statute and board regulations.

5. Section 18 - Exemptions

Section 08.62.180(a) should be changed. The term "enrollment" is no longer used in vessel documentation law. As a result of revisions to the federal documentation system made in the 1980 Vessel Documentation Act, Pub. Law No. 96-594, 46 U.S.C. Chapter 121, a vessel under enrollment is now a vessel with a "Certificate of Documentation Endorsed With a Coastwise License."

Since the purpose of section 08.62.180 is to recognize the coastwise vessels that are made exempt from state pilotage jurisdiction under federal law, 46 U.S.C. §8501(d), we suggest that the term "vessels under enrollment" be replaced by "coastwise vessels exempt from state pilotage requirements under 46 U.S.C. §8501(d), as amended, excluding coastwise vessels subject to 46 U.S.C. §8502(g)(2) as amended". The latter reference is to the recent provision enacted in the federal Oil Pollution Act of 1990,

Pub. Law No. 101-380, §4116, which requires a pilot licensed by the State of Alaska for all tankers moving between Valdez and a point south of Bligh Reef in Prince William Sound.

CONCLUSION

These comments have been respectfully offered for the purpose of assisting this Committee in its review and consideration of H.B. 194. I would be pleased to respond to any questions that the Committee may have.

Thank you.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 18, 1991

Hon. Dave Donley
Alaska House of Representatives
Room 122, Capitol Building
P.O. Box V
Juneau, Alaska 99811

Re: CS for HB 194 (L&C)

Dear Representative Donley:

On your behalf, Laurie Otto asked this office to review and comment on CS for HB 194 (L&C), a bill currently in the House Judiciary Committee that would amend the laws pertaining to marine pilotage in Alaska. More specifically, we understand that you want to know whether there are any potential legal problems with the bill, including how state and federal antitrust laws may be implicated.

For at least the past couple of years, questions have been raised with increasing frequency about whether certain components of the existing marine pilotage system violate state or federal antitrust laws. The targets of those questions have for the most part been related to (1) the authority of the Board of Marine Pilots (the Board) to establish and enforce mandatory tariffs for pilotage services in particular areas or ports, and (2) the requirements for advancement within the profession being in the control of the currently licensed marine pilots and existing marine pilot associations, the most notable of these requirements being the one that allows a pilot to upgrade an entry level license only after completing a certain number of dockings and undockings under the supervision of a state licensed marine pilot. 1/

1/ The Board of Marine Pilots, and the individual members of the Board are currently defendants in a lawsuit filed in federal court wherein the Plaintiff, Captain Joseph Homer, has generally accused the Board of allowing the Southeastern Alaska Pilots' Association (SEAPA) to monopolize the profession by, among other

(continued...)

To the extent that these antitrust concerns arise in the existing statutes, it is our opinion that this legislation addresses those problems. 2/ The public interest of the state, which may at any time be significantly impacted by the quality of marine pilotage, is served only when marine pilotage is safe, efficient, and, except under very unusual circumstances, always available to those who are required to use it. For that reason alone, marine pilotage has been, and should continue to be, a heavily regulated profession. 3/

In CS for HB 194 (L&C), a part of that heavy regulation includes (1) giving the Board broad and express authority (A) to adopt and enforce pilotage tariffs and (B) to approve the by-laws and operating rules of pilot organizations, and (2) establishing statutory standards for licensure and training. In our opinion, those provisions pave the way for the state to avoid antitrust concerns with its marine pilotage system. Why we only say "pave the way" is explained below.

1/ (...continued)
things, establishing a pilotage tariff and allowing SEAPA to control advancement in the profession through the dockings/undockings requirement.

The Plaintiff recently filed a Motion for Partial Summary Judgment against the Board on the basis that the dockings and undockings requirement was beyond the Board's authority to adopt and that the manner in which it is being implemented is a violation of antitrust laws. In the next month or so, this office will respond to that motion. By the middle of June, the Plaintiff's reply, if any, must be filed with the court. If requested, oral argument will be scheduled sometime after that. After oral argument, the court will rule on the motion.

2/ As you are probably well aware, SEAPA also is the defendant in lawsuits alleging that it has monopolized the marine pilotage business in Southeast Alaska. Although we believe that this legislation also addresses some antitrust concerns of SEAPA, in this memorandum we are only discussing the antitrust concerns of the state directly, except to the extent that those issues necessarily overlap.

3/ The amount of regulation and the significance of the public interest in the endeavor makes the regulation of pilotage in some ways analogous to that of a public utility.

In general, antitrust laws prohibit a variety of monopolistic, anti-competitive activities. However, in addition to certain statutory (state and federal) exemptions, under certain circumstances, the courts have recognized a state action exemption to a claim that activities violate antitrust laws. In California Liquor Dealers v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), the United States Supreme Court described the exemption as follows:

> These decisions establish two standards for antitrust immunity under Parker v. Brown. First, the challenged restraint must be "one clearly articulated and affirmatively expressed as state policy"; second, the policy must be "actively supervised" by the State itself. City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978) (opinion of Brennan, J.).

Midcal, 495 U.S. at 105. (Footnote omitted.)

In order for the state action exemption to be valid, there must first be a clearly articulated policy and law authorizing what otherwise might be anticompetitive behavior. In this bill, we believe such a clearly articulated policy and law exists. Secondly, for the exemption to be validly invoked, the state must actively supervise the otherwise anticompetitive conduct. This bill certainly contains provisions to effect that active supervision, e.g., employment of marine pilot coordinator and the generally clear and increased regulatory authority of the Board. If those provisions are implemented, we think that the active supervision standard will be met. 4/

Although other legal issues were discussed and considered during the process that began last fall on drafting a bill on this subject, we think that those issues have been dealt with in such a way in this bill so that we find none outstanding. 5/

4/ It is not perfectly clear to what extent a state must supervise for that supervision to be "active." Recent caselaw indicates that the courts are not making the standard a rigorous or onerous one for a state to meet.

5/ For example, the bill does not contain a provision limiting the number of licenses that would be issued.

Recognizing that this letter is somewhat conclusory, if you have any questions or wish further details, please let me know.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Gary Amendola
Gary I. Amendola
Assistant Attorney General

GIA:jf

cc: Ann P. Boudreaux, Director
Division of Occupational Licensing, DCED

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 10, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 5-13-91

The JUDICIARY Committee considered: HB 194

HOUSE BILL NO. 194 REGULATION OF MARINE PILOTS

"An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot organizations; and providing for an effective date."

RECOMMENDATIONS: [ ] the same title
be replaced with CS HB 194 (JUD) [X] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

[X] fiscal impact CED [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Kevin P. Parnell	✓				
Terry Mackie	✓				
Dave Donley	✓	Mark Hanley		X	
Jerry Ellis	✓				

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 194(Jud)

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: Relating to the Board of Marine Pilots, marine pilots, ... BRU: Occupational Licensing

Component: Administration

Sponsor: Rep. C. Davis, et al

Requestor: House Judiciary COMPONENT SERIAL NO. 0 3 5 6

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	72.3	72.3	72.3	72.3	72.3	72.3
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	103.3	93.3	93.3	93.3	93.3	93.3
CAPITAL						
REVENUE	0	131.6	0	131.6	0	131.6

FUNDING: (Thousands of Dollars)

GENERAL FUND	103.3					
FEDERAL FUNDS						
OTHER GF/PR		93.3	93.3	93.3	93.3	93.3
TOTAL	103.3	93.3	93.3	93.3	93.3	93.3

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

(SEE ATTACHED)

Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144

Division: Occupational Licensing Date: May 14, 1991

Approved by Commissioner: Glenn A. Olds Asst. Comm.

Agency: Commerce and Economic Development Date: 5-14-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE ANALYSIS

CSHB 194(JUD)

The bill makes a number of amendments to the Marine Pilotage Act. The expenses identified in this fiscal note result from paying for audits to collect information needed to apply standards as mentioned in Section 2, and the employment of a Marine Pilot Coordinator established by Section 4.

The bill places the Marine Pilot Coordinator in the partially exempt service of State government and is charged with the responsibility to administer and enforce the chapter. The costs identified are based on a similar Executive Director position, Range 22.

Personal Services:	
Marine Pilot Coordinator, XE, 12 months, Range 22A	$72.3
Travel:	10.0
Funding of $10.0 will cover travel and per diem expenses for the marine pilot coordinator to conduct audits, review training programs, and to enforce compliance with the marine pilotage act.	
Contractual Services:	10.0
This funding will provide for communications, postage, printing, advertising, and auditing costs.	
Supplies:	1.0
Funding will provide for daily operating supplies for the Marine Pilot Coordinator position.	
Equipment:	10.0
Funding will provide one-time equipment costs for the Marine Pilot Coordinator position. This funding will also provide for on-going office space costs.	
TOTAL COSTS:	**$103.3**

Revenues:

There are approximately 123 licensed marine pilots whose licensing fees must be increased to cover the new costs provided in the bill. In addition, current expenses of the Board of Marine Pilots exceed revenues generated from licensing fees to support its licensing program.

Licensing fees must be raised to cover an additional $131.7 (an average of the new costs identified in this fiscal note for the first two years, $98.3, and the current deficit of $33.4), totalling $131.7. Therefore, a biennial licensing fee of $1,070 ($535 per year) will be necessary to cover the additional program costs ($1,070 x 123 = $131.6). Marine Pilot licensees currently pay a biennial fee of $180 ($90 per year). If licensing fees are not increased to cover program costs, the program must then be supported by the general fund.

Since marine pilot licenses are due for renewal on December 31, 1992 (FY 93), revenues will not be collected in the first year of operation under provisions of CSHB 194(JUD). Funding in the first year must therefore be covered by general funds, unless a special one time assessment fee is made to licensees in FY 92.

The revenues identified in this fiscal note are based on the assumption that licensees will be willing to increase their fees to fully cover the costs of its licensing program beginning in FY 93 during the license renewal period.

ALASKA STEAMSHIP OPERATORS ASSOCIATION
HOUSE JUDICIARY COMMITTEE
APRIL 18, 1991

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
One	2	1	2	DELETE: "and adjacent to water"	Conforming amendment to reflect language found at pg. 7, sec. 4, line 25.
				INSERT: "inland and coastal waters	
Two	3	1	7	DELETE: (5)	By requiring vessels to use pilots, the State has a duty to insure that pilots do not use this power to exact excessive rates for services. Therefore, it is incumbent upon the State to make sure that rates for pilotage services do not exceed a maximum level authorized by the Board. Below that maximum, pilots and vessel owners should be able to negotiate rates based upon a multitude of factors such as, for example, guaranteeing a minimum number of engagements. To prohibit pilots and vessel owners from negotiating lower rates is really an attempt to protect pilots from competing with each other. That is not a proper matter for the State to involve itself in. This amendment also makes it clear that it is the pilots and applicants for pilot licenses who pay for training and licensing fees.
				INSERT NEW (5):"(5) establish maximum rates to be charged by pilots for basic pilotage services within each pilotage region and charges to be paid for by persons licensed or applying for licenses under this chapter for training, licensing and other purposes."	
Three	3	4	30	INSERT NEW SUBSECTION (d): "(d) For	The intent of this change is to

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
				purposes of AS 08.62.040(a)(5), the term "basic pilotage services" is intended to refer to the conduct of a vessel over or within a specific waterway or into or out of a specific port."	limit the rate setting authority of the Board to matters directly related to movement of the vessel. All other charges would be left to negotiation between the pilots and vessel owners.
our	3	4	26	INSERT: "(13) establish standards by which a marine pilot may receive licensing and endorsements to pilot in more than one region as provided in AS 08.62.080 and this chapter."	This is compromise language designed to deal with the regionalization concept. Instead of limiting a pilot to one region, it would allow licenses for multiple regions, specify the waterways and ports for which the license is valid.
ive	4	6	10	DELETE: line 10 INSERT: "(b) If a person is licensed to pilot vessels in more than one region, the license shall specify which region is the primary license region and which regions are the secondary license regions. A license issued to a person for a secondary pilotage region shall limit the specific waterways and ports in that region within which the person is authorized to pilot a vessel based upon the particular training and other qualifications of the person."	Same as amendment four.
Six	7	13	14	INSERT: after "alcohol" "or drugs"	This language clarifies that intoxication of any sort is unacceptable when performing pilotage duties.
Seven	7	13	20 & 21	DELETE: Lines 20 and 21	Same as amendment two.

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
Eight	8	15	9	DELETE: "the organization or" beginning at the end of line 10 and "or indirectly" at the beginning of line 12. If this is done, one can also delete the entire sentence beginning on line 12.	It is correct that a marine pilot organization should not be liable for errors or omissions of its individual members occurring in the performance of pilotage services. If the organization itself acts improperly, it should be held to the same standard as any other private business. For example: an organization should be held liable if it breaches a contract with another party whether or not that breach was wilful. Furthermore, if the organization itself acts negligently, the organization should be held accountable whether or not that negligence constitutes gross negligence. All this change does is make sure that pilot organizations, when acting as organizations, are held to the same level of accountability as any person in business is held to.
Nine	9	17	15	DELETE: "maintaining a sufficient number of qualified pilots available for dispatch" INSERT: "<u>demonstrating the ability to maintain and dispatch pilots</u>"	The existing language requires that any new organization must, from day one, have enough pilots on their roster to meet the needs of any and all vessels entering their region. The Board would have the authority to ensure that all organizations would comply with the intent to provide year round pilotage.
Ten	10	19	7	DELETE: "...person's name..."	This is a point of clarification. It is individual companies not

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
				INSERT: "employer of said person"	its employees conducting business within the State. As long as a person is in the employ of a company licensed to do business in Alaska then that is sufficient.
Eleven	10	23	25	DELETE: Section 23 and renumber	We are not aware of any other State that exempts pilot organizations from its antitrust laws. The fact of the matter is that, for example, a pilot organization was to enter into an exclusive dealing arrangement with a shipper that should be illegal given the potentially disastrous implications on competing shippers. If there are multiple pilot organizations that want to merge, the antitrust implications of that merger should be subject to scrutiny. If a pilot organization was to enter into an agreement with a shipper in which the organization agreed to charge all other shippers higher rates, that should be subject to antitrust scrutiny. Pilot organizations are private businesses that are subject to only limited governmental scrutiny. As to those areas in which the government does not regulate, the antitrust laws provide a necessary level of protection to prevent abuse of market power.

Testimony To The House Judiciary Committee
From Captain Terry Bennett of
Alaska Coastwise Pilots Association
April 18, 1991

Mr. Chairman, Members of the Committee, Thank you for the opportunity to testify today. My name is Terry Bennett and I am President of Alaska Coastwise Pilots (ACP). I hold a masters license, any gross tons and have been piloting in Alaska since 1981.

Our association was formed in 1988 by myself and Captain Joseph W. Homer for the purpose of seeking employment as pilots independent of Southeastern Alaska Pilots Association (SEAPA). I have provided committee staff with documentation describing the struggle Captain Homer and I had trying to find work from June 1988 to June 1990.

In June 1990 Captain Homer and I negotiated a contract with Windstar Sail Cruises to provide Alaska pilotage service for one of their vessels. Our successful 1990 season led to negotiation with the parent company of Windstar, Holland America Line, a wholly owned American company whose stock is publicly traded.

This past fall we expanded our association to six full share members and three contract pilots. The combined experience of our group is nearly two hundred years of accident free pilotage. Some of our members have piloted in other parts of the world, including large cargo ships in Hawaii, passenger ships in the Panama Canal and VLCC's in the Persian Gulf. The growth of ACP allowed for the successful conclusion of a contract between HAL and ACP in which ACP will provide dispatch services for pilots on HAL cruise ships in Southeast Alaska for the next five seasons. It is the aim of ACP to increase our market share and to the extent we do, provide year-round service to our customers.

We see this bill as an attempt to put ACP out of business and to force our customers back to SEAPA for pilots. We believe Southwest Alaska Pilots Association (SWAPA) supports SEAPA's efforts so as to prevent our offering pilotage service to HAL ships in Prince William Sound.

The bill suggests that there is a need for improving safety of navigation and upgrading training and entry standards, but the bill attempts to provide an economic answer and thereby exposes its real purpose, the eventual, if not immediate elimination of competition.

We suggest that the bill be discarded. Failing that we have specific recommendations for amendments which if made would allow ACP and/or other new pilot groups to compete successfully with SEAPA and SWAPA.

AMENDMENT NO. 1

p. 2 l. 18 Add: Pilot membership of the board shall rotate evenly among the existing pilot associations.

AMENDMENT NO. 2

p. 2 l. 31 Delete and keep current statutory language. Comment: This language is code for eliminating competition through arbitrary and capricious use of board authority as influenced by SEAPA and SWAPA. In addition it is not necessary since qualifications and limitations already occur through the license exam process.

AMENDMENT NO. 3

p. 3 (7) Delete all. Replace with: Provide advice and asistance to pilot organizations desiring to establish or upgrade their pilot training programs.

AMENDMENT NO. 4

p. 3 (9) Delete all. Replace with: Adopt no rule the result of which is the limiting of business or termination of any pilot orgainization existing in this state now.

AMENDMENT NO. 5

p. 4 Sec. 08.62.050 Marine Pilot Coordinator. Delete all. Replace with: The department may hire a marine pilot coordinator to act as an advisor to the department on the administration of this chapter. The coordinator may not be an active pilot in Alaska, nor have been a member of a pilot organization in Alaska for three years prior to his date of hire. Among his duties may be conducting check rides for pilots seeking docking licenses.

AMENDMENT NO. 6

p. 4 Sec. 6 Delete all and replace with language of current statute.

AMENDMENT NO. 7

p. 4 Sec. 9 (3) Delete all.

AMENDMENT NO. 8

p. 5 l. 8 Delete: member of a professional pilots organization, and replace with professional marine pilot. Comment: Many excellent pilots work on federal license and would not be eligible.

AMENDMENT NO. 9

p. 5 (d) after word of insert: any gross tons and dock vessels of 30,000 gross tons.

AMENDMENT NO. 10

p. 5 Sec 08.62.097 Training Programs for Deputy Marine Pilots. Delete and replace with: Upon an applicant's successful completion of the license exam for the deputy marine pilots license the board will recommend to the deputy marine pilot's organization an appropriate continuing education program. Comment: The deputy pilot would then be licensed and qualified to work immediately. The further training can be applied flexibly since pilots entering the profession have differing background experience.

AMENDMENT NO. 11

p. 7 Sec. 13 (7) Delete. Comment: anti-competition.

AMENDMENT NO. 12

p. 9 (b) Delete all. Comment: Not necessary for state to recognize regional organization. State does recognize pilots as individuals. Idea of a "social contract" between State and association is nonsense, reference study + FTC FLA. comment.

AMENDMENT NO. 13

P. 9 (c) Delete all. Replace with: All pilot organizations shall promote safe and efficient pilotage in Alaska. Each organization shall apply its articles, bylaws or rules in a fair, uniform and nondiscriminatory manner. Each pilot organization will comply with applicable state and federal laws.

AMENDMENT NO. 14

p. 10 Sec. 23 Delete all. Comment: This would give anti trust immunity.

AMENDMENT NO. 15

p. 1 (3) Delete all. Comment: The licensing and regulation of marine pilots has not protected the public from the consequences of marine casualties. e.g. Exxon Valdez and North Star casualties.

MMITTEE SUBSTITUTE FOR SPONSOR SUB-ILL NO. 806 (relating to heads, de-ectors of divisions of principal de-xecutive branch and to members of nd commissions) (page 1042 of the House Journal Supplement No. 54.

ttee has had HOUSE BILL NO. 933 isory vote by the qualified voters ndment of the Alaska Statehood Act to land) under consideration and committee recommends it do pass. (Co-Chairman), Halford, Chatterton, er and Zharoff.

to the Judiciary Committee.

a has had HOUSE BILL NO. 961 (re-Commercial Fishing and Agriculture for an effective date) under con-jority of the committee recommends a COMMITTEE SUBSTITUTE FOR HOUSE title) and reports it back with ations. Freeman (Vice Chairman), en and Duncan recommend do pass. have no recommendation.

to the Rules Committee for place-

a has had HOUSE BILL NO. 970 (mak-priation for regional aquaculture ve date) under consideration and mmittee recommends it be replaced TITUTE FOR HOUSE BILL NO. 970 e), and reports it back with in-ions. Freeman (Vice Chairman) ommend do pass. Guy, Duncan, have no recommendation.

to the Rules Committee for place-

UCTION OF CITATIONS

ns were received:

Airlie C. Bruce
tative McKinnon

Mary Edna Crawford
tative McKinnon

Miss M. Betty Malay
tative McKinnon

were referred to the Rules Com-n the calendar.

INTRODUCTION, FIRST READING AND REFERENCE

OF HOUSE BILLS

HOUSE BILL NO. 1025 by the Commerce Committee, entitled: HB 1025

"An Act continuing the existance of the Board of Marine Pilots and amending the law relating to its powers and responsibilities; and providing for an effective date."

was read the first time with the following committee report:

The Commerce Committee has had HB 1025 under consideration and a majority of the committee recommends it do pass and attaches a letter of intent. Concurring: Brown (Chairman), Malone, Osterback, Halford and Munson. Not concurring: Randolph recommends do not pass and Bettisworth has no recommendation.

HB 1025 was referred to the Rules Committee for placement on the calendar.

The letter of intent on HB 1025 follows:

Dear Mr. Speaker:

It is the belief of the House Commerce Committee that entry into the Marine Pilots profession has been unnecessarily restrictive. It is therefore the intention of this committee that the Board of Marine Pilots develop an apprentice training program. This program should provide an opportunity to all qualified Alaskans to impartially participate in training, which when successfully completed, would qualify them to compete for and obtain available pilotage positions. A report providing complete details for implementing this program shall be presented to the next session of the Legislature on or before the opening day of the session.

Respectfully submitted,

Representative Fred Brown
Chairman
House Commerce Committee

: 3, 1980 were read stating the Senate
.owing:

ID REFERENCE OF SENATE RESOLUTIONS

E FOR SENATE CONCURRENT RESOLUTION
the Rules Committee:

the Second Amendment to the
for the Sale and Purchase
Royalty Oil between the
Alaska and The Alpetco Com-

time and referred to the Rules Com-

AND REFERENCE OF SENATE BILLS

mended, by the Rules Committee by re-

proving the second amend-
ie agreement for the sale
ise of state royalty oil
ie State of Alaska and the
ompany; and providing for
e date."

ae and referred to the Rules Commit-

OF STANDING COMMITTEES

has had SENATE BILL NO. 294 amended
.tna River hydroelectric project;
consideration and a majority of
ds it be replaced with HOUSE COM-
SENATE BILL NO. 294 (Finance):

"An Act relating to power projects of the Alaska Power Authority and the Susitna River hydroelectric project; and providing for an effective date." SB 294 am

that it do pass and attaches a new fiscal note. Concurring: Mackins, Rogers, McKinnon, Guy, Moss and Duncan. Not concurring: Freeman (Vice Chairman), Haugen, Smith, Montgomery and Schaeffer have no recommendation.

SB 294am was referred to the Rules Committee for placement on the calendar.

Fiscal note appears in House Journal Supplement No. 85.

The Rules Committee has had SENATE BILL NO. 573 (continuing the existence of the Board of Marine Pilots and amending the law relating to its powers and responsibilities; effective date) under consideration and a majority of the committee recommends it do pass and that the House Commerce Committee letter of intent on HB 1025 (page 1085 of the journal) be adopted. Concurring: Cotten (Chairman), Brown, Miller, Parr and Phillips. SB 573

SB 573 appears on today's calendar.

REPORTS OF SPECIAL COMMITTEES

The FREE CONFERENCE COMMITTEE, which has had COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 114 (Rules) amended (competitive bidding under the Fiscal Procedures Act) and HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 114 (Finance) amended House (same title) under consideration recommends that: HCS CSSB 114 (Fin) amH

FREE CONFERENCE COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 114
"An Act relating to state contracting and procurement procedures, and competitive bidding under the Fiscal Procedures Act."

be adopted.